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[Report No. 107–10]

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

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2001

Mr. ENZI (for himself, Mr. GRAMM, Mr. SARBANES, Mr. JOHNSON, Mr. HAGEL, Mr. ROBERTS, Ms. STABENOW, Mr. BAYH, Mr. BENNETT, Mr. REID, Ms. CANTWELL, Mr. BUNNING, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

APRIL 2, 2001

Reported by Mr. GRAMM, with an amendment

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

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

1 ~~(b) TABLE OF CONTENTS.—The table of contents of~~

2 ~~this Act is as follows:~~

~~Sec. 1. Short title; table of contents.~~
~~Sec. 2. Definitions.~~

~~TITLE I—GENERAL AUTHORITY~~

~~Sec. 101. Commerce Control List.~~
~~Sec. 102. Delegation of authority.~~
~~Sec. 103. Public information; consultation requirements.~~
~~Sec. 104. Right of export.~~
~~Sec. 105. Export control advisory committees.~~
~~Sec. 106. President's Technology Export Council.~~
~~Sec. 107. Prohibition on charging fees.~~

~~TITLE II—NATIONAL SECURITY EXPORT CONTROLS~~

~~Subtitle A—Authority and Procedures~~

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

~~Subtitle B—Foreign Availability and Mass-Market Status~~

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

~~TITLE III—FOREIGN POLICY EXPORT CONTROLS~~

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

~~TITLE IV—EXEMPTION FOR AGRICULTURAL COMMODITIES, MEDICINE, AND MEDICAL SUPPLIES~~

~~Sec. 401. Exemption for agricultural commodities, medicine, and medical supplies.~~
~~Sec. 402. Termination of export controls required by law.~~
~~Sec. 403. Exclusions.~~

~~TITLE V—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION~~

~~Sec. 501. Export license procedures.~~
~~Sec. 502. Interagency dispute resolution process.~~

~~TITLE VI—INTERNATIONAL ARRANGEMENTS, FOREIGN BOYCOTTS, SANCTIONS, AND ENFORCEMENT~~

~~Sec. 601. International arrangements.~~
~~Sec. 602. Foreign boycotts.~~
~~Sec. 603. Penalties.~~
~~Sec. 604. Multilateral export control regime violation sanctions.~~
~~Sec. 605. Missile proliferation control violations.~~
~~Sec. 606. Chemical and biological weapons proliferation sanctions.~~
~~Sec. 607. Enforcement.~~
~~Sec. 608. Administrative procedure.~~

~~TITLE VII—EXPORT CONTROL AUTHORITY AND REGULATIONS~~

~~Sec. 701. Export control authority and regulations.~~
~~Sec. 702. Confidentiality of information.~~

~~TITLE VIII—MISCELLANEOUS PROVISIONS~~

~~Sec. 801. Annual and periodic reports.~~
~~Sec. 802. Technical and conforming amendments.~~
~~Sec. 803. Savings provisions.~~

~~SEC. 2. DEFINITIONS.~~

~~In this Act:~~

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

~~(2) AGRICULTURE COMMODITY.—The term "agriculture commodity" means any agricultural commodity, food, fiber, or livestock (including livestock, as defined in section 602(2) of the Emergency Livestock Feed Assistance Act of 1988 (title VI of the Agricultural Act of 1949 (7 U.S.C. 1471(2))), and including insects), and any product thereof.~~

~~(3) CONTROL OR CONTROLLED.—The terms "control" and "controlled" mean any requirement, condition, authorization, or prohibition on the export or reexport of an item.~~

~~(4) CONTROL LIST.—The term "Control List" means the Commerce Control List established under section 101.~~

~~(5) CONTROLLED COUNTRY.—The term "controlled country" means a country with respect to which exports are controlled under section 201 or 301.~~

~~(6) CONTROLLED ITEM.—The term "controlled item" means an item the export of which is controlled under this Act.~~

~~(7) COUNTRY.—The term "country" means a sovereign country or an autonomous customs territory.~~

~~(8) COUNTRY SUPPORTING INTERNATIONAL TERRORISM.—The term "country supporting international terrorism" means a country designated by the Secretary of State pursuant to section 310.~~

~~(9) DEPARTMENT.—The term "Department" means the Department of Commerce.~~

~~(10) EXPORT.—~~

~~(A) The term "export" means—~~

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

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

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

~~(B) The term includes a reexport.~~

~~(11) FOREIGN AVAILABILITY STATUS.—The term "foreign availability status" means the status described in section 211(d)(1).~~

~~(12) FOREIGN PERSON.—The term "foreign person" means—~~

~~(A) an individual who is not—~~

~~(i) a United States citizen;~~

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

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

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

~~(C) any governmental entity of a foreign country.~~

~~(13) ITEM.—~~

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

~~(B) OTHER DEFINITIONS.—In this paragraph:~~

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

~~(ii) TECHNOLOGY.—The term ''technology'' means specific information that is~~

~~necessary for the development, production, or use of an item, and takes the form of technical data or technical assistance.~~

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

~~(14) MASS-MARKET STATUS.—The term "mass-market status" means the status described in section 211(d)(2).~~

~~(15) MULTILATERAL EXPORT CONTROL REGIME.—The term "multilateral export control regime" means an international agreement or arrangement among two or more countries, including the United States, a purpose of which is to coordinate national export control policies of its members regarding certain items. The term includes regimes such as the Australia Group, the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), and the Nuclear Suppliers' Group Dual Use Arrangement.~~

~~(16) NATIONAL SECURITY CONTROL LIST.—The term "National Security Control List" means the list established under section 202(a).~~

~~(17) PERSON.—The term "person" includes—~~

~~(A) any individual, or partnership, corporation, business association, society, trust, organi-~~

~~zation, or any other group created or organized under the laws of a country; and~~

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

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

~~(19) SECRETARY.—The term "Secretary" means the Secretary of Commerce.~~

~~(20) UNITED STATES.—The term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (42 U.S.C. 1331(a)).~~

~~(21) UNITED STATES PERSON.—The term "United States person" means—~~

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

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

~~(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations prescribed by the President.~~

~~TITLE I—GENERAL AUTHORITY~~

~~SEC. 101. COMMERCE CONTROL LIST.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 102. DELEGATION OF AUTHORITY.~~

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

~~(b) EXCEPTIONS.—~~

~~(1) DELEGATION TO APPOINTEES CONFIRMED BY SENATE.—No authority delegated to the President under this Act may be delegated by the President to, or exercised by, any official of any depart-~~

~~ment or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate.~~

~~(2) OTHER LIMITATIONS.—The President may not delegate or transfer the President's power, authority, or discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State under this Act.~~

~~SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIREMENTS.~~

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

~~(b) CONSULTATION WITH PERSONS AFFECTED.—The Secretary shall consult regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls in order to obtain their views on United States export control policy and the foreign availability or mass-market status of controlled items.~~

~~SEC. 104. RIGHT OF EXPORT.~~

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

~~SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.~~

~~(a) APPOINTMENT.—Upon the Secretary's own initiative or upon the written request of representatives of a substantial segment of any industry which produces any items subject to export controls under this Act or under the International Emergency Economic Powers Act, or being considered for such controls, the Secretary may appoint export control advisory committees with respect to any such items. Each such committee shall consist of representatives of United States industry and Government officials, including officials from the Departments of Commerce, Defense, and State, and other appropriate departments and agencies of the Government. The Secretary shall permit the widest possible participation by the business community on the export control advisory committees.~~

~~(b) FUNCTIONS.—~~

~~(1) IN GENERAL.—Export control advisory committees appointed under subsection (a) shall advise and assist the Secretary, and any other department, agency, or official of the Government carrying out functions under this Act, on actions (including~~

~~all aspects of controls imposed or proposed) designed to carry out the provisions of this Act concerning the items with respect to which such export control advisory committees were appointed.~~

~~(2) OTHER CONSULTATIONS.—Nothing in paragraph (1) shall prevent the United States Government from consulting, at any time, with any person representing an industry or the general public, regardless of whether such person is a member of an export control advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present information to such committees.~~

~~(c) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export control advisory committee appointed under subsection (a), the Secretary may, if the Secretary determines it to be appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.~~

~~(d) CHAIRPERSON.—Each export control advisory committee appointed under subsection (a) shall elect a chairperson, and shall meet at least every 3 months at the call of the chairperson, unless the chairperson determines, in consultation with the other members of the com-~~

~~mittee, that such a meeting is not necessary to achieve the purposes of this section. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years each. The Secretary shall consult with each such committee on such termination or extension of that committee.~~

~~(e) ACCESS TO INFORMATION.—To facilitate the work of the export control advisory committees appointed under subsection (a), the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the items or policies for which that committee furnishes advice. Information provided by the export control advisory committees shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest.~~

~~SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.~~

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

SEC. 107. PROHIBITION ON CHARGING FEES.

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

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT CONTROLS.

(a) AUTHORITY.—

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

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

~~partments and agencies as the Secretary considers appropriate.~~

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

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

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

~~(A) leading international efforts to control the proliferation of chemical and biological weapons, nuclear explosive devices, missile delivery systems, key-enabling technologies, and other significant military capabilities;~~

~~(B) controlling involvement of United States persons in, and contributions by United States persons to, foreign programs intended to develop weapons of mass destruction, missiles, and other significant military capabilities, and the means to design, test, develop, produce, stockpile, or use them; and~~

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

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

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

~~(d) ENHANCED CONTROLS.—Notwithstanding any other provisions of this title, the President may determine that applying the provisions of section 204(b) or section 211 with respect to an item on the National Security Control List would constitute a significant threat to the national security of the United States and that such item requires enhanced control. If the President determines that enhanced control should apply to such item, it shall be excluded from the provisions of section 204(b), section 211, or both, until such time as the President shall determine that such enhanced control should no longer apply~~

~~to such item. The President may not delegate the authority provided for in this subsection.~~

~~SEC. 202. NATIONAL SECURITY CONTROL LIST.~~

~~(a) ESTABLISHMENT OF LIST.—~~

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

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

~~(3) IDENTIFICATION OF ITEMS FOR NATIONAL SECURITY CONTROL LIST.—The Secretary, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, shall identify the items to be included on the National Security Control List provided that the National Security Control List shall, on the date of enactment of this Act, include all of the items on the Commerce Control List controlled on the day before the date of enactment of this Act to protect the national security of the United States, to prevent the proliferation of weapons of mass destruction and the means to deliver them, and to~~

~~deter acts of international terrorism. The Secretary shall periodically review and, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, adjust the National Security Control List to add items that require control under this section and to remove items that no longer warrant control under this section.~~

~~(b) RISK ASSESSMENT.—~~

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

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

~~(A) The characteristics of the item.~~

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

~~(C) The effectiveness of controlling the item for national security purposes of the~~

~~United States, taking into account mass-market status, foreign availability, and other relevant factors.~~

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

~~(E) Any other appropriate risk factors.~~

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

~~SEC. 203. COUNTRY TIERS.~~

~~(a) IN GENERAL.—~~

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

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

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

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

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

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

~~(b) TIERS.—~~

~~(1) IN GENERAL.—The President shall establish a country tiering system consisting of 5 tiers for purposes of this section, ranging from tier 1 through tier 5.~~

~~(2) RANGE.—Countries that represent the lowest risk of diversion or misuse of an item on the National Security Control List shall be assigned to tier 1. Countries that represent the highest risk of diversion or misuse of an item on the National Security Control List shall be assigned to tier 5.~~

~~(3) OTHER COUNTRIES.—Countries that fall between the lowest and highest risk to the national security interest of the United States with respect to the risk of diversion or misuse of an item on the National Security Control List shall be assigned to tier 2, 3, or 4, respectively, based on the assessments required under subsection (c).~~

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

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

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

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

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

~~(5) Whether the country, if a NATO or major non-NATO ally with whom the United States has entered into a free trade agreement as of January 1, 1986, controls exports in accordance with the criteria and standards of a multilateral export control regime as defined in section 2(15) pursuant to an international agreement to which the United States is a party.~~

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

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

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

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

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

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

~~SEC. 204. INCORPORATED PARTS AND COMPONENTS.~~

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

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

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

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

~~unless the item itself, if exported, would by virtue of the functional characteristics of the item as a whole make a significant contribution to the military or proliferation potential of a controlled country or end user which would prove detrimental to the national security of the United States, or unless failure to control the item would be contrary to the provisions of section 201(c), section 201(d), or section 309 of this Act.~~

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

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

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

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

~~(B) are incorporated into the item; and~~

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

~~SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STATUS.~~

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

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

~~Subtitle B—Foreign Availability and Mass-Market Status~~

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

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

~~(1) on a continuing basis,~~

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

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

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

~~(b) PETITION AND CONSULTATION.—~~

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

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

~~(c) RESULT OF DETERMINATION.—In any case in which the Secretary determines, in accordance with proce-~~

~~dures and criteria which the Secretary shall by regulation establish, that an item described in subsection (a) has—~~

~~(1) a foreign availability status, or~~

~~(2) a mass-market status,~~

~~the Secretary shall notify the President (and other appropriate departments and agencies) and publish the notice of the determination in the Federal Register. The Secretary's determination shall become final 30 days after the date the notice is published, the item shall be removed from the National Security Control List, and a license or other authorization shall not be required under this title or under section 1211 of the National Defense Authorization Act of Fiscal Year 1998 with respect to the item, unless the President makes a determination described in section 212 or 213, or takes action under section 309, with respect to the item in that 30-day period.~~

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

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

~~(A) is available to controlled countries from sources outside the United States, includ-~~

~~ing countries that participate with the United States in multilateral export controls;~~

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

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

~~(2) MASS-MARKET STATUS.—~~

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

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

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

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

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

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

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

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

~~(B) DIRECTLY COMPETITIVE ITEM.—~~

~~(i) IN GENERAL.—The determination of whether an item in relation to another item is a directly competitive item shall include a fair assessment of whether the~~

~~item, although not substantially identical in its intrinsic or inherent characteristics, is substantially equivalent for commercial purposes and may be adapted for substantially the same uses.~~

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

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

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

~~(1) GENERAL CRITERIA.—~~

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

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

~~(II) there is a high probability that the foreign availability of an item will be~~

~~eliminated through international negotiations within a reasonable period of time taking into account the characteristics of the item, or~~

~~(ii) failure to control an item would be contrary to the provisions of section 309,~~

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

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

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

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

~~(B) publish the determination in the Federal Register.~~

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

~~(1) IN GENERAL.—~~

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

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

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

~~tiations to eliminate the foreign availability of the item.~~

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

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

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

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

~~(D) the date that is 18 months after the date on which the determination described in subsection (a)(1)(A) is made if the President has been unable to achieve an agreement to~~

~~eliminate foreign availability within that 18-month period.~~

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

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

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

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

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

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

~~(B) failure to control an item would be contrary to the provisions of section 309,~~

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

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

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

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

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

~~International Relations of the House of Representatives.~~

~~SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.~~

~~(a) IN GENERAL.—~~

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

~~(2) STAFF.—The Secretary shall ensure that the Office include persons with the training, expertise and experience in economic analysis, the defense industrial base, technological developments, national security, and foreign policy export controls to carry out the responsibilities set forth in subsection (b) of this section. In addition to employees of the Department of Commerce, the Secretary may accept on nonreimbursable detail to the Office, employees of the Departments of Defense, State, and Energy and other departments and agencies as appropriate.~~

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

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

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

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

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

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

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

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

~~(B) the United States economy in general.~~

~~(c) REPORTS TO CONGRESS.—The Secretary shall make available to the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate as part of the Secretary's annual report required under section 801 information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability and mass-market status, during the fiscal year preceding the report, including information on the training of personnel, and the use of Commercial Service Officers of the United States and Foreign Commercial Service to assist in making determinations. The information shall also include a description of determinations made under this Act during the preceding fiscal year that foreign availability or mass-market status did or did not exist (as the case may be), together with an explanation of the determinations.~~

~~(d) SHARING OF INFORMATION.—Each department or agency of the United States, including any intelligence~~

~~agency, and all contractors with any such department or agency, shall, consistent with the need to protect intelligence sources and methods, furnish information to the Office concerning foreign availability and the mass-market status of items subject to export controls under this Act.~~

~~TITLE III—FOREIGN POLICY EXPORT CONTROLS~~

~~SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CONTROLS.~~

~~(a) AUTHORITY.—~~

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

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

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

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

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

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

~~(c) EXCEPTION.—The President may not control under this title the export from a foreign country (whether or not by a United States person) of any item produced or originating in a foreign country that contains parts or components produced or originating in the United States.~~

~~(d) CONTRACT SANCTITY.—~~

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

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

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

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

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

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

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

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

~~SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.~~

~~(a) NOTICE.—~~

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

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

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

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

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

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

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

~~(c) CONSULTATION.—~~

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

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

~~SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CONTROLS.~~

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

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

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

~~(3) include an assessment by the President that—~~

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

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

~~(4) be targeted narrowly; and~~

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

~~SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF CONTROL.~~

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

~~(b) CONTENT.—The report shall contain a description and assessment of each of the criteria described in~~

~~section 303. In addition, the report shall contain a description and assessment of—~~

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

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

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

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

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

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

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

~~United States agricultural interests, commercial interests, and employment; and~~

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

~~SEC. 305. IMPOSITION OF CONTROLS.~~

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

~~SEC. 306. DEFERRAL AUTHORITY.~~

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

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

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

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

~~SEC. 307. REVIEW, RENEWAL, AND TERMINATION.~~

~~(a) RENEWAL AND TERMINATION.—~~

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

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

~~(A) is required by law;~~

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

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

~~(b) REVIEW.—~~

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

~~(2) CONSULTATION.—~~

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

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

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

~~(c) REPORT TO CONGRESS.—~~

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

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

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

~~(B) An assessment of—~~

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

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

~~(C) An updated description and assessment of—~~

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

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

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

~~SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.~~

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

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

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

~~(b) EXCEPTION.—Paragraphs (1) and (2) of subsection (a) do not apply to any export control imposed under this title that is targeted against any country designated as a country supporting international terrorism pursuant to section 310.~~

~~(c) EFFECTIVE DATE OF TERMINATION.—The termination of an export control pursuant to this section shall~~

~~take effect on the date notice of the termination is published in the Federal Register.~~

~~SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGATIONS.~~

~~Notwithstanding any other provision of this Act setting forth limitations on authority to control exports and except as provided in section 304, the President may impose controls on exports to a particular country or countries in order to fulfill obligations or commitments of the United States under resolutions of the United Nations and under treaties, or other international agreements and arrangements, to which the United States is a party.~~

~~SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.~~

~~(a) LICENSE REQUIRED.—A license shall be required for the export of an item to a country if the Secretary of State has determined that—~~

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

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

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

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

~~(d) LIMITATIONS ON RESCINDING DETERMINATION.—A determination made by the Secretary of State under subsection (a)(1) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Banking, Housing, and Urban Affairs and the Chairman of the Committee on Foreign Relations of the Senate—~~

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

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

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

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

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

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

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

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

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

~~(2) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the item which is the subject of such export or transfer and~~

~~a description of the manner in which such country or organization intends to use the item;~~

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

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

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

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

~~TITLE IV—EXEMPTION FOR AGRICULTURAL COMMODITIES, MEDICINE, AND MEDICAL SUPPLIES~~

~~SEC. 401. EXEMPTION FOR AGRICULTURAL COMMODITIES, MEDICINE, AND MEDICAL SUPPLIES.~~

~~Notwithstanding any other provision of law, the export controls imposed on items under title III shall not apply to agricultural commodities, medicine, and medical supplies.~~

~~SEC. 402. TERMINATION OF EXPORT CONTROLS REQUIRED BY LAW.~~

~~Notwithstanding any other provision of law, the President shall terminate any export control mandated by law on agricultural commodities, medicine, and medical supplies upon the date of enactment of this Act except for a control that is specifically reimposed by law.~~

~~SEC. 403. EXCLUSIONS.~~

~~Sections 401 and 402 do not apply to the following:~~

~~(1) The export of agricultural commodities, medicine, and medical supplies that are subject to national security export controls under title II or are listed on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778).~~

~~(2) The export of agricultural commodities, medicine, and medical supplies to a country against which an embargo is in effect under the Trading With the Enemy Act.~~

~~TITLE V—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION~~

~~SEC. 501. EXPORT LICENSE PROCEDURES.~~

~~(a) RESPONSIBILITY OF THE SECRETARY.—~~

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

~~(2) PROCEDURES.—In guidance and regulations that implement this section, the Secretary shall describe the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies in reviewing applications, the rights of the applicant, and other relevant matters affecting the review of license applications.~~

~~(3) CALCULATION OF PROCESSING TIMES.—In calculating the processing times set forth in this title, the Secretary shall use calendar days, except~~

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

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

~~(A) The characteristics of the controlled item.~~

~~(B) The threat to—~~

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

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

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

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

~~(i) the exporter;~~

~~(ii) the method of export;~~

~~(iii) the end-user;~~

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

~~(v) the end-use.~~

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

~~(i) changing the characteristics of the controlled item;~~

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

~~(iii) post-shipment verification.~~

~~(b) INITIAL SCREENING.—~~

~~(1) UPON RECEIPT OF APPLICATION.—Upon receipt of an export license application, the Secretary shall enter and maintain in the records of the Department information regarding the receipt and status of the application.~~

~~(2) INITIAL PROCEDURES.—~~

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

~~(i) contact the applicant if the application is improperly completed or if additional information is required, and hold the application for a reasonable time while the applicant provides the necessary correc-~~

~~tions or information, and such time shall not be included in calculating the time periods prescribed in this title;~~

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

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

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

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

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

~~(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—~~

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

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

~~(3) ADDITIONAL INFORMATION REQUESTS.—Each department or agency to which a license application is referred shall specify to the Secretary any information that is not in the application that would be required for the department or agency to make~~

~~a determination with respect to the application, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by that department or agency and the date the information is received by that department or agency shall not be included in calculating the time periods prescribed in this title.~~

~~(4) TIME PERIOD FOR ACTION BY REFERRAL DEPARTMENTS AND AGENCIES.—Within 30 days after the Secretary refers an application under this section, each department or agency to which an application has been referred shall provide the Secretary with a recommendation either to approve the license or to deny the license. A recommendation that the Secretary deny a license shall include a statement of reasons for the recommendation that are consistent with the provisions of this title, and shall cite both the specific statutory and regulatory basis for the recommendation. A department or agency that fails to provide a recommendation in accordance with this paragraph within that 30-day period shall be deemed to have no objection to the decision of the Secretary on the application.~~

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

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

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

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

~~(2) if there is no agreement among the referral departments and agencies, notify the applicant that the application is subject to the interagency dispute resolution process provided for in section 502.~~

~~(e) CONSEQUENCES OF APPLICATION DENIAL.—~~

~~(1) IN GENERAL.—If a determination is made to deny a license, the applicant shall be informed in writing by the Secretary of—~~

~~(A) the determination;~~

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

~~(C) what, if any, modifications to, or restrictions on, the items for which the license~~

~~was sought would allow such export to be compatible with export controls imposed under this Act, and which officer or employee of the Department would be in a position to discuss modifications or restrictions with the applicant and the specific statutory and regulatory bases for imposing such modifications or restrictions;~~

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

~~(E) the availability of appeal procedures.~~

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

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

~~(1) IN GENERAL.—The Secretary shall establish appropriate procedures for an applicant to appeal to the Secretary the denial of an application or other administrative action under this Act. In any case in which the Secretary proposes to reverse the decision with respect to the application, the appeal under this subsection shall be handled in accordance with the interagency dispute resolution process provided for in section 502(b)(3).~~

~~(2) ENFORCEMENT OF TIME LIMITS.—~~

~~(A) IN GENERAL.—In any case in which an action prescribed in this section is not taken on an application within the time period established by this section (except in the case of a time period extended under subsection (g) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.~~

~~(B) BRINGING COURT ACTION.—If, within 20 days after a petition is filed under subparagraph (A), the processing of the application has~~

~~not been brought into conformity with the requirements of this section, or the processing of the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for an order requiring compliance with the time periods required by this section.~~

~~(g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—The following actions related to processing an application shall not be included in calculating the time periods prescribed in this section:~~

~~(1) AGREEMENT OF THE APPLICANT.—Delays upon which the Secretary and the applicant mutually agree.~~

~~(2) PRELICENSE CHECKS.—A prelicense check (for a period not to exceed 60 days) that may be required to establish the identity and reliability of the recipient of items controlled under this Act, if—~~

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

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

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

~~(3) REQUESTS FOR GOVERNMENT-TO-GOVERNMENT ASSURANCES.—Any request by the Secretary or another department or agency for government-to-government assurances of suitable end-uses of items approved for export, when failure to obtain such assurances would result in rejection of the application, if—~~

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

~~(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and~~

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

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

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

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

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

~~(h) CLASSIFICATION REQUESTS AND OTHER INQUIRIES.—~~

~~(1) CLASSIFICATION REQUESTS.—In any case in which the Secretary receives a written request asking for the proper classification of an item on the Control List or the applicability of licensing requirements under this title, the Secretary shall promptly~~

~~notify the Secretary of Defense and other departments and agencies the Secretary considers appropriate. The Secretary shall, within 14 days after receiving the request, inform the person making the request of the proper classification.~~

~~(2) OTHER INQUIRIES.—In any case in which the Secretary receives a written request for information under this Act, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.~~

~~SEC. 502. INTERAGENCY DISPUTE RESOLUTION PROCESS.~~

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

~~(b) INTERAGENCY DISPUTE RESOLUTION PROCESS.—~~

~~(1) INITIAL RESOLUTION.—The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications described in subsection (a) with respect to which the Secretary and any of the referral departments and agencies are not in agreement. The chairperson shall consider the positions of all the referral departments and agencies (which shall be included in the minutes described in~~

~~subsection (c)(2)) and make a decision on the license application, including appropriate revisions or conditions thereto.~~

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

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

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

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

~~(C) provide that any decision of an interagency committee established under paragraph (1) or interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the~~

~~request of any representative of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and~~

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

~~(c) FINAL ACTION.—~~

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

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

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

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

for the member's position and the reasons shall be entered in the minutes.

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

SEC. 601. INTERNATIONAL ARRANGEMENTS.

(a) MULTILATERAL EXPORT CONTROL REGIMES.—

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

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

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

(b) ANNUAL REPORT ON MULTILATERAL EXPORT CONTROL REGIMES.—Not later than February 1 of each

~~year, the President shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives a report evaluating the effectiveness of each multilateral export control regime, including an assessment of the steps undertaken pursuant to subsections (c) and (d). The report, or any part of this report, may be submitted in classified form to the extent the Secretary considers necessary.~~

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

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

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

~~(3) PUBLIC UNDERSTANDING.—The regime makes an effort to enhance public understanding of~~

~~the purpose and procedures of the multilateral export control regime.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(A) national security concerns;~~

~~(B) the controllability of items; and~~

~~(C) the costs and benefits of controls.~~

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

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

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

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

~~(f) TRANSPARENCY OF MULTILATERAL EXPORT CONTROL REGIMES.—~~

~~(1) PUBLICATION OF INFORMATION ON EACH EXISTING REGIME.—Not later than 120 days after the date of enactment of this Act, the Secretary shall, for each multilateral export control regime (to the extent that it is not inconsistent with the arrangements of that regime or with the national in-~~

~~terest), publish in the Federal Register and post on the Department of Commerce website the following information with respect to the regime:~~

~~(A) The purposes of the regime.~~

~~(B) The members of the regime.~~

~~(C) The export licensing policy of the regime.~~

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

~~(E) Any countries, end uses, or end users that are subject to the export controls of the regime.~~

~~(F) Rules of interpretation.~~

~~(G) Major policy actions.~~

~~(H) The rules and procedures of the regime for establishing and modifying any matter described in subparagraphs (A) through (G) and for reviewing export license applications.~~

~~(2) NEW REGIMES.—Not later than 60 days after the United States joins or organizes a new multilateral export control regime, the Secretary shall, to the extent not inconsistent with arrange-~~

~~ments under the regime or with the national interest, publish in the Federal Register and post on the Department of Commerce website the information described in subparagraphs (A) through (H) of paragraph (1) with respect to the regime.~~

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

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

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

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

~~SEC. 602. FOREIGN BOYCOTTS.~~

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

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

~~(2) To encourage and, in specified cases, require United States persons engaged in the export of items to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person.~~

~~(b) PROHIBITIONS AND EXCEPTIONS.—~~

~~(1) PROHIBITIONS.—In order to carry out the purposes set forth in subsection (a), the President shall issue regulations prohibiting any United States person, with respect to that person's activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country that is friendly~~

~~to the United States and is not itself the object of any form of boycott pursuant to United States law or regulation:~~

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

~~(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminate against any United States person on the basis of the race, religion, sex, or national ori-~~

~~gin of that person or of any owner, officer, director, or employee of such person.~~

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

~~(D) Furnishing information (other than furnishing normal business information in a commercial context, as defined by the Secretary) about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person that is known or believed to be restricted from having any business relationship with or in the boycotting country.~~

~~(E) Furnishing information about whether any person is a member of, has made a contribution to, or is otherwise associated with or involved in the activities of any charitable or~~

~~fraternal organization which supports the boycotted country.~~

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

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

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

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

~~(ii) prohibiting the shipment of items to the boycotting country on a carrier of the boycotted country or by a route other~~

~~than that prescribed by the boycotting country or the recipient of the shipment;~~

~~(B) compliance, or agreement to comply, with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment, or the name of the provider of other services, except that, for purposes of applying any exception under this subparagraph, no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;~~

~~(C) compliance, or agreement to comply, in the normal course of business with the unilateral and specific selection by a boycotting country, or a national or resident thereof, or carriers, insurers, suppliers of services to be performed within the boycotting country, or specific items which, in the normal course of busi-~~

~~ness, are identifiable by source when imported into the boycotting country;~~

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

~~(E) compliance by an individual, or agreement by an individual to comply, with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and~~

~~(F) compliance by a United States person resident in a foreign country, or agreement by such a person to comply, with the laws of the country with respect to the person's activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of the foreign country governing imports into such country of~~

~~trademarked, trade-named, or similarly specifically identifiable products, or components of products for such person's own use, including the performance of contractual services within that country.~~

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

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

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

~~(c) ADDITIONAL REGULATIONS AND REPORTS.—~~

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

~~(2) REPORTS BY UNITED STATES PERSONS.—The regulations shall require that any United States person receiving a request to furnish information, enter into or implement an agreement, or take any other action referred to in subsection (a) shall report that request to the Secretary, together with any other information concerning the request that the Secretary determines appropriate. The person shall also submit to the Secretary a statement regarding whether the person intends to comply, and whether the person has complied, with the request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any item to which such report relates may be treated as confidential if the Secretary determines that disclosure of that information would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in the reports to the Secretary of State for~~

~~such action as the Secretary of State, in consultation with the Secretary, considers appropriate to carry out the purposes set forth in subsection (a).~~

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

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

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

~~SEC. 603. PENALTIES.~~

~~(a) CRIMINAL PENALTIES.—~~

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

~~may be increased to life for multiple violations or aggravated circumstances.~~

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

~~(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—~~

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

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

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

~~(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.~~

~~(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection, or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of chapter 46 of title 18, United States Code, to the same extent as property subject to forfeiture under that chapter.~~

~~(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—~~

~~(1) CIVIL PENALTIES.—The Secretary may impose a civil penalty of up to $1,000,000 for each violation of a provision of this Act or any regulation, license, or order issued under this Act. A civil penalty under this paragraph may be in addition to, or in lieu of, any other liability or penalty which may be imposed for such a violation.~~

~~(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person, including the suspension or revocation of the author-~~

~~ity of such person to export or receive United States-origin items subject to this Act, for a violation of a provision of this Act or any regulation, license, or order issued under this Act.~~

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

~~(d) PAYMENT OF CIVIL PENALTIES.—~~

~~(1) PAYMENT AS CONDITION OF FURTHER EXPORT PRIVILEGES.—The payment of a civil penalty imposed under subsection (c) may be made a condition for the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. The period for which the payment of a penalty may be made such a condition may not exceed 1 year after the date on which the payment is due.~~

~~(2) DEFERRAL OR SUSPENSION.—~~

~~(A) IN GENERAL.—The payment of a civil penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a~~

~~period no longer than any probation period (which may exceed 1 year) that may be imposed upon the person on whom the penalty is imposed.~~

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

~~(3) TREATMENT OF PAYMENTS.—Any amount paid in satisfaction of a civil penalty imposed under subsection (c) shall be covered into the Treasury as miscellaneous receipts except as set forth in section 607(h).~~

~~(e) REFUNDS.—~~

~~(1) AUTHORITY.—~~

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

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

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

~~(f) EFFECT OF OTHER CONVICTIONS.—~~

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

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

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

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

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

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

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

~~(G) any regulation, license, or order issued under any provision of law listed in subparagraph (A), (B), (C), (D), (E), or (F),~~

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

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

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

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

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

~~may, at the discretion of the Secretary, be denied export privileges under this Act for a period not to exceed 10 years from the date of the conviction. The Secretary may also revoke any export license under this Act in which such person had an interest at the time of the conviction.~~

~~(2) RELATED PERSONS.—The Secretary may exercise the authority under paragraph (1) with respect to any person related through affiliation, ownership, control, or position of responsibility to a per-~~

~~son convicted of any violation of a law set forth in paragraph (1) upon a showing of such relationship with the convicted person. The Secretary shall make such showing only after providing notice and opportunity for a hearing.~~

~~(g) STATUTE OF LIMITATIONS.—~~

~~(1) IN GENERAL.—Except as provided in paragraph (2), a proceeding in which a civil penalty or other administrative sanction (other than a temporary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.~~

~~(2) EXCEPTION.—~~

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

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

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

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

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

~~(2) the authority to compromise and settle administrative proceedings brought with respect to any such violation; or~~

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

~~SEC. 604. MULTILATERAL EXPORT CONTROL REGIME VIOLATION SANCTIONS.~~

~~(a) IMPOSITION OF SANCTIONS.—~~

~~(1) IN GENERAL.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—~~

~~(A) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to a multilateral export control regime; and~~

~~(B) such violation has substantially aided a country in—~~

~~(i) acquiring military significant capabilities or weapons, if the country is an actual or potential adversary of the United States;~~

~~(ii) acquiring nuclear weapons provided such country is other than the declared nuclear states of the People's Republic of China, the Republic of France, the Russian Federation, the United Kingdom, and the United States;~~

~~(iii) acquiring biological or chemical weapons; or~~

~~(iv) acquiring missiles.~~

~~(2) NOTIFICATION OF CONGRESS.—The President shall notify Congress of each action taken under this section.~~

~~(b) APPLICABILITY AND FORMS OF SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:~~

~~(1) A prohibition on contracting with, and the procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government.~~

~~(2) A prohibition on the importation into the United States of all items produced by a sanctioned person.~~

~~(c) EXCEPTIONS.—The President shall not apply sanctions under this section—~~

~~(1) in the case of procurement of defense items—~~

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

~~(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense items and no alternative supplier can be identified; or~~

~~(C) if the President determines that such items are essential to the national security under defense coproduction agreements;~~

~~(2) in any case in which such sanctions would violate United States international obligations including treaties, agreements, or understandings; or~~

~~(3) to—~~

~~(A) items provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies Congress of the intention to impose the sanctions;~~

~~(B) after-market service and replacement parts including upgrades;~~

~~(C) component parts, but not finished products, essential to United States products or productions; or~~

~~(D) information and technology.~~

~~(d) EXCLUSION.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—~~

~~(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person; and~~

~~(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles set forth in section 601(b)(2).~~

~~(e) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed, if the President determines that—~~

~~(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of~~

~~evidence available to the United States, itself violated the export control regulation involved, either directly or through a course of conduct;~~

~~(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in section 601(b)(2); and~~

~~(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the multilateral export control regime.~~

~~SEC. 605. MISSILE PROLIFERATION CONTROL VIOLATIONS.~~

~~(a) VIOLATIONS BY UNITED STATES PERSONS.—~~

~~(1) SANCTIONS.—~~

~~(A) IN GENERAL.—If the President determines that a United States person knowingly—~~

~~(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, title II or III of this Act, or any regulations or orders issued under any such provisions,~~

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

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

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

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

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

~~(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.~~

~~(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 603.~~

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

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

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

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

~~(1) SANCTIONS.—~~

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

~~(i) exports, transfers, or otherwise engages in the trade of any MTCR equip-~~

~~ment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,~~

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

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

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

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

~~(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of mis-~~

~~sile equipment or technology the export of which is controlled under this Act.~~

~~(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.~~

~~(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.~~

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

~~(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR~~

~~adherent, if such authorization is not obtained by misrepresentation or fraud; or~~

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

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

~~(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed~~

~~activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.~~

~~(5) WAIVER AND REPORT TO CONGRESS.—~~

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

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

~~(6) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph~~

~~(1) on a person with respect to a product or service if the President certifies to the Congress that—~~

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

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

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

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

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

~~(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the de-~~

~~fense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or~~

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

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

~~(C) to—~~

~~(i) spare parts,~~

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

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

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

~~(c) DEFINITIONS.—In this section:~~

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

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

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

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

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

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

~~(7) PERSON.—~~

~~(A) IN GENERAL.—The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.~~

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

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

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

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

~~SEC. 606. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.~~

~~(a) IMPOSITION OF SANCTIONS.—~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) any successor entity to that foreign person;~~

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

~~(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.~~

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

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

~~President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.~~

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

~~(3) REPORT TO CONGRESS.—The President shall report to Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the~~

~~basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.~~

~~(c) SANCTIONS.—~~

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

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

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

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

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

~~(i) under existing contracts or subcontracts, including the exercise of options~~

~~for production quantities to satisfy United States operational military requirements;~~

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

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

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

~~(C) to—~~

~~(i) spare parts,~~

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

~~(iii) routine servicing and maintenance of products, to the extent that alter-~~

~~native sources are not readily or reasonably available;~~

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

~~(E) to medical or other humanitarian items.~~

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

~~(e) WAIVER.—~~

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

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

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

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

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

~~SEC. 607. ENFORCEMENT.~~

~~(a) GENERAL AUTHORITY AND DESIGNATION.—~~

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

~~(2) GENERAL AUTHORITIES.—~~

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

~~(B) CUSTOMS SERVICE.—In carrying out enforcement authority under paragraph (3), the Commissioner of Customs and employees of the United States Customs Services designated by the Commissioner may make investigations within or outside the United States and at ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to carry out law enforcement responsibilities. Subject to paragraph (3), the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize~~

~~commodities or technology at the ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to conduct searches, detentions, and seizures, and at the places outside the United States where the United States Customs Service, pursuant to agreement or other arrangement with other countries, is authorized to perform enforcement activities.~~

~~(C) OTHER EMPLOYEES.—In carrying out enforcement authority under paragraph (3), the Secretary and officers and employees of the Department designated by the Secretary may make investigations within the United States, and may conduct, outside the United States, pre-license and post-shipment verifications of controlled items and investigations in the enforcement of section 602. The Secretary and officers and employees of the Department designated by the Secretary are authorized to search, detain (after search), and seize items at places within the United States other than ports referred to in subparagraph (B). The search, detention (after search), or seizure of items at the ports and places referred to in sub-~~

~~paragraph (B) may be conducted by officers and employees of the Department only with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.~~

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

~~(3) SPECIFIC AUTHORITIES.—~~

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

~~(i) Make investigations of, obtain information from, make inspection of any books, records, or reports (including any writings required to be kept by the Secretary), premises, or property of, and take the sworn testimony of, any person.~~

~~(ii) Administer oaths or affirmations, and by subpoena require any person to appear and testify or to appear and produce~~

~~books, records, and other writings, or both. In the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, on request of the Attorney General and after notice to any such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both. Any failure to obey such order of the court may be punished by such court as a contempt thereof. The attendance of witnesses and the production of documents provided for in this clause may be required from any State, the District of Columbia, or in any territory of the United States at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage allowance as paid witnesses in the district courts of the United States.~~

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

~~(i) OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—Any officer or employee of the Office of Export Enforcement of the Department of Commerce (in this Act referred to as "OEE") who is designated by the Secretary under paragraph (2), and any officer or employee of the United States Customs Service who is designated by the Commissioner of Customs under paragraph (2), may do the following in carrying out the enforcement authority under this Act:~~

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

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

~~(III) Carry firearms.~~

~~(ii) OEE PERSONNEL.—Any officer and employee of the OEE designated by the Secretary under paragraph (2) shall exercise the authority set forth in clause (i) pursuant to guidelines approved by the Attorney General.~~

~~(C) OTHER ACTIONS BY CUSTOMS SERVICE PERSONNEL.—Any officer or employee of the United States Customs Service designated by the Commissioner of Customs under paragraph (2) may do the following in carrying out the enforcement authority under this Act:~~

~~(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom the officer or employee has reasonable cause to suspect there is any item that has been, is being, or is about to be exported from or transited through the United States in violation of this Act.~~

~~(ii) Detain and search any package or container in which the officer or employee has reasonable cause to suspect there is any item that has been, is being, or is about to be exported from or transited~~

~~through the United States in violation of this Act.~~

~~(iii) Detain (after search) or seize any item, for purposes of securing for trial or forfeiture to the United States, on or about such vehicle, vessel, aircraft, or person or in such package or container, if the officer or employee has probable cause to believe the item has been, is being, or is about to be exported from or transited through the United States in violation of this Act.~~

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

~~(b) FORFEITURE.—~~

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

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

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

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

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

~~(D) the compromise of claims,~~

~~shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subsection, insofar as applicable and not inconsistent with this Act.~~

~~(3) FORFEITURES UNDER CUSTOMS LAWS.—Duties that are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures of property under this subsection by the Secretary or any officer or employee of the Department that may be authorized or designated for that purpose by the Secretary, or, upon the request of the Secretary, by any other agency that has authority to manage and dispose of seized property.~~

~~(c) REFERRAL OF CASES.—All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 603 or to the Attorney General~~

~~for criminal action in accordance with this Act or to both the Secretary and the Attorney General.~~

~~(d) UNDERCOVER INVESTIGATION OPERATIONS.—~~

~~(1) USE OF FUNDS.—With respect to any undercover investigative operation conducted by the OEE that is necessary for the detection and prosecution of violations of this Act—~~

~~(A) funds made available for export enforcement under this Act may be used to purchase property, buildings, and other facilities, and to lease equipment, conveyances, and space within the United States, without regard to sections 1341 and 3324 of title 31, United States Code, the third undesignated paragraph under the heading of "miscellaneous" of the Act of March 3, 1877, (40 U.S.C. 34), sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22), subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a) and (c)), and section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);~~

~~(B) funds made available for export enforcement under this Act may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 1341, 3324, and 9102 of title 31, United States Code;~~

~~(C) funds made available for export enforcement under this Act and the proceeds from undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and~~

~~(D) the proceeds from undercover operations may be used to offset necessary and reasonable expenses incurred in such operations without regard to the provisions of section 3302 of title 31, United States Code,~~

~~if the Director of OEE (or an officer or employee designated by the Director) certifies, in writing, that the action authorized by subparagraph (A), (B), (C), or (D) for which the funds would be used is necessary for the conduct of the undercover operation.~~

~~(2) DISPOSITION OF BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation has a net value of more than $250,000 and is to be liquidated, sold, or otherwise disposed of, the Director of OEE shall report the circumstances to the Secretary and the Comptroller General of the United States as much in advance of such disposition as the Director of the OEE (or the Director's designee) determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations incurred by the corporation or business enterprise are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.~~

~~(3) DEPOSIT OF PROCEEDS.—As soon as the proceeds from an OEE undercover investigative operation with respect to which an action is authorized and carried out under this subsection are no longer needed for the conduct of such operation, the pro-~~

~~ceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.~~

~~(4) AUDIT AND REPORT.—~~

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

~~(B) REPORT.—The Secretary shall submit annually to Congress a report, which may be included in the annual report under section 801, specifying the following information:~~

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

~~(ii) The number of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted.~~

~~(iii) The number of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect to the operation.~~

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

~~(A) the term "closed", with respect to an undercover investigative operation, refers to the earliest point in time at which all criminal proceedings (other than appeals) pursuant to the investigative operation are concluded, or covert activities pursuant to such operation are concluded, whichever occurs later; and~~

~~(B) the terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation conducted by the OEE—~~

~~(i) in which the gross receipts (excluding interest earned) exceed $25,000, or expenditures (other than expenditures for salaries of employees) exceed $75,000, and~~

~~(ii) which is exempt from section 3302 or 9102 of title 31, United States Code, except that clauses (i) and (ii) shall not apply with respect to the report to Congress required by paragraph (4)(B).~~

~~(e) WIRETAPS.—~~

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

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

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

~~(f) POST-SHIPMENT VERIFICATION.—~~

~~(1) IN GENERAL.—The Secretary shall target post-shipment verifications to exports involving the greatest risk to national security including, but not limited to, exports of high performance computers.~~

~~(2) REPEAL.—Section 1213 of the National Defense Authorization Act for Fiscal Year 1998 is repealed.~~

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

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

~~(2) RELATED PERSONS.—The Secretary may exercise the authority under paragraph (1) with respect to any person related through affiliation, ownership, control, or position of responsibility, to any end-user refusing to allow post-shipment verification of a controlled item.~~

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

~~(h) AWARD OF COMPENSATION; PATRIOT PROVISION.—~~

~~(1) IN GENERAL.—If—~~

~~(A) any person, who is not an employee or officer of the United States, furnishes to a~~

~~United States attorney, to the Secretary of the Treasury or the Secretary, or to appropriate officials in the Department of the Treasury or the Department of Commerce, original information concerning a violation of this Act or any regulation, order, or license issued under this Act, which is being, or has been, perpetrated or contemplated by any other person and in which the person furnishing the information has not participated, and~~

~~(B) such information leads to the recovery of any criminal fine, civil penalty, or forfeiture, the Secretary and the Commissioner of Customs, may, in the sole discretion of the Secretary or the Commissioner, award and pay an amount that does not exceed 25 percent of the net amount recovered.~~

~~(2) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section may not exceed $250,000 for any case.~~

~~(3) SOURCE OF PAYMENT.—The amount paid under this section shall be paid out of any penalties, forfeitures, or appropriated funds.~~

~~(i) FREIGHT FORWARDERS BEST PRACTICES PROGRAM AUTHORIZATION.—There is authorized to be appropriated for the Department of Commerce $3,500,000 and~~

~~such sums as may be necessary to hire 20 additional employees to assist United States freight forwarders and other interested parties in developing and implementing, on a voluntary basis, a "best practices" program to ensure that exports of controlled items are undertaken in compliance with this Act.~~

~~(j) END-USE VERIFICATION AUTHORIZATION.—~~

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

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

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

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

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

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

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

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

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

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

~~(o) AMENDMENTS TO TITLE 31.—~~

~~(1) Section 9703(a) of title 31, United States Code (as added by Public Law 102–393) is amended by striking "or the United States Coast Guard" and inserting ", the United States Coast Guard, or the~~

~~Bureau of Export Administration of the Department of Commerce''.~~

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

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

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

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

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

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

~~(p) AUTHORIZATION FOR LICENSE REVIEW OFFICERS.—~~

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

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

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

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

~~(q) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—~~

~~(1) $72,000,000 for the fiscal year 2002, of which no less than $27,701,000 shall be used for compliance and enforcement activities;~~

~~(2) $73,000,000 for the fiscal year 2003, of which no less than $28,312,000 shall be used for compliance and enforcement activities;~~

~~(3) $74,000,000 for the fiscal year 2004, of which no less than $28,939,000 shall be used for compliance and enforcement activities;~~

~~(4) $76,000,000 for the fiscal year 2005, of which no less than $29,582,000 shall be used for compliance and enforcement activities; and~~

~~(5) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.~~

~~SEC. 608. ADMINISTRATIVE PROCEDURE.~~

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

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

~~(1) ADMINISTRATIVE PROCEDURES.—Any administrative sanction imposed under section 603 may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code. The imposition of any such administrative sanction shall be subject to judicial review in ac-~~

~~cordance with sections 701 through 706 of title 5, United States Code.~~

~~(2) AVAILABILITY OF CHARGING LETTER.—Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued under section 602 shall be made available for public inspection and copying.~~

~~(e) COLLECTION.—If any person fails to pay a civil penalty imposed under section 603, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.~~

~~(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—~~

~~(1) GROUNDS FOR IMPOSITION.—In any case in which there is reasonable cause to believe that a person is engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this Act, or any regulation, order, or license issued under this Act, including any diversion~~

~~of goods or technology from an authorized end use or end user, and in any case in which a criminal indictment has been returned against a person alleging a violation of this Act or any of the statutes listed in section 603, the Secretary may, without a hearing, issue an order temporarily denying that person's United States export privileges (hereafter in this subsection referred to as a "temporary denial order"). A temporary denial order shall be effective for such period (not in excess of 180 days) as the Secretary specifies in the order, but may be renewed by the Secretary, following notice and an opportunity for a hearing, for additional periods of not more than 180 days each.~~

~~(2) ADMINISTRATIVE APPEALS.—The person or persons subject to the issuance or renewal of a temporary denial order may appeal the issuance or renewal of the temporary denial order, supported by briefs and other material, to an administrative law judge who shall, within 15 working days after the appeal is filed, issue a decision affirming, modifying, or vacating the temporary denial order. The temporary denial order shall be affirmed if it is shown that—~~

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

~~(B) a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or any of the statutes listed in section 603.~~

~~The decision of the administrative law judge shall be final unless, within 10 working days after the date of the administrative law judge's decision, an appeal is filed with the Secretary. On appeal, the Secretary shall either affirm, modify, reverse, or vacate the decision of the administrative law judge by written order within 10 working days after receiving the appeal. The written order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3). The materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the court.~~

~~(3) COURT APPEALS.—An order of the Secretary affirming, in whole or in part, the issuance or~~

~~renewal of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have the jurisdiction of the appeal. The court may review only those issues necessary to determine whether the issuance of the temporary denial order was based on reasonable cause to believe that the person subject to the order was engaged in or was about to engage in any act or practice that constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this Act, or whether a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or of any of the statutes listed in section 603. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.~~

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

~~TITLE VII—EXPORT CONTROL AUTHORITY AND REGULATIONS~~

~~SEC. 701. EXPORT CONTROL AUTHORITY AND REGULATIONS.~~

~~(a) EXPORT CONTROL AUTHORITY.—~~

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

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

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

~~(1) UNDER SECRETARY OF COMMERCE.—There shall be within the Department an Under Secretary of Commerce for Export Administration (in this section referred to as the "Under Secretary") who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall carry out all functions of the Secretary under~~

~~this Act and other provisions of law relating to national security, as the Secretary may delegate.~~

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

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

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

~~(c) ISSUANCE OF REGULATIONS.—~~

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

~~be issued only after the regulations are submitted for review to such departments or agencies as the President considers appropriate. The Secretary shall consult with the appropriate export control advisory committee appointed under section 105(f) in formulating regulations under this title. The second sentence of this subsection does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.~~

~~(2) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to the United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the appropriate export control advisory committees appointed under section 105(f) in amending regulations issued under this Act.~~

~~SEC. 702. CONFIDENTIALITY OF INFORMATION.~~

~~(a) EXEMPTIONS FROM DISCLOSURE.—~~

~~(1) INFORMATION OBTAINED ON OR BEFORE JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 602(c)(2), information obtained under the Export Administration Act of 1979, or any predecessor statute, on or before June 30, 1980, which is deemed confidential, including Shipper's Export Declarations, or with respect to which a request for confidential treatment is made by the person furnishing such information, shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed, unless the Secretary determines that the withholding thereof is contrary to the national interest.~~

~~(2) INFORMATION OBTAINED AFTER JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 13(b)(2) of the Export Administration Act of 1979, information obtained under this Act, under the Export Administration Act of 1979 after June 30, 1980, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), may be withheld from disclosure only to the extent permitted by statute, except that information submitted, ob-~~

~~tained, or considered in connection with an application for an export license or other export authorization (or recordkeeping or reporting requirement) under the Export Administration Act of 1979, under this Act, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), including—~~

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

~~(B) classification requests described in section 501(h),~~

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

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

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

~~and information obtained in any investigation of an alleged violation of section 602 of this Act except for information required to be disclosed by section 602(c)(2) or 606(b)(2) of this Act, shall be withheld~~

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

~~(b) INFORMATION TO CONGRESS AND GAO.—~~

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

~~(2) AVAILABILITY TO THE CONGRESS—~~

~~(A) IN GENERAL.—Any information obtained at any time under this title or under any predecessor Act regarding the control of exports, including any report or license application required under this title, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon the request of the chairman or ranking minority member of such committee or subcommittee.~~

~~(B) PROHIBITION ON FURTHER DISCLOSURE.—No committee, subcommittee, or Member of Congress shall disclose any information obtained under this Act or any predecessor Act regarding the control of exports which is sub-~~

~~mitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.~~

~~(3) AVAILABILITY TO THE GAO.—~~

~~(A) IN GENERAL.—Notwithstanding subsection (a), information described in paragraph (2) shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.~~

~~(B) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to Congress in accordance with this paragraph, any such information which is submitted on a con-~~

~~fidential basis and from which any individual can be identified.~~

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

~~(d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—~~

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

~~(A) the officer or employee obtains in the course of his or her employment or official duties or by reason of any examination or investigation made by, or report or record made to or filed with, such department or agency, or officer or employee thereof; and~~

~~(B) is exempt from disclosure under this section.~~

~~(2) CRIMINAL PENALTIES.—Any such officer or employee who knowingly violates paragraph (1) shall be fined not more than $50,000, imprisoned not~~

more than 1 year, or both, for each violation of paragraph (1). Any such officer or employee may also be removed from office or employment.

(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The Secretary may impose a civil penalty of not more than $5,000 for each violation of paragraph (1). Any officer or employee who commits such violation may also be removed from office or employment for the violation of paragraph (1). Subsections 603 (c), (g), (h), and (i) and 606 (a), (b), and (c) shall apply to violations described in this paragraph.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. ANNUAL AND PERIODIC REPORTS.

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

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

(1) a description of the implementation of the export control policies established by this Act, in-

~~cluding any delegations of authority by the President and any other changes in the exercise of delegated authority;~~

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

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

~~(4) a description of the regulations issued under this Act;~~

~~(5) a description of organizational and procedural changes undertaken in furtherance of this Act;~~

~~(6) a description of the enforcement activities, violations, and sanctions imposed under section 604;~~

~~(7) a statistical summary of all applications and notifications, including—~~

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

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

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

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

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

~~(8) summary of export license data by export identification code and dollar value by country;~~

~~(9) an identification of processing time by—~~

~~(A) overall average, and~~

~~(B) top 25 export identification codes;~~

~~(10) an assessment of the effectiveness of multilateral regimes, and a description of negotiations regarding export controls;~~

~~(11) a description of the significant differences between the export control requirements of the United States and those of other multilateral control regime members, the specific differences between United States requirements and those of other significant supplier countries, and a description of the extent to which the executive branch intends to address the differences;~~

~~(12) an assessment of the costs of export controls;~~

~~(13) a description of the progress made toward achieving the goals established for the Department dealing with export controls under the Government Performance Results Act; and~~

~~(14) any other reports required by this Act to be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.~~

~~(c) CONGRESSIONAL NOTIFICATION.—Whenever the Secretary determines, in consultation with other appropriate departments and agencies, that a significant violation of this Act poses a direct and imminent threat to United States national security interests, the Secretary, in consultation with other appropriate departments and agencies, shall advise the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives of such violation consistent with the protection of law enforcement sources, methods, and activities.~~

~~(d) FEDERAL REGISTER PUBLICATION REQUIREMENTS.—Whenever information under this Act is required to be published in the Federal Register, such information~~

~~shall, in addition, be made available on the appropriate Internet website of the Department.~~

~~SEC. 802. TECHNICAL AND CONFORMING AMENDMENTS.~~

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

~~(b) ENERGY POLICY AND CONSERVATION ACT.—~~

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

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

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

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

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

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

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

~~(h) ARMS EXPORT CONTROL ACT.—~~

~~(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) is amended—~~

~~(A) in subsection (c)—~~

~~(i) in the first sentence, by striking "subsections (c)" and all that follows through "12 of such Act," and inserting "subsections (b), (c), (d) and (e) of section 603 of the Export Administration Act of 2001, by subsections (a) and (b) of section 607 of such Act, and by section 702 of such Act,"; and~~

~~(ii) in the third sentence, by striking "11(c) of the Export Administration Act of 1979" and inserting "603(c) of the Export Administration Act of 2001"; and~~

~~(B) in subsection (g)(1)(A)(ii), by inserting "or section 603 of the Export Administration Act of 2001" after "1979".~~

~~(2) Section 39A(c) of the Arms Export Control Act is amended—~~

~~(A) by striking "subsections (c)," and all that follows through "12(a) of such Act" and inserting "subsections (c), (d), and (e) of section 603, section 608(c), and subsections (a)~~

~~and (b) of section 607, of the Export Administration Act of 2001'';~~ ~~and~~

~~(B) by striking ''11(c)'' and inserting ''603(c)''.~~

~~(3) Section 40(k) of the Arms Export Control Act (22 U.S.C. 2780(k)) is amended—~~

~~(A) by striking ''11(c), 11(c), 11(g), and 12(a) of the Export Administration Act of 1979'' and inserting ''603(b), 603(c), 603(c), 607(a), and 607(b) of the Export Administration Act of 2001'';~~ ~~and~~

~~(B) by striking ''11(c)'' and inserting ''603(c)''.~~

~~(i) OTHER PROVISIONS OF LAW.—~~

~~(1) Section 5(b)(4) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by striking ''section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States'' and inserting ''titles II and III of the Export Administration Act of 2001''.~~

~~(2) Section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the second sentence—~~

~~(A) by striking "Export Administration Act of 1979" the first place it appears and inserting "Export Administration Act of 2001"; and~~

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

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

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

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

~~(4) Section 40(e)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1)) is amended by striking "section 6(j)(1) of the Export Administration Act of 1979" and inserting "section 310 of the Export Administration Act of 2001".~~

~~(5) Section 205(d)(4)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 305(d)(4)(B)) is amended by striking "section 6(j)~~

~~of the Export Administration Act of 1979'' and inserting ''section 310 of the Export Administration Act of 2001''.~~

~~(6) Section 110 of the International Security and Development Cooperation Act of 1980 (22 U.S.C. 2778a) is amended by striking ''Act of 1979'' and inserting ''Act of 2001''.~~

~~(7) Section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)) is amended by striking ''section 5 of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States'' and inserting ''the Export Administration Act of 2001''.~~

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

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

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

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

~~(12) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 11 (relating to violations) of the Export Administration of 1979" and inserting "section 603 (relating to penalties) of the Export Administration Act of 2001".~~

~~SEC. 803. SAVINGS PROVISIONS.~~

~~(a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under—~~

~~(1) the Export Control Act of 1949, the Export Administration Act of 1969, the Export Administration Act of 1979, or the International Emergency~~

~~Economic Powers Act when invoked to maintain and continue the Export Administration regulations, or~~

~~(2) those provisions of the Arms Export Control Act which are amended by section 802,~~

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

~~(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—~~

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

~~(2) OTHER PROVISIONS OF LAW.—This Act shall not affect any administrative or judicial proceeding commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 802, if such proceeding or application is pending at the time~~

~~this Act takes effect. Any such proceeding, and any action on such application, shall continue under those provisions as if those provisions had not been amended by section 802.~~

~~(c) TREATMENT OF CERTAIN DETERMINATIONS.—Any determination with respect to the government of a foreign country under section 6(j) of the Export Administration Act of 1979, or Executive Order 12924, that is in effect on the day before the date of enactment of this Act, shall, for purposes of this title or any other provision of law, be deemed to be made under section 310 of this Act until superseded by a determination under such section 310.~~

~~(d) LAWFUL INTELLIGENCE ACTIVITIES.—The prohibitions otherwise applicable under this Act do not apply with respect to any transaction subject to the reporting requirements of title V of the National Security Act of 1947.~~

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

1 *(b) TABLE OF CONTENTS.—The table of contents of this*

2 *Act is as follows:*

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—GENERAL AUTHORITY

Sec. 101. Commerce Control List.
Sec. 102. Delegation of authority.
Sec. 103. Public information; consultation requirements.
Sec. 104. Right of export.
Sec. 105. Export control advisory committees.
Sec. 106. President's Technology Export Council.
Sec. 107. Prohibition on charging fees.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

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

Subtitle B—Foreign Availability and Mass-Market Status

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

TITLE III—FOREIGN POLICY EXPORT CONTROLS

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

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

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

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

Sec. 501. International arrangements.

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

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

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

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.
Sec. 702. Technical and conforming amendments.
Sec. 703. Savings provisions.

1 ***SEC. 2. DEFINITIONS.***

2 *In this Act:*

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

7 *(2) CONTROL OR CONTROLLED.—The terms "con-*
8 *trol" and "controlled" mean any requirement, condi-*
9 *tion, authorization, or prohibition on the export or*
10 *reexport of an item.*

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

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

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

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

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

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

(9) EXPORT.—

(A) The term "export" means—

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

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

(iii) a transfer of an item in the United States to an embassy or affiliate of

a country, which shall be considered an export to that country.

(B) The term includes a reexport.

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

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

(A) an individual who is not—

(i) a United States citizen;

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

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

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

(C) any governmental entity of a foreign country.

(12) ITEM.—

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

(B) OTHER DEFINITIONS.—In this paragraph:

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

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

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

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

(14) MULTILATERAL EXPORT CONTROL REGIME.—The term "multilateral export control regime" means an international agreement or arrangement among two or more countries, including the United States, a purpose of which is to coordinate national

export control policies of its members regarding certain tems. The term includes regimes such as the Australia Group, the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), and the Nuclear Suppliers' Group Dual Use Arrangement.

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

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

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

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

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

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

(19) UNITED STATES.—The term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States,

and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (42 U.S.C. 1331(a)).

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

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

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

(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations prescribed by the President.

TITLE I—GENERAL AUTHORITY

SEC. 101. COMMERCE CONTROL LIST.

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

(1) shall establish and maintain a Commerce Control List (in this Act referred to as the "Control List") consisting of items the export of which are sub-

ject to licensing or other authorization or requirement; and

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

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

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

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

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

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

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

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

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

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

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

SEC. 102. DELEGATION OF AUTHORITY.

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

cies, and officials of the Government as the President considers appropriate.

(b) EXCEPTIONS.—

(1) DELEGATION TO APPOINTEES CONFIRMED BY SENATE.—No authority delegated to the President under this Act may be delegated by the President to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate.

(2) OTHER LIMITATIONS.—The President may not delegate or transfer the President's power, authority, or discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State under this Act.

SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIREMENTS.

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

(b) CONSULTATION WITH PERSONS AFFECTED.—The Secretary shall consult regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls in order

to obtain their views on United States export control policy and the foreign availability or mass-market status of controlled items.

SEC. 104. RIGHT OF EXPORT.

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

SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.

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

(b) FUNCTIONS.—

(1) IN GENERAL.—Export control advisory committees appointed under subsection (a) shall advise and assist the Secretary, and any other department,

agency, or official of the Government carrying out functions under this Act, on actions (including all aspects of controls imposed or proposed) designed to carry out the provisions of this Act concerning the items with respect to which such export control advisory committees were appointed.

(2) OTHER CONSULTATIONS.—Nothing in paragraph (1) shall prevent the United States Government from consulting, at any time, with any person representing an industry or the general public, regardless of whether such person is a member of an export control advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present information to such committees.

(c) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export control advisory committee appointed under subsection (a), the Secretary may, if the Secretary determines it to be appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(d) CHAIRPERSON.—Each export control advisory committee appointed under subsection (a) shall elect a chairperson, and shall meet at least every 3 months at the

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

(e) ACCESS TO INFORMATION.—To facilitate the work of the export control advisory committees appointed under subsection (a), the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security and intelligence sources and methods, pertaining to the reasons for the export controls which are in effect or contemplated for the items or policies for which that committee furnishes advice. Information provided by the export control advisory committees shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest.

SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.

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

SEC. 107. PROHIBITION ON CHARGING FEES.

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

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT CONTROLS.

(a) AUTHORITY.—

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

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

Secretary, in consultation with the Secretary of Defense, the intelligence agencies, and such other departments and agencies as the Secretary considers appropriate.

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

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

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

(A) leading international efforts to control the proliferation of chemical and biological weapons, nuclear explosive devices, missile delivery systems, key-enabling technologies, and other significant military capabilities;

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

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

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

(3) To deter acts of international terrorism.

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

(d) ENHANCED CONTROLS.—

(1) IN GENERAL.—Notwithstanding any other provisions of this title, the President may determine that applying the provisions of section 204 or 211 with respect to an item on the National Security Control List would constitute a significant threat to the national security of the United States and that such item requires enhanced control. If the President determines that enhanced control should apply to such item, the item may be excluded from the provisions of section 204, section 211, or both, until such time as

the President shall determine that such enhanced control should no longer apply to such item. The President may not delegate the authority provided for in this subsection.

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

SEC. 202. NATIONAL SECURITY CONTROL LIST.

(a) ESTABLISHMENT OF LIST.—

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

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

(3) IDENTIFICATION OF ITEMS FOR NATIONAL SECURITY CONTROL LIST.—The Secretary, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers ap-

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

(b) RISK ASSESSMENT.—

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

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

(A) The characteristics of the item.

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

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

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

(E) Any other appropriate risk factors.

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

SEC. 203. COUNTRY TIERS.

(a) IN GENERAL.—

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

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

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

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

(3) REDETERMINATION AND REVIEW OF ASSIGNMENTS.—The President may redetermine the assignment of a country to a particular tier at any time and shall review and, as the President considers appropriate, reassign country tiers on an on-going

basis. The Secretary shall provide notice of any such reassignment to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

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

(b) TIERS.—

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

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

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

than the lowest or highest tier, based on the assessments required under subsection (c).

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

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

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

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

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

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

national agreement to which the United States is a party.

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

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

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

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

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

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

SEC. 204. INCORPORATED PARTS AND COMPONENTS.

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

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

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

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

unless the item itself, if exported, would by virtue of the functional characteristics of the item as a whole make a significant contribution to the military or proliferation potential of a controlled country or end user which would prove detrimental to the national security of the United States, or unless failure to control the item would be contrary to the provisions of section 201(c), section 201(d), or section 309 of this Act.

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

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

maintained if the value of the controlled United States content is more than 10 percent of the total value of the item.

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

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

(B) are incorporated into the item; and

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

SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STATUS.

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

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

Subtitle B—Foreign Availability and Mass-Market Status

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

(a) IN GENERAL.—The Secretary shall—

(1) on a continuing basis,

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

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

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

(b) PETITION AND CONSULTATION.—

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

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

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

(1) a foreign availability status, or

(2) a mass-market status,

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

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

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

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

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

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

(2) MASS-MARKET STATUS.—

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

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

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

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

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

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

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

(A) SUBSTANTIALLY IDENTICAL ITEM.—The determination of whether an item in relation to another item is a substantially identical item

shall include a fair assessment of end-uses, the properties, nature, and quality of the item.

(B) DIRECTLY COMPETITIVE ITEM.—

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

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

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

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—

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

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

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

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

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

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

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

(A) report any set-aside determination described in paragraph (1), along with the specific reasons for the determination, to the Committee

on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives; and

(B) publish the determination in the Federal Register.

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

(1) IN GENERAL.—

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

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

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

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

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

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

(C) the date on which the President determines that there is not a high probability of

eliminating foreign availability of the item through negotiation; or

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

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

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

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

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

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

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

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

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

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

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

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

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

on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.

(a) IN GENERAL.—

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

(2) STAFF.—

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

(i) economic analysis;

(ii) the defense industrial base;

(iii) technological developments; and

(iv) national security and foreign policy export controls.

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

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

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

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

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

(4) monitoring and evaluating multilateral export control regimes and foreign government export

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

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

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

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

(B) the United States economy in general.

(c) REPORTS TO CONGRESS.—The Secretary shall make available to the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate as part of the Secretary's annual report required under section 701 information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability and mass-market status, during the fiscal year preceding the report, including information on the training of personnel, and the use of Commercial Service Officers of the United States and Foreign Commercial Service to assist in making determinations. The information shall also

include a description of determinations made under this Act during the preceding fiscal year that foreign availability or mass-market status did or did not exist (as the case may be), together with an explanation of the determinations.

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

TITLE III—FOREIGN POLICY EXPORT CONTROLS

SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CONTROLS.

(a) AUTHORITY.—

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

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

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

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

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

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

(c) FOREIGN PRODUCTS.—No authority or permission may be required under this title to reexport to a country an item that is produced in a country other than the United States and incorporates parts or components that are subject to the jurisdiction of the United States, except that in the case of reexports of an item to a country designated

as a country supporting international terrorism pursuant to section 310, controls may be maintained if the value of the controlled United States content is more than 10 percent of the value of the item.

(d) CONTRACT SANCTITY.—

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

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

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

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

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

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

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

SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.

(a) NOTICE.—

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

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

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

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

(A) to provide an opportunity for the formulation of an effective export control policy

under this title that advances United States economic and foreign policy interests; and

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

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

(c) CONSULTATION.—

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

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

SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CONTROLS.

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

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

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

(3) include an assessment by the President that—

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

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

(4) be targeted narrowly; and

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

SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF CONTROL.

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

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

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

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

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

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

(5) any United States obligations under international trade agreements, treaties, or other inter-

national arrangements, with which the proposed export control may conflict;

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

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

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

SEC. 305. IMPOSITION OF CONTROLS.

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

SEC. 306. DEFERRAL AUTHORITY.

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

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

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

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

SEC. 307. REVIEW, RENEWAL, AND TERMINATION.

(a) RENEWAL AND TERMINATION.—

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

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

(A) is required by law;

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

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

(b) REVIEW.—

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

(2) CONSULTATION.—

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

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

(3) PUBLIC COMMENT.—In conducting the review of each export control under paragraph (1), the President shall provide a period of not less than 30 days for any interested person to submit comments on renewal of the export control. The President shall pub-

lish notice of the opportunity for public comment in the Federal Register not less than 45 days before the review is required to be completed.

(c) REPORT TO CONGRESS.—

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

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

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

(B) An assessment of—

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

(ii) the reasons why the existing export control has failed to fully achieve its objectives and, if renewed, how the export control

will achieve that objective before the next renewal year.

(C) An updated description and assessment of—

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

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

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

SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.

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

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

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

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

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

SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGATIONS.

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

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

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

SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

(a) LICENSE REQUIRED.—Notwithstanding any other provision of this Act setting forth limitations on the author-

ity to control exports, a license shall be required for the export of any item to a country if the Secretary of State has determined that—

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

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

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

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

(d) LIMITATIONS ON RESCINDING DETERMINATION.—A determination made by the Secretary of State under sub-

section (a)(1) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Banking, Housing, and Urban Affairs and the Chairman of the Committee on Foreign Relations of the Senate—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 311. CRIME CONTROL INSTRUMENTS.

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

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

(2) any determination by the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 401 of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under

paragraph (1) or (2), the matter shall be referred to the President for resolution.

(b) EXCEPTION.—The provisions of this section shall not apply with respect to exports to countries that are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this section and section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304).

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

SEC. 401. EXPORT LICENSE PROCEDURES.

(a) RESPONSIBILITY OF THE SECRETARY.—

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

(2) PROCEDURES.—In guidance and regulations that implement this section, the Secretary shall describe the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies in reviewing applications, the

rights of the applicant, and other relevant matters affecting the review of license applications.

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

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

(A) The characteristics of the controlled item.

(B) The threat to—

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

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

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

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

(i) the exporter;

(ii) the method of export;

(iii) the end-user;

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

(v) the end-use.

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

(i) changing the characteristics of the controlled item;

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

(iii) post-shipment verification.

(b) INITIAL SCREENING.—

(1) UPON RECEIPT OF APPLICATION.—Upon receipt of an export license application, the Secretary shall enter and maintain in the records of the Department information regarding the receipt and status of the application.

(2) INITIAL PROCEDURES.—

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

(i) contact the applicant if the application is improperly completed or if additional information is required, and hold the application for a reasonable time while the applicant provides the necessary corrections or information, and such time shall not be included in calculating the time periods prescribed in this title;

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

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

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

(B) REFERRAL NOT REQUIRED.—In the event that the head of a department or agency determines that certain types of applications

need not be referred to the department or agency, such department or agency head shall notify the Secretary of the specific types of such applications that the department or agency does not wish to review.

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

(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

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

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

(3) ADDITIONAL INFORMATION REQUESTS.—Each department or agency to which a license application is referred shall specify to the Secretary any information that is not in the application that would be required for the department or agency to make a determination with respect to the application, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by that department or agency and the date the information is received by that department or agency shall not be included in calculating the time periods prescribed in this title.

(4) TIME PERIOD FOR ACTION BY REFERRAL DEPARTMENTS AND AGENCIES.—Within 30 days after the Secretary refers an application under this section, each department or agency to which an application has been referred shall provide the Secretary with a recommendation either to approve the license or to deny the license. A recommendation that the Secretary deny a license shall include a statement of reasons for the recommendation that are consistent with the provisions of this title, and shall cite both the specific statutory and regulatory basis for the recommendation. A department or agency that fails to

provide a recommendation in accordance with this paragraph within that 30-day period shall be deemed to have no objection to the decision of the Secretary on the application.

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

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

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

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

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

(e) CONSEQUENCES OF APPLICATION DENIAL.—

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

(A) the determination;

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

(C) what, if any, modifications to, or restrictions on, the items for which the license was sought would allow such export to be compatible with export controls imposed under this Act, and which officer or employee of the Department would be in a position to discuss modifications or restrictions with the applicant and the specific statutory and regulatory bases for imposing such modifications or restrictions;

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

(E) the availability of appeal procedures.

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

does address or correct the reasons for denial, the application shall be considered in a timely manner.

(f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

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

(2) ENFORCEMENT OF TIME LIMITS.—

(A) IN GENERAL.—In any case in which an action prescribed in this section is not taken on an application within the time period established by this section (except in the case of a time period extended under subsection (g) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(B) BRINGING COURT ACTION.—If, within 20 days after a petition is filed under subparagraph (A), the processing of the application has not been brought into conformity with the requirements of this section, or the processing of the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for an order requiring compliance with the time periods required by this section.

(g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—The following actions related to processing an application shall not be included in calculating the time periods prescribed in this section:

(1) AGREEMENT OF THE APPLICANT.—Delays upon which the Secretary and the applicant mutually agree.

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

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

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

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

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

(3) REQUESTS FOR GOVERNMENT-TO-GOVERNMENT ASSURANCES.—Any request by the Secretary or another department or agency for government-to-government assurances of suitable end-uses of items approved for export, when failure to obtain such assurances would result in rejection of the application, if—

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

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

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

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

paragraph (3) are not requested within the time periods set forth therein, then the time expended for such prelicense check or assurances shall be included in calculating the time periods established by this section.

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

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

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

(h) CLASSIFICATION REQUESTS AND OTHER INQUIRIES.—

(1) CLASSIFICATION REQUESTS.—In any case in which the Secretary receives a written request asking for the proper classification of an item on the Control List or the applicability of licensing requirements under this title, the Secretary shall promptly notify the Secretary of Defense and the head of any department or agency the Secretary considers appropriate.

The Secretary shall, within 14 days after receiving the request, inform the person making the request of the proper classification.

(2) OTHER INQUIRIES.—In any case in which the Secretary receives a written request for information under this Act, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.

SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.

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

(b) INTERAGENCY DISPUTE RESOLUTION PROCESS.—

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

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

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

(A) provide for decision-making based on the majority vote of the participating departments and agencies;

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases for a position, shall be deemed to have no objection to the pending decision;

(C) provide that any decision of an interagency committee established under paragraph (1) or interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency com-

mittee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary.

(c) FINAL ACTION.—

(1) IN GENERAL.—Once a final decision is made under subsection (b), the Secretary shall promptly—

(A) issue the license and ensure that all appropriate personnel in the Department (including the Office of Export Enforcement) are notified of all approved license applications; or

(B) notify the applicant of the intention to deny the application.

(2) MINUTES.—The interagency committee and each level of the interagency dispute resolution process shall keep reasonably detailed minutes of all meetings. On each matter before the interagency committee or before any other level of the interagency dispute resolution process in which members disagree, each member shall clearly state the reasons for the member's position and the reasons shall be entered in the minutes.

TITLE V—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT

SEC. 501. INTERNATIONAL ARRANGEMENTS.

(a) MULTILATERAL EXPORT CONTROL REGIMES.—

(1) POLICY.—It is the policy of the United States to seek multilateral arrangements that support the national security objectives of the United States (as described in title II) and that establish fairer and more predictable competitive opportunities for United States exporters.

(2) PARTICIPATION IN EXISTING REGIMES.—Congress encourages the United States to continue its active participation in and to strengthen existing multilateral export control regimes.

(3) PARTICIPATION IN NEW REGIMES.—It is the policy of the United States to participate in additional multilateral export control regimes if such participation would serve the national security interests of the United States.

(b) ANNUAL REPORT ON MULTILATERAL EXPORT CONTROL REGIMES.—Not later than February 1 of each year, the President shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Com-

mittee on International Relations of the House of Representatives a report evaluating the effectiveness of each multilateral export control regime, including an assessment of the steps undertaken pursuant to subsections (c) and (d). The report, or any part of this report, may be submitted in classified form to the extent the President considers necessary.

(c) STANDARDS FOR MULTILATERAL EXPORT CONTROL REGIMES.—The President shall take steps to establish the following features in any multilateral export control regime in which the United States is participating or may participate:

(1) FULL MEMBERSHIP.—All supplier countries are members of the regime, and the policies and activities of the members are consistent with the objectives and membership criteria of the multilateral export control regime.

(2) EFFECTIVE ENFORCEMENT AND COMPLIANCE.—The regime promotes enforcement and compliance with the regime's rules and guidelines.

(3) PUBLIC UNDERSTANDING.—The regime makes an effort to enhance public understanding of the purpose and procedures of the multilateral export control regime.

(4) EFFECTIVE IMPLEMENTATION PROCEDURES.—The multilateral export control regime has procedures for the uniform and consistent interpretation and implementation of its rules and guidelines.

(5) ENHANCED COOPERATION WITH REGIME NONMEMBERS.—There is agreement among the members of the multilateral export control regime to—

(A) cooperate with governments outside the regime to restrict the export of items controlled by such regime; and

(B) establish an ongoing mechanism in the regime to coordinate planning and implementation of export control measures related to such cooperation.

(6) PERIODIC HIGH-LEVEL MEETINGS.—There are regular periodic meetings of high-level representatives of the governments of members of the multilateral export control regime for the purpose of coordinating export control policies and issuing policy guidance to members of the regime.

(7) COMMON LIST OF CONTROLLED ITEMS.—There is agreement on a common list of items controlled by the multilateral export control regime.

(8) REGULAR UPDATES OF COMMON LIST.—There is a procedure for removing items from the list

of controlled items when the control of such items no longer serves the objectives of the members of the multilateral export control regime.

(9) TREATMENT OF CERTAIN COUNTRIES.—There is agreement to prevent the export or diversion of the most sensitive items to countries whose activities are threatening to the national security of the United States or its allies.

(10) HARMONIZATION OF LICENSE APPROVAL PROCEDURES.—There is harmonization among the members of the regime of their national export license approval procedures, practices, and standards.

(11) UNDERCUTTING.—There is a limit with respect to when members of a multilateral export control regime—

(A) grant export licenses for any item that is substantially identical to or directly competitive with an item controlled pursuant to the regime, where the United States has denied an export license for such item, or

(B) approve exports to a particular end user to which the United States has denied export license for a similar item.

(d) STANDARDS FOR NATIONAL EXPORT CONTROL SYSTEMS.—The President shall take steps to attain the co-

operation of members of each regime in implementing effective national export control systems containing the following features:

(1) EXPORT CONTROL LAW.—Enforcement authority, civil and criminal penalties, and statutes of limitations are sufficient to deter potential violations and punish violators under the member's export control law.

(2) LICENSE APPROVAL PROCESS.—The system for evaluating export license applications includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end users.

(3) ENFORCEMENT.—The enforcement mechanism provides authority for trained enforcement officers to investigate and prevent illegal exports.

(4) DOCUMENTATION.—There is a system of export control documentation and verification with respect to controlled items.

(5) INFORMATION.—There are procedures for the coordination and exchange of information concerning licensing, end users, and enforcement with other members of the multilateral export control regime.

(6) RESOURCES.—The member has devoted adequate resources to administer effectively the authori-

ties, systems, mechanisms, and procedures described in paragraphs (1) through (5).

(e) OBJECTIVES REGARDING MULTILATERAL EXPORT CONTROL REGIMES.—The President shall seek to achieve the following objectives with regard to multilateral export control regimes:

(1) STRENGTHEN EXISTING REGIMES.—Strengthen existing multilateral export control regimes—

(A) by creating a requirement to share information about export license applications among members before a member approves an export license; and

(B) harmonizing national export license approval procedures and practices, including the elimination of undercutting.

(2) REVIEW AND UPDATE.—Review and update multilateral regime export control lists with other members, taking into account—

(A) national security concerns;

(B) the controllability of items; and

(C) the costs and benefits of controls.

(3) ENCOURAGE COMPLIANCE BY NONMEMBERS.—Encourage nonmembers of the multilateral export control regime—

(A) to strengthen their national export control regimes and improve enforcement;

(B) to adhere to the appropriate multilateral export control regime; and

(C) not to undermine an existing multilateral export control regime by exporting controlled items in a manner inconsistent with the guidelines of the regime.

(f) TRANSPARENCY OF MULTILATERAL EXPORT CONTROL REGIMES.—

(1) PUBLICATION OF INFORMATION ON EACH EXISTING REGIME.—Not later than 120 days after the date of enactment of this Act, the Secretary shall, for each multilateral export control regime, to the extent that it is not inconsistent with the arrangements of that regime (in the judgment of the Secretary of State) or with the national interest, publish in the Federal Register and post on the Department of Commerce website the following information with respect to the regime:

(A) The purposes of the regime.

(B) The members of the regime.

(C) The export licensing policy of the regime.

(D) The items that are subject to export controls under the regime, together with all public notes, understandings, and other aspects of the agreement of the regime, and all changes thereto.

(E) Any countries, end uses, or end users that are subject to the export controls of the regime.

(F) Rules of interpretation.

(G) Major policy actions.

(H) The rules and procedures of the regime for establishing and modifying any matter described in subparagraphs (A) through (G) and for reviewing export license applications.

(2) NEW REGIMES.—Not later than 60 days after the United States joins or organizes a new multilateral export control regime, the Secretary shall, to the extent that it is not inconsistent with arrangements under the regime (in the judgment of the Secretary of State) or with the national interest, publish in the Federal Register and post on the Department of Commerce website the information described in subparagraphs (A) through (H) of paragraph (1) with respect to the regime.

(3) PUBLICATION OF CHANGES.—Not later than 60 days after a multilateral export control regime adopts any change in the information published under this subsection, the Secretary shall, to the extent not inconsistent with the arrangements under the regime or the national interest, publish such changes in the Federal Register and post such changes on the Department of Commerce website.

(g) SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL SYSTEMS.—The Secretary is encouraged to continue to—

(1) participate in training of, and provide training to, officials of other countries on the principles and procedures for implementing effective export controls; and

(2) participate in any such training provided by other departments and agencies of the United States.

SEC. 502. FOREIGN BOYCOTTS.

(a) PURPOSES.—The purposes of this section are as follows:

(1) To counteract restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person.

(2) To encourage and, in specified cases, require United States persons engaged in the export of items to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person.

(b) PROHIBITIONS AND EXCEPTIONS.—

(1) PROHIBITIONS.—In order to carry out the purposes set forth in subsection (a), the President shall issue regulations prohibiting any United States person, with respect to that person's activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country that is friendly to the United States and is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized

under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, or requirement of, or a request from or on behalf of the boycotting country (subject to the condition that the intent required to be associated with such an act in order to constitute a violation of the prohibition is not indicated solely by the mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person).

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminate against any United States person on the basis of the race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information (other than furnishing normal business information in a commercial context, as defined by the Secretary) about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person that is known or believed to be restricted from having any business relationship with or in the boycotting country.

(E) Furnishing information about whether any person is a member of, has made a contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement the compliance with which is prohibited by regulations

issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) EXCEPTIONS.—Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) compliance, or agreement to comply, with requirements—

(i) prohibiting the import of items from the boycotted country or items produced or provided, by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

(ii) prohibiting the shipment of items to the boycotting country on a carrier of the boycotted country or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) compliance, or agreement to comply, with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment, or the

name of the provider of other services, except that, for purposes of applying any exception under this subparagraph, no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) compliance, or agreement to comply, in the normal course of business with the unilateral and specific selection by a boycotting country, or a national or resident thereof, or carriers, insurers, suppliers of services to be performed within the boycotting country, or specific items which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) compliance, or agreement to comply, with export requirements of the boycotting country relating to shipment or transshipment of exports to the boycotted country, to any business concern of or organized under the laws of the

boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual, or agreement by an individual to comply, with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country, or agreement by such a person to comply, with the laws of the country with respect to the person's activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of the foreign country governing imports into such country of trademarked, trade-named, or similarly specifically identifiable products, or components of products for such person's own use, including the performance of contractual services within that country.

(3) LIMITATION ON EXCEPTIONS.—Regulations issued pursuant to paragraphs (2)(C) and (2)(F)

shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) ANTITRUST AND CIVIL RIGHTS LAWS NOT AFFECTED.—Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) EVASION.—This section applies to any transaction or activity undertaken by or through a United States person or any other person with intent to evade the provisions of this section or the regulations issued pursuant to this subsection. The regulations issued pursuant to this section shall expressly provide that the exceptions set forth in paragraph (2) do not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) that are otherwise prohibited, pursuant to the intent of such exceptions.

(c) ADDITIONAL REGULATIONS AND REPORTS.—

(1) REGULATIONS.—In addition to the regulations issued pursuant to subsection (b), regulations issued pursuant to title III shall implement the purposes set forth in subsection (a).

(2) REPORTS BY UNITED STATES PERSONS.—The regulations shall require that any United States person receiving a request to furnish information, enter

into or implement an agreement, or take any other action referred to in subsection (a) shall report that request to the Secretary, together with any other information concerning the request that the Secretary determines appropriate. The person shall also submit to the Secretary a statement regarding whether the person intends to comply, and whether the person has complied, with the request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any item to which such report relates may be treated as confidential if the Secretary determines that disclosure of that information would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate to carry out the purposes set forth in subsection (a).

(d) PREEMPTION.—The provisions of this section and the regulations issued under this section shall preempt any law, rule, or regulation that—

(1) is a law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof; and

(2) pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

SEC. 503. PENALTIES.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Any individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports involved or $1,000,000, whichever is greater, imprisoned for not more than 10 years, or both, for each violation.

(2) VIOLATIONS BY A PERSON OTHER THAN AN INDIVIDUAL.—Any person other than an individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports in-

volved or $5,000,000, whichever is greater, for each violation.

(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

(1) FORFEITURE.—Any person who is convicted under paragraph (1) or (2) of subsection (a) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's security or other interest in, claim against, or property or contractual rights of any kind in the tangible items that were the subject of the violation;

(B) any of that person's security or other interest in, claim against, or property or contractual rights of any kind in the tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection, or with respect to any property

that may be subject to forfeiture under this subsection, shall be governed by the provisions of chapter 46 of title 18, United States Code (relating to criminal forfeiture), to the same extent as property subject to forfeiture under that chapter.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—

(1) CIVIL PENALTIES.—The Secretary may impose a civil penalty of up to $500,000 for each violation of a provision of this Act or any regulation, license, or order issued under this Act. A civil penalty under this paragraph may be in addition to, or in lieu of, any other liability or penalty which may be imposed for such a violation.

(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person, including the suspension or revocation of the authority of such person to export or receive United States-origin items subject to this Act, for a violation of a provision of this Act or any regulation, license, or order issued under this Act.

(3) EXCLUSION FROM PRACTICE.—The Secretary may exclude any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity from participating be-

fore the Department with respect to a license application or any other matter under this Act.

(d) PAYMENT OF CIVIL PENALTIES.—

(1) PAYMENT AS CONDITION OF FURTHER EXPORT PRIVILEGES.—The payment of a civil penalty imposed under subsection (c) may be made a condition for the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. The period for which the payment of a penalty may be made such a condition may not exceed 1 year after the date on which the payment is due.

(2) DEFERRAL OR SUSPENSION.—

(A) IN GENERAL.—The payment of a civil penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period no longer than any probation period (which may exceed 1 year) that may be imposed upon the person on whom the penalty is imposed.

(B) NO BAR TO COLLECTION OF PENALTY.—A deferral or suspension under subparagraph (A) shall not operate as a bar to the collection of the penalty concerned in the event that the condi-

tions of the suspension, deferral, or probation are not fulfilled.

(3) TREATMENT OF PAYMENTS.—Any amount paid in satisfaction of a civil penalty imposed under subsection (c) shall be covered into the Treasury as miscellaneous receipts.

(e) REFUNDS.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, refund any civil penalty imposed under subsection (c) on the ground of a material error of fact or law in imposition of the penalty.

(B) LIMITATION.—A civil penalty may not be refunded under subparagraph (A) later than 2 years after payment of the penalty.

(2) PROHIBITION ON ACTIONS FOR REFUND.—Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any civil penalty referred to in paragraph (1) may be maintained in any court.

(f) EFFECT OF OTHER CONVICTIONS.—

(1) DENIAL OF EXPORT PRIVILEGES.—Any person convicted of a violation of—

(A) a provision of this Act or the Export Administration Act of 1979,

(B) a provision of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.),

(C) section 793, 794, or 798 of title 18, United States Code,

(D) section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)),

(E) section 38 of the Arms Export Control Act (22 U.S.C. 2778),

(F) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16),

(G) any regulation, license, or order issued under any provision of law listed in subparagraph (A), (B), (C), (D), (E), or (F),

(H) section 371 or 1001 of title 18, United States Code, if in connection with the export of controlled items under this Act or any regulation, license, or order issued under the International Emergency Economic Powers Act, or the export of items controlled under the Arms Export Control Act,

(I) section 175 of title 18, United States Code,

(J) a provision of the Atomic Energy Act (42 U.S.C. 201 et seq.),

(K) section 831 of title 18, United States Code, or

(L) section 2332a of title 18, United States Code,

may, at the discretion of the Secretary, be denied export privileges under this Act for a period not to exceed 10 years from the date of the conviction. The Secretary may also revoke any export license under this Act in which such person had an interest at the time of the conviction.

(2) RELATED PERSONS.—The Secretary may exercise the authority under paragraph (1) with respect to any person related through affiliation, ownership, control, or position of responsibility to a person convicted of any violation of a law set forth in paragraph (1) upon a showing of such relationship with the convicted person. The Secretary shall make such showing only after providing notice and opportunity for a hearing.

(g) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a proceeding in which a civil penalty or other administrative sanction (other than a tem-

porary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) EXCEPTION.—

(A) TOLLING.—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

(B) DURATION.—The tolling of the limitation with respect to a defendant under subparagraph (A) as a result of a criminal indictment shall continue for a period of 6 months from the date on which the conviction of the defendant becomes final, the indictment against the defendant is dismissed, or the criminal action has concluded.

(h) VIOLATIONS DEFINED BY REGULATION.—Nothing in this section shall limit the authority of the Secretary to define by regulation violations under this Act.

(i) CONSTRUCTION.—Nothing in subsection (c), (d), (e), (f), or (g) limits—

(1) the availability of other administrative or judicial remedies with respect to a violation of a provision of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to any such violation; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.

(a) VIOLATIONS BY UNITED STATES PERSONS.—

(1) SANCTIONS.—

(A) IN GENERAL.—If the President determines that a United States person knowingly—

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7

of the Arms Export Control Act, title II or III of this Act, or any regulations or orders issued under any such provisions,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in subparagraph (B).

(B) SANCTIONS DESCRIBED.—The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States per-

son, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 503.

(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to an item if the President certifies to Congress that—

(A) the item is essential to the national security of the United States; and

(B) such person is a sole source supplier of the item, the item is not available from any alternative reliable supplier, and the need for the item cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

(1) SANCTIONS.—

(A) IN GENERAL.—Subject to paragraphs (3) through (7), if the President determines that

a foreign person, after the date of enactment of this section, knowingly—

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) SANCTIONS DESCRIBED.—The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of

the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.

(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(2) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Paragraph (1) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(3) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advi-

sory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(5) WAIVER AND REPORT TO CONGRESS.—

(A) WAIVER.—In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(B) REPORT TO CONGRESS.—In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(6) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph

(1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(7) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense arti-

cles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(c) DEFINITIONS.—In this section:

(1) MISSILE.—The term "missile" means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems.

(2) MISSILE TECHNOLOGY CONTROL REGIME; MTCR.—The term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(3) MTCR ADHERENT.—The term "MTCR adherent" means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR.

(4) MTCR ANNEX.—The term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(5) MISSILE EQUIPMENT OR TECHNOLOGY; MTCR EQUIPMENT OR TECHNOLOGY.—The terms "missile equipment or technology" and "MTCR equipment or technology" mean those items listed in category I or category II of the MTCR Annex.

(6) FOREIGN PERSON.—The term "foreign person" means any person other than a United States person.

(7) PERSON.—

(A) IN GENERAL.—The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.

(B) IDENTIFICATION IN CERTAIN CASES.—In the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term "person" means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment.

(8) OTHERWISE ENGAGED IN THE TRADE OF.—The term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any item that is subject to the jurisdiction of the United States under this Act, or

(B) through the export from any other country of any item that would be, if it were a

United States item, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after the date of enactment of this Act—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 310 to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, Congress urges the President

to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following the consultations, the President shall impose sanctions unless the President determines and certifies to Congress that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to Congress that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection

that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiv-

er authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

SEC. 506. ENFORCEMENT.

(a) GENERAL AUTHORITY AND DESIGNATION.—

(1) POLICY GUIDANCE ON ENFORCEMENT.—The Secretary, in consultation with the Secretary of the Treasury and the heads of other departments and agencies that the Secretary considers appropriate, shall be responsible for providing policy guidance on the enforcement of this Act.

(2) GENERAL AUTHORITIES.—

(A) EXERCISE OF AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act, officers and employees of the Department designated by the Secretary, officers and employees of the United States Customs Service designated by the Commissioner of Customs, and officers and employees of any other department or agency designated by the head of a department or agency exercising functions under this Act, may exercise the enforcement authority under paragraph (3).

(B) CUSTOMS SERVICE.—In carrying out enforcement authority under paragraph (3), the Commissioner of Customs and employees of the United States Customs Service designated by the Commissioner may make investigations within or outside the United States and at ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to carry out law enforcement responsibilities. Subject to paragraph (3), the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize items at the ports of entry into or exit from the United States where

officers of the United States Customs Service are authorized by law to conduct searches, detentions, and seizures, and at the places outside the United States where the United States Customs Service, pursuant to agreement or other arrangement with other countries, is authorized to perform enforcement activities.

(C) OTHER EMPLOYEES.—In carrying out enforcement authority under paragraph (3), the Secretary and officers and employees of the Department designated by the Secretary may make investigations within the United States, and may conduct, outside the United States, pre-license and post-shipment verifications of controlled items and investigations in the enforcement of section 502. The Secretary and officers and employees of the Department designated by the Secretary are authorized to search, detain (after search), and seize items at places within the United States other than ports referred to in subparagraph (B). The search, detention (after search), or seizure of items at the ports and places referred to in subparagraph (B) may be conducted by officers and employees of the Department only with the concurrence of the Com-

missioner of Customs or a person designated by the Commissioner.

(D) AGREEMENTS AND ARRANGEMENTS.—The Secretary and the Commissioner of Customs may enter into agreements and arrangements for the enforcement of this Act, including foreign investigations and information exchange.

(3) SPECIFIC AUTHORITIES.—

(A) ACTIONS BY ANY DESIGNATED PERSONNEL.—Any officer or employee designated under paragraph (2), in carrying out the enforcement authority under this Act, may do the following:

(i) Make investigations of, obtain information from, make inspection of any books, records, or reports (including any writings required to be kept by the Secretary), premises, or property of, and take the sworn testimony of, any person.

(ii) Administer oaths or affirmations, and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both. In the case of contumacy by, or refusal to obey a subpoena issued to, any such person,

a district court of the United States, on request of the Attorney General and after notice to any such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both. Any failure to obey such order of the court may be punished by such court as a contempt thereof. The attendance of witnesses and the production of documents provided for in this clause may be required from any State, the District of Columbia, or in any territory of the United States at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage allowance as paid witnesses in the district courts of the United States.

(B) ACTIONS BY OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—

(i) OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—Any officer or employee of the Office of Export Enforcement of the Department of Com-

merce (in this Act referred to as "OEE") who is designated by the Secretary under paragraph (2), and any officer or employee of the United States Customs Service who is designated by the Commissioner of Customs under paragraph (2), may do the following in carrying out the enforcement authority under this Act:

(I) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of this Act.

(II) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed, is committing, or is about to commit such a violation.

(III) Carry firearms.

(ii) OEE PERSONNEL.*—Any officer or employee of the OEE designated by the Secretary under paragraph (2) shall exercise the authority set forth in clause (i) pursu-*

ant to guidelines approved by the Attorney General.

(C) OTHER ACTIONS BY CUSTOMS SERVICE PERSONNEL.—Any officer or employee of the United States Customs Service designated by the Commissioner of Customs under paragraph (2) may do the following in carrying out the enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom the officer or employee has reasonable cause to suspect there is any item that has been, is being, or is about to be exported from or transited through the United States in violation of this Act.

(ii) Detain and search any package or container in which the officer or employee has reasonable cause to suspect there is any item that has been, is being, or is about to be exported from or transited through the United States in violation of this Act.

(iii) Detain (after search) or seize any item, for purposes of securing for trial or forfeiture to the United States, on or about such vehicle, vessel, aircraft, or person or in

such package or container, if the officer or employee has probable cause to believe the item has been, is being, or is about to be exported from or transited through the United States in violation of this Act.

(4) OTHER AUTHORITIES NOT AFFECTED.—The authorities conferred by this section are in addition to any authorities conferred under other laws.

(b) FORFEITURE.—

(1) IN GENERAL.—Any tangible items lawfully seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United States.

(2) APPLICABLE LAWS.—Those provisions of law relating to—

(A) the seizure, summary and judicial forfeiture, and condemnation of property for violations of the customs laws;

(B) the disposition of such property or the proceeds from the sale thereof;

(C) the remission or mitigation of such forfeitures; and

(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of

this subsection, insofar as applicable and not inconsistent with this Act.

(3) FORFEITURES UNDER CUSTOMS LAWS.—Duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures of property under this subsection by the Secretary or any officer or employee of the Department that may be authorized or designated for that purpose by the Secretary (or by the Commissioner of Customs or any officer or employee of the United States Customs Service designated by the Commissioner), or, upon the request of the Secretary, by any other agency that has authority to manage and dispose of seized property.

(c) REFERRAL OF CASES.—All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 503 or to the Attorney General for criminal action in accordance with this Act or to both the Secretary and the Attorney General.

(d) UNDERCOVER INVESTIGATION OPERATIONS.—

(1) USE OF FUNDS.—With respect to any undercover investigative operation conducted by the OEE

that is necessary for the detection and prosecution of violations of this Act—

(A) funds made available for export enforcement under this Act may be used to purchase property, buildings, and other facilities, and to lease equipment, conveyances, and space within the United States, without regard to sections 1341 and 3324 of title 31, United States Code, the third undesignated paragraph under the heading of "miscellaneous" of the Act of March 3, 1877, (40 U.S.C. 34), sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22), subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a) and (c)), and section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);

(B) funds made available for export enforcement under this Act may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections

1341, 3324, and 9102 of title 31, United States Code;

(C) funds made available for export enforcement under this Act and the proceeds from undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

(D) the proceeds from undercover operations may be used to offset necessary and reasonable expenses incurred in such operations without regard to the provisions of section 3302 of title 31, United States Code,

if the Director of OEE (or an officer or employee designated by the Director) certifies, in writing, that the action authorized by subparagraph (A), (B), (C), or (D) for which the funds would be used is necessary for the conduct of the undercover operation.

(2) DISPOSITION OF BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation has a net value of more than $250,000 and is to be liquidated, sold, or otherwise disposed of, the Director of OEE shall report the circumstances to the Secretary and the

Comptroller General of the United States as much in advance of such disposition as the Director of the OEE (or the Director's designee) determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations incurred by the corporation or business enterprise are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

(3) DEPOSIT OF PROCEEDS.—As soon as the proceeds from an OEE undercover investigative operation with respect to which an action is authorized and carried out under this subsection are no longer needed for the conduct of such operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) AUDIT AND REPORT.—

(A) AUDIT.—The Director of OEE shall conduct a detailed financial audit of each closed OEE undercover investigative operation and

shall submit the results of the audit in writing to the Secretary. Not later than 180 days after an undercover operation is closed, the Secretary shall submit to Congress a report on the results of the audit.

(B) REPORT.—The Secretary shall submit annually to Congress a report, which may be included in the annual report under section 701, specifying the following information:

(i) The number of undercover investigative operations pending as of the end of the period for which such report is submitted.

(ii) The number of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted.

(iii) The number of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect to the operation.

(5) DEFINITIONS.—For purposes of paragraph (4)—

(A) the term "closed", with respect to an undercover investigative operation, refers to the earliest point in time at which all criminal proceedings (other than appeals) pursuant to the investigative operation are concluded, or covert activities pursuant to such operation are concluded, whichever occurs later; and

(B) the terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation conducted by the OEE—

(i) in which the gross receipts (excluding interest earned) exceed $25,000, or expenditures (other than expenditures for salaries of employees) exceed $75,000, and

(ii) which is exempt from section 3302 or 9102 of title 31, United States Code, except that clauses (i) and (ii) shall not apply with respect to the report to Congress required by paragraph (4)(B).

(e) WIRETAPS.—

(1) AUTHORITY.—Interceptions of communications in accordance with section 2516 of title 18,

United States Code, are authorized to further the enforcement of this Act.

(2) CONFORMING AMENDMENT.—Section 2516(1) of title 18, United States Code, is amended by adding at the end the following:

"(q)(i) any violation of, or conspiracy to violate, the Export Administration Act of 2001 or the Export Administration Act of 1979.".

(f) POST-SHIPMENT VERIFICATION.—The Secretary shall target post-shipment verifications to exports involving the greatest risk to national security.

(g) REFUSAL TO ALLOW POST-SHIPMENT VERIFICATION.—

(1) IN GENERAL.—If an end-user refuses to allow post-shipment verification of a controlled item, the Secretary shall deny a license for the export of any controlled item to such end-user until such post-shipment verification occurs.

(2) RELATED PERSONS.—The Secretary may exercise the authority under paragraph (1) with respect to any person related through affiliation, ownership, control, or position of responsibility, to any end-user refusing to allow post-shipment verification of a controlled item.

(3) REFUSAL BY COUNTRY.—If the country in which the end-user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a license for the export of that item or any substantially identical or directly competitive item or class of items to all end-users in that country until such post-shipment verification is allowed.

(h) FREIGHT FORWARDERS BEST PRACTICES PROGRAM AUTHORIZATION.—There is authorized to be appropriated for the Department of Commerce $3,500,000 and such sums as may be necessary to hire 20 additional employees to assist United States freight forwarders and other interested parties in developing and implementing, on a voluntary basis, a "best practices" program to ensure that exports of controlled items are undertaken in compliance with this Act.

(i) END-USE VERIFICATION AUTHORIZATION.—

(1) IN GENERAL.—There is authorized to be appropriated for the Department of Commerce $4,500,000 and such sums as may be necessary to hire 10 additional overseas investigators to be posted in the People's Republic of China, the Russian Federation, the Hong Kong Special Administrative Region, the Republic of India, Singapore, Egypt, and Taiwan, or any other place the Secretary deems ap-

propriate, for the purpose of verifying the end use of high-risk, dual-use technology.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Department shall, in its annual report to Congress on export controls, include a report on the effectiveness of the end-use verification activities authorized under subsection (a). The report shall include the following information:

(A) The activities of the overseas investigators of the Department.

(B) The types of goods and technologies that were subject to end-use verification.

(C) The ability of the Department's investigators to detect the illegal transfer of high risk, dual-use goods and technologies.

(3) ENHANCEMENTS.—In addition to the authorization provided in paragraph (1), there is authorized to be appropriated for the Department of Commerce $5,000,000 to enhance its program for verifying the end use of items subject to controls under this Act.

(j) ENHANCED COOPERATION WITH UNITED STATES CUSTOMS SERVICE.—Consistent with the purposes of this Act, the Secretary is authorized to undertake, in cooperation with the United States Customs Service, such measures

as may be necessary or required to enhance the ability of the United States to detect unlawful exports and to enforce violations of this Act.

(k) REFERENCE TO ENFORCEMENT.—For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, license, or order issued under this Act.

(l) AUTHORIZATION FOR EXPORT LICENSING AND ENFORCEMENT COMPUTER SYSTEM.—There is authorized to be appropriated for the Department $5,000,000 and such other sums as may be necessary for planning, design, and procurement of a computer system to replace the Department's primary export licensing and computer enforcement system.

(m) AUTHORIZATION FOR BUREAU OF EXPORT ADMINISTRATION.—The Secretary may authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement in accordance with section 9703 of title 31, United States Code (as added by Public Law 102–393). The Secretary may also authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement

from the Department of Justice Assets Forfeiture Fund in accordance with section 524 of title 28, United States Code. Such funds shall be deposited in an account and shall remain available until expended.

(n) AMENDMENTS TO TITLE 31.—

(1) Section 9703(a) of title 31, United States Code (as added by Public Law 102–393) is amended by striking "or the United States Coast Guard" and inserting ", the United States Coast Guard, or the Bureau of Export Administration of the Department of Commerce".

(2) Section 9703(a)(2)(B)(i) of title 31, United States Code is amended (as added by Public Law 102–393)—

(A) by striking "or" at the end of subclause (I);

(B) by inserting "or" at the end of subclause (II); and

(C) by inserting at the end, the following new subclause:

"(III) a violation of the Export Administration Act of 1979, the Export Administration Act of 2001, or any regulation, license, or order issued under those Acts;".

(3) Section 9703(p)(1) of title 31, United States Code (as added by Public Law 102–393) is amended by adding at the end the following: "In addition, for purposes of this section, the Bureau of Export Administration of the Department of Commerce shall be considered to be a Department of the Treasury law enforcement organization.".

(o) AUTHORIZATION FOR LICENSE REVIEW OFFICERS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Department of Commerce $2,000,000 to hire additional license review officers.

(2) TRAINING.—There is authorized to be appropriated to the Department of Commerce $2,000,000 to conduct professional training of license review officers, auditors, and investigators conducting post-shipment verification checks. These funds shall be used to—

(A) train and certify, through a formal program, new employees entering these positions for the first time; and

(B) the ongoing professional training of experienced employees on an as needed basis.

(p) AUTHORIZATION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(A) $72,000,000 for the fiscal year 2002, of which no less than $27,701,000 shall be used for compliance and enforcement activities;

(B) $73,000,000 for the fiscal year 2003, of which no less than $28,312,000 shall be used for compliance and enforcement activities;

(C) $74,000,000 for the fiscal year 2004, of which no less than $28,939,000 shall be used for compliance and enforcement activities;

(D) $76,000,000 for the fiscal year 2005, of which no less than $29,582,000 shall be used for compliance and enforcement activities; and

(E) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

(2) LIMITATION.—The authority granted by this Act shall terminate on September 30, 2004, unless the President carries out the following duties:

(A) Provides to Congress a detailed report on—

(i) the implementation and operation of this Act; and

(ii) the operation of United States export controls in general.

(B)(i) Provides to Congress legislative reform proposals in connection with the report described in subparagraph (A); or

(ii) certifies to Congress that no legislative reforms are necessary in connection with such report.

SEC. 507. ADMINISTRATIVE PROCEDURE.

(a) EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE.—Except as provided in this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—

(1) ADMINISTRATIVE PROCEDURES.—Any administrative sanction imposed under section 503 may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code. The imposition of any such administrative sanction shall be subject to judicial review in accordance with

sections 701 through 706 of title 5, United States Code, except that the review shall be initiated in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the review.

(2) AVAILABILITY OF CHARGING LETTER.—Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued under section 502 shall be made available for public inspection and copying.

(c) COLLECTION.—If any person fails to pay a civil penalty imposed under section 503, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

(1) GROUNDS FOR IMPOSITION.—In any case in which there is reasonable cause to believe that a person is engaged in or is about to engage in any act

or practice which constitutes or would constitute a violation of this Act, or any regulation, order, or license issued under this Act, including any diversion of goods or technology from an authorized end use or end user, and in any case in which a criminal indictment has been returned against a person alleging a violation of this Act or any of the statutes listed in section 503, the Secretary may, without a hearing, issue an order temporarily denying that person's United States export privileges (hereafter in this subsection referred to as a "temporary denial order"). A temporary denial order shall be effective for such period (not in excess of 180 days) as the Secretary specifies in the order, but may be renewed by the Secretary, following notice and an opportunity for a hearing, for additional periods of not more than 180 days each.

(2) ADMINISTRATIVE APPEALS.—The person or persons subject to the issuance or renewal of a temporary denial order may appeal the issuance or renewal of the temporary denial order, supported by briefs and other material, to an administrative law judge who shall, within 15 working days after the appeal is filed, issue a decision affirming, modifying, or

vacating the temporary denial order. The temporary denial order shall be affirmed if it is shown that—

(A) there is reasonable cause to believe that the person subject to the order is engaged in or is about to engage in any act or practice that constitutes or would constitute a violation of this Act, or any regulation, order, or license issued under this Act; or

(B) a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or any of the statutes listed in section 503.

The decision of the administrative law judge shall be final unless, within 10 working days after the date of the administrative law judge's decision, an appeal is filed with the Secretary. On appeal, the Secretary shall either affirm, modify, reverse, or vacate the decision of the administrative law judge by written order within 10 working days after receiving the appeal. The written order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3). The materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the court.

(3) COURT APPEALS.—An order of the Secretary affirming, in whole or in part, the issuance or renewal of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the issuance of the temporary denial order was based on reasonable cause to believe that the person subject to the order was engaged in or was about to engage in any act or practice that constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this Act, or whether a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or of any of the statutes listed in section 503. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) LIMITATIONS ON REVIEW OF CLASSIFIED INFORMATION.—Any classified information that is included in the administrative record that is subject to review pursuant

to subsection (b)(1) or (d)(3) may be reviewed by the court only on an ex parte basis and in camera.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

SEC. 601. EXPORT CONTROL AUTHORITY AND REGULATIONS.

(a) EXPORT CONTROL AUTHORITY.—

(1) IN GENERAL.—Unless otherwise reserved to the President or a department (other than the Department) or agency of the United States, all power, authority, and discretion conferred by this Act shall be exercised by the Secretary.

(2) DELEGATION OF FUNCTIONS OF THE SECRETARY.—The Secretary may delegate any function under this Act, unless otherwise provided, to the Under Secretary of Commerce for Export Administration or to any other officer of the Department.

(b) UNDER SECRETARY OF COMMERCE; ASSISTANT SECRETARIES.—

(1) UNDER SECRETARY OF COMMERCE.—There shall be within the Department an Under Secretary of Commerce for Export Administration (in this section referred to as the "Under Secretary") who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall

carry out all functions of the Secretary under this Act and other provisions of law relating to national security, as the Secretary may delegate.

(2) ADDITIONAL ASSISTANT SECRETARIES.—In addition to the number of Assistant Secretaries otherwise authorized for the Department of Commerce, there shall be within the Department of Commerce the following Assistant Secretaries of Commerce:

(A) An Assistant Secretary for Export Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall assist the Secretary and the Under Secretary in carrying out functions relating to export listing and licensing.

(B) An Assistant Secretary for Export Enforcement who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall assist the Secretary and the Under Secretary in carrying out functions relating to export enforcement.

(c) ISSUANCE OF REGULATIONS.—

(1) IN GENERAL.—The President and the Secretary may issue such regulations as are necessary to carry out this Act. Any such regulations the purpose of which is to carry out title II or title III may be

issued only after the regulations are submitted for review to such departments or agencies as the President considers appropriate. The Secretary shall consult with the appropriate export control advisory committee appointed under section 105(a) in formulating regulations under this title. The second sentence of this subsection does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(2) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to the United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the appropriate export control advisory committees appointed under section 105(a) in amending regulations issued under this Act.

SEC. 602. CONFIDENTIALITY OF INFORMATION.

(a) EXEMPTIONS FROM DISCLOSURE.—

(1) INFORMATION OBTAINED ON OR BEFORE JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under the Export Administration Act of 1979, or any predecessor statute, on or before June 30, 1980, which is deemed confidential, including Shipper's Export Declarations, or with respect to which a request for confidential treatment is made by the person furnishing such information, shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed, unless the Secretary determines that the withholding thereof is contrary to the national interest.

(2) INFORMATION OBTAINED AFTER JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under this Act, under the Export Administration Act of 1979 after June 30, 1980, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), may be withheld from disclosure only to the extent permitted by statute, except that information submitted, obtained, or considered in connec-

tion with an application for an export license or other export authorization (or recordkeeping or reporting requirement) under the Export Administration Act of 1979, under this Act, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), including—

(A) the export license or other export authorization itself,

(B) classification requests described in section 401(h),

(C) information or evidence obtained in the course of any investigation,

(D) information obtained or furnished under title V in connection with any international agreement, treaty, or other obligation, and

(E) information obtained in making the determinations set forth in section 211 of this Act, and information obtained in any investigation of an alleged violation of section 502 of this Act except for information required to be disclosed by section 502(c)(2) or 507(b)(2) of this Act, shall be withheld from public disclosure and shall not be subject to dis-

closure under section 552 of title 5, United States Code, unless the release of such information is determined by the Secretary to be in the national interest.

(b) INFORMATION TO CONGRESS AND GAO.—

(1) IN GENERAL.—Nothing in this title shall be construed as authorizing the withholding of information from Congress or from the General Accounting Office.

(2) AVAILABILITY TO THE CONGRESS—

(A) IN GENERAL.—Any information obtained at any time under this title or under any predecessor Act regarding the control of exports, including any report or license application required under this title, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon the request of the chairman or ranking minority member of such committee or subcommittee.

(B) PROHIBITION ON FURTHER DISCLOSURE.—No committee, subcommittee, or Member of Congress shall disclose any information obtained under this Act or any predecessor Act regarding the control of exports which is submitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to

which the information is made available determines that the withholding of the information is contrary to the national interest.

(3) AVAILABILITY TO THE GAO.—

(A) IN GENERAL.—Notwithstanding subsection (a), information described in paragraph (2) shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

(B) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(c) INFORMATION EXCHANGE.—Notwithstanding subsection (a), the Secretary and the Commissioner of Customs shall exchange licensing and enforcement information with each other as necessary to facilitate enforcement efforts and effective license decisions.

(d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—

(1) DISCLOSURE PROHIBITED.—No officer or employee of the United States, or any department or agency thereof, may publish, divulge, disclose, or make known in any manner or to any extent not authorized by law any information that—

(A) the officer or employee obtains in the course of his or her employment or official duties or by reason of any examination or investigation made by, or report or record made to or filed with, such department or agency, or officer or employee thereof; and

(B) is exempt from disclosure under this section.

(2) CRIMINAL PENALTIES.—Any such officer or employee who knowingly violates paragraph (1) shall be fined not more than $50,000, imprisoned not more than 1 year, or both, for each violation of paragraph

(1). Any such officer or employee may also be removed from office or employment.

(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The Secretary may impose a civil penalty of not more than $5,000 for each violation of paragraph (1). Any officer or employee who commits such violation may also be removed from office or employment for the violation of paragraph (1). Sections 503 (e), (g), (h), and (i) and 507 (a), (b), and (c) shall apply to violations described in this paragraph.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. ANNUAL REPORT.

(a) ANNUAL REPORT.—Not later than February 1 of each year, the Secretary shall submit to Congress a report on the administration of this Act during the fiscal year ending September 30 of the preceding calendar year. All Federal agencies shall cooperate fully with the Secretary in providing information for each such report.

(b) REPORT ELEMENTS.—Each such report shall include in detail—

(1) a description of the implementation of the export control policies established by this Act, including any delegations of authority by the President and any other changes in the exercise of delegated authority;

(2) a description of the changes to and the year-end status of country tiering and the Control List;

(3) a description of the petitions filed and the determinations made with respect to foreign availability and mass-market status, the set-asides of foreign availability and mass-market status determinations, and negotiations to eliminate foreign availability;

(4) a description of any enhanced control imposed on an item pursuant to section 201(d);

(5) a description of the regulations issued under this Act;

(6) a description of organizational and procedural changes undertaken in furtherance of this Act;

(7) a description of the enforcement activities, violations, and sanctions imposed under this Act;

(8) a statistical summary of all applications and notifications, including—

(A) the number of applications and notifications pending review at the beginning of the fiscal year;

(B) the number of notifications returned and subject to full license procedure;

(C) the number of notifications with no action required;

(D) the number of applications that were approved, denied, or withdrawn, and the number of applications where final action was taken; and

(E) the number of applications and notifications pending review at the end of the fiscal year;

(9) summary of export license data by export identification code and dollar value by country;

(10) an identification of processing time by—

(A) overall average, and

(B) top 25 export identification codes;

(11) an assessment of the effectiveness of multilateral regimes, and a description of negotiations regarding export controls;

(12) a description of the significant differences between the export control requirements of the United States and those of other multilateral control regime members, and the specific differences between United States requirements and those of other significant supplier countries;

(13) an assessment of the costs of export controls;

(14) a description of the progress made toward achieving the goals established for the Department

dealing with export controls under the Government Performance Results Act; and

(15) any other reports required by this Act to be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

(c) FEDERAL REGISTER PUBLICATION REQUIREMENTS.—Whenever information under this Act is required to be published in the Federal Register, such information shall, in addition, be posted on the Department of Commerce or other appropriate government website.

SEC. 702. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REPEAL.—The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

(b) ENERGY POLICY AND CONSERVATION ACT.—

(1) Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212) is repealed.

(2) Section 251(d) of the Energy Policy and Conservation Act (42 U.S.C. 6271(d)) is repealed.

(c) ALASKA NATURAL GAS TRANSPORTATION ACT.—Section 12 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719j) is repealed.

(d) MINERAL LEASING ACT.—Section 28(u) of the Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

(e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Section 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s)) is repealed.

(f) DISPOSITION OF CERTAIN NAVAL PETROLEUM RESERVE PRODUCTS.—Section 7430(e) of title 10, United States Code, is repealed.

(g) OUTER CONTINENTAL SHELF LANDS ACT.—Section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354) is repealed.

(h) ARMS EXPORT CONTROL ACT.—

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(A) in subsection (e)—

(i) in the first sentence, by striking "subsections (c)" and all that follows through "12 of such Act," and inserting "subsections (b), (c), (d) and (e) of section 503 of the Export Administration Act of 2001, by subsections (a) and (b) of section 506 of such Act, and by section 602 of such Act,"; and

(ii) in the third sentence, by striking "11(c) of the Export Administration Act of 1979" and inserting "503(c) of the Export Administration Act of 2001"; and

(B) in subsection (g)(1)(A)(ii), by inserting "or section 503 of the Export Administration Act of 2001" after "1979".

(2) Section 39A(c) of the Arms Export Control Act (22 U.S.C. 2779a(c)) is amended—

(A) by striking "subsections (c)," and all that follows through "12(a) of such Act" and inserting "subsections (c), (d), and (e) of section 503, section 507(c), and subsections (a) and (b) of section 506, of the Export Administration Act of 2001"; and

(B) by striking "11(c)" and inserting "503(c)".

(3) Section 40(k) of the Arms Export Control Act (22 U.S.C. 2780(k)) is amended—

(A) by striking "11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979" and inserting "503(b), 503(c), 503(e), 506(a), and 506(b) of the Export Administration Act of 2001"; and

(B) by striking "11(c)" and inserting "503(c)".

(i) OTHER PROVISIONS OF LAW.—

(1) Section 5(b)(4) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by

striking "section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States" and inserting "titles II and III of the Export Administration Act of 2001".

(2) Section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the second sentence—

(A) by striking "Export Administration Act of 1979" the first place it appears and inserting "Export Administration Act of 2001"; and

(B) by striking "Act of 1979)" and inserting "Act of 2001)".

(3) Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)) is amended—

(A) in paragraph (1)(B), by inserting "or section 310 of the Export Administration Act of 2001" after "Act of 1979"; and

(B) in paragraph (2), by inserting "or 310 of the Export Administration Act of 2001" after "6(j) of the Export Administration Act of 1979".

(4) Section 40(e)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1))

is amended by striking "section 6(j)(1) of the Export Administration Act of 1979" and inserting "section 310 of the Export Administration Act of 2001".

(5) Section 205(d)(4)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 305(d)(4)(B)) is amended by striking "section 6(j) of the Export Administration Act of 1979" and inserting "section 310 of the Export Administration Act of 2001".

(6) Section 110 of the International Security and Development Cooperation Act of 1980 (22 U.S.C. 2778a) is amended by striking "Act of 1979" and inserting "Act of 2001".

(7) Section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)) is amended by striking "section 5 of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States" and inserting "the Export Administration Act of 2001".

(8) Section 1605(a)(7)(A) of title 28, United States Code, is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C.

App. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(9) Section 2332d(a) of title 18, United States Code, is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405)" and inserting "section 310 of the Export Administration Act of 2001".

(10) Section 620H(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(11) Section 1621(a) of the International Financial Institutions Act (22 U.S.C. 262p–4q(a)) is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(12) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 11 (relating to violations) of the Export Administration of 1979" and inserting "section 503 (relating to penalties) of the Export Administration Act of 2001".

(13) Subsection (f) of section 491 and section 499 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620c(f) and 620j) are repealed.

(14) Section 904(2)(B) of the Trade Sanctions Reform and Export Enhancement Act of 2000 is amended by striking "Export Administration Act of 1979" and inserting "Export Administration Act of 2001".

(15) Section 983(i)(2) of title 18, United States Code (as added by Public Law 106–185), is amended—

(A) by striking the "or" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting "; or"; and

(C) by inserting the following new subparagraph:

"(F) the Export Administration Act of 2001.".

(j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product that—

(1) is standard equipment, certified by the Federal Aviation Administration, in civil aircraft, and

(2) is an integral part of such aircraft, shall be subject to export control only under this Act. Such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act (22 U.S.C. 2778(b)).

(k) REPEAL OF CERTAIN EXPORT CONTROLS.—Subtitle B of title XII of division A of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note) is repealed.

SEC. 703. SAVINGS PROVISIONS.

(a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under—

(1) the Export Control Act of 1949, the Export Administration Act of 1969, the Export Administration Act of 1979, or the International Emergency Economic Powers Act when invoked to maintain and continue the Export Administration regulations, or

(2) those provisions of the Arms Export Control Act which are amended by section 702,

and are in effect on the date of enactment of this Act, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act or the Arms Export Control Act.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—

(1) EXPORT ADMINISTRATION ACT.—This Act shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979 or pursuant to Executive Order 12924, which is pending at the time this Act takes effect. Any such proceedings, and any action on such application, shall continue under the Export Administration Act of 1979 as if that Act had not been repealed.

(2) OTHER PROVISIONS OF LAW.—This Act shall not affect any administrative or judicial proceeding commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 702, if such proceeding or application is pending at the time this Act takes effect. Any such proceeding, and any action on such application, shall continue under those provisions as if those provisions had not been amended by section 702.

(c) TREATMENT OF CERTAIN DETERMINATIONS.—Any determination with respect to the government of a foreign country under section 6(j) of the Export Administration Act of 1979, or Executive Order 12924, that is in effect on the day before the date of enactment of this Act, shall, for pur-

poses of this title or any other provision of law, be deemed to be made under section 310 of this Act until superseded by a determination under such section 310.

(d) LAWFUL INTELLIGENCE ACTIVITIES.—The prohibitions otherwise applicable under this Act do not apply with respect to any transaction subject to the reporting requirements of title V of the National Security Act of 1947. Notwithstanding any other provision of this Act, nothing shall affect the responsibilities and authorities of the Director of Central Intelligence under section 103 of the National Security Act of 1947.

(e) IMPLEMENTATION.—The Secretary shall make any revisions to the Export Administration regulations required by this Act no later than 180 days after the date of enactment of this Act.

Calendar No. 26

107TH CONGRESS
1ST SESSION

S. 149

[Report No. 107–10]

A BILL

To provide authority to control exports, and for other purposes.

APRIL 2, 2001

Reported with an amendment