

OMNIBUS EXPORT ADMINISTRATION ACT OF 1996

JUNE 5, 1996.—Ordered to be printed

Mr. GILMAN, from the Committee on International Relations,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 361]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 361) to provide authority to control exports, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—EXPORT ADMINISTRATION

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. Policy statement.
- Sec. 104. General provisions.
- Sec. 105. Multilateral controls.
- Sec. 106. Emergency controls.
- Sec. 107. Short supply controls.
- Sec. 108. Foreign boycotts.
- Sec. 109. Procedures for processing export license applications; other inquiries.
- Sec. 110. Violations.
- Sec. 111. Controlling proliferation activity.
- Sec. 112. Administrative and judicial review.
- Sec. 113. Enforcement.
- Sec. 114. Export control authorities and procedures.
- Sec. 115. Annual report.
- Sec. 116. Definitions.
- Sec. 117. Effects on other Acts.
- Sec. 118. Secondary Arab boycott.
- Sec. 119. Conforming amendments to other laws.
- Sec. 120. Expiration date.
- Sec. 121. Savings provision.

TITLE II—NUCLEAR PROLIFERATION PREVENTION

Sec. 201. Repeal of termination of provisions of the Nuclear Proliferation Prevention Act of 1994.
 Sec. 202. Seeking multilateral support for unilateral sanctions.
 Sec. 203. Sanctions under the Nuclear Proliferation Prevention Act of 1994.

TITLE I—EXPORT ADMINISTRATION**SEC. 101. SHORT TITLE.**

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

SEC. 102. FINDINGS.

The Congress makes the following findings:

(1) Export controls are a part of a comprehensive response to national security threats. United States exports should be restricted only for significant national security, nonproliferation, and foreign policy reasons.

(2) Exports of certain commodities and technology may adversely affect the national security and foreign policy of the United States by making a significant contribution to the military potential of individual countries or by disseminating the capability to design, develop, test, produce, stockpile, or use weapons of mass destruction, missile delivery systems, and other significant military capabilities. Therefore, the administration of export controls should emphasize the control of these exports.

(3) The acquisition of sensitive commodities and technology by those countries and end users whose actions or policies run counter to United States national security or foreign policy interests may enhance the military capabilities of those countries, particularly their ability to design, develop, test, produce, stockpile, use, and deliver nuclear, chemical, and biological weapons, missile delivery systems, and other significant military capabilities. This enhancement threatens the security of the United States and its allies, and places additional demands on the defense budget of the United States. Availability to countries and end users of items that contribute to military capabilities or the proliferation of weapons of mass destruction is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(4) With the growing importance of exports to sustained United States economic growth and vitality, restrictions on exports must be evaluated in terms of their effects on the United States economy.

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

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

(7) International treaties, such as the Chemical Weapons Convention, and international agreements and arrangements intended to control, lessen, or eliminate weapons of mass destruction should be fully implemented by, among other things, imposing restrictions on imports and exports of designated items, monitoring, and transmitting reports on, the production, processing, consumption, export, and import of designated items, and complying with verification regimes mandated by such treaties, agreements, and arrangements.

(8) Except in the event the United States is the sole source of critical supplies, unilateral export controls are generally not truly effective in influencing the behavior of other governments or impeding access to controlled items. Unilateral controls alone may impede access to United States sources of supply without affecting the ability of countries to obtain controlled items elsewhere. Moreover, unilateral controls generally permit foreign competitors to serve markets the United States Government denies to United States firms and workers, thus impairing the reliability of United States suppliers in comparison with their foreign competitors. At the same time, the need to lead the international community or overriding national security or foreign policy interests may justify unilateral controls in specific cases.

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

(10) The United States export control system must not be overly restrictive or bureaucratic, or undermine the competitive position of United States indus-

try. The export control system must be efficient, responsive, transparent, and effective.

(11) Export restrictions that negatively affect the United States industrial base may ultimately weaken United States military capabilities and lead to dependencies on foreign sources for key components.

(12) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(13) Minimization of restrictions on the export of information technology products and services is of critical importance to United States leadership in removing obstacles to the effective development of a superior global information infrastructure and the new jobs and markets, increased trade and information flows, improved national security, and new tools for the improvement of the quality of life for people globally that will be created.

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

SEC. 103. POLICY STATEMENT.

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

(1) 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, 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.

(2) To restrict the export of items—

(A) that would significantly contribute to the military potential of countries so as to prove detrimental to the national security of the United States or its allies; or

(B) where necessary to further significantly the foreign policy of the United States or to fulfill its declared international commitments.

(3) To—

(A) minimize uncertainties in export control policy; and

(B) encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

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

(5) To further increase the reliance of the United States upon multilateral coordination of controls through effective control regimes that maintain lists of controlled items that are truly critical to the control objectives, strive to increase membership to include all relevant countries, maintain common criteria and procedures for licensing, and harmonize member countries' licensing practices. It is the policy of the United States that multilateral controls are the best means of achieving the control objectives of the United States.

(6) To impose unilateral controls only when it is necessary to further significantly the national security or foreign policy of the United States, and only after full consideration of the economic impact of the controls and their effectiveness in achieving their intended objectives.

(7) To make all licensing determinations in a timely manner so undue delays in the licensing process will not cause a United States person to lose an export sale.

(8) 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. To this end, consistent with the policies of this section and the provisions of this title, the United States should, by restricting exports to countries that have violated international norms of behavior by repeatedly supporting acts of international terrorism, distance itself from those countries.

(9)(A) 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.

(B) To encourage and, in specified cases, require United States persons engaged in the export of commodities, technology, and other information 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.

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

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

(12) To minimize restrictions on the export of information technology products and services as part of a flexible regulatory environment that can keep pace with the rapid technological changes necessary to realize the full economic, societal, and national security benefits of United States leadership in the development of a superior global information infrastructure.

(13) To cooperate with other countries to promote greater transparency and responsibility with regard to the transfers of armaments and sensitive goods and technologies, both for the purpose of developing common understandings of the risks to international peace and regional security associated with the transfers of such items and to coordinate national control policies to combat those risks.

(14) To enhance the national security and nonproliferation interests of the United States. To this end and consistent with the other policies of this section and the provisions of this title, the United States will use export controls when necessary to ensure that access to weapons of mass destruction, missile delivery systems, and other significant military capabilities is restricted. While the multilateral nonproliferation regimes will be the primary instruments through which the United States will pursue its nonproliferation goals, it may also, consistent with the policies of this section and the provisions of this title, take unilateral action.

(15) To promote international peace, stability, and respect for fundamental human rights. The United States may establish controls on exports that contribute to the military capabilities of countries that threaten international peace or stability or to countries that abuse the fundamental rights of their citizens, or to promote other important foreign policy objectives of the United States, consistent with the policies of this section and the provisions of this title.

SEC. 104. GENERAL PROVISIONS.

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

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

(2) MULTIPLE EXPORTS.—Licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of a license for each such export. Licenses under this paragraph shall be designed to encourage and acknowledge exporters' internal control programs for ensuring compliance with the terms of the license.

(b) UNITED STATES COMMODITY CONTROL INDEX.—

(1) IN GENERAL.—The Secretary shall establish and maintain, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies, a United States Commodity Control Index specifying the license requirements under this title that are applicable to the items on the list.

(2) CONTENTS.—The control index shall—

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

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

(C) for each item on the control index, specify with particularity the performance (where applicable) and other identifying characteristics of the item and provide a rationale for why the item is on the control list;

(D) identify countries, and, as appropriate, end uses or end users, including specific projects and end users of concern, cross-referenced with the list of commodities and technology on which export controls are imposed; and

(E) be sufficiently specific and clear as to guide exporters and licensing officers in determinations of licensing requirements under this title.

(c) DENIED OR DEBARRED PARTIES, SANCTIONED PARTIES, BLOCKED PERSONS, SPECIALLY DESIGNATED NATIONALS, AND OTHER PARTIES PRESENTING UNACCEPTABLE RISKS OF DIVERSION.—

(1) DENIED OR DEBARRED PARTIES, SANCTIONED PARTIES, BLOCKED PERSONS, AND SPECIALLY DESIGNATED NATIONALS.—The President shall ensure that an official list is published semiannually in the Federal Register of all parties denied or debarred from export privileges under this title or under the Arms Export Control Act, all parties sanctioned for prohibited proliferation activity under this title or other statutes, and all blocked persons and specially designated nationals. For purposes of this paragraph, a “blocked person” or “specially designated national” is a person or entity so designated by the President or the Secretary of the Treasury under the Trading With the Enemy Act, or the International Emergency Economic Powers Act, with whom transactions are prohibited on account of the relationship of that person or entity with a country, organization, or activity against which sanctions are imposed under either such Act. Promptly after any person is designated a “blocked person” or “specially designated national”, the Secretary of the Treasury shall publish such designation in the Federal Register.

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

(d) DELEGATION OF AUTHORITY.—Subject to the provisions of this title, the President may delegate the power, authority, and discretion conferred upon the President by this title to such departments, agencies, and officials of the Government as the President considers appropriate, except that no authority under this title may be delegated 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. The President may not delegate or transfer his 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 title and may not delegate the authority under section 106(a)(4).

(e) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this title with a view to encouraging trade. 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 of items subject to controls.

(f) EXPORT ADVISORY COMMITTEES.—

(1) APPOINTMENT.—Upon his or her 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 title or under the International Emergency Economic Powers Act, or being considered for such controls, the Secretary shall appoint export advisory committees with respect to any such items. Each such committee shall consist of representatives of United States industry and Government, including the Department of Commerce and other appropriate departments and agencies of the Government. The Secretary shall permit the widest possible participation by the business community on the export advisory committees.

(2) FUNCTIONS.—Export advisory committees appointed under paragraph (1) shall advise and assist the Secretary, and any other department, agency, or official of the Government carrying out functions under this title, on actions (including all aspects of controls imposed or proposed) designed to carry out the policies of this title concerning the items with respect to which such export advisory committees were appointed. Such committees, where they have expertise in such matters, shall be consulted on questions involving—

(A) technical matters,

(B) worldwide availability and actual utilization of production technology,

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

(D) revisions of the multilateral control list (as provided in section 105(g)), including proposed revisions of multilateral controls in which the United States participates,

(E) the issuance of regulations,

(F) the impact and interpretation of existing regulations,

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

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

(I) the operation and conduct of international business transactions.

Nothing in this subsection 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 advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export advisory committee appointed under paragraph (1), 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.

(4) CHAIRPERSON.—Each export advisory committee appointed under paragraph (1) 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 subsection. 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.

(5) ACCESS TO INFORMATION.—To facilitate the work of the export advisory committees appointed under paragraph (1), the Secretary, in conjunction with other departments and agencies participating in the administration of this title, 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 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.

(g) DEVELOPMENT AND REVIEW OF THE CONTROL INDEX.—

(1) IN GENERAL.—

(A) Consistent with the general guidance of the Export Control Policy Committee established in section 114(c), the Secretary of Defense and the heads of other appropriate departments and agencies may identify and recommend to the Secretary—

(i) commodities and technology for inclusion on, or deletion from, the multilateral and emergency control lists; and

(ii) the licensing requirements that should or should not apply to these commodities and technology.

(B) The Secretary of Defense shall have primary responsibility for identifying commodities and technologies that are critical to the design, development, test, production, stockpiling, or use of weapons of mass destruction and other military capabilities, including nuclear, biological, and chemical weapons, and manned and unmanned vehicles capable of delivering such weapons, in determining recommendations for inclusion of items on the control index.

(C) If the Secretary of Defense, the Secretary of State, or the Secretary of Energy disagrees with the decision of the Secretary regarding the inclusion or deletion, or licensing requirements of, any commodity or technology, the Secretary of Defense, State, or Energy (as the case may be) may, within 30 days after the Secretary makes the decision, appeal the Secretary's decision to the President in writing, but only on the basis of the specific provisions of this title. If the Secretary of Defense, the Secretary of State, or the Secretary of Energy fails to appeal a decision of the Secretary in accordance with the preceding sentence, he or she shall be deemed to have no objection to the decision. The President shall resolve a disagreement under this subsection not later than 30 days after the appeal is made under this paragraph.

(2) **NEGOTIATIONS.**—The Secretary of State, in consultation with appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding multilateral arrangements for restricting the export of items to carry out the policies of this title. All appropriate departments and agencies shall develop initial technical parameters and product definitions in connection with the development of proposals within the United States Government to be made to multilateral regimes, in consultation with the export advisory committees as provided in paragraph (3).

(3) **CONSULTATIONS WITH EXPORT ADVISORY COMMITTEES.**—The Secretary shall consult with the appropriate export advisory committee appointed under this section with respect to changes in the control index, and such export advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the export advisory committee and shall inform the committee of the disposition of its recommendations. The Secretary shall also seek comments and recommendations from the public in connection with changes in the control index. To the maximum extent practicable and consistent with the conduct of international negotiations, such comments and recommendations should be taken into consideration in the development of United States Government proposals and positions to be taken in multilateral regimes.

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

(i) **INTERNATIONAL OBLIGATIONS UNDER TREATIES.**—Notwithstanding any other provision of this title containing limitations on authority to control exports, the Secretary, in consultation with the Secretary of State, may impose controls on exports to a particular country or countries in order to fulfill obligations of the United States under resolutions of the United Nations and under treaties to which the United States is a party. The Secretary may regulate domestic and foreign conduct consistent with the policies of such United Nations resolutions, treaties, and other international agreements. Such authority shall include, but not be limited to, authority to prohibit activity such as financing, contracting, providing services, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, to compel reports, and to curtail travel.

(j) **FEES.**—No fee may be charged in connection with the submission or processing of an export license application under this title.

SEC. 105. MULTILATERAL CONTROLS.

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—In order to carry out the policies set forth in paragraphs (1), (2), (5), (13), (14), and (15) of section 103, the President may, in accordance with this section, prohibit, curtail, or require the provision of information regarding, the export of any commodities, technology, or other information subject to the jurisdiction of the United States, or exported by any person subject to the jurisdiction of the United States, in order to implement multilateral export control regimes. The authority under this paragraph shall include, but not be limited to, the authority to regulate domestic and foreign conduct, to prohibit activity such as financing, contracting, providing services, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, and to compel reports. The authority granted by this subsection may not be exercised to impose unilateral controls.

(2) **EXERCISE OF AUTHORITY.**—The authority granted by this subsection shall be implemented by the Secretary, in consultation with appropriate departments and agencies.

(3) **CONSISTENCY WITH EXPORT CONTROL REGIMES.**—Any provision of this title that provides that no authority or permission to export may be required under this title shall not apply to the extent that such a provision is inconsistent with an international commitment of the United States under a multilateral export control regime.

(b) **MULTILATERAL CONTROL LIST.**—The Secretary shall, in consultation with appropriate departments and agencies as provided in section 104(g), designate as part of the control index, a multilateral control list, comprised of the items on which export controls are in effect under this section.

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

(d) **MULTILATERAL CONTROL REGIMES.**—

(1) **POLICY.**—In order to carry out the policies set forth in section 103, the Secretary of State, in consultation with appropriate departments and agencies, should seek multilateral arrangements that are intended to secure effective achievement of these policies and, in so doing, also establish fairer and more predictable competitive opportunities for United States exporters.

(2) **STANDARDS FOR NATIONAL SYSTEMS.**—In the establishment and maintenance of multilateral regimes, the Secretary of State, in consultation with appropriate departments and agencies, shall take steps to attain the cooperation of members of the regimes in the effective implementation of export control systems. Such systems should contain the following elements:

(A) National laws providing enforcement authorities, civil and criminal penalties, and statutes of limitations sufficient to deter potential violations and punish violators.

(B) A program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end users.

(C) An enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports.

(D) A system of export control documentation to verify the movement of items.

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

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

(3) **STANDARDS FOR MULTILATERAL REGIMES.**—In the establishment and maintenance of multilateral regimes, the Secretary of State, in consultation with appropriate departments and agencies, should seek, consistent with the policies set forth in section 103, the following features for the multilateral control regimes in which the United States participates:

(A) **FULL MEMBERSHIP.**—Achieve membership of all supplier countries whose policies and activities are consistent with the objectives and membership criteria of the multilateral regime.

(B) **EFFECTIVE ENFORCEMENT AND COMPLIANCE.**—Promote enforcement and compliance with the rules and guidelines of the members of the regime through maintenance of an effective control list.

(C) **PUBLIC UNDERSTANDING.**—Enhance public understanding of each regime's purpose and procedures.

(D) **EFFECTIVE IMPLEMENTATION PROCEDURES.**—Achieve procedures for effective implementation of the rules and guidelines of the regime through uniform and consistent interpretations of export controls agreed to by the governments participating in the regime.

(E) **ENHANCED COOPERATION AMONG REGIME MEMBERS.**—Reach agreement to enhance cooperation among members of the regime in obtaining the agreement of governments outside the regime to restrict the export of items controlled by the regime, to establish an ongoing mechanism in the regime to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the list of items controlled by the regime if the control of such items no longer serves the objectives of the members of the regime.

(F) **PERIODIC HIGH-LEVEL MEETINGS.**—Conduct periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to members of the regime.

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

(H) **TREATMENT OF CERTAIN COUNTRIES.**—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.

(I) **DISCLOSURE OF NONPROPRIETARY INFORMATION.**—Promote transparency and timely disclosure of nonproprietary information with respect to the transfers of sensitive dual-use commodities and technologies, when appropriate, for the purpose of developing common understandings of the risks to international peace and regional security associated with such transfers and to coordinate national control policies to combat those risks.

(e) **INCENTIVES FOR PARTNERSHIP.**—Consistent with the policies of this title and consistent with the objectives, rules, and guidelines of the individual regime—

(1) The Secretary, in consultation with appropriate departments and agencies, may provide for exports free of license requirements to and among members of

a multilateral regime for items subject to controls under such a multilateral regime; and

(2) the Secretary, in consultation with appropriate departments and agencies, may adjust licensing policies with respect to a particular country or entity for access to items controlled under this title to the extent of the adherence of that country or entity to the export control policies of this section.

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

(f) TRANSPARENCY OF MULTILATERAL CONTROL REGIMES.—

(1) PUBLICATION OF INFORMATION ON EACH EXISTING REGIME.—Within 6 months after the date of the enactment of this Act, the Secretary shall, to the extent doing so is not inconsistent with arrangements in multilateral export control regimes, publish in the Federal Register the following information with respect to each multilateral control regime existing on the date of the enactment of this Act:

(A) Purposes of the control regime.

(B) Members of the regime.

(C) Licensing policy.

(D) Items subject to the 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 controls.

(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.—Within 2 months after the United States joins or organizes a new export control regime, the Secretary shall, to the extent doing so is not inconsistent with arrangements in the regime, publish the information described in subparagraphs (A) through (H) of paragraph (1) with respect to that regime.

(3) PUBLICATION OF CHANGES.—Within 2 months after the applicable regime adopts any changes in the information published under this subsection, the Secretary shall, to the extent doing so is not inconsistent with arrangements in the regime, publish such changes in the Federal Register.

(g) REVIEW OF CONTROLLED ITEMS.—

(1) IN GENERAL.—Under the policy guidance of the Export Control Policy Committee established in section 114(c), and consistent with the procedures in section 104(g), the Secretary shall review all items on the multilateral control list maintained under subsection (b) at least every 2 years, except that the Secretary shall review annually whether the policy set forth in section 103(12) is being achieved. At the conclusion of each review, the Secretary shall decide whether to maintain or remove items from the multilateral control list, maintain, change, or eliminate the specifications, performance thresholds, or licensing requirements on items on the list, or add items to the list.

(2) CONSIDERATIONS.—In conducting the review, the Secretary shall—

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

(B) consult with the appropriate export advisory committees appointed under section 104(f) and consider recommendations of such committees with respect to proposed changes in the multilateral control list;

(C) consider whether controlled items or their equivalent are so widely available in the United States (in terms of quantity, cost, and means of sale and delivery) that the requirement for a license is ineffective in achieving the purpose of the control;

(D) consider whether the differences between the export controls of the United States and that of governments of foreign suppliers or competing items effectively has placed or will place the United States exporter at a significant commercial disadvantage with respect to its competitors abroad, and has placed, or will place, employment in the United States in jeopardy;

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

(F) consider comments received pursuant to the notice of review provided under paragraph (3)(A).

(3) PROCEDURES.—

(A) NOTICE OF REVIEW.—Before beginning each review under this subsection, the Secretary shall publish a notice of that review in the Federal

Register and shall provide a 30-day period for comments and submission of data, including by exporters and other interested parties.

(B) PROPOSALS TO EXPORT CONTROL REGIMES.—If a revision to the multilateral control list or to a licensing requirement under this paragraph is inconsistent with the control lists, guidelines, or the licensing requirements of, an export control regime, the Secretary of State shall propose such revision to that regime. Such revision shall become effective only to the extent such revision is agreed to by the export control regime.

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

SEC. 106. EMERGENCY CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the policy set forth in paragraphs (1), (2), (6), (8), (14), and (15) of section 103, the President may, in accordance with the provisions of this section, unilaterally prohibit, curtail, or require the provision of information regarding the export of any commodity, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority under this paragraph shall include, but not be limited to, the authority to regulate domestic and foreign conduct, to prohibit activity such as financing, contracting, providing services, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, and to compel reports.

(2) EXERCISE OF AUTHORITY.—The authority contained in this section shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, and such other departments and agencies as the President considers appropriate, and consistent with the procedures in section 104(g).

(3) EXPIRATION OF CONTROLS.—

(A) IN GENERAL.—Any controls imposed under this section shall expire 12 months after they are imposed, unless they are terminated earlier by the President or unless they are extended under this section, except that such controls may be adopted as multilateral controls under section 105 or included in an embargo that is imposed by the President under the International Emergency Economic Powers Act, the Trading with the Enemy Act, or other provision of law other than this title. Any extension or subsequent extension of the controls under this section shall be for a period of not more than 1 year each. The controls shall expire at the end of each such extension unless they are terminated earlier by the President or unless they are further extended under this section, except that such controls may be adopted as multilateral controls under section 105 or included in an embargo described in the first sentence of this subparagraph.

(B) EXCEPTION FOR MULTILATERAL AGREEMENTS.—Subparagraph (A) shall not apply to controls imposed by the President in order to fulfill obligations of the United States under resolutions of the United Nations or under treaties to which the United States is a party. If such a resolution or treaty ceases to be in effect, controls imposed by the President pursuant to such resolution or treaty shall immediately cease to be in effect.

(4) CRITERIA.—Controls may be imposed, expanded, or extended under this section only if the President determines that—

(A) the controls are necessary to further significantly the nonproliferation, national security, or foreign policies of the United States provided in section 103, the objective of the controls is in the overall national interest of the United States, and reasonable alternative means to the controls are not available;

(B) the controls are likely to make substantial progress toward achieving the intended purpose of—

(i) changing, modifying, or constraining the undesirable conduct or policies of the country to which the controls apply;

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

(iii) establishing multilateral cooperation to deny the country access to controlled items from all sources; or

(iv) denying exports or assistance that significantly contributes to the proliferation of weapons of mass destruction or other important military capabilities, terrorism, or human rights abuses;

(C) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which the controls apply;

(D) the reaction of other countries to the imposition, expansion, or extension of such export controls by the United States is not likely to render the controls ineffective in achieving the intended purpose or to be counter-productive to United States policy interests;

(E) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States as a supplier of items, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to the United States foreign policy, nonproliferation, or national security interests; and

(F) the United States has the ability to enforce the proposed controls effectively.

(b) CONSULTATION WITH INDUSTRY.—The Secretary shall consult with and seek advice from affected United States industries and export advisory committees appointed under section 104(f) before the imposition, expansion, or extension of any export control under this section.

(c) CONSULTATION WITH OTHER COUNTRIES.—When expanding or extending export controls under this section (unless such action is taken under subsection (a)(3)(B)), the Secretary of State, in consultation with appropriate departments and agencies, shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with other countries, as appropriate, to advise them of the reasons for the action and to urge them to adopt similar controls.

(d) CONSULTATIONS WITH THE CONGRESS.—

(1) CONSULTATIONS.—The Secretary may impose, expand, or extend export controls under this section only after consultation with the Congress, including the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

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

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

(B) specifying the purpose of the controls;

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

(D) specifying the nature and results of any alternative means attempted to achieve the objectives of the controls, or the reasons for imposing or expanding the controls without attempting any such alternative means; and

(E) describing the availability from other countries of items comparable to the items subject to the controls, and describing the nature and results of the efforts made to secure the cooperation of foreign governments in controlling the foreign availability of such comparable items.

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

(e) SEEKING MULTILATERAL SUPPORT FOR UNILATERAL CONTROLS.—The Secretary of State, in consultation with appropriate departments and agencies, shall have a continuing duty to seek support for controls imposed under this section by other countries and by effective multilateral control regimes.

(f) PROCEDURES AND LIMITATIONS ON EMERGENCY CONTROLS.—

(1) CESSATION OF EMERGENCY CONTROLS.—

(A) IN GENERAL.—Controls imposed under this section on commodities, technology, or other information shall cease to be in effect immediately upon—

(i) the imposition of similarly restrictive controls under section 105 on the same commodities, technology, or information to the country or end user, or for the end use, with respect to which the controls were imposed under this section; or

(ii) the imposition of an embargo, under the International Emergency Economic Powers Act, the Trading with the Enemy Act, or other provision of law, on exports to, and imports from the country with respect to which the controls were imposed under this section.

(B) CONVERSION TO MULTILATERAL AGREEMENTS.—If the President imposes controls on commodities, technology, or other information to a country or end user, or for an end use, under this section in order to fulfill obliga-

tions of the United States under resolutions of the United Nations or under a treaty to which the United States is a party, any equivalent controls imposed prior thereto under this section on the same commodities, technology, or information to the same country or end user, or for the same end use, shall immediately cease to be in effect.

(2) LIMITATIONS ON REIMPOSITION.—Controls which have ceased to be in effect under subsection (a)(3), and which have not been extended under subsection (g), may not be reimposed by the President under subsection (a) for a period of 6 months beginning on the date on which the original controls expire, unless the President determines that reimposition of controls is warranted due to significant changes in circumstances since the expiration of the controls.

(g) EXTENSION OF EMERGENCY CONTROLS.—

(1) REPORT.—If the President decides to extend controls imposed under subsection (a), which are due to expire under subsection (a)(3), the President shall, not later than 30 calendar days before the expiration of such controls, transmit to the Congress a report on the proposed extension, setting forth the reasons for the proposed extension in detail and specifying the period of time, which may not exceed 1 year, for which the controls are proposed to be extended. In particular, such report shall—

(A) contain determinations by the President—

(i) that the controls are likely to continue to make substantial progress toward achieving the intended purpose of—

(I) changing, modifying, or constraining the undesirable conduct or policies of the country to which the controls apply;

(II) denying access by the country to controlled items from all sources;

(III) establishing multilateral cooperation to deny the country access to controlled items from all sources; or

(IV) denying exports or assistance that significantly contributes to the proliferation of weapons of mass destruction or other important military capabilities, terrorism, or human rights abuses;

(ii) that the impact of the controls has been compatible with the foreign policy objectives of the United States and with overall United States policy toward the controlled country;

(iii) that the reaction of other countries to the imposition or expansion of the controls by the United States has not rendered the controls ineffective in achieving the intended purpose and have not been counterproductive to United States policy interests;

(iv) that the effect of the controls on the export performance of the United States, the competitive position of the United States as a supplier of items, and the economic well-being of individual United States companies and their employees and communities has not exceeded the benefit to the United States foreign policy, nonproliferation, or national security interests; and

(v) that the United States has enforced the controls effectively.

(2) FURTHER EXTENSIONS OF CONTROLS.—If, upon the expiration of the controls extended under this subsection, the President determines that a further extension of emergency controls for an additional period of time of not more than 1 year is necessary, paragraph (1) shall apply to such further extension.

(h) EFFECT ON OTHER AUTHORITY.—

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

(2) EFFECT ON EXISTING EMBARGOES.—(A) Nothing in this section affects the authorities conferred upon the President by section 5(b) of the Trading with the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before that date, and are being exercised on the date of the enactment of this Act.

(B) Nothing in this section affects the authorities conferred upon the President by the International Economic Powers Act or other provision of law (other than the Export Administration Act of 1979), which were being exercised with respect to a country before the date of the enactment of this Act as a result of a national emergency declared by the President before that date, and are being exercised with respect to such country on such date of enactment.

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—

(1) PROHIBITION ON EXPORTS.—(A) No export described in subparagraph (B) may be made to any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism.

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

(i) of any commodity or technology the export of which is controlled under this title pursuant to the Wassenaar Arrangement, the Missile Technology Control Regime, or the Australia Group, or controlled under this title pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978,

(ii) of any other commodity or technology the export of which is controlled under this title pursuant to multilateral export control regimes in which the United States participates, and

(iii) of any commodity or technology which could make a significant contribution to the military potential of a country described in subparagraph (A), including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism, other than food, medicine, or medical supplies that the President determines will be used only for humanitarian purposes. An individual validated license shall be required for the export under this subparagraph of any such food, medicine, or medical supplies.

(C) Subsections (a)(3) and (b) shall not apply to exports prohibited or restricted under this subsection.

(D)(i) The Secretary shall maintain a list of commodities and technology described in subparagraph (B)(iii). The Secretary shall review the list of items on that list at least annually. At the conclusion of the review, the Secretary shall determine whether to remove items from the list, change the specifications of items on the list, or add items to the list, in order to ensure that the items on the list meet the requirements of subparagraph (B)(iii).

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

(2) NOTIFICATION OF CONGRESS OF LICENSES ISSUED.—The Secretary and the Secretary of State shall notify the Speaker 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 under this title for exports to a country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism.

(3) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under paragraph (1)(A) shall be published in the Federal Register.

(4) RESCISSION OF DETERMINATIONS.—A determination made by the Secretary of State under paragraph (1)(A) 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—

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

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

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

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

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

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

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

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

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

(B) not less than 30 days prior to the proposed transaction, the President—

(i) consults with the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the proposed transaction; and

(ii) submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(I) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(II) a description of the items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction;

(III) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for the proposed transaction;

(IV) the date on which the proposed transaction is expected to occur; and

(V) the name of any foreign governments involved in the proposed transaction.

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

(6) MULTILATERAL REGIMES.—The Secretary of State, in consultation with appropriate departments and agencies, shall seek support by other countries and by effective multilateral control regimes of controls imposed by this subsection.

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

(j) CRIME CONTROL INSTRUMENTS.—

(1) LICENSE REQUIRED.—Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to an export license. Paragraphs (3)(A) and (4) of subsection (a) shall not apply to the export controls imposed by this subsection.

(2) CONCURRENCE OF SECRETARY OF STATE.—

(A) ITEMS ON CONTROL INDEX.—Any determination of the Secretary of what commodities or technology shall be included on the control index as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State.

(B) ACTION ON LICENSE APPLICATION.—Any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made with the concurrence of the Secretary of State.

(3) DISPUTE RESOLUTION.—If the Secretary of State does not agree with the Secretary with respect to any determination under paragraph (2), the Secretary of State shall refer the matter to the President for resolution.

(4) EXCEPTIONS.—The provisions of this subsection shall not apply with respect to exports to countries which 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 subsection and section 502B of the Foreign Assistance Act of 1961.

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

(l) EFFECT ON OTHER LAWS.—None of the prohibitions contained in this section shall apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947.

SEC. 107. SHORT SUPPLY CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the policy set forth in section 103(4), the President may prohibit or curtail the export of any commodities subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 103(4), the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade

practices with respect to United States commodities and treats the United States equitably in times of short supply.

(2) PUBLIC PARTICIPATION.—Upon imposing quantitative restrictions on exports of any commodities to carry out the policy set forth in section 103(4), the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days after the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) LICENSE FEES.—In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—

(1) IN GENERAL.—In order to carry out the policy set forth in section 103(4), the Secretary shall monitor exports, and contracts for exports, of any commodity when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 103(4), to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2).

(2) REPORTS ON MONITORING.—The results of monitoring under paragraph (1) shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) CONSULTATION WITH SECRETARY OF ENERGY.—The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to—

- (A) drilling rigs, platforms, and equipment;
- (B) petroleum refineries, and natural gas processing, liquefaction, and gasification plants;
- (C) facilities for production of synthetic natural gas or synthetic crude oil;
- (D) oil and gas pipelines, pumping stations, and associated equipment;
- and
- (E) vessels for transporting oil, gas, coal, and other fuels.

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

(1) IN GENERAL.—(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 103(4).

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

(2) PUBLICATION OF NOTICE.—Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

- (A) include the name of the material that is the subject to the petition;
- (B) include the schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States;
- (C) indicate whether the petition is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material;
- and
- (D) provide that interested persons shall have a period of 30 days beginning on the date on which the notice is published to submit to the Secretary

written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

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

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

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

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

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

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

(4) PUBLICATION OF REGULATIONS.—Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) CONSOLIDATION OF PETITIONS.—For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions, which involve the same or related materials.

(6) SUBSEQUENT PETITIONS ON SAME MATERIAL.—If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures described in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

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

(8) TEMPORARY CONTROLS.—The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary actions would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

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

(9) OTHER AUTHORITY NOT AFFECTED.—The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this title, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the

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

(10) SUBMISSION AND CONSIDERATION OF ADDITIONAL INFORMATION.—Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this title, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) AGRICULTURAL COMMODITIES.—

(1) APPROVAL OF CONTROLS BY SECRETARY OF AGRICULTURE.—The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, forest products, or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent the President determines that the controls on such agricultural commodities are also imposed under section 106. The Secretary of Agriculture shall, by exercising the authority which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) PROTECTION OF STORED COMMODITIES FROM FUTURE CONTROLS.—Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 103(4) subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds—

- (A) that such commodities will eventually be exported,
- (B) that neither the sale nor export thereof will result in an excessive drain of scarce material and have a serious domestic inflationary impact,
- (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and
- (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country.

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

(3) PROCEDURES FOR IMPOSING CONTROLS.—(A) If the President imposes export controls on any agricultural commodity under section 106 or this section, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of the receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

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

- (i) which are extended under this title if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or
- (ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4) EXPEDITED PROCEDURES.—(A) For purposes of this paragraph, the term “joint resolution” means only a joint resolution the matter after the resolving clause of which is as follows: “That pursuant to section 107(d)(3) of the Export Administration Act of 1996, the President may impose export controls as specified in the report submitted to the Congress on _____”, with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on International Relations, for the

chairman and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for the majority leader and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

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

(D) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedure set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(E) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

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

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

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

(e) BARTER AGREEMENTS.—

(1) EXEMPTION FROM CONTROLS.—The exportation pursuant to a barter agreement of any commodities which may lawfully be exported from the United States, for any commodities which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2), from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 103(4).

(2) CRITERIA FOR EXEMPTION.—The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

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

(i) the average annual quantity of the commodities to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such commodities estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the commodities to be imported will be more than the average amount of such commodities estimated to be required annually to supplement domestic production; and

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

(3) DEFINITION.—For purposes of this subsection, the term “barter agreement” means any agreement which is made for the exchange, without monetary consideration, of any commodities produced in the United States for any commodities produced outside of the United States.

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

(f) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—

(1) WESTERN RED CEDAR.—Any export controls imposed under section 7(i) of the Export Administration Act of 1979 or this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export.

(2) OTHER CONTROLS.—Any export controls imposed under this section on any agricultural commodity (including fats, oils, forest products, and animal hides and skins), or on any fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this paragraph, the term “contract to export” includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of commodities or technology.

(g) OIL EXPORTS FOR USE BY UNITED STATES MILITARY FACILITIES.—For purposes of this section, and for purposes of any export controls imposed under this title, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

SEC. 108. FOREIGN BOYCOTTS.

(a) PROHIBITIONS AND EXCEPTIONS.—

(1) PROHIBITIONS.—In order to carry out the policies set forth in section 103(9), 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 which is friendly to the United States and which 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, a requirement of, or a request from or on behalf of the boycotting country. 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, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating 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 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. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(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 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) complying or agreeing to comply with requirements—

(i) prohibiting the import of commodities or services from the boycotted country or commodities produced or services 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 commodities 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) complying or agreeing 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 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) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific commodities which, in the normal course of business, are identifiable by source when imported into the boycotting country;
 - (D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments 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 person to comply with the laws of the country with respect to such 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, as may be defined by such regulations.
- (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 the 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 shall apply 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 as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.
- (b) ADDITIONAL REGULATIONS AND REPORTS.—
- (1) REGULATIONS.—In addition to the regulations issued pursuant to subsection (a), regulations issued under section 106 shall implement the policies set forth in section 103(9).
 - (2) REPORTS BY UNITED STATES PERSONS.—Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 103(9) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require, for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such 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 commodities or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the

information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 103(9).

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

(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. 109. PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES.

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

(1) **IN GENERAL.**—All export license applications required under this title shall be submitted by the applicant to the Secretary. Subject to the procedures provided in this section—

(A) if referral of an application to other departments or agencies for review is not required, the Secretary shall, within 9 days after receiving the application, issue a license or notify the applicant of the intent to deny the application; or

(B) if referral of the application to other departments or agencies for review is required, the Secretary shall, within 30 days after referral of any such application to other departments or agencies—

(i) issue a license;

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

(iii) ensure that the application is subject to the interagency resolution process set forth in subsection (d).

(2) **RECOMMENDATIONS OF OTHER AGENCIES.**—The Secretary shall seek information and recommendations from the Department of Defense and other departments and agencies of the United States that are identified by the President as being concerned with factors having an important bearing on exports administered under this title. Such departments and agencies shall cooperate fully and promptly in rendering information and recommendations.

(3) **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.

(4) **CALCULATION OF PROCESSING TIMES.**—In calculating the processing times set forth in this section, 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.

(5) **RELIABILITY OF PARTIES.**—In reviewing applications for export licenses, the Secretary may in each case consider the reliability of the parties to the proposed export. In making such an evaluation, the Secretary may consider all sources of information, including results of other United States Government actions, such as actions by the Committee on Foreign Investment in the United States, investigations of diversions from authorized end uses or end users, and intelligence information, except that the consideration of such information in connection with the evaluation of the reliability of parties shall not authorize the direct or indirect disclosure of classified information or sources and methods of gathering classified information and shall not confer a right on private parties to have access to classified information.

(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 of Commerce information regarding the receipt and status of the application.

(2) **INITIAL PROCEDURES.**—Promptly upon receiving any license application, the Secretary shall—

(A) 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 section;

(B) refer the application, including all information submitted by the applicant, and all necessary recommendations and analyses by the Secretary

to the Department of Defense and other departments and agencies identified by the President under subsection (a)(2); and

(C) ensure that the classification stated on the application for the export items is correct, return the application if a license is not required, and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intent to deny the application.

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.

(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

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

(2) RESPONSIBILITY OF REFERRAL AGENCIES.—The Department of Defense and other reviewing departments and agencies shall organize their resources and units to plan for the prompt and expeditious internal dissemination of export license applications, if necessary, so as to avoid delays in responding to the referral of applications.

(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 section.

(4) TIME PERIOD FOR ACTION BY REFERRAL DEPARTMENTS AND AGENCIES.—Within 30 days after receiving a referral of an application under this section, the department or agency concerned 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 the 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) INTERAGENCY RESOLUTION.—

(1) INITIAL RESOLUTION.—The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications on which the departments and agencies reviewing the applications under this section are not in agreement. The chairperson of such committee shall consider the recommendations of the departments and agencies reviewing a particular application and inform them of his or her decision on the application, which may include a decision that the particular application requires further consideration under the procedures established under paragraph (2). An application may also be referred to further consideration under the procedures established under paragraph (2) if an appeal from the chairperson's decision is made in writing by an official of the department or agency concerned who is appointed by the President by and with the advice and consent of the Senate, or an officer properly acting in such capacity.

(2) FURTHER RESOLUTION.—The President shall establish a process for the further review and determination of export license applications pursuant to a decision by the chairperson under paragraph (1) or an appeal by a department or agency under paragraph (1). Such process shall—

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

(B) ensure that license applications are resolved or referred to the President no later than 90 days after the date the license application is initially received by the Secretary;

(C) provide that a department or agency dissenting from the decision reached under subparagraph (B) may appeal the decision to the President; and

(D) 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.

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

(1) the determination to deny;

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

(3) what, if any, modifications in or restrictions on the items for which the license was sought would allow such export to be compatible with export controls imposed under this title, and which officer or employee of the Department of Commerce 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;

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

(5) the availability of appeal procedures.

The Secretary shall allow the applicant 20 days to respond to the determination before the license application is denied.

(f) 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 that may be required to establish the identity and reliability of the recipient of items controlled under this title, if—

(A) the need for the prelicense check is determined by the Secretary, or by another department or agency if the request for the prelicense check is made by such department or agency;

(B) the request for the prelicense check is sent 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.

Whenever a prelicense check described in paragraph (2) and assurances described in this paragraph 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.

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

(5) CONGRESSIONAL NOTIFICATION.—Such time as is required for mandatory congressional notifications under this title.

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

(g) APPEALS.—

(1) IN GENERAL.—The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application or other administrative action under this title.

(2) FILING OF PETITION.—In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f) 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.

(3) BRINGING COURT ACTION.—If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into con-

formity with the requirements of this section, or 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. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(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 index, 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 about the applicability of licensing requirements under this title to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.

SEC. 110. VIOLATIONS.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Except as provided in paragraph (3), any individual who knowingly violates or conspires to or attempts to violate any provision of this title or any regulation, license, or order issued under this title shall be fined not more than 5 times the value of the exports involved or \$500,000, whichever is greater, or imprisoned not more than 10 years, or both.

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

(3) ANTIBOYCOTT VIOLATIONS.—

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

(B) Any person other than an individual who knowingly violates or conspires to or attempts to violate any regulation or order issued under section 108 shall be fined, for each violation, not more than 5 times the value of the exports involved or \$500,000, whichever is greater.

(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

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

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

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in 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 not more than \$250,000 for each violation of this title or any regulation, license, or order issued under this title, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation of regulations issued under section 108 may not exceed \$50,000.

(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person, including suspending or revoking the authority of any person to export or receive United States-origin commodities or technology subject to this title, on account of any violation of this title or any regulation, license, or order issued under this title.

(d) **PAYMENT OF CIVIL PENALTIES.**—The payment of any civil penalty imposed under subsection (c) may be made a condition, for a period not exceeding 1 year after the penalty has become due but has not been paid, to 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. In addition, the payment of any civil penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed 1 year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

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

(f) **EFFECT OF OTHER CONVICTIONS.**—

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

- (A) this title or the Export Administration Act of 1979,
- (B) the International Emergency Economic Powers Act,
- (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,
- (F) section 16 of the Trading with the Enemy Act (59 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), or
- (H) section 371 or 1001 of title 18, United States Code, if in connection with the export of commodities or technology controlled under this title, any regulation, license or order issued under the International Emergency Economic Powers Act, or defense articles or defense services controlled under the Arms Export Control Act,

may, at the discretion of the Secretary, be denied export privileges under this title for a period of up to 10 years from the date of the conviction. The Secretary may also revoke any export license under this title 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 any person convicted of any violation of a law set forth in paragraph (1), upon a showing of such relationship with the convicted person, after providing notice and opportunity for a hearing.

(g) **STATUTE OF LIMITATIONS.**—Any 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 date of the alleged violation, except that, in any case in which a criminal indictment alleging a violation of this title is returned within the time limits prescribed by law for the institution of such action, the statute of limitations for bringing a proceeding to impose such a civil penalty or other administrative sanction under this title shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant. The tolling of the statute of limitations shall continue for a period of 6 months from the date a conviction becomes final or the indictment is dismissed.

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

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

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

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

- (1) against whom an act of discrimination described in section 108(a)(1)(B) is committed, or
- (2) who, on account of a violation of the regulations issued pursuant to section 108(a), loses an opportunity to engage in a commercial venture pursuant to a

contract, joint venture, or other commercial transaction, including an opportunity to bid or tender an offer for a contract, may bring an action in an appropriate district court of the United States against the United States person committing the violation, for recovery of actual damages incurred on account of such act of discrimination or lost opportunity. In any such action the court may award punitive damages. An action may be brought under this subsection against a United States person whether or not the United States person has been determined under this section to have violated the regulations issued pursuant to section 108(a) on account of which the action is brought. In an action brought under this subsection, unless the court finds that the interests of justice require otherwise, the court shall designate the substantially prevailing party or parties in the action, and the remaining parties shall pay the reasonable attorneys' fees of the substantially prevailing party or parties in such proportion as the court shall determine.

SEC. 111. CONTROLLING PROLIFERATION ACTIVITY.

(a) **PROLIFERATION CONTROLS.**—

(1) **MISSILE TECHNOLOGY CONTROLS.**—The Secretary, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies and consistent with sections 103 and 104(g)—

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

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

(i) would make a material contribution to the design, development, test, production, stockpiling, or use of missile delivery systems, and

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

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

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

(ii) any export of items that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an adherent to the MTCR.

(2) **CHEMICAL AND BIOLOGICAL WEAPONS CONTROLS.**—The Secretary, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies and consistent with sections 103 and 104(g)—

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

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

(i) would make a material contribution to the design, development, test, production, stockpiling, or use of chemical or biological weapons, and

(ii) are not contained on the list of controlled items of the Australia Group but which the United States has proposed to the other members of the Australia Group for inclusion in such list; and

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

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

(ii) any export of items that the exporter knows is destined for a project or facility for the design, development, or manufacture of a chemical or biological weapon.

(3) **POLICY OF DENIAL OF LICENSES.**—(A) Licenses under paragraph (1)(C) should in general be denied if the ultimate consignee of the commodities or technology is a facility in a country that is not an adherent to the MTCR and the facility is designed to develop or build missiles.

(B) Licenses under paragraph (1)(C) shall be denied if the ultimate consignee of the commodities or technology is a facility in a country the government of which has been determined under section 106(i)(1) to have repeatedly provided support for acts of international terrorism.

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

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

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

(d) CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.—

(1) IMPOSITION OF SANCTIONS.—

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

(i) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this title, or

(ii) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this title, to the efforts by any foreign country, project, or entity described in subparagraph (B) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

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

(i) any foreign country that the President determines has, at any time after January 1, 1980—

(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 subclause (I) or (II);

(ii) any foreign country whose government is determined for purposes of section 106(i) to be a government that has repeatedly provided support for acts of international terrorism; or

(iii) any other foreign country, project, or entity designated by the President for purposes of this subsection.

(C) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to subparagraph (A) on—

(i) the foreign person with respect to which the President makes the determination described in that subparagraph;

(ii) any successor entity to that foreign person;

(iii) 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

(iv) 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.

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

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

(B) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this subsection for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the

President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in paragraph (1)(A). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(C) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under paragraph (1)(A), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under subparagraph (B) of this paragraph that such government has taken specific corrective actions.

(3) SANCTIONS.—

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

(i) 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 paragraph (1)(C).

(ii) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in paragraph (1)(C) shall be prohibited.

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

(i) 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;

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

(iii) 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;

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

(v) to medical or other humanitarian items.

(4) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this subsection 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 paragraph (1)(A) 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 paragraph.

(5) WAIVER.—

(A) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this subsection, 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 the Congress that such waiver is important to the national security interests of the United States.

(B) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in subparagraph (A), 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.

(6) DEFINITION OF FOREIGN PERSON.—For purposes of this subsection, the term “foreign person” means—

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

(B) 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.

(e) MISSILE PROLIFERATION CONTROL VIOLATIONS.—

(1) VIOLATIONS BY UNITED STATES PERSONS.—

(A) SANCTIONS.—(i) 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, this title, 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 clause (ii).

(ii) The sanctions which apply to a United States person under clause (i) 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 title.

(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 title.

(B) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in subparagraph (A), the Secretary may pursue any other appropriate penalties under section 110.

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

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

(ii) 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.

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

(A) SANCTIONS.—(i) Subject to subparagraphs (C) through (G), if the President determines that a foreign person, after the date of the 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 adherent to the MTCR and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this title,

(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 clause (ii).

(ii) The sanctions which apply to a foreign person under clause (i) 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 title.

(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 title.

(III) If, in addition to actions taken under subclauses (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 adherent to the MTCR, 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.

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

(i) any export, transfer, or trading activity that is authorized by the laws of an adherent to the MTCR, if such authorization is not obtained by misrepresentation or fraud; or

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

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

(D) 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 paragraph. 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.

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

(ii) In the event that the President decides to apply the waiver described in clause (i), the President shall so notify the 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.

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

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

(ii) 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.

(G) EXCEPTIONS FROM IMPORT SANCTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

(i) 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 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;
 - (ii) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or
 - (iii) 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.
- (3) DEFINITIONS.—For purposes of this subsection—
- (A) 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;
 - (B) the term “foreign person” means any person other than a United States person;
 - (C)(i) 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; and
 - (ii) in the case of a country where it may be impossible to identify a specific governmental entity referred to in clause (i), 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; and
 - (D) 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.
- (f) EFFECT ON OTHER LAWS.—The provisions of this section do not affect any activities subject to the reporting requirements contained in title V of the National Security Act of 1947.
- (g) SEEKING MULTILATERAL SUPPORT FOR UNILATERAL SANCTIONS.—The Secretary of State, in consultation with appropriate departments and agencies, shall seek the support of other countries for sanctions imposed under this section.

SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) APPLICABILITY.—

(1) EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE.—Except as provided in this section, the functions exercised under this title are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(2) JUDICIAL REVIEW.—Except as otherwise provided in this section, a final agency action under this title may be reviewed by appeal to the United States Court of Appeals for the District of Columbia Circuit, to the extent provided in this paragraph. The court’s review in any such appeal shall be limited to determining whether—

(A) a regulation—

- (i) fails to take an action required by this title;
- (ii) takes an action prohibited by this title; or
- (iii) otherwise violates this title;

(B) an agency action violates this title;

(C) an agency action violates an agency regulation establishing time requirements or other procedural requirements of a non-discretionary nature;

(D) the issuance of regulations required by this title complies with time restrictions imposed by this title;

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

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

(G) unfair impact determinations under section 114(k) are in compliance with time restrictions imposed by that section; or

(H) the United States has complied with the requirements of section 114(k) after an unfair impact determination has been made.

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

(1) ADMINISTRATIVE PROCEDURES.—Any administrative sanction imposed under section 110(c) 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.

(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 108(a) shall be made available for public inspection and copying.

(c) COLLECTION.—If any person fails to pay a civil penalty imposed under section 110(c), the Secretary may ask the Attorney General to bring a civil action in an appropriate district court 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 title, or any regulation, order, or license issued under this title, including any diversion of goods or technology from an authorized end use or end user, or in any case in which a criminal indictment has been returned against a person alleging a violation of this title or any of the statutes listed in section 110(f), the Secretary may, without a hearing, issue an order temporarily denying that person's United States export privileges (hereafter in this subsection referred to a "temporary denial order"). A temporary denial order may be effective for no longer than 180 days, 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 which constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this title, or

(B) a criminal indictment has been returned against the person subject to the order alleging a violation of this title or any of the statutes listed in section 110(f).

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 which constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this title, or if a criminal indictment has been returned against the person subject to the order alleging a violation of this title or any of the statutes listed in section 110(f). 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.

SEC. 113. 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 appropriate departments and agencies, shall be responsible for providing policy guidance on the enforcement of this title.

(2) **GENERAL AUTHORITIES.**—(A) To the extent necessary or appropriate to the enforcement of this title or to the imposition of any penalty, forfeiture, or liability arising under the Export Administration Act of 1979, officers or employees of the Department of Commerce designated by the Secretary and officers and employees of the United States Customs Service designated by the Commissioner may exercise the enforcement authorities described in paragraph (3).

(B) In carrying out the enforcement authorities described in 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 those ports of entry or exit from the United States where officers of the United States Customs Service are authorized by law to carry out such enforcement responsibilities. Subject to paragraph (3), the United States Customs Service is authorized, in the enforcement of this title, to search, detain (after search), and seize commodities or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(C) In carrying out the enforcement authorities described in paragraph (3), the Secretary, and officers and employees of the Department of Commerce designated by the Secretary, may make investigations within the United States, and shall conduct, outside the United States, preclearance and postshipment verifications of items licensed for export and investigations in the enforcement of section 108. The Secretary, and officers and employees of the Department of Commerce designated by the Secretary, are authorized to search, detain (after search), and seize items at those places within the United States other than those ports specified in subparagraph (B). The search, detention (after search), or seizure of items at those ports and places specified in subparagraph (B) may be conducted by officers and employees of the Department of Commerce only with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(D) The Secretary and the Commissioner of Customs may enter into agreements and arrangements for the enforcement of this title, including foreign investigations and information exchange.

(3) **SPECIFIC AUTHORITIES.**—(A) Any officer or employee designated under paragraph (2) may do the following in carrying out the enforcement authority under this title:

(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 as are paid witnesses in the district courts of the United States.

(B)(i) Any officer or employee of the Office of Export Enforcement of the Department of Commerce who is designated by the Secretary under paragraph (2), and any officer or employee of the United States Customs Service who is des-

ignated by the Commissioner of Customs under paragraph (2), may do the following in carrying out the enforcement authority under this title:

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

(II) Make arrests without warrant for any violation of this title 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) Officers and employees of the Office of Export Enforcement designated by the Secretary under paragraph (2) shall exercise the authorities set forth in clause (i) pursuant to guidelines approved by the Attorney General.

(C) 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 title:

(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 title.

(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 title.

(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 title.

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

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

- (1) the seizure, summary and judicial forfeiture, and condemnation of property for violations of the customs laws,
- (2) the disposition of such property or the proceeds from the sale thereof,
- (3) the remission or mitigation of such forfeitures, and
- (4) 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 title; except that such duties as 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 such officers and employees of the Department of Commerce as 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 title shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 110(c), or to the Attorney General for criminal action in accordance with this title 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 Office of Export Enforcement of the Department of Commerce (hereafter in this subsection referred to as “OEE”) necessary for the detection and prosecution of violations of this title—

(A) funds made available for export enforcement under this title may be used to purchase property, buildings, and other facilities, and to lease 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), and subsections (a) and (c) of section 304, and section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a) and (c) and 255),

(B) funds made available for export enforcement under this title 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 section 9102 of title 31, United States Code,

(C) funds made available for export enforcement under this title 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 with a net value of more than \$50,000 is to be liquidated, sold, or otherwise disposed of, the Director of OEE shall report the circumstances to the Secretary and the Comptroller General, as much in advance of such disposition as the Director of OEE or his or her 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.

(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 necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) AUDIT AND REPORT.—(A) The Director of OEE shall conduct a detailed financial audit of each OEE undercover investigative operation which is closed 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 the Congress a report on the results of the audit.

(B) The Secretary shall submit annually to the Congress a report, which may be included in the annual report under section 115, 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 thereto.

(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;

(B) the terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation conducted by 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 the Congress required by subparagraph (B) of paragraph (4); and

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

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

SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCEDURES.

(a) POLICY GUIDANCE.—

(1) IN GENERAL.—As directed by the President, annual policy guidance shall be issued to provide detailed implementing guidance to export licensing officials in all appropriate departments and agencies.

(2) ELEMENTS OF ANNUAL POLICY REVIEW.—In order to develop such annual policy guidance, export controls and other regulations to implement this title shall be reviewed annually. This annual policy review shall include an evaluation of the benefits and costs of the imposition, extension, or removal of controls under this title. This review shall include—

(A) an assessment by the Secretary of the economic consequences of the imposition, extension, or removal of controls during the preceding 12 months, including the impact on United States exports or jobs;

(B) an assessment by the Secretary of State of the objectives of the controls in effect during the preceding 12 months, and the extent to which the controls have served those objectives; and

(C) an assessment by the Secretary of Defense of the impact that the imposition, extension, or removal of controls during the preceding 12 months has had on United States national security.

(b) EXPORT CONTROL AUTHORITY AND FUNCTIONS.—

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

(2) DELEGATION OF FUNCTIONS OF THE SECRETARY.—The Secretary may delegate any function under this title to the Under Secretary of Commerce for Export Administration appointed under subsection (d) or to any other officer of the Department of Commerce.

(c) EXPORT CONTROL POLICY COMMITTEE.—

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

(2) FUNCTIONS.—The Committee shall—

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

(B) review policy recommendations proposed by the Secretary and other members of the Committee; and

(C) receive policy recommendations from other departments and agencies and resolve policy disputes among departments and agencies under this title.

(3) MEMBERSHIP.—The Committee shall include the Secretary, the Secretary of Defense, the Secretary of Energy, the heads of other relevant departments, and appropriate officials of the Executive Office of the President.

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

(5) DELEGATION; OTHER REPRESENTATIVES.—A member of the Committee under paragraph (3) may designate the deputy head of his or her department or agency to serve in his or her absence as a member of the Committee, but this authority may not be delegated to any other individual. The chair may also invite the temporary participation in the Committee’s meetings of representatives from other offices and agencies as appropriate to the issues under consideration.

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

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

(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this title and other provisions of law relating to national security, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(2) TRANSITION PROVISIONS.—Those individuals serving in the positions of Under Secretary of Commerce for Export Administration and Assistant Secretaries of Commerce under section 15(a) of the Export Administration Act of 1979, on the day before the date of the enactment of this Act, shall be deemed to have been appointed under paragraph (1), by and with the advice and consent of the Senate, as of such date of enactment.

(e) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out this title. Any such regulations the purpose

of which is to carry out section 105, 106, or 111(a) 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 advisory committee appointed under section 104(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.

(f) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this title, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Speaker 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 advisory committees appointed under section 104(f) in amending regulations issued under this title.

(g) CONFIDENTIALITY OF INFORMATION.—

(1) EXEMPTIONS FROM DISCLOSURE.—

(A) INFORMATION OBTAINED ON OR BEFORE JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 108(b)(2), information obtained under the Export Administration Act of 1979 and its predecessor statutes on or before June 30, 1980, which is deemed confidential, including Shipper's Export Declarations, or with reference 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.

(B) INFORMATION OBTAINED AFTER JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 108(b)(2), information obtained under this title or under the Export Administration Act of 1979 after June 30, 1980, may be withheld from disclosure only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with an application for an export license or other export authorization under the Export Administration Act of 1979 or this title, including—

- (i) the export license or other export authorization itself,
- (ii) classification requests described in section 109(h)(1),
- (iii) information obtained during the course of an assessment under subsection (k),

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

(v) information obtained or furnished under this title in connection with international agreements, treaties, or obligations, 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.

(2) INFORMATION TO CONGRESS AND GAO.—

(A) IN GENERAL.—Nothing in this title shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office.

(B) AVAILABILITY TO THE CONGRESS.—

(i) IN GENERAL.—All information obtained at any time under this title or previous Acts 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.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—No committee, subcommittee, or Member of Congress shall disclose any information obtained under this title or previous Acts regarding the control of exports which is submitted on a confidential basis to the Congress under clause (i) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

(C) AVAILABILITY TO THE GAO.—

(i) IN GENERAL.—Notwithstanding paragraph (1), information referred to in subparagraph (B) 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.

(ii) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) INFORMATION EXCHANGE.—Notwithstanding paragraph (1), the Secretary and the Commissioner of Customs shall exchange licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions.

(4) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—Any officer or employee of the United States, or any department or agency thereof, who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information that—

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

(h) AUTHORITY FOR SEMINAR AND PUBLICATIONS FUND.—The Secretary is authorized to cooperate with public agencies, other governments, international organizations, private individuals, private associations, and other groups in connection with seminars, publications, and related activities to carry out export activities, including educating the public or government officials on the application of this title and the regulations issued under this title. The Secretary is further authorized to accept contributions of funds, property, or services in connection with such activities to recover the cost of such programs and activities. Contributions may include payments for materials or services provided as part of such activities. The contributions collected may be retained for use in covering the costs of such activities, and for providing information to the public with respect to this title and other export control programs of the United States and other governments.

(i) SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL PROGRAM.—The Secretary is authorized to participate in and provide training to officials of other countries on the principles and procedures for the implementation of effective export controls and may participate in any such training provided by other departments and agencies of the United States.

(j) INCORPORATED COMMODITIES AND TECHNOLOGY.—

(1) COMMODITIES CONTAINING CONTROLLED PARTS AND COMPONENTS.—Controls may not be imposed under this title or any other provision of law for a commodity solely because the commodity contains parts or components subject to export controls under this title if such parts or components—

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

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

(C) comprise 25 percent or less of the total value of the commodity, unless the commodity itself, if exported, would by virtue of the functional characteristics of the commodity 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.

(2) REEXPORTS OF FOREIGN-MADE ITEMS INCORPORATING U.S. ITEMS.—

(A) COMMODITIES.—(i) No authority or permission may be required under section 105 or section 106 to reexport to a country other than a terrorist country or an embargoed country a commodity that is produced in a country other than the United States and incorporates commodities that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the commodity produced in such other country is 25 percent or less of the total value of the commodity.

(ii) No authority or permission may be required under section 105 or section 106 to reexport to a terrorist country or to an embargoed country a

commodity that is produced in a country other than the United States and incorporates commodities that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the commodity produced in such other country is 10 percent or less of the total value of the commodity.

(B) TECHNOLOGY.—(i) No authority or permission may be required under section 105 or section 106 to reexport to a country other than a terrorist country or an embargoed country technology that is produced in a country other than the United States and is commingled with or drawn from technology that is produced in the United States, if the value of the controlled United States content of the technology produced in such other country is 25 percent or less of the total value of the technology.

(ii) No authority or permission may be required under section 105 or section 106 to reexport to a terrorist country or an embargoed country technology that is produced in a country other than the United States and is commingled with or drawn from technology that is produced in the United States, if the value of the controlled United States content of the technology produced in such other country is 10 percent or less of the total value of the technology.

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

(i) the “controlled United States content” of a commodity or technology means those commodities or technology that—

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

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

(III) would, at the time of the reexport, require a license under section 105 or 106 if exported from the United States to a country to which the commodity or technology is to be reexported;

(ii) an “embargoed country” is a country against which an embargo is in effect under the Trading with the Enemy Act, the International Emergency Economic Powers Act, or other provision of law; and

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

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

(4) REPORTING REQUIREMENTS.—Notwithstanding paragraphs (1) through (3), the Secretary may require persons to report to the Department of Commerce their proposed calculations and underlying data sufficient for the Department of Commerce to evaluate the adequacy of those calculations and data related to commodities and technology before a reexporter may rely upon the exclusions from controls provided in this subsection.

(5) EXCEPTIONS.—Paragraphs (1) and (2) do not require any changes to regulations in effect on the effective date of this title and, notwithstanding paragraphs (1) and (2), controls may be imposed on commodities or technology transferred, after March 1, 1996, from export control under the Arms Export Control Act to control under this title if those commodities or technology are designated by the President for exemption from paragraph (1) or (2), as the case may be.

(k) UNFAIR IMPACT ON UNITED STATES EXPORTER.—

(1) POLICY.—It is the policy of the United States that no United States exporter should be affected unfairly by export control policies or practices unless relief from such controls would create a significant risk to the foreign policy, nonproliferation, or national security interests of the United States.

(2) RELIEF FROM EXPORT CONTROLS.—(A) A person may petition the Secretary for relief from current export control requirements (other than control requirements specifically imposed by this title or other provisions of law) on the basis of foreign availability. A person may also petition the Secretary for approval of an export license application on other grounds which the Secretary, with the concurrence of the Secretary of Defense, shall establish by regulation. The Secretary shall, upon receipt of such petitions, and may, on his or her initiative, conduct assessments for providing relief based upon these grounds.

(B) For purposes of this subsection, foreign availability exists when the controlled item is available in fact, under terms and conditions established by the Secretary with the concurrence of the secretary of Defense, to controlled countries or end users from sources outside the United States so that the require-

ment for a license is or would be ineffective in achieving the purpose of the control.

(3) PROVISIONS FOR RELIEF.—The Secretary, in consultation with appropriate departments and agencies, shall make determinations of facts under paragraph (2), addressing, in the case of a petition filed under paragraph (2), each ground for relief asserted in the petition, and, subject to paragraph (4), shall provide at least one of the following forms of relief to persons that meet the criteria in paragraph (2):

(A) Change the control status of, or licensing requirements on, all or some of the items in question so as to eliminate the unfair impact.

(B) Selectively approve the sale of controlled items so as to eliminate the unfair impact.

(C) Seek multilateral support to eliminate the source of unfair impact. If relief under this subparagraph is chosen and if such efforts fail to achieve multilateral support, then the Secretary, not later than 330 days from the date of the Secretary's initiation of the assessment under paragraph (2), shall provide other relief pursuant to subparagraph (A) or (B) or conclude pursuant to paragraph (4) that the granting of such relief would create a significant risk to United States nonproliferation, foreign policy, or national security interests.

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

(4) EXCEPTIONS FROM RELIEF.—The Secretary shall provide relief under paragraph (3) to a petitioner who qualifies for relief under paragraph (2) unless the Secretary concludes that the granting of such relief would create a significant risk to United States nonproliferation, foreign policy, or national security interests. In the event the Secretary determines to grant such relief, he or she may do so unless the President determines that such relief would create a significant risk to the foreign policy, nonproliferation, or national security interests of the United States.

(5) PROCEDURES.—

(A) PUBLICATION.—In any case in which the President or the Secretary determines that relief under paragraph (3) will not be granted, notwithstanding the existence of facts that constitute a basis for granting relief, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) NOTICE OF ASSESSMENTS.—Whenever the Secretary undertakes an assessment under paragraph (2), the Secretary shall publish in the Federal Register notice of the initiation of such assessment.

(C) PROCEDURES FOR MAKING DETERMINATIONS.—During the conduct of an assessment under this subsection, the Secretary shall consult with other appropriate departments and agencies concerning the assessment. The Secretary shall make a determination as to whether relief is required under paragraph (2) within 120 days after the date of the Secretary's receipt of the petition requesting relief or the date of the Secretary's initiation of the assessment (as the case may be) and shall so notify the applicant. If the Secretary has determined that relief is appropriate, the Secretary shall, upon making such a determination, submit the determination for review to the Department of Defense and other appropriate departments and agencies for consultations regarding the findings and the relief selected. If the Secretary of Defense or other department or agency head disagrees with the Secretary's determination, he or she may appeal the determination to the President in writing, but only on the basis of the criteria set forth in paragraph (4). The President shall resolve any such disagreement so that, in all cases, not later than 150 days after the date of the Secretary's receipt of the petition requesting relief or the date of the Secretary's initiation of the assessment (as the case may be), the Secretary responds in writing to the petitioner and submits for publication in the Federal Register, that—

(i) unfair impact exists and—

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

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

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

(IV) export controls under this title are to be maintained notwithstanding the finding under paragraph (2); or

(V) the United States recommendation to remove the license requirement or change the control status will be submitted to a relevant multilateral regime for consideration for a period of not more than 180 days beginning on the date of the publication; or

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

The reasons for maintaining export controls under clause (i)(IV) shall be included in the submission to the petitioner and the publication. In any case in which the submission for publication is not made within the 150-day period required by this subparagraph, the Secretary may not thereafter require a license for the export of items that are the subject of the allegation under paragraph (2).

(D) NEGOTIATIONS TO ELIMINATE UNFAIR IMPACT.—(i) In any case in which export controls are maintained under this section pursuant to paragraph (4) despite a determination of unfair impact, the Secretary of State shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating the unfair impact. No later than the commencement of such negotiations, the Secretary of State shall notify the Congress in writing that the Secretary of State has begun such negotiations and why it is important that export controls on the items involved be maintained to avoid a significant risk to the foreign policy, nonproliferation, or national security interests of the United States.

(ii) Whenever the Secretary of State has reason to believe that items subject to export controls by the United States may become available in fact from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the Secretary of State shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(6) 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, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Department of Commerce concerning foreign availability of items subject to export controls under this title. Consistent with the protection of intelligence sources and methods and classification restrictions, each such department or agency shall allow the Department of Commerce access to such information from a laboratory or other facility within such department or agency.

(7) CONGRESSIONAL NOTIFICATION AND REPORTING REQUIREMENTS.—The Secretary shall each year notify the Congress of all petitions for relief under this subsection and the status of all such petitions.

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

(1) medicine or medical supplies; or

(2) donations of items that are intended to meet basic human needs, including food, educational materials, seeds, hand tools, water resources equipment, clothing and shelter materials, and basic household supplies.

(m) SANCTITY OF EXISTING CONTRACTS AND LICENSES.—

(1) IN GENERAL.—In the case of a control imposed under section 106 on the export of any items, the President may not prohibit the export of those items—

(A) in performance of a contract, agreement, or other contractual commitment entered into before the date on which the control is initially imposed, or the date on which the President reports to the Congress the President's intention to impose the control, whichever date occurs first, or

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

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

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

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

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

The authority of the President to make determinations under this paragraph may not be delegated.

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

(1) IN GENERAL.—The Secretary shall publish in the Federal Register, to the greatest extent practicable, actions, procedures, and decisions of the Secretary under this title, taking into account restrictions on disclosure of classified or confidential information. The Secretary shall publish in the Federal Register calculations by the Secretary of commonly-used control index parameters for commodities and technologies, including all officially accepted composite theoretical performance calculations for computers and microprocessors, except in a case in which a private party requested the calculation and asked that it not be published.

(2) NOTICE OF REVISIONS.—Whenever the Secretary makes any revision in the control index with respect to any commodity or technology, or with respect to any country or destination affected by controls imposed under section 105 or section 106, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice under which authority the revision is being made.

(o) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH INDUSTRY; RECORD-KEEPING.—

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

(2) CONSULTATION WITH INDUSTRY.—The Secretary shall meet regularly with export advisory committees appointed under section 104(f) in order to obtain their views on United States export control policy and the foreign availability of commodities and technology.

(p) EXPORT CONTROL DUTIES.—

(1) ASSIGNMENT.—The Secretary shall ensure that at least one full-time representative of the Department of Commerce stationed in the People's Republic of China has duties related to the implementation of export controls under this title. These duties shall include giving priority to conducting postshipment verifications and prelicense checks, and to using other means to ensure that United States exports from the United States of dual use items are not diverted to unauthorized end uses or end users.

(2) OTHER RESOURCES.—The Secretary shall ensure that appropriate resources are made available and, if necessary, new procedures established to assist the representative or representatives of the Department of Commerce referred to in paragraph (1) in carrying out their duties and to ensure that sensitive items are not diverted to inappropriate end uses or end users in the People's Republic of China. Efforts to carry out this paragraph shall include appropriate coordination with United States officials in Hong Kong to ensure that sensitive items exported to Hong Kong are protected from diversion.

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

(q) AUTHORIZATION FOR TECHNICAL DATA.—A license authorizing the export of any commodities or technology under this title shall also authorize the export of operation technical data related to such commodities or technology, if the technical level of the data does not exceed the minimum necessary to install, repair, maintain, inspect, operate, or use the commodities or technology.

(r) LICENSES FOR SPARE PARTS NOT REQUIRED.—A license shall not be required under this title for replacement parts which are exported to replace on a one-for-one basis parts that were in a commodity that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

SEC. 115. ANNUAL REPORT.

(a) CONTENTS.—Not later than March 1 of each year, the Secretary shall submit to the Congress a report on the administration of this title during the preceding calendar year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information on the following:

(1) The implementation of the policies set forth in section 103, including delegations of authority by the President under section 104(d), consultations with the export advisory committees established under section 104(f), and any changes in the exercise of the authorities contained in sections 105(a), 106(a), 107(a), and 108(a).

(2) With respect to multilateral export controls imposed or maintained under section 105, the following:

(A) Adjustments to multilateral export controls.

(B) The exercise of the Secretary's authority under section 105(e).

(3) Determinations made under section 114(k), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to maintain export controls notwithstanding determinations made under paragraph (2) of section 114(k).

(4) Short supply controls and monitoring under section 107.

(5) Organizational and procedural changes undertaken in furtherance of the policies set forth in this title, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 109, including an accounting of appeals received, and actions taken pursuant thereto, under section 109(g).

(6) Violations under section 110 and enforcement activities under section 113.

(7) The issuance of regulations under this title.

(8) The results, in as much detail as may be included consistent with the strategic and political interests of the United States and the need to maintain the confidentiality of proprietary information, of the reviews of the multilateral control list, and any revisions to the list resulting from such reviews, required by section 105.

(b) **COMPARATIVE REPORT ON EXPORT CONTROL SYSTEMS AMONG COUNTRIES.**—The Secretary shall include, in each annual report under subsection (a), a description of significant differences between the export control laws and regulations of the United States and its major trade competitors, particularly as these differences relate to the implementation of multilateral export control regimes. The Secretary shall include—

(1) an assessment of the impact of these differences on important interests of the United States;

(2) a description of the extent to which the executive branch intends to address these differences; and

(3) a listing of unilateral controls and embargoes imposed by the United States that are in effect, with a quantification of their economic impact, including the effect of such controls and embargoes on employment in the United States.

(c) **GAO REPORT.**—The Comptroller General shall prepare and submit to the Congress, not later than 120 days after each report under subsection (b) is submitted, an analysis of such report.

SEC. 116. DEFINITIONS.

As used in this title:

(1) **AFFILIATE.**—The term “affiliate” includes both governmental entities and commercial entities that are controlled in fact by a country.

(2) **ADHERENT.**—An “adherent” to a multilateral regime is a country that is a member of that regime or that, pursuant to an international understanding to which the United States is a party, controls exports in accordance with the criteria and standards of that regime.

(3) **AUSTRALIA GROUP.**—The term “Australia Group” means the multilateral regime in which the United States participates that seeks to prevent the proliferation of chemical and biological weapons.

(4) **CHEMICAL WEAPONS CONVENTION.**—The term “Chemical Weapons Convention” refers to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 1992.

(5) **COMMODITY.**—The term “commodity” means any article, natural or man-made substance, material, software, source code, supply, or manufactured product, including inspection and test equipment, and excluding technical data.

(6) **CONTROL OR CONTROLLED.**—The terms “control” and “controlled” refer to a licensing requirement, a written reexport authorization requirement, or a prohibition on an export.

(7) **CONTROL INDEX.**—The term “control index” means the United States Commodity Control Index established under section 104(b)(1).

(8) **CONTROLLED COUNTRY.**—The term “controlled country” means a country to which exports are controlled under section 105 or 106.

(9) **EXPORT.**—(A) The term “export”—

(i) means—

(I) an actual shipment, transfer, or transmission of items out of the United States; and

(II) a transfer to any person of items either within the United States or outside of the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted outside the United States; and

(ii) includes the term “reexport”.

- (B) The Secretary may further define the term export by regulation to include, among other concepts, that—
- (i) a transfer of items in the United States to an embassy or affiliate of a country is an export to the country,
 - (ii) disclosure of technology to a foreign person is deemed to be an export to the country of which he or she is a national, and
 - (iii) transfer of effective control from one country to another over a satellite above the earth is an export from one country to another.
- (C) As used in this paragraph, the term “foreign person” means—
- (i) an individual who is not a United States citizen or an alien lawfully admitted for permanent residence to the United States;
 - (ii) 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
 - (iii) any governmental entity of a foreign country that is operating as a business enterprise.
- (10) EXPORT CONTROL REGIME, MULTILATERAL EXPORT CONTROL REGIME, MULTILATERAL REGIME, AND REGIME.—The terms “export control regime”, “multilateral export control regime”, “multilateral regime”, and “regime” each means an international agreement or an arrangement among two or more countries, including the United States, a purpose of which is to coordinate national export control policies of participating countries regarding certain items. Such terms include the Australia Group, the Wassenaar Arrangement, the MTCR, and the Nuclear Supplies Group.
- (11) FOREIGN AVAILABILITY, AVAILABLE IN FACT TO CONTROLLED COUNTRIES.—The terms “foreign availability” and “available in fact to controlled countries” each include production or availability of any item from any country—
- (A) in which the item is not restricted for export to any controlled country; or
 - (B) in which such export restrictions are determined by the Secretary to be ineffective.
- For purposes of subparagraph (B), the mere inclusion of items on a list of items subject to export controls imposed pursuant to a multilateral export control regime shall not alone constitute credible evidence that the government of a country provides an effective means of controlling the export of such items to controlled countries.
- (12) ITEM.—The term “item” means any commodity, technology, or other information.
- (13) LICENSING REQUIREMENT.—The term “licensing requirement” includes any restriction or condition, including recordkeeping and reporting, imposed by the Secretary under this title in licensing the export of a commodity, technology, or other information.
- (14) MEMBER OF AN EXPORT CONTROL REGIME.—A “member” of an export control regime, multilateral export control regime, multilateral regime, or regime is a country that participates in that regime.
- (15) MISSILE.—The term “missile” means any missile system or component listed in category I of the MTCR Annex, and any other unmanned delivery system or component of similar capability, as well as the specially designed production facilities for these systems.
- (16) MISSILE TECHNOLOGY CONTROL REGIME; MTCR.—The term “Missile Technology Control Regime” or “MTCR” means the policy statement and guidelines 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-related transfers based on the MTCR Annex, and any amendments thereto.
- (17) MTCR ANNEX.—The term “MTCR Annex” means the Equipment and Technology Annex of the MTCR, and any amendments thereto.
- (18) NUCLEAR EXPLOSIVE DEVICE.—The term “nuclear explosive device” means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).
- (19) NUCLEAR SUPPLIERS’ GROUP.—The term “Nuclear Suppliers’ Group” means the multilateral arrangement in which the United States participates whose purpose is to restrict the transfers of items with relevance to the nuclear fuel cycle or nuclear explosive applications.
- (20) PERSON.—Except as provided in section 111, the term “person” includes—

(A) the singular and the plural and any individual, 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 body, corporation, trust, agency, department, or group, operating as a business enterprise.

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

(22) SECRETARY.—The term “Secretary” means the Secretary of Commerce or any successor officer performing functions of the Secretary of Commerce under this title.

(23) TECHNOLOGY.—The term “technology” means specific information that is necessary for the development, production, or use of a commodity, including source code, and that takes the form of technical data or technical assistance.

(24) UNILATERAL AND UNILATERALLY.—The terms “unilateral” and “unilaterally”, with respect to an export control on a commodity or technology, refer to a control that is not similarly imposed in similar circumstances by any country other than the United States, and that materially restricts the export of the commodity or technology.

(25) 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 (43 U.S.C. 1331(a)).

(26) UNITED STATES PERSON.—The term “United States person” means any United States citizen, resident, or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and 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 of the President.

(27) WASSENAAR ARRANGEMENT.—The term “Wassenaar Arrangement” means the multilateral regime in which the United States participates that seeks to promote transparency and responsibility with regard to the transfers of conventional armaments and sensitive dual-use goods and technologies.

(28) WEAPON OF MASS DESTRUCTION.—The term “weapon of mass destruction” means any chemical, biological, or nuclear weapon, including a nuclear explosive device.

SEC. 117. EFFECTS ON OTHER ACTS.

(a) COMMODITY JURISDICTION.—

(1) COORDINATION OF CONTROLS.—The authority granted under this title and under section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be exercised in such a manner as to achieve effective coordination between the licensing systems under this title and such section 38 and to share information regarding the trustworthiness of parties.

(2) ELIMINATION OF OVERLAPPING CONTROLS.—Notwithstanding any other provision of law, no item may be included on both the control index and the United States Munitions List after the date of the enactment of this Act.

(3) COMMODITY JURISDICTION DISPUTE RESOLUTION.—The President shall establish procedures for the resolution of commodity jurisdiction disputes among departments and agencies of the United States. Such disputes shall normally be resolved within 60 days, and the procedures shall allow disputes to be referred to the President normally within 90 days. These procedures shall also—

(A) require the Secretary and the Secretary of State to refer matters to each other in accordance with their respective jurisdictions;

(B) require transparency, among the Secretary, the Secretary of State, and the Secretary of Defense, in commodity jurisdiction cases and commodity classification requests and determinations;

(C) provide for interagency meetings and consultations to permit the free exchange of views regarding significant jurisdictional issues; and

(D) provide deadlines for action and standards for decision, and ensure that disputes that cannot be resolved may be referred to the President by the Secretary of State, the Secretary of Defense, or the Secretary.

(b) IN GENERAL.—Except as otherwise provided in this title, nothing in this title shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodities, technology, or other information.

(c) LICENSING PROCESS.—The provisions of section 109 shall supersede the procedures published pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2139a(c)) to the extent such procedures are inconsistent with the provisions of section 109.

(d) AMENDMENTS TO THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—

(1) EXERCISE OF PRESIDENTIAL AUTHORITY.—(A) Section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703(b)) is amended—

- (i) by striking “and” at the end of paragraph (4);
- (ii) by striking the period at the end of paragraph (5) and inserting “; and”; and
- (iii) by adding at the end the following:

“(6) if the action is being taken unilaterally—

“(A) why the President believes the action is necessary to meet the unusual and extraordinary threat referred to in paragraph (2); and

“(B) what steps the President is taking to gain multilateral support for the action.”

(B) Section 204(c) of that Act (50 U.S.C. 1703(c)) is amended—

- (i) by striking “(5)” and inserting “(6)”; and
- (ii) by striking the period and inserting “, and, in the case of controls referred to in paragraph (6) of subsection (b), the President shall report to the Congress on the economic losses that have occurred as a result of the unilateral action”.

(2) CONFIDENTIALITY OF INFORMATION.—The International Emergency Economic Powers Act is amended—

- (A) by redesignating section 208 as section 209; and
- (B) by inserting after section 207 the following:

“SEC. 208. CONFIDENTIALITY OF INFORMATION.

“(a) EXEMPTIONS FROM DISCLOSURE.—Information obtained under this title before or after the enactment of this section may be withheld only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with any transaction that would otherwise be prohibited under this title, including—

- “(1) the license or other authorization itself,
- “(2) classification requests or other inquiries on the applicability of export license requirements to a proposed transaction or series of transactions,
- “(3) information or evidence obtained in the course of any investigation, and
- “(4) information obtained or furnished under this title in connection with international agreements, treaties, or obligations,

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 of Commerce or the Secretary of the Treasury to be in the national interest. In the case of information obtained or furnished under this title in connection with international agreements, treaties, or obligations, such a determination may be made only after consultation with the Secretary of State.

“(b) INFORMATION TO CONGRESS AND GAO.—

“(1) IN GENERAL.—Nothing in this title shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office.

“(2) AVAILABILITY TO THE CONGRESS.—

“(A) IN GENERAL.—All information obtained at any time under this title 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 title or previous Acts 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 paragraph (1), information referred to 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 the Congress in accordance with this subsection, any such information which is submitted on a confidential basis and from which any individual can be identified.

“(c) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—Any officer or employee of the United States, or any department or agency thereof, who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information that—

“(1) he or she 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

“(2) is exempt from disclosure under this section, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, shall be removed from office or employment, and shall be subject to a civil penalty of not more than \$1,000.”

(3) PENALTIES.—Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended—

(A) in subsection (a) by inserting “, or attempts to violate,” after “violates”; and

(B) in subsection (b) by inserting “, or willfully attempts to violate,” after “violates”.

(e) AMENDMENTS TO THE TRADING WITH THE ENEMY ACT.—Section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16) is amended—

(1) in subsection (a)—

(A) by inserting “, or attempt to violate,” after “violate” the first place it appears; and

(B) by inserting “attempt to violate,” after “violate,” the second place it appears; and

(2) in subsection (b)(1) by inserting “, or attempts to violate,” after “violates”.

(f) REPORT ON OFAC AND ODTC.—

(1) STUDY ON OFAC.—The Secretary of the Treasury shall study ways to make the operations of the Office of Foreign Assets Control of the Department of the Treasury more effective and efficient in responding to licensing requests and other inquiries of United States exporters, including through the upgrading of technology in that office.

(2) STUDY ON ODTC.—The Secretary of State shall study ways to make the Office of Defense Trade Controls of the Department of State more effective and efficient in responding to licensing requests and other inquiries of United States exporters, including through the upgrading of technology in that office.

(3) SUBMISSION OF REPORTS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Congress a report on the study conducted under paragraph (1) and the Secretary of State shall submit to the Congress a report on the study conducted under paragraph (2).

SEC. 118. SECONDARY ARAB BOYCOTT.

(a) SENSE OF CONGRESS.—

(1) ENDING SECONDARY BOYCOTT.—It is the sense of the Congress that the countries of the Arab League should end the secondary Arab boycott.

(2) ACTIONS TO END SECONDARY BOYCOTT.—The United States will consider the secondary Arab boycott to have ended when—

(A) the Arab League issues a public pronouncement that the Arab League has ended the secondary Arab boycott;

(B) all activities carried out by the Central Office for the Boycott of Israel in support of the secondary Arab boycott have been terminated;

(C) the Arab League and the individual countries that are members of the Arab League have terminated the practice of barring United States persons and foreign companies that do not comply with the secondary Arab boycott from doing business with countries that are members of the Arab League, and have declared null and void any existing list of such barred persons and companies; and

(D) the Arab League, and the individual countries that are the members of the Arab League, have ceased requesting United States persons to take actions prohibited under section 108(a).

(b) DEFINITION.—For purposes of this section, the term “secondary Arab boycott” means the refusal to do business with persons who do not comply with requests to take any action prohibited under section 108(a) with respect to Israel.

SEC. 119. CONFORMING AMENDMENTS.

(a) 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 110 of the Export Administration Act of 1996, by subsections (a) and (b) of section 113 of such Act, and by section 114(g) of such Act”; and

(ii) in the third sentence by striking “11(c) of the Export Administration Act of 1979” and inserting “110(c) of the Export Administration Act of 1996”; and

(B) in subsection (g)(1)(A) by striking clause (ii) and inserting the following:

“(ii) section 110 of the Export Administration Act of 1996.”

(2) Section 39A(c) of the Arms Export Control Act, as added by the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, is amended—

(A) by striking “(c),” and all that follows through “12(a) of such Act” and inserting “(c), (d), and (e) of section 110, section 112(c), and subsections (a) and (b) of section 113, of the Export Administration Act of 1996”; and

(B) by striking “11(c)” and inserting “110(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 “110(b), 110(c), 110(e), 113(a), and 113(b) of the Export Administration Act of 1996”; and

(B) by striking “11(c)” and inserting “110(c)”.

(4) Section 73A of the Arms Export Control Act, as added by the Foreign Relations Authorization Act, Fiscal Years 1995 and 1995, is amended by striking “a MTCR adherent” and inserting “an MTCR adherent”.

(b) OTHER PROVISIONS OF LAW.—

(1) Section 5(b)(4) of the Trading with the Enemy Act (12 U.S.C. 95a(4); 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 “the Export Administration Act of 1996”.

(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 1996”; and

(B) by striking “Act of 1979” and inserting “Act of 1996”.

(3)(A) Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)) is amended—

(i) in paragraph (1)(B) by inserting “or section 106(i) of the Export Administration Act of 1996” after “Act of 1979”; and

(ii) in paragraph (2) by striking “6(j) of the Export Administration Act of 1979” and inserting “106(i) of the Export Administration Act of 1996”.

(B) For purposes of the report required by March 31, 1996, under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, the reference in paragraph (2) of such section to “section 106(i) of the Export Administration Act of 1996” shall be deemed to refer to “section 6(j) of the Export Administration Act of 1979 or section 106(i) of the Export Administration Act of 1996”.

(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 “6(j)(1) of the Export Administration Act of 1979” and inserting “106(i)(1) of the Export Administration Act of 1996”.

(5) 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 1996”.

(6) Section 205(d)(4)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4305(d)(4)(B)) is amended by striking “6(j) of the Export Administration Act of 1979” and inserting “106(i) of the Export Administration Act of 1996”.

(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 1996”.

(8) Section 491(f) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620c(f)) is repealed.

(c) REPEAL.—The Export Administration Act of 1979 is repealed.

SEC. 120. EXPIRATION DATE.

This title expires on June 30, 2001.

SEC. 121. 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, or the Export Administration Act of 1979, or

(2) those provisions of the Arms Export Control Act which are amended by section 119,

and are in effect at the time this title takes effect, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this title or the Arms Export Control Act.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—

(1) EXPORT ADMINISTRATION ACT.—This title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979, which is pending at the time this title 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 title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 119, if such proceedings or application is pending at the time this title takes effect. Any such proceedings, and any action on such application, shall continue under those provisions as if those provisions had not been amended by section 119.

(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, that is in effect at the time this title takes effect, shall, for purposes of this title or any other provision of law, be deemed to be made under section 106(i) of this Act until superseded by a determination under such section 106(i).

TITLE II—NUCLEAR PROLIFERATION PREVENTION

SEC. 201. REPEAL OF TERMINATION OF PROVISIONS OF THE NUCLEAR PROLIFERATION PREVENTION ACT OF 1994.

(a) REPEAL.—Part D of the Nuclear Proliferation Prevention Act of 1994 (part D of title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103–236; 108 Stat. 525) is hereby repealed.

(b) PRESIDENTIAL DETERMINATIONS.—Section 824(c) of the Nuclear Proliferation Prevention Act of 1994 is amended by striking “, in writing after opportunity for a hearing on the record.”.

(c) JUDICIAL REVIEW.—Section 824 of the Nuclear Proliferation Prevention Act of 1994 is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) through (k) as subsections (e) through (j), respectively.

(d) CONFORMING AMENDMENT.—Section 102(b)(2)(G) of the Arms Export Control Act (22 U.S.C. 2799aa–1(b)(2)(G)) is amended by striking “section 6 of the Export Administration Act of 1979” and inserting “section 105 or 106 of the Export Administration Act of 1996”.

SEC. 202. SEEKING MULTILATERAL SUPPORT FOR UNILATERAL SANCTIONS.

The Secretary of State, in consultation with appropriate departments and agencies, shall seek the support of other countries for sanctions imposed under the Nuclear Proliferation Prevention Act of 1994 or the amendments made by that Act.

SEC. 203. SANCTIONS UNDER THE NUCLEAR PROLIFERATION PREVENTION ACT OF 1994.

Section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)(2)) is amended by adding at the end the following:

“(H)(i) The President shall prohibit the importation into the United States of specific products produced in that country by persons who have engaged in the activities described in paragraph (1) that were the basis of the President’s determination under such paragraph.

“(ii) In the event that it is not possible to identify the persons who have engaged in the activities described in paragraph (1) that were the basis of the President’s determination under such paragraph, the President shall prohibit the importation into the United States of products produced in that country by those persons that the President shall designate as most closely identified with those activities.

“(iii) For purposes of this subparagraph, the term ‘person’ means—

“(I) a natural person;

“(II) a corporation, business association, partnership, society, or trust, or any other nongovernmental entity, organization, or group;

“(III) a governmental entity operating as a business enterprise;

“(IV) a division or office of a governmental department; or

“(V) a military unit or successor to such unit.

“(iv) The prohibition on imports imposed under this subparagraph shall be in addition to any other prohibition on imports in effect before the President’s determination under paragraph (1) is made.”

PURPOSE

H.R. 361, the “Export Administration Act of 1996”, as amended, would replace the expired Export Administration Act of 1979, which traditionally has provided the statutory basis of the U.S. system for controlling exports of dual-use commodities and technologies. The purposes of the bill are to: (1) strengthen the effectiveness of U.S. dual-use export controls regarding threats posed by international terrorism and by the proliferation of weapons of mass destruction; and (2) strengthen U.S. export competitiveness by removing ineffective and unnecessary governmental impediments.

BACKGROUND

The Export Administration Act of 1979 provided the framework for the Commerce Department’s controls on dual-use exports. Dual-use commodities and technologies are civilian items that possess potential military applications; they are not munitions. Exports of munitions are controlled by the State Department under the Arms Export Control Act (AECA).

For most of the last seventeen years, the Export Administration Act of 1979 has provided the executive branch authority to control exports of dual-use commodities and technologies for three broad purposes (described below). The law has not been significantly rewritten in that period, and it has not been updated since 1988, though attempts were made in the 101st, 102nd, and 103rd Congresses.

The Export Administration Act of 1979 expired as of August 20, 1994. Since that time, the statutory authority to control dual-use exports has derived from a state of emergency declared by the President. The President declared this emergency pursuant to his authorities under the International Emergency Economic Powers

Act, so that the pertinent regulations and most enforcement powers could remain in effect. The emergency powers, however, do not allow for full enforcement powers.

Traditionally, there have been three types of dual-use export controls. First, U.S. exports are controlled for national security purposes. National security controls, which have been applied since the early years of the Cold War, assisted NATO efforts to maintain a qualitative military edge sufficient to overcome the Warsaw Pact's quantitative edge. Until two years ago, these controls were implemented in coordination with other members of the Coordinating Committee for Multilateral Export Controls (COCOM).

Second, exports are controlled for several different "foreign policy" purposes. Objectives for which foreign policy controls have been implemented include protecting human rights, curbing proliferation of weapons of mass destruction, and restricting exports to rogue or terrorist countries. Many U.S. foreign policy controls have been, and continue to be, imposed unilaterally.

Third, export controls are applied for short supply purposes. Short supply controls are designed to protect the U.S. economy from potentially damaging price rises or conditions of scarcity due to exports. Commodities subject to short supply export controls or prohibitions have included petroleum products and certain timber products.

The executive branch controls exports for these purposes through the granting of licenses to exporters. Export license applications are processed by the Department of Commerce. Many license applications are referred for comment and recommendations to the Department of State, the Department of Defense, and other national security agencies of the U.S. Government.

The Export Administration Act of 1979 also contained provisions designed to prevent U.S. citizens and firms from complying with or supporting boycotts against countries friendly to the United States.

NEED FOR EXPORT CONTROL REFORM

The world has changed dramatically since the last revisions to the Export Administration Act were adopted in 1988. These changes have made it necessary to reform the U.S. dual-use export control system.

First, the end of the Cold War has also brought with it the end of the tight international coordination and high-level political commitment that were embodied in COCOM. During the Cold War, the COCOM allies agreed on the enemy and U.S. leadership on export controls was acknowledged throughout the western alliance. There was consensus on the paramount security objective of ensuring that NATO's qualitative edge in the battlefield was sufficient to overcome the Warsaw Pact's quantitative edge. The procedures incorporated into COCOM were remarkably intrusive for a multilateral arrangement, especially one without a treaty base. COCOM not only operated with strict disciplines and a tight rule of consensus, it featured a unique power: any one member of COCOM could veto the licensing by any other member of a proposed export to any of the proscribed destinations (basically, the Warsaw Pact members and China). Through this veto power, the United States was not

only able to ensure that dangerous exports were not made, we were also able to ensure a level playing field for our own exporters.

In the post-Cold War era, it has become quickly apparent that no similar over-arching, and politically binding, mission or procedures drive our western partners to march in step with us on export controls. COCOM expired on March 31, 1994, and while there is still strong interest in coordination, and fortunately our national control policies have very similar objectives, there is an absolute rejection of the kind of intrusive disciplines that characterized COCOM. As a result, there is no more United States veto power, no more procedural assurance that dangerous exports are not being made by even our closest allies, and no more procedural assurance that our exporters are being provided a reasonably level playing field.

Second, the capacity to build weapons of mass destruction (WMD)—including nuclear, chemical, and biological weapons, and the missiles to deliver them—is spreading. International terrorists and rogue regimes like Iraq and Iran have set up sophisticated procurement efforts to design, develop, produce, and deploy various WMD capabilities. Such efforts do not have to target leading-edge technologies. Often the procurement targets are for technologies that are decades old. (Terrorists in Japan caused tragedy in the subways of Tokyo with chemical weapons technology harkening back to WWI. Key elements of Saddam Hussein's nuclear capabilities were established from procuring 1960's technologies.) But more sophisticated technologies are also being targeted. The Jordanian interdiction of especially sophisticated gyroscopes destined for the Iraqi long-range missile program is a prime example.

This spreading WMD capability points to the great need for improvements in multilateral non-proliferation efforts and in national export control systems. U.S. export control policies must focus more effectively on leading international efforts to prevent the proliferation of weapons of mass destruction that threaten U.S. national security or that of our allies. This can only be accomplished through more effective multilateral activities and coordination.

Third, international economic competition has intensified. Exports account for a growing share of output and jobs in most advanced industrial countries, which raises the stakes in the competition for export markets. Many U.S. exporters have stressed the value, in this competitive environment, of a disciplined and streamlined U.S. export control system. Exporters argue that unilateral U.S. export controls, and sanctions, punish them without necessarily achieving their intended purpose. They also claim that a slow and cumbersome export license processing system can handicap American exporters competing for markets with exporters from countries whose licensing is more efficient.

Fourth, the pace of technological change is increasing. More rapid technological change, particularly in the information technologies industry, has made it difficult for changes in export control policies to keep pace. Elementary schoolers today do their homework on personal computers with many times the power of what ten years ago were massive, multi-million dollar, and very tightly controlled supercomputers! New cars today have more computing power than the guidance system that landed the Apollo

space capsule on the moon. The internet is but the beginning of a global information infrastructure that could totally change not only how we communicate, export, and do business, it could change our whole concept of national borders. The committee believes strongly that both our national security and our economic competitiveness will be greatly affected by our ability to maintain U.S. industry's leadership in the information technologies field.

Finally, the Committee notes that it has been almost two years since the U.S. has had a law in place on dual-use export controls. The Committee believes this situation must not be tolerated any longer, as it can only serve to undermine critical U.S. global leadership on dual-use export controls.

KEY PROVISIONS OF H.R. 361, AS AMENDED

H.R. 361 adapts the U.S. dual-use export control system to the challenges of the post-Cold War era. It removes unnecessary bureaucratic and other impediments to U.S. export competitiveness, while strengthening U.S. non-proliferation and counter-terrorism programs. The bill is designed to make our export control system more effective, more efficient, and more transparent.

More specifically, H.R. 361:

COMBATS PROLIFERATION

Mandates more effective multilateral controls by, among other things, requiring the Secretary of State to pursue lists of upgrades in other nations' control systems and in the rules and procedures of the various non-proliferation regimes. The bill also requires that key differences between U.S. controls and those of other key suppliers be identified and that greater steps be taken to harmonize these nations' control requirements with our own.

Creates a new, tough statutory basis for proliferation-based end use controls, and adds a strict prohibition on any export that would materially contribute to a WMD program in any country that is not a member of, or cooperating with, a multilateral export control regime.

Establishes a new statutory link between U.S. export controls and today's multilateral non-proliferation regimes: the Missile Technology Control Regime (MTCR), the Australia Group (which controls exports relating to chemical and biological weapons), the Nuclear Suppliers Group, and the Wassenaar Arrangement (the successor to COCOM). H.R. 361 requires that U.S. export controls be based on the provisions of the multilateral export control regimes, except in cases where emergency controls are imposed.

Updates U.S. anti-proliferation sanctions by: making permanent the Nuclear Proliferation Prevention Act; re-codifying the sanctions against persons and entities that export items that contribute to a foreign chemical or biological weapon or missile program; adding targeted import sanctions to the country sanctions under the Nuclear Proliferation Prevention Act; and, adding a requirement that the Secretary of State seek overseas support for all such sanctions.

COMBATS TERRORISM

Greatly tightens current statutory restrictions on exports to terrorist countries. All proliferation-related and other dual-use exports and reexports to such countries are prohibited, except that the President may waive this prohibition if an export is essential to national security.

Requires the Secretary of State to seek support for these anti-terrorism controls from other countries and from the various multilateral export control regimes.

INCREASES COMPETITIVENESS

Increases government-industry cooperation, to include greater reliance on multiple export licenses that are designed to better encourage and acknowledge the internal compliance efforts of U.S. companies.

Significantly reduces the statutory time lines for issuing licenses. Licensing reviews will be faster, and while the Department of Defense and other relevant agencies shall have the statutory authority to review any export license application submitted to the Department of Commerce, this new authority must be exercised pursuant to new time lines and disciplines.

Imposes greater transparency and stricter conditions on the use of most unilateral export controls. The President must certify that any such controls will further significantly the national security or foreign policy of the United States, and that the benefits of the controls will exceed their economic costs to the United States. The President may then extend these controls only if he has been able to gain multilateral acceptance of the control, or if the President reports annually to the Congress that certain critical criteria are being met. The Secretary of State has a continuing duty to make such controls multilateral, and the Secretary of Commerce has the annual duty of compiling a list of unilateral controls and sanctions and estimating their impact on the U.S. economy.

Provides procedures to ensure that U.S. exporters can petition for relief from unfair treatment. The procedures update current foreign availability procedures.

Establishes a new statutory basis upon which questions of commodity jurisdiction between the U.S. munitions list and the U.S. dual-use list can be more quickly and transparently resolved.

Requires the U.S. Government to provide exporters additional information about export controls. The Secretary of Commerce is required to publish more information about: the U.S. control lists, including controlled destinations and control rationales; other key governments' export control systems; and on the lists, rules and actions of the various multilateral regimes.

Helps protect the rights of exporters by subjecting certain export control laws and regulations to greater administrative and judicial review.

Mandates annual review of the achievement of minimized restrictions on the export of information technology products and services to realize the full benefits of U.S. leadership in the development of the global information infrastructure.

With regard to export competitiveness, the committee notes that export control reform is especially imperative for our nation's small- to medium-sized exporters. Generally, they neither have the staff, the legal expertise, nor the time to devote to wading through hundreds of pages of complex regulations governing the export of products destined for benign commercial end-use overseas. In reporting this legislation, it is the desire of the committee that the various government agencies responsible for export controls ensure that the system is made clearer and more understandable for the small business exporter. In this regard, it is the committee's expectation that the licensing time lines contained in the legislation will be strictly adhered to because unnecessary delays in processing an export license for even one export sale may determine the future survivability of a small- or medium-size business.

COMMITTEE ACTION

H.R. 361 was introduced on January 4, 1995, by Representative Toby Roth, Chairman of the Subcommittee on International Economic Policy and Trade. The bill was referred to the Committee on International Relations, and on January 25 was in turn referred to the Subcommittee on International Economic Policy and Trade.

The Subcommittee heard testimony on this bill and on U.S. export controls generally at Hearings on January 25, March 14, June 13, September 6, and November 8, 1995. The Subcommittee also held about ten months of informal discussions on the bill with the Administration.

On March 22, 1996, the Subcommittee on International Economic Policy and Trade met in open session to consider H.R. 361, and for other purposes. The Subcommittee adopted by voice vote a Roth amendment in the nature of a substitute, and adopted by voice vote a Manzullo motion reporting H.R. 361, as amended, to the full Committee.

On March 29, 1996, the Committee on International Relations met in open session to consider H.R. 361, as amended, agreed to several amendments, and by voice vote adopted the Bereuter motion favorably reporting H.R. 361, as amended, to the Committee of the Whole House.

ROLLCALL VOTES AND AMENDMENTS AND FINAL PASSAGE

In compliance with clause (2)(1)(2)(B) of rule XI of the Rules of the House of Representatives, the record of committee rollcall votes taken on final passage or amendments during the committee's consideration of H.R. 361, as amended, is set out below, as is a report of the committee's final action on the bill.

DESCRIPTION OF AMENDMENT, MOTION, ORDER OR OTHER PROPOSITION

By voice vote, the Committee accepted amendments by Chairman Gilman, Subcommittee Chairman Roth, Ranking Subcommittee member Gejdenson, and Congressman Campbell.

By rollcall vote, the Committee accepted a Roth amendment to the terms and conditions under which the Secretary of Commerce shall determine foreign availability.

RECORD OF COMMITTEE VOTES

Name and State	Aye	No	Answer Present	Name and State	Aye	No.	Answer Present
Benjamin A. Gilman, N.Y., Chmn.	X			Lee H. Hamilton, Ind			
William F. Gooding, Pa				Sam Gejdenson, Conn		X	
James A. Leach, Iowa	X			Tom Lantos, Calif		X	
Toby Roth, Wis	X			Robert G. Torricelli, N.J.			
Henry J. Hyde, Ill				Howard L. Berman, Calif		X	
Doug Bereuter, Nebr	X			Gary L. Ackerman, N.Y.		X	
Christopher H. Smith, N.J.	X			Harry Johnston, Fla		X	
Dan Burton, Ind				Eliot L. Engel, N.Y.			
Jan Meyers, Kans	X			Eni F.H. Faleomavaega, Am. Samoa.			
Elton Gallegly, Calif	X			Matthew G. Martinez, Calif		X	
Ileana Ros-Lehtinen, Fla				Donald M. Payne, NJ		X	
Cass Ballenger, N.C	X			Robert E. Andrews, NJ			
Dana Rohrabacher, Calif	X			Robert Menendez,		X	
Donald A. Manzullo, Calif	X			Sherrod Brown, Ohio		X	
Edward R. Royce, Calif	X			Cynthia A. McKinney, Ga		X	
Peter T. King, N.Y.	X			Alcee L. Hastings, Fla		X	
Jay Kim, Calif	X			Albert Russell Wynn, Md		X	
Sam Brownback, Kans	X			James Moran, V.A		X	
David Fundeburk, N.C	X			Victor Frazer, VI			
Steven J. Chabot, Ohio	X			Charlie Rose, NC			
Marshall "Mark" Sanford, S.C	X			Pat Danner, MO		X	
Matt Salmon, Ariz	X						
Amo Houghton, NY		X					
Tom Campbell, CA	X						

The Bereuter motion that the bill be reported to the House with the recommendation that the bill, as amended, do pass, was accepted by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1.—Table of contents

Section 1 establishes a table of contents for purposes of this act.

TITLE I—EXPORT ADMINISTRATION

Section 101.—Short title

Section 101 establishes a short title of the "Export Administration Act of 1996".

Section 102.—Findings

Section 102 contains congressional findings concerning export control policy and its implementation.

Section 103.—Policy statement

Section 103 establishes U.S. policies concerning export controls.

Section 104.—General provisions

Section 104(a) authorizes the Secretary of Commerce to require various kinds of export licenses to include specific licenses and multiple export licenses that encourage and acknowledge exporters' internal control programs.

Section 104(b) requires the Secretary of Commerce, in consultation with the Secretary of Defense and the heads of other relevant

agencies, to establish a Commodity Control Index, which will include the items subject either to “multilateral,” “emergency,” or “short supply” export controls. Each item on the Control Index shall be cross-referenced with the specific countries, and as appropriate, the end users or end uses for which the export of the item is controlled.

Section 104(c) requires the President to ensure that an updated list is published at least semi-annually that identifies those parties denied or debarred export privileges or sanctioned under the Act or under other laws, to include those who are designated by the Secretary of Treasury as blocked persons or as specially designated nationals. The Secretary of Treasury is required to publish in the Federal Register all blocked persons and specially designated nationals promptly upon their designation.

Section 104(d) allows the President, subject to the provisions of this title, to delegate any authority granted to him under this title to officials that are appointed by him with the advice and consent of the Senate. The President may not delegate or transfer his authority to overrule or modify recommendations or decisions made by the Secretaries of Commerce, State, or Defense, or the authority under section 106(a)(4).

Section 104(e) requires the Secretary of Commerce to consult regularly with representatives from the private sector and to keep the public fully apprised of changes in export control policies and procedures.

Section 104(f) requires the Secretary of Commerce to appoint export advisory committees, made up of representatives from industry and government, to provide technical advice and assistance to the Department of Commerce and other appropriate departments regarding export control policy and procedures. It is the committee’s intent that this shall include advisory committee advice and assistance on the administration of the International Emergency Economic Powers Act by the Treasury Department’s Office of Foreign Assets Control. This section, also among other things, authorizes the reimbursement of expenses incurred by members of the committees in connection with their duties.

Section 104(g) establishes an interagency process for identifying and recommending to the Secretary items to be added or removed from the multilateral and emergency control lists and the licensing requirements that should or should not apply to these items. This process includes the right for the Secretary of Defense, Secretary of State, or the Secretary of Energy to appeal a decision to the President under certain conditions and time frames. The subsection also authorizes the Secretary of State to conduct negotiations with other countries relating to multilateral export control arrangements. U.S. proposals to such arrangements shall take into consideration technical information developed by the export advisory committees.

Section 104(h) requires that all export controls implemented under this title support the policies established under section 103.

Section 104(i) allows the Secretary of Commerce, in consultation with the Secretary of State, to impose export controls designed to fulfill obligations under United Nations resolutions or international treaty obligations, notwithstanding any provisions of this title.

Section 104(j) prohibits export license application fees.

Section 105.—Multilateral controls

Section 105(a) authorizes the President to control exports to implement multilateral export control regimes. The authority granted under this subsection may not be exercised to impose unilateral controls, as defined in section 116. The Committee notes that the inclusion of an item on a list of items subject to export controls under a multilateral export control regime should not alone constitute sufficient evidence that a control is not unilateral and thus also should not constitute sufficient evidence that a control is authorized under this section as opposed to section 106. The Committee envisions that there could be instances where the U.S. maintains a control that materially restricts the export of an item and that the control is not similarly imposed in similar circumstances by any other member country, and therefore that such control is unilateral.

Section 105(b) requires the Secretary of Commerce, in consultation with other departments and agencies, to establish and maintain a Multilateral Control List that includes the items controlled under this section.

Section 105(c) requires the President to ensure that steps are taken to increase the degree to which the licensing requirements of other export control regime members are harmonized with our own.

Section 105(d) requires the Secretary of State to seek multilateral arrangements that are intended to secure effective achievement of the policies in Section 103. To this end, the Secretary of State is required to seek a list of specific standards for the arrangements themselves and for the national systems of the members to these arrangements.

Section 105(e) permits, consistent with the rules and guidelines of the individual export control regimes and with the requirements of section 111(a)(1)(C), license-free exports to and among countries that are members of a regime or cooperating with a regime.

Section 105(f) requires the Secretary of Commerce, to the extent not inconsistent with the requirements of a regime, to publish information on the policies of regimes of which the United States is a member within 6 months of the date of enactment of this Act. Within 2 months after joining or organizing a new regime, to the extent not inconsistent with the requirements of the regime, similar information on its policies must also be published. Changes in any information published under this section must be published within 2 months after the applicable regime adopts the changes.

Section 105(g) requires that the Secretary of Commerce, under the policy guidance of the Committee established in section 114(c) and consistent with the procedures in 104(g), review the Multilateral Control List at least every two years to determine whether items, as well as specifications, performance thresholds, or licensing requirements on the items, need to be added, updated, or removed. Controls on information technologies products and services shall be reviewed every year to consider if the policy in section 103(12) is being achieved. A notice of each review must be published in the Federal Register 30 days in advance, and the Sec-

retary is required to: consult the Secretary of Defense concerning militarily critical technologies; consult the appropriate advisory committees; consider whether items can be effectively controlled or not due to widespread domestic availability; consider whether significant competitive disadvantage is being caused; consider the results of determinations made under section 114(k); and, to consider the public comments received.

Section 106—Emergency controls

Section 106(a) authorizes the President to impose unilateral controls provided the President makes certain determinations. The President must determine that: the controls are necessary to further significantly the nonproliferation, national security or foreign policies of the United States; the objective of the controls is in the overall national interest; reasonable alternative means to the controls are not available; the controls are likely to make substantial progress towards achieving a list of intended purposes; the controls are compatible with U.S. objectives and policy toward the target country; the reaction of other countries to the imposition of such controls is not likely to render them ineffective or counter-productive; the benefits of the control exceed the economic costs to the U.S.; and, the controls are enforceable.

Unilateral controls expire 12 months after they are imposed unless they are adopted multilaterally, are incorporated in an embargo, or are extended for one year under the provisions of 106(g).

Section 106(b) requires the Secretary of Commerce to consult with the private sector before unilateral controls are imposed or extended.

Section 106(c) requires the Secretary of State to consult with other countries regarding the controls.

Section 106(d) requires that Congress be consulted before any unilateral controls are imposed. Before a new unilateral control can be imposed, the Secretary of Commerce must submit a report to Congress stating, among other things, that the control criteria set forth in 106(a) have been satisfied.

Section 106(e) requires the Secretary of State, in consultation with the Secretary of Commerce and other appropriate departments and agencies, to pursue multilateral adoption of unilateral U.S. controls on an ongoing basis.

Section 106(f) provides that unilateral controls will cease once similarly restrictive controls are imposed under section 105, or once they are imposed in an embargo against a particular nation or are required to fulfill obligations under U.N. resolutions or international treaties. Once a unilateral control has expired, it normally cannot be reimposed for 6 months.

Section 106(g) provides for the extension of unilateral controls beyond the initial 12 months, and for subsequent annual extensions. The President must submit a report to Congress justifying the extension of a unilateral control 30 days before its extension. In particular, such report shall contain determinations by the President that: the controls are likely to continue to make substantial progress towards achieving specified purposes identical to those purposes identified in subsection (a); that the impact of the controls has been compatible with the foreign policy objectives of the U.S.;

that the reaction of other countries has not rendered the controls ineffective; that the effect of the controls on the export performance of the U.S., the competitive position of the U.S. as a supplier, and the economic well-being of individual U.S. companies and their employees and communities has not exceeded the benefit to the U.S.; and, that the U.S. has enforced the controls effectively. In analyzing economic impact, the Committee expects the President to consider both direct and indirect economic impact, and to include such considerations as the impact of the control on U.S. intellectual property rights.

Section 106(h) provides that this section does not interfere with the President's authority to impose new embargoes under the International Emergency Economic Powers Act or the Trading with the Enemy Act. The subsection also provides that this section does not affect authorities conferred upon the President by these Acts or other provision of law as a result of a national emergency which were being exercised before the date of enactment of this Title.

Section 106(i) prohibits the export of the following items to designated terrorist countries: items controlled pursuant to the Missile Technology Control Regime, the Australia Group, the Wassenaar Arrangement, section 309(c) of the Nuclear Non-Proliferation Act of 1978; other items controlled under section 105; and, items which could make a significant contribution to military logistics capabilities or that could enhance the ability of a country to support acts of terrorism. An exception is granted for food, medicine, and medical supplies, and the President may waive these prohibitions if he determines that doing so is essential to national security interests and so notifies the Congress. Licenses granted have to be notified to the Congress. The Secretary of State is required to seek support for these U.S. export prohibitions by other countries and by the multilateral export control regimes.

Section 106(j) requires licenses for crime control and detection instruments to all countries except members of NATO, Japan, Australia, New Zealand, or other countries designated by the President. The Secretary of State must concur with the Secretary of Commerce regarding items controlled and licenses approved under this section.

Section 106(k) allows the President to determine whether replacement parts will be subject to the controls imposed under section 106.

Section 106(l) exempts transactions subject to the reporting requirements of title V of the National Security Act from the prohibitions contained in section 106.

Section 107.—Short supply controls

Section 107(a) authorizes the President to control exports in order to protect the domestic economy from the drain of short supplies and the inflationary impact of foreign demand, taking into consideration the trade practices of other countries. The Secretary of Commerce must solicit public comments on any such controls. The President is authorized to impose export license fees for short supply items.

Section 107(b) requires the Secretary of Commerce to monitor certain exports to carry out the provisions of this section and to re-

port his findings weekly or monthly if appropriate. The Secretary of Commerce must consult with the Secretary of Energy concerning the fuel- and energy-related items that warrant monitoring.

Section 107(c) allows entities that are representative of an industry that processes metallic materials to petition the Secretary of Commerce to monitor or control any such materials. The Secretary of Commerce must publish notices of petitions within 15 days, requesting public input within 30 days. The Secretary of Commerce must make a determination regarding a petition within 45 days of the end of the period for public input, taking into account an increase in exports, an increase in domestic price, the impact of exports on price and shortages, and the impact on the domestic economy. The Secretary of Commerce must publish his determination and any regulations implementing the determination. The Secretary of Commerce may consolidate similar petitions. Temporary controls can be imposed under this subsection only if necessary to protect the petitioning entity from irreparable harm and to protect the domestic economy from the drain of short supplies and the inflationary impact of foreign demand.

Section 107(d) requires the approval of the Secretary of Agriculture for any controls imposed on agricultural commodities under this section. This section allows agricultural products to be stored in the United States for export notwithstanding subsequent imposition of controls under this section. Controls on agricultural commodities imposed under this section and section 106 must be reported to the Congress, and shall expire in 60 days unless the Congress enacts a joint resolution approving the controls. Such controls shall not extend for more than one year.

Section 107(e) authorizes the Secretary of Commerce to grant an exception to the restriction on agricultural export controls for barter agreements entered into after September 30, 1979, based on the reliability of the parties and the impact of the barter agreement on short supply.

Section 107(f) continues sanctity for contracts to harvest western red cedar from state lands entered into before October 1, 1979. This section also grants contract sanctity for agricultural exports.

Section 107(g) stipulates that the export limitations of this Title will not apply to the transfer of crude oil or refined petroleum products for use by the Department of Defense or U.S.-supported facilities abroad.

Section 108.—Foreign boycotts

Section 108 is intended to recodify Section 8 of the expired Export Administration Act of 1979.

Section 108(a) prohibits any U.S. person from compliance with a foreign boycott against a country friendly to the United States. Compliance with a foreign boycott that is prohibited is: refusing to do business with a boycotted country, its nationals, residents, businesses, or with any other person, at the request of a boycotting country; discriminating against any U.S. person; furnishing information about the race, religion, sex, or national origin of any U.S. person; furnishing information concerning whether a person is conducting business with a boycotted country, or its nationals, residents, or businesses; furnishing information about charitable con-

tributions to any organization which supports a boycotted country; or honoring a letter of credit that contains conditions relating to such a boycott.

Activities permitted under this section are compliance with: prohibitions on the import of commodities from a boycotted country or prohibitions on shipments to a boycotting country on a carrier of a boycotted country; requirements to provide shipping documents; a boycotting country's unilateral and specific choice of carriers, insurers, and suppliers when importing into a boycotting country; the export requirements of a boycotting country regarding shipments; immigration requirements within a boycotting country; and, a boycotting country's laws governing activities exclusively within the country.

Section 108(b) requires that regulations issued to implement section 106 support the anti-boycott policy. U.S. persons are required to notify the Secretary of Commerce when they are requested to comply with a foreign boycott. The Secretary of Commerce must publish such reports, unless publishing information on the pertinent items would disadvantage the U.S. person, and must periodically provide summaries of such reports to the Secretary of State.

Section 108(c) provides that section 108 and related regulations preempt any state or District of Columbia laws pertaining, as listed, to foreign boycotts.

Section 109.—Procedures for processing export license applications; other inquiries

Section 109(a) gives the Secretary the primary responsibility to make export license application determinations, and establishes certain rules on procedures, calculation of processing times, and the reliability of parties. It also stipulates that, subject to the provisions of this section: if interagency referral of an application is not required, within 9 days of receipt the Secretary shall either issue a license or notify the applicant of the intent to deny; and, if interagency referral of the application is required, the Secretary shall, within 30 days of referral issue a license, notify the applicant of the intent to deny the application, or ensure that the application is subject to the interagency resolution process set forth in 109(d).

Section 109(b) requires the Secretary to promptly: return the application if a license is not required; contact the applicant if an application is improperly completed; ensure that the classification stated on the application is correct; and, refer the application and all necessary recommendations and analysis to the Department of Defense and other agencies identified by the President, except that these departments and agencies are to notify the Secretary as to the specific types of applications that they do not wish to review.

Section 109(c) requires reviewing agencies to promptly request additional information, if needed, and to provide a recommendation, either to approve or deny, within 30 days of receipt of a referral. Recommendations to deny or to impose conditions must include a statement of reasons consistent with the Act and cite the specific statutory and regulatory bases for the recommendation. Failure to provide a timely and reasoned recommendation is deemed "no objection" to the application.

Section 109(d) establishes procedures for resolving interagency disputes. Under paragraph (1), the Secretary shall establish an interagency committee, and select its chairman, to review initially all license applications on which the departments and agencies are not in agreement. The Chairperson of such committee shall consider the interagency recommendations and inform them of his decision, which may include a decision that the particular application requires interagency escalation. An application may also be escalated interagency if the Chairperson's decision is appealed in writing by an official of another department or agency who is appointed by and with the advice and consent of the Senate.

Under paragraph (2), the President is required to establish a process for resolving disagreements escalated from the interagency committee established under paragraph (1). Such process shall: be chaired by the Secretary of Commerce or a designee; ensure that applications are resolved or referred to the President within 90 days of initial filing; provide a dissenting department or agency an ability to appeal to the President; and, provide that a department or agency failing to take a timely position, citing the specific statutory and regulatory bases for a denial, be deemed to have no objection to the pending decision.

Section 109(e) requires the Secretary, in cases where the Secretary has determined that the application should be denied, to inform the applicant of: the determination to deny; the statutory and regulatory basis for denial; possible modifications to allow approval; specific considerations, as permitted by national security and foreign policy, that led to denial; and the availability of appeal procedures. Applicants have 20 days to respond to an intent to deny notification.

Section 109(f) requires that the time periods related to processing an application shall not include delays agreed to by the applicant, the time for pre-license checks, the time to obtain government-to-government assurances, the time for required multilateral review or international consultations, or the time required for mandatory Congressional notifications.

Section 109(g) requires the Secretary to establish procedures for appeals of license denials and other administrative action. If action on an application is not taken within the specified times, the applicant may petition the Secretary for compliance with the time requirements. The Secretary shall immediately take action to correct the situation and notify the applicant. Under specified circumstances, the applicant may seek judicial relief.

Section 109(h) requires the Secretary to provide commodity classifications within 14 days, and advisory opinions within 30 days, of receipt of such requests.

Section 110.—Violations

Section 110(a) imposes criminal penalties of not more than the greater of \$500,000 or 5 times the value of the exports involved, or imprisonment for not more than 10 years, or both, against an individual who knowingly violates this title or any regulation, license, or order issued under this title. The penalties for entities are not more than the greater of \$1 million or 10 times the value of the

exports involved. These penalties do not apply to antiboycott violations.

The maximum criminal penalty for antiboycott violations by individuals is not more than the greater of five times the value of the exports or \$250,000 per violation and/or imprisonment for up to 10 years. The maximum criminal penalty for antiboycott violations by entities is the greater of five times the value of the exports or \$500,000 per violation.

Section 110(b) further subjects violators to forfeiture of the items that were the subject of the violations, property used in the export of the items, and any property constituting or derived from any proceeds from the illegal transaction.

Section 110(c) imposes civil penalties of not more than \$250,000 for each violation of this title, except for violations of section 108, which may not exceed \$50,000. This section also authorizes the Secretary of Commerce to deny export privileges to individuals who have violated this title.

Section 110(d) authorizes the Secretary of Commerce to require the payment of civil penalties as a condition for the restoration of export privileges, or to defer or suspend the payment of the civil penalties for a probationary period.

Section 110(e) requires that amounts realized from civil penalties be deposited as miscellaneous receipts in the Treasury. The amounts realized from civil penalties may be refunded within 2 years based on a material error of fact or law. No action for such refund may be maintained in court.

Section 110(f) authorizes the Secretary of Commerce to deny export privileges for up to 10 years to any person convicted of violating this title or related acts, including revoking existing licenses. The Secretary may also exercise this authority with respect to related persons.

Section 110(g) sets the statute of limitations for civil penalties or administrative sanctions at 5 years.

Section 110(h) authorizes the Secretary of Commerce to define violations by regulation.

Section 110(i) provides that sections 110 (c), (d), (e), (f), and (g) do not limit other available remedies, the authority to settle administrative proceedings, or the authority to compromise forfeitures.

Section 110(j) provides for private rights of action by persons discriminated against by a foreign boycott-related action, or by persons who, on account of a violation of regulations issued pursuant to section 108, suffer a commercial loss. Such persons may sue U.S. persons committing the violation in the appropriate U.S. district court to recover actual damages. Punitive damages are also permitted. An action may be brought regardless of whether or not the defendant has been determined under this section to have violated the regulations issued pursuant to section 108. This section also sets the rule for the payment of the substantially prevailing parties' attorneys' fees.

Section 111.—Controlling proliferation activity

Section 111(a) provides for the establishment of strict proliferation controls. For missile technology, the Secretary shall, in consultation with the Secretary of Defense and the heads of other ap-

appropriate departments and agencies, include on the Control Index dual-use items on the MTCR Annex and may include items that the U.S. proposes for inclusion on the MTCR Annex. Consistent with the MTCR, the Secretary shall require a license for export of items on the Control Index pursuant to this subsection, and for any item when the exporter knows it is for the design, development or manufacture of missiles in countries that are not MTCR adherents. Such licenses shall generally be denied if the ultimate consignee is a facility in a country that is not an adherent to the MTCR and the facility is designed to develop or build missiles.

For chemical and biological weapons, the Secretary shall, in consultation with the Secretary of Defense and other appropriate departments, include on the Control Index dual-use items listed by the Australia Group or the Chemical Weapons Convention, and may include items the U.S. proposes for inclusion on the Australia Group control list. Consistent with the Australia Group, the Secretary shall require a license for any items on the Control Index pursuant to this subsection, and for any item when the exporter knows it is for the design, development or manufacture of a chemical or biological weapon.

Section 111(b) makes technical amendments to the AECA.

Section 111(c) prohibits the export of any item, whether on a control list or not, to a weapon of mass destruction or missile program or activity in a country that is not a member of, or is not cooperating with, a non-proliferation export control regime, unless the Secretary determines that such export would not make a material contribution to such program or activity.

Section 111(d) recodifies the chemical and biological weapons sanctions that had existed under section 11(c) of the Export Administration Act of 1979, as amended.

Section 111(e) recodifies the missile proliferation control sanctions that had existed under section 11(b) of the Export Administration Act of 1979, as amended.

Section 111(f) provides that the provisions of this section do not affect activities subject to the reporting requirements of Title 5 of the National Security Act.

Section 111(g) requires that the Secretary of State seek other countries support for sanctions imposed under this section.

Section 112.—Administrative and judicial review

Section 112(a) exempts this title from administrative review under specified sections of Title 5 of the U.S.C., unless otherwise provided. This section does, however, provide for judicial review of a final agency action as specified.

Section 112(b) provides for administrative review before imposition of civil penalties and sanctions imposed under section 110(c).

Section 112(c) authorizes the Secretary of Commerce to request the Attorney General to bring a civil action against persons failing to pay civil penalties to recover the amounts imposed for violation of this title.

Section 112(d) authorizes the Secretary of Commerce to deny for 180 days export privileges if there is reasonable cause to believe that such person has violated or is about to violate this title or any regulation, order or license issued under this title or if there is a

criminal indictment pending against the person in question for violating this title or statutes listed in section 110(f). The order may be renewed for additional 180 day periods after notice and a hearing. The order may be appealed to an administrative law judge, and must be affirmed if there is reasonable cause for imposing the order or there is a criminal indictment pending against the person in question for violating this title or statutes listed in section 110(f). The administrative decision may be appealed to the Secretary of Commerce, whose decision is subject to judicial review only on the same basis as the administrative appeal. The court may vacate the Secretary's order only if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise illegal.

Section 113.—Enforcement

Section 113(a) places the responsibility for providing guidance on the enforcement of this title with the Secretary of Commerce and authorizes designated officers or employees of the Department of Commerce and the Customs Service to carry out enforcement activities. The Customs Service may investigate within or outside the U.S. and at specified ports of entry or exit, and may search, detain, and seize commodities or technologies at ports of entry or exit as authorized by law or international agreements. The Department of Commerce may carry out the same activities within the United States, other than at ports and borders, or elsewhere with the concurrence of the Customs Service. Outside the United States, the Department of Commerce may conduct pre-license and post-shipment verifications and foreign boycott investigations. Any designated personnel may inspect records and property, take sworn testimony, and administer oaths and subpoenas. Pursuant to guidelines issued by the Attorney General, any Customs Officer or anyone from the Office of Export Enforcement of the Department of Commerce (OEE) may be authorized to execute warrants, make arrests, and carry firearms. In addition, Customs officials may, based on reasonable cause, stop, search, and examine vehicles, aircraft, or persons, and detain and search packages or containers. Customs officials may also detain and search items that such officials have probable cause to believe has or will be exported from the U.S. in violation of this Title.

Section 113(b) subjects the items seized under section 113(a) to forfeiture to the U.S. by the Department of Commerce or the U.S. Customs Service, subject to applicable laws.

Section 113(c) requires that all violations be referred to the Secretary of Commerce for civil penalties and administrative sanctions, and/or to the Attorney General for criminal action.

Section 113(d) authorizes the OEE, in the conduct of undercover investigations, to use funds available for export enforcement under this title to purchase property, lease space, establish or acquire businesses, or deposit such funds or the proceeds from undercover investigations in banks or other financial institutions. If such businesses with a net value of over \$50,000 are to be liquidated, the Director of the OEE must report the circumstances to the Secretary of Commerce and the Comptroller General. The proceeds of any disposition after obligations incurred by the business must be deposited as miscellaneous receipts to the Treasury. Proceeds from

investigations may be used to offset the cost of such investigations. The Director of the OEE will audit and report on such undercover operations, and the Secretary of Commerce must report annually to Congress the number of undercover operations pending, commenced, and completed.

Section 113(e) provides that enforcement of this title includes cover the enforcement of all regulations, licenses, and orders issued under this title.

Section 114.—Export control authorities and procedures

Section 114(a) requires that, at the President's direction, annual policy guidance be issued on the implementation of this title by export licensing officials. To develop this annual policy guidance, all export controls and regulations established pursuant to this title must be reviewed annually. This annual review must include an assessment of the costs and benefits of the imposition, extension, and removal of controls, including estimates of any lost or gained exports or jobs; the extent to which control objectives have been attained; and the impact on U.S. national security.

Section 114(b) provides that the authorities conferred by this title be exercised by the Secretary of Commerce, unless otherwise reserved to the President or another department or agency, and may be delegated to the Under Secretary of Commerce for Export Administration.

Section 114(c) creates an Export Control Policy Committee, comprised of the cabinet officials of the relevant agencies or their deputies, and chaired by the President's designee.

Section 114(d) authorizes the President to appoint an Under Secretary of Commerce for Export Administration and two Assistant Secretaries of Commerce who, at the time of the enactment of this title may be those individuals who have been appointed under the Export Administration Act of 1979.

Section 114(e) authorizes the President and the Secretary of Commerce to issue regulations to implement this title and requires that such regulations be submitted to appropriate departments, agencies, and Export Advisory Committees for review.

Section 114(f) requires the Secretary of Commerce to consult with the Export Advisory Committees on creating or changing the regulations to implement this title and to report any amendments to the regulations to the Congress.

Section 114(g) requires that confidential information, including Shipper's Export Declarations and such information as requested to be confidential by the person furnishing it, obtained under the Export Administration Act of 1979 and its predecessor statutes on or before June 30, 1980, be kept confidential. Information obtained under that act or this title after that date may be kept confidential only if statutes permit, except that information submitted, obtained, or considered in connection with license applications, classification and other related requests, foreign availability studies, investigations, and international treaties must not be disclosed to the public unless the Secretary of Commerce determines disclosure is in the national interest.

Section 114(g) also entitles any committee of appropriate jurisdiction in the Congress and the GAO to review confidential informa-

tion related to this title upon request. To protect listed sources, methods, and activities, however, only the agency that originally obtained such information may make it available to the GAO. The GAO must not disclose such information except to Congress, and Congress must not disclose such information unless a full committee of appropriate jurisdiction receiving such information determines that withholding such information is contrary to the national interest. Unauthorized disclosure is subject to fines, imprisonment, civil penalties, and dismissal.

Section 114(h) authorizes the Secretary of Commerce to cooperate with public agencies and other entities to educate the public on export controls. The Secretary of Commerce is also authorized to collect funds to recover the cost of such programs, and use those funds to cover the cost of the specified activities.

Section 114(i) authorizes the Secretary of Commerce to participate in and provide export control training for officials of other countries.

Section 114(j) sets out certain parameters for controlling incorporated commodities and technologies. It states that licenses may not be required, except in certain very limited circumstances, for the export of a commodity solely because it contains parts or components (to include chemicals) controlled under this title, if such parts or components are essential to the item's functioning, are customarily included in sales of the item in non-controlled countries, and comprise 25 percent or less of the total value of the item, unless the commodity itself, if exported, would, by virtue of its functional characteristics as a whole, make a significant contribution to the military or proliferation potential of a controlled country or end-user detrimental to U.S. national security.

Section 114(j) further states that no authority or permission may be required under sections 105 or 106, except in certain very limited circumstances, to reexport foreign-produced commodities if less than 25 percent of their total value is accounted for by components controlled by the U.S., or 10 percent if the reexport is destined for a terrorist or embargoed country. In addition, no authority or permission may be required under section 105 or 106, except in the same very limited circumstances, to reexport foreign-produced technology that is commingled with or drawn from U.S. technology if the controlled U.S. technology accounts for less than 25 percent of the total value of the reexported technology, or 10 percent if the reexport is destined for a terrorist or embargoed country.

This section also permits the Secretary to require persons to report to the Department of Commerce their proposed calculations and underlying data in certain circumstances, an authority that the Committee expects will be used only in extraordinary situations.

Section 114(k) establishes the policy—and requisite procedures to carry out the policy—that no U.S. exporter should be affected unfairly by export control policies or practices, unless relief from such controls would create a significant risk to the foreign policy, non-proliferation, or national security interests of the United States. An exporter may petition, or the Secretary may conduct an evaluation on his or her own initiative, for relief from unfair impact.

Relief shall be provided under 114(k), consistent with multilateral arrangements, by providing a change in the control status of the item in question, selectively approving exports, or by seeking multilateral support to eliminate the unfair impact. This provision shall not require the decontrol of an item that remains subject to control by a multilateral regime to which the U.S. belongs. Both the Secretary and the President may decide not to provide relief if it would create a significant risk to U.S. nonproliferation, foreign policy, or national security interests. Detailed procedures and time lines for considering petitions for relief are established, though certain terms and conditions are to be established by the Secretary of Commerce, with the concurrence of the Secretary of Defense. This is true in particular with regard to what grounds for relief may be used besides foreign availability, and with regard to some of the terms and conditions for deciding foreign availability.

Section 114(l) creates an exemption from export controls for medical supplies and items for humanitarian purposes.

Section 114(m) grants sanctity to contracts that are effective and licenses that are granted prior to the imposition of new controls under section 106. Exceptions are permitted if the President determines that an approved or contracted export could pose a direct threat to U.S. national security.

Section 114(n) requires the Secretary of Commerce to publish in the Federal Register information on actions taken under this title, including calculations of commonly-used control index parameters and revisions to the control lists.

Section 114(o) requires the Secretary of Commerce to keep the public fully apprised of changes in export control policy and to consult with the export advisory committees concerning any changes.

Section 114(p) requires the appointment of at least one Department of Commerce representative in China with duties related to implementation of export controls under this title. Such attaches must conduct pre-license and post-shipment verifications and monitor end uses. Section 114(p) also requires the Secretary to ensure that appropriate resources and procedures are made available to ensure that sensitive items are not diverted to inappropriate end uses or end users in China, to include appropriate coordination with U.S. officials in Hong Kong. Such sums as may be necessary are authorized to be appropriated for these purposes. The Committee notes recent evidence, including a GAO report in 1995 and recent information concerning the possible diversion of at least one U.S. export, that greater efforts are required to protect against U.S. exports being diverted to improper uses in China.

Section 114(q) requires that licenses granted under this title cover the minimum technical data necessary to install, repair, maintain, inspect, and operate the licensed items.

Section 114(r) allows for one-for-one replacement of spare parts associated with a lawfully exported item to be exported without a separate license.

Section 115.—Annual report

Section 115(a) requires the Secretary of Commerce to submit an annual report to Congress on the administration of this title and specifies the topics that must be reviewed in the annual report.

Section 115(b) requires that an analysis be included in the annual report regarding significant differences between the export controls of the United States and our major trading partners, particularly as these differences relate to the implementation of multilateral export control regimes. The report must include a listing of U.S. unilateral controls and sanctions and their estimated economic impact.

Section 115(c) requires the GAO to analyze the annual section 115(b) report and to provide its own views within 90 days.

Section 116.—Definitions

Section 116 provides definitions of certain terms for purposes of this act, including affiliate, adherent, Australia Group, Chemical Weapons Convention, commodity, control/controlled, control index, export, export control regime, foreign availability, item, licensing requirement, member, missile, Missile Technology Control Regime, MTCR annex, nuclear explosive device, Nuclear Supplier Group, person, reexport, Secretary, technology, unilateral and unilaterally, United States, United States person, Wassenaar Arrangement, and weapons of mass destruction.

Section 117.—Effects on other acts

Section 117(a) requires that no item may be included on both the control index of this Title and the State Department's munitions list after the effective date of this act. To resolve interagency disputes over commodity jurisdiction and classification, the President is to establish procedures which satisfy a specified list of requirements. These requirements include that disputes shall normally be resolved within 60 days, and that disputes needing escalation to the President shall normally be referred to the President within 90 days. The Committee notes that in the last two Congresses the Committee had believed it necessary to include far more detailed provisions concerning commodity jurisdiction, to include provisions dealing exclusively with specific sectoral problems. This more detailed language has been omitted in this bill due in part to recent progress made by the Administration. The Committee especially supports the recent decisions by the President to transfer certain dual-use communications satellites and jet engine technologies to the Commerce Department's control. Regarding these items, the Committee notes that to be consistent with this subsection, exporters shall be subject only to the licensing requirements of this title for any items transferred.

Section 117(a) also specifies that the authority granted under this title and under section 38 of the Arms Export Control Act (22 U.S.C. 2778) must be exercised in such a manner as to share information regarding the trustworthiness of parties.

Section 117(b) provides that, except as otherwise provided in this title, nothing in the title supersedes the provisions of any other laws authorizing controls over exports of any commodities or technology.

Section 117(c) specifies that the licensing procedures of section 109 shall supersede the licensing procedures of the Nuclear Non-Proliferation Act (NNPA) for nuclear-related dual-use items.

Section 117(d) amends the International Emergency Economic Powers Act (IEEPA) to require that the Presidential reports to Congress identify unilateral controls under IEEPA, and in those cases explain why the control is needed, what is being done to make the controls multilateral, and the estimated U.S. economic losses. In addition, section 117(g) amends IEEPA to include the same confidentiality provision contained in section 114(g). This section also amends IEEPA to provide that criminal and civil penalties may be imposed against a person who attempts to violate a license, order, or regulations issued under IEEPA.

Section 117(e) amends the Trading With the Enemy Act (TWEA) to provide that criminal and civil penalties may be imposed against a person who attempts to violate a license, order, or regulations issued under the TWEA.

Section 117(f) requires the Secretaries of Treasury and State to report to Congress, within 6 months of enactment, on ways to make the operations of Treasury's Office of Foreign Assets Control and State's Office of Defense Trade Controls more effective and efficient in responding to licensing and other requests of U.S. exporters.

Section 118.—Secondary Arab boycott

Section 118(a) expresses the sense of Congress that Arab League countries should end the secondary Arab boycott. It also establishes the conditions under which the United States will consider the secondary Arab boycott to have ended.

Section 118(b) defines the secondary Arab boycott.

Section 119.—Conforming amendments to other laws

Section 119(a) makes technical corrections that conform the Arms Export Control Act necessitated by this title.

Section 119(b) makes technical corrections to other provisions of law.

Section 119(c) repeals the Export Administration Act of 1979.

Section 120.—Effective date

Section 120 provides that this title will expire on June 30, 2001.

Section 121.—Savings provisions

Section 122(a) preserves administrative actions that were based on the Export Control Act of 1949, the Export Administration Act of 1969, Export Administration Act of 1979, or repealed provisions of the Arms Export Control Act and Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

Section 122(b) preserves pending proceedings or determinations under the Export Administration Act of 1979, or repealed provisions of the Arms Export Control Act and Biological Weapons Control and Warfare Elimination Act of 1991.

Section 122(c) preserves determinations made under section 6(j) of the Export Administration Act of 1979 until superseded by determinations made under section 106(i) of this Title.

TITLE II—NUCLEAR PROLIFERATION PREVENTION ACT

Section 201.—Repeal of termination of provisions of the Nuclear Proliferation Prevention Act of 1994

Section 201 makes permanent the Nuclear Proliferation Prevention Act, makes two minor amendments to that Act, and repeals the judicial review provision in Section 824 of that Act.

Section 202.—Seeking multilateral support for unilateral sanctions

Section 202 requires the Secretary of State to seek overseas support for sanctions imposed under this title.

Section 203.—Sanctions under Nuclear Proliferation Prevention Act of 1994

Section 203 amends the Arms Export Control Act (AECA) by adding a new sanction under which the President would be required to prohibit the importation into the United States of specific products produced by persons who have engaged in the proliferation of nuclear weapons, as defined by Section 102(b)(1) of the AECA. By adding this new provision, the Committee intends to make the threat of sanctions more effective by targeting the sanction to maximize its impact on the offending party or parties and to minimize its impact on the U.S. trading community. The sanction has been written so as not to so limit its scope that it would have a negligible impact on the parties engaged in the violation, nor so broadly that it would dilute the impact on these parties and adversely affect the interests of the United States. The President has been granted the flexibility to impose this new sanction in a manner that best advances the goal of non-proliferation.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Among the principal oversight activities which contributed to the Committee's formulation of H.R. 361 were: Extensive hearings and briefings on the current export control system, the various international export control regimes, and issues pertinent to exports regulated under this bill by the Committee and by the Subcommittee on International Economic Policy and Trade; and ongoing consultations between the Committee Members and staff and executive branch officials.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The Committee adopts the cost estimate of the Congressional Budget Office, set out below, as its submission of any required information on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt required by clause 2(1)(3)(B) of rule XI of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 361 will have no significant inflationary impact on prices and costs in the operation of the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 423 of Public Law 104-4, the Committee sets forth with respect to H.R. 361 the following estimates and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Budget Act of 1974 and section 424 of Public Law 104-4:

Bill number: H.R. 361.

Bill title: Omnibus Export Administration Act of 1996.

Bill status: As ordered reported by the House Committee on International Relations on March 29, 1996.

Bill purpose: H.R. 361 would replace the expired Export Administration Act (EEA), thereby updating the system of export controls for dual-use technologies and commodities. Since expiration of the EEA in 1994, the President has extended export controls pursuant to his authority under the International Emergency Economic Powers Act. The Bureau of Export Administration (BXA) in the Department of Commerce currently administers the system of export controls.

Title I of H.R. 361 would require the Secretary of Commerce to establish a Commodity Control Index of all items subject to unilateral, multilateral, or short supply export controls. The title would establish procedures for including items on the control index and would provide for an export advisory committee to provide technical assistance to the BXA. The BXA also would be required to publish specific information concerning export controls, and to prepare an annual report to Congress on the status of export controls.

Title I also would establish procedures for export license applications and would require the BXA to make decisions on such applications within nine days of when the application is submitted. The BXA would be required to consult with various agencies when issuing export licenses for certain commodities. Finally, this title would enable BXA to carry out enforcement activities and would increase the fines and penalties for violations of export controls.

Title II would repeal the expiration date of the Nuclear Proliferation Prevention Act of 1994 (Public Law 103-236), thereby extending the law indefinitely. Title II also would require the Secretary of State to seek overseas support for sanctions imposed under this act.

5. Estimated Cost to the Federal Government: The following table summarizes the budgetary impact of H.R. 361. Because the bill does not provide a specific authorization, the table shows two alternative authorization levels for fiscal years 1997–2000—without adjustment for anticipated inflation, and with adjustment for inflation. Outlay estimates are based on historical spending rates for this program and assume that appropriations will be provided before the start of each fiscal year.

Assuming an adjustment for inflation, CBO estimates that discretionary spending to carry out the provisions of this bill would total \$170 million over the 1997–2000 period. H.R. 361 also would affect direct spending and receipts, but all such changes would be less than \$500,000 for each year.

(By fiscal years, in millions of dollars)

	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS					
Spending under current law:					
Budget authority	39				
Estimated outlays	38	6	2		
Without Adjustment for Inflation					
Proposed changes:					
Estimated authorization level		41	41	41	41
Estimated outlays		35	39	41	41
Spending under H.R. 361:					
Estimated authorization level ¹	39	41	41	41	41
Estimated outlays	38	41	41	41	41
With Adjustment for Inflation					
Proposed Changes:					
Estimated authorization level		42	44	45	47
Estimated outlays		36	42	45	47
Spending under H.R. 361:					
Estimated authorization level ¹	39	42	44	45	47
Estimated outlays	38	42	44	45	47
REVENUES AND DIRECT SPENDING					
Estimated revenues	(2)	(2)	(2)	(2)	(2)
Estimated Budget Authority		(2)	(2)	(2)	(2)
Estimated outlays		(2)	(2)	(2)	(2)

¹The 1996 level is the amount appropriated for the year.

²Less than \$500,000.

The costs of this bill fall primarily within budget function 370.

6. Basis of Estimate: For purposes of this estimate, CBO assumes that the bill is enacted by the end of fiscal year 1996, that amounts of the estimated authorization levels are appropriated prior to the start of each fiscal year, and that outlays follow historical spending rates for BXA programs.

Spending subject to appropriations

In the absence of a specific authorization of appropriations for BXA to carry out the provisions of this bill, CBO has estimated the amounts necessary to implement H.R. 361. We based our estimate on the amount of money that BXA currently uses to administer export controls plus the amount needed to administer any new tasks required by H.R. 361.

For 1996, appropriations to date (annualized) are about \$39 million, of which an estimated \$37 million will be used to administer export controls. Based on information from BXA, CBO estimates that BXA would require an additional \$2 million a year to carry out the tasks required by H.R. 361 that are not being done under current law. These amounts would be spent primarily to support at least one export officer in Beijing, China and to comply with the expanded reporting requirements of the bill. Therefore, CBO estimates that implementation of H.R. 361 would result in total costs to the BXA of about \$41 million in fiscal year 1997 and subsequent years, assuming no adjustment for inflation. Costs adjusted for inflation would be higher in each year.

H.R. 361 would require the BXA to consult with various agencies when issuing licenses for certain commodities. These agencies already provide information to BXA under current law and executive order and, hence, the additional cost to the government of implementing these provisions of the bill would not be significant. The bill also would require the Secretary of State to seek international support for sanctions imposed under the bill and would require the Department of Defense to assess the impact of export controls on national security. Based on information from these agencies, CBO estimates that the additional cost to the federal government of implementing these provisions of the bill would not be significant.

Revenues and direct spending

Section 110 of the bill would increase the maximum civil and criminal penalties for violations of export control regulations and statutes. CBO expects that receipts would increase as a result of the penalty changes, but that the increase would be less than \$500,000 annually because the maximum penalties are rarely assessed, even under current law. Payments of criminal fines are deposited in the Crime Victims Fund and are spent without the need for appropriations action, in the following year.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. H.R. 361 would increase fines and penalties for violations of export controls. Any increase in fine collections and civil penalties would be classified as a change in governmental receipts and would count for pay-as-you-go scoring. CBO estimates that the increase in fine collections would not be significant. Criminals fines would be deposited in the Crime Victims Fund and spent in the following year. The increase in direct spending would be the same as the amount of fines collected with a one-year lag. Therefore, additional direct spending would also be negligible. The following table summarizes the pay-as-you-go impact of this bill.

(By fiscal years, in millions of dollars)

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	0	0	0

8. Estimated impact on State, local, and tribal governments: Section 4 Public Law 104-4 excludes from application of the act legis-

lative provisions that are necessary for the national security. CBO has determined that all provisions of H.R. 361 either fit within this exclusion or codify existing federal requirements, and thus do not constitute new intergovernmental mandates.

9. Estimated impact on the private sector: CBO has determined that all provisions of H.R. 361 either fit within the national security exclusion of Public Law 104-4 or codifying existing federal requirements, and thus do not constitute new private sector mandates.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate—Rachel Forward, Sunita D'Monte, Stephanie Weiner; State and Local Government Impact—Pepper Santalucia; Private Sector Impact—Amy Downs.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

JURISDICTIONAL ISSUES

H.R. 361, as reported by the Committee on International Relations, contains several provisions which fall within the shared jurisdiction of other committees of the House, including the Committee on National Security and the Committee on Ways and Means. As concerns the jurisdiction of the Committee on National Security, Chairman Spence has supplied the following letter:

COMMITTEE ON NATIONAL SECURITY,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 15, 1996.

Hon. BENJAMIN A. GILMAN,
*Chairman, Committee on International Relations,
House of Representatives, Washington, DC.*

DEAR BEN: I understand the Committee on International Relations has recently ordered reported H.R. 361, the Omnibus Export Administration Act of 1996. The bill includes a number of provisions that fall within the legislative jurisdiction of the Committee on National Security pursuant to House Rule X.

As you know, H.R. 361 as reported resulted from extensive discussions between our two committees in an effort to address the historical concerns the House National Security Committee has had in this area. In this regard, I want to express my sincere appreciation to you and Chairman Roth for the cooperative and productive manner in which those discussions were held.

In recognition of your committee's desire to bring this legislation expeditiously before the House of Representatives, the Committee on National Security will forego a request for sequential referral of the bill, without, of course, waiving or diminishing this committee's jurisdiction over the issues with which it is concerned. Of course, this committee will seek the appointment of conferees with respect to provisions within its legislative jurisdiction during any conference on the bill. I also request that this letter be printed in your committee's report on this legislation.

Thank you for your assistance and prompt attention to this matter, and I look forward to supporting H.R. 361 on the House floor.

With warm personal regards, I am
Sincerely,

FLOYD D. SPENCE,
Chairman.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ARMS EXPORT CONTROL ACT

* * * * *

Chapter 3.—MILITARY EXPORT CONTROLS

* * * * *

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) * * *

* * * * *

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by [subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act] *subsections (b), (c), (d) and (e) of section 110 of the Export Administration Act of 1996, by subsections (a) and (b) of section 113 of such Act, and by section 114(g) of such Act*, subject to the same terms and conditions as are applicable to such powers under such Act. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section [11(c) of the Export Administration Act of 1979] *110(c) of the Export Administration Act of 1996*, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed \$500,000.

* * * * *

(g)(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

[(ii) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410),]

(ii) *section 110 of the Export Administration Act of 1996,*

* * * * *

SEC. 39A. PROHIBITION ON INCENTIVE PAYMENTS.

(a) * * *

* * * * *

(c) In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections [(c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 and section 12(a) of such Act] (c), (d), and (e) of section 110, section 112(c), and subsections (a) and (b) of section 113, of the Export Administration Act of 1996, subject to the same terms and conditions as are applicable to such powers under that Act, except that notwithstanding section [11(c)] 110(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

* * * * *

SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) * * *

* * * * *

(k) CIVIL PENALTIES; ENFORCEMENT.—In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections [11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979] 110(b), 110(c), 110(e), 113(a), and 113(b) of the Export Administration Act of 1996 (subject to the same terms and conditions as are applicable to such powers under that Act), except that, notwithstanding section [11(c)] 110(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

* * * * *

CHAPTER 7—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY**SEC. 71. LICENSING.—**

(a) ESTABLISHMENT OF LIST OF CONTROLLED ITEMS.—The Secretary of State, in consultation with the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under section [6(l) of the Export Administration Act of 1979] 111(a) of the Export Administration Act of 1996.

* * * * *

SEC. 73A. NOTIFICATION OF ADMITTANCE OF MTCR ADHERENTS.

Following any action by the United States that results in a country becoming [a] an MTCR adherent, the President shall transmit promptly to the Congress a report which describes the rationale for such action, together with an assessment of that country's non-proliferation policies, practices, and commitments. Such report shall also include the text of any agreements or understandings be-

tween the United States and such country regarding the terms and conditions of the country's adherence to the MTCR.

* * * * *

**CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS
PROLIFERATION**

SEC. 81. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(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 the enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States *under this Act*,

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States *under this Act*, or

* * * * *

**CHAPTER 10—NUCLEAR NONPROLIFERATION
CONTROLS**

* * * * *

SEC. 102. NUCLEAR REPROCESSING TRANSFERS, ILLEGAL EXPORTS FOR NUCLEAR EXPLOSIVE DEVICES, TRANSFERS OF NUCLEAR EXPLOSIVE DEVICES, AND NUCLEAR DETONATIONS.

(a) * * *

(b) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OR USE OF NUCLEAR EXPLOSIVE DEVICES; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) * * *

(2) The sanctions referred to in paragraph (1) are as follows:

(A) * * *

* * * * *

(G) The authorities of [section 6 of the Export Administration Act of 1979] *section 105 or 106 of the Export Administration Act of 1996* shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agricultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities).

(H)(i) The President shall prohibit the importation into the United States of specific products produced in that country by persons who have engaged in the activities described in paragraph (1) that were the basis of the President's determination under such paragraph.

(ii) In the event that it is not possible to identify the persons who have engaged in the activities described in paragraph (1)

that were the basis of the President's determination under such paragraph, the President shall prohibit the importation into the United States of products produced in that country by those persons that the President shall designate as most closely identified with those activities.

(iii) For purposes of this subparagraph, the term "person" means—

(I) a natural person;

(II) a corporation, business association, partnership, society, or trust, or any other nongovernmental entity, organization, or group;

(III) a governmental entity operating as a business enterprise;

(IV) a division or office of a governmental department; or

(V) a military unit or successor to such unit.

(iv) The prohibition on imports imposed under this subparagraph shall be in addition to any other prohibition on imports in effect before the President's determination under paragraph (1) is made.

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INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

* * * * *

TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS

* * * * *

GRANTS OF AUTHORITIES

SEC. 203. (a) * * *

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) * * *

* * * * *

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under [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] *the Export Administration Act of 1996*, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code; or

* * * * *

CONSULTATION AND REPORTS

SEC. 204. (a) * * *

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying—

(1) * * *

* * * * *

(4) why the President believes such actions are necessary to deal with those circumstances; [and]

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries[.]; and

(6) if the action is being taken unilaterally—

(A) why the President believes the action is necessary to meet the unusual and extraordinary threat referred to in paragraph (2); and

(B) what steps the President is taking to gain multilateral support for the action.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the Congress with respect to the action taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through [(5)] (6) of subsection (b)[.], and, in the case of controls referred to in paragraph (6) of subsection (b), the President shall report to the Congress on the economic losses that have occurred as a result of the unilateral action.

* * * * *

PENALTIES

SEC. 206. (a) A civil penalty of not to exceed \$10,000 may be imposed on any person who violates, or attempts to violate, any license, order or regulation issued under this title.

(b) Whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this title shall, upon conviction, be fined not more than \$50,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

* * * * *

SEC. 208. CONFIDENTIALITY OF INFORMATION.

(a) EXEMPTIONS FROM DISCLOSURE.—Information obtained under this title before or after the enactment of this section may be withheld only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with any transaction that would otherwise be prohibited under this title, including—

(1) the license or other authorization itself,

(2) classification requests or other inquiries on the applicability of export license requirements to a proposed transaction or series of transactions,

(3) information or evidence obtained in the course of any investigation, and

(4) information obtained or furnished under this title in connection with international agreements, treaties, or obligations, 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 of Commerce or the Secretary of the Treasury to be in the national interest. In the case of information obtained or furnished under this title in connection with international agreements, treaties, or obligations, such a determination may be made only after consultation with the Secretary of State.

(b) INFORMATION TO CONGRESS AND GAO.—

(1) IN GENERAL.—Nothing in this title shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office.

(2) AVAILABILITY TO THE CONGRESS.—

(A) IN GENERAL.—All information obtained at any time under this title 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 title or previous Acts 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 paragraph (1), information referred to 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 the Congress in accordance with this subsection, any such information which is submitted on a confidential basis and from which any individual can be identified.

(c) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—Any officer or employee of the United States, or any depart-

ment or agency thereof, who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information that—

(1) he or she 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

(2) is exempt from disclosure under this section, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, shall be removed from office or employment, and shall be subject to a civil penalty of not more than \$1,000.

SEC. [208.] 209. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

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TRADING WITH THE ENEMY ACT

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SEC. 5. (a) * * *
(b)(1) * * *

* * * * *

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under [section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the non-proliferation or antiterrorism policies of the United States] *the Export Administration Act of 1996*, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code.

* * * * *

SEC. 16. (a) Whoever shall willfully violate, or attempt to violate, any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, attempt to violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of the Act shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, be fined not more than \$100,000, or imprisoned for not more than ten years or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than ten years or both.

(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates, or at-

tempts to violate, any license, order, rule, or regulation issued in compliance with the provisions of this Act.

* * * * *

SECTION 502B OF THE FOREIGN ASSISTANCE ACT OF 1961

SEC. 502B. HUMAN RIGHTS.—(a)(1) * * *

(2) Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the **[Export Administration Act of 1979]** *Export Administration Act of 1996* for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration **[Act of 1979]** *Act of 1996*), that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses. Assistance may not be provided under chapter 5 of this part to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.

* * * * *

SECTION 140 OF THE FOREIGN RELATIONS AUTHORIZATION ACT, FOR FISCAL YEARS 1988 AND 1989

SEC. 140. ANNUAL COUNTRY REPORTS ON TERRORISM.

(a) **REQUIREMENT OF ANNUAL COUNTRY REPORTS ON TERRORISM.**—The Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by April 30 of each year, a full and complete report providing—

(1) detailed assessments with respect to each foreign country—

(A) in which acts of international terrorism occurred which were, in the opinion of the Secretary, of major significance;

(B) about which the Congress was notified during the preceding five years pursuant to section 6(j) of the Export

Administration Act of 1979 or section 106(i) of the Export Administration Act of 1996; and

(C) which the Secretary determines should be the subject of such report; and

(2) all relevant information about the activities during the preceding year of any terrorist group, and any umbrella group under which such terrorist group falls, known to be responsible for the kidnapping or death of an American citizen during the preceding five years, any terrorist group known to be financed by countries about which Congress was notified during the preceding year pursuant to section [6(j) of the Export Administration Act of 1979] 106(i) of the Export Administration Act of 1996, and any other known international terrorist group which the Secretary determines should be the subject of such report.

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STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

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TITLE I—BASIC AUTHORITIES GENERALLY

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AUTHORITY TO CONTROL CERTAIN TERRORISM-RELATED SERVICES

SEC. 40. (a) * * *

* * * * *

(e) DEFINITIONS.—

(1) **DESIGNATED FOREIGN GOVERNMENT.**—As used in this section, the term “designated foreign government” means a foreign government that the Secretary of State has determined, for purposes of section [6(j)(1) of the Export Administration Act of 1979] 106(i)(1) of the Export Administration Act of 1996, has repeatedly provided support for acts of international terrorism.

* * * * *

TITLE II—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

* * * * *

PROPERTY OF FOREIGN MISSIONS

SEC. 205. (a) * * *

* * * * *

(d)(1) * * *

* * * * *

(4) For the purposes of this subsection, the term “foreign country” means—

(A) any country listed as a Communist country in section 620(f) of the Foreign Assistance Act of 1961;

(B) any country determined by the Secretary of State, for purposes of section [6(j) of the Export Administration Act of 1979] 106(i) of the *Export Administration Act of 1996*, to be a country which has repeatedly provided support for acts of international terrorism; and

(C) any other country which engages in intelligence activities in the United States which are adverse to the national security interests of the United States.

* * * * *

SECTION 110 OF THE INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1980

EXPORTATION OF URANIUM DEPLETED IN THE ISOTOPE 235

SEC. 110. Upon a finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 and of the Nuclear Non-Proliferation Act of 1978 when such exports are subject to the controls established under the Arms Export Control Act or the Export Administration [Act of 1979] *Act of 1996*.

SECTION 491 OF THE FOREST RESOURCES CONSERVATION AND SHORTAGE RELIEF ACT OF 1990

SEC. 491. RESTRICTION ON EXPORTS OF UNPROCESSED TIMBER FROM STATE AND OTHER PUBLIC LANDS.

(a) * * *

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[(f) WESTERN RED CEDAR.—Nothing in this section shall be construed to supersede section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).]

* * * * *

THE EXPORT ADMINISTRATION ACT OF 1979

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

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

[SHORT TITLE

[SECTION 1. This Act may be cited as the “Export Administration Act of 1979”.

【FINDINGS

【SEC. 2. The Congress makes the following findings:

【(1) The ability of the United States citizens to engage in international commerce is a fundamental concern of United States policy.

【(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

【(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

【(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

【(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

【(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

【(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

【(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

【(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

【(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis

to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

[(11) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

[(12) Excessive dependence of the United States, its allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

【DECLARATION OF POLICY

【SEC. 3. The Congress makes the following declarations:

【(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

【(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

【(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

【(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

【(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

【(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

【(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

【(5) It is the policy of the United States—

【(A) to oppose 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;

【(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information 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; and

【(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

【(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

【(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

【(8) It is the policy of the United States to use export controls 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. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

【(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments, or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

【(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to fur-

ther fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

[(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

[(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

[(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

[(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

【GENERAL PROVISIONS

【SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

[(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

[(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

[(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such

as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

[(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

[(C) A project license, authorizing exports of goods or technology for a specified activity.

[(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

[(3) A general license, authorizing exports, without application by the exporter.

[(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

[(b) CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

[(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States, so as to render the controls ineffective in achieving their purposes unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign avail-

ability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

[(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

[(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated 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. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

[(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet 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 of goods and technology.

[(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.

NATIONAL SECURITY CONTROLS

[SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term “affiliates” includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

[(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

[(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take the effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

[(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

[(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

- [(i) supercomputers;
- [(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);
- [(iii) devices for surreptitious interception of wire or oral communications; and
- [(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

[(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

- [(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or
- [(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the “controlled United States content” of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

[(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

[(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term “supercomputer” for purposes of those paragraphs.

[(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries

those countries set forth in section 620(f) of the Foreign Assistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

[(A) the extent to which the country's policies are adverse to the national security interests of the United States;

[(B) the country's Communist or non-Communist status;

[(C) the present and potential relationship of the country with the United States;

[(D) the present and potential relationship of the country with countries friendly or hostile to the United States;

[(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

[(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

[(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

[(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

[(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

[(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing

an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

[(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

[(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

[(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

[(iv) a system of export control documentation to verify the movement of goods and technology; and

[(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

[(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

[(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.

[(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

[(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the imple-

mentation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

[(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

[(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

[(5)(A) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

[(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

[(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

[(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.”

[(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the

date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that—

【(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

【(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

【(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

【(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

【(A) shall determine the truth of the allegation;

【(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

【(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

【(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

【(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

【(A) arrays of design and manufacturing know-how,

【(B) keystone manufacturing, inspection, and test equipment,

[(C) goods accompanied by sophisticated operation, application, or maintenance know-how; and

[(D) keystone equipment with would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

[(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

[(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology, is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

[(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

[(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied

by suitable reductions in the controls on the products of that technology and equipment.

[(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

[(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses.

[(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

[(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

[(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

[(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

[(3) The Secretary, subject to the provisions of subsection (1) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

[(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

[(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

[(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect

under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

【(A) the United States exporter retains title to the good during the entire period in which the good is in the People’s Republic of China; and

【(B) the exporter removes the good from the People’s Republic of China no later than at the conclusion of the trade show.

【(f) FOREIGN AVAILABILITY.—

【(1) FOREIGN AVAILABILITY TO CONTROLLED COUNTRIES.—(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

【(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine wheth-

er a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

【(2) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

【(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

【(3) PROCEDURES FOR MAKING DETERMINATIONS.—(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence,

unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

[(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

[(i) the foreign availability does exist and—

[(I) the requirement of a validated license has been removed,

[(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

[(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

[(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

[(4) NEGOTIATIONS TO ELIMINATE FOREIGN AVAILABILITY.—(A) In any case in which export controls are maintained under this

section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

[(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

[(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

[(5) EXPEDITED LICENSES FOR ITEMS AVAILABLE TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

[(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the

20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

[(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

[(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

[(6) OFFICE OF FOREIGN AVAILABILITY.—The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

[(7) 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, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

[(8) REMOVAL OF CONTROLS ON LESS SOPHISTICATED GOODS OR TECHNOLOGY.—In any case in which the Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or

paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

[(9) NOTICE OF ALL FOREIGN AVAILABILITY ASSESSMENTS.—Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the Federal Register.

[(10) AVAILABILITY DEFINED.—For purposes of this subsection and subsections (f) and (h), the term “available in fact to controlled countries” includes production or availability of any goods or technology in any country—

[(A) from which the goods or technology is not restricted for export to any controlled country; or

[(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

[(g) INDEXING.—(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

[(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

[(i) which are eligible for export under a distribution license,

【(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

【(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

【(B) In any case in which the Secretary receives a request which—

【(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

【(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section, the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

【(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

【(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to

any goods or technology, (D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

[(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

[(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

[(5) To facilitate the work of the technical advisory committees, 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 goods or technology with respect to which that committee furnishes advice.

[(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

[(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

[(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability,
or

[(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist. To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

[(i) MULTILATERAL EXPORT CONTROLS.—Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the “Committee”) with a view toward accomplishing the following objectives:

[(1) Enhanced public understanding of the Committee’s purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

[(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

[(3) Strengthened legal basis for each government’s export control system, including, as appropriate, increased penalties and statutes of limitations.

[(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

[(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

[(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

[(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

【(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

【(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

【(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

【(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.

For purposes of reviews of the International Control List, the President may include as advisors of the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

【(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

【(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

【(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act.

【(l) DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence, as determined by the Sec-

retary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

[(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

[(B) may take such additional actions under this Act with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

[(2) As used in this subsection, the term “unauthorized use” means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

[(m) GOODS CONTAINING CONTROLLED PARTS AND COMPONENTS.—Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

[(1) are essential to the functioning of the good,

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

[(3) comprise 25 percent or less of the total value of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

[(n) SECURITY MEASURES.—The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

[(o) RECORDKEEPING.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

[(p) NATIONAL SECURITY CONTROL OFFICE.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the De-

partment of Defense a National Security Control Office under the direction of the Under Secretary of Defense Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

[(q) EXCLUSION FOR AGRICULTURAL COMMODITIES.—This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

【FOREIGN POLICY CONTROLS

【SEC. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

【(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

【(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than a year.

【(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

【(5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

【(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the

President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

[(b) CRITERIA.—(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

[(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

[(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

[(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

[(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

[(E) the United States has the ability to enforce the proposed controls effectively.

[(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

[(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

[(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which

the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

[(e) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

[(f) CONSULTATION WITH THE CONGRESS.—(1) The president may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

[(A) specifying the purpose of the controls;

[(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

[(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

[(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

[(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

[(3) To the extent necessary to further the effectiveness of the export controls portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.

[(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

[(5) In addition to any written report required, under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

[(g) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export control on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interest of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. The subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.

[(h) FOREIGN AVAILABILITY.—(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consigns

to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

[(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

[(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

[(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.

[(i) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

[(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

[(A) The government of such country has repeatedly provided support for acts of international terrorism.

[(B) The export of such goods or technology 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.

[(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs 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 validated license required by paragraph (1).

[(3) Each determination of the Secretary of State under paragraph (1)(A), 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.

[(4) A determination made by the Secretary of State under paragraph (1)(A) 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—

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

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

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

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

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

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

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

[(5) The Secretary and the Secretary of State shall include in the notification required by paragraph (2)—

[(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

[(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

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

[(D) 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;

[(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and

amounts of articles, services, or design and construction services; and

[(F) 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 goods or services which are the subject of such export would be delivered.

[(k) NEGOTIATIONS WITH OTHER COUNTRIES.—

[(1) COUNTRIES PARTICIPATING IN CERTAIN AGREEMENTS.—

The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out—

[(A) the policy set forth in section 3(2)(B) of this Act, and

[(B) United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (l).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreed export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act.

[(2) OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreements on export restrictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act, the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports are treated to countries that are MTCR adherents.

[(3) REVIEW OF DETERMINATIONS.—The Secretary shall annually review any determination under paragraph (2) with respect to a country. For each such country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5(a)(4)(D), the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

[(l) MISSILE TECHNOLOGY.—

【(1) DETERMINATION OF CONTROLLED ITEMS.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies—

【(A) shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

【(B) may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

【(2) REQUIREMENT OF INDIVIDUAL VALIDATED LICENSES.—The Secretary shall require an individual validated license for—

【(A) any export of goods or technology on the list established under paragraph (1) to any country; and

【(B) any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

【(3) POLICY OF DENIAL OF LICENSES.—(A) Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

【(B) Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) to have repeatedly provided support for acts of international terrorism.

【(4) CONSULTATION WITH OTHER DEPARTMENTS.—(A) A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

【(B) Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

【(C) The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

[(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

[(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

[(5) INFORMATION SHARING.—The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

[(m) CHEMICAL AND BIOLOGICAL WEAPONS.—

[(1) ESTABLISHMENT OF LIST.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

[(2) REQUIREMENT FOR VALIDATED LICENSES.—The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

[(3) COUNTRIES OF CONCERN.—For purposes of paragraph (2), the term “country of concern” means any country other than—

[(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

[(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

[(n) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

[(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restric-

tions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

[(B) any determination of 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 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

[(2) The provisions of this subsection shall not apply with respect to exports to countries which 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 subsection and section 502B of the Foreign Assistance Act of 1961.

[(o) CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

[(p) EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

[(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

[(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

[(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

[(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

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

[(q) EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

[(r) EXPANDED AUTHORITY TO IMPOSE CONTROLS.—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

[(2) For purposes of this subsection, the term “joint resolution” means a joint resolution the matter after the resolving clause of which is as follows: “That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.”, with the date of the receipt of the determination and report inserted in the blank.

[(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(s) SPARE PARTS.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

[(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

【SHORT SUPPLY CONTROLS

【SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

【(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

【(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

【(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

【(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

【(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas proc-

essing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

[(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

[(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

[(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

[(A) include the name of the material that is the subject of the petition,

[(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

[(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

[(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

[(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

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

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

[(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

[(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

[(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

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

[(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

[(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions which involve the same or related materials.

[(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

[(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

[(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

[(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

[(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

[(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under

the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3) (A) and (B) of this subsection.

[(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

[(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

[(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

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

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

[(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

[(iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;

[(iv) are clearly necessary to protect the national interest; and

[(v) are in accordance with the provisions of this Act; and

[(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

[(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

[(e) REFINED PETROLEUM PRODUCTS.—(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

[(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

[(4) For purposes of this subsection, “refined petroleum product” means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

[(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account

delays in action by the Secretary on a license application on account of the provisions of this subsection.

[(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

[(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

[(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

[(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving

such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

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

[(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

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

[(4)(A) For purposes of this paragraph, the term joint resolution means only a joint resolution the matter after the resolving clause of which is as follows: “That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on .”, with the blank space being filled with the appropriate date.

[(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

[(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

[(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

[(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

[(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that

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

[(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

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

[(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

[(2) the Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

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

[(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

[(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

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

[(3) For purposes of this subsection, the term “barter agreement” means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

[(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

[(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (*Thuja plicata*) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

[(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

[(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

[(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period. After the end of such 3-year period, no unprocessed western red cedar logs harvested from State or Federal lands may be exported from the United States.

[(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of validated licenses for exports under this subsection.

[(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

[(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

[(5) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

[(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

[(B) chips, pulp, and pulp products;

[(C) veneer and plywood;

[(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

[(E) shakes and shingles.

[(j) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

[(k) OIL EXPORTS FOR USE BY UNITED STATES MILITARY FACILITIES.—For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

[(FOREIGN BOYCOTTS

[(SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B)

of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his 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 which is friendly to the United States and which 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, a requirement of, or a request from or on behalf of the boycotting country. 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, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

[(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of 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 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 which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

[(E) Furnishing information about whether any person is a member of, has made 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 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) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

[(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services 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 goods to the boycotted 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) complying or agreeing 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 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) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

[(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments 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 person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

[(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

[(4) 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) This section shall apply 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 as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

[(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

[(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such 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 goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

[(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any 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, which law, rule, or regulation 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.

【PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

【SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in

such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

[(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

[(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

[(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

[(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

[(B) potential serious financial loss to the applicant if not granted an exception;

[(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

[(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

[(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

[(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

[(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

[PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS;
OTHER INQUIRIES

[SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

[(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum

extent possible by the Secretary without referral of such application to any other department or agency of the Government.

[(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

[(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

[(1) sent the applicant an acknowledgment of the receipt of the application and the date of the receipt;

[(2) submit to this applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application and the rights of the applicant;

[(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case of such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

[(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

[(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a part and, if so inform the applicant of this requirement.

[(c) ACTION ON CERTAIN APPLICATIONS.—Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

[(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

[(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

[(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

[(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

[(2)(A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

[(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

[(f) ACTION BY THE SECRETARY.—(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application is made, the applicant shall be entitled—

[(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

[(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

[(A) the determination,

[(B) the statutory basis for the proposed denial,

[(C) the policies set forth in section 3 of this Act which would be furthered by the proposed denial,

[(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

[(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

[(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

[(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

[(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense

determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

[(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

[(A) recommend to the President and the Secretary that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

[(B) notify the Secretary that he would recommend approval subject to specified conditions; or

[(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

[(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

[(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral re-

view process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

[(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

[(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

[(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) 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.

[(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or 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 a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this

section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

[(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

[(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

[(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

[(m) SMALL BUSINESS ASSISTANCE.—Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988, report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.

[(n) REPORTS ON LICENSE APPLICATIONS.—(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

[(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

[(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

[(2) With regard to each application, each listing shall identify—

[(A) the application case number;

[(B) the value of the goods or technology to which the application relates;

[(C) the country of destination of the goods or technology;

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

[(E) the date on which the Secretary approved or denied the application;

[(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

[(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

[(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

[(A) the departments or agencies to which the application was referred;

[(B) the date or dates of such referral; and

[(C) the date or dates on which recommendations were received from those departments or agencies.

[(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

[(A) the office responsible for processing the application and the position of the officer responsible for the office; and

[(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

[(5) Each report shall also provide an introduction which contains—

[(A) summary of the number of applications described in paragraph (1) (A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

[(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

[(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

[(B) a summary by country of destination of the number of applications described in paragraph (1) (A) and (B) of this subsection, and the value of the goods or technology involved in applications, on which action was not completed within 60 days.

[(o) EXPORTS TO MEMBERS OF COORDINATING COMMITTEE.—(1) Fifteen working days after the date of formal filing with the Sec-

retary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

【(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

【(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

【(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

【(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

【(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

【(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

【(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

【(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

【(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

【VIOLATIONS

【SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

【(b) WILLFUL VIOLATIONS.—(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved

is, any controlled country or any country to which exports are controlled for foreign policy purposes—

[(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

[(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

[(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use of the Secretary of Defense—

[(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

[(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

[(3) Any person who possesses any goods or technology—

[(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control, or

[(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

[(4) Any person who takes any action with the intent to evade the provisions of this act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

[(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

[(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act or any regulation, order, or license issued under this act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed \$100,000.

[(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

[(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act 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.

[(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

[(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

[(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

[(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to 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. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

[(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

[(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c) a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection

(d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

[(g) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

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

[(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in 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) 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 section 1963 of title 18, United States Code.

[(h) PRIOR CONVICTIONS.—(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act, section 793, 794, or 798 of title 18, United States Code, section 4(b) on the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

[(2) 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 person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

[(i) OTHER AUTHORITIES.—Nothing in subsection (c), (d), (f), (g), or (h) limits—

[(1) the availability of other administrative or judicial remedies with respect to violations 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 violations of this Act, or any regulation, order, or license issued under this Act; 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)).

【MULTILATERAL EXPORT CONTROL VIOLATIONS

【SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—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—

【(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

【(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

【(b) 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 procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

【(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

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

【(1) in the case of procurement of defense articles or defense services—

【(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 articles or services and no alternative supplier can be identified; or

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

【(2) to—

【(A) products or services 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 the Congress of the intention to impose the sanctions;

【(B) spare parts;

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

[(D) routine servicing and maintenance of products; or

[(E) 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 agreed to in the Coordinating Committee, including the following:

[(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

[(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

[(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

[(D) a system of export control documentation to verify the movement of goods and technology; and

[(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

[(e) DEFINITIONS.—For purposes of this section—

[(1) the term “component part” means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

[(2) the term “finished product” means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

[(3) the term “sanctioned person” means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

[(f) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Congress, 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 available evidence, 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 subsection (d)(2);

【(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

【(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

【(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

【(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

【(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

【(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

【(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) or (h), the President shall—

【(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

[(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

[(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

[(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

[(3) The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

[(l) DEFINITION.—For purposes of this section, the term “foreign person” means any person other than a United States person.

[(MISSILE PROLIFERATION CONTROL VIOLATIONS

[(SEC. 11B. (a) VIOLATIONS BY UNITED STATES PERSONS.—

[(1) SANCTIONS.—(A) 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, section 5 or 6 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) 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 11 of this Act.

[(3) 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.

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

[(1) SANCTIONS.—(A) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of the 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) 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 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) 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) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the 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 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.—For purposes of this section and subsection (k) and (l) of section 6—

[(1) 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) 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) 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) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

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

[(7)(A) 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; and

[(B) 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; and

[(8) 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.

[CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

[SEC. 11C. (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 the enactment of this section, has knowingly and materially contributed—

[(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

[(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, 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 January 1, 1980—

[(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 6(j) of this Act 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, the 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 these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that 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 the Congress that that government is in the process of taking the actions described in the preceding sentence.

[(3) REPORT TO CONGRESS.—The President shall report to the 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 the 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 notifica-

tion 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.

[ENFORCEMENT

[SEC. 12. (a) GENERAL AUTHORITY.—(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may subpoena or require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, after notice to any such person and 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, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

[(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

[(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

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

[(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

[(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

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

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

[(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

[(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out 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 the provisions 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 or is committing such a violation.

[(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

[(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

[(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

[(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than \$12,000,000 in the fiscal year 1985 and not more than \$14,000,000 in the fiscal year 1986.

[(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

[(8) 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, order, or license issued under this Act.

[(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

[(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from 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. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the na-

tional interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

[(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph 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 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

[(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

[(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effec-

tive enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

[(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

[ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

[SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2) and subsection (c) of 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) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

[(c) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8) is sought under section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

[(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

[(3) The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have juris-

diction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

[(4) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a hearing commissioner of the Department of Commerce shall be included among these considered as qualified for selection and appointment to such position.

[(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a “temporary denial order”) to a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

[(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act. All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.

[(3) An order of the Secretary affirming, in whole or in part, the issuance 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 standard for

issuing the temporary denial order has been met. 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) APPEALS FROM LICENSE DENIALS.—A determination of the Secretary, under section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

[ANNUAL REPORT

[SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

[(1) the implementation of the policies set forth in section 3;

[(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

[(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

[(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

[(5) actions taken to carry out section 5(d);

[(6) changes in categories of items under export control referred to in section 5(e);

[(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

[(8) actions taken in compliance with section 5(f)(6);

[(9) the operation of the indexing system under section 5(g);

[(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

[(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

[(12) export controls and monitoring under section 7;

[(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

[(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

[(B) the worldwide supply of such commodities; and

[(C) actions being taken by other countries in response to such shortages or increased prices;

[(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

[(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

[(16) delegations of authority by the President as provided in section 4(e) of this Act;

[(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

[(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

[(19) violations under section 11 and enforcement activities under section 12; and

[(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

[(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

[(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

[(d) REPORT ON EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or tech-

nology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act.

[(e) REPORT ON DOMESTIC ECONOMIC IMPACT OF EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

[(f) ANNUAL REPORT OF THE PRESIDENT.—The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

[(ADMINISTRATIVE AND REGULATORY AUTHORITY

[SEC. 15. (a) UNDER SECRETARY OF COMMERCE.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985, and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

[(b) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section 4(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

[(c) 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 Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

DEFINITIONS

SEC. 16. As used in this Act—

(1) the term “person” includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term “United States person” means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and 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 of the President;

(3) the term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term “technology” means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term “export” means—

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

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

(6) the term “controlled country” means a controlled country under section 5(b)(1) of this Act;

(7) 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 in-

cludes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

[(8) the term "Secretary" means the Secretary of Commerce.

【EFFECT ON OTHER ACTS

【SEC. 17. (a) IN GENERAL.—Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

【(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

【(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.

【(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

【(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

【(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

【(f) AGRICULTURAL ACT OF 1970.—Nothing in this Act shall affect the provisions of the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c–3).

【AUTHORIZATION OF APPROPRIATIONS

【SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provisions of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

【(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

[(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

[(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

[(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

[(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

[(1) \$42,813,000 for the fiscal year 1993;

[(2) such sums as may be necessary for the fiscal year 1994; and

[(3) 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 non-discretionary costs.

【EFFECTIVE DATE

【SEC. 19. (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.

[(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

[(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

【TERMINATION DATE

【SEC. 20. The authority granted by this Act terminates on August 20, 1994.

【SAVINGS PROVISIONS

【SEC. 21. (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 the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

[(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

【TECHNICAL AMENDMENTS

【SEC. 22. (a) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out “section 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969” and inserting in lieu thereof “subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act”.

【(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended—

 【(A) by striking out “1969” and inserting in lieu thereof “1979”; and

 【(B) by striking out “(A)” and inserting in lieu thereof “(C)”.

【(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out “section 7 of the Export Administration Act of 1969” and inserting in lieu thereof “section 12 of the Export Administration Act of 1979”.

【(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 993(c)(2)(D)) is amended—

 【(1) by striking out “4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))” and inserting in lieu thereof “7(a) of the Export Administration Act of 1979”; and

 【(2) by striking out “(A)” and inserting in lieu thereof “(C)”.

【INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

【SEC. 23. (a) Section 9 of the International Investment Survey Act of 1976 (22 U.S.C. 3108) is amended to read as follows:

 【“AUTHORIZATIONS

 【“SEC. 9. To carry out this Act, there are authorized to be appropriated \$4,400,000 for the fiscal year ending September 30, 1980, and \$4,500,000 for the fiscal year ending September 30, 1981.”.

 【(b) The amendment made by subsection (a) shall take effect on October 1, 1979.

【MISCELLANEOUS

【SEC. 24. Section 402 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting “or beer” in the section sentence immediately after “wine”.】

**FOREIGN RELATIONS AUTHORIZATION ACT, FOR
FISCAL YEARS 1994 AND 1995**

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TITLE VIII—NUCLEAR PROLIFERATION PREVENTION ACT

SEC. 801. SHORT TITLE.

This title may be cited as the “Nuclear Proliferation Prevention Act of 1994”.

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PART B—SANCTIONS FOR NUCLEAR PROLIFERATION

* * * * *

SEC. 824. PROHIBITION ON ASSISTING NUCLEAR PROLIFERATION THROUGH THE PROVISION OF FINANCING.

(a) * * *

* * * * *

(c) **PRESIDENTIAL DETERMINATION AND ORDER WITH RESPECT TO UNITED STATES AND FOREIGN PERSONS.**—If the President determines[, in writing after opportunity for a hearing on the record,] that a United States person or a foreign person has engaged in a prohibited activity (without regard to whether subsection (b) applies), the President shall, by order, impose the sanctions described in subsection (d) on such person.

* * * * *

[(e) **JUDICIAL REVIEW.**—Any determination of the President under subsection (c) shall be subject to judicial review in accordance with chapter 7 of part I of title 5, United States Code.]

[(f) **(e) CONSULTATION WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.**—

(1) **CONSULTATIONS.**—If the President makes a determination under subsection (c) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with any appropriate foreign government with respect to the imposition of any sanction pursuant to this section.

(2) **ACTIONS BY GOVERNMENT OF JURISDICTION.**—

(A) **SUSPENSION OF PERIOD FOR IMPOSING SANCTIONS.**—In order to pursue consultations described in paragraph (1) with any government referred to in such paragraph, the President may delay, for up to 90 days, the effective date of an order under subsection (c) imposing any sanction.

(B) **COORDINATION WITH ACTIVITIES OF FOREIGN GOVERNMENT.**—Following consultations described in paragraph (1), the order issued by the President under subsection (c) imposing any sanction on a foreign person shall take effect unless the President determines, and certifies in writing to the Congress, that the government referred to in paragraph (1) has taken specific and effective actions, including the imposition of appropriate penalties, to terminate the involvement of the foreign person in any prohibited activity.

(C) EXTENSION OF PERIOD.—After the end of the period described in subparagraph (A), the President may delay, for up to an additional 90 days, the effective date of an order issued under subsection (b) imposing any sanction on a foreign person if the President determines, and certifies in writing to the Congress, that the appropriate foreign government is in the process of taking actions described in subparagraph (B).

(3) REPORT TO CONGRESS.—Before the end of the 90-day period beginning on the date on which an order is issued under subsection (c), the President shall submit to the Congress a report on—

(A) the status of consultations under this subsection with the government referred to in paragraph (1); and

(B) the basis for any determination under paragraph (2) that such government has taken specific corrective actions.

[(g)] (f) TERMINATION OF THE SANCTIONS.—Any sanction imposed on any person pursuant to an order issued under subsection (c) shall—

(1) remain in effect for a period of not less than 12 months; and

(2) cease to apply after the end of such 12-month period only if the President determines, and certifies in writing to the Congress, that—

(A) the person has ceased to engage in any prohibited activity; and

(B) the President has received reliable assurances from such person that the person will not, in the future, engage in any prohibited activity.

[(h)] (g) WAIVER.—The President may waive the continued application of any sanction imposed on any person pursuant to an order issued under subsection (c) if the President determines, and certifies in writing to the Congress, that the continued imposition of the sanction would have a serious adverse effect on the safety and soundness of the domestic or international financial system or on domestic or international payments systems.

[(i)] (h) ENFORCEMENT ACTION.—The Attorney General may bring an action in an appropriate district court of the United States for injunctive and other appropriate relief with respect to—

(1) any violation of subsection (b); or

(2) any order issued pursuant to subsection (c).

[(j)] (i) KNOWINGLY DEFINED.—

(1) IN GENERAL.—For purposes of this section, the term “knowingly” means the state of mind of a person with respect to conduct, a circumstance, or a result in which—

(A) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(B) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(2) KNOWLEDGE OF THE EXISTENCE OF A PARTICULAR CIRCUMSTANCE.—If knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the exist-

ence of such circumstance, unless the person actually believes that such circumstance does not exist.

[(k)] (j) SCOPE OF APPLICATION.—This section shall apply with respect to prohibited activities which occur on or after the date this part takes effect.

* * * * *

[PART D—TERMINATION

[SEC. 851. TERMINATION UPON ENACTMENT OF NEXT FOREIGN RELATIONS ACT.

[On the date of enactment of the first Foreign Relations Authorization Act that is enacted after the enactment of this Act, the provisions of parts A and B of this title shall cease to be effective, the amendments made by those parts shall be repealed, and any provision of law repealed by those parts shall be reenacted.]

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ADDITIONAL VIEWS OF HON. LEE H. HAMILTON AND HON.
SAM GEJDENSON

Congressman Roth, the chief author of H.R. 361, has engaged in an extraordinary cooperative effort to produce a bill that is acceptable to the Administration and to the National Security Committee. He has worked hard to accommodate their concerns. This has been tough sledding and Mr. Roth deserves much credit for his tenacity and his good work.

H.R. 361 does some important things. It transforms the expired Export Administration Act into a statute that more directly addresses the threat of proliferation. This is an important change and one that is required to counter the security threats of the post-Cold War world. The bill also puts our export control system on a statutory foundation. This may provide increased predictability and will enhance the ability of the U.S. government to take enforcement action against violators.

The bill also includes a prohibition on dual-use exports to countries that support international terrorism. This provision mirrors language of H.R. 3109, a bill recently introduced by Mr. Gejdenson. The provision would prevent militarily sensitive dual use items being exported to terrorist countries. The United States must deny the export to countries that support terrorism of goods or technology which could make a significant contribution to their military potential or which could enhance their ability to support acts of international terrorism.

We do not believe, however, that this bill will result in significant changes to what is still a cumbersome and bureaucratic export control apparatus. We are concerned that the bill will not impose sufficient discipline on export licensing decisions, will permit unilateral controls to be imposed to easily, and will unnecessarily limit the rights of exporters to petition the government for relief if they believe that U.S. export controls impact them unfairly.

We will briefly describe our concerns with the bill in more detail.

First, the export licensing timeframes in the bill do not meet the needs of U.S. exporters in an increasingly competitive world economy. Under the bill, license applications could take 90 days just to arrive on the President's desk, and there is no deadline for how long the President could take to make a final decision. Even under the expired Export Administration Act, there is a deadline of 20 days for the President to make a decision. The bill also imposes no time constraints on pre-license checks of intended end-users, and an increasing number of applications will be subject to such checks.

In effect, the bill allows upwards of three months for license decisions, although many may well be made in shorter period. Given the rapidity with which technology advances and the fact that many of our chief competitors routinely approve exports more quickly than we do, delays in licensing will place U.S. business at

a competitive disadvantage. Generations of computers and other technology could change in the time it takes to make a licensing decision.

Our second concern is with the bill's provisions for imposing unilateral export controls. The key factor here is the effect of the new Wassenaar Arrangement, which has replaced CoCom. Countries participating in the Wassenaar Arrangement are permitted to exercise "national discretion" in deciding precisely how to control items on the list. Based on past experience under CoCom, "national discretion" can be expected to open the door to the imposition of unilateral controls on U.S. exports. Unfortunately, given its definition of unilateral controls and the criteria in section 106 for imposing those controls, this bill will not adequately restrict unilateral U.S. controls on items on the Wassenaar list, including items slated for export to our allies and to other countries that do not pose a security threat to the United States.

In addition, we understand that it is the Administration's view that, for items that have been included in the Wassenaar List, export restrictions that the U.S. government choose to apply would not generally qualify as unilateral controls. If the United States prohibits the export of a listed item and no other country restricts the export of that item, the U.S. prohibition would still be considered a multilateral rather than a unilateral control. As result, we do not believe that this bill adequately addresses the potential expansion of unilateral controls.

Third, the bill falls short in the area of commodity jurisdiction. The bill lacks provisions that define the differences between dual-use items controlled by the Commerce Department and munitions items controlled by the State Department. To its credit, the Administration has devised procedures for resolving commodity jurisdiction disputes, and this bill will accommodate those procedures. However, the absence of a balanced statutory distinction between dual-use and munitions items could skew U.S. export controls in a more restrictive direction.

Fourth, we have concerns about section 114(k) of this bill, which is intended to give U.S. exporters relief from the unfair impact of U.S. export controls. H.R. 361 originally allowed for a claim of unfair impact to be based on any one of three grounds: 1) foreign availability; 2) the inability to control an item domestically; or 3) a control resulting in a significant competitive disadvantage.

Unfortunately, this provision was narrowed to allow a claim of unfair impact only on the basis of foreign availability and other criteria to which the Secretary of Defense agrees. It seems to us that American executives should not be restricted in their ability to petition their government regarding the potentially unfair impact of U.S. export controls. It is clear that limiting the grounds on which exporters can petition for a change in U.S. export controls will hurt U.S. Business; it is not clear how broadening those grounds will harm U.S. national security.

Not only has unfair impact been limited to foreign availability; by virtue of an amendment approved during the Committee markup, the bill no longer explicitly authorizes forward-looking foreign availability determinations. Forward-looking foreign availability determinations led to the liberalization of export controls on com-

puters in 1993 and 1996. On both occasions, the Administration recognized that it did not make sense to set U.S. control levels for computers only at the level at which they were presently available in world markets because technology would quickly overtake those control levels. As result, the Administration authorized the export of computers at performance levels at which they were expected, with a high degree of certainty, to be available abroad in the near term.

Although the amendment adopted in Full Committee does not explicitly prohibit looking forward, by failing to include forward-looking foreign availability and requiring Defense Department concurrence on all foreign availability criteria, the language in this section makes it likely that forward-looking foreign availability will not be authorized in export control regulations or will be heavily conditioned on other factors.

We want to emphasize that broader rights of petition would not compel changes in U.S. export controls; they would only provide U.S. companies greater opportunity to ask for relief when they believe they are unfairly disadvantaged by U.S. controls.

We regret that the National Security Committee and the Administration could not be more accommodating on these provisions. It is our hope that as this bill moves forward, the provisions we have raised here can be modified and improved so that this bill better serves the U.S. national interest.

SAM GEJDENSON.
LEE H. HAMILTON.

