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To provide fundamental reform of the system and authority to regulate commercial exports, to enhance the effectiveness of export controls, to strengthen multilateral export control regimes, and to improve the efficiency of export regulation.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 1993

Mr. ROTH (for himself and Mr. OBERSTAR) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Ways and Means, and Rules

A BILL

To provide fundamental reform of the system and authority to regulate commercial exports, to enhance the effectiveness of export controls, to strengthen multilateral export control regimes, and to improve the efficiency of export regulation.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Commercial Export Administration Act of 1993”.

6 (b) TABLE OF CONTENTS.—

TABLE OF CONTENTS

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- Sec. 2. Findings and policy.
- Sec. 3. General provisions.
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- Sec. 9. Definitions; reports.
- Sec. 10. Effect on other acts; conforming amendments.
- Sec. 11. Authorization of appropriations; termination date.
- Sec. 12. Miscellaneous provisions.

1 **SEC. 2. FINDINGS AND POLICY.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) The ability of United States citizens to en-
5 gage in international commerce is a fundamental
6 right, which is to be abridged only under specific
7 conditions for critical national security or foreign
8 policy reasons. In principle, exports of commercial
9 goods and technology are unrestricted, except as
10 specified in this Act.

11 (2) Exporting is critical to the economic health
12 of the United States and, therefore, to its national
13 security as well. With the growing importance of ex-
14 ports to sustained United States economic growth
15 and vitality, restrictions on exports should be consid-
16 ered within the broader framework of the economic
17 performance of the United States. Restrictions on
18 commercial exports from the United States have had
19 serious adverse effects on economic competitiveness
20 and domestic employment, particularly when re-

1 strains applied by the United States are more ex-
2 tensive than those imposed by other countries or
3 when United States export control policy is uncer-
4 tain.

5 (3) Traditional strategic threats of Warsaw
6 Pact military capabilities have fundamentally
7 changed; new security threats lie in the proliferation
8 of weapons of mass destruction, that is, nuclear,
9 chemical, and biological weapons, missiles, and ad-
10 vanced delivery systems. Availability to certain coun-
11 tries and endusers of items that contribute to mili-
12 tary or proliferation potential is a fundamental con-
13 cern of the United States and should be eliminated
14 through negotiations and other appropriate means
15 whenever possible.

16 (4) In order for export controls to be effective,
17 they must be maintained multilaterally by supplier
18 countries, and focused only on those commercial
19 goods or technology that would directly, substan-
20 tially, and materially contribute to the military or
21 proliferation potential of countries or endusers pos-
22 ing a strategic threat to the United States. Ad hoc
23 approaches to export controls are no longer suffi-
24 cient. Greater coordination, formalization, simplifica-

1 tion, and consolidation of existing multilateral export
2 control regimes are necessary.

3 (5) Unilateral controls are not effective in
4 changing the actions or policies of other govern-
5 ments. Unilateral emergency controls should only be
6 imposed temporarily in order to allow time to seek
7 multilateral support. If negotiations fail, emergency
8 controls should expire, unless a further extension is
9 approved by the Congress or the emergency controls
10 are upgraded to an embargo.

11 (6) In order for export controls to be effective,
12 United States exporters and the United States Gov-
13 ernment must work closely together in developing,
14 implementing, harmonizing, and enforcing export
15 controls. The Government must clearly and specifi-
16 cally define which items are controlled to which spe-
17 cific destinations and endusers. Effectiveness of ex-
18 port controls is largely based on voluntary compli-
19 ance by the exporting public; it is, therefore, impera-
20 tive that industry be clearly informed in a timely
21 fashion about export control regulations and policies,
22 and that United States exporters know their cus-
23 tomers and, to the greatest extent practicable, the
24 ultimate destination of their products.

1 (7) Export controls cannot, by themselves, stop
2 the development of capabilities to produce weapons
3 of mass destruction. Export controls should, there-
4 fore, be applied as part of a well-reasoned, com-
5 prehensive national response to security threats, tak-
6 ing into account the limitations and the realities of
7 whether goods or technology are controllable.

8 (8) The residual Cold War system of export
9 controls faces basic problems that hamper the effec-
10 tiveness of export controls and unnecessarily im-
11 pedes legitimate United States commercial exports.
12 The United States export control system must be
13 fundamentally and substantially reformed to address
14 more effectively the current security challenges and
15 to achieve the goals of an effective and efficient ex-
16 port control program.

17 (b) POLICY.—It is the policy of the United States—

18 (1) to encourage and support trade with all
19 countries with which the United States has diplo-
20 matic or trading relations;

21 (2) that exports of commercial goods and tech-
22 nology are unrestricted, to be abridged only for criti-
23 cal national security or foreign policy reasons to the
24 extent provided in this Act;

1 (3) that absent the requirement for a validated
2 license, as indicated by the inclusion of specific
3 goods and technology on the export control index to
4 specified countries and endusers, no authority or
5 permission to export is required;

6 (4) to minimize unnecessary restrictions and
7 uncertainty in export control policy;

8 (5) to apply any necessary export controls in
9 cooperation with other supplier nations as part of
10 multilateral export control regimes under section 4,
11 and to strengthen such efforts to better coordinate,
12 formalize, and even consolidate national export con-
13 trol policies;

14 (6) to impose unilateral controls, under the pro-
15 cedures and conditions set forth in section 5, only in
16 response to an immediate and extraordinary threat
17 to the national security or foreign policy of the Unit-
18 ed States, and only after full consideration of the
19 economic impact of the controls and their effective-
20 ness in achieving the intended objectives, and for a
21 limited time in order to negotiate for multilateral
22 controls;

23 (7) to restrict the export or reexport of only
24 those commercial goods and technology that would
25 directly, substantially, and materially—

1 (A) contribute to the military potential of
2 countries posing a strategic threat to the Unit-
3 ed States, or

4 (B) enable a country or enduser to acquire
5 the capability to develop, produce, stockpile,
6 use, or deliver weapons of mass destruction, but
7 only if such goods and technology are control-
8 lable;

9 (8) to administer export controls consistent
10 with basic standards of due process and to provide
11 specific guidelines to United States exporters,
12 through the publication of regulations, public no-
13 tices, and advisory opinions with respect to goods,
14 technology, sectors, license processing policies and
15 practices, destinations, and endusers subject to spe-
16 cific types of controls or exemptions from controls;
17 and

18 (9) to consolidate and simplify the regulation,
19 reporting, and documentation required of exporters.

20 **SEC. 3. GENERAL PROVISIONS.**

21 (a) RIGHT OF EXPORT.—No authority or permission
22 to export commercial goods and technology may be re-
23 quired under this Act or any other provision of law (other
24 than the Atomic Energy Act of 1954), except as provided

1 in sections 4 and 5 of this Act and in sections 7 and 8(b)
2 of the Export Administration Act of 1979.

3 (b) UNITED STATES COMMERCIAL EXPORT CONTROL
4 INDEX.—

5 (1) IN GENERAL.—The Secretary shall—

6 (A) establish and maintain a United States
7 Commercial Export Control Index which shall
8 identify all commercial goods or technology on
9 which controls are imposed under this Act;

10 (B) specify the license requirements appli-
11 cable to the items on the control index; and

12 (C) designate countries and endusers to
13 which exports and reexports of commercial
14 goods and technology are controlled.

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

16 (A) consist of a security control list of all
17 commercial goods and technology on which ex-
18 port and reexport controls are imposed under
19 section 4, and an emergency control list of all
20 goods and technology on which export and reex-
21 port controls are imposed under section 5;

22 (B) for each item on the control index,
23 specify with particularity the performance and
24 other identifying characteristics of the item and

1 provide a rationale for why the item is on the
2 control list;

3 (C) identify countries and endusers to
4 which exports are reexports are controlled, in-
5 cluding specific projects and endusers of con-
6 cern, cross-referenced with the list of goods and
7 technology on which export and reexport con-
8 trols are imposed; and

9 (D) be sufficiently specific and clear as to
10 guide exporters and licensing officers in deter-
11 minations of licensing requirements under this
12 Act.

13 (3) LICENSING OF CONTROL INDEX GOODS AND
14 TECHNOLOGY.—A validated license may be required
15 for the export or reexport of those commercial goods
16 and technology that are specifically and clearly iden-
17 tified on the control index to countries and endusers
18 so designated on the control index. No authority or
19 permission may be required to export or reexport
20 commercial goods and technology not so identified to
21 any country or enduser not so designated.

22 (4) REVIEW OF INDEX.—

23 (A) IN GENERAL.—The Secretary shall re-
24 view all goods and technology on the control
25 index maintained under paragraph (1) at least

1 annually. This review shall apply to the removal
2 of items from the control index or changes in
3 specifications of items on the control index. The
4 Secretary shall use the data developed from
5 such reviews in formulating United States pro-
6 posals for revision of multilateral controls in
7 COCOM and other export control regimes de-
8 scribed in section 4.

9 (B) CONSIDERATIONS.—In conducting the
10 annual review, the Secretary shall—

11 (i) consult with the appropriate indus-
12 try advisory committees appointed under
13 section 6(d) and consider—

14 (I) recommendations of such
15 committees with respect to proposed
16 changes in the control index; and

17 (II) proposals of such committees
18 for the removal, by the date on which
19 the applicable export control regime
20 would implement such removal, of li-
21 censing requirements under this Act
22 for goods or technology which are an-
23 ticipated to be widely available from
24 countries that are not members of
25 that export control regime as a result

1 of advances in the technological per-
2 formance levels of such goods or tech-
3 nology;

4 (ii) consider the results of foreign
5 availability determinations made under
6 subsection (g);

7 (iii) consider comments received pur-
8 suant to the notice of review provided
9 under subparagraph (C)(ii); and

10 (iv) consult with other departments or
11 agencies as the Secretary considers appro-
12 priate.

13 (C) PROCEDURES.—

14 (i) DURATION OF REVIEW.—The an-
15 nual review required under subparagraph
16 (A) may not extend beyond 180 days after
17 such review is begun.

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

1 (iii) REVISIONS.—The Secretary shall
2 make a determination of any revisions in
3 the control index not later than 30 days
4 after the end of the review period. The
5 concurrence or approval of any other de-
6 partment or agency shall not be required
7 before any such revision is made. The Sec-
8 retary shall publish in the Federal Register
9 any revisions in the list, with an expla-
10 nation of the reasons for the revisions.

11 (5) INDEXING.—The Secretary shall develop,
12 with the assistance of the industry advisory commit-
13 tees established under section 6(d), methodologies
14 and procedures for indexing products where per-
15 formance capabilities are measurable. Such meth-
16 odologies and procedures shall provide for increases
17 in the performance levels of goods and technology on
18 the control index and shall provide for the technical
19 specifications below which no authority or permis-
20 sion to export or reexport is required as compared
21 to the most technologically advanced commercially
22 available version of the same or equivalent goods or
23 technology. Such methodologies and procedures shall
24 be published and used in the annual list review of
25 the control index under paragraph (4).

1 (c) ISSUANCE OF REGULATIONS.—

2 (1) IN GENERAL.—The Secretary may issue
3 such regulations as are necessary to carry out this
4 Act.

5 (2) PUBLIC PARTICIPATION.—Unless dem-
6 onstrated as impracticable, all regulations imposing
7 controls on exports under this Act shall be issued in
8 proposed form with opportunity for public comment
9 before taking effect. If a regulation imposing con-
10 trols under this Act is issued with immediate effect,
11 opportunity for public comment shall also be pro-
12 vided and the regulation shall be reissued in final
13 form after public comments have been fully consid-
14 ered.

15 (3) REPORT.—The Secretary shall report to the
16 Committee on Banking, Housing, and Urban Affairs
17 of the Senate and the Committee on Foreign Affairs
18 of the House of Representatives on the intent and
19 rationale of all proposed regulations under this Act
20 and any proposed amendments to regulations issued
21 under this Act. Such report shall thoroughly evalu-
22 ate the costs and burden imposed on United States
23 exporters of the proposed regulations or amend-
24 ments in relation to any enhancement of export li-
25 censing objectives.

1 (4) CONSULTATION.—The Secretary shall, in
2 formulating or amending regulations issued under
3 this Act, consult with the industry advisory commit-
4 tees authorized under section 6(d) before such regu-
5 lations or amendments are issued. The Secretary, in
6 consultation with appropriate industry advisory com-
7 mittees, shall review the regulations issued under
8 this Act in order to simplify and clarify such regula-
9 tions.

10 (d) PUBLICATION OF ACTIONS.—

11 (1) DECISIONS AND ACTIONS OF THE SEC-
12 RETARY—

13 (A) IN GENERAL.—The Secretary shall
14 publish in the Federal Register, to the greatest
15 extent practicable, actions, procedures, and de-
16 cisions of the Secretary under this Act, taking
17 into account restrictions on disclosure of classi-
18 fied or confidential information. The following
19 determinations of the Secretary shall in every
20 case be published in the Federal Register, un-
21 less a private party requested the determination
22 and asked that it not be published:

23 (i) Classification of a good or tech-
24 nology on the control index.

1 (ii) Calculation of a commonly-used
2 control index parameter for a good or tech-
3 nology, including all officially accepted
4 composite theoretical performance calcula-
5 tions for computers and microprocessors.

6 (B) NOTICE OF REVISIONS.—Whenever the
7 Secretary makes any revision in the control
8 index with respect to any good or technology, or
9 with respect to any country or destination af-
10 fected by controls imposed under section 4 or
11 section 5, the Secretary shall publish in the
12 Federal Register a notice of such revision and
13 shall specify in such notice under which author-
14 ity the revision is being made.

15 (2) EXPORT CONTROL REGIME ACTIONS.—

16 (A) IN GENERAL.—Not more than 90 days
17 after the date of the enactment of this Act, the
18 Secretary shall publish the full text of each
19 International List of COCOM, together with all
20 notes and understandings concerning such lists
21 that are agreed to by COCOM, and the lists
22 and all notes and understandings of all other
23 export control regimes. The Secretary shall up-
24 date the publication under the preceding sen-
25 tence at least once in each 1-year period occur-

1 ring after the original publication under this
2 subparagraph.

3 (B) CONTENTS.—The Secretary shall pub-
4 lish—

5 (i) the full text of any agreements of
6 COCOM affecting the International Lists,
7 and any agreements of other export control
8 regimes of which the United States is a
9 member, together with all notes, under-
10 standings, and other aspects of such agree-
11 ments and all revisions to such texts;

12 (ii) subject to the limitations set forth
13 in subsection (f), decisions on requests for
14 general exceptions to the Industrial List
15 portion of the International Lists of
16 COCOM, and decisions on exceptions for
17 exports permitted by such other export
18 control regimes;

19 (iii) other decisions made by COCOM,
20 and other actions and decisions of such
21 other export control regimes, to the maxi-
22 mum extent possible; and

23 (iv) lists of controlled countries and
24 controlled endusers, projects of concern
25 with respect to the capability described in

1 section 2(b)(7)(B), unreliable practices
2 with respect to items on which export or
3 reexport controls are imposed under this
4 Act, and persons to whom sanctions have
5 been applied, or whose export privileges
6 have been denied, under this Act.

7 (C) TIMING.—Such publication shall be
8 made not more than 30 days after the agree-
9 ments are reached, or the decisions are made,
10 as the case may be.

11 (D) EXCEPTION.—The publication of a
12 particular matter need not be made under this
13 paragraph to the extent that the Secretary sub-
14 mits a written finding to the Congress that to
15 publish that matter would be contrary to na-
16 tional or international security, would abridge
17 the confidentiality of the decision-making proc-
18 esses of COCOM or another export control re-
19 gime, or would otherwise be inconsistent with
20 the obligations of the United States to COCOM
21 or another export control regime.

22 (e) NOTIFICATION OF THE PUBLIC; CONSULTATION
23 WITH INDUSTRY; RECORDKEEPING.—

24 (1) NOTIFICATION OF THE PUBLIC.—The Sec-
25 retary shall keep the public fully apprised of changes

1 in export control policy and procedures instituted
2 under this Act with a view to encouraging trade.

3 (2) CONSULTATION WITH INDUSTRY.—The Sec-
4 retary shall meet regularly with industry advisory
5 committees appointed under section 6(d) in order to
6 obtain their views on United States export control
7 policy and the foreign availability of commercial
8 goods and technology.

9 (3) REVIEW OF REPORTING REQUIREMENTS.—
10 In the administration of this Act, reporting require-
11 ments shall be designed so as to reduce the cost of
12 reporting, recordkeeping, and export documentation
13 required under this Act, to the extent feasible and
14 consistent with effective enforcement and compila-
15 tion of useful trade statistics. Reporting, record-
16 keeping, and export documentation requirements
17 shall be periodically reviewed and revised in the light
18 of developments in the field of information tech-
19 nology.

20 (f) CONFIDENTIALITY OF INFORMATION.—

21 (1) EXEMPTIONS FROM DISCLOSURE.—Except
22 as provided in paragraph (2), information obtained
23 by the Secretary under this Act or under previous
24 Acts regarding the control of exports, including any
25 report, export license application, or classification re-

1 quest which is deemed confidential, or with reference
2 to which a request for confidential treatment is
3 made by the person furnishing such information,
4 shall be exempt from disclosure under section 552 of
5 title 5, United States Code, and such information
6 shall not be published or disclosed unless the Sec-
7 retary determines that the withholding thereof is
8 contrary to the national interest.

9 (2) INFORMATION TO CONGRESS AND GAO.—

10 (A) IN GENERAL.—Nothing in this Act
11 shall be construed as authorizing the withhold-
12 ing of information from the Congress or from
13 the General Accounting Office.

14 (B) AVAILABILITY TO THE CONGRESS.—

15 (i) IN GENERAL.—All information ob-
16 tained at any time under this Act or pre-
17 vious Acts regarding the control of exports,
18 including any report or export license ap-
19 plication required under this Act, shall be
20 made available to any committee or sub-
21 committee of Congress of appropriate ju-
22 risdiction upon request of the chairman or
23 ranking minority member of such commit-
24 tee or subcommittee.

1 (ii) PROHIBITION ON FURTHER DIS-
2 CLOSURE.—No such committee or sub-
3 committee, or member thereof, shall dis-
4 close any information obtained under this
5 Act or previous Acts regarding the control
6 of exports which is submitted on a con-
7 fidential basis unless the full committee de-
8 termines that the withholding of that infor-
9 mation is contrary to the national interest.

10 (C) AVAILABILITY TO THE GAO.—

11 (i) IN GENERAL.—Notwithstanding
12 paragraph (1), information referred to in
13 subparagraph (B) shall, consistent with
14 the protection of intelligence, counterintel-
15 ligence, and law enforcement sources,
16 methods, and activities, as determined by
17 the agency that originally obtained the in-
18 formation, and consistent with the provi-
19 sions of section 716 of title 31, United
20 States Code, be made available only by
21 that agency, upon request, to the Comp-
22 troller General of the United States or to
23 any officer or employee of the General Ac-
24 counting Office authorized by the Comp-

1 troller General to have access to such in-
2 formation.

3 (ii) PROHIBITION ON FURTHER DIS-
4 CLOSURE.—No officer or employee of the
5 General Accounting Office shall disclose,
6 except to the Congress in accordance with
7 this paragraph, any such information
8 which is submitted on a confidential basis
9 and from which any individual can be iden-
10 tified.

11 (3) PENALTIES FOR DISCLOSURE OF CON-
12 FIDENTIAL INFORMATION.—Any officer or employee
13 of the United States, or any department or agency
14 thereof, who publishes, divulges, discloses, or makes
15 known in any manner or to any extent not author-
16 ized by law any information to which such officer or
17 employee gains access in the course of his or her em-
18 ployment or official duties or by reason of any exam-
19 ination or investigation made by, or report or record
20 made to or filed with, such department or agency,
21 or officer or employee thereof, if such information is
22 exempt from disclosure under this subsection, shall
23 be fined not more than \$25,000, or imprisoned not
24 more than 1 year, or both, and shall be removed
25 from office or employment.

1 (g) FOREIGN AVAILABILITY.—

2 (1) IN GENERAL.—Except when the President
3 determines that the absence of controls under this
4 Act would prove detrimental to the national security
5 of the United States—

6 (A) the Secretary shall not impose controls
7 under this Act on commercial goods or tech-
8 nology with respect to which it is determined
9 that there is foreign availability; and

10 (B) in the case of any commercial goods or
11 technology with respect to which it is deter-
12 mined that there is foreign availability, the Sec-
13 retary shall either—

14 (i) eliminate controls imposed under
15 this Act on such goods or technology; or

16 (ii) in the case of goods or technology
17 the export or reexport of which is con-
18 trolled under the terms of an export con-
19 trol regime, propose elimination of export
20 and reexport controls to countries partici-
21 pating in the regime and eliminate such
22 controls to the extent such countries agree
23 to such elimination.

24 (2) FOREIGN AVAILABILITY REVIEW.—The Sec-
25 retary, in consultation with appropriate industry ad-

1 visory committees appointed under section 6(d),
2 shall review and monitor on a continuing basis the
3 foreign availability of any commercial goods or tech-
4 nology on which controls are or may be imposed
5 under this Act. In so doing, the Secretary shall con-
6 sider the availability of such goods or technology,
7 and the anticipated availability of such goods and
8 technology within 6 months, within and to controlled
9 countries and countries other than controlled coun-
10 tries from sources outside the United States, and
11 the extent to which any such source country places
12 and enforces controls on the export of such goods or
13 technology to controlled countries. The Secretary
14 shall not consider the availability under license from
15 a country which maintains export controls on such
16 goods or technology cooperatively with the United
17 States pursuant to the agreement of COCOM or
18 other export control regimes, unless the Secretary
19 determines that the export restrictions maintained
20 by such country are ineffective.

21 (3) PROCEDURES FOR FOREIGN AVAILABILITY
22 DETERMINATIONS.—

23 (A) IN GENERAL.—The United States
24 International Trade Commission (hereafter in
25 this subsection referred to as the “ITC”) is

1 solely responsible for making foreign availability
2 determinations of goods and technology under
3 this Act. The ITC may undertake a foreign
4 availability assessment at any time upon its
5 own initiative, and shall undertake a foreign
6 availability assessment upon a written request
7 by the Secretary, or upon receipt of a written
8 allegation supported by reasonable evidence
9 from the appropriate industry advisory commit-
10 tee under section 6(d) or a United States per-
11 son that such availability exists.

12 (B) NOTICE REQUIREMENTS.—Whenever
13 the ITC undertakes a foreign availability as-
14 sessment under this subsection, the ITC shall
15 publish notice of such assessment in the Fed-
16 eral Register. Not later than 4 months after
17 initiating such an assessment, the ITC shall de-
18 termine whether the foreign availability exists,
19 and shall submit for publication in the Federal
20 Register a notice of its determination, together
21 with a concise statement of the basis for its de-
22 termination. The ITC shall also forward a writ-
23 ten notice of its determination to the Secretary.

24 (C) ACTION BY THE SECRETARY.—Not
25 later than 30 days after receipt of a determina-

1 tion by the ITC that foreign availability exists
2 with respect to a commercial good or tech-
3 nology, the Secretary shall either—

4 (i) eliminate controls under this Act
5 on such commercial good or technology
6 and publish a notice of such action in the
7 Federal Register;

8 (ii) in the case of a commercial good
9 or technology controlled under the terms of
10 export control regime, propose the elimi-
11 nation of controls on such commercial good
12 or technology in accordance with the proce-
13 dures of such regime and publish a notice
14 of such proposal in the Federal Register;
15 or

16 (iii) in any case in which the Presi-
17 dent determines that controls under this
18 Act must be maintained notwithstanding
19 the foreign availability because the absence
20 of such controls would prove detrimental to
21 the national security of the United States,
22 publish a notice of that determination in
23 the Federal Register, together with a con-
24 cise statement of the basis for that deter-
25 mination and the estimated economic im-

1 pact of the decision, and a statement that
2 the applicable steps are being taken under
3 paragraph (4).

4 (4) NEGOTIATIONS TO ELIMINATE FOREIGN
5 AVAILABILITY.—

6 (A) IN GENERAL.—In any case in which
7 export controls are maintained on a commercial
8 good or technology notwithstanding foreign
9 availability on account of a determination by
10 the President that the absence of controls under
11 this Act would prove detrimental to the national
12 security of the United States, the Secretary
13 shall actively pursue negotiations with the gov-
14 ernments of the countries which are the sources
15 of the good or technology for the purpose of
16 eliminating the foreign availability.

17 (B) REMOVAL OF CONTROLS.—If, not later
18 than 6 months after the determination by the
19 President described in subparagraph (A), the
20 foreign availability of the good or technology
21 has not been eliminated, the Secretary shall re-
22 move export or reexport controls from the good
23 or technology under this Act and publish notice
24 of such action in the Federal Register.

1 (C) EFFECT OF AGREEMENT.—After an
2 agreement is reached with a country pursuant
3 to negotiations under this paragraph to elimi-
4 nate foreign availability of commercial goods or
5 technology, the Secretary may not require a
6 validated license under this Act for the export
7 of such commercial goods or technology to that
8 country.

9 (5) SHARING OF INFORMATION.—Each depart-
10 ment or agency of the United States, including any
11 intelligence agency, and all contractors with any
12 such department or agency, shall, upon the request
13 of the Secretary or the ITC and consistent with the
14 protection of intelligence sources and methods and
15 safeguarding of classified information, furnish infor-
16 mation to the ITC concerning foreign availability of
17 goods and technology subject to export controls
18 under this Act. Each such department or agency
19 shall allow the ITC access to any such information
20 from a laboratory or other facility within such de-
21 partment or agency.

22 (6) REMOVAL OF CONTROLS ON LESS SOPHISTI-
23 CATED GOODS OR TECHNOLOGY.—In any case in
24 which export or reexport controls are removed from
25 commercial goods or technology under this sub-

1 section, then such controls may not be imposed or
2 maintained on any similar commercial goods or tech-
3 nology whose function, technological approach, per-
4 formance thresholds, and other attributes that form
5 the basis for controls under this Act do not exceed
6 the technical parameters of the commercial goods or
7 technology from which the controls are removed
8 under this subsection.

9 (7) REPORT OF DETERMINATIONS AND AC-
10 TIONS.—Not later than 10 days after any deter-
11 mination by the ITC under paragraph (3)(B), or in
12 the case of determination of the President under
13 paragraph (3)(C)(iii), not later than 10 days after
14 the initiation of negotiations under paragraph
15 (4)(A), the Secretary shall submit a report to the
16 Committee on Banking, Housing, and Urban Affairs
17 of the Senate and the Committee on Foreign Affairs
18 of the House of Representatives setting forth a de-
19 tailed explanation of the determination of the ITC
20 and the determination of the President (if applica-
21 ble), and the implications of such determinations.

22 **SEC. 4. NATIONAL SECURITY CONTROLS.**

23 (a) AUTHORITY.—

24 (1) IN GENERAL.—In order to carry out the
25 policy set forth in section 2(b)(7), the President

1 may, in accordance with this section, prohibit or cur-
2 tail the export and reexport of any commercial goods
3 or technology subject to the jurisdiction of the Unit-
4 ed States, if such goods and technology would—

5 (A) directly, substantially, and materially
6 contribute to the military capability of countries
7 or endusers posing a strategic threat to the
8 United States; or

9 (B) directly, substantially, and materially
10 enable a country or enduser to acquire the ca-
11 pability to develop, produce, stockpile, use, or
12 deliver weapons of mass destruction.

13 (2) EXERCISE OF AUTHORITY.—The authority
14 granted by this subsection shall be exercised by the
15 Secretary, and shall be implemented by means of ex-
16 port licenses issued by the Secretary.

17 (b) SECURITY CONTROL LIST.—

18 (1) IN GENERAL.—The Secretary shall establish
19 and maintain, as part of the control index estab-
20 lished under section 3(b), a security control list,
21 comprised of all commercial goods or technology on
22 which export and reexport controls are in effect
23 under this section, and the countries or endusers to
24 which the controls apply. The security control list
25 shall clearly identify the specific commercial goods

1 and technology the export or reexport of which is
2 controlled, and each country and enduser to which
3 such exports and reexports are controlled. Such list
4 shall be reviewed and updated at least once every 12
5 months.

6 (2) CONTROLLED GOODS AND TECHNOLOGY.—
7 Export or reexport controls may be imposed under
8 this section only on commercial goods and tech-
9 nology that are controllable, only if the controls
10 would be effective in restricting the capabilities set
11 forth in subsection (a)(1), and only if—

12 (A) the export controls are imposed pursu-
13 ant to an export control regime, such as
14 COCOM, the MTCR, the Australia Group, the
15 Nuclear Suppliers Group, or any export control
16 regime entered into by the United States under
17 subsection (d)(3); or

18 (B) in the absence of an applicable export
19 control regime, no foreign availability of such
20 goods or technology exists.

21 (3) DESIGNATED COUNTRIES AND
22 ENDUSERS.—In administering export controls under
23 this section, the Secretary shall, for each good and
24 technology listed on the security control list, des-
25 ignate the specific countries and endusers for which

1 export licenses or reexport authorizations are re-
2 quired. These countries and endusers may include
3 only—

4 (A) controlled countries and controlled
5 endusers; and

6 (B) non-regime countries with respect to
7 the export control regime which controls the ex-
8 port of such good and technology.

9 (4) CONTROLLED COUNTRIES AND
10 ENDUSERS.—A country may be designated a con-
11 trolled country, and an enduser may be designated
12 a controlled enduser, with respect to a particular
13 good or technology on the security control list only
14 if exports of such good or technology to such country
15 or enduser are controlled cooperatively pursuant to
16 the agreement of an export control regime, and only
17 if such country or enduser—

18 (A) has military capabilities, policies, or
19 activities which represent a direct strategic
20 threat to the national security of the members
21 of the export control regime; or

22 (B) is engaged in or is deliberately assist-
23 ing another controlled country or enduser in the
24 design, development, production, stockpiling,
25 use, or delivery of weapons of mass destruction.

1 (5) REVISION OF DESIGNATION OF CON-
2 TROLLED COUNTRIES AND ENDUSERS.—

3 (A) CONTROLLED COUNTRIES.—In any
4 case in which a controlled country—

5 (i) adopts military policies that rep-
6 resent a lesser strategic threat to members
7 of the appropriate export control regime;

8 (ii) terminates efforts to acquire
9 weapons of mass destruction and adopts
10 policies consistent with international ef-
11 forts to restrict the proliferation of weap-
12 ons of mass destruction;

13 (iii) terminates activities that would
14 assist the capabilities of other controlled
15 countries in those activities described in
16 paragraph (4)(B); or

17 (iv) agrees to adhere to policies and
18 practices of the appropriate export control
19 regime and implements an effective export
20 control system;

21 such that the reasons for its being designated
22 a controlled country cease to exist, the Sec-
23 retary shall propose to the appropriate export
24 control regime to remove the country's designa-
25 tion as a controlled country. Upon the removal

1 of such designation by the export control re-
2 gime, the Secretary shall, with respect to the
3 commercial goods and technology which are
4 controlled under this section pursuant to the
5 agreement of that regime, change the designa-
6 tion of the country on the security control list
7 from a controlled country to a non-regime coun-
8 try. If the country also agrees to participate in
9 or be a cooperating country with respect to the
10 export control regime, the Secretary shall re-
11 move such country from the security control
12 list.

13 (B) CONTROLLED ENDUSERS.—In any
14 case in which a controlled enduser—

15 (i) ceases to engage in the design, de-
16 velopment, production, stockpiling, use, or
17 delivery of weapons of mass destruction; or

18 (ii) terminates activities that would
19 assist the capabilities of controlled coun-
20 tries in those activities described in para-
21 graph (4)(B);

22 such that the reasons for its being designated
23 a controlled enduser cease to exist, the Sec-
24 retary shall propose to the appropriate export
25 control regime to remove the enduser's designa-

1 tion as a controlled enduser. Upon the removal
2 of such designation by the export control re-
3 gime, the Secretary shall, with respect to the
4 commercial goods and technology which are
5 controlled under this section pursuant to agree-
6 ment of that regime, remove that enduser from
7 the security control list.

8 (c) EXPORT LICENSING POLICIES FOR DESIGNATED
9 COUNTRIES AND CONTROLLED ENDUSERS.—

10 (1) EXPORTS TO CONTROLLED COUNTRIES AND
11 ENDUSERS.—

12 (A) IN GENERAL.—Except as provided in
13 subsection (d)(5), the Secretary shall require
14 authority or permission to export or reexport
15 goods and technology on the security control
16 list to controlled countries and controlled
17 endusers.

18 (B) PRESUMPTION OF DENIAL FOR CON-
19 TROLLED ENDUSERS.—Exports and reexports
20 to controlled endusers in controlled countries of
21 goods or technology on which controls are in ef-
22 fect under this section shall carry a presump-
23 tion of denial if such requirement is the policy
24 of the export control regime controlling the
25 goods or technology. In the negotiations re-

1 required by subsection (d)(1), the Secretary shall
2 seek agreement on such a policy by every export
3 control regime.

4 (C) CASE-BY-CASE REVIEW FOR OTHER
5 ENDUSERS.—Exports and reexports to
6 endusers, other than controlled endusers, in
7 controlled countries of goods or technology on
8 which controls are in effect under this section
9 shall be subject to case-by-case license review by
10 the Secretary and shall be submitted for multi-
11 lateral review if required by the export control
12 regime controlling the goods or technology.

13 (2) EXPORTS TO NON-REGIME COUNTRIES.—

14 (A) IN GENERAL.—Except as provided in
15 subsection (d)(5), the Secretary may, in his or
16 her discretion, require authority or permission
17 to export or reexport to endusers in non-regime
18 countries goods or technology on which controls
19 are in effect under this section if—

20 (i) such requirement is the policy of
21 the export control regime controlling the
22 goods or technology, for exports of such
23 goods and technology to non-regime coun-
24 tries; and

1 (ii) the Secretary has determined that
2 the unrestricted export of such goods or
3 technology to such non-regime country
4 would directly, substantially, and materi-
5 ally contribute to the military capability of
6 a controlled country or enduser described
7 in subsection (a)(1)(A), or to the capability
8 of a controlled country or enduser de-
9 scribed in subsection (a)(1)(B), through
10 the threat of diversion or other means.

11 (B) EXCEPTION.—Notwithstanding clause
12 (i) of subparagraph (A), for a period of 18
13 months beginning on the effective date of this
14 Act, the Secretary may require a license for the
15 export or reexport to any non-regime country of
16 any good or technology controlled under sub-
17 section (b)(2). During such period, the Sec-
18 retary shall engage in negotiations with other
19 members of the export control regime control-
20 ling the good or technology for the purpose of
21 developing a common list of controlled countries
22 and controlled endusers, and a common policy
23 on exports to non-regime countries. After the
24 end of such 18-month period, export controls on

1 such good or technology may be imposed only
2 under subparagraph (A) or under section 5.

3 (C) LICENSING TREATMENT.—(i) Exports
4 and reexports to non-regime countries of goods
5 and technology on which controls are in effect
6 under this section shall be considered on a na-
7 tional discretion basis.

8 (ii) Exports to endusers in non-regime
9 countries other than controlled endusers shall
10 carry a presumption of approval.

11 (iii) Exports to controlled endusers in non-
12 regime countries shall be reviewed on a case-by-
13 case basis and shall be submitted for multilat-
14 eral review if required by the export control re-
15 gime controlling the good or technology.

16 (iv) The Secretary shall pursue negotia-
17 tions with countries participating in export con-
18 trol regimes to achieve a consistent and effec-
19 tive multilateral approach to exports to non-re-
20 gime countries.

21 (D) NEGOTIATIONS TO ENHANCE CO-
22 OPERATION.—The Secretary shall pursue nego-
23 tiations with non-regime countries regarding
24 their cooperation in restricting the export of
25 goods and technology consistent with the pur-

1 poses of those export control regimes controlling
2 such exports. The goal of such negotiations
3 shall be to produce agreements with such coun-
4 tries under which such countries impose export
5 restrictions consistent with the objectives set
6 forth in subsection (d)(1).

7 (E) REVIEW OF AGREEMENTS.—The Sec-
8 retary shall review annually any agreement
9 reached pursuant to subparagraph (D). If the
10 Secretary determines that a country is not ad-
11 hering to the terms of such an agreement with
12 the United States, the Secretary may restrict or
13 eliminate any preferential licensing treatment
14 for exports to that country provided under the
15 agreement and shall notify other members of
16 the appropriate export control regime of such
17 action.

18 (F) SANCTIONS.—If the Secretary deter-
19 mines that a non-regime country or an enduser
20 in a non-regime country is exporting to a con-
21 trolled country or controlled enduser goods or
22 technology on which controls are in effect under
23 this section, the Secretary may—

24 (i) suspend favorable licensing treat-
25 ment for such goods and technology to

1 such non-regime country or enduser in a
2 non-regime country;

3 (ii) propose to the other members of
4 the export control regime controlling the
5 goods or technology the suspension of fa-
6 vorable licensing treatment of the goods
7 and technology to such non-regime country
8 or enduser by all members of the regime;
9 and

10 (iii) consider applying United States
11 sanctions pursuant to section 8(d) to such
12 non-regime country or enduser.

13 (d) EXPORT CONTROL REGIMES AND LICENSING
14 POLICIES.—

15 (1) IN GENERAL.—For the purposes of creating
16 effective multilateral export controls and strengthen-
17 ing the controls imposed by export control regimes,
18 the Secretary shall, with respect to each export con-
19 trol regime, pursue negotiations with other members
20 of such regime to accomplish the following objec-
21 tives:

22 (A) No license requirement for exports and
23 reexports among members of the regime and to
24 countries who are cooperating countries with re-
25 spect to the regime.

1 (B) Development of a common list of
2 goods and technology to which export controls
3 are applied, and a common list of countries and
4 endusers to which exports are controlled, by
5 members of the regime.

6 (C) Agreement on the same treatment, to
7 be applied by all members of the regime, of ex-
8 ports and reexports to members of the regime
9 cooperating countries, and non-regime coun-
10 tries, which could include multilateral review of
11 exports to controlled countries and controlled
12 endusers and multilateral sanctions to be ap-
13 plied to such countries and endusers, or to
14 members of the regime and cooperating coun-
15 tries who violate export controls imposed by the
16 regime.

17 (D) National procedures resulting in com-
18 parable implementation and enforcement of ex-
19 port controls among the members of the regime,
20 including laws providing appropriate civil and
21 criminal penalties and statutes of limitations
22 sufficient to deter potential violations.

23 (E) Periodic meetings of high-level rep-
24 resentatives of governments participating in the
25 regime for the purpose of coordinating national

1 export control policies and issuing policy guid-
2 ance for dissemination to exporters in partici-
3 pating countries.

4 (F) Establishment of procedures for regul-
5 ar consultation among members of the regime
6 on proposed export license applications that in-
7 cludes consultation with individuals with suffi-
8 cient technical expertise to assess the licensing
9 status of exports and to ensure the reliability of
10 endusers.

11 (G) Development of common procedures
12 for enforcing the export controls agreed upon
13 by the regime, including adequate training and
14 authority for enforcement officers to investigate
15 and prevent illegal exports.

16 (H) Development of a common system of
17 export control documentation to verify the
18 movement of goods and technology.

19 (I) Establishment of procedures for the co-
20 ordination and exchange of information con-
21 cerning violations of controls agreed to by the
22 regime.

23 (J) Establishment of procedures for the co-
24 ordination and sharing of intelligence informa-

1 tion on controlled countries and controlled
2 endusers.

3 (2) CERTIFICATION OF MULTILATERAL EXPORT
4 CONTROL REGIMES.—

5 (A) When the Secretary determines that
6 an existing export control regime has met the
7 objectives set forth in paragraph (1), the Sec-
8 retary shall certify such determination and pub-
9 lish such certification in the Federal Register,
10 and exports to all countries adhering to that re-
11 gime shall be subject to the licensing treatment
12 set forth in paragraph (5).

13 (B) COCOM shall be considered to have
14 met the objectives set forth in paragraph (1).

15 (3) NEW EXPORT CONTROL REGIMES.—No new
16 export control regime shall be entered into by the
17 United States until the President has submitted to
18 the appropriate committees in the House of Rep-
19 resentatives and the Senate and published in the
20 Federal Register, at least 90 days before the new re-
21 gime becomes effective, a report—

22 (A) certifying that the members of the new
23 regime represent all significant sources of sup-
24 ply for the goods and technology which are to
25 be controlled by the regime;

1 (B) specifying the list of goods and tech-
2 nology to be controlled cooperatively by mem-
3 bers of the regime and the destinations to
4 which such goods and technology are to be con-
5 trolled; and

6 (C) certifying that such goods and tech-
7 nology are controllable and that licensing their
8 export would be effective in restricting the ca-
9 pabilities set forth in subsection (a)(1)(A) or
10 (B).

11 (4) FORMALIZATION OF REGIME CONTROLS.—
12 The Secretary shall pursue efforts to consolidate and
13 formalize existing export control regimes, such as
14 COCOM, the MTCR, the Australia Group, and the
15 Nuclear Suppliers Group, into a single, new, multi-
16 lateral entity for the coordination of export controls.
17 Until such new entity is formed, the Secretary shall
18 also pursue efforts to rationalize export controls
19 among the existing export control regimes, especially
20 with respect to coordinating the performance and
21 other identifying characteristics of goods and tech-
22 nologies which are controlled under such regimes.

23 (5) EXPORT LICENSING POLICIES TO COUN-
24 TRIES PARTICIPATING IN OR COOPERATING WITH
25 EXPORT CONTROL REGIMES.—

1 (A) FAVORABLE LICENSING TREAT-
2 MENT.— Except as otherwise required by the
3 Atomic Energy Act of 1954, if an export con-
4 trol regime is certified under paragraph (2), no
5 authority or permission may be required for ex-
6 ports or reexports of goods and technology con-
7 trolled by such regime to or from members of
8 the regime or cooperating countries with respect
9 to such regime.

10 (B) EXEMPTION FROM SANCTIONS.—Sanc-
11 tions for violations of export controls may not
12 be imposed under section 8(d) on foreign per-
13 sons who are nationals of countries that are
14 members of an export control regime certified
15 under paragraph (2) or cooperating countries
16 with respect to such regime, to the extent pro-
17 vided in section 8(d)(5).

18 (C) EXCEPTION.—If the Secretary deter-
19 mines that a member of an export control re-
20 gime certified under paragraph (2), a cooperat-
21 ing country with respect to such regime, or an
22 enduser in a country that is such a regime
23 member or in such a cooperating country is en-
24 gaging in a pattern and practice of noncompli-
25 ance with controls agreed to by the regime, the

1 Secretary shall seek a similar determination by
2 the other members of the regime concerning
3 such noncompliance. If such a determination is
4 made, the Secretary shall propose the suspen-
5 sion of favorable licensing treatment of exports
6 and reexports to that noncomplying regime
7 member, cooperating country, or enduser by all
8 members of the regime during the period in
9 which that determination is in effect.

10 (D) NEW MEMBERS.—When a country
11 that is not a member of an export control re-
12 gime certified under paragraph (2) agrees to
13 the objectives and procedures of such regime
14 and has become a member of that regime, the
15 Secretary shall certify that this new member is
16 eligible for the licensing treatment set forth in
17 this paragraph, and shall publish such certifi-
18 cation in the Federal Register.

19 (6) TRANSITION PERIOD TO CERTIFIED EXPORT
20 CONTROL REGIMES.—For a period of 18 months be-
21 ginning on the effective date of this Act, the Sec-
22 retary shall apply the licensing policies set forth in
23 paragraph (5) to all countries who participate in or
24 are cooperating countries with respect to an export
25 control regime even if the Secretary has not certified

1 the regime under paragraph (2). After the expiration
2 of such 18-month period, if the Secretary fails to
3 certify an export control regime under paragraph
4 (2), the Secretary may—

5 (A) continue to apply the licensing policies
6 set forth in paragraph (5) if the negotiations
7 prescribed in paragraph (1) continue; or

8 (B) require authority or permission to ex-
9 port or reexport goods or technology on which
10 controls are in effect under this section to any
11 country that participates in or is a cooperating
12 country with respect to such export control re-
13 gime.

14 **SEC. 5. EMERGENCY CONTROLS.**

15 (a) AUTHORITY.—

16 (1) IN GENERAL.—In order to carry out the
17 policy set forth in section 2(b)(6), the President
18 may, in accordance with this section, prohibit or cur-
19 tail the export and reexport of any commercial goods
20 or technology subject to the jurisdiction of the Unit-
21 ed States to any country or enduser. The authority
22 to impose controls under this subsection shall be ex-
23 ercised by the Secretary, in consultation with other
24 members of the Commercial Export Control Policy
25 Committee established under section 6(b), and shall

1 be implemented by means of export licenses issued
2 by the Secretary.

3 (2) EXPIRATION OF AUTHORITY.—

4 (A) IN GENERAL.—Any emergency controls
5 imposed under this section shall expire 180
6 days after they are imposed, unless they are
7 terminated earlier by the President, or unless
8 they are extended, adopted as national security
9 controls under section 4, or included in a total
10 embargo described in subsection (b)(2) that is
11 imposed by the President under the Inter-
12 national Emergency Economic Powers Act, the
13 Trading with the Enemy Act or other provision
14 of law other than this Act, on all exports and
15 imports to a country. Any extension or subse-
16 quent extension of the emergency controls shall
17 be for a period of not more than 180 days each.

18 (B) EXCEPTION FOR MULTILATERAL
19 AGREEMENTS.—Subparagraph (A) shall not
20 apply to controls imposed by the President in
21 order to fulfill obligations of the United States
22 pursuant to a treaty to which the United States
23 is a party or pursuant to an agreement to im-
24 pose such controls multilaterally by the United
25 Nations or similar international or regional or-

1 ganization of which the United States is a
2 member. If such a treaty or agreement ceases
3 to be in effect, emergency controls imposed by
4 the President pursuant to such treaty or agree-
5 ment shall immediately cease to be in effect.

6 (3) CRITERIA.—The President may impose
7 emergency controls under this section only if the
8 President—

9 (A) determines that the emergency controls
10 are a necessary and appropriate policy response
11 to an immediate and extraordinary threat to the
12 national security or foreign policy of the United
13 States;

14 (B) determines that no other alternative
15 means can achieve the national security or for-
16 eign policy objectives of the United States with-
17 in a reasonable time frame;

18 (C) determines that the emergency controls
19 can reasonably be expected to achieve the in-
20 tended objective within 180 days after being im-
21 posed, after having taken into consideration
22 other factors, including the availability from
23 one or more countries of comparable goods and
24 technology to those on which the controls are
25 imposed;

1 (D) determines that the United States has
2 the ability to enforce all aspects of the proposed
3 emergency controls effectively;

4 (E) determines that a period of time of not
5 more than 180 days is necessary for the United
6 States to obtain the agreement of other coun-
7 tries to adopt such controls so that such con-
8 trols may be imposed under section 4;

9 (F) commences, through the Secretary,
10 within 10 days after the imposition of the emer-
11 gency controls, negotiations with other coun-
12 tries to adopt the emergency controls so that
13 such controls may be imposed under section 4,
14 unless such emergency controls are imposed
15 under paragraph (2)(B); and

16 (G) consults with the Congress and sub-
17 mits the necessary report under paragraph (4).

18 (4) REQUIRED CONSULTATIONS.—

19 (A) IN GENERAL.—The President may im-
20 pose emergency controls under this section only
21 after consultation with industry under subpara-
22 graph (C), foreign countries under subpara-
23 graph (D), and the Congress, including the
24 Committee on Foreign Affairs of the House of

1 Representatives and the Committee on Bank-
2 ing, Housing, and Urban Affairs of the Senate.

3 (B) LIMITATION.—The President may not
4 impose emergency controls under this section
5 until the President has submitted to the Con-
6 gress and published in the Federal Register a
7 report—

8 (i) specifying the purpose of the con-
9 trols;

10 (ii) specifying the determinations of
11 the President with respect to each of the
12 criteria set forth in paragraph (3), the
13 bases for such determinations, and the ad-
14 verse national security, foreign policy, and
15 economic consequences of the controls;

16 (iii) containing an analysis identifying
17 those commercial goods and technology
18 which must be controlled in order to
19 achieve the intended purpose of the emer-
20 gency controls, and describing the reasons
21 for selecting such items;

22 (iv) describing the nature, subjects,
23 and plans for the negotiations with other
24 countries required by paragraph (3)(F);

1 (v) containing a thorough assessment
2 of the foreign availability of the commer-
3 cial goods and technology proposed for
4 control;

5 (vi) containing an analysis, based on
6 past experience with emergency controls
7 and based upon information on foreign
8 availability, of the extent to which the
9 emergency controls will be effective in
10 achieving the intended purpose;

11 (vii) incorporating an evaluation of
12 the impact of the controls on the export
13 performance of the United States, on the
14 competitive position of the United States
15 and United States industry in the inter-
16 national economy, on the international rep-
17 utation of the United States as a reliable
18 supplier of goods and technology, on the
19 economic well-being of individual United
20 States companies and their employees and
21 shareholders, their foreign investments,
22 and their joint ventures, and on public
23 health and safety;

24 (viii) specifying that the President has
25 determined that the emergency controls

1 can be expected to achieve the intended
2 purpose with reasonable certainty within
3 180 days after being imposed;

4 (ix) indicating the nature and results
5 of the alternative means attempted under
6 paragraph (3)(B);

7 (x) describing the results of the con-
8 sultations with industry required by sub-
9 paragraph (C) and with other countries re-
10 quired by subparagraph (D); and

11 (xi) describing the views of the Presi-
12 dent regarding the likelihood that all other
13 countries representing a source of supply
14 of the goods or technology on which the
15 controls are imposed will be willing to im-
16 pose comparable controls promptly.

17 (C) CONSULTATION WITH INDUSTRY.—The
18 Secretary shall consult with and seek advice
19 from affected United States industries and the
20 appropriate industry advisory committees estab-
21 lished under section 6(d) before imposing emer-
22 gency controls under this section. Such con-
23 sultation and advice shall be with respect to the
24 matters described in subparagraph (B), and

1 such other matters as the Secretary considers
2 appropriate.

3 (D) CONSULTATION WITH OTHER COUN-
4 TRIES.—Before imposing emergency controls
5 under this section, the President shall consult
6 with such other countries as the President con-
7 siders appropriate with respect to the proposed
8 controls, including other countries that rep-
9 resent a significant source of supply of goods
10 and technology proposed for the controls. Pur-
11 suant to paragraph (3)(F), the President shall,
12 within 10 days after imposing emergency con-
13 trols, initiate negotiations with other supplier
14 countries of goods and technology on which the
15 controls are imposed, and other countries as the
16 President considers appropriate, with respect to
17 adopting the controls so that the controls may
18 be imposed under section 4.

19 (E) CONFIDENTIALITY.—To the extent
20 necessary to further the effectiveness of the
21 emergency controls, portions of the report re-
22 quired by subparagraph (B) may be submitted
23 to the Congress on a classified basis, and shall
24 be subject to the provisions of section 3(f), but
25 a non-classified version of such report shall be

1 simultaneously made available to the public.
2 Each such report shall, at the time it is submit-
3 ted to the Congress, also be submitted to the
4 Comptroller General, who shall assess the re-
5 port's full compliance with the purposes of this
6 subsection.

7 (5) EMERGENCY CONTROL LIST.—The Sec-
8 retary shall establish and maintain, as part of the
9 control index, a list comprised of any commercial
10 goods and technology on which emergency controls
11 are in effect under this section and, for each item
12 on the list, the specific countries or endusers to
13 which the controls apply. In addition to clearly iden-
14 tifying which commercial goods or technology are
15 subject to emergency controls to which specific coun-
16 tries or endusers, the list shall also indicate when
17 such controls are due to expire. Such list shall be re-
18 viewed and updated every 6 months for the purpose
19 of making such revisions as are necessary in order
20 to carry out this section.

21 (b) PROCEDURES AND LIMITATIONS ON EMERGENCY
22 CONTROLS.—

23 (1) IN GENERAL.—Not later than the end of
24 the 180-day period after emergency controls are im-
25 posed under subsection (a), the President shall—

1 (A) terminate the emergency controls;

2 (B) adopt the emergency controls as na-
3 tional security controls under section 4;

4 (C) include the emergency controls in an
5 embargo described in paragraph (2) on all ex-
6 ports and imports that are imposed under the
7 International Emergency Economic Powers Act,
8 the Trading with the Enemy Act, or other pro-
9 vision of law; or

10 (D) extend the emergency controls under
11 subsection (c).

12 (2) IMPOSITION OF AN EMBARGO.—An embargo
13 under paragraph (1)(C) shall include the prohibition
14 of all exports to and imports from the country
15 against which the controls under this section were
16 imposed, except as provided in section 7(b)(6).

17 (3) CESSATION OF EMERGENCY CONTROLS.—

18 (A) IN GENERAL.— Emergency controls
19 imposed under this section on goods or tech-
20 nology shall cease to be in effect immediately
21 upon—

22 (i) the imposition of national security
23 controls under section 4 on the same goods
24 and technology to the country or enduser

1 with respect to which the emergency con-
2 trols were imposed; or

3 (ii) the imposition, under the Inter-
4 national Emergency Economic Powers Act,
5 the Trading with the Enemy Act, or other
6 provision of law, of an embargo described
7 in paragraph (2).

8 (B) CONVERSION TO MULTILATERAL
9 AGREEMENTS.—If the President imposes emer-
10 gency controls on goods or technology to a
11 country or enduser under this section in order
12 to fulfill obligations of the United States pursu-
13 ant to a treaty to which the United States is a
14 party, or pursuant to an agreement to impose
15 such controls multilaterally by an international
16 organization of which the United States is a
17 member, any emergency controls imposed prior
18 thereto under this section on the same goods or
19 technology to the same country or enduser shall
20 immediately cease to be in effect.

21 (4) LIMITATIONS ON REIMPOSITION.—Emer-
22 gency controls which have ceased to be in effect
23 under paragraph (3) or subsection (a)(2), and which
24 have not been extended under subsection (c), may
25 not be reimposed by the President under subsection

1 (a) for a period of 1 year beginning on the date on
2 which the original controls expire.

3 (c) EXTENSION OF EMERGENCY CONTROLS.—

4 (1) REPORT.—If the President decides to ex-
5 tend emergency controls imposed under subsection
6 (a), which are due to expire under subsection (a)(2),
7 the President shall, not later than 60 calendar days
8 before the expiration of such controls, transmit to
9 the Congress a report on the proposed extension,
10 setting forth the reasons for the proposed extension
11 in detail and specifying the period of time, which
12 may not exceed 180 days, for which the controls are
13 proposed to be extended. In particular, such report
14 shall specify in detail—

15 (A) the determinations of the President
16 with respect to each of the criteria set forth in
17 subsection (a)(3);

18 (B) the reasons why negotiations required
19 under subsection (a)(3)(F) failed to result in
20 the adoption of the emergency controls under
21 section 4, and the reasonable period of time the
22 President expects will be required to success-
23 fully conclude such negotiations;

24 (C) the reasons why a total embargo on all
25 exports and imports is not presently justified to

1 achieve the national security or foreign policy
2 objectives of the United States; and

3 (D) information on each of the items set
4 forth in subsection (a)(4)(B).

5 (2) CONSIDERATION OF EXTENSION.—If the
6 Congress, not later than 60 calendar days after the
7 date of its receipt of the report under paragraph (1),
8 adopts a joint resolution pursuant to paragraph (3)
9 approving the extension of the emergency controls,
10 then such emergency controls shall remain in effect
11 for the period specified in the report or until termi-
12 nated by the President, whichever occurs first, but
13 in no case longer than 180 days after the date on
14 which the controls would otherwise expire under sub-
15 section (a)(2). If the Congress, within 60 calendar
16 days after the date of its receipt of such report, fails
17 to adopt a joint resolution approving the extension
18 of such controls, then such controls shall cease to be
19 effective upon the expiration of that 60-day period.

20 (3) JOINT RESOLUTIONS.—

21 (A) DEFINITION.—For purposes of this
22 paragraph, the term “joint resolution” means
23 only a joint resolution the matter after the re-
24 solving clause of which is as follows: “That,
25 pursuant to section 5(c) of the Commercial Ex-

1 port Administration Act of 1993, the President
2 may extend emergency controls as specified in
3 the report submitted to the Congress on
4 _____.”, with the
5 blank space being filled with the appropriate
6 date.

7 (B) INTRODUCTION.—On the day on which
8 a report is submitted to the House of Rep-
9 resentatives and the Senate under paragraph
10 (1), a joint resolution with respect to the exten-
11 sion of controls specified in such report shall be
12 introduced (by request) in the House of Rep-
13 resentatives by the chairman of the Committee
14 on Foreign Affairs, for the chairman and the
15 ranking minority member of the Committee, or
16 by Members of the House designated by the
17 chairman and ranking minority member; and
18 shall be introduced (by request) in the Senate
19 by the majority leader of the Senate, for himself
20 and the minority leader of the Senate, or by
21 Members of the Senate designated by the ma-
22 jority leader and the minority leader of the Sen-
23 ate. If either House of Congress is not in ses-
24 sion on the day on which such a report is sub-
25 mitted, the joint resolution shall be introduced

1 in that House, as provided for in the preceding
2 sentence, on the first day thereafter on which
3 that House is in session.

4 (C) COMMITTEE REFERRALS.—All joint
5 resolutions introduced in the House of Rep-
6 resentatives shall be referred to the appropriate
7 committee and all joint resolutions introduced
8 in the Senate shall be referred to the Commit-
9 tee on Banking, Housing, and Urban Affairs.

10 (D) DISCHARGE.—If the committee of ei-
11 ther House to which a joint resolution has been
12 referred has not reported the joint resolution by
13 the end of 30 calendar days after its referral,
14 the committee shall be discharged from further
15 consideration of the joint resolution or of any
16 other joint resolution introduced with respect to
17 the same matter.

18 (E) CONSIDERATION.—A joint resolution
19 under this paragraph shall be considered in the
20 Senate in accordance with the provisions of sec-
21 tion 601(b)(4) of the International Security As-
22 sistance and Arms Export Control Act of 1976.
23 For the purpose of expediting the consideration
24 and passage of joint resolutions reported or dis-
25 charged under this paragraph, it shall be in

1 order for the Committee on Rules of the House
2 of Representatives to present for consideration
3 a resolution of the House of Representatives
4 providing procedures for the immediate consid-
5 eration of a joint resolution under this para-
6 graph which may be similar, if applicable, to
7 the procedures set forth in section 601(b)(4) of
8 the International Security Assistance and Arms
9 Export Control Act of 1976.

10 (F) DUPLICATIVE RESOLUTIONS.—In the
11 case of a joint resolution described in subpara-
12 graph (A), if, before the passage by one House
13 of a joint resolution of that House, that House
14 receives a resolution with respect to the same
15 matter from the other House, then—

16 (i) the procedure in that House shall
17 be the same as if no joint resolution had
18 been received from the other House; and

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

21 (4) RENEWAL OF CONTROLS.—If, upon the
22 expiration of the emergency controls extended
23 under this subsection, the President determines
24 that a further extension of emergency controls
25 for an additional period of time of not more

1 than 180 calendar days is necessary, para-
2 graphs (1) through (3) shall apply to such fur-
3 ther extension.

4 “(d) EFFECT ON OTHER AUTHORITY.—

5 “(1) EMBARGO AUTHORITY.—Nothing in this
6 section shall be construed to limit the authority of
7 the President to impose an embargo on all exports
8 to, and imports from, a specific country (except for
9 exports of goods described in subparagraphs (A) and
10 (B) of section 7(b)(6)) under the International
11 Emergency Economic Powers Act, the Trading With
12 the Enemy Act, or other provision of law. In any
13 case in which the President exercises any such au-
14 thority to impose an embargo, the requirements of
15 this section shall not apply for so long as such em-
16 bargo is in effect.

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

1 (B) Nothing in this section affects the authori-
2 ties conferred upon the President by the Inter-
3 national Emergency Economic Powers Act or other
4 provision of law, which were being exercised with re-
5 spect to a country before the date of the enactment
6 of this Act as a result of a national emergency de-
7 clared by the President before that date, and are
8 being exercised with respect to such country on such
9 date of enactment.

10 **SEC. 6. EXPORT CONTROL AUTHORITIES.**

11 (a) EXPORT CONTROL AUTHORITY AND FUNC-
12 TIONS.—

13 (1) IN GENERAL.—Unless otherwise reserved to
14 the President or a department or agency outside the
15 Department of Commerce, all power, authority, and
16 discretion conferred by this Act shall be exercised by
17 the Secretary. The Secretary is responsible for all
18 export control functions required by this Act, subject
19 to subsection (d) of this section.

20 (2) DELEGATION.—The Secretary may delegate
21 any export control function under this Act to the Di-
22 rector of the Commercial Export Control Adminis-
23 tration appointed under subsection (c), or to any
24 other officer of the Department of Commerce.

1 (3) TRANSFER OF LICENSING AND REGU-
2 LATORY FUNCTIONS.—In addition to the authorities
3 and responsibilities otherwise provided for in this
4 Act, there are hereby transferred to the Secretary
5 the following functions.

6 (A) TRANSFERS FROM THE DEPARTMENT
7 OF TREASURY.—There are hereby transferred
8 to the Secretary all export control and licensing
9 authorities and functions with respect to com-
10 mercial goods and technology, and related serv-
11 ices, exercised by the Office of Foreign Assets
12 Control of the Department of the Treasury, be-
13 fore the effective date of this Act, under—

14 (i) the International Emergency Eco-
15 nomic Powers Act;

16 (ii) the Trading With the Enemy Act;

17 (iii) section 504 of the International
18 Security Development and Cooperation Act
19 of 1985 (22 U.S.C. 2349aa-8);

20 (iv) the United Nations Participation
21 Act;

22 (v) the Comprehensive Anti-Apartheid
23 Act of 1986; and

24 (vi) any other provision of law which
25 authorizes the imposition by the United

1 States of embargoes or economic sanctions
2 against foreign countries.

3 (B) TRANSFERS FROM THE NUCLEAR REG-
4 ULATORY COMMISSION.—There are hereby
5 transferred to the Secretary all export control
6 and licensing authorities and functions to the
7 extent such functions apply to commercial
8 goods and technology of the Nuclear Regulatory
9 Commission under—

10 (i) the Atomic Energy Act of 1954;

11 (ii) the Nuclear Non-Proliferation Act
12 of 1978; and

13 (iii) the Energy Reorganization Act of
14 1974.

15 (C) TRANSFERS FROM THE SECRETARY OF
16 ENERGY.—There are hereby transferred to the
17 Secretary all authorities and functions which
18 are exercised by the Secretary of Energy, before
19 the effective date of this Act, under—

20 (i) section 131 of the Atomic Energy
21 Act of 1954, relating to the entry into sub-
22 sequent arrangements; and

23 (ii) section 402(a) of the Nuclear
24 Non-Proliferation Act of 1978, relating to

1 approval of enrichment after export of
2 source material or special nuclear material.

3 (D) MISCELLANEOUS TRANSFERS.—There
4 are hereby transferred to the Secretary such ex-
5 port licensing and related regulatory functions
6 and authorities not specifically or otherwise
7 vested or delegated by statute, as the Secretary,
8 in consultation with the Director of the Office
9 of Management and Budget, determines to be
10 appropriate.

11 (E) INCIDENTAL TRANSFERS.—The Direc-
12 tor of the Office of Management and Budget, in
13 consultation with the Secretary, shall make
14 such determinations as may be necessary with
15 regard to the transfer of functions under this
16 Act, to make such additional incidental disposi-
17 tions of assets, liabilities, contracts, property,
18 records, and unexpended balances of appropria-
19 tions, authorizations, allocations, and other
20 funds held, used, arising from, available to, or
21 to be made available in connection with the
22 functions transferred by this Act, as the Direc-
23 tor considers necessary to carry out this Act.

24 (F) EMPLOYEE TRANSFER PROVISIONS.—
25 The Secretary, in consultation with the head of

1 any affected department or agency and the Di-
2 rector of the Office of Management and Budg-
3 et, is authorized to transfer to the Department
4 of Commerce, or from the Department of Com-
5 merce to another department or agency, any
6 Federal employees employed to carry out the li-
7 censing and regulatory functions required by
8 this Act. The Secretary is authorized to exer-
9 cise, with respect to such transferred Federal
10 employees, all authority available to the head of
11 the agency from which such Federal employees
12 are transferred. Such authority shall include,
13 but not be limited to, the authority to prescribe
14 regulations incident to the exercise of such au-
15 thority.

16 (4) PRESIDENTIAL DELEGATION OF AUTHOR-
17 ITY.—With respect to those powers, authorities, or
18 discretion reserved to the President by this Act, the
19 President may not delegate or transfer such power,
20 authority, or discretion to any official of any depart-
21 ment or agency the head of which is not appointed
22 by the President by and with the advice and consent
23 of the Senate.

24 (5) EXCLUSIVE JURISDICTION OF THE SEC-
25 RETARY OF ENERGY.—The Secretary of Energy

1 shall have exclusive jurisdiction with respect to the
2 authorization under the first sentence of section 57b.
3 of the Atomic Energy Act of 1954, of all activities
4 constituting the direct or indirect engagement in the
5 production of special nuclear material outside the
6 United States. Nothing in this Act shall be con-
7 strued to give the Secretary dual or concurrent juris-
8 diction with the Secretary of Energy with respect to
9 such activities, including the export or reexport of
10 technology related to nuclear fuel cycle facilities or
11 activities, or to expand the jurisdiction that the Sec-
12 retary of Energy exercised under 57b. of the Atomic
13 Energy Act of 1954 before the effective date of this
14 Act.

15 (b) COMMERCIAL EXPORT CONTROL POLICY COM-
16 MITTEE.—

17 (1) ESTABLISHMENT.—There is established a
18 Commercial Export Control Policy Committee.

19 (2) FUNCTIONS.—The Committee shall—

20 (A) provide policy guidance and advice to
21 the Secretary on commercial export control is-
22 sues;

23 (B) review policy recommendations pro-
24 posed by the Secretary and other members of
25 the Committee; and

1 (C) receive policy recommendations from
2 other agencies and resolve any policy disputes
3 among departments and agencies under this
4 Act.

5 (3) MEMBERSHIP.—The Committee shall be
6 comprised of —

7 (A) the Secretary;

8 (B) the Secretary of Defense;

9 (C) the Secretary of Energy;

10 (D) the Secretary of State;

11 (E) the National Security Adviser;

12 (F) the National Economic Adviser; and

13 (G) the Director of the Commercial Export
14 Control Administration.

15 (4) CHAIR.—The Committee shall be jointly
16 chaired by the National Economic Adviser and the
17 National Security Adviser.

18 (5) DELEGATION; OTHER REPRESENTATIVES.—
19 A member of the Committee under paragraph (3)
20 may designate the deputy head of his or her depart-
21 ment or agency to serve in his or her absence as a
22 member of the Committee, but this authority may
23 not be delegated to any other individual. The Chairs
24 may also invite the temporary participation in the
25 Committee's meetings of representatives from other

1 offices and agencies as appropriate to the issues
2 under consideration.

3 (6) MEETINGS.—The Secretary or either Chair
4 of the Committee may call a meeting of the Commit-
5 tee. Meetings shall not be subject to section 552b of
6 title 5, United States Code.

7 (c) THE COMMERCIAL EXPORT CONTROL ADMINIS-
8 TRATION.—

9 (1) ESTABLISHMENT.—There is established in
10 the Department of Commerce the Commercial Ex-
11 port Control Administration. CECA shall be the
12 agency responsible for the implementation of export
13 controls imposed under this Act.

14 (2) PRINCIPAL OFFICERS.—

15 (A) DIRECTOR.—There shall be at the
16 head of CECA a Director, who shall be ap-
17 pointed by the President, by and with the ad-
18 vice and consent of the Senate. The Director,
19 under the supervision and direction of the Sec-
20 retary, shall perform such administrative and
21 executive functions as the Secretary shall dele-
22 gate, including—

23 (i) the formulation of United States
24 export control and technology transfer poli-

1 cies with respect to commercial goods and
2 technology;

3 (ii) the implementation of export con-
4 trol policies through the administration of
5 licenses for exports and reexports of com-
6 mercial goods and technology, and the en-
7 forcement of export controls, to the extent
8 provided in this Act;

9 (iii) the establishment of the control
10 index, and the development of proposals
11 for revisions of export control lists of ex-
12 port control regimes;

13 (iv) the conduct of bilateral and multi-
14 lateral negotiations relating to export con-
15 trols of export control regimes and emer-
16 gency controls under section 5;

17 (v) the distribution of duties among
18 the personnel, administrative units, and of-
19 fices of CECA; and

20 (vi) such other matters as the Sec-
21 retary may specify.

22 (B) DEPUTY DIRECTOR.—The Director
23 shall be assisted by a Deputy Director, who
24 shall be appointed by the President, by and
25 with the advice and consent of the Senate. The

1 Deputy Director shall supervise and coordinate
2 the operations of CECA.

3 (C) ASSISTANT DIRECTOR FOR EXPORT
4 CONTROL.—The Assistant Director for Export
5 Control of CECA shall assist the Director and
6 shall carry out CECA's responsibilities with re-
7 spect to—

8 (i) processing export license applica-
9 tions;

10 (ii) emergency control policies;

11 (iii) the review and revision of the
12 control index;

13 (iv) foreign availability determinations
14 under section 3(g);

15 (v) requests by exporters for the clas-
16 sification of commodities on the control
17 index;

18 (vi) coordinating the activities of the
19 industry advisory committees appointed
20 under subsection (d);

21 (vii) export control functions and re-
22 sponsibilities transferred under subsection
23 (a)(3); and

24 (viii) such other matters as the Direc-
25 tor may specify.

1 (D) ASSISTANT DIRECTOR FOR NON-
2 PROLIFERATION.—The Assistant Director for
3 Nonproliferation of CECA shall carry out
4 CECA’s responsibilities with respect to policy
5 development on—

6 (i) export and reexport controls under
7 the MTCR;

8 (ii) chemical and biological weapons
9 export and reexport controls imposed pur-
10 suant to the agreement of the Australia
11 Group;

12 (iii) export and reexport controls on
13 goods and technology imposed pursuant to
14 section 309(c) of the Nuclear Non-Pro-
15 liferation Act of 1978, and proliferation is-
16 sues of the Nuclear Suppliers Group;

17 (iv) the designation of controlled
18 countries and controlled endusers for pur-
19 poses of restricting the capabilities de-
20 scribed in section 4(a)(1)(B); and

21 (v) such other matters as the Director
22 may specify.

23 (E) ASSISTANT DIRECTOR FOR SECURITY
24 AND INTELLIGENCE.—The Assistant Director
25 for Security and Intelligence of CECA shall

1 carry out CECA's responsibilities with respect
2 to—

3 (i) coordination and liaison with the
4 Department of Defense, the Armed Forces
5 of the United States, and the intelligence
6 community;

7 (ii) development and maintenance of
8 information on enduser reliability, includ-
9 ing conducting outside the United States
10 prelicense investigations and post-shipment
11 verifications of items licensed for export;
12 and

13 (iii) such other matters as the Direc-
14 tor may specify.

15 (F) ASSISTANT DIRECTOR FOR ENFORCE-
16 MENT AND COMPLIANCE.—The Assistant Direc-
17 tor for Enforcement and Compliance of CECA
18 shall carry out CECA's responsibilities with re-
19 spect to—

20 (i) the enforcement and compliance
21 duties of CECA, as provided in subsection
22 (e); and

23 (ii) coordination with the Commis-
24 sioner of Customs in the enforcement of
25 this Act.

1 (G) CHIEF NEGOTIATOR.—The Chief Ne-
2 negotiator of CECA shall hold the rank of ambas-
3 sador, and shall be responsible for the develop-
4 ment, coordination, and conduct of all negotia-
5 tions regarding export control regimes, includ-
6 ing negotiations related to COCOM, the Aus-
7 tralia Group, the Nuclear Suppliers Group, and
8 the MTCR, negotiations described in section
9 4(c)(2)(D), and negotiations required under
10 section 5 regarding emergency controls.

11 (H) APPOINTMENTS.—The officers de-
12 scribed in subparagraphs (C), (D), (E), (F),
13 and (G) shall each be appointed by the Presi-
14 dent, by and with the advice and consent of the
15 Senate.

16 (d) INDUSTRY ADVISORY COMMITTEES.—

17 (1) TECHNICAL ADVICE AND SUPPORT.—

18 (A) IN GENERAL.—Upon written request
19 by representatives of a substantial segment of
20 any industry that produces goods or technology
21 subject to export controls under this Act, the
22 Secretary shall appoint an industry advisory
23 committee for any such goods or technology
24 that the Secretary determines are difficult to
25 evaluate because of questions concerning tech-

1 nical matters, worldwide availability and actual
2 utilization of goods and technology, or licensing
3 procedures.

4 (B) COMPOSITION.—Each such committee
5 shall consist of representatives of United States
6 industry and the United States Government. No
7 person serving on any such committee who is a
8 representative of industry shall serve on such
9 committee for more than 4 consecutive years.

10 (C) CONSULTATION.—The Secretary and
11 the Committee shall consult with appropriate
12 industry advisory committees with respect to
13 questions involving—

14 (i) technical matters, including licens-
15 ing procedures;

16 (ii) worldwide availability and utiliza-
17 tion of controlled goods and technology;

18 (iii) revisions of the control index, in-
19 cluding proposed revisions of export control
20 regime agreements;

21 (iv) the issuance of regulations;

22 (v) gathering of information from in-
23 dustry on illegal sales and diversion of
24 technology in furtherance of the enforce-
25 ment of this Act; and

1 (vi) any other questions that the Sec-
2 retary considers appropriate.

3 Members of the public shall be given a reason-
4 able opportunity, under regulations prescribed
5 by the Secretary, to present evidence to any in-
6 dustry advisory committee.

7 (D) MULTILATERAL NEGOTIATIONS.—The
8 Secretary may include industry representatives
9 from appropriate industry advisory committees
10 in the United States delegations to export con-
11 trol regime negotiations.

12 (E) EXPENSES.—Upon the request of any
13 member of an industry advisory committee, the
14 Secretary may reimburse such member for trav-
15 el, subsistence, and other necessary expenses in-
16 curred by such member in connection with the
17 duties of such member on such committee.

18 (F) CHAIRPERSON; MEETINGS.—Each in-
19 dustry advisory committee shall elect a chair-
20 person (who may not be an officer or employee
21 of the United States Government), and shall
22 meet at least every 3 months at the call of the
23 chairperson unless the chairperson determines,
24 in consultation with the other members of the

1 committee, that such a meeting is not necessary
2 to achieve the purposes of this subsection.

3 (G) DURATION.—Each industry advisory
4 committee shall be terminated after a period of
5 2 years, unless extended by the Secretary for
6 one additional 2-year period.

7 (H) AGENCY DISCLOSURES.—The Sec-
8 retary, in conjunction with other departments
9 and agencies participating in the administration
10 of this Act, shall disclose to each industry advi-
11 sory committee adequate information, consist-
12 ent with national security, necessary for such
13 committee to discharge its duties.

14 (I) CERTIFICATION OF FOREIGN AVAIL-
15 ABILITY.—If an industry advisory committee
16 certifies to the Secretary that any of the goods
17 or technology with respect to which such com-
18 mittee was appointed meet the foreign availabil-
19 ity requirements of section 3(g), the Secretary
20 shall refer the matter to the International
21 Trade Commission which shall make a foreign
22 availability assessment of such goods or tech-
23 nology under such section and shall submit a
24 report on such foreign availability to the indus-
25 try advisory committee and the Secretary.

1 (2) POLICY ADVICE.—The Secretary shall ap-
2 point a group of knowledgeable individuals from
3 businesses affected by export controls to provide ad-
4 vice to the Secretary and the Committee on export
5 control policy issues. The chairperson of such group
6 may not be a member of the Committee, but shall
7 represent industry advisory committees regarding re-
8 view of control lists and export control regime pro-
9 posals.

10 (e) ENFORCEMENT AUTHORITY.—

11 (1) GENERAL AUTHORITIES SHARED BY COM-
12 MERCE AND CUSTOMS.—To the extent necessary or
13 appropriate to the enforcement of this Act or to the
14 imposition of any penalty, forfeiture, or liability aris-
15 ing under this Act, the Secretary and the Commis-
16 sioner of Customs (and officers or employees specifi-
17 cally designated by either the Secretary or the Com-
18 missioner) may—

19 (A) require reports or the keeping of
20 records by any person;

21 (B) take the sworn testimony of any per-
22 son;

23 (C) administer oaths or affirmations; and

24 (D) by subpoena, require any person to ap-
25 pear and testify or to appear and produce

1 books, records, and other writings, or both, and
2 to inspect the books, records and other writings,
3 premises, or property of any person.

4 In the case of contumacy by, or refusal to obey a
5 subpoena issued to any person under this paragraph,
6 a district court of the United States, after notice to
7 any such person and a hearing, shall have jurisdic-
8 tion to issue an order requiring such person to ap-
9 pear and give testimony or to appear and produce
10 books, records, and other writings, or both, and any
11 failure to obey such order of the court may be pun-
12 ished by such court as a contempt thereof.

13 (2) ENFORCEMENT AUTHORITY OF THE DE-
14 PARTMENT OF COMMERCE.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), the Secretary shall have the respon-
17 sibility for investigations conducted within the
18 United States in the enforcement of this Act. In
19 the enforcement of this Act, the Secretary is
20 authorized to search, detain (after search), and
21 seize goods or technology at those places within
22 the United States other than those ports speci-
23 fied in paragraph (3)(A). The search, detention
24 (after search), or seizure of goods and tech-
25 nology at those ports and places specified in

1 paragraph (3)(A) may be conducted by employ-
2 ees of the Department of Commerce designated
3 by the Secretary with the concurrence of the
4 Commissioner of Customs or a person des-
5 ignated by the Commissioner.

6 (B) OTHER AUTHORIZED ACTIONS.—The
7 Secretary may designate employees under the
8 direction of the Assistant Director for Enforce-
9 ment and Compliance of CECA, in carrying out
10 enforcement authority under this Act, to—

11 (i) execute any warrant or other proc-
12 ess issued by a court or officer with com-
13 petent jurisdiction with respect to the en-
14 forcement of this Act;

15 (ii) make arrests without warrant for
16 any violation of this Act committed in his
17 or her presence or view, or if the officer or
18 employee has probable cause to believe that
19 the person to be arrested has committed or
20 is committing such a violation of this Act;
21 and

22 (iii) carry firearms in carrying out
23 any activity described in clause (i) or (ii).

24 (3) ENFORCEMENT AUTHORITY OF THE COM-
25 MISSIONER OF CUSTOMS.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the United States Customs Service
3 is authorized, in the enforcement of this Act, to
4 make investigations outside of the United
5 States, and to search, detain (after search), and
6 seize goods or technology at those ports of
7 entry to or exit from the United States where
8 officers of the Customs Service are authorized
9 by law to conduct such searches, detentions,
10 and seizures, and at those places outside the
11 United States where the Customs Service, pur-
12 suant to agreements or other arrangements
13 with other countries, is authorized to perform
14 enforcement activities.

15 (B) OTHER AUTHORIZED ACTIONS.—An
16 officer of the United States Customs Service, in
17 carrying out enforcement authority under this
18 Act, may—

19 (i) stop, search, and examine a vehi-
20 cle, vessel, aircraft, or person on which or
21 whom such officer has reasonable cause to
22 suspect there are any goods or technology
23 that has been, is being, or is about to be
24 exported from the United States in viola-
25 tion of this Act;

1 (ii) search any package or container
2 in which such officer has reasonable cause
3 to suspect there are any goods or tech-
4 nology that has been, is being, or is about
5 to be exported from the United States in
6 violation of this Act;

7 (iii) detain (after search) or seize and
8 secure for trial any goods or technology on
9 or about such vehicle, vessel, aircraft, or
10 person, or in such package or container, if
11 such officer has probable cause to believe
12 the goods or technology has been, is being,
13 or is about to be exported from the United
14 States in violation of this Act; and

15 (iv) make arrests without warrant for
16 any violation of this Act committed in the
17 officer's presence or view or if the officer
18 has probable cause to believe that the per-
19 son to be arrested has committed or is
20 committing such a violation.

21 The arrest authority conferred by clause (iv) is in
22 addition to any arrest authority provided under
23 other laws.

24 (4) OTHER ENFORCEMENT PROVISIONS.—

1 (A) REFERRAL OF CASES.—All cases in-
2 volving violations of this Act shall be referred to
3 the Secretary for purposes of determining civil
4 penalties and administrative sanctions under
5 section 8, or to the Attorney General for crimi-
6 nal action in accordance with this Act.

7 (B) PUBLICATION OF PROCEDURES.—The
8 Secretary, with the concurrence of the Sec-
9 retary of the Treasury, shall publish in the Fed-
10 eral Register procedures setting forth, in ac-
11 cordance with this subsection, the responsibil-
12 ities of the Department of Commerce and the
13 United States Customs Service in the enforce-
14 ment of this Act.

15 (C) INFORMATION SHARING.—The Sec-
16 retary, with the concurrence of the Secretary of
17 the Treasury, may publish procedures for the
18 sharing of information in accordance with sec-
19 tion 3(g), and procedures for the submission to
20 the appropriate departments and agencies by
21 private persons of information relating to the
22 enforcement of this Act.

23 (D) REFERENCES.—For purposes of this
24 section, a reference to the enforcement of this
25 Act or to a violation of this Act includes a ref-

1 erence to the enforcement or a violation of any
2 regulation, order, or license issued under this
3 Act.

4 (5) IMMUNITY.—No person shall be excused
5 from complying with any requirements under this
6 section because of an assertion of a privilege against
7 self-incrimination, but the immunity provisions of
8 section 6002 of title 18, United States Code, shall
9 apply with respect to any individual who specifically
10 claims such privilege.

11 **SEC. 7. COMMERCIAL EXPORT LICENSES AND PROCESSING**

12 **PROCEDURES.**

13 (a) RESPONSIBILITY OF THE SECRETARY.—

14 (1) IN GENERAL.—The Secretary is responsible
15 for all export licensing functions required by this
16 Act. All determinations with respect to any export li-
17 cense application shall be made by the Secretary,
18 subject to the procedures provided in this section.

19 (2) REFERRAL TO OTHER DEPARTMENTS OR
20 AGENCIES.—The Secretary may seek information
21 and recommendations from any other department or
22 agency of the United States on export license appli-
23 cations, in accordance with the procedures provided
24 in subsection (c)(2). A department or agency review-
25 ing an export license application referred by the Sec-

1 retary shall cooperate fully in providing such infor-
2 mation or recommendations. The recommendations
3 made by other departments or agencies shall not be
4 binding on the Secretary in making determinations
5 on export license applications under this section.

6 (b) COMMERCIAL EXPORT LICENSES.—

7 (1) TYPES OF COMMERCIAL EXPORT LI-
8 CENSES.—Under such conditions as the Secretary
9 may impose, consistent with the provisions of this
10 Act, the Secretary may require the following types of
11 licenses for exports and reexports of commercial
12 goods and technology controlled under this Act:

13 (A) SPECIFIC EXPORTS AND REEX-
14 PORTS.—An individual validated license, au-
15 thorizing a specific export or reexport.

16 (B) MULTIPLE EXPORTS AND REEX-
17 PORTS.—Validated licenses authorizing multiple
18 exports or reexports, in lieu of an individual
19 validated license for each such export or reex-
20 port.

21 (C) TERMS AND CONDITIONS.—(i) The
22 Secretary shall grant a license under this para-
23 graph on the basis of approval of the appli-
24 cant's systems of control for the commercial
25 goods and technology to be exported. The Sec-

1 retary and, at the request of the Secretary, the
2 Commissioner of Customs, shall perform peri-
3 odic reviews of license applicants and their com-
4 pliance with the terms of licenses issued under
5 this Act. In the case of a license issued under
6 subparagraph (B), the Secretary shall perform
7 periodic audits of license holders in order to as-
8 sure the integrity and effectiveness of the li-
9 censing procedures under this section that
10 apply to such licenses.

11 (ii) Requirements for the redesign,
12 reengineering, or substantial modification of
13 standard product models or configurations, and
14 similar requirements shall not be imposed under
15 this Act before any export license application is
16 approved for the export or reexport of commer-
17 cial goods or technology to which export or re-
18 export controls imposed pursuant to an export
19 control regime apply if such goods or tech-
20 nology are intended for civil end uses, unless
21 such export control regime agrees to such re-
22 quirements.

23 (2) AUTHORIZATION FOR TECHNICAL DATA.—A
24 validated license authorizing the export or reexport
25 of any commercial goods or technology under this

1 Act shall also authorize the export or reexport of op-
2 eration technical data related to such goods or tech-
3 nology, whether or not such data is specifically ref-
4 erenced in the license or license application, if the
5 technical level of the data does not exceed the level
6 reasonably necessary to install, repair, maintain, in-
7 spect, operate, or use the goods or technology.

8 (3) REPLACEMENT PARTS.—The Secretary
9 shall not require an individual validated license for
10 replacement parts that are exported or reexported to
11 replace on a one-for-one basis parts that were in a
12 good that has been lawfully exported from the Unit-
13 ed States.

14 (4) INCORPORATED GOODS OR TECHNOLOGY.—

15 (A) GOODS CONTAINING CONTROLLED
16 PARTS AND COMPONENTS.—No license may be
17 required under this Act to export a commercial
18 good solely because the good contains parts or
19 components the export of which is controlled
20 under this Act if such parts or components—

21 (i) are essential to the functioning of
22 the good;

23 (ii) are customarily included in sales
24 of the good in countries other than con-
25 trolled countries; and

1 (iii) comprise 25 percent or less of the
2 total value of the good.

3 (B) REEXPORTS.—Except as provided in
4 subparagraph (C), no authority or permission
5 may be required under this Act to reexport,
6 from any country that is not a member of, or
7 a cooperating country with respect to, an export
8 control regime certified under section 4(d)(2),
9 of any commercial good or technology the ex-
10 port of which is controlled under section 4 when
11 the good or technology to be reexported is in-
12 corporated in another good or technology in
13 that country, and—

14 (i) the value of the commercial good
15 or technology the export of which is con-
16 trolled under this Act is 25 percent or less
17 of the total value of the good or technology
18 into which it is incorporated; or

19 (ii) the export of such commercial
20 good or technology from the United States
21 to the destination or enduser of the pro-
22 posed reexport would require only notifica-
23 tion to the participating governments of
24 the appropriate export control regime.

1 (C) EMERGENCY CONTROLS.—No author-
2 ity or permission may be required to reexport
3 from any country a commercial good or tech-
4 nology the export of which is controlled under
5 section 5 when the good or technology to be re-
6 exported is incorporated in another good or
7 technology in that country and the value of the
8 good or technology controlled under section 5 is
9 10 percent or less of the total value of the good
10 or technology into which it is incorporated.

11 (5) EXISTING CONTRACTS AND LICENSES.—

12 (A) IN GENERAL.—The President may not,
13 under this Act, prohibit the export or reexport
14 of commercial goods or technology—

15 (i) in performance of a contract,
16 agreement, or other contractual commit-
17 ment entered into before the effective date
18 of export or reexport controls imposed
19 under this Act on such goods or tech-
20 nology, or the date on which the President
21 reports to the Congress under section
22 (5)(a)(4)(B) the President’s intention to
23 impose emergency controls on the export
24 or reexport of such goods or technology, or

1 (ii) under a validated license or other
2 authorization issued under this Act.

3 (B) EXCEPTION.—The prohibition in sub-
4 paragraph (A) shall not apply if the President
5 determines and certifies to the Congress that—

6 (i) a breach of the peace poses a seri-
7 ous and direct threat to the strategic inter-
8 ests of the United States;

9 (ii) the prohibition or curtailment of
10 exports or reexports (as the case may be)
11 under each such contract, agreement, com-
12 mitment, license, or authorization will be
13 directly instrumental in remedying the sit-
14 uation posing the direct threat; and

15 (iii) such prohibition or curtailment
16 will continue only as long as the direct
17 threat persists.

18 (6) EXCLUSION FOR MEDICINE AND MEDICAL
19 SUPPLIES AND FOR DONATIONS.—This Act does not
20 authorize controls on—

21 (A) medicine or medical supplies; or

22 (B) donations of goods (including, but not
23 limited to, food, educational materials, seeds
24 and hand tools, medicines and medical supplies,
25 water resources equipment, clothing and shelter

1 materials, and basic household supplies) that
2 are intended to meet basic human needs.

3 (7) PROHIBITION OF FEES FOR PROCESSING
4 EXPORT LICENSE APPLICATIONS.—No fee may be
5 charged in connection with the submission or proc-
6 essing of an export license application under this
7 Act.

8 (c) PROCEDURES FOR PROCESSING EXPORT LI-
9 CENSE APPLICATIONS.—

10 (1) INITIAL SCREENING.—All export license ap-
11 plications required under this Act shall be submitted
12 by the applicant to the Secretary. Not more than 10
13 days after the date on which any export license ap-
14 plication is submitted to the Secretary, the Secretary
15 shall—

16 (A) send the applicant an acknowledgment
17 of the receipt of the application and the date of
18 the receipt;

19 (B) submit to the applicant a written de-
20 scription of the procedures required by this sec-
21 tion, the responsibilities of the Secretary with
22 respect to the application, and the rights of the
23 applicant;

24 (C) return the application without action if
25 the application is improperly completed or if ad-

1 ditional information is required, with sufficient
2 information to permit the application to be
3 properly resubmitted, in which case, if such ap-
4 plication is resubmitted, it shall be treated as a
5 new application for the purpose of calculating
6 the time periods prescribed in this subsection;
7 and

8 (D) determine whether it is necessary to
9 submit the application to a multilateral review
10 process pursuant to an export control regime
11 and, if so, inform the applicant of such require-
12 ment.

13 (2) REFERRAL.—If the Secretary decides to
14 refer an export license application to any other de-
15 partment or agency for a recommendation under
16 subsection (a)(2), the Secretary shall, within 5 days
17 after receiving the application, refer the application
18 concurrently to all such departments or agencies. A
19 department or agency reviewing an export license
20 application referred by the Secretary shall have 15
21 days in which to submit to the Secretary its rec-
22 ommendations on the application. Any department
23 or agency which does not submit its recommenda-
24 tions within that 15-day period shall be deemed by

1 the Secretary to have no objection to the approval of
2 such application.

3 (3) ACTION BY THE SECRETARY.—Subject to
4 paragraph (6), 30 days after the date of formal fil-
5 ing with the Secretary of an export license applica-
6 tion, a license for the transaction specified in the ap-
7 plication shall become valid and effective and the
8 goods or technology involved are authorized for ex-
9 port or reexport pursuant to such license, unless—

10 (A) the application has been otherwise ap-
11 proved by the Secretary, in which case it shall
12 be valid and effective according to the terms of
13 the approval;

14 (B) the application has been denied by the
15 Secretary under this section and the applicant
16 has been so informed; or

17 (C) the Secretary requires additional time,
18 not to exceed 30 days, for matters related to
19 the consideration of the export license applica-
20 tion, including, but not limited to, performing
21 pre-license investigations and obtaining govern-
22 ment-to-government assurances with respect to
23 reexports or other matters, and so informs the
24 applicant.

1 In a case in which subparagraph (C) applies, at the
2 end of the 30-day period described in such subpara-
3 graph, the license for the transaction specified in the
4 application shall become valid and effective and the
5 goods and technology are authorized for export or
6 reexport pursuant to such license, unless subpara-
7 graph (A) or (B) applies during such 30-day period.

8 (4) ACTION UPON DENIAL.—In cases in which
9 the Secretary has determined that a license applica-
10 tion should be denied, the applicant shall be in-
11 formed in writing, not later than 5 days after such
12 determination is made, of—

13 (A) the determination;

14 (B) the statutory basis for the proposed
15 denial;

16 (C) the reasons for such denial, with ref-
17 erences to the criteria set forth in sections 4
18 and 5;

19 (D) what, if any, modifications in, or re-
20 strictions on, the goods or technology for which
21 the license was sought would allow the export
22 or reexport of the goods or technology to be
23 compatible with controls imposed under this
24 Act;

1 (E) which officers and employees of the
2 Department of Commerce who are familiar with
3 the application will be made reasonably avail-
4 able to the applicant for considerations with re-
5 gard to such modifications or restrictions, if ap-
6 propriate;

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

11 (G) the availability of appeal procedures.

12 The Secretary shall allow the applicant not less than
13 30 days to respond to the Secretary's determination
14 before the license application is denied. If any deci-
15 sion on a license application is deferred inconsistent
16 with the provisions of this subsection, the applicant
17 shall be so informed in writing not more than 5 days
18 after such deferral.

19 (5) RECORDKEEPING.—The Secretary shall
20 make and keep records of all advice and rec-
21 ommendations given by Federal departments and
22 agencies, and decisions made by the Department of
23 Commerce, in connection with any export license ap-
24 plication or revision of an export license application

1 under this Act, including the factual and analytical
2 basis of the advice, recommendations, or decisions.

3 (6) MULTILATERAL CONTROLS.—

4 (A) NOTICE OF MULTILATERAL REVIEW.—

5 In any case in which an export license applica-
6 tion that has been finally approved is required
7 to be submitted to a multilateral review process
8 pursuant to an export control regime, the li-
9 cense shall not be issued under paragraph (3),
10 but the Secretary shall notify the applicant of
11 the approval of the application (and the date of
12 such approval) by the Secretary subject to such
13 multilateral review. The license shall be issued
14 upon approval of the application under such
15 multilateral review.

16 (B) ISSUANCE OF LICENSE AFTER 30

17 DAYS.—If such multilateral review has not re-
18 sulted in a determination with respect to the
19 application within 30 days after the application
20 is approved, the Secretary's approval of the li-
21 cense shall be final and the license shall be is-
22 sued, unless a longer review period is specifi-
23 cally required by the established procedures of
24 the applicable export control regime.

1 (7) CHANGES IN REQUIREMENTS FOR APPLICA-
2 TIONS.—Except as provided in paragraph (1)(C), in
3 any case in which, after an export license application
4 is submitted, the Secretary changes the require-
5 ments for such a license application, the Secretary
6 may request appropriate additional information of
7 the applicant, but the Secretary may not return the
8 application to the applicant without action because it
9 fails to meet the changed requirements.

10 (d) APPEAL AND COURT ACTIONS.—

11 (1) IN GENERAL.—The Secretary shall establish
12 appropriate procedures for any applicant to appeal
13 to the Secretary the denial of an export license ap-
14 plication under this Act.

15 (2) PUBLICATION AND INDEXING OF APPEAL
16 DECISIONS.—The Secretary shall, to the greatest ex-
17 tent practicable, taking into account restrictions on
18 the disclosure of classified or confidential informa-
19 tion, publish in the Federal Register and index deci-
20 sions on appeals of license denials under paragraph
21 (1).

22 (3) TIME DELAY.—In any case in which any ac-
23 tion prescribed in this section is not taken on an ex-
24 port license application within the time periods es-
25 tablished by subsection (c) (except in the case of a

1 time period extended under subsection (c)(3)(C) of
2 which the applicant is notified), the applicant may
3 file a petition with the Secretary requesting compli-
4 ance with the requirements of subsection (c). When
5 such petition is filed, the Secretary shall take imme-
6 diate steps to correct the situation giving rise to the
7 petition and shall immediately notify the applicant of
8 such steps.

9 (4) ACTION ON PETITIONS.—If, within 20 days
10 after a petition is filed under paragraph (3), the
11 processing of the application has not been brought
12 into conformity with the requirements of subsection
13 (c), or the application has been brought into con-
14 formity with such requirements but the Secretary
15 has not so notified the applicant, the applicant may
16 bring an action in an appropriate United States dis-
17 trict court for a restraining order, a temporary or
18 permanent injunction, or other appropriate relief, to
19 require compliance with the requirements of sub-
20 section (c). The United States district courts shall
21 have jurisdiction to provide such relief, as appro-
22 priate.

23 (5) FINAL ORDERS; APPEAL.—The determina-
24 tion of the Secretary on appeals under this sub-

1 section shall be final and may be appealed in accord-
2 ance with section 8(c).

3 (e) OTHER INQUIRIES.—

4 (1) CLASSIFICATION REQUESTS.—In any case
5 in which the Secretary receives a written request
6 asking for the proper classification of a good or
7 technology on the control index, the Secretary shall,
8 not more than 10 working days after receiving the
9 request, inform the person making the request of the
10 proper classification.

11 (2) APPLICABILITY OF REQUIREMENT.—In any
12 case in which the Secretary receives a written re-
13 quest for information about the applicability of ex-
14 port license requirements under this Act to a pro-
15 posed transaction or series of transactions, the Sec-
16 retary shall, not more than 30 days after receiving
17 the request, reply with that information to the per-
18 son making the request.

19 (3) PUBLICATION OF CLASSIFICATION DETER-
20 MINATIONS.—The Secretary shall, to the greatest
21 extent practicable, taking into account restrictions
22 on the disclosure of classified or confidential infor-
23 mation, publish in the Federal Register classification
24 determinations made under paragraph (1).

1 **SEC. 8. PENALTIES, ADMINISTRATIVE PROCEDURES, AND**
2 **SANCTIONS.**

3 (a) PENALTIES FOR VIOLATIONS.—

4 (1) CRIMINAL PENALTIES.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), whoever knowingly violates
7 or conspires to or attempts to violate any provi-
8 sion of this Act or any regulation, order, or li-
9 cense issued under this Act shall be fined not
10 more than 5 times the value of the exports in-
11 volved or \$50,000, whichever is greater, or im-
12 prisoned for not more than 5 years, or both.

13 (B) WILLFUL VIOLATIONS.—Whoever will-
14 fully violates or conspires to or attempts to vio-
15 late any provision of this Act or any regulation,
16 order, or license issued under this Act, with
17 knowledge that the exports involved will be used
18 for the benefit of, or that the destination or in-
19 tended destination of the goods or technology
20 involved is, any controlled country or controlled
21 enduser—

22 (i) except in the case of an individual,
23 shall be fined not more than 10 times the
24 value of the exports involved or
25 \$2,000,000, whichever is greater; and

1 (ii) in the case of an individual, shall
2 be fined not more than \$500,000, or im-
3 prisoned for not more than 10 years, or
4 both.

5 (C) FAILURE TO REPORT MISUSE UNDER
6 LICENSE.—Any person who is issued a vali-
7 dated license under this Act for the export of
8 any commercial good or technology to a con-
9 trolled country and who, with knowledge that
10 such a good or technology is being used by such
11 controlled country for military or intelligence-
12 gathering purposes, or for purposes of enhanc-
13 ing capabilities described in section 4(a)(1)(B),
14 contrary to the conditions under which the li-
15 cense was issued, willfully fails to report such
16 use, shall be subject to the penalties set forth
17 in subparagraph (B).

18 (D) INTENT TO VIOLATE CONTROLS.—Any
19 person who possesses any commercial goods or
20 technology—

21 (i) with the intent to export or reex-
22 port such goods or technology in violation
23 of an export or reexport control imposed
24 under this Act, or any regulation, order, or

1 license issued with respect to such control,
2 or

3 (ii) knowing or having reason to be-
4 lieve that the goods or technology would be
5 so exported or reexported,

6 shall be subject to the penalties set forth in
7 subparagraph (B).

8 (E) EVASION OF CONTROLS.—Any person
9 who takes any action with the intent to evade
10 the provisions of this Act or any regulation,
11 order, or license issued under this Act shall be
12 subject to the penalties set forth in paragraph
13 (B).

14 (2) CIVIL PENALTIES.—

15 (A) IN GENERAL.—The Secretary may im-
16 pose a civil penalty of not more than \$250,000
17 for each violation of this Act or any regulation,
18 order, or license issued under this Act, either in
19 addition to or in lieu of any other liability or
20 penalty which may be imposed for such viola-
21 tion.

22 (B) PAYMENT OF PENALTIES.—The pay-
23 ment of any penalty imposed under this para-
24 graph may be made a condition, for a period of
25 not more than 1 year after the imposition of

1 such penalty, to the granting, restoration, or
2 continuing validity of any license, permission, or
3 privilege granted or to be granted under this
4 Act to the person upon whom such penalty is
5 imposed. In addition, the payment of any pen-
6 alty imposed under this paragraph may be de-
7 ferred or suspended in whole or in part for a
8 period of time not longer than any probation
9 period (which may exceed 1 year) that may be
10 imposed upon such person. Such a deferral or
11 suspension shall not operate as a bar to the col-
12 lection of the penalty in the event that the con-
13 ditions of the suspension, deferral, or probation
14 are not fulfilled.

15 (C) REFUNDS.—Any amount paid in satis-
16 faction of any penalty imposed under this para-
17 graph, and any amounts realized from the for-
18 feiture of any property interest or proceeds
19 under subsection (b)(4), shall be covered into
20 the Treasury as a miscellaneous receipt. The
21 head of the department or agency concerned
22 may, in his or her discretion, refund any such
23 penalty imposed under this paragraph within 2
24 years after payment, on the ground of a mate-
25 rial error of fact or law in the imposition of the

1 penalty. Notwithstanding section 1346(a) of
2 title 28, United States Code, no action for the
3 refund of any such penalty may be maintained
4 in any court.

5 (D) ACTIONS FOR RECOVERY OF PEN-
6 ALTIES.—In the event of the failure of any per-
7 son to pay a penalty imposed under this para-
8 graph, a civil action for the summary collection
9 of the penalty may, in the discretion of the
10 head of the department or agency concerned, be
11 brought in an appropriate United States dis-
12 trict court in the name of the United States.

13 (E) CIVIL PENALTY STANDARDS.—The
14 Secretary may by regulation provide standards
15 for establishing levels of civil penalty under this
16 paragraph based upon the seriousness of the
17 violation, the culpability of the violator, and the
18 violator's record of cooperation with the Gov-
19 ernment in disclosing the violation.

20 (3) VIOLATIONS OF THE ACT.—Nothing in this
21 paragraph shall limit the power of the Secretary to
22 define by regulations violations under this Act.

23 (b) ADMINISTRATIVE SANCTIONS.—

24 (1) SUSPENSION, REVOCATION, AND DENIAL OF
25 EXPORT PRIVILEGES.—The Secretary may suspend,

1 revoke, or deny the export or reexport privileges of
2 any person who violates or conspires to or attempts
3 to violate any provision of this Act or any regulation,
4 order, or license issued under this Act.

5 (2) ELIGIBILITY FOR LICENSES.—No person
6 convicted of a violation of this Act (or any regula-
7 tion, order, or license issued under this Act), any
8 regulation, license, or order issued under the Inter-
9 national Emergency Economic Powers Act, section
10 793, 794, or 798 of title 18, United States Code,
11 section 4(b) of the Internal Security Act of 1950 (50
12 U.S.C. 783(b)), or section 38 of the Arms Export
13 Control Act (22 U.S.C. 2778) shall be eligible, at
14 the discretion of the Secretary, to apply for or use
15 any export license under this Act for a period of not
16 more than 10 years from the date of the conviction.
17 The Secretary may revoke any export license under
18 this Act in which such person has an interest at the
19 time of the conviction.

20 (3) RELATED PERSONS.—The Secretary may
21 exercise the authority under paragraphs (1) and (2)
22 with respect to any person related, through affili-
23 ation, ownership, control, or position of responsibil-
24 ity, to any person who has been sanctioned under
25 this subsection, upon a showing of such relationship

1 with the sanctioned party and a finding that such
2 action is necessary to prevent an imminent violation
3 of this Act or any regulation, order, or license issued
4 under this Act, and subject to the procedures set
5 forth in subsection (c).

6 (4) FORFEITURE OF PROPERTY INTEREST AND
7 PROCEEDS.—

8 (A) IN GENERAL.—Any person who is con-
9 victed under subsection (a)(1) of a violation of
10 an export or reexport control imposed under
11 this Act or any regulation, order, or license is-
12 sued under this Act shall, in addition to any
13 other penalty, forfeit to the United States—

14 (i) any of that person's interest in, se-
15 curity of, claim against, or property or
16 contractual rights of any kind in the goods
17 or tangible items that were the subject of
18 the violation;

19 (ii) any of that person's interest in,
20 security of, claim against, or property or
21 contractual rights of any kind in tangible
22 property that was used in the export or re-
23 export or attempt to export or reexport
24 that was the subject of the violation; and

1 (iii) any of that person's property con-
2 stituting or derived from any proceeds ob-
3 tained directly or indirectly as a result of
4 the violation.

5 (B) PROCEDURE.—The procedures in any
6 forfeiture under this paragraph, and the duties
7 and authority of the courts of the United States
8 and the Attorney General with respect to any
9 forfeiture action under this paragraph or with
10 respect to any property that may be subject to
11 forfeiture under this paragraph, shall be gov-
12 erned by the provisions of section 1963 of title
13 18, United States Code.

14 (c) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
15 VIEW.—

16 (1) ADMINISTRATIVE PROCEDURES RELATING
17 TO CIVIL PENALTIES AND ADMINISTRATIVE SANC-
18 TIONS.—

19 (A) FORMAL COMPLAINT.—In any case in
20 which a civil penalty or administrative sanction
21 (other than a temporary denial order) is sought
22 under this section, the charged party is entitled
23 to receive a formal complaint specifying the
24 charges and, at his or her request, to contest

1 the charges in a hearing before an administra-
2 tive law judge.

3 (B) HEARING PROCEDURES.—Subject to
4 the provisions of this subsection, any such hear-
5 ing shall be conducted in accordance with sec-
6 tions 556 and 557 of title 5, United States
7 Code.

8 (C) PRESENTATION OF EVIDENCE IN CAM-
9 ERA.—In any such hearing the Government
10 may, with the approval of the administrative
11 law judge, present evidence in camera in the
12 presence of the charged party or his or her rep-
13 resentative.

14 (D) POST-HEARING ACTION BY THE SEC-
15 RETARY.—After the hearing, the administrative
16 law judge shall make findings of fact and con-
17 clusions of law in a written decision, which shall
18 be referred to the Secretary. The Secretary
19 shall, in a written order, affirm, modify, or va-
20 cate the decision of the administrative law
21 judge not later than 30 days after receiving the
22 decision.

23 (E) TIMING.—The proceedings described
24 in this subsection shall be concluded not later
25 than 1 year after the complaint is submitted,

1 unless the administrative law judge extends
2 such period for good cause shown.

3 (F) FINAL ORDERS; APPEAL.—The order
4 of the Secretary under subparagraph (D) shall
5 be final and may be appealed in accordance
6 with paragraph (4).

7 (2) ADMINISTRATIVE PROCEDURES FOR THE
8 IMPOSITION OF TEMPORARY DENIAL ORDERS.—

9 (A) IN GENERAL.—In any case in which it
10 is necessary, in the public interest, to prevent
11 an imminent violation of this Act or any regula-
12 tion, order, or license issued under this Act, the
13 Secretary may, without a hearing, issue an
14 order temporarily denying United States export
15 or reexport privileges (hereafter in this sub-
16 section referred to as a “temporary denial
17 order”) to a person. A temporary denial order
18 may be effective no longer than 180 days (un-
19 less renewed in writing by the Secretary for an
20 additional period of not more than 180 days) in
21 order to prevent such an imminent violation, ex-
22 cept that a temporary denial order may be re-
23 newed only after notice and an opportunity for
24 a prompt hearing is provided.

1 (B) CONTENTS.—A temporary denial order
2 shall define the imminent violation and state
3 why the temporary denial order was granted
4 without a hearing. The person or persons sub-
5 ject to the issuance or renewal of a temporary
6 denial order may file an appeal of the issuance
7 or renewal of the temporary denial order with
8 an administrative law judge who shall, not more
9 than 10 working days after the appeal is filed,
10 recommend that the temporary denial order be
11 affirmed, modified, or vacated. Parties may
12 submit briefs and other material to the judge.
13 The recommendation of the administrative law
14 judge shall be submitted to the Secretary who
15 shall either accept, reject, or modify the rec-
16 ommendation by written order not more than 5
17 working days after receiving the recommenda-
18 tion. The written order of the Secretary under
19 the preceding sentence shall be final and may
20 be appealed as provided in paragraph (4). The
21 temporary denial order shall be affirmed only if
22 it is reasonable to believe that the order is re-
23 quired in the public interest to prevent an im-
24 mminent violation of this Act or any regulation,
25 order, or license issued under this Act. All ma-

1 materials submitted to the administrative law
2 judge and the Secretary under this paragraph
3 shall constitute the administrative record for
4 purposes of review by the courts.

5 (3) ADMINISTRATIVE LAW JUDGES.—Adminis-
6 trative law judges referred to in paragraphs (1) and
7 (2)(B) shall be appointed by the Secretary from
8 among those considered qualified for selection and
9 appointment under section 3105 of title 5, United
10 States Code.

11 (4) JUDICIAL REVIEW.— Any final agency ac-
12 tion under this Act may be reviewed by appeal to the
13 United States Court of Appeals for the Federal Cir-
14 cuit.

15 (d) SANCTIONS AGAINST CERTAIN PERSONS.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (5), the President may impose the sanctions
18 described in paragraph (3) if the President deter-
19 mines that a person has knowingly and materially
20 contributed—

21 (A) through the export from the United
22 States of any commercial goods or technology
23 that are subject to the jurisdiction of the Unit-
24 ed States under this Act, or

1 (B) through the export from any other
2 country of any commercial goods or technology
3 that constitutes a violation of any regulation is-
4 sued by that country to control exports pursu-
5 ant to an export control regime,
6 to the efforts by any controlled country or controlled
7 enduser to use, develop, produce, stockpile, or other-
8 wise acquire chemical or biological weapons, nuclear
9 materials and equipment (as defined in section 4(4)
10 of the Nuclear Non-Proliferation Act of 1978) or
11 any nuclear explosive device, or any missile equip-
12 ment or technology.

13 (2) PERSONS AGAINST WHICH SANCTIONS ARE
14 TO BE IMPOSED.—Sanctions shall be imposed under
15 paragraph (1) on—

16 (A) the person with respect to whom the
17 President makes the determination described in
18 that paragraph;

19 (B) any successor entity to that person;
20 and

21 (C) any parent, subsidiary, or affiliate of
22 that person if that parent, subsidiary, or affili-
23 ate knowingly and materially contributed to the
24 activities that were the basis of that determina-
25 tion.

1 (3) SANCTIONS.—The sanctions to be imposed
2 under paragraph (1) are—

3 (A) denial of licenses to the sanctioned
4 person to export or reexport, and denial of li-
5 censes to United States persons to export or re-
6 export to the sanctioned person, commercial
7 goods and technology to the same intent as the
8 export or reexport of such goods or technology
9 is controlled under this Act;

10 (B) a prohibition on contracting with, and
11 procurement of products and services from, the
12 sanctioned person by any department, agency,
13 of instrumentality of the United States Govern-
14 ment; and

15 (C) a prohibition on the importation into
16 the United States of products produced by the
17 sanctioned person.

18 (4) CONSULTATIONS WITH FOREIGN GOVERN-
19 MENTS OF JURISDICTION.—If the President makes a
20 determination in paragraph (1) with respect to a
21 foreign person, the President shall immediately initi-
22 ate consultations with the government of the country
23 of which that foreign person is a national with re-
24 spect to the imposition of sanctions under this sec-
25 tion.

1 (5) INAPPLICABILITY.—Sanctions set forth in
2 paragraph (3) may not be imposed on a foreign per-
3 son with respect to acts described in paragraph (1)
4 if the government of the country of which that for-
5 eign person is a national is a member of an export
6 control regime certified under section 4(d)(2) or a
7 cooperating country with respect to such regime, un-
8 less a determination made with respect to such
9 country under section 4(d)(5)(C) is in effect.

10 (6) TERMINATION OF SANCTIONS.—Sanctions
11 imposed under this subsection shall apply for a pe-
12 riod at least one year beginning on the date on
13 which the sanctions are imposed. Such sanctions
14 shall cease to apply, in the case of a foreign person,
15 at such time as paragraph (5) applies. The sanctions
16 shall cease to apply after the end of the 1-year pe-
17 riod described in the first sentence if the President
18 determines that the person with respect to whom the
19 determination was made under paragraph (1) has
20 ceased all activities described in paragraph (1) that
21 were the subject of the violation and has taken ap-
22 propriate steps to ensure that such activities will not
23 take place in the future.

24 (e) OTHER AUTHORITIES.—Nothing in this section
25 limits—

1 (1) the availability of other administrative or
2 judicial remedies with respect to violations of this
3 Act or any regulation, order, or license issued under
4 this Act;

5 (2) the authority to compromise and settle ad-
6 ministrative proceedings brought with respect to vio-
7 lations of this Act or any regulation, order, or li-
8 cense issued under this Act; or

9 (3) the authority to compromise, remit, or miti-
10 gate seizures and forfeitures under section 1(b) of
11 title VI of the Act of June 15, 1917 (22 U.S.C.
12 401(b)).

13 **SEC. 9. DEFINITIONS; REPORTS.**

14 (a) DEFINITIONS.—Except as otherwise provided in
15 this Act, as used in this Act:

16 (1) AUSTRALIA GROUP.—The term “Australia
17 Group” means a group of countries that have agreed
18 to restrict the sale of chemical weapons precursors
19 and equipment, including, as of the date of the en-
20 actment of this Act, Australia, Austria, Belgium,
21 Canada, Denmark, Finland, France, Germany,
22 Greece, Ireland, Italy, Japan, Luxembourg, the
23 Netherlands, New Zealand, Norway, Portugal,
24 Spain, Sweden, Switzerland, the United Kingdom,
25 and the United States.

1 (2) CECA.—The term “CECA” means the
2 Commercial Export Control Administration estab-
3 lished in section 6(c).

4 (3) COCOM.—The term “COCOM” means the
5 Coordinating Committee for Multilateral Export
6 Controls, a non-treaty organization created in 1949
7 that—

8 (A) cooperatively restricts exports of goods
9 and technology to certain countries;

10 (B) collectively determines the goods and
11 technology that are so restricted and the des-
12 tinations to which exports are so restricted; and

13 (C) as of the date of the enactment of this
14 Act, includes Australia, Belgium, Canada, Den-
15 mark, Finland, France, Germany, Greece, Italy,
16 Japan, Luxembourg, the Netherlands, Norway,
17 Portugal, Spain, Sweden, Turkey, the United
18 Kingdom, and the United States.

19 (4) COMMERCIAL GOODS AND TECHNOLOGY.—
20 The term “commercial goods and technology” means
21 goods and technology that were developed or are em-
22 ployed for bona fide civilian endusers.

23 (5) COMMITTEE.—The term “Committee”
24 means the Commercial Export Control Policy Com-
25 mittee established in section 6(b).

1 (6) CONTROL INDEX.—The term “control
2 index” means the United States Commercial Export
3 Control Index established under section 3(b)(1).

4 (7) CONTROLLABLE.—The term “controllable”
5 means capable of being made subject to an effective
6 prohibition or significant restriction on exports. A
7 good or technology shall not be considered to be con-
8 trollable unless it is—

9 (A) manufactured or sold by only a modest
10 number of suppliers who can be positively iden-
11 tified;

12 (B) consumed or used by only a modest
13 number of endusers who can be positively iden-
14 tified and whose export activities can be con-
15 trolled; and

16 (C) individually traceable or not easily con-
17 cealed or disguised.

18 (8) CONTROLLED COUNTRY AND CONTROLLED
19 ENDUSER.—(A) The term “controlled country”
20 means a country identified under section 4(b)(4).
21 The term “controlled enduser” means an enduser
22 identified under section 4(b)(4).

23 (B) The term “controlled enduser” means an
24 enduser identified under section 4(b)(4).

1 (9) COOPERATING COUNTRY.—The term “co-
2 operating country” means a country which has en-
3 tered into an agreement with the United States or
4 an export control regime on maintaining export re-
5 strictions comparable in practice to those maintained
6 by such export control regime.

7 (10)(A) ENDUSE.—The term “enduse” means
8 the intended application or use of an item as rep-
9 resented to an export license applicant by the im-
10 porter of the item in another country.

11 (B) ENDUSER.—The term “enduser” means
12 the person located abroad who is the true party in
13 interest in actually receiving an export for the end-
14 use designated for the export.

15 (11) EXPORT.—The term “export” means an
16 actual shipment, transfer, or transmission of goods
17 or technology out of the United States.

18 (12) EXPORT CONTROL REGIME.—The term
19 “export control regime” means a system of export
20 controls agreed to and maintained by the United
21 States and one or more other countries and includes
22 COCOM, the Australia Group, the MTCR, and the
23 Nuclear Supplies Group.

24 (13) EXPORT LICENSE APPLICATION.—The
25 term “export license application” means a request

1 for permission or authorization to export or reexport
2 a commercial good or technology the export of which
3 is controlled under this Act.

4 (14) FOREIGN AVAILABILITY.—The term “for-
5 eign availability” means the availability within con-
6 trolled countries or to controlled countries or con-
7 trolled endusers without restriction from sources
8 outside the United States of commercial goods and
9 technology that would reasonably be considered to
10 substitute for those produced in the United States
11 or other countries that participate with the United
12 States in export control regimes so as to render ex-
13 port and reexport controls imposed by the United
14 States or such regimes on such goods or technology
15 so produced ineffective in achieving their intended
16 purpose. A determination of foreign availability of a
17 good or technology from sources outside the United
18 States shall be made only after considering the avail-
19 ability of such good or technology—

20 (A) within a controlled country;

21 (B) from any country from which exports
22 to a controlled country or controlled enduser of
23 the good or technology are not restricted; and

24 (C) from countries that participate with
25 the United States in export control regimes to

1 the extent that export and reexport restrictions
2 on the good or technology maintained by such
3 countries are determined by the Secretary to be
4 ineffective.

5 (15) FOREIGN PERSON.—The term “foreign
6 person” means—

7 (A) an individual who is not a citizen of
8 the United States or a “protected individual”
9 as defined in section 274B of the Immigration
10 and Nationality Act (8 U.S.C. 1324b(a)(3));
11 and

12 (B) a corporation, partnership, or other
13 entity that is created or organized under the
14 laws of a foreign country or that has its prin-
15 cipal place of business outside the United
16 States.

17 (16) GOOD.—The term “good” means any arti-
18 cle, natural or manmade substance, material, supply,
19 or manufactured product, including inspection and
20 test equipment, and excluding technical data.

21 (17) MISSILE TECHNOLOGY CONTROL REGIME;
22 MTCR.—The term “Missile Technology Control Re-
23 gime” or “MTCR” means the policy statement be-
24 tween the United States, the United Kingdom, the
25 Federal Republic of Germany, France, Italy, Can-

1 ada, and Japan, announced on April 16, 1987, to re-
2 strict sensitive missile-relevant transfers based on
3 the MTCR Annex, and any amendments thereto,
4 which, as of the date of the enactment of this Act,
5 includes the each of those countries and Australia,
6 Austria, Belgium, Denmark, Finland, Luxembourg,
7 the Netherlands, Norway, Sweden, New Zealand,
8 and Spain.

9 (18) MISSILE EQUIPMENT OR TECHNOLOGY;
10 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
11 “missile equipment or technology” and “MTCR
12 equipment or technology” mean those items listed in
13 the MTCR Annex.

14 (19) MTCR annex.—The term “MTCR Annex”
15 means the Guidelines and Equipment and Tech-
16 nology Annex of the MTCR, and any amendments
17 thereto.

18 (20) NON-REGIME COUNTRY.—The term “non-
19 regime country” means a country that is not a mem-
20 ber of an export control regime and is not a cooper-
21 ating country.

22 (21) NUCLEAR SUPPLIERS’ GROUP.—The term
23 “Nuclear Suppliers’ Group” means a group of coun-
24 tries that—

1 (A) in 1978, committed themselves to pro-
2 hibit the export of certain nuclear-related goods
3 and technology unless the importing country
4 agreed to a pledge of “no explosive use” and to
5 acceptance of safeguards by the International
6 Atomic Energy Agency; and

7 (B) as of the date of the enactment of this
8 Act, is comprised of Australia, Austria, Bel-
9 gium, Bulgaria, Canada, Czech Republic, Den-
10 mark, Finland, France, Germany, Greece, Hun-
11 gary, Ireland, Italy, Japan, Luxembourg, the
12 Netherlands, Norway, Poland, Portugal, Roma-
13 nia, Russia, Slovak Republic, Spain, Sweden,
14 Switzerland, the United Kingdom, and the
15 United States.

16 (22) PERSON.—The term “person” includes the
17 singular and the plural and any individual, partner-
18 ship, corporation, or other form of association, in-
19 cluding any government or agency thereof.

20 (23) REEXPORT.—The term “reexport” means
21 an actual shipment, transfer, or transmission of
22 U.S.-origin goods or technology from one foreign
23 country to another.

24 (24) MEMBER OF AN EXPORT CONTROL RE-
25 GIME.—A “member” of an export control regime is

1 a country that is a participant in that export control
2 regime.

3 (25) SECRETARY.—The term “Secretary”
4 means the Secretary of Commerce.

5 (26) SECURITY CONTROL LIST.—The term “se-
6 curity control list” means the list established under
7 section 4(b).

8 (27) TECHNOLOGY.—The term “technology”
9 means the information and know how (whether in
10 tangible form, such as models, prototypes, drawings,
11 sketches, diagrams, blueprints, or manuals, or in in-
12 tangible form, such as training or technical services)
13 that can be used to design, produce, manufacture,
14 utilize, or reconstruct goods, including computer
15 software and technical data, but not the goods them-
16 selves.

17 (28) UNITED STATES.—The term “United
18 States” means the States of the United States, the
19 District of Columbia, and any commonwealth, terri-
20 tory, dependency, or possession of the United States,
21 and includes the outer Continental Shelf, as defined
22 in section 2(a) of the Outer Continental Shelf Lands
23 Act (43 U.S.C. 1331(a)).

24 (29) UNITED STATES PERSON.—The term
25 “United States person” means—

1 (A) any United States resident or national,
2 including any “protected individual” as defined
3 in section 274B of the Immigration and Na-
4 tionality Act (8 U.S.C. 1324b(a)(3)), but not
5 including an individual resident outside the
6 United States and employed by other than a
7 United States person;

8 (B) any domestic concern (including any
9 permanent domestic establishment of any for-
10 eign concern); and

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

16 (30) U.S. ORIGIN.—The term “U.S.-origin”
17 means, with respect to a good or technology, that
18 the good or technology, when imported into a foreign
19 country, is treated as a product of the United States
20 for purposes of that country’s customs laws.

21 (31) WEAPONS OF MASS DESTRUCTION.—The
22 term “weapons of mass destruction” refers to chemi-
23 cal, biological, and nuclear weapons, and missiles ca-
24 pable of delivering such weapons.

1 (b) ANNUAL REPORT.—Not later than December 31
2 of each year, the Secretary shall submit to the Congress
3 a report on the administration of this Act during the pre-
4 ceding fiscal year. Such report shall include detailed infor-
5 mation with respect to—

6 (1) the implementation of the policies set forth
7 in section 2;

8 (2) export licensing activities under sections 4
9 and 5, and any changes in the exercise of the au-
10 thorities contained in those sections, including a re-
11 port on all export license applications pending be-
12 yond the deadlines contained in section 7;

13 (3) designations under section 4(a)(3) of con-
14 trolled countries and controlled endusers, and any
15 changes in such designations;

16 (4) the results, in as much detail as may be in-
17 cluded consistent with the national security and the
18 need to maintain the confidentiality of proprietary
19 information, of the review and revision of the control
20 index required by section 3(b)(4);

21 (5) any emergency sanctions imposed under
22 section 5(a), and the results of negotiations required
23 by section 5(a)(3)(F);

24 (6) determinations of foreign availability made
25 under section 3(g), the criteria used to make such

1 determinations, and the removal of any export or re-
2 export controls as a result of such determinations;

3 (7) consultations with and recommendations of
4 the industry advisory committees established under
5 section 6(d) and the use made of the advice given
6 by such committees;

7 (8) organizational and procedural changes un-
8 dertaken in furtherance of the policies set forth in
9 this Act, including changes to increase the efficiency
10 of the export licensing process; and

11 (9) violations, enforcement activities, and any
12 sanctions imposed under section 8.

13 **SEC. 10. EFFECT ON OTHER ACTS; CONFORMING AMEND-**
14 **MENTS.**

15 (a) IN GENERAL.—To the extent provided in this
16 Act, this Act shall be construed to modify, repeal, super-
17 sede, and otherwise affect the provisions of other laws au-
18 thorizing control over exports of commercial goods and
19 technology.

20 (b) COORDINATION OF CONTROLS.—

21 (1) NUCLEAR NON-PROLIFERATION ACT OF
22 1978.—The requirement in section 309(c) of the Nu-
23 clear Non-Proliferation Act of 1978 for procedures
24 that provide for prior consultations with other agen-
25 cies, and any procedure published by the President

1 pursuant to that section, shall be deemed to be met
2 by the deliberations of the Committee regarding the
3 policy for exports and reexports of goods and tech-
4 nology to which such section 309(c) applies.

5 (2) AUTHORITY UNDER OTHER ACTS.—The au-
6 thority granted to the President under section
7 203(a)(1)(B) of the International Emergency Eco-
8 nomic Powers Act (50 U.S.C. 1702(a)(1)(B)) and
9 section 5(b)(1)(B) of the Trading with the Enemy
10 Act (50 U.S.C. App. 5(b)(1)(B)) with respect to li-
11 censing or control of exports and reexports of com-
12 mercial goods and technology and related services
13 shall be delegated to the Secretary.

14 (c) COMMODITY JURISDICTION.—

15 (1) IN GENERAL.—Notwithstanding any other
16 provision of law—

17 (A) an item agreed for control on the
18 International Munitions List of COCOM shall
19 be subject to control under the Arms Export
20 Control Act and not under this Act;

21 (B) except as provided in paragraphs (2)
22 and (4), an item which is on the International
23 Industrial List of COCOM shall be subject to
24 control under this Act and not under the Arms
25 Export Control Act; and

1 (C) no item may be included on both the
2 security control list and the United States Mu-
3 nitions List after publication of the lists re-
4 quired under paragraph (3) and resolution of
5 any dispute with respect to such lists under
6 paragraph (4).

7 (2) EXCEPTIONS.—

8 (A) An item described in subparagraph (B)
9 that is not on the International Munitions List
10 may be subject to control under the Arms Ex-
11 port Control Act—

12 (i)(I) for a period of 9 months after
13 the date on which the United States pro-
14 poses to COCOM that the item be added
15 to the International Munitions List, and

16 (II) for an additional 9-month period,
17 but only if negotiations in COCOM to add
18 the item to the International Munitions
19 List are continuing; or

20 (ii) if the Secretary of State, in con-
21 sultation with the Secretary, so deter-
22 mines, except that if the Secretary dis-
23 agrees with the Secretary of State with re-
24 spect to such item, the item may be sub-
25 ject to control under the Arms Export

1 Control Act only if the disagreement is re-
2 solved by the Secretaries or by the Presi-
3 dent pursuant to the procedures set forth
4 in subparagraphs (B) and (C) of para-
5 graph (4).

6 (B) An item referred to in subparagraph

7 (A) is an item that—

8 (i) is specifically designed or devel-
9 oped for military application;

10 (ii) does not have bona fide civilian
11 applications; and

12 (iii) does not have performance equiv-
13 alent in form and function to those of an
14 article or service used for civilian applica-
15 tions.

16 (3) PUBLICATION OF LISTS.—

17 (A) Not later than 3 months after the date
18 of the enactment of this Act, the Secretary shall
19 publish the security control list and the Sec-
20 retary of State shall publish the United States
21 Munitions List, with all revisions that have
22 been made in accordance with this subsection.

23 (B) Not later than 3 months after the date
24 of the enactment of this Act, the Secretary of
25 State shall publish in a separate list those items

1 remaining subject to control under the Arms
2 Export Control Act under paragraph (2).

3 (C) If either the Secretary or the Secretary
4 of State fails to publish a revised list in accord-
5 ance with subparagraph (A), there shall be ex-
6 cluded from the list of the Secretary that did
7 not so publish a revised list any item included
8 on the list of the Secretary that did so publish
9 a revised list.

10 (4) COMMODITY JURISDICTION DISPUTE RESO-
11 LUTION.—

12 (A) Whenever—

13 (i) the Secretary or the Secretary of
14 State receives a request to determine
15 whether an item is subject to control under
16 this Act or the Arms Export Control Act;

17 (ii) either Secretary finds that an item
18 is included on both the security control
19 index and the United States Munitions
20 List;

21 (iii) an item appearing on the list of
22 one Secretary under paragraph (3)(A) is
23 considered by the other Secretary to be
24 under the jurisdiction of that other Sec-
25 retary; or

1 (iv) the Secretary disagrees with the
2 inclusion of an item on the list published
3 under paragraph (3)(B);

4 the Secretary or the Secretary of State (as the
5 case may be) shall refer the matter and any rel-
6 evant information to the other Secretary.

7 (B) The 2 Secretaries shall have a period
8 of 15 days following the referral of a matter
9 under subparagraph (A) to resolve any dif-
10 ferences with respect to the matter involved.

11 (C) If the 2 Secretaries fail to resolve such
12 differences within that 15-day period, either
13 Secretary may refer the matter to the President
14 who, not later than 15 days after receiving the
15 referral, shall notify the 2 Secretaries of his de-
16 termination on the matter in dispute.

17 (D) In resolving disputes under subpara-
18 graph (C), the President may decide that an
19 item which is not on the International Muni-
20 tions List is subject to control under the Arms
21 Export Control Act only if the President—

22 (i) determines that extraordinary cir-
23 cumstances exist affecting the national se-
24 curity of the United States, which require

1 that the item be controlled under the Arms
2 Export Control Act;

3 (ii) proposes to COCOM that the item
4 be added to the International Munitions
5 List; and

6 (iii) not later than 10 days after mak-
7 ing the determination under clause (i),
8 submits a report to the Speaker of the
9 House of Representatives and the Presi-
10 dent pro tempore of the Senate, describing
11 in detail the reasons for the determination,
12 in appropriate classified form, as nec-
13 essary.

14 (E) If either the Secretary or the Secretary
15 of State does not respond to a referral under
16 subparagraph (A), the Secretary that did not so
17 respond shall be deemed to concur with the
18 other Secretary on the matter involved.

19 (d) AMENDMENTS TO THE INTERNATIONAL EMER-
20 GENCY ECONOMIC POWERS ACT.—

21 (1) LIMITATION ON AUTHORITY.—Section
22 203(a)(1) of the International Emergency Economic
23 Powers Act (50 U.S.C. 1706) is amended by adding
24 at the end the following:

1 “The President may prohibit or curtail the exportation
2 and reexportation of any commercial goods or technology
3 subject to the jurisdiction of the United States under this
4 title only to the extent provided, and subject to the criteria
5 set forth in, sections 4 and 5 of the Commercial Export
6 Administration Act of 1993, unless such prohibition or
7 curtailment is part of a total embargo of all exports and
8 imports (other than exports of items described in section
9 7(b)(6) of such Act).”.

10 (2) EXTENSION OR REINSTATEMENT OF EX-
11 PIRED PROVISION OF LAW.—Section 207 of the
12 International Emergency Economic Powers Act (50
13 U.S.C. 1706) is amended—

14 (A) by redesignating subsections (c) and
15 (d) as subsections (d) and (e), respectively, and

16 (B) by inserting after subsection (b) the
17 following new subsection:

18 “(c) EXPIRED LEGISLATIVE AUTHORITY.—The
19 President may use the authority of this Act to extend or
20 reinstate an expired provision of the Commercial Export
21 Administration Act of 1993 for only one period of not
22 more than 180 days after the date of such expiration.”.

23 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS; TERMI-**
24 **NATION DATE.**

25 (a) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) REQUIREMENT OF AUTHORIZING LEGISLA-
2 TION.—

3 (A) Notwithstanding any other provision of
4 law, money appropriated to the Department of
5 Commerce to carry out the purposes of this Act
6 may be obligated or expended only if—

7 (i) the appropriation thereof has been
8 previously authorized by law enacted on or
9 after the date of the enactment of this Act;
10 or

11 (ii) the amount of all such obligations
12 and expenditures does not exceed an
13 amount previously prescribed by law en-
14 acted on or after such date.

15 (B) To the extent that legislation enacted
16 after the making of an appropriation to carry
17 out the purposes of this Act authorizes the obli-
18 gation or expenditure thereof, the limitation in
19 subparagraph (A) shall have no effect.

20 (2) AUTHORIZATION.—There are authorized to
21 be appropriated to the Department of Commerce
22 such sums as may be necessary to carry out the pur-
23 poses of this Act.

24 (b) TERMINATION DATE.—

1 The authority granted by this Act terminates
2 on September 30, 2000.

3 **SEC. 12. MISCELLANEOUS PROVISIONS.**

4 (a) AMENDMENTS TO TITLE 5, UNITED STATES
5 CODE.—(1) Section 5314 of title 5, United States Code,
6 is amended—

7 (A) by striking “Under Secretary of Commerce
8 for Export Administration”; and

9 (B) by adding at the end the following:

10 “Director, Commercial Export Control Adminis-
11 tration.”.

12 (2) Section 5315 of title 5, United States Code, is
13 amended—

14 (A) in the item relating to Assistant Secretaries
15 of Commerce, by striking “(11)” and inserting
16 “(9)”; and

17 (B) by adding at the end the following:

18 “Deputy Director, Commercial Export Control
19 Administration.

20 “Assistant Director for Export Control, Com-
21 mercial Export Control Administration.

22 “Assistant Director for Enforcement and Com-
23 pliance, Commercial Export Control Administration.

24 “Assistant Director for Security and Intel-
25 ligence, Commercial Export Control Administration.

1 “Assistant Director for Nonproliferation, Com-
2 mercial Export Control Administration.

3 “Chief Negotiator, Commercial Export Control
4 Administration.”.

5 (b) EXPORT ADMINISTRATION ACT OF 1979.—Upon
6 the effective date of this Act, sections 5, 6 (except to the
7 extent provided in section 8(b)), 11A, 11B, 11C, 10(h),
8 and 10(o) of the Export Administration Act of 1979, and
9 section 6 of that Act (except to the extent provided in sec-
10 tion 8(b) of that Act), shall cease to be effective, and all
11 other provisions of that Act to the extent such provisions
12 apply to such ineffective sections shall cease to be effec-
13 tive.

14 (c) SAVINGS PROVISIONS.—

15 (1) IN GENERAL.—All delegations, rules, regu-
16 lations, orders, determinations, licenses, or other
17 forms of administrative action which—

18 (A) have been made, issued, conducted, or
19 allowed to become effective—

20 (i) under provisions of the Export Ad-
21 ministration Act of 1979 referred to in
22 subsection (b), or

23 (ii) in the exercise of functions trans-
24 ferred by this Act, and

1 (B) are in effect at the time this Act takes
 2 effect,
 3 shall continue in effect according to their terms until
 4 modified, superseded, set aside, or revoked under
 5 this Act.

6 (b) ADMINISTRATIVE PROCEEDINGS.—This Act shall
 7 not apply to any administrative proceedings commenced
 8 or any application for a license made, under the Export
 9 Administration Act of 1979 or in the exercise of functions
 10 transferred by this Act, which is pending at the time this
 11 Act takes effect.

12 (d) EFFECTIVE DATE.—This Act takes effect on the
 13 date of the enactment of this Act.

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