

103^D CONGRESS
2^D SESSION

H. R. 4663

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1994

Mr. HAMILTON introduced the following bill; which was referred to the
Committee on Foreign Affairs

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Omnibus Export
5 Administration Act of 1994”.

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

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

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—EXPORT ADMINISTRATION

Sec. 101. Short title.
Sec. 102. Findings.
Sec. 103. Policy statement.

- Sec. 104. General provisions.
- Sec. 105. Multilateral controls.
- Sec. 106. Emergency controls.
- Sec. 107. Short supply controls.
- Sec. 108. Foreign boycotts.
- Sec. 109. Procedures for processing export license applications; other inquiries.
- Sec. 110. Violations.
- Sec. 111. Controlling proliferation activity.
- Sec. 112. Administrative and judicial review.
- Sec. 113. Enforcement.
- Sec. 114. Export control authorities and procedures.
- Sec. 115. Annual report.
- Sec. 116. Definitions.
- Sec. 117. Effects on other Acts.
- Sec. 118. Secondary Arab boycott.
- Sec. 119. Authorization of appropriations.
- Sec. 120. Conforming amendments to other laws.
- Sec. 121. Effective date.
- Sec. 122. Expiration date.
- Sec. 123. Savings provision.

TITLE II—NUCLEAR PROLIFERATION PREVENTION ACT

- Sec. 201. Short title.

PART A—REPORTING ON NUCLEAR EXPORTS

- Sec. 211. Reports to Congress.
- Sec. 212. Effective date.

PART B—SANCTIONS FOR NUCLEAR PROLIFERATION

- Sec. 221. Imposition of sanctions on persons engaging in export activities that contribute to proliferation.
- Sec. 222. Eligibility for assistance.
- Sec. 223. Role of international financial institutions.
- Sec. 224. Prohibition on assisting nuclear proliferation through the provision of financing.
- Sec. 225. Export-Import Bank.
- Sec. 226. Sanctions against countries involved in transfer of nuclear weapons or design information or components.
- Sec. 227. Amendment to the Arms Export Control Act.
- Sec. 228. Reward.
- Sec. 229. Reports.
- Sec. 230. Technical correction.
- Sec. 231. Definitions.
- Sec. 232. Effective date.

PART C—INTERNATIONAL ATOMIC ENERGY AGENCY

- Sec. 241. Bilateral and multilateral initiatives.
- Sec. 242. IAEA internal reforms.
- Sec. 243. Reporting requirement.
- Sec. 244. Definitions.

PART D—REPEAL OF DUPLICATIVE PROVISIONS

Sec. 251. Repeal.

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

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

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

5 **SEC. 102. FINDINGS.**

6 The Congress makes the following findings:

7 (1) Export controls are a part of a comprehen-
8 sive response to national security threats. United
9 States exports should be restricted only for critical
10 national security, nonproliferation, and foreign policy
11 reasons.

12 (2) Exports of certain commodities and tech-
13 nology may adversely affect the national security of
14 the United States by making a direct and significant
15 contribution to the military potential of individual
16 countries or by disseminating the capability to
17 produce or use weapons of mass destruction. There-
18 fore, the administration of export controls should
19 emphasize the control of these exports.

20 (3) The acquisition of dual use commodities
21 and technology by those countries and end users
22 whose actions or policies run counter to United
23 States national security interests may enhance the
24 military capabilities of those countries, particularly
25 their ability to produce and deliver nuclear, chemi-

1 cal, and biological weapons. This enhancement
2 threatens the security of the United States and its
3 allies, and places additional demands on the defense
4 budget of the United States. Availability to certain
5 countries and end users of items that contribute to
6 certain military capabilities or the proliferation of
7 weapons of mass destruction is a fundamental con-
8 cern of the United States and should be eliminated
9 through negotiations and other appropriate means
10 whenever possible.

11 (4) 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 must be evalu-
16 ated in terms of their effects on the United States
17 economy as well as on its national security. Restric-
18 tions on exports from the United States have had se-
19 rious adverse effects on economic competitiveness
20 and domestic employment, particularly when re-
21 straints applied by the United States have been
22 more extensive than those imposed by other coun-
23 tries or when United States export control policy is
24 uncertain.

1 (5) Export controls cannot be the sole instru-
2 ment of the United States to prevent a country or
3 end user from developing weapons of mass destruc-
4 tion. For this reason, export controls should be ap-
5 plied as part of a comprehensive response to security
6 threats.

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

12 (7) Effective export controls also must be fo-
13 cused only on those items that materially contribute
14 to a country's or an end user's military potential or
15 potential to produce or use weapons of mass destruc-
16 tion.

17 (8) Unilateral export controls are generally not
18 effective in influencing the behavior of other govern-
19 ments or impeding access to controlled countries of
20 controlled items. In most situations, unilateral con-
21 trols alone impede access to United States sources
22 of supply without affecting the ability of controlled
23 countries to obtain controlled items elsewhere. More-
24 over, unilateral controls permit foreign competitors
25 to serve markets the United States Government de-

1 nies to United States firms and workers, thus im-
2 pairing the reliability of United States suppliers in
3 comparison with their foreign competitors. At the
4 same time, the need to lead the international com-
5 munity or overriding national security or foreign pol-
6 icy interests may justify unilateral controls in spe-
7 cific cases.

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

11 (10) The United States' export control system
12 must not be overly restrictive or bureaucratic, or un-
13 dermine the competitive position of American indus-
14 try. The export control system must be efficient, re-
15 sponsive, transparent, and effective.

16 (11) Export restrictions that negatively affect
17 the United States industrial base ultimately weaken
18 United States military capabilities and lead to de-
19 pendencies on foreign sources for key components.

20 (12) Minimization of restrictions on exports of
21 agricultural commodities and products is of critical
22 importance to the maintenance of a sound agricul-
23 tural sector, to a positive contribution to the balance
24 of payments, to reducing the level of Federal ex-
25 penditures for agricultural support programs, and to

1 United States cooperation in efforts to eliminate
2 malnutrition and world hunger.

3 **SEC. 103. POLICY STATEMENT.**

4 It is the policy of the United States to do the follow-
5 ing:

6 (1) To stem the proliferation of weapons of
7 mass destruction and the means to deliver them
8 by—

9 (A) leading international efforts to control
10 the proliferation of chemical, biological, and nu-
11 clear weapons and missiles;

12 (B) controlling involvement of United
13 States persons in, and contributions by United
14 States persons to, foreign programs intended to
15 develop weapons of mass destruction or missiles
16 and the means to design, develop, produce,
17 stockpile, or use them; and

18 (C) implementing international treaties or
19 other agreements that require controls on ex-
20 ports of designated items, reports on the pro-
21 duction, processing, consumption, and exports
22 of such items, and compliance with verification
23 programs.

24 (2) To restrict the export of items that would
25 directly and significantly contribute to the military

1 potential of countries so as to pose a threat to the
2 national security of the United States or its allies.

3 (3) To—

4 (A) minimize uncertainties in export con-
5 trol policy; and

6 (B) encourage trade with all countries with
7 which the United States has diplomatic or trad-
8 ing relations, except those countries with which
9 such trade has been determined by the Presi-
10 dent to be against the national interest, and to
11 strongly encourage the trading partners of the
12 United States not to trade with those other
13 countries.

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

18 (5) To increase the effectiveness of and the reli-
19 ance of the United States upon multilateral coordi-
20 nation of controls through effective export control
21 regimes that—

22 (A) clearly identify countries and entities
23 to which, and end uses for which, exports of
24 items are to be controlled,

1 (B) incorporate lists of controlled items
2 that are critical to the control objectives,

3 (C) establish uniform criteria and proce-
4 dures for licensing, and

5 (D) implement means to curtail member
6 countries from granting licenses that render in-
7 effective license denials by the United States.

8 (6) To impose unilateral controls, under the
9 procedures and conditions set forth in section 106,
10 only when it is essential to the national security or
11 foreign policy of the United States, and only after
12 full consideration of the economic impact of the con-
13 trols and their effectiveness in achieving their in-
14 tended objectives.

15 (7) To make all licensing determinations in a
16 timely manner so undue delays in the licensing proc-
17 ess will not cause a United States firm to lose an
18 export sale.

19 (8) To maintain a presumption of approval of
20 license applications for authority to export items for
21 civil end use.

22 (9) To use export controls to encourage other
23 countries to take immediate steps to prevent the use
24 of their territories or resources to aid, encourage, or
25 give sanctuary to those persons involved in directing,

1 supporting, or participating in acts of international
2 terrorism.

3 (10)(A) To counteract restrictive trade prac-
4 tices or boycotts fostered or imposed by foreign
5 countries against other countries friendly to the
6 United States or against any United States person.

7 (B) To encourage and, in specified cases, re-
8 quire United States persons engaged in the export of
9 commodities, technology, and other information to
10 refuse to take actions, including furnishing informa-
11 tion or entering into or implementing agreements,
12 which have the effect of furthering or supporting the
13 restrictive trade practices or boycotts fostered or im-
14 posed by any foreign country against a country
15 friendly to the United States or against any United
16 States person.

17 (11) To consolidate export control functions
18 and increase administrative accountability, and
19 thereby better serve the exporting public by reducing
20 and eliminating overlapping, conflicting, and incon-
21 sistent regulatory burdens.

22 (12) To minimize restrictions on the export of
23 agricultural commodities and products.

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

2 (a) TYPES OF LICENSES.—Under such conditions as
3 the Secretary may impose, consistent with the provisions
4 of this title, and subject to paragraph (2)(B), the Sec-
5 retary may require the following types of licenses for ex-
6 ports of commodities and technology controlled under this
7 title:

8 (1) SPECIFIC EXPORTS AND REEXPORTS.—An
9 individual validated license, authorizing a specific ex-
10 port.

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

15 (B)(i) A distribution license, authorizing mul-
16 tiple exports of general application computers to any
17 country other than a sanctioned country. The Sec-
18 retary shall grant such distribution licenses strictly
19 on the basis of the reliability of the applicant and
20 foreign consignees with respect to the prevention of
21 diversion of commodities or technology, consistent
22 with section 105(a)(1). Not later than 30 days after
23 an application is submitted under section 109 for
24 such a distribution license to export general applica-
25 tion computers, the Secretary shall grant the license
26 with respect to such distributors and end users that

1 the Secretary determines to be reliable. The Sec-
2 retary may deny the license application with respect
3 to those distributors and end users that present a
4 risk of diversion of commodities or technology, di-
5 rectly or indirectly, consistent with the provisions of
6 section 105(a)(1).

7 (ii) For purposes of this subparagraph, a “sanc-
8 tioned country” is any country—

9 (I) the government of which the Secretary
10 of State has determined to be a government
11 that has repeatedly provided support for acts of
12 international terrorism; or

13 (II) against which the United States main-
14 tains an embargo on all, or substantially all, ex-
15 ports pursuant to the International Emergency
16 Economic Powers Act or the Trading With The
17 Enemy Act.

18 (iii) For purposes of this subparagraph, the
19 term “general application computers” means any
20 computer system, computer networking equipment,
21 peripheral to a computer system, or combination
22 thereof, on which export controls are in effect under
23 section 105, except the following:

24 (I) Supercomputers.

1 (II) Computers specially designed for use
2 in connection with the capability described in
3 subparagraph (A) or (B) of section 105(a)(1).

4 (III) Computers specially designed for use
5 in connection with the surreptitious interception
6 of wire or oral communications.

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

15 (c) UNITED STATES COMMODITY CONTROL INDEX.—

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

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

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

23 (C) designate countries, and end uses or
24 end users, to which exports of commodities and
25 technology are controlled.

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

2 (A) consist of a security control list of all
3 commodities and technology on which export
4 controls are imposed under section 105, an
5 emergency control list of all commodities and
6 technology on which export controls are im-
7 posed under section 106, a short supply control
8 list of all commodities on which export controls
9 are imposed under section 107;

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

15 (C) identify countries, and end uses or end
16 users, to which exports are controlled, including
17 specific projects and end users of concern,
18 cross-referenced with the list of commodities
19 and technology on which export controls are im-
20 posed; and

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

1 (3) LICENSING OF CONTROL INDEX COMMOD-
2 ITIES AND TECHNOLOGY.—A validated license may
3 be required for the export of those commodities and
4 technology that are specifically and clearly identified
5 on the control index to countries, end uses, and end
6 users so designated on the control index. No author-
7 ity or permission may be required to export com-
8 modities and technology not so identified to any
9 country, end use, or end user not so designated.

10 (d) DELEGATION OF AUTHORITY.—Subject to the
11 provisions of this title, the President may delegate the
12 power, authority, and discretion conferred upon the Presi-
13 dent by this title to such departments, agencies, and offi-
14 cials of the Government as the President considers appro-
15 priate, except that no authority under this title may be
16 delegated to, or exercised by, any official of any depart-
17 ment or agency the head of which is not appointed by the
18 President, by and with the advice and consent of the Sen-
19 ate. The President may not delegate or transfer his power,
20 authority, or discretion to overrule or modify any rec-
21 ommendation or decision made by the Secretary, the Sec-
22 retary of Defense, or the Secretary of State under this
23 title and may not delegate the authority under section
24 106(a)(4).

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

11 (f) EXPORT ADVISORY COMMITTEES.—

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

1 (2) FUNCTIONS.—Export advisory committees
2 appointed under paragraph (1) shall advise and as-
3 sist the Secretary, and any other department, agen-
4 cy, or official of the Government carrying out func-
5 tions under this title, on actions (including all as-
6 pects of controls imposed or proposed) designed to
7 carry out the policies of this title concerning the
8 items with respect to which such export advisory
9 committees were appointed. Such committees, where
10 they have expertise in such matters, shall be con-
11 sulted on questions involving—

12 (A) technical matters,

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

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

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

21 (E) the issuance of regulations,

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

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

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

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

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

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

21 (4) CHAIRPERSON.—Each export advisory com-
22 mittee appointed under paragraph (1) shall elect a
23 chairperson, and shall meet at least every 3 months
24 at the call of the chairperson, unless the chairperson
25 determines, in consultation with the other members

1 of the committee, that such a meeting is not nec-
2 essary to achieve the purposes of this subsection.
3 Each such committee shall be terminated after a pe-
4 riod of 2 years, unless extended by the Secretary for
5 additional periods of 2 years each. The Secretary
6 shall consult each such committee on such termi-
7 nation or extension of that committee.

8 (5) ACCESS TO INFORMATION.—To facilitate
9 the work of the export advisory committees ap-
10 pointed under paragraph (1), the Secretary, in con-
11 junction with other departments and agencies par-
12 ticipating in the administration of this title, shall
13 disclose to each such committee adequate informa-
14 tion, consistent with national security, pertaining to
15 the reasons for the export controls which are in ef-
16 fect or contemplated for the items or policies for
17 which that committee furnishes advice.

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

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

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

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

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

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

5 (a) AUTHORITY.—

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

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

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

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

1 (3) CONSISTENCY WITH EXPORT CONTROL RE-
2 GIMES.—Any provision of this title that provides
3 that no authority or permission to export may be re-
4 quired under this section shall not apply to the ex-
5 tent that the applicable export control regime pro-
6 vides otherwise.

7 (b) SECURITY CONTROL LIST.—

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

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

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

3 (2) CONTROLLED COMMODITIES AND TECH-
4 NOLOGY.—Export controls shall be imposed under
5 this section if, and may be imposed under this sec-
6 tion only if, the export controls are agreed to by an
7 export control regime which includes export control
8 purposes, items subject to control, policy of review
9 for license applications, and all controlled destina-
10 tions, and end uses or end users.

11 (3) CONTROLLED COUNTRIES, END USES, AND
12 END USERS.—A country shall be designated a con-
13 trolled country, and an end use or end user shall be
14 designated a controlled end use or controlled end
15 user, with respect to a particular commodity or tech-
16 nology on the security control list if exports of such
17 commodity or technology to such country, end use,
18 or end user are controlled multilaterally pursuant to
19 the agreement of an export control regime described
20 in paragraph (2).

21 (c) EXPORT LICENSING POLICIES FOR CONTROLLED
22 COUNTRIES AND CONTROLLED END USES OR END
23 USERS.—

24 (1) EXPORTS TO CONTROLLED COUNTRIES,
25 AND END USES OR END USERS.—

1 (A) IN GENERAL.—The Secretary shall re-
2 quire authority or permission to export com-
3 modities and technology on the security control
4 list to a controlled country, a controlled end
5 use, or a controlled end user.

6 (B) PRESUMPTION OF APPROVAL FOR
7 CIVIL END USES.—Subject to subparagraph
8 (C), applications to export commodities or tech-
9 nology for civil end uses shall carry a presump-
10 tion of approval.

11 (C) PRESUMPTION OF DENIAL FOR CON-
12 TROLLED END USERS.—Exports to controlled
13 end users of commodities or technology on
14 which controls are in effect under this section
15 shall carry a presumption of denial.

16 (D) BASIS FOR DENIAL.—Licenses may be
17 denied under this section only if the commodity
18 or technology meets the requirements of sub-
19 paragraph (A) or (B) of subsection (a)(1).

20 (2) CIVIL END USE.—A determination under
21 paragraph (1)(B) of whether commodities or tech-
22 nology are for civil end use shall be based on the fol-
23 lowing criteria:

24 (A) Whether the stated end use is civil.

1 (B) Whether the civil application of the
2 commodities or technology is well established in
3 countries other than controlled countries.

4 (C) Whether the commodities or tech-
5 nology proposed for export are reasonable in
6 quantity and quality for the proposed end use.

7 (D) The risk of diversion to an unauthor-
8 ized user or consignee, including whether such
9 diversion can be verified.

10 (d) EXPORT CONTROL REGIMES AND LICENSING
11 POLICIES.—For the purposes of creating effective multi-
12 lateral export controls and strengthening the controls im-
13 posed by export control regimes, the Secretary of State
14 shall, with respect to each export control regime, pursue
15 negotiations with other members of such regime to accom-
16 plish the following objectives:

17 (1) Development of a common list of commod-
18 ities and technology to which export controls are ap-
19 plied, and a common list of countries, and end uses
20 or end users, to which exports are controlled, by
21 members of the regime.

22 (2) Agreement on the same treatment, to be ap-
23 plied by all members of the regime, of exports and
24 reexports to members of the regime, cooperating

1 countries, and other countries that are not controlled
2 countries.

3 (3) National procedures resulting in comparable
4 implementation and enforcement of export controls
5 among the members of the regime, including laws
6 providing appropriate civil and criminal penalties
7 and statutes of limitations sufficient to deter poten-
8 tial violations.

9 (4) Periodic meetings of high-level representa-
10 tives of governments participating in the regime for
11 the purpose of coordinating national export control
12 policies and issuing policy guidance for dissemina-
13 tion to exporters in participating countries.

14 (5) Establishment of procedures for regular
15 consultation among members of the regime on pro-
16 posed export license applications that includes con-
17 sultation with individuals with sufficient technical
18 expertise to assess the licensing status of exports
19 and to ensure the reliability of end users.

20 (6) An enforcement mechanism that provides
21 authority for adequately trained enforcement officers
22 to investigate and prevent illegal exports.

23 (7) Development of a system of export control
24 documentation to verify the movement of commod-
25 ities and technology.

1 (8) Establishment of procedures for the coordi-
2 nation and sharing of information on licensing, end
3 users, and enforcement.

4 (9) The application of adequate national re-
5 sources to carry out paragraphs (1) through (8).

6 (e) INCENTIVES FOR COUNTRIES TO PARTICIPATE IN
7 OR COOPERATE WITH EXPORT CONTROL REGIMES.—

8 (1) GENERAL RULE FOR REGIMES.—Unless the
9 Secretary, in consultation with the Secretary of
10 State, determines that an existing export control re-
11 gime has failed to meet the objectives set forth in
12 subsection (d), exports to all countries that are
13 members of, or cooperating countries with respect
14 to, that regime shall be subject to the licensing
15 treatment set forth in this subsection. The Secretary
16 shall publish each determination under this para-
17 graph in the Federal Register.

18 (2) FAVORABLE LICENSING TREATMENT.—Sub-
19 ject to paragraphs (3) and (4), unless an export con-
20 trol regime is the subject of a determination under
21 paragraph (1), no authority or permission may be
22 required for exports of any commodity or technology
23 controlled by that regime to or among members of
24 that regime or cooperating countries with respect to
25 that regime.

1 (3) EXCEPTION.—If the Secretary determines
2 that a member of an export control regime, a co-
3 operating country with respect to such regime, or an
4 end user in a country that is such a regime member
5 or in such a cooperating country is engaging in a
6 pattern and practice of noncompliance with controls
7 agreed to by the regime—

8 (A) if the license treatment under para-
9 graph (2) is provided by the United States uni-
10 laterally, the Secretary shall terminate such
11 treatment with respect to that noncomplying
12 member, cooperating country, or end user dur-
13 ing the period in which the determination is in
14 effect; or

15 (B) in any other case the Secretary shall
16 seek a similar determination by the other mem-
17 bers of the regime concerning such noncompli-
18 ance and, if such a determination is made, the
19 Secretary shall propose the suspension of favor-
20 able licensing treatment of exports to that non-
21 complying regime member, cooperating country,
22 or end user by all members of the regime dur-
23 ing the period in which that determination is in
24 effect.

1 (4) EXCEPTION FOR EXPORTS TO CERTAIN
2 COUNTRIES.—(A) Should some of the members of
3 an export control regime decide to require licenses
4 for the export to other members of the regime or to
5 cooperating countries of certain items controlled by
6 the regime, the United States may require such li-
7 censes if—

8 (i) the Secretary determines that a prepon-
9 derance of the world's supply of the items in-
10 volved would be subject to such export license
11 requirements; or

12 (ii) after making a determination that a
13 preponderance of the world's supply of the
14 items involved would not be subject to such ex-
15 port license requirements, the Secretary, in con-
16 sultation with the Secretary of State and the
17 Secretary of Defense, determines that the ab-
18 sence of a requirement of export licenses for
19 such items to such members of the regime or
20 cooperating countries would prove detrimental
21 to the national security of the United States.

22 In any case in which the Secretary makes a deter-
23 mination under clause (ii), the Secretary shall pub-
24 lish that determination, together with a concise

1 statement of its basis and the estimated impact of
2 the determination.

3 (B) The Secretary shall notify the Congress at
4 least 30 days before a license requirement described
5 in subparagraph (A) goes into effect.

6 (f) CREATION AND ENHANCEMENT OF MULTILAT-
7 ERAL CONTROL REGIMES.—

8 (1) EXPANSION OF MEMBERSHIP OF RE-
9 GIMES.—For each existing export control regime and
10 for each export control regime the United States
11 seeks to create, the Secretary of State, in consulta-
12 tion with the Secretary, shall seek—

13 (A) to expand the membership of the re-
14 gime to include all countries that produce or ex-
15 port items controlled pursuant to agreement by
16 the regime and share the objectives of the re-
17 gime;

18 (B) the adoption of procedures for effective
19 implementation of the rules and guidelines of
20 the regime through uniform and consistent in-
21 terpretations of export controls agreed to by the
22 regime;

23 (C) agreement to create a secretariat, for
24 each regime that seeks the prevention of the
25 proliferation of weapons of mass destruction or

1 missiles, that would call regular meetings of
2 members of the regime and establish rules for
3 the regime; and

4 (D) agreement within each regime not to
5 render ineffective the denial of licenses by other
6 regime members and to establish procedures for
7 the coordination and regular exchange of infor-
8 mation about such denials.

9 (2) TERRORIST THREATS TO REGIME MEM-
10 BERS.—

11 (A) PRESUMPTION OF DENIAL FOR LI-
12 CENSES.—For each existing export control re-
13 gime and for each export control regime the
14 United States seeks to create, the Secretary of
15 State, in consultation with the Secretary, shall
16 pursue negotiations with other members of such
17 regime to establish a presumption of denial for
18 licenses for exports that would directly contrib-
19 ute to acts of terrorism directed at 1 or more
20 regime members.

21 (B) REPORTS TO CONGRESS.—The Sec-
22 retary shall annually report to the Committee
23 on Foreign Affairs of the House of Representa-
24 tives and the Committee on Banking, Housing,
25 and Urban Affairs of the Senate on the

1 progress made toward meeting the objectives
2 set forth in subparagraph (A).

3 (3) DISCLOSURE OF NONPROPRIETARY INFOR-
4 MATION.—The Secretary of State shall propose the
5 following to each export control regime:

6 (A) Full disclosure on a confidential basis
7 to all members of the regime of all
8 nonproprietary information relating to all li-
9 censes granted for the export of items con-
10 trolled by the regime, consistent with the pro-
11 tection of intelligence sources and methods.

12 (B) A list of controlled items of particular
13 sensitivity for which such disclosure shall be
14 given 15 days before the license is issued.

15 (g) TRANSPARENCY OF MULTILATERAL CONTROL
16 REGIMES.—

17 (1) PUBLICATION OF INFORMATION ON EACH
18 EXISTING REGIME.—Within 6 months after the date
19 of the enactment of this Act, the Secretary shall
20 publish in the Federal Register the following infor-
21 mation with respect to export controls agreed to by
22 each multilateral control regime existing on the date
23 of the enactment of this Act:

24 (A) Purposes of the controls.

25 (B) Members of the regime.

1 (C) Licensing policy.

2 (D) Items subject to the controls, together
3 with all public notes, understandings, and other
4 aspects of the agreement of the regime, and all
5 changes thereto.

6 (E) Controlled countries, controlled end
7 uses, and, to the extent not inconsistent with
8 requirements of the regime, controlled end
9 users.

10 (F) Rules of interpretation.

11 (G) Major policy actions.

12 (H) The rules and procedures of the re-
13 gime for establishing and modifying any matter
14 described in subparagraphs (A) through (G)
15 and for reviewing export license applications.

16 (2) INFORMATION REGARDING CONTROLLED
17 END USERS.—The United States shall propose to
18 each export control regime to permit a member of
19 the regime to publish the controlled end users (in-
20 cluding projects of concern) agreed to by the regime.

21 (3) NEW REGIMES.—Within 2 months after
22 joining or organizing a new export control regime,
23 the Secretary shall publish the information described
24 in subparagraphs (A) through (H) of paragraph (1).

1 (4) PUBLICATION OF CHANGES.—The Secretary
2 shall publish in the Federal Register any changes in
3 the information published under this subsection
4 within 2 months after the applicable regime adopts
5 such changes.

6 (h) EFFECTIVENESS OF MULTILATERAL CONTROL
7 REGIMES AND IMPLEMENTATION BY THEIR MEMBERS.—

8 (1) ANNUAL EVALUATION.—At least once each
9 year, the Secretary shall evaluate the effectiveness of
10 each export control regime and the effectiveness of
11 the implementation of the regime by each of its
12 members, including the United States. Such evalua-
13 tion shall be included in the annual report issued
14 under section 115.

15 (2) CONTENTS.—The evaluation under para-
16 graph (1) shall include the following for the calendar
17 year for which the report is issued:

18 (A) Items not controlled by the export con-
19 trol regime that the United States believes
20 should be controlled if the regime is to achieve
21 its control purposes effectively.

22 (B) Countries that are sources of foreign
23 availability for each item controlled by agree-
24 ment of the regime. Such countries shall in-
25 clude members of the regime, cooperating coun-

1 tries with respect to the regime, and countries
2 that are not members of the regime.

3 (C) Countries that are risks for diverting
4 controlled items to controlled countries, end
5 uses, or end users.

6 (D) Members of the regime that have not,
7 in the judgment of the Secretary, implemented
8 the objectives set forth in subsection (d).

9 (E) The extent to which the regime and
10 each of its members have adopted and are im-
11 plementing uniform licensing policies.

12 (F) The extent to which the licensing pol-
13 icy of the regime and each of its members ade-
14 quately prevents the export licensing decisions
15 of one member of the regime from rendering in-
16 effective the denial of license applications by
17 another member.

18 (3) COMMENTS.—Before beginning each evalua-
19 tion under this subsection, the Secretary shall re-
20 quest comments from the public and the export advi-
21 sory committees appointed under section 104(f) re-
22 garding the effectiveness of each export control re-
23 gime. The Secretary shall give the public at least 30
24 days to provide comments under this paragraph.

25 (i) FOREIGN AVAILABILITY.—

1 (1) FOREIGN AVAILABILITY TO CONTROLLED
2 COUNTRIES.—

3 (A) IN GENERAL.—The Secretary, in con-
4 sultation with the Secretary of Defense, other
5 appropriate Government departments and agen-
6 cies, and appropriate export advisory commit-
7 tees appointed under section 104(f), shall re-
8 view, on a continuing basis, the availability of
9 controlled items to controlled countries from
10 sources outside the United States, including
11 countries that participate with the United
12 States in export control regimes.

13 (B) ITEMS CONTROLLED BY COCOM.—(i)
14 In any case in which the Secretary determines
15 under paragraph (3), in accordance with proce-
16 dures and criteria which the Secretary shall es-
17 tablish by regulation, that any item controlled
18 for export pursuant to the agreement of
19 COCOM is available in fact, or will be available
20 in fact within 2 years in the future, to con-
21 trolled countries from sources outside the Unit-
22 ed States in sufficient quantity and of com-
23 parable quality so that the requirement of a
24 validated license for the export of such item is

1 or would be ineffective in achieving the pur-
2 poses of this section—

3 (I) the President shall propose to
4 COCOM that export controls on such item
5 be eliminated, or

6 (II) if the President determines that
7 the absence of export controls on the item
8 would prove detrimental to the national se-
9 curity of the United States, the President
10 shall actively pursue negotiations with the
11 governments of the appropriate foreign
12 countries for the purpose of eliminating
13 such availability.

14 No later than the commencement of such nego-
15 tiations, the President shall notify in writing
16 the Committee on Banking, Housing, and
17 Urban Affairs of the Senate and the Committee
18 on Foreign Affairs of the House of Representa-
19 tives that the President has begun such nego-
20 tiations and why the President believes it is im-
21 portant to the national security that export con-
22 trols on the item involved be maintained.

23 (ii) If, within 6 months after the Presi-
24 dent's determination under clause (i)(II) that
25 export controls be maintained notwithstanding

1 foreign availability, the foreign availability has
2 not been eliminated, the Secretary may not,
3 after the end of that 6-month period, require a
4 validated license for the export of the item in-
5 volved. The President may extend the 6-month
6 period for an additional period of 12 months if
7 the President certifies to the Congress that the
8 negotiations involved are progressing and that
9 the absence of the export controls involved
10 would prove detrimental to the national security
11 of the United States.

12 (C) ITEMS CONTROLLED BY OTHER RE-
13 GIMES.—(i) In any case in which the Secretary
14 determines under paragraph (3), in accordance
15 with procedures and criteria which the Sec-
16 retary shall establish by regulation, that any
17 item controlled for export pursuant to an export
18 control regime other than COCOM is available
19 in fact, or will be available in fact within 2
20 years in the future, to controlled countries from
21 sources outside the United States in sufficient
22 quantity and of comparable quality so that the
23 requirement of a validated license for the export
24 of such item is or would be ineffective in achiev-
25 ing the purposes of this section, the President

1 shall actively pursue negotiations with the gov-
2 ernments of the appropriate foreign countries
3 for the purpose of eliminating such availability.
4 No later than the commencement of such nego-
5 tiations, the President shall notify in writing
6 the Committee on Banking, Housing, and
7 Urban Affairs of the Senate and the Committee
8 on Foreign Affairs of the House of Representa-
9 tives that the President has begun such nego-
10 tiations, indicating whether the President be-
11 lieves it is important that export controls on the
12 item involved be maintained to avoid a signifi-
13 cant risk to the national security interests of
14 the United States.

15 (ii) If, within 120 days after a determina-
16 tion of foreign availability described in clause
17 (i) is made, the foreign person or persons that
18 are or will be the source of such foreign avail-
19 ability have not taken the steps necessary to
20 eliminate such availability, the President shall
21 propose to the export control regime controlling
22 the commodities or technology that are the sub-
23 ject of the foreign availability determination—

24 (I) that such controls be eliminated,

25 or

1 (II) that the members of the regime
2 impose all of the sanctions described in
3 clause (iii) on such foreign person or per-
4 sons.

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

8 (I) A prohibition on the export to
9 such person or persons of all items con-
10 trolled by such export control regime.

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

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

18 (iv) If, within 90 days after a proposal
19 under clause (ii)(II) regarding sanctions is
20 made to an export control regime, such regime
21 has not agreed to such proposal, the President
22 shall either propose to such regime that the ex-
23 port controls on the commodities or technology
24 that are the subject of the foreign availability
25 determination be eliminated, or report to the

1 Congress that the President has determined
2 that elimination of the controls would create a
3 significant risk to the national security interests
4 of the United States. Such report shall include
5 the basis for such determination.

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

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

13 (A) PROCEDURES.—(i) The Secretary shall
14 make a foreign availability determination under
15 paragraph (1) on the Secretary's own initiative,
16 upon the certification of an export advisory
17 committee appointed under section 104(f) with
18 respect to the commodities or technology con-
19 cerning which the certification is made, or upon
20 receipt of an allegation from an export license
21 applicant that such availability exists. In mak-
22 ing any such determination, the Secretary shall
23 accept the representations of applicants made
24 in writing and supported by reasonable evi-
25 dence, unless such representations are contra-

1 dicted by reliable evidence, including scientific
2 or physical examination, expert opinion based
3 upon adequate factual information, or intel-
4 ligence information.

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

13 (iii) For purposes of this subparagraph,
14 the term “evidence” may include such items as
15 foreign manufacturers’ catalogues, brochures,
16 operations or maintenance manuals, articles
17 from reputable trade publications, photographs,
18 and depositions based upon eyewitness ac-
19 counts.

20 (B) CERTIFICATIONS BY EXPORT ADVI-
21 SORY COMMITTEES.—At the same time as an
22 export advisory committee submits a certifi-
23 cation to the Secretary under subparagraph
24 (A)(i), the committee shall submit the certifi-
25 cation to the Congress. The Secretary shall in-

1 vestigate the foreign availability so certified
2 and, not later than 90 days after the certifi-
3 cation is made, shall submit a report to the ex-
4 port advisory committee and the Congress stat-
5 ing that—

6 (i) the foreign availability does exist,
7 and the applicable steps are being taken
8 under paragraph (1); or

9 (ii) the foreign availability does not
10 exist.

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

13 (C) ALLEGATIONS BY EXPORT LICENSE
14 APPLICANTS.—Within 4 months after receiving
15 an allegation described in subparagraph (A)(i)
16 from an export license applicant, the Secretary
17 shall determine whether the foreign availability
18 exists, and shall so notify the applicant. If the
19 Secretary has determined that the foreign avail-
20 ability exists, the Secretary shall, upon making
21 such determination, submit the determination
22 for review to other departments and agencies as
23 the Secretary considers appropriate. The Sec-
24 retary's determination of foreign availability
25 shall not require the concurrence or approval of

1 any such department or agency. Not later than
2 30 days after the Secretary makes the deter-
3 mination, the Secretary shall respond in writing
4 to the applicant and submit for publication in
5 the Federal Register, that—

6 (i) the foreign availability does exist,
7 and the applicable steps are being taken
8 under paragraph (1); or

9 (ii) the foreign availability does not
10 exist.

11 (4) SHARING OF INFORMATION.—Each depart-
12 ment or agency of the United States, including any
13 intelligence agency, and all contractors with any
14 such department or agency, shall, upon the request
15 of the Secretary and consistent with the protection
16 of intelligence sources and methods as determined by
17 the Director of Central Intelligence, furnish informa-
18 tion to the Department of Commerce concerning for-
19 eign availability of items subject to export controls
20 under this section, including allowing access to any
21 information from a laboratory or other facility with-
22 in such department or agency.

23 (5) CONGRESSIONAL NOTIFICATIONS.—The
24 Secretary shall annually notify the Committee on
25 Foreign Affairs of the House of Representatives,

1 and the Committee on Banking, Housing, and
2 Urban Affairs of the Senate, of all allegations of for-
3 eign availability received from export license appli-
4 cants under paragraph (3), and the actions the Sec-
5 retary has taken pursuant to such allegations.

6 (j) REVIEW OF CONTROLLED ITEMS.—

7 (1) IN GENERAL.—The Secretary shall review
8 all commodities and technology on the security con-
9 trol list maintained under subsection (b) at least an-
10 nually. At the conclusion of each review, the Sec-
11 retary shall justify the inclusion of each item on the
12 security control list, remove items from the security
13 control list, change the specifications of items on the
14 list, or add items to the list, in order to meet the
15 requirements of subsection (a)(1). The data devel-
16 oped from such reviews shall be used in formulating
17 United States proposals for revision of multilateral
18 controls in the applicable export control regimes.

19 (2) CONSIDERATIONS.—In conducting the an-
20 nual review, the Secretary shall—

21 (A) consult with the appropriate export ad-
22 visory committees appointed under section
23 104(f) and consider recommendations of such
24 committees with respect to proposed changes in
25 the security control list;

1 (B) consider the results of foreign avail-
2 ability determinations made under subsection
3 (i);

4 (C) consider comments received pursuant
5 to the notice of review provided under para-
6 graph (3)(B); and

7 (D) consult with other appropriate depart-
8 ments or agencies.

9 (3) PROCEDURES.—

10 (A) DURATION OF REVIEW.—The annual
11 review required under paragraph (1) may not
12 extend beyond 180 days after such review is
13 begun.

14 (B) NOTICE OF REVIEW.—Before begin-
15 ning each annual review, the Secretary shall
16 publish a notice of that review in the Federal
17 Register and shall provide a 30-day period for
18 comments and submission of data, with or with-
19 out oral presentation, by interested Government
20 agencies, exporters, and other interested par-
21 ties.

22 (C) REVISIONS.—The Secretary shall make
23 a determination of any revisions in the security
24 control list not later than 30 days after the end
25 of the review period. In making such determina-

1 tion, the Secretary shall consult with the appro-
2 priate departments or agencies. The concu-
3 rence or approval of any other department or
4 agency shall not be required before any such re-
5 vision is made.

6 (D) PROPOSALS TO EXPORT CONTROL RE-
7 GIMES.—If a revision of the security control list
8 under this paragraph affects the items con-
9 trolled by an export control regime, the Sec-
10 retary of State shall propose such revision to
11 that regime. Such revision shall become effec-
12 tive only to the extent such revision is agreed
13 to by the export control regime.

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

18 (k) INDEXING.—The Secretary shall develop, with the
19 assistance of the export advisory committees appointed
20 under section 104(f), methodologies and procedures for in-
21 dexing items on the security control list where perform-
22 ance capabilities are relevant and measurable. Such meth-
23 odologies and procedures shall provide for increases in the
24 performance levels of commodities and technology on the
25 security control list and shall provide for the technical

1 specifications below which no authority or permission to
2 export is required as compared to the most technologically
3 advanced commercially available version of the same or
4 equivalent commodities or technology. Such methodologies
5 and procedures shall be published in the Federal Register
6 and used in the annual review of the security control list
7 under subsection (j).

8 (I) REVIEW OF EXPORT CONTROLS ON COMPUTER
9 EQUIPMENT AND TECHNOLOGY.—

10 (1) IN GENERAL.—In order to ensure that re-
11 quirements of validated licenses are periodically re-
12 moved as computer equipment, computer commu-
13 nications and networking equipment, computer soft-
14 ware, and related technology, that are subject to
15 such requirements become obsolete with respect to
16 the specific objectives of the export controls requir-
17 ing such licenses, the Secretary shall conduct peri-
18 odic reviews of such controls. The Secretary shall
19 complete such a review not later than 6 months
20 after the date of the enactment of this Act, and
21 thereafter as part of the reviews conducted under
22 subsection (j).

23 (2) REVIEW ELEMENTS.—In conducting each
24 review under paragraph (1), the Secretary shall do

1 the following with respect to the export controls de-
2 scribed in paragraph (1):

3 (A) OBJECTIVES OF CONTROLS.—The Sec-
4 retary shall identify the specific objectives of
5 the export controls, as part of a comprehensive
6 strategy to prevent the proliferation of weapons
7 of mass destruction, for the 12-month period
8 following completion of the review, for each
9 country or group of countries for which a vali-
10 dated license is required. When an objective of
11 an export control is to defer the development of
12 a specific capability in such country or group of
13 countries, the Secretary shall specify for what
14 period of time the controls are expected to defer
15 such capability.

16 (B) QUANTITY AND PERFORMANCE.—The
17 Secretary shall estimate, for the 12-month pe-
18 riod described in subparagraph (A), the quan-
19 tity and performance (measured in Composite
20 Theoretical Performance or other relevant per-
21 formance metrics) of computer systems that
22 must be obtained by each country or group of
23 countries for which a validated license is re-
24 quired in order to defeat the objectives of the
25 export controls.

1 (C) AVAILABILITY TO CONTROLLED DES-
2 TINATIONS.—The Secretary shall evaluate the
3 effectiveness of the export controls in achieving
4 their specific objectives, including explicit de-
5 scriptions of the availability from sources out-
6 side the United States, during the 12-month pe-
7 riod described in subparagraph (A), to con-
8 trolled countries of computer equipment, com-
9 puter communications and networking equip-
10 ment, computer software, and related tech-
11 nology on which the export controls are in ef-
12 fect.

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

19 (3) INCREASE IN THRESHOLDS.—

20 (A) INCREASES.—After completing each
21 review under this subsection, the Secretary
22 shall, after consultation with appropriate de-
23 partments or agencies, increase, if warranted by
24 the findings of the review, the following export
25 control thresholds, consistent with the obliga-

1 tions of the United States under export control
2 regimes:

3 (i) The performance levels at which
4 computer systems are eligible for delivery
5 under a distribution license or other license
6 authorizing multiple exports.

7 (ii) The performance levels defining a
8 “supercomputer”.

9 (iii) The performance levels at which
10 an individual validated license is required
11 for the export to a controlled country of
12 computer systems and peripherals, soft-
13 ware, parts, and communications equip-
14 ment normally supplied with such com-
15 puter systems.

16 In any recommendation for or publication of
17 such increase, the Secretary shall include the
18 specific rationale for the increase.

19 (B) PROPOSALS TO MULTILATERAL RE-
20 GIMES.—The Secretary of State shall, within 30
21 days after a determination by the Secretary to
22 increase thresholds, propose to the other mem-
23 bers of the applicable export control regime the
24 elimination of the applicable controls on the
25 items with respect to which such determination

1 is made, in accordance with the procedures of
2 the regime, and publish a notice of such pro-
3 posal in the Federal Register.

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

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

15 (6) REMOVAL OF CONTROLS ON MASS-MARKET
16 COMPUTER EQUIPMENT.—

17 (A) MASS-MARKET COMPUTER EQUIPMENT
18 DEFINED.—For purposes of this paragraph, the
19 term “mass-market computer equipment”
20 means any computer system, computer
21 networking equipment, peripheral to a computer
22 system, part or subassembly of a computer sys-
23 tem, or combination thereof, on which export
24 controls are in effect under this section, and
25 which will have been installed for end use out-

1 side the United States in a quantity exceeding
2 100,000 units over a 12-month period, as deter-
3 mined under subparagraph (B).

4 (B) ANTICIPATORY REVIEW OF MASS-MAR-
5 KET COMPUTER EQUIPMENT.—Not later than—

6 (i) 6 months after the date of the en-
7 actment of this Act, and

8 (ii) the end of each 1-year period oc-
9 ccurring thereafter,

10 the Secretary shall, in consultation with the
11 Computer Systems Technical Advisory Commit-
12 tee (or successor export advisory committee),
13 industry groups, and computer equipment pro-
14 ducers, identify those items described in sub-
15 subparagraph (A) (including computer systems dif-
16 ferentiated in terms of Composite Theoretical
17 Performance) that will be installed for end use
18 outside the United States in a quantity exceed-
19 ing 100,000 units during the 12-month period
20 beginning on the applicable date described in
21 clause (i) or (ii). For purposes of this para-
22 graph, estimates of numbers of items that will
23 be installed shall be based on reliable estimates
24 provided by producers of such items.

1 (C) ACTION BY THE SECRETARY.—Not
2 later than 30 days after an item is determined
3 by the Secretary under subparagraph (B) to be
4 mass-market computer equipment, the Sec-
5 retary of State shall propose to the export con-
6 trol regime controlling the equipment the elimi-
7 nation of controls on such equipment in accord-
8 ance with the procedures of the appropriate re-
9 gime and shall publish a notice of such proposal
10 in the Federal Register.

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

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

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

5 (n) STUDY ON COMPUTER EXPORT CONTROLS.—

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

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

19 (B) REQUIREMENT OF STUDY.—Recogniz-
20 ing the need to enhance the competitiveness of
21 the United States computer industry while pre-
22 venting sensitive technology from being used to
23 develop weapons of mass destruction by con-
24 trolled countries, the study shall—

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

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

16 (iii) examine the effect of export con-
17 trols on the competitiveness of the United
18 States computer industry.

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

1 ber who is an elected or appointed official or em-
2 ployee in the executive, legislative, or judicial branch
3 of any government. In selecting members of the Ad-
4 visory Panel, the Academies shall seek suggestions
5 from the President, the Congress, and representa-
6 tives of industry and the academic community.

7 (3) EXECUTIVE BRANCH COOPERATION.—The
8 Secretary, the Secretary of Defense, the Secretary of
9 State, the Director of the Central Intelligence Agen-
10 cy, and the head of any department or agency that
11 exercises authority under this title—

12 (A) shall furnish to the Academies, upon
13 request and under appropriate safeguards, clas-
14 sified or unclassified information which the
15 Academies determine to be necessary for the
16 purposes of conducting the study required by
17 this subsection; and

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

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

1 a detailed statement of findings and conclusions of
2 the Academies from the study conducted under
3 paragraph (1), together with their recommendations
4 for the complete removal of controls from computers
5 or specifying the level of technology to which con-
6 trols on computers should be reduced.

7 **SEC. 106. EMERGENCY CONTROLS.**

8 (a) AUTHORITY.—

9 (1) IN GENERAL.—In order to carry out the
10 policy set forth in paragraphs (6) and (9) of section
11 103, the President may, in accordance with this sec-
12 tion, unilaterally prohibit or curtail the export of any
13 commodity or technology subject to the jurisdiction
14 of the United States or exported by any person sub-
15 ject to the jurisdiction of the United States.

16 (2) EXERCISE OF AUTHORITY.—The authority
17 contained in this subsection shall be exercised by the
18 Secretary, in consultation with the Secretary of
19 State, the Secretary of Defense, and such other de-
20 partments and agencies as the President considers
21 appropriate.

22 (3) EXPIRATION OF AUTHORITY.—

23 (A) IN GENERAL.—Any controls imposed
24 under this section shall expire 6 months after
25 they are imposed, unless they are terminated

1 earlier by the President or unless they are ex-
2 tended under this section, except that such con-
3 trols may be adopted as multilateral controls
4 under section 105 or included in an embargo
5 described in subsection (f)(1) that is imposed
6 by the President under the International Emer-
7 gency Economic Powers Act, the Trading with
8 the Enemy Act, or other provision of law other
9 than this title. Any extension or subsequent ex-
10 tension of the controls under this section shall
11 be for a period of not more than 1 year each.
12 The controls shall expire at the end of each
13 such extension unless they are terminated ear-
14 lier by the President or unless they are further
15 extended under this section, except that such
16 controls may be adopted as multilateral controls
17 under section 105 or included in an embargo
18 described in the first sentence of this subpara-
19 graph.

20 (B) EXCEPTION FOR MULTILATERAL
21 AGREEMENTS.—Subparagraph (A) shall not
22 apply to controls imposed by the President in
23 order to fulfill obligations of the United States
24 under resolutions of the United Nations or
25 under treaties to which the United States is a

1 party. If such a resolution or treaty ceases to
2 be in effect, controls imposed by the President
3 pursuant to such resolution or treaty shall im-
4 mediately cease to be in effect.

5 (4) CRITERIA.—The President may impose con-
6 trols under this section only if the President—

7 (A) determines that the controls are essen-
8 tial to the national security or foreign policy of
9 the United States or its allies, including the
10 prevention of acts of international terrorism;

11 (B) determines that no other alternative
12 means can achieve the national security or for-
13 eign policy objectives of the United States with-
14 in a reasonable period of time, including all
15 other possible sanctions;

16 (C) determines that the controls can rea-
17 sonably be expected to achieve their intended
18 objectives after having taken into consideration
19 other factors, including the availability from
20 one or more countries of comparable commod-
21 ities and technology to those on which the con-
22 trols are to be imposed;

23 (D) determines that the United States has
24 the ability to enforce all aspects of the proposed
25 controls effectively;

1 (E) determines that the effect of the pro-
2 posed controls on the export performance of the
3 United States, the competitive position of the
4 United States as a supplier of items, or on the
5 economic well-being of individual United States
6 companies and their employees and commu-
7 nities does not exceed the benefits to the for-
8 eign policy or national security interests of the
9 United States; and

10 (F) identifies those commodities and tech-
11 nology to be controlled, determines that they
12 must be controlled in order to achieve the in-
13 tended purpose of the controls, and describes
14 the reasons for selecting such items.

15 (5) NEGOTIATIONS.—The President shall com-
16 mence, through the Secretary of State, within 10
17 days after the imposition of controls under this sec-
18 tion, negotiations with other countries to adopt the
19 controls so that such controls may be imposed under
20 section 105, unless such controls are imposed under
21 paragraph (3)(B).

22 (b) CONSULTATION WITH INDUSTRY.—The Sec-
23 retary in every possible instance shall consult with and
24 seek advice from affected United States industries and ex-
25 port advisory committees appointed under section 104(f)

1 before the imposition, expansion, or extension of any ex-
2 port control under this section.

3 (c) CONSULTATION WITH OTHER COUNTRIES.—

4 When expanding or extending export controls under this
5 section (unless such action is taken under subsection
6 (a)(3)(B)), the Secretary of State, in consultation with the
7 Secretary, shall, at the earliest appropriate opportunity,
8 consult with the countries with which the United States
9 maintains export controls cooperatively, and with other
10 countries, as appropriate, to advise them of the reasons
11 for the action and to urge them to adopt similar controls,
12 so that the controls may be imposed under section 105.

13 (d) CONSULTATIONS WITH THE CONGRESS.—

14 (1) CONSULTATIONS.—The Secretary may im-
15 pose, expand, or extend export controls under this
16 section only after consultation with the Congress, in-
17 cluding the Committee on Foreign Affairs of the
18 House of Representatives and the Committee on
19 Banking, Housing, and Urban Affairs of the Senate.

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

23 (A) addressing each of the criteria set
24 forth in subparagraphs (A) through (F) of sub-
25 section (a)(4);

1 (B) specifying the purpose of the controls;

2 (C) describing the nature, the subjects,
3 and the results of, or plans for, the consultation
4 with industry under subsection (b) and with
5 other countries under subsections (a)(5) and
6 (c);

7 (D) specifying the nature and results of
8 any alternative means attempted to achieve the
9 objectives of the controls, or the reasons for im-
10 posing or expanding the controls without at-
11 tempting any such alternative means; and

12 (E) describing the availability from other
13 countries of items comparable to the items sub-
14 ject to the controls, and describing the nature
15 and results of the efforts made to secure the co-
16 operation of foreign governments in controlling
17 the foreign availability of such comparable com-
18 modities or technology.

19 Such report shall also indicate how such controls will
20 further significantly the policies of the United States
21 as set forth in section 103 or will further its de-
22 clared international obligations.

23 (3) SUBMISSION OF REPORT TO GAO.—Each re-
24 port required by paragraph (2) shall, at the same
25 time it is submitted to the Congress, also be submit-

1 ted to the General Accounting Office for the purpose
2 of assessing the report's full compliance with the
3 purpose of this subsection.

4 (e) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
5 ERAL CONTROLS.—The Secretary and the Secretary of
6 State shall have a continuing duty to seek support, by
7 other countries and by multilateral export control regimes,
8 for all controls imposed under this section.

9 (f) PROCEDURES AND LIMITATIONS ON EMERGENCY
10 CONTROLS.—

11 (1) IMPOSITION OF AN EMBARGO.—An embargo
12 under subsection (a)(3)(A) shall include the prohibi-
13 tion of all exports to and imports from the country
14 against which the controls under this section were
15 imposed, except that such an embargo need not in-
16 clude a prohibition on exports of items described in
17 section 114(k).

18 (2) CESSATION OF EMERGENCY CONTROLS.—

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

22 (i) the imposition of multilateral con-
23 trols under section 105 on the same com-
24 modities and technology to the country or
25 end user, or for the end use, with respect

1 to which the controls were imposed under
2 this section; 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 (1).

8 (B) CONVERSION TO MULTILATERAL
9 AGREEMENTS.—If the President imposes con-
10 trols on commodities or technology to a country
11 or end user, or for an end use, under this sec-
12 tion in order to fulfill obligations of the United
13 States under resolutions of the United Nations
14 or under a treaty to which the United States is
15 a party, any controls imposed prior thereto
16 under this section on the same commodities or
17 technology to the same country or end user, or
18 for the same end use, shall immediately cease
19 to be in effect.

20 (3) LIMITATIONS ON REIMPOSITION.—Controls
21 which have ceased to be in effect under subsection
22 (a)(3), and which have not been extended under sub-
23 section (g), may not be reimposed by the President
24 under subsection (a) for a period of 6 months begin-

1 ning on the date on which the original controls ex-
2 pire.

3 (g) EXTENSION OF EMERGENCY CONTROLS.—

4 (1) REPORT.—If the President decides to ex-
5 tend controls imposed under subsection (a), which
6 are due to expire under subsection (a)(3), the Presi-
7 dent shall, not later than 60 calendar days before
8 the expiration of such controls, transmit to the Con-
9 gress a report on the proposed extension, setting
10 forth the reasons for the proposed extension in detail
11 and specifying the period of time, which may not ex-
12 ceed 1 year, for which the controls are proposed to
13 be extended. In particular, such report shall—

14 (A) contain determinations by the Presi-
15 dent—

16 (i) that the controls continue to be es-
17 sential to the national security or foreign
18 policy of the United States;

19 (ii) that no other alternative means
20 can achieve the national security or foreign
21 policy objectives of the United States with-
22 in a reasonable period of time, as described
23 in subsection (a)(4)(B);

1 (iii) that the United States has dem-
2 onstrated the ability to enforce all aspects
3 of the controls effectively; and

4 (iv) that the effect of the controls on
5 those factors described in subsection
6 (a)(4)(E) has not exceeded the benefits to
7 the foreign policy or national security in-
8 terests of the United States;

9 (B) identify those commodities and tech-
10 nology to be controlled, specify that they must
11 be controlled in order to achieve the intended
12 purpose of the controls, and describe the rea-
13 sons for the selection of such items;

14 (C) specify the reasons why negotiations
15 required under subsection (a)(5) or (c) failed to
16 result in the adoption of the controls under sec-
17 tion 105, and the prospects for the multilateral
18 adoption of such controls;

19 (D) specify the reasons why an embargo
20 described in paragraph (1) is not presently jus-
21 tified to achieve the national security or foreign
22 policy objectives of the United States;

23 (E) include an assessment by the Secretary
24 of the economic consequences of the controls
25 during the preceding 4 months (in the case of

1 the first extension of the controls under this
2 section) or during the preceding 10 months (in
3 the case of any subsequent extension of the con-
4 trols under this section), including estimates of
5 any lost United States exports and jobs;

6 (F) include an assessment by the Secretary
7 of State of the objectives of the controls and the
8 extent to which the controls have attained those
9 objectives during the preceding 4 months (in
10 the case of the first extension of the controls
11 under this section) or during the preceding 10
12 months (in the case of any subsequent exten-
13 sion of the controls under this section); and

14 (G) include an assessment by the Secretary
15 of Defense of the impact the controls have had
16 on the national security of the United States in
17 the preceding 4 months (in the case of the first
18 extension of the controls under this section) or
19 in the preceding 10 months (in the case of any
20 subsequent extension of the controls under this
21 section).

22 (2) CONSIDERATION OF EXTENSION.—The con-
23 trols shall remain in effect unless the Congress,
24 within 60 calendar days after its receipt of the re-
25 port under paragraph (1), enacts a joint resolution

1 pursuant to paragraph (3) disapproving the exten-
2 sion of the controls. Any controls remaining in effect
3 shall continue for the period specified in the report
4 or until terminated by the President, whichever oc-
5 curs first, but in no case longer than 1 year after
6 the date on which the controls would otherwise ex-
7 pire under subsection (a)(3), unless the Congress by
8 law terminates the controls. If the Congress, within
9 60 calendar days after the date of its receipt of such
10 report, enacts a joint resolution disapproving the ex-
11 tension of such controls, then such controls shall
12 cease to be effective upon the expiration of that 60-
13 day period.

14 (3) JOINT RESOLUTIONS.—

15 (A) DEFINITION.—For purposes of this
16 paragraph, the term “joint resolution” means
17 only a joint resolution the matter after the re-
18 solving clause of which is as follows: “That,
19 pursuant to section 106(g) of the Export Act of
20 1994, the President may not extend emergency
21 controls as specified in the report submit-
22 ted to the Congress on
23 _____.”, with the
24 blank space being filled with the appropriate
25 date.

1 (B) INTRODUCTION.—On the day on which
2 a report is submitted to the House of Rep-
3 resentatives and the Senate under paragraph
4 (1), a joint resolution with respect to the exten-
5 sion of controls specified in such report shall be
6 introduced (by request) in the House of Rep-
7 resentatives by the chairman of the Committee
8 on Foreign Affairs, for the chairman and the
9 ranking minority member of the Committee, or
10 by Members of the House designated by the
11 chairman and ranking minority member; and
12 shall be introduced (by request) in the Senate
13 by the majority leader of the Senate, for the
14 majority leader and the minority leader of the
15 Senate, or by Members of the Senate des-
16 igned by the majority leader and the minority
17 leader of the Senate. If either House of Con-
18 gress is not in session on the day on which such
19 a report is submitted, the joint resolution shall
20 be introduced in that House, as provided for in
21 the preceding sentence, on the first day there-
22 after on which that House is in session.

23 (C) DISCHARGE.—If the Committee of ei-
24 ther House to which a joint resolution has been
25 referred has not reported the joint resolution by

1 the end of 30 calendar days after its referral,
2 the committee shall be discharged from further
3 consideration of the joint resolution or of any
4 other joint resolution introduced with respect to
5 the same matter.

6 (D) CONSIDERATION.—A joint resolution
7 under this paragraph shall be considered in the
8 Senate in accordance with the provisions of sec-
9 tion 601(b)(4) of the International Security As-
10 sistance and Arms Export Control Act of 1976.
11 For the purpose of expediting the consideration
12 and passage of joint resolutions reported or dis-
13 charged under this paragraph, it shall be in
14 order for the Committee on Rules of the House
15 of Representatives to present for consideration
16 a resolution of the House of Representatives
17 providing procedures for the immediate consid-
18 eration of a joint resolution under this para-
19 graph which may be similar, if applicable, to
20 the procedures set forth in section 601(b)(4) of
21 the International Security Assistance and Arms
22 Export Control Act of 1976.

23 (E) DUPLICATIVE RESOLUTIONS.—In the
24 case of a joint resolution described in subpara-
25 graph (A), if, before the passage by one House

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

4 (i) the procedure in that House shall
5 be the same as if no joint resolution had
6 been received from the other House; and

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

9 (4) FURTHER EXTENSIONS OF CONTROLS.—If,
10 upon the expiration of the emergency controls ex-
11 tended under this subsection, the President deter-
12 mines that a further extension of emergency controls
13 for an additional period of time of not more than 1
14 year is necessary, paragraphs (1) through (3) shall
15 apply to such further extension.

16 (5) CALCULATION OF TIME PERIODS.—For pur-
17 poses of calculating calendar days under this sub-
18 section, there shall be excluded the days on which ei-
19 ther House of Congress is not in session because of
20 an adjournment of more than 3 days to a day cer-
21 tain or because of an adjournment of the Congress
22 sine die.

23 (h) EFFECT ON OTHER AUTHORITY.—

24 (1) EMBARGO AUTHORITY.—Nothing in this
25 section shall be construed to limit the authority of

1 the President to impose an embargo described in
2 subsection (f)(1) on exports to, and imports from, a
3 specific country under the International Emergency
4 Economic Powers Act, the Trading with the Enemy
5 Act, or other provision of law (other than this title).
6 In any case in which the President exercises any
7 such authority to impose an embargo, the require-
8 ments of this section shall not apply for so long as
9 such embargo is in effect.

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

18 (B) Nothing in this section affects the authori-
19 ties conferred upon the President by the Inter-
20 national Economic Powers Act or other provision of
21 law (other than the Export Administration Act of
22 1979), which were being exercised with respect to a
23 country before the date of the enactment of this Act
24 as a result of a national emergency declared by the
25 President before that date, and are being exercised

1 with respect to such country on such date of enact-
2 ment.

3 (i) COUNTRIES SUPPORTING INTERNATIONAL TER-
4 RORISM.—

5 (1) PROHIBITION ON EXPORTS.—(A) No export
6 or reexport of commodities or technology described
7 in subparagraph (B) may be made to any country
8 the government of which the Secretary of State has
9 determined has repeatedly provided support for acts
10 of international terrorism.

11 (B) The commodities or technology referred to
12 in subparagraph (A) are—

13 (i) any commodities or technology the ex-
14 port of which is controlled under this title pur-
15 suant to the Missile Technology Control Regime
16 or the Australia Group, or controlled under this
17 title pursuant to section 309(c) of the Nuclear
18 Non-Proliferation Act of 1978,

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

22 (iii) any commodities or technology the ex-
23 port of which could make a significant contribu-
24 tion to the military potential of a country de-
25 scribed in subparagraph (A), including its mili-

1 tary logistics capability, or could enhance the
2 ability of such country to support acts of inter-
3 national terrorism,

4 other than commodities or technology that the Presi-
5 dent determines will be used only for humanitarian
6 purposes. A validated license shall be required for
7 the export under this paragraph of any such com-
8 modities or technology that will be used only for hu-
9 manitarian purposes.

10 (C) Paragraphs (3)(A) and (4) of subsection (a)
11 shall not apply to exports prohibited or restricted
12 under this subsection.

13 (D)(i) The Secretary shall review the list of
14 items described in subparagraph (B)(iii) at least an-
15 nually. At the conclusion of the review, the Secretary
16 shall justify the inclusion of each item on the list,
17 remove items from the list, change the specifications
18 of items on the list, or add items to the list, in order
19 to ensure that the items on the list meet the require-
20 ments of subparagraph (B)(iii).

21 (ii) The procedures set forth in subparagraphs
22 (B), (C), and (E) of section 105(j) shall apply to re-
23 views under clause (i) of the list of items described
24 in subparagraph (B)(iii) to the same extent as such

1 subparagraphs apply to reviews of the security con-
2 trol list under section 105(j).

3 (2) NOTIFICATION OF CONGRESS OF LICENSES
4 ISSUED.—The Secretary and the Secretary of State
5 shall notify the Committee on Foreign Affairs of the
6 House of Representatives and the Committee on
7 Banking, Housing, and Urban Affairs and the Com-
8 mittee on Foreign Relations of the Senate at least
9 30 days before issuing any validated license under
10 this title for exports to a country described in para-
11 graph (1)(A).

12 (3) PUBLICATION OF DETERMINATIONS.—Each
13 determination of the Secretary of State under para-
14 graph (1)(A), and each determination under section
15 6(j)(1)(A) of the Export Administration Act of 1979
16 in effect at the time this title takes effect, shall be
17 published in the Federal Register.

18 (4) RESCISSION OF DETERMINATIONS.—A de-
19 termination made by the Secretary of State under
20 paragraph (1)(A) may not be rescinded unless the
21 President submits to the Speaker of the House of
22 Representatives and the chairman of the Committee
23 on Banking, Housing, and Urban Affairs and the
24 chairman of the Committee on Foreign Relations of
25 the Senate—

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

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

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

8 (iii) that government has provided as-
9 surances that it will not support acts of
10 international terrorism in the future; or

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

14 (i) the government concerned has not
15 provided any support for international ter-
16 rorism during the preceding 6-month pe-
17 riod; and

18 (ii) the government concerned has
19 provided assurances that it will not sup-
20 port acts of international terrorism in the
21 future.

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

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

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

6 (i) consults with the Committee on
7 Foreign Affairs of the House of Represent-
8 atives and the Committee on Banking,
9 Housing, and Urban Affairs of the Senate
10 regarding the proposed transaction; and

11 (ii) submits to the Speaker of the
12 House of Representatives and the chair-
13 man of the Committee on Banking, Hous-
14 ing, and Urban Affairs of the Senate a re-
15 port containing—

16 (I) the name of any country in-
17 volved in the proposed transaction,
18 the identity of any recipient of the
19 items to be provided pursuant to the
20 proposed transaction, and the antici-
21 pated use of those items;

22 (II) a description of the items in-
23 volved in the proposed transaction (in-
24 cluding their market value) and the

1 actual sale price at each step in the
2 transaction;

3 (III) the reasons why the pro-
4 posed transaction is essential to the
5 national security interests of the
6 United States and the justification for
7 the proposed transaction;

8 (IV) the date on which the pro-
9 posed transaction is expected to occur;
10 and

11 (V) the name of every United
12 States Government department, agen-
13 cy, or other entity involved in the pro-
14 posed transaction, and every foreign
15 government involved in the proposed
16 transaction.

17 To the extent possible, the information specified in
18 clause (ii) of subparagraph (B) shall be provided in
19 unclassified form, with any classified information
20 provided in an addendum to the report.

21 (6) MULTILATERAL REGIMES.—The Secretary
22 of State shall propose to COCOM, to the Australia
23 Group, to the countries participating in the Missile
24 Technology Control Regime, and to the Nuclear
25 Suppliers Group, that each such group adopt those

1 controls that are imposed by this subsection on ex-
2 ports of commodities or technology subject to control
3 by such group. The Secretary of State shall continue
4 to make such proposals until such export controls
5 are so adopted.

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

14 (j) CRIME CONTROL INSTRUMENTS.—

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

21 (2) CONSULTATION WITH SECRETARY OF
22 STATE.—

23 (A) ITEMS ON CONTROL LIST.—Any deter-
24 mination of the Secretary of what commodities
25 or technology shall be included on the control

1 index as a result of the export restrictions im-
2 posed by this subsection shall be made after
3 consultation with the Secretary of State.

4 (B) ACTION ON LICENSE APPLICATION.—
5 Any determination of the Secretary to approve
6 or deny an export license application to export
7 crime control or detection instruments or equip-
8 ment shall be made after consultation with the
9 Secretary of State.

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

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

23 (k) SPARE PARTS.—At the same time as the Presi-
24 dent imposes or expands export controls under this sec-
25 tion, the President shall determine whether such export

1 controls will apply to replacement parts or parts in com-
2 modities subject to such export controls.

3 **SEC. 107. SHORT SUPPLY CONTROLS.**

4 (a) AUTHORITY.—

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

18 (2) PUBLIC PARTICIPATION.—Upon imposing
19 quantitative restrictions on exports of any commod-
20 ities to carry out the policy set forth in section
21 103(4), the Secretary shall include in a notice pub-
22 lished in the Federal Register with respect to such
23 restrictions an invitation to all interested parties to
24 submit written comments within 15 days after the
25 date of publication on the impact of such restrictions

1 and the method of licensing used to implement
2 them.

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

7 (b) MONITORING.—

8 (1) IN GENERAL.—In order to carry out the
9 policy set forth in section 103(4), the Secretary shall
10 monitor exports, and contracts for exports, of any
11 commodity when the volume of such exports in rela-
12 tion to domestic supply contributes, or may contrib-
13 ute, to an increase in domestic prices or a domestic
14 shortage, and such price increase or shortage has, or
15 may have, a serious adverse impact on the economy
16 or any sector thereof. Any such monitoring shall
17 commence at a time adequate to assure that the
18 monitoring will result in a data base sufficient to en-
19 able policies to be developed, in accordance with sec-
20 tion 103(4), to mitigate a short supply situation or
21 serious inflationary price rise or, if export controls
22 are needed, to permit imposition of such controls in
23 a timely manner. Information which the Secretary
24 requires to be furnished in effecting such monitoring

1 shall be confidential, except as provided in para-
2 graph (2).

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

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

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

22 (B) petroleum refineries, and natural gas
23 processing, liquefaction, and gasification plants;

24 (C) facilities for production of synthetic
25 natural gas or synthetic crude oil;

1 (D) oil and gas pipelines, pumping sta-
2 tions, and associated equipment; and

3 (E) vessels for transporting oil, gas, coal,
4 and other fuels.

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

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

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

23 (2) PUBLICATION OF NOTICE.—Within 15 days
24 after receipt of any petition described in paragraph

1 (1), the Secretary shall publish a notice in the Fed-
2 eral Register. The notice shall—

3 (A) include the name of the material that
4 is the subject to the petition;

5 (B) include the schedule B number of the
6 material as set forth in the Statistical Classi-
7 fication of Domestic and Foreign Commodities
8 Exported from the United States;

9 (C) indicate whether the petition is re-
10 questing that controls or monitoring, or both,
11 be imposed with respect to the exportation of
12 such material; and

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

20 At the request of the petitioner or any other entity
21 described in paragraph (1)(A) with respect to the
22 material which is the subject of the petition, or at
23 the request of any entity representative of producers
24 or exporters of such material, the Secretary shall
25 conduct public hearings with respect to the subject

1 of the petition, in which case the 30-day period may
2 be extended to 45 days.

3 (3) DETERMINATION OF MONITORING OR CON-
4 TROLS.—(A) Within 45 days after the end of the
5 30- or 45-day period described in paragraph (2), as
6 the case may be, the Secretary shall determine
7 whether to impose monitoring or controls, or both,
8 on the export of the material that is the subject of
9 the petition in order to carry out the policy set forth
10 in section 103(4). In making such determination,
11 the Secretary shall determine whether—

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

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

19 (iii) exports of such material are as impor-
20 tant as any other cause of a domestic price in-
21 crease or shortage relative to demand found
22 under clause (ii);

23 (iv) a domestic price increase or shortage
24 relative to demand found under clause (ii) has
25 significantly adversely affected or may signifi-

1 cantly adversely affect the national economy or
2 any sector thereof, including a domestic indus-
3 try; and

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

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

13 (4) PUBLICATION OF REGULATIONS.—Within
14 15 days after making a determination under para-
15 graph (3) to impose monitoring or controls on the
16 export of a material, the Secretary shall publish in
17 the Federal Register proposed regulations with re-
18 spect to such monitoring or controls. Within 30 days
19 after the publication of such proposed regulations,
20 and after considering any public comments on the
21 proposed regulations, the Secretary shall publish and
22 implement final regulations with respect to such
23 monitoring or controls.

24 (5) CONSOLIDATION OF PETITIONS.—For pur-
25 poses of publishing notices in the Federal Register

1 and scheduling public hearings pursuant to this sub-
2 section, the Secretary may consolidate petitions, and
3 responses to such petitions, which involve the same
4 or related materials.

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

16 (7) PRECEDENCE OF PROCEDURES OVER
17 OTHER REVIEWS.—The procedures and time limits
18 set forth in this subsection with respect to a petition
19 filed under this subsection shall take precedence over
20 any review undertaken at the initiative of the Sec-
21 retary with respect to the same subject as that of
22 the petition.

23 (8) TEMPORARY CONTROLS.—The Secretary
24 may impose monitoring or controls, on a temporary
25 basis, on the export of a metallic material after a pe-

1 tition is filed under paragraph (1)(A) with respect to
2 that material but before the Secretary makes a de-
3 termination under paragraph (3) with respect to
4 that material only if—

5 (A) the failure to take such temporary ac-
6 tions would result in irreparable harm to the
7 entity filing the petition, or to the national
8 economy or segment thereof, including a domes-
9 tic industry, and

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

13 (9) OTHER AUTHORITY NOT AFFECTED.—The
14 authority under this subsection shall not be con-
15 strued to affect the authority of the Secretary under
16 any other provision of this title, except that if the
17 Secretary determines, on the Secretary’s own initia-
18 tive, to impose monitoring or controls, or both, on
19 the export of metallic materials capable of being re-
20 cycled, under the authority of this section, the Sec-
21 retary shall publish the reasons for such action in
22 accordance with paragraph (3) (A) and (B).

23 (10) SUBMISSION AND CONSIDERATION OF AD-
24 DITIONAL INFORMATION.—Nothing contained in this
25 subsection shall be construed to preclude submission

1 on a confidential basis to the Secretary of informa-
2 tion relevant to a decision to impose or remove mon-
3 itoring or controls under the authority of this title,
4 or to preclude consideration of such information by
5 the Secretary in reaching decisions required under
6 this subsection. The provisions of this paragraph
7 shall not be construed to affect the applicability of
8 section 552(b) of title 5, United States Code.

9 (d) DOMESTICALLY PRODUCED CRUDE OIL.—

10 (1) PROHIBITION ON EXPORTS.—Notwithstand-
11 ing any other provision of this title and notwith-
12 standing subsection (u) of section 28 of the Mineral
13 Leasing Act of 1920 (30 U.S.C. 185), no domesti-
14 cally produced crude oil transported by pipeline over
15 right-of-way granted pursuant to section 203 of the
16 Trans-Alaska Pipeline Authorization Act (43 U.S.C.
17 1652) may, subject to paragraph (2), be exported
18 from the United States, except any such crude oil
19 which—

20 (A) is exported to an adjacent foreign
21 country to be refined and consumed therein in
22 an exchange that—

23 (i) is for the same quantity of crude
24 oil being exported from that country to the
25 United States; and

1 (ii) results through convenience or in-
2 creased efficiency of transportation in
3 lower prices for consumers of petroleum
4 products in the United States as described
5 in paragraph (2)(A)(ii);

6 (B) is temporarily exported for convenience
7 or increased efficiency of transportation across
8 parts of an adjacent foreign country and reen-
9 ters the United States; or

10 (C) is transported to Canada, to be
11 consumed therein, in amounts not to exceed an
12 annual average of 50,000 barrels per day, in
13 addition to exports under subparagraphs (A)
14 and (B), except that any ocean transportation
15 of such oil shall be by vessels documented under
16 section 12106 of title 46, United States Code.

17 (2) EXCEPTIONS.—Crude oil subject to the pro-
18 hibition contained in paragraph (1) may be exported
19 only if—

20 (A) the President so recommends to the
21 Congress after making and publishing express
22 findings that exports of such crude oil, includ-
23 ing exchanges—

24 (i) will not diminish the total quantity
25 or quality of petroleum refined within,

1 stored within, or legally committed to be
2 transported to and sold within the United
3 States;

4 (ii) will, within 3 months following the
5 initiation of such exports or exchanges, re-
6 sult in—

7 (I) acquisition costs to the refin-
8 ers that purchase the imported crude
9 oil being lower than the acquisition
10 costs such refiners would have to pay
11 for the domestically produced oil in
12 the absence of such an export or ex-
13 change, and

14 (II) not less than 75 percent of
15 such savings in costs being reflected
16 in wholesale and retail prices of prod-
17 ucts refined from such imported crude
18 oil;

19 (iii) will be made only pursuant to
20 contracts which may be terminated if the
21 crude oil supplies of the United States are
22 interrupted, threatened, or diminished;

23 (iv) are clearly necessary to protect
24 the national interest; and

1 (v) are in accordance with the provi-
2 sions of this title; and

3 (B) the President includes such findings in
4 the recommendation to the Congress and the
5 Congress, within 60 days after receiving that
6 recommendation, agrees to a joint resolution
7 which approves such exports on the basis of
8 those findings, and which is thereafter enacted
9 into law.

10 (3) EXPORTS UNDER BILATERAL AGREE-
11 MENTS.—Notwithstanding any other provision of
12 this section or any other provision of law, including
13 subsection (u) of section 28 of the Mineral Leasing
14 Act of 1920, the President may export oil to any
15 country pursuant to a bilateral international oil sup-
16 ply agreement entered into by the United States
17 with such country before June 25, 1979, or to any
18 country pursuant to the International Emergency
19 Oil Sharing Plan of the International Energy Agen-
20 cy.

21 (e) REFINED PETROLEUM PRODUCTS.—

22 (1) EXPORT LICENSES.—In any case in which
23 the President determines that it is necessary to im-
24 pose export controls on refined petroleum products
25 in order to carry out the policy set forth in section

1 103(4), the President shall notify the Congress of
2 that determination. The President shall also notify
3 the Congress if and when the President determines
4 that such export controls are no longer necessary.
5 During any period in which a determination that
6 such export controls are necessary is in effect, no re-
7 fined petroleum product may be exported except pur-
8 suant to an export license specifically authorizing
9 such export.

10 (2) NOTIFICATION TO CONGRESS AND LAY-
11 OVER.—(A) Not later than 5 days after an applica-
12 tion for a license to export any refined petroleum
13 product is received, the Secretary shall notify the
14 Congress of such application, together with the
15 name of the exporter, the destination of the pro-
16 posed export, and the amount and price of the pro-
17 posed export. Such notification shall be made to the
18 chairman of the Committee on Foreign Affairs of
19 the House of Representatives and the chairman of
20 the Committee on Banking, Housing, and Urban Af-
21 fairs of the Senate.

22 (B) The Secretary may not grant such license
23 during the 30-day period beginning on the date on
24 which notification to the Congress under paragraph
25 (1) is received, unless the President certifies in writ-

1 ing to the Speaker of the House of Representatives
2 and the President pro tempore of the Senate that
3 the proposed export is vital to the national interest
4 and that a delay in issuing the license would ad-
5 versely affect that interest.

6 (3) EXCEPTION.—This subsection shall not
7 apply to—

8 (A) any export license application for ex-
9 ports to a country with respect to which histori-
10 cal export quotas established by the Secretary
11 on the basis of past trading relationships apply;
12 or

13 (B) any license application for exports to a
14 country if exports under the license would not
15 result in the export from the United States of
16 more than 250,000 barrels of refined petroleum
17 products to such country in any fiscal year.

18 (4) DEFINITION.—For purposes of this sub-
19 section, the term “refined petroleum product” means
20 gasoline, kerosene, distillates, propane or butane
21 gas, diesel fuel, and residual fuel oil, that is refined
22 within the United States or entered for consumption
23 within the United States.

24 (5) EXTENSION OF LICENSE APPLICATION
25 PROCESSING TIME.—The Secretary may extend any

1 time period prescribed in section 109 to the extent
2 necessary to take into account delays in action by
3 the Secretary on a license application on account of
4 the provisions of this subsection.

5 (f) CERTAIN PETROLEUM PRODUCTS.—Petroleum
6 products refined in United States foreign trade zones, or
7 in the United States Territory of Guam, from foreign
8 crude oil shall be excluded from any quantitative restric-
9 tions imposed under this section, except that, if the Sec-
10 retary finds that a product is in short supply, the Sec-
11 retary may issue such regulations as may be necessary to
12 limit exports.

13 (g) AGRICULTURAL COMMODITIES.—

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

1 such agricultural commodities are also imposed
2 under section 106. The Secretary of Agriculture
3 shall, by exercising the authority which the Sec-
4 retary of Agriculture has under other applicable pro-
5 visions of law, collect data with respect to export
6 sales of animal hides and skins.

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

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

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

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

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

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

11 (3) PROCEDURES FOR IMPOSING CONTROLS.—

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

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

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

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

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

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

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

1 to the export controls specified in such report shall
2 be introduced (by request) in the House by the
3 chairman of the Committee on Foreign Affairs, for
4 the chairman and the ranking minority member of
5 the Committee, or by Members of the House des-
6 ignated by the chairman and ranking minority mem-
7 ber; and shall be introduced (by request) in the Sen-
8 ate by the majority leader of the Senate, for the
9 chairman and the minority leader of the Senate, or
10 by Members of the Senate designated by the major-
11 ity leader and minority leader of the Senate. If ei-
12 ther House is not in session on the day on which
13 such a report is submitted, the joint resolution shall
14 be introduced in that House, as provided in the pre-
15 ceding sentence, on the first day thereafter on which
16 that House is in session.

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

24 (D) A joint resolution under this paragraph
25 shall be considered in the Senate in accordance with

1 the provisions of section 601(b)(4) of the Inter-
2 national Security Assistance and Arms Export Con-
3 trol Act of 1976. For the purpose of expediting the
4 consideration and passage of joint resolutions re-
5 ported or discharged pursuant to the provisions of
6 this paragraph, it shall be in order for the Commit-
7 tee on Rules of the House of Representatives to
8 present for consideration a resolution of the House
9 of Representatives providing procedures for the im-
10 mediate consideration of a joint resolution under
11 this paragraph which may be similar, if applicable,
12 to the procedure set forth in section 601(b)(4) of the
13 International Security Assistance and Arms Export
14 Control Act of 1976.

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

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

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

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

9 (h) BARTER AGREEMENTS.—

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

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

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

1 (i) the average annual quantity of the
2 commodities to be exported pursuant to
3 the barter agreement will not be required
4 to satisfy the average amount of such com-
5 modities estimated to be required annually
6 by the domestic economy and will be sur-
7 plus thereto; and

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

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

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

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

1 (i) UNPROCESSED RED CEDAR.—

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

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

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

14 (A) lumber of American Lumber Stand-
15 ards Grades of Number 3 dimension or better,
16 or Pacific Lumber Inspection Bureau Export
17 R-List Grades of Number 3 common or better;

18 (B) chips, pulp, and pulp products;

19 (C) veneer and plywood;

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

23 (E) shakes and shingles.

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

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

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

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

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

1 enterprise which involves the export of commodities
2 or technology.

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

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

12 (a) PROHIBITIONS AND EXCEPTIONS.—

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

1 (A) Refusing, or requiring any other per-
2 son to refuse, to do business with or in the boy-
3 cotted country, with any business concern orga-
4 nized under the laws of the boycotted country,
5 with any national or resident of the boycotted
6 country, or with any other person, pursuant to
7 an agreement with, a requirement of, or a re-
8 quest from or on behalf of the boycotting coun-
9 try. The mere absence of a business relationship
10 with or in the boycotted country with any busi-
11 ness concern organized under the laws of the
12 boycotted country, with any national or resident
13 of the boycotted country, or with any other per-
14 son, does not indicate the existence of the in-
15 tent required to establish a violation of regula-
16 tions issued to carry out this subparagraph.

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

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

1 United States person or of any owner, officer,
2 director, or employee of such person.

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

19 (E) Furnishing information about whether
20 any person is a member of, has made a con-
21 tribution to, or is otherwise associated with or
22 involved in the activities of any charitable or
23 fraternal organization which supports the boy-
24 cotted country.

1 (F) Paying, honoring, confirming, or other-
2 wise implementing a letter of credit which con-
3 tains any condition or requirement compliance
4 with which is prohibited by regulations issued
5 pursuant to this paragraph, and no United
6 States person shall, as a result of the applica-
7 tion of this paragraph, be obligated to pay or
8 otherwise honor or implement such letter of
9 credit.

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

12 (A) complying or agreeing to comply with
13 requirements—

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

21 (ii) prohibiting the shipment of com-
22 modities to the boycotted country on a car-
23 rier of the boycotted country, or by a route
24 other than that prescribed by the boycott-

1 ing country or the recipient of the ship-
2 ment;

3 (B) complying or agreeing to comply with
4 import and shipping document requirements
5 with respect to the country of origin, the name
6 of the carrier and route of shipment, the name
7 of the supplier of the shipment, or the name of
8 the provider of other services, except that no in-
9 formation knowingly furnished or conveyed in
10 response to such requirements may be stated in
11 negative, blacklisting, or similar exclusionary
12 terms, other than with respect to carriers or
13 route of shipment as may be permitted by such
14 regulations in order to comply with precaution-
15 ary requirements protecting against war risks
16 and confiscation;

17 (C) complying or agreeing to comply in the
18 normal course of business with the unilateral
19 and specific selection by a boycotting country,
20 or national or resident thereof, of carriers, in-
21 surers, suppliers of services to be performed
22 within the boycotting country, or specific com-
23 modities which, in the normal course of busi-
24 ness, are identifiable by source when imported
25 into the boycotting country;

1 (D) complying or agreeing to comply with
2 export requirements of the boycotting country
3 relating to shipments or transshipment of ex-
4 ports to the boycotted country, to any business
5 concern of or organized under the laws of the
6 boycotted country, or to any national or resi-
7 dent of the boycotted country;

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

16 (F) compliance by a United States person
17 resident in a foreign country or agreement by
18 such person to comply with the laws of the
19 country with respect to such person's activities
20 exclusively therein, and such regulations may
21 contain exceptions for such resident complying
22 with the laws or regulations of the foreign coun-
23 try governing imports into such country of
24 trademarked, trade named, or similarly specifi-
25 cally identifiable products, or components of

1 products for such person's own use, including
2 the performance of contractual services within
3 that country, as may be defined by such regula-
4 tions.

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

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

13 (5) EVASION.—This section shall apply to any
14 transaction or activity undertaken, by or through a
15 United States person or any other person, with in-
16 tent to evade the provisions of this section as imple-
17 mented by the regulations issued pursuant to this
18 subsection, and such regulations shall expressly pro-
19 vide that the exceptions set forth in paragraph (2)
20 shall not permit activities or agreements (expressed
21 or implied by a course of conduct, including a pat-
22 tern of responses) otherwise prohibited, which are
23 not within the intent of such exceptions.

24 (b) EMERGENCY CONTROLS.—

1 (1) REGULATIONS.—In addition to the regula-
2 tions issued pursuant to subsection (a), regulations
3 issued under section 106 shall implement the policies
4 set forth in section 103(10).

5 (2) REPORTS BY UNITED STATES PERSONS.—
6 Such regulations shall require that any United
7 States person receiving a request for the furnishing
8 of information, the entering into or implementing of
9 agreements, or the taking of any other action re-
10 ferred to in section 103(10) shall report that fact to
11 the Secretary, together with such other information
12 concerning such request as the Secretary may re-
13 quire, for such action as the Secretary considers ap-
14 propriate for carrying out the policies of that sec-
15 tion. Such person shall also report to the Secretary
16 whether such person intends to comply and whether
17 such person has complied with such request. Any re-
18 port filed pursuant to this paragraph shall be made
19 available promptly for public inspection and copying,
20 except that information regarding the quantity, de-
21 scription, and value of any commodities or tech-
22 nology to which such report relates may be kept con-
23 fidential if the Secretary determines that disclosure
24 thereof would place the United States person in-
25 volved at a competitive disadvantage. The Secretary

1 shall periodically transmit summaries of the infor-
2 mation contained in such reports to the Secretary of
3 State for such action as the Secretary of State, in
4 consultation with the Secretary, considers appro-
5 priate for carrying out the policies set forth in sec-
6 tion 103(10).

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

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

14 (2) pertains to participation in, compliance
15 with, implementation of, or the furnishing of infor-
16 mation regarding restrictive trade practices or boy-
17 cotts fostered or imposed by foreign countries
18 against other countries.

19 **SEC. 109. PROCEDURES FOR PROCESSING EXPORT LI-**
20 **CENSE APPLICATIONS; OTHER INQUIRIES.**

21 (a) PRIMARY RESPONSIBILITY OF THE SEC-
22 RETARY.—

23 (1) IN GENERAL.—All export license applica-
24 tions required under this title shall be submitted by
25 the applicant to the Secretary. All determinations

1 with respect to any such application shall be made
2 by the Secretary, subject to the procedures provided
3 in this section.

4 (2) REGULATIONS.—In regulations that carry
5 out this section, the Secretary shall describe the pro-
6 cedures required by this section, the responsibilities
7 of the Secretary and of other departments and agen-
8 cies in reviewing applications, the rights of the appli-
9 cant, and the extent of any multilateral review of a
10 given license application.

11 (3) CALCULATION OF TIME PERIODS.—In cal-
12 culating the processing times set forth in this sec-
13 tion, the Secretary shall use calendar days, except
14 that if the final day for a required action falls on a
15 weekend or holiday, that action shall be taken no
16 later than the following business day.

17 (4) CONSIDERATION OF RELIABILITY OF PAR-
18 TIES.—In reviewing applications for validated export
19 licenses, the Secretary may in each case consider the
20 reliability of the parties to the proposed export. In
21 making such an evaluation, the Secretary may con-
22 sider all sources of information, including intel-
23 ligence information. The consideration of intelligence
24 information in connection with the evaluation of the
25 reliability of parties shall not authorize the direct or

1 indirect disclosure of classified information or
2 sources and methods of gathering classified informa-
3 tion.

4 (b) ACTION BY OTHER DEPARTMENTS AND AGEN-
5 CIES.—

6 (1) REFERRALS.—(A) At the direction of the
7 President, the Secretary shall refer appropriate li-
8 cense applications required under section 105 or 106
9 to appropriate departments and agencies of the Gov-
10 ernment to make recommendations and provide in-
11 formation to the Secretary on such applications.

12 (B) The President shall restrict referrals of li-
13 cense applications to Government departments and
14 agencies that possess particular expertise and infor-
15 mation that is relevant to the licensing process and
16 is not possessed by the Secretary.

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

24 (3) REQUESTS FOR ADDITIONAL INFORMA-
25 TION.—Within 5 days after an export license appli-

1 cation is referred to a department or agency under
2 this subsection, the agency or department shall
3 specify to the Secretary all information that is not
4 in the application that would be required to respond
5 to the referral of the application, and the Secretary
6 shall, pursuant to subsection (d)(1)(C), request such
7 information from the applicant. The time that may
8 elapse between the date the information is requested
9 from the applicant and the date the information is
10 received by the Secretary shall not be included in
11 calculating the time periods prescribed in this sec-
12 tion.

13 (c) ACTION BY THE SECRETARY.—Subject to sub-
14 section (d)(4), 30 days after the date of formal filing with
15 the Secretary of an export license application, a license
16 for the transaction specified in the application shall be-
17 come valid and effective and the commodities or tech-
18 nology involved are authorized for export or reexport pur-
19 suant to such license, unless—

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

23 (2) the application has been denied by the Sec-
24 retary under this section and the applicant has been
25 so informed.

1 (d) PROCEDURES FOR PROCESSING EXPORT LI-
2 CENSE APPLICATIONS.—

3 (1) INITIAL SCREENING.—Not more than 10
4 days after the date on which any export license ap-
5 plication is submitted to the Secretary, the Secretary
6 shall—

7 (A) send the applicant an acknowledgment
8 of the receipt of the application and the date of
9 the receipt;

10 (B) submit to the applicant a written de-
11 scription of the procedures required by this sec-
12 tion, the responsibilities of the Secretary with
13 respect to the application, and the rights of the
14 applicant;

15 (C) on the basis of information the Sec-
16 retary has, including information provided to
17 the Secretary under subsection (b)(3), return
18 the application without action if the application
19 is improperly completed or if additional infor-
20 mation is required, with sufficient information
21 to permit the application to be properly resub-
22 mitted; and

23 (D) determine whether it is necessary to
24 submit the application to a multilateral review
25 process pursuant to an export control regime

1 and, if so, inform the applicant of such require-
2 ment.

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

19 (B) A recommendation that the Secretary deny
20 a validated license shall include a statement of rea-
21 sons for the recommendation that are consistent
22 with the provisions of this title, and shall cite both
23 the statutory and the regulatory basis for the rec-
24 ommendation.

1 (3) INTERAGENCY COMMITTEE.—An inter-
2 agency committee may be established by the Presi-
3 dent for the purpose of resolving disputes among de-
4 partments and agencies on export license applica-
5 tions under this title. Such committee shall be
6 chaired by the Secretary. The procedures followed by
7 such interagency committee shall provide—

8 (A) deadlines for decisions within the
9 interagency committee consistent with the duty
10 of the Secretary to reach his or her final deci-
11 sion on an application within 30 days after the
12 date of filing of the license application;

13 (B) that a department or agency dissent-
14 ing from the position of the Secretary shall
15 have the burden to bring the issue in writing to
16 the next level of review provided within the
17 interagency committee and may only dissent on
18 the basis of the criteria set forth in section
19 105(c)(1)(D) or section 106(a)(4); and

20 (C) that a department or agency that fails
21 to make a timely escalation of a disputed mat-
22 ter shall be deemed to have no objection to the
23 decision of the Secretary.

24 (4) ACTIONS BY THE SECRETARY.—(A) When a
25 referral of a license application to other departments

1 or agencies is not required, the Secretary shall issue
2 a license or notify the applicant of the intent to deny
3 within 10 days after receiving the application.

4 (B) If an application is to be denied because
5 the export would be made to a controlled end user,
6 no referral to other departments or agencies is re-
7 quired, and the applicant shall be informed of the
8 reason for the denial.

9 (5) ACTION UPON DENIAL.—In cases in which
10 the Secretary has determined that a license applica-
11 tion should be denied, the applicant shall be in-
12 formed in writing, not later than 3 days after such
13 determination is made, of—

14 (A) the determination;

15 (B) the statutory and regulatory basis for
16 the proposed denial;

17 (C) the reasons for such denial, with ref-
18 erences to the criteria set forth in section 105,
19 106, or 107 (as the case may be);

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

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 finally denied.

15 (e) RECORDKEEPING.—The Secretary shall make and
16 keep records of all advice and recommendations given by
17 Federal departments and agencies, and decisions made by
18 the Department of Commerce, in connection with any ex-
19 port license application or revision of an export license ap-
20 plication under this title, including the factual and analyt-
21 ical basis of the advice, recommendations, or decisions.

22 (f) CHANGES IN REQUIREMENTS FOR APPLICA-
23 TIONS.—Except as provided in subsection (d), in any case
24 in which, after an export license application is submitted,
25 the Secretary changes the requirements for such a license

1 application, the Secretary may request appropriate addi-
2 tional information of the applicant, but the Secretary may
3 not return the application to the applicant without action
4 because it fails to meet the changed requirements.

5 (g) APPEALS.—The Secretary shall establish appro-
6 priate procedures for any applicant to appeal to the Sec-
7 retary the denial of an export license application under
8 this title.

9 (h) OTHER INQUIRIES.—

10 (1) CLASSIFICATION REQUESTS.—In any case
11 in which the Secretary receives a written request for
12 the proper classification of a commodity or tech-
13 nology on the control index, the Secretary shall, not
14 more than 10 working days after receiving the re-
15 quest, inform the person making the request of the
16 proper classification.

17 (2) APPLICABILITY OF REQUIREMENTS.—In
18 any case in which the Secretary receives a written
19 request for information about the applicability of ex-
20 port license requirements under this title to a pro-
21 posed transaction or series of transactions, the Sec-
22 retary shall, not more than 30 days after receiving
23 the request, reply with that information to the per-
24 son making the request.

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

7 (i) REPORTS ON LICENSE APPLICATIONS.—

8 (1) QUARTERLY REPORT.—Not later than 180
9 days after the date of the enactment of this Act, and
10 not later than the end of each 3-month period there-
11 after, the Secretary shall submit to the Committee
12 on Foreign Affairs of the House of Representatives
13 and to the Committee on Banking, Housing, and
14 Urban Affairs of the Senate a report listing all ap-
15 plications on which action was completed during the
16 preceding 3-month period and which required a pe-
17 riod longer than the period permitted under sub-
18 section (c) or (d)(4), as the case may be, before noti-
19 fication on a decision to approve or deny the applica-
20 tion was sent to the applicant.

21 (2) INFORMATION ON LICENSE APPLICA-
22 TIONS.—With regard to each application, each list-
23 ing shall identify—

24 (A) the application case number;

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

3 (C) the country of destination of the com-
4 modities or technology;

5 (D) the date on which the application was
6 received by the Secretary;

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

9 (F) the date on which the notification of
10 approval or denial of the application was sent to
11 the applicant.

12 (3) INTRODUCTION TO REPORT.—With respect
13 to an application referred to any other department
14 or agency which did not submit or has not submitted
15 its recommendations on the application within the
16 period permitted under subsection (d)(2) to submit
17 such recommendations, the listing shall also in-
18 clude—

19 (A) the office responsible for processing
20 the application and the officer responsible for
21 the office; and

22 (B) the period of time that elapsed before
23 the recommendations were submitted or that
24 has elapsed since referral of the application, as
25 the case may be.

1 **SEC. 110. VIOLATIONS.**

2 (a) CRIMINAL PENALTIES.—

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

10 (2) VIOLATIONS BY A PERSON OTHER THAN AN
11 INDIVIDUAL.—Any person other than an individual
12 who knowingly violates or conspires to or attempts
13 to violate any provision of this title or any regula-
14 tion, license, or order issued under this title shall be
15 fined not more than 10 times the value of the ex-
16 ports involved or \$1,000,000, whichever is greater.

17 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
18 CEEDS.—

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

22 (A) any of that person's interest in, secu-
23 rity of, claim against, or property or contractual
24 rights of any kind in the commodities or tan-
25 gible items that were the subject of the viola-
26 tion;

1 (B) any of that person's interest in, secu-
2 rity of, claim against, or property or contractual
3 rights of any kind in tangible property that was
4 used in the export or attempt to export that
5 was the subject of the violation; and

6 (C) any of that person's property con-
7 stituting, or derived from, any proceeds ob-
8 tained directly or indirectly as a result of the
9 violation.

10 (2) PROCEDURES.—The procedures in any for-
11 feiture under this subsection, and the duties and au-
12 thority of the courts of the United States and the
13 Attorney General with respect to any forfeiture ac-
14 tion under this subsection or with respect to any
15 property that may be subject to forfeiture under this
16 subsection, shall be governed by the provisions of
17 section 1963 of title 18, United States Code.

18 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
19 TIONS.—

20 (1) CIVIL PENALTIES.—The Secretary may im-
21 pose a civil penalty of not more than \$250,000 for
22 each violation of this title or any regulation, license,
23 or order issued under this title, either in addition to
24 or in lieu of any other liability or penalty which may
25 be imposed, except that the civil penalty for each

1 such violation of regulations issued under section
2 108 may not exceed \$50,000.

3 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
4 retary may deny the export privileges of any person,
5 including suspending or revoking the authority of
6 any person to export or receive United States-origin
7 commodities or technology, on account of any viola-
8 tion of this title or any regulation, license, or order
9 issued under this title.

10 (d) PAYMENT OF CIVIL PENALTIES.—The payment
11 of any civil penalty imposed under subsection (c) may be
12 made a condition, for a period not exceeding 1 year after
13 the penalty has become due but has not been paid, to the
14 granting, restoration, or continuing validity of any export
15 license, permission, or privilege granted or to be granted
16 to the person upon whom such penalty is imposed. In addi-
17 tion, the payment of any civil penalty imposed under sub-
18 section (c) may be deferred or suspended in whole or in
19 part for a period of time no longer than any probation
20 period (which may exceed 1 year) that may be imposed
21 upon such person. Such deferral or suspension shall not
22 operate as a bar to the collection of the penalty in the
23 event that the conditions of the suspension, deferral, or
24 probation are not fulfilled.

1 (e) REFUNDS.—Any amounts realized from the for-
2 feiture of any property interest or proceeds under sub-
3 section (b), and any amount paid in satisfaction of any
4 civil penalty imposed under subsection (c) shall be covered
5 into the Treasury as a miscellaneous receipt. The head
6 of the department or agency concerned may, in his or her
7 discretion, refund any such civil penalty imposed under
8 subsection (c), within 2 years after payment, on the
9 ground of a material error of fact or law in the imposition
10 of the penalty. Notwithstanding section 1346(a) of title
11 28, United States Code, no action for the refund of any
12 such penalty may be maintained in any court.

13 (f) EFFECT OF OTHER CONVICTIONS.—

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

16 (A) this title or the Export Administration
17 Act of 1979 (or any regulation, license, or order
18 issued under this title or that Act),

19 (B) any regulation, license, or order issued
20 under the International Emergency Economic
21 Powers Act,

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

24 (D) section 371 or 1001 of title 18, United
25 States Code, if in connection with the export of

1 commodities or technology controlled under this
2 title, or defense articles or defense services con-
3 trolled under the Arms Export Control Act,

4 (E) section 4(a) of the Internal Security
5 Act of 1950 (50 U.S.C. 783(a)), or

6 (F) section 38 of the Arms Export Control
7 Act,

8 may, at the discretion of the Secretary, be denied ex-
9 port privileges under this title for a period of up to
10 10 years from the date of the conviction. The Sec-
11 retary may also revoke any export license under this
12 title in which such person had an interest at the
13 time of the conviction.

14 (2) RELATED PERSONS.—The Secretary may
15 exercise the authority under paragraph (1) with re-
16 spect to any person related, through affiliation, own-
17 ership, control, or position of responsibility, to any
18 person convicted of any violation of a law set forth
19 in paragraph (1), upon a showing of such relation-
20 ship with the convicted person, after providing notice
21 and opportunity for a hearing.

22 (g) STATUTE OF LIMITATIONS.—Any proceeding in
23 which a civil penalty or other administrative sanction
24 (other than a temporary denial order) is sought under sub-
25 section (c) may not be instituted more than 5 years after

1 the date of the alleged violation, except that, in any case
2 in which a criminal indictment alleging a violation of this
3 title is returned within the time limits prescribed by law
4 for the institution of such action, the statute of limitations
5 for bringing a proceeding to impose such a civil penalty
6 or other administrative sanction under this title shall,
7 upon the return of the criminal indictment, be tolled
8 against all persons named as a defendant. The tolling of
9 the statute of limitations shall continue for a period of
10 6 months from the date a conviction becomes final or the
11 indictment is dismissed.

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

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

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

21 (2) the authority to compromise and settle ad-
22 ministrative proceedings brought with respect to any
23 such violation; or

24 (3) the authority to compromise, remit, or miti-
25 gate seizures and forfeitures pursuant to section

1 1(b) of title VI of the Act of June 15, 1917 (22
2 U.S.C. 401(b)).

3 (j) PRIVATE RIGHT OF ACTION.—Any person injured
4 in his or her business or property by reason of a violation
5 of the regulations issued pursuant to section 108(a) may
6 sue therefor in any appropriate United States district
7 court against the United States person committing the
8 violation and shall recover the damages such person sus-
9 tains and the cost of the suit, including a reasonable attor-
10 ney's fee. In any such action the court may award punitive
11 damages. An action may be brought under this subsection
12 against a United States person whether or not the United
13 States person has been determined under this section to
14 have violated the regulations issued pursuant to section
15 108(a) on account of which the action is brought.

16 **SEC. 111. CONTROLLING PROLIFERATION ACTIVITY.**

17 (a) ESTABLISHMENT OF PROLIFERATION LISTS.—

18 (1) ESTABLISHMENT OF CHEMICAL AND BIO-
19 LOGICAL WEAPONS CONTROL LIST UNDER THIS
20 TITLE.—

21 (A) IN GENERAL.—The Secretary, in con-
22 sultation with the Secretary of State, the Sec-
23 retary of Defense, and the heads of other ap-
24 propriate departments and agencies, shall es-

1 tablish and maintain a list of all dual use com-
2 modities and technology—

3 (i) that would directly and substan-
4 tially assist a foreign government, group,
5 entity, or project in acquiring the capabil-
6 ity to develop, produce, stockpile, or deliver
7 chemical or biological weapons; and

8 (ii) the licensing of which would be ef-
9 fective in barring the acquisition or en-
10 hancement of such capability.

11 The list shall include those dual use commod-
12 ities and technology controlled pursuant to the
13 Australia Group or any other multilateral ex-
14 port control regime that seeks to prevent the
15 proliferation of chemical or biological weapons.

16 (B) REQUIREMENT FOR VALIDATED LI-
17 CENSES.—Subject to the provisions of this title,
18 the Secretary shall require a validated license
19 for any export of commodities or technology on
20 the list established under subparagraph (A) to
21 any country of concern.

22 (C) COUNTRY OF CONCERN.—For pur-
23 poses of subparagraph (B), the term “country
24 of concern” means any country other than—

1 (i) a country with whose government
2 the United States has entered into a bilat-
3 eral or multilateral arrangement for the
4 control of commodities or technology on
5 the list established under subparagraph
6 (A); and

7 (ii) such other countries as the Sec-
8 retary of State, in consultation with the
9 Secretary and the Secretary of Defense,
10 shall designate consistent with the pur-
11 poses of this section.

12 (2) ESTABLISHMENT OF MISSILE TECHNOLOGY
13 CONTROL LIST UNDER THIS TITLE.—

14 (A) IN GENERAL.—The Secretary, in con-
15 sultation with the Secretary of State, the Sec-
16 retary of Defense, and the heads of other ap-
17 propriate departments and agencies—

18 (i) shall establish and maintain a list
19 of all dual use commodities and technology
20 on the MTCR Annex; and

21 (ii) may include on that list any com-
22 modities or technology that would provide
23 a direct and significant impact on the de-
24 velopment of missile delivery systems.

1 (B) REQUIREMENT OF INDIVIDUAL VALI-
2 DATED LICENSES.—Subject to the provisions of
3 this title, the Secretary shall require an individ-
4 ual validated license for—

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

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

13 (C) POLICY OF DENIAL OF LICENSES.—(i)
14 Licenses under subparagraph (B) should in
15 general be denied if the ultimate consignee of
16 the commodities or technology is a facility in a
17 country that is not an MTCR adherent and the
18 facility is designed to develop or build missiles.

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

1 (D) DEFINITION.—For purposes of this
2 paragraph, the term “MTCR adherent” means
3 a country that participates in the MTCR or
4 that, pursuant to an international understand-
5 ing to which the United States is a party, con-
6 trols MTCR equipment or technology in accord-
7 ance with the criteria and standards set forth
8 in the MTCR.

9 (b) ESTABLISHMENT OF LISTS UNDER ARMS EX-
10 PORT CONTROL ACT.—

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

14 **“SEC. 81. ESTABLISHMENT OF CHEMICAL AND BIOLOGICAL**
15 **WEAPONS CONTROL LIST**

16 “(a) IN GENERAL.—The Secretary of State, in con-
17 sultation with the Secretary of Defense, and the heads of
18 other appropriate departments and agencies, shall estab-
19 lish and maintain, as part of the United States Munitions
20 List, a list of items—

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

1 “(2) the licensing of which would be effective in
2 barring the acquisition or enhancement of such ca-
3 pability; and

4 “(3) the export of which is not subject to con-
5 trol under section 111(a)(1) of the Export Act of
6 1994.

7 The list shall include those items, not subject to control
8 under section 111(a)(1) of the Export Act of 1994, that
9 are controlled pursuant to the Australia Group or any
10 other multilateral export control regime that seeks to pre-
11 vent the proliferation of chemical or biological weapons.

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

15 “(c) DEFINITIONS.—For purposes of this section, the
16 terms ‘multilateral export control regime’ and ‘Australia
17 Group’ have the meanings given those terms in section
18 116 of the Export Act of 1994.”.

19 (2) MISSILE TECHNOLOGY CONTROL LIST.—
20 Section 71 of the Arms Export Control Act (22
21 U.S.C. 2797) is amended to read as follows:

22 **“SEC. 71. LICENSING.**

23 “(a) ESTABLISHMENT OF MISSILE TECHNOLOGY
24 CONTROL LIST.—The Secretary of State, in consultation
25 with the Secretary of Defense and the heads of other ap-

1 appropriate departments and agencies, shall establish and
2 maintain a list of all items, which shall include those items
3 listed on the MTCR Annex, that would provide a direct
4 and significant impact on the development of missile deliv-
5 ery systems and the export of which is not subject to con-
6 trol under section 111(a)(2) of the Export Act of 1994.

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

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

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

15 “(c) POLICY OF DENIAL OF LICENSES.—

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

21 “(2) EXPORTS TO TERRORIST COUNTRIES.—Li-
22 censes under subsection (b) shall be denied if the ul-
23 timate consignee of the items is a facility in a coun-
24 try the government of which has been determined
25 under section 106(i)(1) of the Export Act of 1994

1 to have repeatedly provided support for acts of inter-
2 national terrorism.”.

3 (c) SANCTIONS FOR ACTIVITIES SUPPORTING THE
4 PROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAP-
5 ONS AND MISSILES.—

6 (1) VIOLATIONS BY UNITED STATES PER-
7 SONS.—(A) If the President determines that a
8 United States person, on or after the date of the en-
9 actment of this Act, with requisite knowledge—

10 (i) exports or transfers—

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

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

16 in violation of United States law,

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

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

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

24 (B) The sanctions referred to in subparagraph

25 (A) are the following:

1 (i) All export licenses under this title to
2 the sanctioned entity for, or for the transfer to
3 the sanctioned entity of, items controlled under
4 section 105, or items controlled under section
5 106 that meet the requirements of section
6 105(a)(1)(A) or (B), and all export licenses
7 under the Arms Export Control Act to the
8 sanctioned entity for, or for the transfer to the
9 sanctioned entity of, items on the United States
10 Munitions List, shall be denied.

11 (ii) The United States Government shall
12 not procure, or enter into any contract for the
13 procurement of, any services, commodities,
14 technology, or other products from or produced
15 by the sanctioned entity.

16 (C) In the case of a determination made under
17 subparagraph (A), the President may pursue any
18 penalty provided in section 38(c) of the Arms Ex-
19 port Control Act.

20 (2) VIOLATIONS BY FOREIGN PERSONS.—(A) If
21 the President determines that a foreign person, on
22 or after the date of the enactment of this Act, with
23 requisite knowledge contributed to the efforts of any
24 government, group, entity, or project to use, design,

1 develop, produce, stockpile, or otherwise acquire
2 chemical or biological weapons or missiles—

3 (i) through the export or transfer of—

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

6 (II) any item on the list established
7 under subsection (a)(1) of this section or
8 section 81(a) of the Arms Export Control
9 Act, whether or not of United States ori-
10 gin,

11 (ii) by conspiring or attempting to engage
12 in such export or transfer or,

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

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

18 (B) The sanctions referred to in subparagraph
19 (A) are the following:

20 (i) All export licenses under this title for
21 the transfer to the sanctioned entity of, or to
22 the sanctioned entity for, items controlled under
23 section 105, or items controlled under section
24 106 that meet the requirements of section
25 105(a)(1)(A) or (B), and all export licenses

1 under the Arms Export Control Act for the
2 transfer to the sanctioned entity of, or to the
3 sanctioned entity for, items on the United
4 States Munitions List, shall be denied.

5 (ii) The United States Government shall
6 not procure, or enter into any contract for the
7 procurement of, any services, commodities,
8 technology, or other products from or produced
9 by the sanctioned entity.

10 (iii) Imports of products from or produced
11 by the sanctioned entity shall be prohibited.

12 (3) ENTITIES AGAINST WHICH SANCTIONS ARE
13 IMPOSED.—The President shall impose sanctions
14 under paragraphs (1) and (2) on—

15 (A) the person that committed the conduct
16 that is the subject of the determination giving
17 rise to the sanctions;

18 (B) any successor of a person or entity de-
19 scribed in subparagraph (A);

20 (C) any foreign person or United States
21 person that is a parent or subsidiary of a per-
22 son or entity described in subparagraph (A), if
23 that parent or subsidiary with requisite knowl-
24 edge assisted in the activities which are the
25 basis of that determination; and

1 (D) any foreign person or United States
2 person that is an affiliate of a person or entity
3 described in subparagraph (A), if that affiliate
4 with requisite knowledge assisted in the activi-
5 ties which were the basis of that determination
6 and if that affiliate is controlled in fact by that
7 person or entity.

8 For purposes of this section, any person or entity
9 described in subparagraph (A), (B), (C), or (D)
10 shall be referred to as a “sanctioned entity”.

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

20 (5) EXEMPTION FOR MTCR ADHERENTS.—

21 (A) EXEMPTION.—Paragraphs (1) and (2)
22 do not apply with respect to any export or
23 transfer—

24 (i) that is authorized by the laws of
25 an MTCR adherent, if such authorization

1 is not obtained by misrepresentation or
2 fraud; or

3 (ii) to an end user in a country that
4 is an MTCR adherent.

5 (B) DEFINITION.—For purposes of this
6 paragraph, the term “MTCR adherent” has the
7 meaning given that term in subsection
8 (a)(2)(D).

9 (6) CONSULTATION WITH AND ACTIONS BY
10 FOREIGN GOVERNMENT OF JURISDICTION.—

11 (A) CONSULTATIONS.—If the President
12 makes a determination described in paragraph
13 (2) with respect to a foreign person, the Con-
14 gress urges the President to initiate consulta-
15 tions immediately with the government with pri-
16 mary jurisdiction over that foreign person with
17 respect to the imposition of sanctions pursuant
18 to this subsection.

19 (B) ACTIONS BY GOVERNMENT OF JURIS-
20 DICTION.—In order to pursue such consulta-
21 tions with that government, the President may
22 delay imposition of sanctions pursuant to this
23 subsection for up to 90 days. Following these
24 consultations, the President shall impose sanc-
25 tions unless the President determines and cer-

1 tifies to the Congress that that government has
2 taken specific and effective actions, including
3 appropriate penalties, to terminate the involve-
4 ment of the foreign person in the activities de-
5 scribed in paragraph (2). The President may
6 delay the imposition of sanctions for up to an
7 additional 90 days if the President determines
8 and certifies to the Congress that that govern-
9 ment is in the process of taking the actions de-
10 scribed in the preceding sentence.

11 (C) REPORT TO CONGRESS.—Not later
12 than 90 days after making a determination
13 under paragraph (2), the President shall submit
14 to the Committee on Foreign Relations and the
15 Committee on Governmental Affairs of the Sen-
16 ate and the Committee on Foreign Affairs of
17 the House of Representatives a report on the
18 status of consultations with the appropriate
19 government under this paragraph, and the basis
20 for any determination under subparagraph (B)
21 that such government has taken specific and ef-
22 fective actions.

23 (7) EFFECT OF ENFORCEMENT ACTIONS BY RE-
24 GIME ADHERENTS.—

1 (A) EXEMPTION FROM SANCTIONS.—Sanctions set forth in paragraph (1) or (2) may not
2 be imposed under this subsection on a person
3 with respect to acts described in either such
4 paragraph or, if such sanctions are in effect
5 against a person on account of such acts, such
6 sanctions shall be terminated, if the government
7 of a regime adherent, other than the United
8 States, is taking judicial or other enforcement
9 action against that person with respect to such
10 acts, or that person has been found by the gov-
11 ernment of a regime adherent to be innocent of
12 wrongdoing with respect to such acts.

14 (B) REGIME ADHERENT DEFINED.—For
15 purposes of subparagraph (A), a “regime ad-
16 herent” is a country that is a member of a mul-
17 tilateral regime that controls the export or
18 transfer giving rise to the sanctions, or that,
19 pursuant to an international understanding to
20 which the United States is a party, controls the
21 export or transfer in accordance with the cri-
22 teria and standards set forth in the regime.

23 (8) REQUISITE KNOWLEDGE DEFINED.—For
24 purposes of this subsection, the term “requisite
25 knowledge” means situations in which a person

1 “knows”, as “knowing” is defined in section 104 of
2 the Foreign Corrupt Practices Act of 1977 (15
3 U.S.C. 78dd-2).

4 (9) FOREIGN PERSON DEFINED FOR CERTAIN
5 EXPORTS.—(A) For purposes of any determination
6 under paragraph (2)(A) with respect to an export or
7 transfer of an item on the MTCR Annex, the term
8 ‘foreign person’, in addition to the meaning set forth
9 in section 116(13), means, in the case of countries
10 with nonmarket economies (other than former mem-
11 bers of the Warsaw Pact)—

12 (i) all activities of the government of any
13 such country relating to the development or
14 production of any missile equipment or tech-
15 nology; and

16 (ii) all activities of that government affect-
17 ing the development or production of elec-
18 tronics, space systems or equipment, and mili-
19 tary aircraft.

20 (B) As used in subparagraph (A), the term
21 ‘missile equipment or technology’ means those items
22 listed in category I or II of the MTCR Annex.

23 (d) SANCTIONS AGAINST COUNTRIES FOR USE OF
24 CHEMICAL OR BIOLOGICAL WEAPONS.—

25 (1) DETERMINATION.—

1 (A) IN GENERAL.—Whenever persuasive
2 information becomes available to the executive
3 branch indicating the substantial possibility
4 that, on or after the date of the enactment of
5 this Act, the government of a foreign country
6 has made substantial preparation to use or has
7 used chemical or biological weapons in violation
8 of international law or has used lethal chemical
9 or biological weapons against its own nationals,
10 the President shall, within 60 days after the re-
11 ceipt of such information by the executive
12 branch, determine whether that government, on
13 or after such date of enactment, has used chem-
14 ical or biological weapons in violation of inter-
15 national law, or has used lethal chemical or bio-
16 logical weapons against its own nationals.

17 (B) MATTERS TO BE CONSIDERED.—In
18 making the determination under subparagraph
19 (A), the President shall consider the following:

20 (i) All physical and circumstantial evi-
21 dence available bearing on the possible use
22 of chemical or biological weapons.

23 (ii) All information provided by al-
24 leged victims, witnesses, and independent
25 observers.

1 (iii) The extent of the availability of
2 the weapons in question to the purported
3 user.

4 (iv) All official and unofficial state-
5 ments bearing on the possible use of such
6 weapons.

7 (v) Whether, and to what extent, the
8 government in question is willing to honor
9 a request from the Secretary General of
10 the United Nations to grant timely access
11 to a United Nations fact-finding team to
12 investigate the possibility of chemical or bi-
13 ological weapons use or to grant such ac-
14 cess to other legitimate outside parties.

15 (2) DETERMINATION TO BE REPORTED TO CON-
16 GRESS.—Upon making a determination under para-
17 graph (1), the President shall promptly report that
18 determination to the Congress. If the determination
19 is that a foreign government has used such weapons
20 as described in that paragraph, the report shall
21 specify the sanctions to be imposed pursuant to
22 paragraph (4).

23 (3) CONGRESSIONAL REQUESTS; REPORT.—

24 (A) REQUEST.—The Chairman of the
25 Committee on Foreign Relations of the Senate

1 (upon consultation with the ranking minority
2 member of such committee) or the Chairman of
3 the Committee on Foreign Affairs of the House
4 of Representatives (upon consultation with the
5 ranking minority member of such committee)
6 may at any time request the President to con-
7 sider whether a particular foreign government,
8 on or after the date of the enactment of this
9 Act, has used chemical or biological weapons in
10 violation of international law or has used lethal
11 chemical or biological weapons against its own
12 nationals.

13 (B) REPORT TO CONGRESS.—Not later
14 than 60 days after receiving such a request, the
15 President shall provide to the Chairman of the
16 Committee on Foreign Relations of the Senate
17 and the Chairman of the Committee on Foreign
18 Affairs of the House of Representatives a writ-
19 ten report on the information held by the execu-
20 tive branch which is pertinent to the issue of
21 whether the specified government, on or after
22 the date of the enactment of this Act, has used
23 chemical or biological weapons in violation of
24 international law or has used lethal chemical or
25 biological weapons against its own nationals.

1 The report under this subparagraph shall con-
2 tain an analysis of each of the items enumer-
3 ated in paragraph (1)(B).

4 (4) MANDATORY SANCTIONS FOR USE OF
5 CHEMICAL OR BIOLOGICAL WEAPONS.—The follow-
6 ing sanctions shall be imposed for a minimum of 2
7 years in the event the President makes an affirma-
8 tive determination under paragraph (1) with respect
9 to the government of a foreign country:

10 (A) FOREIGN ASSISTANCE.—The United
11 States Government shall terminate assistance to
12 that country under the Foreign Assistance Act
13 of 1961, except for urgent humanitarian assist-
14 ance and food or other agricultural commodities
15 or products.

16 (B) ARMS SALES.—The United States
17 Government shall—

18 (i) terminate sales to that country
19 under the Arms Export Control Act of any
20 defense articles, defense services, or design
21 and construction services; and

22 (ii) terminate and deny licenses for
23 the export to that country of any item on
24 the United States Munitions list.

1 (C) ARMS SALES FINANCING.—The United
2 States Government shall terminate all foreign
3 military financing for that country under the
4 Arms Export Control Act.

5 (D) DENIAL OF UNITED STATES GOVERN-
6 MENT CREDIT OR OTHER FINANCIAL ASSIST-
7 ANCE.—The United States Government shall
8 deny to that country any credit, credit guaran-
9 tees, or other financial assistance by any de-
10 partment, agency, or instrumentality of the
11 United States Government, including the Ex-
12 port-Import Bank of the United States.

13 (E) EXPORTS OF NATIONAL SECURITY-
14 SENSITIVE ITEMS.—The authorities of this title
15 shall be used to prohibit the export to that
16 country of any commodities or technology con-
17 trolled or prohibited for export under section
18 106(i).

19 (F) IMPORTS.—There shall be a prohibi-
20 tion on the importation into the United States
21 of goods that are the growth, produce, or man-
22 ufacture of that country. The President shall
23 determine the type and volume of imports to be
24 prohibited, taking into consideration the volume
25 of exports prohibited under subparagraph (E).

1 (5) ADDITIONAL SANCTIONS IF CERTAIN CONDI-
2 TIONS NOT MET.—Unless, within 3 months after
3 making a determination under paragraph (1) with
4 respect to the government of a foreign country, the
5 President determines and certifies, in writing, to the
6 Congress that—

7 (A) the government is no longer using
8 chemical or biological weapons in violation of
9 international law or using lethal chemical or bi-
10 ological weapons against its own nationals,

11 (B) the government has provided reliable
12 assurances that it will not, in the future, en-
13 gage in any such activities, and

14 (C) the government is willing to allow on-
15 site inspections by United Nations observers or
16 other internationally recognized, impartial ob-
17 servers, or other reliable means exist, to ensure
18 that government is not using chemical or bio-
19 logical weapons in violation of international law
20 and is not using lethal chemical or biological
21 weapons against its own nationals,

22 then the President, after consultation with the Con-
23 gress, shall impose on that country for a period of
24 at least 2 years the sanctions set forth in at least

1 3 of subparagraphs (A) through (F) of paragraph
2 (6).

3 (6) ADDITIONAL SANCTIONS FOR USE OF
4 CHEMICAL OR BIOLOGICAL WEAPONS.—The sanc-
5 tions referred to in paragraph (5) are the following:

6 (A) MULTILATERAL DEVELOPMENT BANK
7 ASSISTANCE.—The United States Government
8 shall oppose, in accordance with section 701 of
9 the International Financial Institutions Act (22
10 U.S.C. 262d), the extension of any loan or fi-
11 nancial or technical assistance to the foreign
12 country by international financial institutions.

13 (B) BANK LOANS.—The United States
14 Government shall prohibit any United States
15 bank from making any loan or providing any
16 credit to the government of that country, except
17 for loans or credits for the purpose of purchas-
18 ing food or other agricultural commodities or
19 products.

20 (C) FURTHER RESTRICTIONS.—(i) The au-
21 thorities of this title shall be used to prohibit
22 exports to that country of all items (except for
23 those items described in section 114(k)).

24 (ii) Restrictions shall be imposed on the
25 importation into the United States of goods

1 (which may include petroleum or any petroleum
2 product) that are the growth, product, or man-
3 ufacture of that country.

4 (D) DIPLOMATIC RELATIONS.—The Presi-
5 dent shall use his constitutional authorities to
6 downgrade or suspend diplomatic relations be-
7 tween the United States and the government of
8 that country.

9 (E) PRESIDENTIAL ACTION REGARDING
10 AVIATION.—

11 (i)(I) Within 10 days after the date
12 on which the President provides notice to
13 the government of that country, the Presi-
14 dent shall direct the Secretary of Trans-
15 portation, notwithstanding any air services
16 agreement that may be in effect between
17 the United States and that country, to sus-
18 pend or terminate as soon as practicable
19 the authority of any foreign air carrier of
20 that country to engage in foreign air trans-
21 portation.

22 (II) The President may direct the
23 Secretary of State to terminate any bilat-
24 eral air service agreement between the
25 United States and that country, in accord-

1 ance with the provisions of that agreement,
2 and direct the Secretary of Transportation
3 to terminate the authority of any foreign
4 air carrier of that country to engage in for-
5 eign air transportation at the earliest pos-
6 sible date after the agreement ceases to be
7 effective.

8 (ii) The Secretary of Transportation
9 may make such exceptions from the for-
10 eign air carrier authority provisions of
11 subclauses (I) and (II) of clause (i) as he
12 or she considers necessary to provide for
13 emergencies in which the safety of an air-
14 craft or its crew or passengers would be
15 threatened.

16 (iii) For purposes of this subpara-
17 graph, the terms “air transportation”,
18 “foreign air carrier”, and “foreign air
19 transportation” have the meanings given
20 those terms in section 101 of the Federal
21 Aviation Act of 1958 (49 U.S.C. App.
22 1301).

23 (e) REMOVAL OF SANCTIONS.—

24 (1) FOR VIOLATIONS UNDER SUBSECTION (c).—

25 The President shall remove the sanctions imposed

1 under paragraph (1) or (2) of subsection (c) if the
2 President determines and so certifies to the Con-
3 gress, after the end of the 12-month period begin-
4 ning on the date on which the sanctions were ini-
5 tially imposed, that—

6 (A) reliable information indicates that—

7 (i) the United States person with re-
8 spect to which the determination was made
9 under subsection (c)(1) has ceased all ac-
10 tivities that gave rise to the sanctions; or

11 (ii) the foreign person with respect to
12 which the determination was made under
13 subsection (c)(2) has ceased to contribute
14 to the efforts of any government, group,
15 entity, or project to use, design, develop,
16 produce, stockpile, or otherwise acquire
17 chemical or biological weapons or missiles;
18 and

19 (B) the President has received reliable as-
20 surances from that United States person or for-
21 eign person that such person will not, in the fu-
22 ture, perform any of the actions described in
23 subsection (c) (1) or (2) (as the case may be).

24 (2) FOR VIOLATIONS UNDER SUBSECTION
25 (d).—The President shall remove the sanctions im-

1 posed with respect to a country under paragraph (4)
2 or (6) of subsection (d) if the President determines
3 and so certifies to the Congress, after the end of the
4 12-month period beginning on the date on which
5 such sanctions were initially imposed, that—

6 (A) the government of that country has
7 provided reliable assurances that it will not use
8 chemical or biological weapons in violation of
9 international law and will not use lethal chemi-
10 cal or biological weapons against its own na-
11 tionals;

12 (B) the government is not making prepara-
13 tions to use chemical or biological weapons in
14 violation of international law or to use lethal
15 chemical or biological weapons against its own
16 nationals;

17 (C) the government is willing to allow on-
18 site inspections by United Nations observers or
19 other internationally recognized, impartial ob-
20 servers to verify that it is not making prepara-
21 tions to use chemical or biological weapons in
22 violation of international law or to use lethal
23 chemical or biological weapons against its own
24 nationals, or other reliable means exist to verify
25 that it is not making such preparations; and

1 (D) the government is making restitution
2 to those affected by any use of chemical or bio-
3 logical weapons in violation of international law
4 or by any use of lethal chemical or biological
5 weapons against its own nationals.

6 (3) AUTHORITY TO REVOKE IMPORT SANCTIONS
7 IN CERTAIN CIRCUMSTANCES.—The President may
8 revoke any import sanction imposed under sub-
9 section (c) or (d) if the President determines, as a
10 result of applicable international dispute settlement
11 proceedings, that the imposition of such sanctions is
12 inconsistent with international legal obligations of
13 the United States and that it is appropriate under
14 the circumstances to comply with such obligations.

15 (f) WAIVERS FOR VIOLATIONS UNDER SUBSECTION
16 (c).—

17 (1) WAIVER.—The President may waive the im-
18 position of sanctions under paragraph (1) or (2) of
19 subsection (c) with respect to a product or service if
20 the President certifies to the Congress that—

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

23 (B) the sanctioned entity is a sole source
24 supplier of the product or service, the product
25 or service is not available from any alternative

1 reliable supplier, and the need for the product
2 or service cannot be met in a timely manner by
3 improved manufacturing processes or techno-
4 logical developments.

5 (2) ADDITIONAL WAIVER.—(A) The President
6 may waive the imposition of any sanction under sub-
7 section (c)(2) if the President determines such waiv-
8 er is essential to the national security of the United
9 States.

10 (B) If the President decides to apply the waiver
11 described in subparagraph (A), the President shall
12 so notify the Congress not less than 20 days before
13 issuing the waiver. Such notification shall include a
14 report fully articulating the rationale and cir-
15 cumstances which led the President to exercise the
16 waiver authority.

17 (3) EXCEPTIONS.—The President shall not
18 apply the sanction under subsection (c)(2) prohibit-
19 ing the importation of the products of a sanctioned
20 entity—

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

23 (i) under existing contracts or sub-
24 contracts, including the exercise of options
25 for production quantities to satisfy require-

1 ments essential to the national security of
2 the United States;

3 (ii) if the President determines that
4 the entity to which the sanctions would be
5 applied is a sole source supplier of the de-
6 fense articles and services, that the defense
7 articles or services are essential to the na-
8 tional security of the United States, and
9 that alternative sources are not readily or
10 reasonably available; or

11 (iii) if the President determines that
12 such articles or services are essential to the
13 national security of the United States
14 under defense coproduction agreements or
15 Programs of Cooperation of the North At-
16 lantic Treaty Organization;

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

21 (C) to—

22 (i) spare parts;

23 (ii) components parts, but not finished
24 products, essential to United States prod-
25 ucts or production;

1 (iii) routine services and maintenance
2 of products, to the extent that alternative
3 sources are not readily or reasonably avail-
4 able; or

5 (iv) information or technology essen-
6 tial to United States products or produc-
7 tion.

8 (4) EXEMPTION FOR CERTAIN TRANS-
9 ACTIONS.—The President shall not apply the sanc-
10 tion under paragraph (1)(B)(i) or paragraph
11 (2)(B)(i) of subsection (c) with respect to any trans-
12 action subject to the reporting requirements under
13 title V of the National Security Act of 1947, relating
14 to congressional oversight of intelligence activities.

15 (g) WAIVERS OF VIOLATIONS UNDER SUBSECTION
16 (d).—

17 (1) CRITERIA FOR WAIVER.—The President
18 may waive the application of any sanction imposed
19 with respect to a country under paragraph (4) or (6)
20 of subsection (d)—

21 (A) if—

22 (i) in the case of any sanction other
23 than a sanction specified in subsection
24 (d)(4)(F) or (d)(6)(C)(ii) (relating to im-
25 port restrictions) or (d)(6)(D) (relating to

1 the downgrading or suspension of diplo-
2 matic relations), the President determines
3 and certifies to the Congress that such
4 waiver is essential to the national security
5 interests of the United States, and the
6 President notifies the Committee on For-
7 eign Relations of the Senate and the Com-
8 mittee on Foreign Affairs of the House of
9 Representatives of his determination and
10 certification at least 15 days before the
11 waiver takes effect, in accordance with the
12 procedures applicable to reprogramming
13 notifications under section 634A of the
14 Foreign Assistance Act of 1961; or

15 (ii) in the case of any sanction speci-
16 fied in subsection (d)(4)(F) or (d)(6)(C)(ii)
17 (relating to import restrictions), the Presi-
18 dent determines and certifies to the Con-
19 gress that such waiver is essential to the
20 national security interests of the United
21 States, and the President notifies the Com-
22 mittee on Finance of the Senate and the
23 Committee on Ways and Means and the
24 Committee on Foreign Affairs of the
25 House of Representatives of his determina-

1 tion and certification at least 15 days be-
2 fore the waiver takes effect; or

3 (B) if the President determines and cer-
4 tifies to the Congress that there has been a fun-
5 damental change in the leadership and policies
6 of the government of that country, and if the
7 President notifies the Congress at least 20 days
8 before the waiver takes effect.

9 (2) REPORT.—In the event that the President
10 decides to exercise the waiver authority provided in
11 paragraph (1) with respect to a country, the Presi-
12 dent’s notification to the Congress under such para-
13 graph shall include a report fully articulating the ra-
14 tionale and circumstances which led the President to
15 exercise that waiver authority, including a descrip-
16 tion of the steps which the government of that coun-
17 try has taken to satisfy the conditions set forth in
18 subparagraphs (A) through (D) of subsection (e)(2).

19 (h) CONTRACT SANCTITY.—

20 (1) SANCTIONS NOT APPLIED TO EXISTING
21 CONTRACTS.—(A) A sanction described in subpara-
22 graph (D), (E), or (F) of subsection (d)(4) or in any
23 of subparagraphs (A) through (C) of subsection
24 (d)(6) shall not apply to any activity pursuant to
25 any contract or international agreement entered into

1 before the date of the presidential determination
2 under subsection (d)(1) unless the President deter-
3 mines, on a case-by-case basis, that to apply such
4 sanction to that activity would prevent the perform-
5 ance of a contract or agreement that would have the
6 effect of assisting a country in using chemical or bi-
7 ological weapons in violation of international law or
8 in using lethal chemical or biological weapons
9 against its own nationals.

10 (B) The same restrictions of section 114(l) (re-
11 lating to contract sanctity) which are applicable to
12 exports prohibited under this title shall apply to ex-
13 ports prohibited under subsection (d)(4)(E) or
14 (d)(6)(C)(i). For purposes of this subparagraph, any
15 contract or agreement the performance of which (as
16 determined by the President) would have the effect
17 of assisting a foreign government in using chemical
18 or biological weapons in violation of international
19 law or in using chemical or biological weapons
20 against its own nationals shall be treated as con-
21 stituting a breach of the peace that poses a serious
22 and direct threat to the strategic interest of the
23 United States, within the meaning of subparagraph
24 (A) of section 114(l)(2).

1 (2) SANCTIONS APPLIED TO EXISTING CON-
2 TRACTS.—The sanctions described in subparagraphs
3 (A), (B), and (C) of subsection (d)(4) shall apply to
4 contracts, agreements, and licenses without regard
5 to the date the contract or agreement was entered
6 into or the license was issued (as the case may be),
7 except that such sanctions shall not apply to any
8 contract or agreement entered into or license issued
9 before the date of the presidential determination
10 under subsection (d)(1) if the President determines
11 that the application of such sanction would be det-
12 rimental to the national security interests of the
13 United States.

14 (i) PROTECTION OF CLASSIFIED INFORMATION.—To
15 the extent practicable, reports submitted under this sec-
16 tion should be based on unclassified information. Portions
17 of such reports may be classified.

18 (j) STAY ON IMPOSITION OF SANCTIONS.—

19 (1) AUTHORITY OF THE PRESIDENT.—The
20 President may stay the imposition of sanctions
21 under subsection (c) on any entity in order to pro-
22 tect—

23 (A) any ongoing criminal investigation; or

24 (B) sensitive intelligence sources and meth-
25 ods which are being used to acquire further in-

1 formation on the proliferation of chemical or bi-
2 ological weapons or missiles that would be com-
3 promised by the publication of the sanctioned
4 entity's name.

5 (2) DETERMINATION OF THE PRESIDENT.—The
6 President may exercise the authority under para-
7 graph (1) when the President determines that the
8 nonproliferation goals of this section are better
9 served by delaying the imposition of sanctions rather
10 than by compromising the criminal investigation or
11 intelligence sources or methods concerned.

12 (3) LIFTING OF STAY.—The President shall lift
13 any stay imposed under this subsection as soon as
14 the basis for imposing the stay no longer exists, but
15 in no case later than 30 days after the imposition
16 of the stay.

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

18 (a) APPLICABILITY.—

19 (1) EXEMPTIONS FROM ADMINISTRATIVE PRO-
20 CEDURE.—Except as provided in this section, sec-
21 tions 551 and 553 through 559 of title 5, United
22 States Code, do not apply to the functions exercised
23 under this title.

24 (2) JUDICIAL REVIEW.—(A) Subject to sub-
25 paragraphs (B) and (C) and except as otherwise

1 provided in this section, actions under this title shall
2 be subject to judicial review under chapter 7 of title
3 5, United States Code.

4 (B) Any discretionary determination of whether
5 a commodity or technology should or should not be
6 on the control index shall not be subject to judicial
7 review.

8 (C) An action to obtain judicial review under
9 this subsection may be brought in the appropriate
10 United States district court.

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

13 (1) ADMINISTRATIVE PROCEDURES.—Any civil
14 penalty or administrative sanction under section
15 110(c), and any sanction under section 111(c)(1),
16 may be imposed only after notice and opportunity
17 for an agency hearing on the record in accordance
18 with sections 554 through 557 of title 5, United
19 States Code.

20 (2) AVAILABILITY OF CHARGING LETTER.—Any
21 charging letter or other document initiating adminis-
22 trative proceedings for the imposition of sanctions
23 for violations of the regulations issued under section
24 108(a) shall be made available for public inspection
25 and copying.

1 (c) COLLECTION.—If any person fails to pay a civil
2 penalty imposed under section 110(c), the Secretary may
3 ask the Attorney General to bring a civil action in an ap-
4 propriate district court to recover the amount imposed
5 (plus interest at currently prevailing rates from the date
6 of the final order).

7 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

8 (1) GROUNDS FOR IMPOSITION.—In any case in
9 which there is reasonable cause to believe that a per-
10 son is engaged in or is about to engage in any act
11 or practice which constitutes or would constitute a
12 violation of this title, or any regulation, order, or li-
13 cense issued under this title, or in any case in which
14 a criminal indictment has been returned against a
15 person alleging a violation of this title or any of the
16 statutes listed in section 110(f), the Secretary may,
17 without a hearing, issue an order temporarily deny-
18 ing that person's United States export privileges
19 (hereafter in this subsection referred to a "tem-
20 porary denial order"). A temporary denial order may
21 be effective for no longer than 180 days, but may be
22 renewed by the Secretary, following notice and an
23 opportunity for a hearing, for additional periods of
24 not more than 180 days each.

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

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

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

21 The decision of the administrative law judge shall be
22 final unless, within 10 working days after the date
23 of the administrative law judge's decision, an appeal
24 is filed with the Secretary. On appeal, the Secretary
25 shall either affirm, modify, reverse, or vacate the de-

1 cision of the administrative law judge by written
2 order within 10 working days after receiving the ap-
3 peal. The written order of the Secretary shall be
4 final and is not subject to judicial review, except as
5 provided in paragraph (3). The materials submitted
6 to the administrative law judge and the Secretary
7 shall constitute the administrative record for pur-
8 poses of review by the court.

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

1 listed in section 110(f). The court shall vacate the
2 Secretary's order if the court finds that the Sec-
3 retary's order is arbitrary, capricious, an abuse of
4 discretion, or otherwise not in accordance with law.

5 (e) APPEALS FROM LICENSING AND CLASSIFICATION
6 ACTIONS.—

7 (1) LICENSE DENIALS.—A determination of the
8 Secretary under section 109 to deny a license may
9 be appealed by the applicant to an administrative
10 law judge who shall have the authority to conduct
11 proceedings to determine only whether the item
12 sought to be exported is in fact on the control list.
13 Such proceedings shall be conducted within 90 days
14 after the appeal is filed. Any determination by an
15 administrative law judge under this subsection and
16 all materials filed before such judge in the proceed-
17 ings shall be reviewed by the Secretary, who shall ei-
18 ther affirm or vacate the determination in a written
19 decision within 30 days after receiving the deter-
20 mination.

21 (2) CLASSIFICATION DECISIONS.—(A) Within
22 30 days after the issuance of a classification decision
23 under section 109(h)(1), or within 30 days after the
24 failure to issue such a classification decision in re-
25 sponse to a request for such a decision, any United

1 States person aggrieved by such decision or failure
2 may file an appeal thereof to an administrative law
3 judge, but only on issues regarding such classifica-
4 tion decision including, but not limited to, decisions
5 of whether an item is covered by any general or spe-
6 cific note. The administrative law judge may not re-
7 view determinations as to the reliability of an end
8 user or the nature of an end use or end user. The
9 administrative law judge shall, within 90 days after
10 such appeal is filed, issue his or her decision and
11 issue any order that is necessary or appropriate to
12 carry out such decision. Such order shall be binding
13 upon the Secretary unless and until vacated or modi-
14 fied under subparagraph (B). Such order may be
15 stayed by the administrative law judge or the Sec-
16 retary pending the filing and determination of an
17 appeal under subparagraph (B).

18 (B) Any United States person aggrieved by a
19 decision of the administrative law judge under sub-
20 paragraph (A) may appeal such decision to the Sec-
21 retary within 45 days after receiving notification of
22 such decision. The Secretary shall, in a written
23 order, affirm, modify, or vacate the decision of the
24 administrative law judge within 30 days after such
25 appeal is filed. The authority of the Secretary under

1 this paragraph may not be delegated to an officer or
2 employee of the Bureau of Export Administration.

3 (3) PUBLICATION AND INDEXING OF DECISIONS.—Subject to the limitations of section 114(g),
4 final decisions of administrative law judges and the
5 Secretary under this subsection shall be published in
6 the Federal Register within 15 days after they are
7 rendered. The Secretary shall index decisions on ap-
8 peals of license denials.

10 (4) CONDUCT OF PROCEEDINGS.—Except as
11 provided in this subsection, proceedings under this
12 subsection shall be conducted in accordance with
13 sections 554 (notwithstanding subsection (a)(4) of
14 such section), 556, and 557 of title 5, United States
15 Code.

16 (5) REGULATIONS.—The Secretary shall issue
17 such regulations as are necessary to carry out this
18 subsection.

19 (6) OTHER RIGHTS NOT AFFECTED.—The
20 rights granted by this subsection do not abridge any
21 other rights provided by law.

22 (7) EFFECTIVE DATE.—This subsection shall
23 take effect 120 days after the date of the enactment
24 of this Act. Regulations implementing this sub-

1 section shall be promulgated no later than such ef-
2 fective date.

3 **SEC. 113. ENFORCEMENT.**

4 (a) GENERAL AUTHORITY AND DESIGNATION.—

5 (1) POLICY GUIDANCE ON ENFORCEMENT.—

6 The Secretary, in consultation with the Secretary of
7 the Treasury and the heads of other appropriate de-
8 partments and agencies, shall be responsible for pro-
9 viding policy guidance on the enforcement of this
10 title.

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

21 (B) In carrying out the enforcement authorities
22 described in paragraph (3), the Commissioner of
23 Customs, and employees of the United States Cus-
24 toms Service designated by the Commissioner, may
25 make investigations within or outside the United

1 States and at those ports of entry or exit from the
2 United States where officers of the United States
3 Customs Service are authorized by law to carry out
4 such enforcement responsibilities. Subject to para-
5 graph (3), the United States Customs Service is au-
6 thorized, in the enforcement of this title, to search,
7 detain (after search), and seize commodities or tech-
8 nology at those ports of entry or exit from the Unit-
9 ed States where officers of the Customs Service are
10 authorized by law to conduct such searches, deten-
11 tions, and seizures, and at those places outside the
12 United States where the Customs Service, pursuant
13 to agreements or other arrangements with other
14 countries, is authorized to perform enforcement ac-
15 tivities.

16 (C) In carrying out the enforcement authorities
17 described in paragraph (3), the Secretary, and offi-
18 cers and employees of the Department of Commerce
19 designated by the Secretary, may make investiga-
20 tions within the United States, and shall conduct,
21 outside the United States, pre-license and post-ship-
22 ment verifications of items licensed for export and
23 investigations in the enforcement of section 108. The
24 Secretary, and officers and employees of the Depart-
25 ment of Commerce designated by the Secretary, are

1 authorized to search, detain (after search), and seize
2 items at those places within the United States other
3 than those ports and borders specified in subpara-
4 graph (B). The search, detention (after search), or
5 seizure of items at those ports and borders specified
6 in subparagraph (B) may be conducted by officers
7 and employees of the Department of Commerce only
8 with the concurrence of the Commissioner of Cus-
9 toms or a person designated by the Commissioner.

10 (D) The Secretary and the Commissioner of
11 Customs may enter into agreements and arrange-
12 ments for the enforcement of this title, including for-
13 eign investigations and information exchange.

14 (3) SPECIFIC AUTHORITIES.—(A) Any officer or
15 employee designated under paragraph (2) may do
16 the following in carrying out the enforcement au-
17 thority under this title:

18 (i) Make investigations of, obtain informa-
19 tion from, make inspection of any books,
20 records, or reports (including any writings re-
21 quired to be kept by the Secretary), premises,
22 or property of, and take the sworn testimony of,
23 any person.

24 (ii) Administer oaths or affirmations, and
25 by subpoena require any person to appear and

1 testify or to appear and produce books, records,
2 and other writings, or both. In the case of con-
3 tumacy by, or refusal to obey a subpoena issued
4 to, any such person, a district court of the
5 United States, after notice to any such person
6 and a hearing, shall have jurisdiction to issue
7 an order requiring such person to appear and
8 give testimony or to appear and produce books,
9 records, and other writings, or both. Any failure
10 to obey such order of the court may be pun-
11 ished by such court as a contempt thereof.

12 (B)(i) Any officer or employee of the Office of
13 Export Enforcement of the Department of Com-
14 merce who is designated by the Secretary under
15 paragraph (2), and any officer or employee of the
16 United States Customs Service who is designated by
17 the Commissioner of Customs under paragraph (2),
18 may do the following in carrying out the enforce-
19 ment authority under this title:

20 (I) Execute any warrant or other process
21 issued by a court or officer of competent juris-
22 diction with respect to the enforcement of this
23 title.

24 (II) Make arrests without warrant for any
25 violation of this title committed in his or her

1 presence or view, or if the officer or employee
2 has probable cause to believe that the person to
3 be arrested has committed, is committing, or is
4 about to commit such a violation.

5 (III) Carry firearms in carrying out any
6 activity under subclause (I) or (II).

7 (ii) The exercise of authorities under clause (i)
8 by officers and employees of the Office of Export
9 Enforcement of the Department of Commerce shall
10 be pursuant to guidelines approved by the Attorney
11 General.

12 (C) Any officer or employee of the United
13 States Customs Service designated by the Commis-
14 sioner of Customs under paragraph (2) may do the
15 following in carrying out the enforcement authority
16 under this title:

17 (i) Stop, search, and examine a vehicle,
18 vessel, aircraft, or person on which or whom the
19 officer or employee has reasonable cause to sus-
20 pect there is any item that has been, is being,
21 or is about to be exported from or transited
22 through the United States in violation of this
23 title.

24 (ii) Detain and search any package or con-
25 tainer in which the officer or employee has rea-

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

5 (D) Any officer or employee designated under
6 paragraph (2) may detain (after search under sub-
7 paragraph (C)) or seize any item, for purposes of se-
8 curing for trial or forfeiture to the United States, on
9 or about a vehicle, vessel, aircraft, or person de-
10 scribed in subparagraph (C)(i), or in a package or
11 container described in subparagraph (C)(ii), if the
12 officer or employee has probable cause to believe the
13 item has been, is being, or is about to be exported
14 from or transited through the United States in viola-
15 tion of this title.

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

19 (b) REFERRAL OF CASES.—All cases involving viola-
20 tions of this title shall be referred to the Secretary for
21 purposes of determining civil penalties and administrative
22 sanctions under section 110(c), or to the Attorney General
23 for criminal action in accordance with this title.

24 (c) UNDERCOVER INVESTIGATION OPERATIONS.—

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

7 (A) funds made available for export en-
8 forcement under this title may be used to pur-
9 chase property, buildings, and other facilities,
10 and to lease space within the United States,
11 without regard to sections 1341 and 3324 of
12 title 31, United States Code, the third undesign-
13 ated paragraph under the heading of “MIS-
14 CELLANEOUS” of the Act of March 3, 1877, (40
15 U.S.C. 34), sections 3732(a) and 3741 of the
16 Revised Statutes of the United States (41
17 U.S.C. 11(a) and 22), and subsections (a) and
18 (c) of section 304, and section 305 of the Fed-
19 eral Property and Administrative Services Act
20 of 1949 (41 U.S.C. 254(a) and (c) and 255),

21 (B) funds made available for export en-
22 forcement under this title may be used to estab-
23 lish or to acquire proprietary corporations or
24 business entities as part of an undercover oper-
25 ation, and to operate such corporations or busi-

1 ness entities on a commercial basis, without re-
2 gard to section 9102 of title 31, United States
3 Code,

4 (C) funds made available for export en-
5 forcement under this title and the proceeds
6 from undercover operations may be deposited in
7 banks or other financial institutions without re-
8 gard to the provisions of section 648 of title 18,
9 United States Code, and section 3302 of title
10 31, United States Code, and

11 (D) the proceeds from undercover oper-
12 ations may be used to offset necessary and rea-
13 sonable expenses incurred in such operations
14 without regard to the provisions of section 3302
15 of title 31, United States Code,

16 if the Director of OEE (or an officer or employee
17 designated by the Director) certifies, in writing, that
18 the action authorized by subparagraph (A), (B), (C),
19 or (D) for which the funds would be used is nec-
20 essary for the conduct of the undercover operation.

21 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
22 corporation or business entity established or ac-
23 quired as part of an undercover operation with a net
24 value of more than \$50,000 is to be liquidated, sold,
25 or otherwise disposed of, the Director of OEE shall

1 report the circumstances to the Secretary and the
2 Comptroller General, as much in advance of such
3 disposition as the Director of OEE or his or her des-
4 ignee determines is practicable. The proceeds of the
5 liquidation, sale, or other disposition, after obliga-
6 tions incurred by the corporation or business enter-
7 prise are met, shall be deposited in the Treasury of
8 the United States as miscellaneous receipts.

9 (3) DEPOSIT OF PROCEEDS.—As soon as the
10 proceeds from an OEE undercover investigative op-
11 eration with respect to which an action is authorized
12 and carried out under this subsection are no longer
13 necessary for the conduct of such operation, such
14 proceeds or the balance of such proceeds remaining
15 at the time shall be deposited into the Treasury of
16 the United States as miscellaneous receipts.

17 (4) AUDIT AND REPORT.—(A) The Director of
18 OEE shall conduct a detailed financial audit of each
19 OEE undercover investigative operation which is
20 closed and shall submit the results of the audit in
21 writing to the Secretary. Not later than 180 days
22 after an undercover operation is closed, the Sec-
23 retary shall submit to the Congress a report on the
24 results of the audit.

1 (B) The Secretary shall submit annually to the
2 Congress a report, which may be included in the an-
3 nual report under section 115, specifying the follow-
4 ing information:

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

8 (ii) The number of undercover investigative
9 operations commenced in the 1-year period pre-
10 ceeding the period for which such report is sub-
11 mitted.

12 (iii) The number of undercover investiga-
13 tive operations closed in the 1-year period pre-
14 ceeding the period for which such report is sub-
15 mitted and, with respect to each such closed un-
16 dercover operation, the results obtained and any
17 civil claims made with respect thereto.

18 (5) DEFINITIONS.—For purposes of paragraph
19 (4)—

20 (A) the term “closed”, with respect to an
21 undercover investigative operation, refers to the
22 earliest point in time at which all criminal pro-
23 ceedings (other than appeals) pursuant to the
24 investigative operation are concluded, or covert

1 activities pursuant to such operation are con-
2 cluded, whichever occurs later;

3 (B) the terms “undercover investigative
4 operation” and “undercover operation” mean
5 any undercover investigative operation con-
6 ducted by OEE—

7 (i) in which the gross receipts (exclud-
8 ing interest earned) exceed \$25,000, or ex-
9 penditures (other than expenditures for
10 salaries of employees) exceed \$75,000, and

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

13 except that clauses (i) and (ii) shall not apply
14 with respect to the report to the Congress re-
15 quired by subparagraph (B) of paragraph (4);
16 and

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

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

1 **SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCE-**
2 **DURES.**

3 (a) POLICY GUIDANCE.—

4 (1) IN GENERAL.—As directed by the Presi-
5 dent, annual policy guidance shall be issued to pro-
6 vide detailed implementing guidance to export licens-
7 ing officials in all appropriate departments and
8 agencies.

9 (2) ELEMENTS OF ANNUAL POLICY REVIEW.—

10 In order to develop such annual policy guidance, ex-
11 port controls and other regulations to implement
12 this title shall be reviewed annually. This annual pol-
13 icy review shall include an evaluation of the benefits
14 and costs of the imposition, extension, or removal of
15 controls under this title. This review shall include—

16 (A) an assessment by the Secretary of the
17 economic consequences of the imposition, exten-
18 sion, or removal of controls during the preced-
19 ing 12 months, including the impact on United
20 States exports or jobs;

21 (B) an assessment by the Secretary of
22 State of the objectives of the controls in effect
23 during the preceding 12 months, and the extent
24 to which the controls have served those objec-
25 tives; and

1 (C) an assessment by the Secretary of De-
2 fense of the impact that the imposition, exten-
3 sion, or removal of controls during the preced-
4 ing 12 months has had on United States na-
5 tional security.

6 (b) EXPORT CONTROL AUTHORITY AND FUNC-
7 TIONS.—

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

13 (2) DELEGATION OF FUNCTIONS OF THE SEC-
14 RETARY.—The Secretary may delegate any function
15 under this title to the Under Secretary of Commerce
16 for Export Administration appointed under sub-
17 section (d) or to any other officer of the Department
18 of Commerce.

19 (c) EXPORT CONTROL POLICY COMMITTEE.—

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

23 (2) FUNCTIONS.—The Committee shall—

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

4 (B) review policy recommendations pro-
5 posed by the Secretary and other members of
6 the Committee; and

7 (C) receive policy recommendations from
8 other agencies and resolve any policy disputes
9 among departments and agencies under this
10 title.

11 (3) MEMBERSHIP.—The Committee shall be
12 comprised of—

13 (A) the Secretary;

14 (B) the Secretary of Defense;

15 (C) the Secretary of Energy;

16 (D) the Secretary of State;

17 (E) the National Security Adviser;

18 (F) the National Economic Adviser;

19 (G) the Secretary of the Treasury;

20 (H) the United States Trade Representa-
21 tive; and

22 (I) the Director of the Arms Control and
23 Disarmament Agency.

1 (4) CHAIR.—The Committee shall be jointly
2 chaired by the National Economic Adviser and the
3 National Security Adviser.

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

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

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

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

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

5 (2) TRANSITION PROVISIONS.—Those individ-
6 uals serving in the positions of Under Secretary of
7 Commerce for Export Administration and Assistant
8 Secretaries of Commerce under section 15(a) of the
9 Export Administration Act of 1979, on the day be-
10 fore the date of the enactment of this Act, shall be
11 deemed to have been appointed under paragraph (1)
12 as of such date of enactment.

13 (e) ISSUANCE OF REGULATIONS.—The President and
14 the Secretary may issue such regulations as are necessary
15 to carry out this title. Any such regulations the purpose
16 of which is to carry out section 105 or 106 may be issued
17 only after the regulations are submitted for review to such
18 departments or agencies as the President considers appro-
19 priate, and to any appropriate export advisory committee
20 appointed under section 104(f). The preceding sentence
21 does not require the concurrence or approval of any offi-
22 cial, department, or agency to which such regulations are
23 submitted.

24 (f) AMENDMENTS TO REGULATIONS.—If the Sec-
25 retary proposes to amend regulations issued under this

1 title, the Secretary shall report to the Committee on Bank-
2 ing, Housing, and Urban Affairs of the Senate and the
3 Committee on Foreign Affairs of the House of Representa-
4 tives on the intent and rationale of such amendments.
5 Such report shall evaluate the cost and burden to the
6 United States exporters of the proposed amendments in
7 relation to any enhancement of licensing objectives. The
8 Secretary shall consult with the appropriate export advi-
9 sory committees appointed under section 104(f) in formu-
10 lating or amending regulations issued under this title.

11 (g) CONFIDENTIALITY OF INFORMATION.—

12 (1) EXEMPTIONS FROM DISCLOSURE.—

13 (A) Except as otherwise provided by the
14 third sentence of section 108(b)(2), information
15 obtained under the Export Administration Act
16 of 1979 and its predecessor statutes on or be-
17 fore June 30, 1980, which is deemed confiden-
18 tial, including Shipper's Export Declarations, or
19 with reference to which a request for confiden-
20 tial treatment is made by the person furnishing
21 such information, shall be exempt from disclo-
22 sure under section 552 of title 5, United States
23 Code, and such information shall not be pub-
24 lished or disclosed unless the Secretary deter-

1 mines that the withholding thereof is contrary
2 to the national interest.

3 (B) Except as otherwise provided by the
4 third sentence of section 108(b)(2), information
5 obtained under this title or under the Export
6 Administration Act of 1979 after June 30,
7 1980, may be withheld from disclosure only to
8 the extent permitted by statute, except that in-
9 formation submitted, obtained, or considered in
10 connection with an application for an export li-
11 cense or other export authorization under the
12 Export Administration Act of 1979 or this title,
13 including the export license or other export au-
14 thorization itself, classification requests de-
15 scribed in section 109(h)(1), information ob-
16 tained during the course of a foreign availabil-
17 ity assessment, information or evidence ob-
18 tained in the course of any investigation, and
19 information obtained or furnished under this
20 title in connection with international agree-
21 ments, treaties, or obligations shall be withheld
22 from public disclosure unless the release of such
23 information is determined by the Secretary to
24 be in the national interest.

25 (2) INFORMATION TO CONGRESS AND GAO.—

1 (A) IN GENERAL.—Nothing in this title
2 shall be construed as authorizing the withhold-
3 ing of information from the Congress or from
4 the General Accounting Office.

5 (B) AVAILABILITY TO THE CONGRESS.—

6 (i) IN GENERAL.—All information ob-
7 tained at any time under this title or pre-
8 vious Acts regarding the control of exports,
9 including any report or license application
10 required under this title, shall be made
11 available to any committee or subcommit-
12 tee of Congress of appropriate jurisdiction
13 upon the request of the chairman or rank-
14 ing minority member of such committee or
15 subcommittee.

16 (ii) PROHIBITION ON FURTHER DIS-
17 CLOSURE.—No committee, subcommittee,
18 or Member of Congress shall disclose any
19 information obtained under this title or
20 previous Acts regarding the control of ex-
21 ports which is submitted on a confidential
22 basis to the Congress under clause (i) un-
23 less the full committee to which the infor-
24 mation is made available determines that

1 the withholding of the information is con-
2 trary to the national interest.

3 (C) AVAILABILITY TO THE GAO.—

4 (i) IN GENERAL.—Notwithstanding
5 paragraph (1), information referred to in
6 subparagraph (B) shall, consistent with
7 the protection of intelligence, counterintel-
8 ligence, and law enforcement sources,
9 methods, and activities, as determined by
10 the agency that originally obtained the in-
11 formation, and consistent with the provi-
12 sions of section 716 of title 31, United
13 States Code, be made available only by the
14 agency, upon request, to the Comptroller
15 General of the United States or to any of-
16 ficer or employee of the General Account-
17 ing Office authorized by the Comptroller
18 General to have access to such informa-
19 tion.

20 (ii) PROHIBITION ON FURTHER DIS-
21 CLOSURES.—No officer or employee of the
22 General Accounting Office shall disclose,
23 except to the Congress in accordance with
24 this paragraph, any such information
25 which is submitted on a confidential basis

1 and from which any individual can be iden-
2 tified.

3 (3) INFORMATION EXCHANGE.—Notwithstand-
4 ing paragraph (1), the Secretary and the Commis-
5 sioner of Customs shall exchange licensing and en-
6 forcement information with each other which is nec-
7 essary to facilitate enforcement efforts and effective
8 license decisions.

9 (4) PENALTIES FOR DISCLOSURE OF CON-
10 FIDENTIAL INFORMATION.—(A) Any officer or em-
11 ployee of the United States, or any department or
12 agency thereof, who publishes, divulges, discloses, or
13 makes known in any manner or to any extent not
14 authorized by law any information under this title or
15 the Export Administration Act of 1979 that—

16 (i) he or she obtains in the course of his
17 or her employment or official duties or by rea-
18 son of any examination or investigation made
19 by, or report or record made to or filed with,
20 such department or agency, or officer or em-
21 ployee thereof, and

22 (ii) is exempt from disclosure under this
23 subsection,

24 shall be subject to the penalties set forth in subpara-
25 graph (B).

1 (B) The penalties for a violation under sub-
2 paragraph (A) are as follows:

3 (i) If the officer or employee acted know-
4 ingly, he or she shall be fined not more than
5 \$10,000, or imprisoned not more than one year,
6 or both, and shall be removed from office or
7 employment.

8 (ii) The officer or employee shall, either in
9 addition to or in lieu of any other penalty that
10 may be imposed, be subject to a civil penalty of
11 not more than \$1,000 imposed by the Secretary
12 under section 110(c) for each violation under
13 subparagraph (A).

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

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

7 (i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
8 TROL PROGRAM.—The Secretary is authorized to provide
9 training to officials of other countries on the principles
10 and procedures for the implementation of effective export
11 controls and shall participate in any such training pro-
12 vided by other departments and agencies of the United
13 States.

14 (j) INCORPORATED COMMODITIES AND TECH-
15 NOLOGY.—

16 (1) COMMODITIES CONTAINING CONTROLLED
17 PARTS AND COMPONENTS.—Export licenses may not
18 be required under this title or any other provision of
19 law for a commodity solely because the commodity
20 contains parts or components on which export con-
21 trols are in effect under this title if such parts or
22 components—

23 (A) are essential to the functioning of the
24 commodity;

1 (B) are customarily included in sales of the
2 commodity in countries other than controlled
3 countries; and

4 (C) comprise 25 percent or less of the total
5 value of the commodity,

6 unless the commodity itself, if exported, would by
7 virtue of the functional characteristics of the com-
8 modity as a whole meet the requirements of sub-
9 paragraph (A) or (B) of section 105(a)(1).

10 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-
11 CORPORATING U.S. ITEMS.—

12 (A) COMMODITIES.—(i) Subject to clause
13 (ii), no authority or permission may be required
14 under section 105 or 106 to reexport a com-
15 modity that is produced in a country other than
16 the United States and incorporates commodities
17 that are subject to the jurisdiction of the
18 United States, if the value of the controlled
19 United States content of the commodity pro-
20 duced in such other country is 25 percent or
21 less of the total value of the commodity.

22 (ii) No authority or permission may be re-
23 quired under section 106 to reexport to a ter-
24 rorist country, or to a country against which an
25 embargo described in section 106(f)(1) is in ef-

1 fect, a commodity that is produced in a country
2 other than the United States and incorporates
3 commodities that are subject to the jurisdiction
4 of the United States, if the value of the con-
5 trolled United States content of the commodity
6 produced in such other country is 10 percent or
7 less of the total value of the commodity.

8 (iii) For purposes of clause (ii), a “terror-
9 ist country” is a country with respect to which
10 a determination is in effect that was made
11 under section 106(i)(1)(A) of this Act, or sec-
12 tion 6(j)(1)(A) of the Export Administration
13 Act of 1979, that the government of such coun-
14 try has repeatedly provided support for acts of
15 international terrorism.

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

1 (ii) No authority or permission may be re-
2 quired under section 106 to reexport technology
3 that is produced in a country other than the
4 United States and is commingled with or drawn
5 from technology that is produced in the United
6 States, if the value of the controlled United
7 States content of the technology produced in
8 such other country is 10 percent or less of the
9 total value of the technology.

10 (C) CONTROLLED CONTENT.—For pur-
11 poses of this paragraph, the “controlled United
12 States content” of a commodity or technology
13 means those commodities or technology that—

14 (i) are subject to the jurisdiction of
15 the United States;

16 (ii) are incorporated into the commod-
17 ity or technology; and

18 (iii) would, at the time of the reex-
19 port, require a validated license under sec-
20 tion 105 or 106 if exported from the Unit-
21 ed States to a country to which the com-
22 modity or technology is to be reexported.

23 (D) TREATMENT OF CERTAIN TECHNICAL
24 DATA.—For purposes of this subsection, tech-
25 nology and source code used to design or

1 produce commodities or software produced in a
2 country other than the United States are not
3 incorporated into such commodities or software.

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

6 (1) medicine or medical supplies; or

7 (2) donations of items that are intended to
8 meet basic human needs, including food, educational
9 materials, seeds, hand tools, water resources equip-
10 ment, clothing and shelter materials, and basic
11 household supplies.

12 (l) SANCTITY OF EXISTING CONTRACTS AND LI-
13 CENSES.—

14 (1) IN GENERAL.—The President may not pro-
15 hibit the export of items under section 105 or 106—

16 (A) in performance of a contract, agree-
17 ment, or other contractual commitment entered
18 into before the effective date of any export con-
19 trols imposed on such items by this title, or the
20 date on which the President reports to the Con-
21 gress the President's intention to impose con-
22 trols on the export of such items, whichever
23 date occurs first, or

24 (B) under a validated license or other au-
25 thorization issued under this title before the ef-

1 fective date of any export controls imposed on
2 such items by this title, or the date on which
3 the President reports to the Congress the Presi-
4 dent's intention to impose controls on the ex-
5 port of such items, whichever date occurs first.

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

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

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

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

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

21 (m) PUBLICATION OF ACTIONS.—

22 (1) DECISIONS AND ACTIONS OF THE SEC-
23 RETARY.—

24 (A) IN GENERAL.—The Secretary shall
25 publish in the Federal Register, to the greatest

1 extent practicable, actions, procedures, and de-
2 cisions of the Secretary under this title, taking
3 into account restrictions on disclosure of classi-
4 fied or confidential information. The following
5 determinations of the Secretary shall in every
6 case be published in the Federal Register, un-
7 less a private party requested the determination
8 and asked that it not be published:

9 (i) Classification of a commodity or
10 technology on the control index.

11 (ii) Calculation of a commonly-used
12 control index parameter for a commodity
13 or technology, including all officially ac-
14 cepted composite theoretical performance
15 calculations for computers and
16 microprocessors.

17 (B) NOTICE OF REVISIONS.—Whenever the
18 Secretary makes any revision in the control
19 index with respect to any commodity or tech-
20 nology, or with respect to any country or des-
21 tination affected by controls imposed under sec-
22 tion 105 or section 106, the Secretary shall
23 publish in the Federal Register a notice of such
24 revision and shall specify in such notice under
25 which authority the revision is being made.

1 (2) EXPORT CONTROL REGIME ACTIONS.—

2 (A) IN GENERAL.—Not more than 90 days
3 after the date of the enactment of this Act, the
4 Secretary shall publish in the Federal Register
5 the full text of the lists of controlled items of
6 all export control regimes and all notes and un-
7 derstandings of the regimes concerning such
8 lists. The Secretary shall update the publication
9 under the preceding sentence at least once in
10 each 1-year period occurring after the original
11 publication under this subparagraph.

12 (B) CONTENTS.—The Secretary shall pub-
13 lish in the Federal Register—

14 (i) the full text of any agreements af-
15 fecting the lists of controlled items of all
16 export control regimes, together with all
17 notes, understandings, and other aspects of
18 such agreements and all revisions to such
19 texts;

20 (ii) subject to the limitations set forth
21 in subsection (g), decisions on requests for
22 exceptions permitted by such export con-
23 trol regimes for particular exports;

1 (iii) other actions and decisions of
2 such export control regimes, to the maxi-
3 mum extent possible; and

4 (iv) unreliable end users with respect
5 to items on which export controls are im-
6 posed under this title, and persons to
7 whom sanctions have been applied, or
8 whose export privileges have been denied,
9 under this title.

10 (C) TIMING.—Such publication shall be
11 made not more than 30 days after the agree-
12 ments are reached, the decisions are made, the
13 actions are taken, or the information becomes
14 available, as the case may be.

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

1 (n) NOTIFICATION OF THE PUBLIC; CONSULTATION
2 WITH INDUSTRY; RECORDKEEPING.—

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

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

13 (o) DELEGATION TO COCOM.—The Secretary, or an
14 officer or employee of the Department of Commerce des-
15 ignated by the Secretary, shall be a member of the perma-
16 nent United States delegation to COCOM or its successor
17 export control regime.

18 (p) EXPORT CONTROL ATTACHES.—The Secretary
19 shall assign a full-time export control attache to each of
20 those countries that—

21 (1) pose the greatest threat to the United
22 States and its allies with respect to the proliferation
23 of weapons of mass destruction and missiles; and

24 (2) received exports pursuant to the largest
25 number of licenses issued under sections 105 and

1 106, during the preceding 2 calendar years, as com-
2 pared to licenses issued under such sections for ex-
3 ports to all countries.

4 Each such attache shall give priority to conducting post-
5 shipment verifications, prelicense checks, and other mon-
6 itoring of end uses in the country to which the attache
7 is assigned.

8 (q) AUTHORIZATION FOR TECHNICAL DATA.—A vali-
9 dated license authorizing the export of any commodities
10 or technology under this title shall also authorize the ex-
11 port of operation technical data related to such commod-
12 ities or technology, whether or not such data is specifically
13 referenced in the license or license application, if the tech-
14 nical level of the data does not exceed the level reasonably
15 necessary to install, repair, maintain, inspect, operate, or
16 use the commodities or technology.

17 (r) LICENSES FOR SPARE PARTS NOT REQUIRED.—
18 An individual validated license shall not be required under
19 this title for replacement parts which are exported to re-
20 place on a one-for-one basis parts that were in a commod-
21 ity that was lawfully exported from the United States, un-
22 less the President determines that such a license should
23 be required for such parts.

1 **SEC. 115. ANNUAL REPORT.**

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

8 (1) The implementation of the policies set forth
9 in section 103, including delegations of authority by
10 the President under section 104(d), consultations
11 with the export advisory committees established
12 under section 104(f), and any changes in the exer-
13 cise of the authorities contained in sections 105(a),
14 106(a), 107(a), and 108(a).

15 (2) With respect to multilateral export controls
16 imposed or maintained under section 105, the fol-
17 lowing:

18 (A) The effectiveness of each export con-
19 trol regime, as required by section 105(h), in-
20 cluding all information required by section
21 105(h)(2).

22 (B) Adjustments to multilateral export
23 controls.

24 (C) The implementation of the export li-
25 censing treatment authorized by section 105(e).

1 (D) Determinations of foreign availability
2 made under section 105(i), the criteria used to
3 make such determinations, the removal of any
4 export controls under such subsection, and any
5 evidence demonstrating a need to maintain ex-
6 port controls notwithstanding foreign availabil-
7 ity.

8 (E) The operation of the indexing system
9 under section 105(k).

10 (3) With respect to unilateral export controls
11 imposed under section 106, the following:

12 (A) The effectiveness of such controls.

13 (B) Adjustments to such controls pursuant
14 to negotiations under subsections (a)(5) and (c)
15 of section 106.

16 (C) Embargoes imposed, maintained, or re-
17 moved in accordance with section 106, including
18 descriptions of each embargo and the rationale
19 for imposing, maintaining, or removing such
20 embargo.

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

23 (5) Organizational and procedural changes un-
24 dertaken in furtherance of the policies set forth in
25 this title, including changes to increase the efficiency

1 of the export licensing process and to fulfill the re-
2 quirements of section 109, including an accounting
3 of appeals received, and actions taken pursuant
4 thereto, under section 109(g).

5 (6) Violations under section 110 and enforce-
6 ment activities under section 113.

7 (7) The issuance of regulations under this title.

8 (8) The results, in as much detail as may be in-
9 cluded consistent with the strategic and political in-
10 terests of the United States and the need to main-
11 tain the confidentiality of proprietary information, of
12 the reviews of the security control list, and any revi-
13 sions to the list resulting from such reviews, re-
14 quired by section 105.

15 (9) Each of the assessments described in sec-
16 tion 114(a)(2).

17 (b) INFORMATION ON SECTION 111.—

18 (1) INFORMATION TO BE INCLUDED.—The
19 President shall include in each annual report under
20 subsection (a)—

21 (A) a description of the actions taken to
22 carry out section 111, including the imposition
23 and removal of sanctions under such section;

24 (B) a description of the current efforts of
25 foreign countries and subnational groups to ac-

1 quire equipment, materials, or technology to de-
2 velop, produce, or use chemical or biological
3 weapons, together with an assessment of the
4 current and likely future capabilities of such
5 countries and groups to develop, produce, stock-
6 pile, deliver, transfer, or use such weapons;

7 (C) a description of—

8 (i) the use of chemical or biological
9 weapons by foreign countries in violation of
10 international law,

11 (ii) the use of chemical or biological
12 weapons by subnational groups,

13 (iii) substantial preparations by for-
14 eign countries and subnational groups to
15 do so, and

16 (iv) the development, production,
17 stockpiling, or use of chemical or biological
18 weapons by foreign countries and
19 subnational groups; and

20 (D) a description of the extent to which
21 foreign persons or governments have knowingly
22 and materially assisted third countries or
23 subnational groups to acquire equipment, mate-
24 rial, or technology intended to develop, produce,
25 or use chemical or biological weapons.

1 (2) INFORMATION SHOULD BE UNCLASSI-
2 FIED.—To the extent practicable, information sub-
3 mitted under paragraph (1) should be based on un-
4 classified information.

5 **SEC. 116. DEFINITIONS.**

6 As used in this title:

7 (1) AUSTRALIA GROUP.—The term “Australia
8 Group” means the multilateral arrangement in
9 which the United States participates that seeks to
10 prevent the proliferation of chemical and biological
11 weapons.

12 (2) COCOM.—The term “COCOM” means the
13 Coordinating Committee for Multilateral Export
14 Controls, and any successor entity.

15 (3) COMMODITY.—The term “commodity”
16 means any article, natural or manmade substance,
17 material, supply, or manufactured product, including
18 inspection and test equipment, and excluding tech-
19 nical data.

20 (4) CONTROL OR CONTROLLED.—The terms
21 “control” and “controlled” refer to a requirement
22 that an export have a validated license or written re-
23 export authorization.

1 (5) CONTROL INDEX.—The term “control
2 index” means the United States Commodity Control
3 Index established under section 104(c)(1).

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

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

12 (B) consumed or used by only a limited
13 number of end users 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 (7) CONTROLLED COUNTRY, CONTROLLED END
19 USE, AND CONTROLLED END USER.—(A) The term
20 “controlled country” means a country identified
21 under section 105(b)(3), a country on which controls
22 are imposed under section 106, and, for purposes of
23 requiring licenses under section 111(a)(1)(B), a
24 country of concern (as defined in section
25 111(a)(1)(C)).

1 (B) The term “controlled end use” means an
2 end use identified under section 105(b)(3) and an
3 end use for which exports are controlled under sec-
4 tion 106.

5 (C) The term “controlled end user” means an
6 end user identified under section 105(b)(3) and an
7 end user to which exports are controlled under sec-
8 tion 106.

9 (8) COOPERATING COUNTRY.—The term “co-
10 operating country” means a country that, pursuant
11 to an agreement or other arrangement with the
12 United States or an export control regime, controls
13 exports of items that are consistent with the criteria
14 and standards of that export control regime.

15 (9) END USE AND END USER.—(A) The term
16 “end use” means the intended application or use of
17 an item as represented by an export license appli-
18 cant.

19 (B) The term “end user” means the person lo-
20 cated abroad who is the true party in interest in ac-
21 tually receiving an export for the end use designated
22 for the export.

23 (10) EXPORT.—The term “export”—

24 (A) means—

1 (i) an actual shipment, transfer, or
2 transmission of items out of the United
3 States; and

4 (ii) a transfer to any person of items
5 either within the United States or outside
6 of the United States with the knowledge or
7 intent that the items will be shipped out-
8 side the United States, transferred, or
9 transmitted to an unauthorized end user,
10 end use, or destination;

11 (B) includes the transfer of the registra-
12 tion of a satellite or operational control of a
13 satellite from a party resident in the United
14 States to a party resident in another country;
15 and

16 (C) includes the term “reexport”.

17 (11) EXPORT CONTROL REGIME, MULTILAT-
18 ERAL EXPORT CONTROL REGIME, MULTILATERAL
19 REGIME, AND REGIME.—The terms “export control
20 regime”, “multilateral export control regime”, “mul-
21 tilateral regime”, and “regime” each mean a group
22 of two or more countries which includes the United
23 States and the purpose of which is to curtail, by
24 means of cooperative export controls, access to cer-

1 tain items by certain countries, by certain end users,
2 or for certain end uses.

3 (12) FOREIGN AVAILABILITY, AVAILABLE IN
4 FACT TO CONTROLLED COUNTRIES.—The terms
5 “foreign availability” and “available in fact to con-
6 trolled countries” each include production or avail-
7 ability of any item from any country—

8 (A) in which the item is not restricted for
9 export to any controlled country; or

10 (B) in which such export restrictions are
11 determined by the Secretary to be ineffective.

12 For purposes of subparagraph (B), the mere inclu-
13 sion of items on a list of items subject to export con-
14 trols imposed pursuant to a multilateral export con-
15 trol regime shall not alone constitute credible evi-
16 dence that the government of a country provides an
17 effective means of controlling the export of such
18 items to controlled countries.

19 (13) FOREIGN PERSON.—The term “foreign
20 person” means—

21 (A) an individual who is not a United
22 States citizen or an alien admitted for perma-
23 nent residence to the United States;

24 (B) any corporation, partnership, business
25 association, society, trust, organization, or other

1 nongovernmental entity created or organized
2 under the laws of a foreign country or that has
3 its principal place of business outside the Unit-
4 ed States; and

5 (C) any governmental entity of a foreign
6 country that is operating as a business enter-
7 prise.

8 (14) ITEM.—The term “item” means any com-
9 modity or technology.

10 (15) LICENSE.—The term “license” includes
11 both validated licenses and written reexport author-
12 izations.

13 (16) MEMBER OF AN EXPORT CONTROL RE-
14 GIME.—A “member” of an export control regime is
15 a country that participates in that regime.

16 (17) MISSILE.—The term “missile” means any
17 missile system or component listed in category I of
18 the MTCR Annex, and any other unmanned delivery
19 system or component of similar capability, as well as
20 the specially designed production facilities for these
21 systems.

22 (18) MISSILE TECHNOLOGY CONTROL REGIME;
23 MTCR.—The term “Missile Technology Control Re-
24 gime” or “MTCR” means the policy statement and
25 guidelines between the United States, the United

1 Kingdom, the Federal Republic of Germany, France,
2 Italy, Canada, and Japan, announced on April 16,
3 1987, to restrict sensitive missile-related transfers
4 based on the MTCR Annex, and any amendments
5 thereto.

6 (19) MTCR ANNEX.—The term “MTCR
7 Annex” means the Equipment and Technology
8 Annex of the MTCR, and any amendments thereto.

9 (20) NUCLEAR EXPLOSIVE DEVICE.—The term
10 “nuclear explosive device” means any device, wheth-
11 er assembled or disassembled, that is designed to
12 produce an instantaneous release of an amount of
13 nuclear energy from special nuclear material that is
14 greater than the amount of energy that would be re-
15 leased from the detonation of one pound of trinitro-
16 toluene (TNT).

17 (21) NUCLEAR SUPPLIERS’ GROUP.—The term
18 “Nuclear Suppliers’ Group” means the multilateral
19 arrangement in which the United States participates
20 whose purpose is to restrict the transfers of items
21 with relevance to the nuclear fuel cycle or nuclear
22 explosive applications.

23 (22) PERSON.—The term “person” includes the
24 singular and the plural and any individual, partner-
25 ship, corporation, or other form of association, in-

1 including (except when used in the term “foreign per-
2 son” or “United States person”) any government or
3 agency thereof.

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

7 (24) SECRETARY.—The term “Secretary”
8 means the Secretary of Commerce.

9 (25) SOFTWARE.—The term “software” means
10 one or more computer programs or microprograms
11 fixed in any tangible medium of expression.

12 (26) TECHNOLOGY.—The term “technology”
13 means specific information necessary for the devel-
14 opment, production, or use of a commodity, and in-
15 cludes software.

16 (27) UNILATERAL AND UNILATERALLY.—(A)
17 The terms “unilateral” and “unilaterally”, with re-
18 spect to an export control or license treatment, refer
19 to a license requirement or license treatment that is
20 not agreed to by a multilateral regime for any or all
21 of the following elements: the purpose of the license
22 requirement or treatment, the items subject to the
23 license requirement or treatment, the standard of re-
24 view for applications for such license, the domestic
25 and international procedures for review of such li-

1 cense applications, and the controlled countries, and
2 end uses or end users, to which the review policy ap-
3 plies.

4 (B) An export control or license treatment shall
5 be considered to be unilateral or unilaterally main-
6 tained by the United States if it is a restriction, con-
7 dition, or interpretation imposed by the Secretary
8 upon commodities or technology, or upon a license
9 application for the export of commodities or tech-
10 nology, that is not imposed or implemented in simi-
11 lar circumstances by other members of an export
12 control regime, or that is not otherwise specifically
13 permitted by this title.

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

21 (29) UNITED STATES PERSON.—The term
22 “United States person” means any United States
23 resident or national (other than an individual resi-
24 dent outside the United States and employed by
25 other than a United States person), any domestic

1 concern (including any permanent domestic estab-
2 lishment of any foreign concern) and any foreign
3 subsidiary or affiliate (including any permanent for-
4 eign establishment) of any domestic concern which is
5 controlled in fact by such domestic concern, as de-
6 termined under regulations of the President.

7 (30) WEAPONS OF MASS DESTRUCTION.—The
8 term “weapons of mass destruction” means any
9 chemical, biological, or nuclear weapon, including a
10 nuclear explosive device.

11 **SEC. 117. EFFECTS ON OTHER ACTS.**

12 (a) COMMODITY JURISDICTION.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law—

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

19 (B) except as provided in paragraphs (2),
20 (3), and (5), an item which is on the Inter-
21 national Industrial List of COCOM shall be
22 subject to control under this title and not under
23 the Arms Export Control Act; and

24 (C) no item may be included on both the
25 control index and the United States Munitions

1 List after publication of the lists required under
2 paragraph (4) and resolution of any dispute
3 with respect to such lists under paragraph (5).

4 (2) EXCEPTIONS.—(A) An item described in
5 subparagraph (B) that is not on the International
6 Munitions List may be subject to control under the
7 Arms Export Control Act—

8 (i)(I) for a period of 9 months after the
9 date on which the United States proposes to
10 COCOM that the item be added to the Inter-
11 national Munitions List; and

12 (II) for an additional 9-month period, but
13 only if negotiations in COCOM to add the item
14 to the International Munitions List are continu-
15 ing; or

16 (ii) if the Secretary of State, in consulta-
17 tion with the Secretary, so determines, except
18 that if the Secretary disagrees with the Sec-
19 retary of State with respect to such item, the
20 item may be subject to control under the Arms
21 Export Control Act only if the disagreement is
22 resolved by the Secretaries or by the President
23 pursuant to the procedures set forth in sub-
24 paragraphs (B) and (C) of paragraph (5).

1 (B) An item referred to in subparagraph (A) is
2 an item that—

3 (i) is specifically designed, developed, con-
4 figured, adapted, or modified for military or in-
5 telligence application;

6 (ii) does not have significant civil applica-
7 tions; and

8 (iii) is not a component the performance
9 capacity and function of which are essentially
10 equivalent to those used for civil applications.

11 (3) PRESIDENTIAL DETERMINATIONS.—An item
12 that is not on the International Munitions List may
13 be subject to control under the Arms Export Control
14 Act if the President—

15 (A) determines that extraordinary cir-
16 cumstances exist affecting the national security
17 of the United States, which require that the
18 item be controlled under the Arms Export Con-
19 trol Act;

20 (B) proposes to COCOM that the item be
21 added to the International Munitions List; and

22 (C) not later than 10 days after making
23 the determination under subparagraph (A),
24 submits a report to the Speaker of the House
25 of Representatives and the President pro tem-

1 pore of the Senate, describing in detail the rea-
2 sons for the determination, in appropriate clas-
3 sified form, as necessary.

4 (4) PUBLICATION OF LISTS.—

5 (A)(i) Not later than 3 months after the
6 date of the enactment of this Act, the Secretary
7 shall publish the control index and the Sec-
8 retary of State shall publish the United States
9 Munitions List, with all revisions that have
10 been made in accordance with this subsection.

11 (ii) Not later than 3 months after the date
12 of the enactment of this Act, the Secretary of
13 State shall publish in a separate list those items
14 remaining subject to control under the Arms
15 Export Control Act under paragraph (2).

16 (iii) The publications required by clauses
17 (i) and (ii) shall be made in the Federal Reg-
18 ister.

19 (B) If either the Secretary or the Secretary
20 of State fails to publish a revised list in accord-
21 ance with subparagraph (A), there shall be ex-
22 cluded from the list of the Secretary that did
23 not so publish a revised list any item included
24 on the list of the Secretary that did so publish
25 a revised list.

1 (5) COMMODITY JURISDICTION DISPUTE RESO-
2 LUTION.—

3 (A) Whenever—

4 (i) the Secretary or the Secretary of
5 State receives a request to determine
6 whether an item is subject to control under
7 this title or the Arms Export Control Act,

8 (ii) either Secretary finds that an item
9 is included on both the control index and
10 the United States Munitions List,

11 (iii) an item appearing on the list of
12 one Secretary under paragraph (4)(A)(i) is
13 considered by the other Secretary to be
14 under the jurisdiction of that other Sec-
15 retary, or

16 (iv) the Secretary disagrees with the
17 inclusion of an item on the list published
18 under paragraph (4)(A)(ii),

19 the Secretary or the Secretary of State (as the
20 case may be) shall refer the matter and any rel-
21 evant information to the other Secretary.

22 (B) The 2 Secretaries shall have a period
23 of 15 days following the referral of a matter
24 under subparagraph (A) to resolve any dif-
25 ferences with respect to the matter involved.

1 (C) If the 2 Secretaries fail to resolve such
2 differences within that 15-day period, either
3 Secretary may refer the matter to the Presi-
4 dent, who, not later than 15 days after receiv-
5 ing the referral, shall notify the 2 Secretaries of
6 his determination on the matter in dispute.

7 (D) In the event that either the Secretary
8 or the Secretary of State does not respond to
9 a referral under subparagraph (A) by the other
10 Secretary, the Secretary that did not so respond
11 shall be deemed to concur with the other Sec-
12 retary on the matter involved.

13 (6) REFERENCES.—For purposes of this sub-
14 section, any reference to the “International Muni-
15 tions List” or the “International Industrial List” in-
16 cludes a reference to any successor list to the Inter-
17 national Munitions List or the International Indus-
18 trial List, as the case may be.

19 (b) EXPORT CONTROLS ON TELECOMMUNI-
20 CATIONS.—

21 (1) NO LICENSE REQUIRED FOR CIVIL END
22 USES.—The Secretary shall not require a validated
23 license for export or authorization for reexport of
24 telecommunications equipment to civil end users for
25 civil end uses in any of the republics of the former

1 Soviet Union, the People’s Republic of China, Po-
2 land, the Czech Republic, Slovakia, Bulgaria, Roma-
3 nia, Albania, Estonia, Lithuania, Latvia, Cambodia,
4 Laos, Mongolia, or Vietnam.

5 (2) DEFINITIONS.—For purposes of this sub-
6 section, the term “telecommunications equipment”
7 includes—

8 (A) those items described in the Advisory
9 Notes to Category 5 of the Commerce Control
10 List set forth in part 799 of title 15, Code of
11 Federal Regulations, as of April 4, 1994, that
12 indicate likelihood of approval—

13 (i) for country groups QWY and the
14 People’s Republic of China,

15 (ii) only for the People’s Republic of
16 China, or

17 (iii) to specified destinations in coun-
18 try group Y; and

19 (B) those entries and subentries listed in
20 export control classification numbers 5A02A
21 (except subentries h and i), 5A03A, 5A04A,
22 5A05A, 5A06A, 5B01A, 5B02A, 5C01A,
23 5D01A, 5D02A, and 5D03A of the Commerce
24 Control List set forth in part 799 of title 15,
25 Code of Federal Regulations, as of April 4,

1 1994, but not including software designed or
2 modified for the development, production, or
3 use of items controlled under export control
4 classification number 5A01A of the Commerce
5 Control List.

6 (c) ASSESSMENT OF ENCRYPTION SOFTWARE MAR-
7 KET.—

8 (1) PRESIDENTIAL REPORT REQUIRED.—Not
9 later than 150 days after the date of enactment of
10 this Act, the President shall submit a report to the
11 Committee on Banking, Housing, and Urban Affairs
12 of the Senate and the Committee on Foreign Affairs
13 of the House of Representatives.

14 (2) CONTENTS OF REPORT.—The report re-
15 quired by paragraph (1) shall—

16 (A) assess the current and future inter-
17 national market for computer software with
18 encryption;

19 (B) assess the impact of United States
20 encryption export controls on the international
21 competitiveness of the United States computer
22 software industry and their economic con-
23 sequences, including the impact on exports and
24 jobs in the United States computer software in-
25 dustry; and

1 (C) review the types, quality and market
2 penetration of foreign produced encryption soft-
3 ware products and any controls that influence
4 the international marketability of encryption
5 software products.

6 (3) CONSULTATION.—In preparing the report
7 required under paragraph (1), the President shall
8 consult with representatives of the United States
9 computer software industry. Confidential business
10 information provided by United States industry in
11 the course of preparing the report shall not be dis-
12 closed, except with the permission of the submitter
13 or when aggregated so that the source of the infor-
14 mation cannot be identified.

15 (d) IN GENERAL.—To the extent provided in this
16 title, this title shall be construed to modify, repeal, super-
17 sede, and otherwise affect the provisions of any other laws
18 authorizing control over exports of any commodities or
19 technology.

20 (e) COORDINATION OF CONTROLS.—The authority
21 granted under this title and under section 38 of the Arms
22 Export Control Act (22 U.S.C. 2778) shall be exercised
23 in such a manner as to share information regarding the
24 trustworthiness of parties.

1 (f) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding
2 any other provision of law, any civil aircraft product, or
3 any technology used in a civil aircraft product, that is
4 standard equipment certified or scheduled to be certified
5 by the Federal Aviation Administration and is an integral
6 part of such aircraft, shall be subject to export controls
7 exclusively under this title.

8 (g) NONPROLIFERATION CONTROLS.—The provisions
9 of section 109 shall supersede the procedures published
10 pursuant to section 309(c) of the Nuclear Non-Prolifera-
11 tion Act of 1978 (42 U.S.C. 2139a(c)) to the extent such
12 procedures are inconsistent with the provisions of section
13 109.

14 (h) AMENDMENTS TO THE INTERNATIONAL EMER-
15 GENCY ECONOMIC POWERS ACT.—

16 (1) PRESIDENTIAL AUTHORIZATION.—Section
17 203(a) of the International Emergency Economic
18 Powers Act (50 U.S.C. 1702(a)) is amended—

19 (A) by redesignating paragraphs (2) and
20 (3) as paragraphs (3) and (4), respectively, and

21 (B) by inserting after paragraph (1) the
22 following new paragraph:

23 “(2) The President may prohibit or curtail the expor-
24 tation of any items on the United States Commodity Con-
25 trol Index that are subject to the jurisdiction of the United

1 States under this title only to the extent provided in, and
2 subject to the criteria of, sections 105, 106, and 114 of
3 the Export Act of 1994, unless such prohibition or curtail-
4 ment is part of an embargo (as described in section
5 106(f)(1) of the Export Act of 1994) against the country
6 concerned. The preceding sentence shall continue to apply
7 notwithstanding the expiration of the Export Act of
8 1994.”.

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

12 (A) by redesignating section 208 as section
13 209; and

14 (B) by inserting after section 207 the fol-
15 lowing:

16 **“SEC. 208. CONFIDENTIALITY OF INFORMATION.**

17 “(a) EXEMPTIONS FROM DISCLOSURE.—Information
18 obtained under this title before or after the enactment of
19 this section may be withheld only to the extent permitted
20 by statute, except that information submitted, obtained,
21 or considered in connection with an application for an ex-
22 port license or other export authorization under this title,
23 including the export license or other export authorization
24 itself, classification requests, information or evidence ob-
25 tained in the course of any investigation, and information

1 obtained or furnished under this title in connection with
2 international agreements, treaties, or obligations shall be
3 withheld from public disclosure unless the release of such
4 information is determined by the Secretary to be in the
5 national interest.

6 “(b) INFORMATION TO CONGRESS AND GAO.—

7 “(1) IN GENERAL.—Nothing in this title shall
8 be construed as authorizing the withholding of infor-
9 mation from the Congress or from the General Ac-
10 counting Office.

11 “(2) AVAILABILITY TO THE CONGRESS.—

12 “(A) IN GENERAL.—All information ob-
13 tained at any time under this title regarding
14 the control of exports, including any report or
15 license application required under this title,
16 shall be made available to any committee or
17 subcommittee of Congress of appropriate juris-
18 diction upon the request of the chairman or
19 ranking minority member of such committee or
20 subcommittee.

21 “(B) PROHIBITION ON FURTHER DISCLO-
22 SURE.—No committee, subcommittee, or Mem-
23 ber of Congress shall disclose any information
24 obtained under this title or previous Acts re-
25 garding the control of exports which is submit-

1 ted on a confidential basis to the Congress
2 under subparagraph (A) unless the full commit-
3 tee to which the information is made available
4 determines that the withholding of the informa-
5 tion is contrary to the national interest.

6 “(3) AVAILABILITY TO THE GAO.—

7 “(A) IN GENERAL.—Notwithstanding para-
8 graph (1), information referred to in paragraph
9 (2) shall, consistent with the protection of intel-
10 ligence, counterintelligence, and law enforce-
11 ment sources, methods, and activities, as deter-
12 mined by the agency that originally obtained
13 the information, and consistent with the provi-
14 sions of section 716 of title 31, United States
15 Code, be made available only by the agency,
16 upon request, to the Comptroller General of the
17 United States or to any officer or employee of
18 the General Accounting Office authorized by
19 the Comptroller General to have access to such
20 information.

21 “(B) PROHIBITION ON FURTHER DISCLO-
22 SURES.—No officer or employee of the General
23 Accounting Office shall disclose, except to the
24 Congress in accordance with this subsection,
25 any such information which is submitted on a

1 confidential basis and from which any individ-
2 ual can be identified.

3 “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-
4 TIAL INFORMATION.—

5 “(1) VIOLATION.—Any officer or employee of
6 the United States, or any department or agency
7 thereof, who publishes, divulges, discloses, or makes
8 known in any manner or to any extent not author-
9 ized by law any information under this title that—

10 “(A) he or she obtains in the course of his
11 or her employment or official duties or by rea-
12 son of any examination or investigation made
13 by, or report or record made to or filed with,
14 such department or agency, or officer or em-
15 ployee thereof, and

16 “(B) is exempt from disclosure under this
17 section,

18 shall be subject to the penalties set forth in para-
19 graph (2).

20 “(2) PENALTIES.—The penalties for a violation
21 under paragraph (1) are as follows:

22 “(A) If the officer or employee acted know-
23 ingly, he or she shall be fined not more than
24 \$10,000, or imprisoned not more than 1 year,

1 or both, and shall be removed from office or
2 employment.

3 “(B) The officer or employee shall, either
4 in addition to or in lieu of any other penalty
5 that may be imposed, be subject to a civil pen-
6 alty of not more than \$1,000 for each violation
7 under paragraph (1).”.

8 (i) REGULATION OF EXPORT OF CERTAIN COMMER-
9 CIAL COMMUNICATIONS SATELLITES AND ASSOCIATED
10 EQUIPMENT.—

11 (1) REGULATION SOLELY UNDER THIS
12 TITLE.—Notwithstanding any other provision of law,
13 the export of commercial communications satellites,
14 including any integral components of such satellites,
15 which are designed for civil applications, including
16 items necessary to achieve the ultimate orbit location
17 of such satellites, and associated ground and test
18 equipment, when exported as part of a satellite sys-
19 tem for purposes of launch, shall be regulated under
20 this title. The Secretary shall consult with the Sec-
21 retary of Defense and the Secretary of State to de-
22 termine the satellites and components to which this
23 paragraph applies. The Secretary, in consultation
24 with the Secretary of State and the Secretary of De-
25 fense, shall prohibit the unauthorized transfer of

1 missile equipment, data, or technology that are com-
2 ponents of any such satellite which is authorized for
3 export.

4 (2) AMENDMENT TO ARMS EXPORT CONTROL
5 ACT.—Section 38(a) of the Arms Export Control Act
6 (22 U.S.C. 2778(a)) is amended—

7 (A) in paragraph (3), by striking “In exer-
8 cising the authorities” and inserting “Except as
9 provided in paragraph (4), in exercising the au-
10 thorities”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(4) The export of commercial communications sat-
14 ellites, including any integral components of such sat-
15 ellites, which are designed for civil applications, including
16 items necessary to achieve the ultimate orbit location of
17 such satellites, and associated ground and test equipment,
18 when exported as part of a satellite system for purposes
19 of launch, may be regulated only by the Secretary of Com-
20 merce under the Export Act of 1994, pursuant to section
21 117(i)(1) of that Act.”.

22 (3) APPLICABILITY.—The amendments made
23 by this subsection shall apply only with respect to
24 the export of satellites on or after the date of the
25 enactment of this Act.

1 **SEC. 118. SECONDARY ARAB BOYCOTT.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) certain countries maintain an economic boy-
4 cott of Israel, including a secondary boycott of com-
5 panies that refuse to cooperate with the economic
6 boycott of Israel;

7 (2) the secondary Arab boycott has caused eco-
8 nomic damage to the countries that maintain the
9 boycott as well as to Israel;

10 (3) the secondary Arab boycott causes great
11 difficulties for United States firms that trade with
12 Israel, depriving them of trade opportunities and
13 violating internationally accepted principles of free
14 trade;

15 (4) the United States has a longstanding policy
16 opposing the Arab League boycott of Israel and
17 United States law prohibits American firms from
18 providing information to Arab countries to dem-
19 onstrate compliance with the boycott;

20 (5) American companies on the list maintained
21 by the Arab League of companies prohibited from
22 doing business in Arab League countries can be de-
23 nied contracts by the Kuwaiti Government for the
24 reconstruction of Kuwait because they conduct busi-
25 ness with Israel;

1 (6) under the leadership of the executive
2 branch, the United States has sent a clear, consist-
3 ent, and unambiguous message that the Arab
4 League boycott of companies that do business with
5 Israel is an obstacle to peace and should be termi-
6 nated;

7 (7) the United States Trade Representative, in
8 August 1993, commissioned the International Trade
9 Commission to undertake a study of the boycott's
10 impact on United States businesses which will pro-
11 vide, for the first time, a carefully researched esti-
12 mate of the impact of the boycott on the United
13 States;

14 (8) the executive branch has conducted an ac-
15 tive diplomatic campaign to convince Arab League
16 countries that the time to end the secondary Arab
17 boycott and the economic discrimination against
18 United States businesses is now;

19 (9) under United States leadership, the G-7
20 countries have unconditionally called for an end to
21 the Arab boycott;

22 (10) the President, the Vice President, the Sec-
23 retary of State, the Secretary of Commerce, and
24 other senior executive branch officials have assured
25 the Congress that they will speak forcefully and can-

1 didly, in every forum which touches upon the search
2 for peace in the Middle East, about the need to end
3 the secondary Arab boycott;

4 (11) the Congress wishes to support the efforts
5 of the executive branch and to help see the promises
6 made to date translated into tangible results;

7 (12) the quarterly reports from the Office of
8 Anti-Boycott Compliance of the Department of Com-
9 merce show no loosening in enforcement by Arab
10 League countries of the secondary Arab boycott; and

11 (13) the recent statements made by Arab lead-
12 ers indicating that the secondary Arab boycott is no
13 longer being enforced must be translated into action,
14 as measured by quarterly reports from the Office of
15 Anti-Boycott Compliance of the Department of Com-
16 merce.

17 (b) SENSE OF CONGRESS.—

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

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

1 (A) the Arab League issues a public pro-
2 nouncement that the Arab League has ended
3 the secondary Arab boycott;

4 (B) all activities carried out by the Central
5 Office for the Boycott of Israel in support of
6 the secondary Arab boycott have been termi-
7 nated;

8 (C) the Arab League and the individual
9 countries that are members of the Arab League
10 have terminated the practice of barring United
11 States persons and foreign companies that do
12 not comply with the secondary Arab boycott
13 from doing business with countries that are
14 members of the Arab League, and have de-
15 clared null and void any existing list of such
16 barred persons and companies; and

17 (D) the Arab League, and the individual
18 countries that are the members of the Arab
19 League, have ceased requesting United States
20 persons from taking actions prohibited under
21 section 108(a).

22 (c) DEFINITION.—For purposes of this section, the
23 term “secondary Arab boycott” means the refusal to do
24 business with persons who do not comply with requests

1 to take any action prohibited under section 108(a) with
2 respect to Israel.

3 **SEC. 119. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated to the De-
5 partment of Commerce to carry out the purposes of this
6 Act—

7 (1) \$43,342,000 for fiscal year 1995, and
8 \$45,336,000 for fiscal year 1996; and

9 (2) such additional amounts for each of the fis-
10 cal years 1995 and 1996 as may be necessary for in-
11 creases in salary, pay, retirement, other employee
12 benefits authorized by law, and other nondiscretion-
13 ary costs.

14 **SEC. 120. CONFORMING AMENDMENTS TO OTHER LAWS.**

15 (a) ARMS EXPORT CONTROL ACT.—

16 (1) Section 38 of the Arms Export Control Act
17 (22 U.S.C. 2778) is amended—

18 (A) in subsection (e)—

19 (i) in the first sentence by striking
20 “subsections (c)” and all that follows
21 through “12 of such Act” and inserting
22 “subsections (b), (c), (d) and (e) of section
23 110 of the Export Act of 1994, by section
24 113(a) of such Act, and by section 114(g)
25 of such Act”; and

1 (ii) in the third sentence by striking
2 “11(c) of the Export Administration Act of
3 1979” and inserting “110(c) of the Export
4 Act of 1994”; and

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

7 “(ii) section 110 of the Export Act of
8 1994.”.

9 (2) Section 39A(c) of the Arms Export Control
10 Act, as added by the Foreign Relations Authoriza-
11 tion Act, Fiscal Years 1994 and 1995, is amended—

12 (A) by striking “(c),” and all that follows
13 through “12(a)” and inserting “(c), (d), and (e)
14 of section 110, section 112(c), and section
15 113(a), of the Export Act of 1994”; and

16 (B) by striking “11(c)” and inserting
17 “110(c)”.

18 (3) Section 40(k) of the Arms Export Control
19 Act (22 U.S.C. 2780(k)) is amended—

20 (A) by striking “11(c), 11(e), 11(g), and
21 12(a) of the Export Administration Act of
22 1979” and inserting “110(b), 110(c), 110(e),
23 and 113(a) of the Export Act of 1994”; and

24 (B) by striking “11(c)” and inserting
25 “110(c)”.

1 (4) Sections 72 and 73 of the Arms Export
2 Control Act (22 U.S.C. 2797a and 2797b) are here-
3 by repealed.

4 (5) Section 73A of the Arms Export Control
5 Act, as added by the Foreign Relations Authoriza-
6 tion Act, Fiscal Years 1994 and 1995, is amended
7 by striking “a MTCR adherent” and inserting “an
8 MTCR adherent”.

9 (6) Section 74 of the Arms Export Control Act
10 (22 U.S.C. 2797c) is amended—

11 (A) by striking paragraphs (6), (7), (8),
12 and (9);

13 (B) in paragraph (4) by adding “and”
14 after the semicolon; and

15 (C) in paragraph (5) by striking the semi-
16 colon and inserting a period.

17 (b) CHEMICAL AND BIOLOGICAL WEAPONS.—The
18 Chemical and Biological Weapons Control and Warfare
19 Elimination Act of 1991 (title III of Public Law 102–182;
20 22 U.S.C. 5601 and following) is hereby repealed.

21 (c) OTHER PROVISIONS OF LAW.—

22 (1) Section 5(b)(4) of the Trading with the
23 Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.
24 5(b)(4)) is amended by striking “5 of the Export
25 Administration Act of 1979, or under section 6” and

1 inserting “105 of the Export Act of 1994, or under
2 section 106”.

3 (2) Section 16(a) of the Trading with the
4 Enemy Act (50 U.S.C. App. 16(a)) is amended by
5 striking “participants” and inserting “participates”.

6 (3) Section 502B(a)(2) of the Foreign Assist-
7 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
8 ed in the second sentence—

9 (A) by striking “Export Administration
10 Act of 1979” the first place it appears and in-
11 serting “Export Act of 1994”; and

12 (B) by striking “Administration Act of
13 1979)” and inserting “Act of 1994)”.

14 (4)(A) Section 140(a)(2) of the Foreign Rela-
15 tions Authorization Act, Fiscal Years 1988 and
16 1989 (22 U.S.C. 2656f(a)(2)) is amended by strik-
17 ing “6(j) of the Export Administration Act of 1979”
18 and inserting “106(i) of the Export Act of 1994”.

19 (B) For purposes of the report required by
20 March 31, 1995, under section 140(a) of the For-
21 eign Relations Authorization Act, Fiscal Years 1988
22 and 1989, the reference in paragraph (2) of such
23 section to “section 106(i) of the Export Act of
24 1994” shall be deemed to refer to “section 6(j) of

1 the Export Administration Act of 1979 or section
2 106(i) of the Export Act of 1994”.

3 (5) Section 40(e)(1) of the State Department
4 Basic Authorities Act of 1956 (22 U.S.C.
5 2712(e)(1)) is amended by striking “6(j)(1) of the
6 Export Administration Act of 1979” and inserting
7 “106(i)(1) of the Export Act of 1994”.

8 (6) Section 110 of the International Security
9 and Development Cooperation Act of 1980 (22
10 U.S.C. 2778a) is amended by striking “Administra-
11 tion Act of 1979” and inserting “Act of 1994”.

12 (7) Section 205(d)(4) of the State Department
13 Basic Authorities Act of 1956 (22 U.S.C.
14 4305(d)(4)) is amended by striking “6(j) of the Ex-
15 port Administration Act of 1979” and inserting
16 “106(i) of the Export Act of 1994”.

17 (8) Section 203(b)(3) of the International
18 Emergency Economic Powers Act (50 U.S.C.
19 1702(b)(3)) is amended by striking “5 of the Export
20 Administration Act of 1979, or under section 6” and
21 inserting “105 of the Export Act of 1994, or under
22 section 106”.

23 (9) Section 491(f) of the Forest Resources Con-
24 servation and Shortage Relief Act of 1990 (16
25 U.S.C. 620c(f)) is amended by striking “supersede

1 section 7(i) of the Export Administration Act of
2 1979 (50 U.S.C. App. 2406(i))” and inserting “af-
3 fect section 107(i) of the Export Act of 1994”.

4 **SEC. 121. EFFECTIVE DATE.**

5 This title shall take effect upon the date of the enact-
6 ment of this Act.

7 **SEC. 122. EXPIRATION DATE.**

8 This title expires on June 30, 1998.

9 **SEC. 123. SAVINGS PROVISIONS.**

10 (a) IN GENERAL.—All delegations, rules, regulations,
11 orders, determinations, licenses, or other forms of admin-
12 istrative action which have been made, issued, conducted,
13 or allowed to become effective under—

14 (1) the Export Control Act of 1949, the Export
15 Administration Act of 1969, or the Export Adminis-
16 tration Act of 1979, or

17 (2) those provisions of the Arms Export Control
18 Act or the Chemical and Biological Weapons Control
19 and Warfare Elimination Act of 1991 which are re-
20 pealed and amended by section 119,

21 and are in effect at the time this title takes effect, shall
22 continue in effect according to their terms until modified,
23 superseded, set aside, or revoked under this title.

24 (b) ADMINISTRATIVE AND JUDICIAL PROCEED-
25 INGS.—

1 (1) EXPORT ADMINISTRATION ACT.—This title
2 shall not affect any administrative or judicial pro-
3 ceedings commenced or any application for a license
4 made, under the Export Administration Act of 1979,
5 which is pending at the time this title takes effect.
6 Any such proceedings, and any action on such appli-
7 cation, shall continue under the Export Administra-
8 tion Act of 1979 as if that Act had not expired.

9 (2) OTHER PROVISIONS OF LAW.—This title
10 shall not affect any administrative or judicial pro-
11 ceedings commenced or any application for a license
12 made, under those provisions of the Arms Export
13 Control Act or the Chemical and Biological Weapons
14 Control and Warfare Elimination Act of 1991 which
15 are repealed and amended by section 119, if such
16 proceedings or application is pending at the time
17 this title takes effect. Any such proceedings, and any
18 action on such application, shall continue under
19 those provisions as if those provisions had not been
20 amended or repealed by section 119.

21 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
22 Any determination with respect to the government of a
23 foreign country under section 6(j) of the Export Adminis-
24 tration Act of 1979, that is in effect at the time this title
25 takes effect, shall, for purposes of this title or any other

1 provision of law, be deemed to be made under section
2 106(i) of this Act until superseded by a determination
3 under such section 106(i).

4 **TITLE II—NUCLEAR PROLIF-**
5 **ERATION PREVENTION ACT**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Nuclear Proliferation
8 Prevention Act of 1994”.

9 **PART A—REPORTING ON NUCLEAR EXPORTS**

10 **SEC. 211. REPORTS TO CONGRESS.**

11 Section 601(a) of the Nuclear Non-Proliferation Act
12 of 1978 (22 U.S.C. 3281(a)) is amended—

13 (1) in paragraph (4), by striking “and” after
14 the semicolon;

15 (2) in paragraph (5), by striking the period and
16 inserting a semicolon; and

17 (3) by adding after paragraph (5) the following:

18 “(6) a description of the implementation of nu-
19 clear and nuclear-related dual-use export controls in
20 the preceding calendar year, including a summary by
21 type of commodity and destination of—

22 “(A) all transactions for which—

23 “(i) an export license was issued for
24 any good controlled under section 309(c)
25 of this Act;

1 “(ii) an export license was issued
2 under section 109 b. of the 1954 Act;

3 “(iii) approvals were issued under the
4 Export Act of 1994, or section 109 b.(3)
5 of the 1954 Act, for the retransfer of any
6 item, technical data, component, or sub-
7 stance; or

8 “(iv) authorizations were made as re-
9 quired by section 57 b.(2) of the 1954 Act
10 to engage, directly or indirectly, in the pro-
11 duction of special nuclear material;

12 “(B) each instance in which—

13 “(i) a sanction has been imposed
14 under section 221(a), 224(h), or 226(a) of
15 the Nuclear Proliferation Prevention Act of
16 1994;

17 “(ii) sales or leases have been denied
18 under section 3(f) of the Arms Export
19 Control Act or transactions prohibited by
20 reason of acts relating to proliferation of
21 nuclear explosive devices as described in
22 section 40(d) of that Act;

23 “(iii) a sanction has not been imposed
24 by reason of section 221(c)(2) of the Nu-
25 clear Proliferation Prevention Act of 1994

1 or the imposition of a sanction has been
2 delayed under section 226(d) of that Act;
3 or

4 “(iv) a waiver of a sanction has been
5 made under—

6 “(I) section 221(f), section 224,
7 or subsection (e) or (f)(2) of section
8 226, of the Nuclear Proliferation Pre-
9 vention Act of 1994,

10 “(II) section 620E(d) of the For-
11 eign Assistance Act of 1961,

12 “(III) section 40(g) of the Arms
13 Export Control Act with respect to
14 the last sentence of section 40(d) of
15 that Act, or

16 “(IV) section 614 of the Foreign
17 Assistance Act of 1961 with respect to
18 section 620E of that Act or section
19 3(f), or the last sentence of section
20 40(d), of the Arms Export Control
21 Act; and

22 “(7) the progress of those independent states of
23 the former Soviet Union that are non-nuclear-weap-
24 on states and of the Baltic states towards achieving

1 the objective of applying full scope safeguards to all
2 their peaceful nuclear activities.

3 Portions of the information required by paragraphs (6)
4 and (7) may be submitted in classified form, as necessary.
5 Any such information that may not be published or dis-
6 closed under section 114(g)(1) of the Export Act of 1994
7 shall be submitted as confidential.”.

8 **SEC. 212. EFFECTIVE DATE.**

9 The amendments made by this part shall take effect
10 on the date of the enactment of this Act.

11 **PART B—SANCTIONS FOR NUCLEAR**
12 **PROLIFERATION**

13 **SEC. 221. IMPOSITION OF SANCTIONS ON PERSONS ENGAG-**
14 **ING IN EXPORT ACTIVITIES THAT CONTRIB-**
15 **UTE TO PROLIFERATION.**

16 (a) DETERMINATION BY THE PRESIDENT.—

17 (1) IN GENERAL.—Except as provided in sub-
18 section (b)(2), the President shall impose the sanc-
19 tions described in subsection (c) if the President de-
20 termines in writing that, on or after the effective
21 date of this part, a foreign person or a United
22 States person has materially and with requisite
23 knowledge contributed, through the export from the
24 United States or any other country of any goods or
25 technology (as defined in section 231(2)), to the ef-

1 forts by any individual, group, or non-nuclear-weap-
2 on state to acquire unsafeguarded special nuclear
3 material or to use, develop, produce, stockpile, or
4 otherwise acquire any nuclear explosive device.

5 (2) PERSONS AGAINST WHICH THE SANCTIONS
6 ARE TO BE IMPOSED.—The sanctions shall be im-
7 posed pursuant to paragraph (1) on—

8 (A) the foreign person or United States
9 person with respect to which the President
10 makes the determination described in that para-
11 graph;

12 (B) any successor entity to that foreign
13 person or United States person;

14 (C) any foreign person or United States
15 person that is a parent or subsidiary of that
16 person if that parent or subsidiary materially
17 and with requisite knowledge assisted in the ac-
18 tivities which were the basis of that determina-
19 tion; and

20 (D) any foreign person or United States
21 person that is an affiliate of that person if that
22 affiliate materially and with requisite knowledge
23 assisted in the activities which were the basis of
24 that determination and if that affiliate is con-
25 trolled in fact by that person.

1 (3) OTHER SANCTIONS AVAILABLE.—The sanc-
2 tions which are required to be imposed for activities
3 described in this subsection is in addition to any
4 other sanction which may be imposed for the same
5 activities under any other provision of law.

6 (4) DEFINITION.—For purposes of this sub-
7 section, the term “requisite knowledge” means situa-
8 tions in which a person “knows”, as “knowing” is
9 defined in section 104 of the Foreign Corrupt Prac-
10 tices Act of 1977 (15 U.S.C. 78dd-2).

11 (b) CONSULTATION WITH AND ACTIONS BY FOREIGN
12 GOVERNMENT OF JURISDICTION.—

13 (1) CONSULTATIONS.—If the President makes a
14 determination described in subsection (a)(1) with re-
15 spect to a foreign person, the Congress urges the
16 President to initiate consultations immediately with
17 the government with primary jurisdiction over that
18 foreign person with respect to the imposition of the
19 sanctions pursuant to this section.

20 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
21 TION.—In order to pursue such consultations with
22 that government, the President may delay imposition
23 of the sanctions pursuant to this section for up to
24 90 days. Following these consultations, the Presi-
25 dent shall impose the sanctions unless the President

1 determines and certifies in writing to the Congress
2 that that government has taken specific and effective
3 actions, including appropriate penalties, to terminate
4 the involvement of the foreign person in the activi-
5 ties described in subsection (a)(1). The President
6 may delay the imposition of the sanctions for up to
7 an additional 90 days if the President determines
8 and certifies in writing to the Congress that that
9 government is in the process of taking the actions
10 described in the preceding sentence.

11 (3) REPORT TO CONGRESS.—Not later than 90
12 days after making a determination under subsection
13 (a)(1), the President shall submit to the Committee
14 on Foreign Relations and the Committee on Govern-
15 mental Affairs of the Senate and the Committee on
16 Foreign Affairs of the House of Representatives a
17 report on the status of consultations with the appro-
18 priate government under this subsection, and the
19 basis for any determination under paragraph (2) of
20 this subsection that such government has taken spe-
21 cific corrective actions.

22 (c) SANCTIONS.—

23 (1) DESCRIPTION OF SANCTIONS.—The sanc-
24 tions to be imposed pursuant to subsection (a)(1)

1 are, except as provided in paragraph (2) of this sub-
2 section, the following:

3 (A) The United States Government shall
4 not procure, or enter into any contract for the
5 procurement of, any goods or services from any
6 person described in subsection (a)(2).

7 (B) The importation into the United
8 States of products produced by any person de-
9 scribed in subsection (a)(2) shall be prohibited.

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

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

15 (i) under existing contracts or sub-
16 contracts, including the exercise of options
17 for production quantities to satisfy require-
18 ments essential to the national security of
19 the United States;

20 (ii) if the President determines in
21 writing that the person or other entity to
22 which the sanctions would otherwise be ap-
23 plied is a sole source supplier of the de-
24 fense articles or services, that the defense
25 articles or services are essential, and that

1 alternative sources are not readily or rea-
2 sonably available; or

3 (iii) if the President determines in
4 writing that such articles or services are
5 essential to the national security under de-
6 fense coproduction agreements;

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

11 (C) to—

12 (i) spare parts which are essential to
13 United States products or production;

14 (ii) component parts, but not finished
15 products, essential to United States prod-
16 ucts or production; or

17 (iii) routine servicing and mainte-
18 nance of products, to the extent that alter-
19 native sources are not readily or reason-
20 ably available;

21 (D) to information and technology essen-
22 tial to United States products or production; or

23 (E) to medical or other humanitarian
24 items.

1 (d) ADVISORY OPINIONS.—Upon the request of any
2 person, the Secretary of State may, in consultation with
3 the Secretary of Defense, issue in writing an advisory
4 opinion to that person as to whether a proposed activity
5 by that person would subject that person to the sanctions
6 under this section. Any person who relies in good faith
7 on such an advisory opinion which states that the pro-
8 posed activity would not subject a person to such sanc-
9 tions, and any person who thereafter engages in such ac-
10 tivity, may not be made subject to such sanctions on ac-
11 count of such activity.

12 (e) TERMINATION OF THE SANCTIONS.—The sanc-
13 tions imposed pursuant to this section shall apply for a
14 period of at least 12 months following the imposition of
15 the sanctions and shall cease to apply thereafter only if
16 the President determines and certifies in writing to the
17 Congress that—

18 (1) reliable information indicates that the for-
19 eign person or United States person with respect to
20 which the determination was made under subsection
21 (a)(1) has ceased to aid or abet any individual,
22 group, or non-nuclear-weapon state in its efforts to
23 acquire unsafeguarded special nuclear material or
24 any nuclear explosive device, as described in that
25 subsection; and

1 (2) the President has received reliable assur-
2 ances from the foreign person or United States per-
3 son, as the case may be, that such person will not,
4 in the future, aid or abet any individual, group, or
5 non-nuclear-weapon state in its efforts to acquire
6 unsafeguarded special nuclear material or any nu-
7 clear explosive device, as described in subsection
8 (a)(1).

9 (f) WAIVER.—

10 (1) CRITERION FOR WAIVER.—The President
11 may waive the application of the sanctions imposed
12 on any person pursuant to this section, after the end
13 of the 12-month period beginning on the date on
14 which the sanctions were imposed on that person, if
15 the President determines and certifies in writing to
16 the Congress that the continued imposition of the
17 sanctions would have a serious adverse effect on
18 vital United States interests.

19 (2) NOTIFICATION OF AND REPORT TO CON-
20 GRESS.—If the President decides to exercise the
21 waiver authority provided in paragraph (1), the
22 President shall so notify the Congress not less than
23 20 days before the waiver takes effect. Such notifica-
24 tion shall include a report fully articulating the ra-

1 tionale and circumstances which led the President to
2 exercise the waiver authority.

3 **SEC. 222. ELIGIBILITY FOR ASSISTANCE.**

4 (a) AMENDMENTS TO THE ARMS EXPORT CONTROL
5 ACT.—

6 (1) PROHIBITION.—Section 3 of the Arms Ex-
7 port Control Act (22 U.S.C. 2753) is amended by
8 adding at the end the following new subsection:

9 “(f) No sales or leases shall be made to any country
10 that the President has determined is in material breach
11 of its binding commitments to the United States under
12 international treaties or agreements concerning the non-
13 proliferation of nuclear explosive devices (as defined in
14 section 231(4) of the Nuclear Proliferation Prevention Act
15 of 1994) and unsafeguarded special nuclear material (as
16 defined in section 231(8) of that Act).”.

17 (2) DEFINITION OF SUPPORT FOR INTER-
18 NATIONAL TERRORISM.—Section 40 of such Act (22
19 U.S.C. 2780) is amended—

20 (A) in subsection (d), by adding at the end
21 the following new sentence: “For purposes of
22 this subsection, such acts shall include all ac-
23 tivities that the Secretary determines willfully
24 aid or abet the international proliferation of nu-
25 clear explosive devices to individuals or groups

1 or willfully aid or abet an individual or group
2 in acquiring unsafeguarded special nuclear ma-
3 terial.”; and

4 (B) in subsection (l)—

5 (i) in paragraph (2), by striking
6 “and” after the semicolon;

7 (ii) in paragraph (3), by striking the
8 period at the end and inserting a semi-
9 colon; and

10 (iii) by adding at the end the follow-
11 ing:

12 “(4) the term ‘nuclear explosive device’ has the
13 meaning given that term in section 231(4) of the
14 Nuclear Proliferation Prevention Act of 1994; and

15 “(5) the term ‘unsafeguarded special nuclear
16 material’ has the meaning given that term in section
17 231(8) of the Nuclear Proliferation Prevention Act
18 of 1994.”.

19 (b) FOREIGN ASSISTANCE ACT OF 1961.—

20 (1) PRESIDENTIAL DETERMINATION 82-7.—

21 Notwithstanding any other provision of law, Presi-
22 dential Determination No. 82-7 of February 10,
23 1982, made pursuant to section 670(a)(2) of the
24 Foreign Assistance Act of 1961, shall have no force
25 or effect with respect to any grounds for the prohibi-

1 tion of assistance under section 102(a) of the Arms
2 Export Control Act arising on or after the effective
3 date of this part.

4 (2) AMENDMENT.—Section 620E(d) of the For-
5 eign Assistance Act of 1961 (22 U.S.C. 2375(d)) is
6 amended to read as follows:

7 “(d) The President may waive the prohibitions of sec-
8 tion 101 of the Arms Export Control Act with respect to
9 any grounds for the prohibition of assistance under that
10 section arising before the effective date of part B of the
11 Nuclear Proliferation Prevention Act of 1994 to provide
12 assistance to Pakistan if he determines that to do so is
13 in the national interest of the United States.”.

14 **SEC. 223. ROLE OF INTERNATIONAL FINANCIAL INSTITU-**
15 **TIONS.**

16 (a) IN GENERAL.—The Secretary of the Treasury
17 shall instruct the United States executive director to each
18 of the international financial institutions described in sec-
19 tion 701(a) of the International Financial Institutions Act
20 (22 U.S.C. 262d(a)) to use the voice and vote of the
21 United States to oppose any use of the institution’s funds
22 to promote the acquisition of unsafeguarded special nu-
23 clear material or the development, stockpiling, or use of
24 any nuclear explosive device by any non-nuclear-weapon
25 state.

1 (b) DUTIES OF UNITED STATES EXECUTIVE DIREC-
2 TORS.—Section 701(b)(3) of the International Financial
3 Institutions Act (22 U.S.C. 262d(b)(3)) is amended to
4 read as follows:

5 “(3) whether the recipient country—

6 “(A) is seeking to acquire unsafeguarded
7 special nuclear material (as defined in section
8 231(8) of the Nuclear Proliferation Prevention
9 Act of 1994) or a nuclear explosive device (as
10 defined in section 231(4) of that Act);

11 “(B) is not a State Party to the Treaty on
12 the Non-Proliferation of Nuclear Weapons; or

13 “(C) has detonated a nuclear explosive de-
14 vice; and”.

15 **SEC. 224. PROHIBITION ON ASSISTING NUCLEAR PRO-**
16 **LIFERATION THROUGH THE PROVISION OF**
17 **FINANCING.**

18 (a) PROHIBITED ACTIVITY DEFINED.—For purposes
19 of this section, the term “prohibited activity” means the
20 act of knowingly, materially, and directly contributing or
21 attempting to contribute, through the provision of financ-
22 ing, to—

23 (1) the acquisition of unsafeguarded special nu-
24 clear material; or

1 (2) the use, development, production, stock-
2 piling, or other acquisition of any nuclear explosive
3 device,

4 by any individual, group, or non-nuclear-weapon state.

5 (b) PROHIBITION.—To the extent that the United
6 States has jurisdiction to prohibit such activity by such
7 person, no United States person and no foreign person
8 may engage in any prohibited activity.

9 (c) PRESIDENTIAL DETERMINATION AND ORDER
10 WITH RESPECT TO UNITED STATES AND FOREIGN PER-
11 SONS.—If the President determines, in writing after op-
12 portunity for a hearing on the record, that a United States
13 person or a foreign person has engaged in a prohibited
14 activity (without regard to whether subsection (b) applies),
15 the President shall, by order, impose the sanctions de-
16 scribed in subsection (d) on such person.

17 (d) SANCTIONS.—The following sanctions shall be
18 imposed pursuant to any order issued under subsection
19 (c) with respect to any United States person or any for-
20 eign person:

21 (1) BAN ON DEALINGS IN GOVERNMENT FI-
22 NANCE.—

23 (A) DESIGNATION AS PRIMARY DEALER.—

24 Neither the Board of Governors of the Federal
25 Reserve System nor the Federal Reserve Bank

1 of New York may designate, or permit the con-
2 tinuation of any prior designation of, the person
3 as a primary dealer in United States Govern-
4 ment debt instruments.

5 (B) SERVICE AS DEPOSITARY.—The person
6 may not serve as a depository for United States
7 Government funds.

8 (2) RESTRICTIONS ON OPERATIONS.—The per-
9 son may not, directly or indirectly—

10 (A) commence any line of business in the
11 United States in which the person was not en-
12 gaged as of the date of the order; or

13 (B) conduct business from any location in
14 the United States at which the person did not
15 conduct business as of the date of the order.

16 (e) JUDICIAL REVIEW.—Any determination of the
17 President under subsection (c) shall be subject to judicial
18 review in accordance with chapter 7 of part I of title 5,
19 United States Code.

20 (f) CONSULTATION WITH AND ACTIONS BY FOREIGN
21 GOVERNMENT OF JURISDICTION.—

22 (1) CONSULTATIONS.—If the President makes a
23 determination under subsection (c) with respect to a
24 foreign person, the Congress urges the President to
25 initiate consultations immediately with any appro-

1 appropriate foreign government with respect to the im-
2 position of any sanction pursuant to this section.

3 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
4 TION.—

5 (A) SUSPENSION OF IMPOSITION OF SANC-
6 TIONS.—In order to pursue consultations de-
7 scribed in paragraph (1) with any government
8 referred to in such paragraph, the President
9 may delay, for up to 90 days, the effective date
10 of an order under subsection (c) imposing any
11 sanction.

12 (B) COORDINATION WITH ACTIVITIES OF
13 FOREIGN GOVERNMENT.—Following consulta-
14 tions described in paragraph (1), the order is-
15 sued by the President under subsection (c) im-
16 posing any sanction on a foreign person shall
17 take effect unless the President determines, and
18 certifies in writing to the Congress, that the
19 government referred to in paragraph (1) has
20 taken specific and effective actions, including
21 the imposition of appropriate penalties, to ter-
22 minate the involvement of the foreign person in
23 any prohibited activity.

24 (C) EXTENSION OF PERIOD.—After the
25 end of the period described in subparagraph

1 (A), the President may delay, for up to an addi-
2 tional 90 days, the effective date of an order is-
3 sued under subsection (c) imposing any sanc-
4 tion on a foreign person if the President deter-
5 mines, and certifies in writing to the Congress,
6 that the appropriate foreign government is in
7 the process of taking actions described in sub-
8 paragraph (B).

9 (3) REPORT TO CONGRESS.—Before the end of
10 the 90-day period beginning on the date on which an
11 order is issued under subsection (c), the President
12 shall submit to the Congress a report on—

13 (A) the status of consultations under this
14 subsection with the government referred to in
15 paragraph (1); and

16 (B) the basis for any determination under
17 paragraph (2) that such government has taken
18 specific corrective actions.

19 (g) TERMINATION OF THE SANCTIONS.—Any sanc-
20 tion imposed on any person pursuant to an order issued
21 under subsection (c) shall—

22 (1) remain in effect for a period of not less
23 than 12 months; and

1 (2) cease to apply after the end of such 12-
2 month period only if the President determines, and
3 certifies in writing to the Congress, that—

4 (A) the person has ceased to engage in any
5 prohibited activity; and

6 (B) the President has received reliable as-
7 surances from such person that the person will
8 not, in the future, engage in any prohibited ac-
9 tivity.

10 (h) WAIVER.—The President may waive the contin-
11 ued application of any sanction imposed on any person
12 pursuant to an order issued under subsection (c) if the
13 President determines, and certifies in writing to the Con-
14 gress, that the continued imposition of the sanction would
15 have a serious adverse effect on the safety and soundness
16 of the domestic or international financial system or on do-
17 mestic or international payments systems.

18 (i) ENFORCEMENT ACTION.—The Attorney General
19 may bring an action in an appropriate district court of
20 the United States for injunctive and other appropriate re-
21 lief with respect to—

22 (1) any violation of subsection (b); or

23 (2) any order issued under subsection (c).

24 (j) KNOWINGLY DEFINED.—

1 (1) IN GENERAL.—For purposes of this section,
2 the term “knowingly” means the state of mind of a
3 person with respect to conduct, a circumstance, or a
4 result in which—

5 (A) such person is aware that such person
6 is engaging in such conduct, that such cir-
7 cumstance exists, or that such result is substan-
8 tially certain to occur; or

9 (B) such person has a firm belief that such
10 circumstance exists or that such result is sub-
11 stantially certain to occur.

12 (2) KNOWLEDGE OF THE EXISTENCE OF A PAR-
13 TICULAR CIRCUMSTANCE.—If knowledge of the exist-
14 ence of a particular circumstance is required for an
15 offense, such knowledge is established if a person is
16 aware of a high probability of the existence of such
17 circumstance, unless the person actually believes
18 that such circumstance does not exist.

19 (k) SCOPE OF APPLICATION.—This section shall
20 apply with respect to prohibited activities which occur on
21 or after the date this part takes effect.

22 **SEC. 225. EXPORT-IMPORT BANK.**

23 Section 2(b)(4) of the Export-Import Bank Act of
24 1945 (12 U.S.C. 635(b)(4)) is amended in the first sen-
25 tence by inserting after “device” the following: “(as de-

1 fined in section 231(4) of the Nuclear Proliferation Pre-
2 vention Act of 1994), or that any country has willfully
3 aided or abetted any non-nuclear-weapon state (as defined
4 in section 231(5) of that Act) to acquire any such nuclear
5 explosive device or to acquire unsafeguarded special nu-
6 clear material (as defined in section 231(8) of that Act)''.

7 **SEC. 226. SANCTIONS AGAINST COUNTRIES INVOLVED IN**
8 **TRANSFER OF NUCLEAR WEAPONS OR DE-**
9 **SIGN INFORMATION OR COMPONENTS.**

10 (a) DETERMINATION OF THE PRESIDENT.—Except
11 as provided in subsections (d), (e), and (f), in the event
12 that the President determines that any country, on or
13 after the effective date of this part—

14 (1) transfers to a non-nuclear-weapon state a
15 nuclear explosive device,

16 (2) is a non-nuclear-weapon state and either—

17 (A) receives a nuclear explosive device, or

18 (B) detonates a nuclear explosive device,

19 (3) transfers to a non-nuclear-weapon state any
20 design information or component which is deter-
21 mined by the President to be important to, and
22 known by the transferring country to be intended by
23 the recipient state for use in, the development or
24 manufacture of any nuclear explosive device, or

1 (4) is a non-nuclear-weapon state and seeks and
2 receives any design information or component which
3 is determined by the President to be important to,
4 and intended by the recipient state for use in, the
5 development or manufacture of any nuclear explosive
6 device,
7 then the President shall forthwith report to the Congress
8 in writing his determination with respect to that country
9 and shall forthwith impose the sanctions described in sub-
10 section (b) against that country.

11 (b) SANCTIONS.—The sanctions referred to in sub-
12 section (a) are as follows:

13 (1) The United States Government shall termi-
14 nate assistance to that country under the Foreign
15 Assistance Act of 1961, except for humanitarian as-
16 sistance or food or other agricultural commodities.

17 (2) The United States Government shall—

18 (A) terminate sales to that country under
19 the Arms Export Control Act of any defense ar-
20 ticles, defense services, or design and construc-
21 tion services, and

22 (B) terminate and deny licenses for the ex-
23 port to that country of any item on the United
24 States Munitions List.

1 (3) The United States Government shall termi-
2 nate all foreign military financing for that country
3 under the Arms Export Control Act.

4 (4) The United States Government shall deny
5 to that country any credit, credit guarantees, or
6 other financial assistance by any department, agen-
7 cy, or instrumentality of the United States Govern-
8 ment, except that the sanction of this paragraph
9 shall not apply—

10 (A) to any transaction subject to the re-
11 porting requirements of title V of the National
12 Security Act of 1947 (relating to congressional
13 oversight of intelligence activities), or

14 (B) to humanitarian assistance.

15 (5) The United States Government shall op-
16 pose, in accordance with section 701 of the Inter-
17 national Financial Institutions Act (22 U.S.C.
18 262d), the extension of any loan or financial or tech-
19 nical assistance to that country by any international
20 financial institution.

21 (6) The United States Government shall pro-
22 hibit any United States bank from making any loan
23 or providing any credit to the government of that
24 country, except for loans or credits for the purpose

1 of purchasing food or other agricultural commod-
2 ities.

3 (7) The authorities of section 106 of this Act
4 shall be used to prohibit exports to that country of
5 specific goods and technology (excluding food and
6 other agricultural commodities), except that such
7 prohibition shall not apply to any transaction subject
8 to the reporting requirements of title V of the Na-
9 tional Security Act of 1947 (relating to congres-
10 sional oversight of intelligence activities).

11 (8) In addition to the sanctions provided for in
12 paragraphs (1) through (7), the President may pro-
13 hibit the importation into the United States of goods
14 that are the growth, product, or manufacture of that
15 country. The President shall determine the type and
16 volume of imports to be prohibited.

17 (c) DEFINITIONS.—As used in this section—

18 (1) the term “design information” means spe-
19 cific information that relates to the design of a nu-
20 clear explosive device and that is not available to the
21 public; and

22 (2) the term “component” means a specific
23 component of a nuclear explosive device.

24 (d) AUTHORITY TO DELAY SANCTIONS RELATING TO
25 NUCLEAR EXPLOSIVE DEVICES.—

1 (1) PRESIDENTIAL CERTIFICATION.—Notwith-
2 standing subsection (a), the President may, for a pe-
3 riod of not more than 30 days of continuous session,
4 delay the imposition of sanctions which would other-
5 wise be required under subsection (a)(1) or (2) if the
6 President first transmits to the Speaker of the
7 House of Representatives, and to the chairman of
8 the Committee on Foreign Relations of the Senate,
9 a certification that he has determined that an imme-
10 diate imposition of sanctions on that country would
11 be detrimental to the national security of the United
12 States. Not more than one such certification may be
13 transmitted for a country with respect to the same
14 detonation, transfer, or receipt of a nuclear explosive
15 device.

16 (2) AUTHORITY TO GRANT WAIVER.—(A) If the
17 President transmits a certification to the Congress
18 under paragraph (1), a joint resolution which would
19 permit the President to exercise the waiver authority
20 of subsection (e) shall, if introduced in either House
21 within 30 days of continuous session after the Con-
22 gress receives this certification, be considered in the
23 Senate in accordance with subparagraph (B).

24 (B) Any joint resolution under this paragraph
25 shall be considered in the Senate in accordance with

1 the provisions of section 601(b) of the International
2 Security Assistance and Arms Export Control Act of
3 1976.

4 (C) For purposes of this paragraph, the term
5 “joint resolution” means a joint resolution the mat-
6 ter after the resolving clause of which is as follows:
7 “That the Congress having received on ____ a cer-
8 tification by the President under section 226(d)(1)
9 of the Nuclear Proliferation Prevention Act of 1994
10 with respect to ____, the Congress hereby authorizes
11 the President to exercise the waiver authority con-
12 tained in section 226(e) of that Act.”, with the date
13 of receipt of the certification inserted in the first
14 blank and the name of the country inserted in the
15 second blank.

16 (e) WAIVER AUTHORITY.—Notwithstanding sub-
17 section (a), if the Congress enacts a joint resolution under
18 subsection (d), the President may waive any sanction
19 which would otherwise be required under subsection (a)(1)
20 or (2) if he determines and certifies in writing to the
21 Speaker of the House of Representatives and the Commit-
22 tee on Foreign Relations of the Senate that the imposition
23 of such sanction would be seriously prejudicial to the
24 achievement of United States nonproliferation objectives
25 or otherwise jeopardize the common defense and security.

1 The President shall transmit with such certification a
2 statement setting forth the specific reasons therefor.

3 (f) SANCTIONS RELATING TO INFORMATION AND
4 COMPONENTS.—

5 (1) IMPOSITION.—In the event the President is
6 required to impose sanctions against a country
7 under subsection (a) (3) or (a)(4), the President
8 shall forthwith so inform such country and shall im-
9 pose the required sanctions beginning 30 days after
10 submitting to the Congress the report required by
11 subsection (a) unless, and to the extent that, there
12 is enacted during the 30-day period a law prohibit-
13 ing the imposition of such sanctions.

14 (2) WAIVER.—Notwithstanding any other provi-
15 sion of law, the sanctions which are required to be
16 imposed against a country under subsection (a)(3)
17 or (4) shall not apply if the President determines
18 and certifies in writing to the Committee on Foreign
19 Relations and the Committee on Governmental Af-
20 fairs of the Senate and the Committee on Foreign
21 Affairs of the House of Representatives that the ap-
22 plication of such sanctions against such country
23 would have a serious adverse effect on vital United
24 States interests. The President shall transmit with

1 such certification a statement setting forth the spe-
2 cific reasons therefor.

3 (g) CONTINUITY OF SESSION.—For purposes of this
4 section, continuity of session is broken only by an adjourn-
5 ment of the Congress sine die and the days on which either
6 House of Congress is not in session because of an adjourn-
7 ment of more than three days to a day certain are ex-
8 cluded in the computation of any period of time in which
9 the Congress is in continuous session.

10 (h) AUTHORITY OF THE PRESIDENT NOT DELE-
11 GABLE.—The President may not delegate or transfer his
12 power, authority, or discretion to make or modify deter-
13 minations under this section.

14 **SEC. 227. AMENDMENT TO THE ARMS EXPORT CONTROL**
15 **ACT.**

16 (a) IN GENERAL.—The Arms Export Control Act is
17 amended by adding at the end the following new chapter:

18 **“CHAPTER 10—NUCLEAR**
19 **NONPROLIFERATION CONTROLS**
20 **“SEC. 101. NUCLEAR ENRICHMENT TRANSFERS.**

21 “(a) PROHIBITIONS; SAFEGUARDS AND MANAGE-
22 MENT.—Except as provided in subsection (b), no funds
23 made available to carry out the Foreign Assistance Act
24 of 1961 or this Act may be used for the purpose of provid-
25 ing economic assistance (including assistance under chap-

1 ter 4 of part II of the Foreign Assistance Act of 1961),
2 providing military assistance or grant military education
3 and training, providing assistance under chapter 6 of part
4 II of that Act, or extending military credits or making
5 guarantees, to any country which the President deter-
6 mines delivers nuclear enrichment equipment, materials,
7 or technology to any other country on or after August 4,
8 1977, or receives such equipment, materials, or technology
9 from any other country on or after August 4, 1977, unless
10 before such delivery—

11 “(1) the supplying country and receiving coun-
12 try have reached agreement to place all such equip-
13 ment, materials, or technology, upon delivery, under
14 multilateral auspices and management when avail-
15 able; and

16 “(2) the recipient country has entered into an
17 agreement with the International Atomic Energy
18 Agency to place all such equipment, materials, tech-
19 nology, and all nuclear fuel and facilities in such
20 country, under the safeguards system of such
21 Agency.

22 “(b) CERTIFICATION BY PRESIDENT OF NECESSITY
23 OF CONTINUED ASSISTANCE; DISAPPROVAL BY CON-
24 GRESS.—(1) Notwithstanding subsection (a), the Presi-
25 dent may furnish assistance which would otherwise be pro-

1 hibited under such subsection if he determines and cer-
2 tifies in writing to the Speaker of the House of Represent-
3 atives and the Committee on Foreign Relations of the Sen-
4 ate that—

5 “(A) the termination of such assistance would
6 have a serious adverse effect on vital United States
7 interests; and

8 “(B) he has received reliable assurances that
9 the country in question will not acquire or develop
10 nuclear weapons or assist other nations in doing so.
11 Such certification shall set forth the reasons supporting
12 such determination in each particular case.

13 “(2)(A) A certification under paragraph (1) shall
14 take effect on the date on which the certification is re-
15 ceived by the Congress. However, if, within 30 calendar
16 days after receiving this certification, the Congress enacts
17 a joint resolution stating in substance that the Congress
18 disapproves the furnishing of assistance pursuant to the
19 certification, then upon the enactment of that resolution
20 the certification shall cease to be effective and all deliveries
21 of assistance furnished under the authority of that certifi-
22 cation shall be suspended immediately.

23 “(B) Any joint resolution under this paragraph shall
24 be considered in the Senate in accordance with the provi-

1 which are alternatives to pure plutonium reprocess-
2 ing), or

3 “(2) is a non-nuclear-weapon state which, on or
4 after August 8, 1985, exports illegally (or attempts
5 to export illegally) from the United States any mate-
6 rial, equipment, or technology which would contrib-
7 ute significantly to the ability of such country to
8 manufacture a nuclear explosive device, if the Presi-
9 dent determines that the material, equipment, or
10 technology was to be used by such country in the
11 manufacture of a nuclear explosive device.

12 For purposes of paragraph (2), an export (or attempted
13 export) by a person who is an agent of, or is otherwise
14 acting on behalf of or in the interests of, a country shall
15 be considered to be an export (or attempted export) by
16 that country.

17 “(b) EXCEPTION.—(1) Notwithstanding subsection
18 (a), the President in any fiscal year may furnish assist-
19 ance which would otherwise be prohibited under that sub-
20 section if he determines and certifies in writing during
21 that fiscal year to the Speaker of the House of Represent-
22 atives and the Committee on Foreign Relations of the Sen-
23 ate that the termination of such assistance would be seri-
24 ously prejudicial to the achievement of United States non-
25 proliferation objectives or would otherwise jeopardize the

1 common defense and security. The President shall trans-
2 mit with such certification a statement setting forth the
3 specific reasons therefor.

4 “(2)(A) A certification under paragraph (1) shall
5 take effect on the date on which the certification is re-
6 ceived by the Congress. However, if, within 30 calendar
7 days after receiving this certification, the Congress enacts
8 a joint resolution stating in substance that the Congress
9 disapproves the furnishing of assistance pursuant to the
10 certification, then upon the enactment of that resolution
11 the certification shall cease to be effective and all deliveries
12 of assistance furnished under the authority of that certifi-
13 cation shall be suspended immediately.

14 “(B) Any joint resolution under this paragraph shall
15 be considered in the Senate in accordance with the provi-
16 sions of section 601(b) of the International Security As-
17 sistance and Arms Export Control Act of 1976.

18 **“SEC. 103. DEFINITION OF NUCLEAR EXPLOSIVE DEVICE.**

19 “As used in this chapter, the term ‘nuclear explosive
20 device’ has the meaning given that term in section 231(4)
21 of the Nuclear Proliferation Prevention Act of 1994.’”.

22 (b) REPEALS.—Sections 669 and 670 of the Foreign
23 Assistance Act of 1961 are hereby repealed.

24 (c) REFERENCES IN LAW.—Any reference in law as
25 of the effective date of this part to section 669 or 670

1 of the Foreign Assistance Act of 1961 shall, on and after
2 such date, be deemed to be a reference to section 101 or
3 102 of the Arms Export Control Act, or section 226 of
4 this Act, as the case may be.

5 **SEC. 228. REWARD.**

6 Section 36(a) of the State Department Basic Au-
7 thorities Act of 1956 (22 U.S.C. 2708(a)) is amended—

- 8 (1) by redesignating paragraphs (1) through
9 (3) as subparagraphs (A) through (C), respectively;
10 (2) by inserting “(1)” after “(a)”; and
11 (3) by adding at the end the following:

12 “(2) For purposes of this subsection, the term ‘act
13 of international terrorism’ includes any act substantially
14 contributing to the acquisition of unsafeguarded special
15 nuclear material (as defined in section 231(8) of the Nu-
16 clear Proliferation Prevention Act of 1994) or any nuclear
17 explosive device (as defined in section 231(4) of that Act)
18 by an individual, group, or non-nuclear-weapon state (as
19 defined in section 231(5) of that Act).”.

20 **SEC. 229. REPORTS.**

21 (a) **CONTENT OF ACDA ANNUAL REPORT.**—Section
22 51 of the Arms Control and Disarmament Act, as amend-
23 ed by section 717 of the Foreign Relations Authorization
24 Act, Fiscal Years 1994 and 1995, is amended—

- 25 (1) in subsection (a)—

1 (A) by striking “and” at the end of para-
2 graph (5);

3 (B) by striking the period at the end of
4 paragraph (6) and inserting “; and”; and

5 (C) by adding after paragraph (6) the fol-
6 lowing new paragraph:

7 “(7) a discussion of any material noncompliance
8 by foreign governments with their binding commit-
9 ments to the United States with respect to the pre-
10 vention of the spread of nuclear explosive devices (as
11 defined in section 231(4) of the Nuclear Prolifera-
12 tion Prevention Act of 1994) by non-nuclear-weapon
13 states (as defined in section 231(5) of that Act) or
14 the acquisition by such states of unsafeguarded spe-
15 cial nuclear material (as defined in section 231(8) of
16 that Act), including—

17 “(A) a net assessment of the aggregate
18 military significance of all such violations;

19 “(B) a statement of the compliance policy
20 of the United States with respect to violations
21 of those commitments; and

22 “(C) what actions, if any, the President
23 has taken or proposes to take to bring any na-
24 tion committing such a violation into compli-
25 ance with those commitments.”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(c) REPORTING CONSECUTIVE NONCOMPLIANCE.—
4 If the President in consecutive reports submitted to the
5 Congress under this section reports that any designated
6 nation is not in full compliance with its binding non-
7 proliferation commitments to the United States, then the
8 President shall include in the second such report an as-
9 sessment of what actions are necessary to compensate for
10 such violations.”.

11 (b) REPORTING ON DEMARCHES.—(1) It is the sense
12 of the Congress that the Department of State should, in
13 the course of implementing its reporting responsibilities
14 under section 602(c) of the Nuclear Non-Proliferation Act
15 of 1978, include a summary of demarches that the United
16 States has issued or received from foreign governments
17 with respect to activities which are of significance from
18 the proliferation standpoint.

19 (2) For purposes of this section, the term “de-
20 marche” means any official communication by one govern-
21 ment to another, by written or oral means, intended by
22 the originating government to express—

23 (A) a concern over a past, present, or possible
24 future action or activity of the recipient government,
25 or of a person within the jurisdiction of that govern-

1 ment, contributing to the global spread of
2 unsafeguarded special nuclear material or of nuclear
3 explosive devices;

4 (B) a request for the recipient government to
5 counter such action or activity; or

6 (C) both the concern and request described in
7 subparagraphs (A) and (B).

8 **SEC. 230. TECHNICAL CORRECTION.**

9 Section 133 b. of the Atomic Energy Act of 1954 (42
10 U.S.C. 2160c) is amended by striking “20 kilograms” and
11 inserting “5 kilograms”.

12 **SEC. 231. DEFINITIONS.**

13 For purposes of this part—

14 (1) the term “foreign person” means—

15 (A) an individual who is not a citizen of
16 the United States or an alien admitted for per-
17 manent residence to the United States; or

18 (B) a corporation, partnership, or other
19 nongovernment entity which is created or orga-
20 nized under the laws of a foreign country or
21 which has its principal place of business outside
22 the United States;

23 (2) the term “goods or technology” means—

24 (A) nuclear materials and equipment and
25 sensitive nuclear technology (as such terms are

1 defined in section 4 of the Nuclear Non-Pro-
2 liferation Act of 1978), all export items des-
3 igned by the President pursuant to section
4 309(c) of the Nuclear Non-Proliferation Act of
5 1978, and all technical assistance requiring au-
6 thorization under section 57 b. of the Atomic
7 Energy Act of 1954; and

8 (B) in the case of exports from a country
9 other than the United States, any goods or
10 technology that, if exported from the United
11 States, would be goods or technology described
12 in subparagraph (A);

13 (3) the term “IAEA safeguards” means the
14 safeguards set forth in an agreement between a
15 country and the International Atomic Energy Agen-
16 cy, as authorized by Article III(A)(5) of the Statute
17 of the International Atomic Energy Agency;

18 (4) the term “nuclear explosive device” means
19 any device, whether assembled or disassembled, that
20 is designed to produce an instantaneous release of
21 an amount of nuclear energy from special nuclear
22 material that is greater than the amount of energy
23 that would be released from the detonation of one
24 pound of trinitrotoluene (TNT);

1 (5) the term “non-nuclear-weapon state” means
2 any country which is not a nuclear-weapon state, as
3 defined by Article IX (3) of the Treaty on the Non-
4 Proliferation of Nuclear Weapons, signed at Wash-
5 ington, London, and Moscow on July 1, 1968;

6 (6) the term “special nuclear material” has the
7 meaning given that term in section 11 aa. of the
8 Atomic Energy Act of 1954 (42 U.S.C. 2014aa);

9 (7) the term “United States person” means—

10 (A) an individual who is a citizen of the
11 United States or an alien admitted for perma-
12 nent residence to the United States; or

13 (B) a corporation, partnership, or other
14 nongovernment entity which is not a foreign
15 person; and

16 (8) the term “unsafeguarded special nuclear
17 material” means special nuclear material which is
18 held in violation of IAEA safeguards or not subject
19 to IAEA safeguards (excluding any quantity of ma-
20 terial that could, if it were exported from the United
21 States, be exported under a general license issued by
22 the Nuclear Regulatory Commission).

1 **SEC. 232. EFFECTIVE DATE.**

2 The provisions of this part, and the amendments
3 made by this part, shall take effect on the date of the
4 enactment of this Act.

5 **PART C—INTERNATIONAL ATOMIC ENERGY**

6 **AGENCY**

7 **SEC. 241. BILATERAL AND MULTILATERAL INITIATIVES.**

8 It is the sense of the Congress that in order to main-
9 tain and enhance international confidence in the effective-
10 ness of IAEA safeguards and in other multilateral under-
11 takings to halt the global proliferation of nuclear weapons,
12 the United States should seek to negotiate with other na-
13 tions and groups of nations, including the IAEA Board
14 of Governors and the Nuclear Suppliers Group, to—

15 (1) build international support for the principle
16 that nuclear supply relationships must require pur-
17 chasing nations to agree to full-scope international
18 safeguards;

19 (2) encourage each nuclear-weapon state within
20 the meaning of the Treaty to undertake a com-
21 prehensive review of its own procedures for declas-
22 sifying information relating to the design or produc-
23 tion of nuclear explosive devices and to investigate
24 any measures that would reduce the risk of such in-
25 formation contributing to nuclear weapons prolifera-
26 tion;

1 (3) encourage the deferral of efforts to produce
2 weapons-grade nuclear material for large-scale com-
3 mercial uses until such time as safeguards are devel-
4 oped that can detect, on a timely and reliable basis,
5 the diversion of significant quantities of such mate-
6 rial for nuclear explosive purposes;

7 (4) pursue greater financial support for the im-
8 plementation and improvement of safeguards from
9 all IAEA member nations with significant nuclear
10 programs, particularly from those nations that are
11 currently using or planning to use weapons-grade
12 nuclear material for commercial purposes;

13 (5) arrange for the timely payment of annual fi-
14 nancial contributions by all members of the IAEA,
15 including the United States;

16 (6) pursue the elimination of international com-
17 merce in highly enriched uranium for use in research
18 reactors while encouraging multilateral cooperation
19 to develop and to use low-enriched alternative nu-
20 clear fuels;

21 (7) oppose efforts by non-nuclear-weapon states
22 to develop or use unsafeguarded nuclear fuels for
23 purposes of naval propulsion;

24 (8) pursue an international open skies arrange-
25 ment that would authorize the IAEA to operate sur-

1 veillance aircraft and would facilitate IAEA access
2 to satellite information for safeguards verification
3 purposes;

4 (9) develop an institutional means for IAEA
5 member nations to share intelligence material with
6 the IAEA on possible safeguards violations without
7 compromising national security or intelligence
8 sources or methods;

9 (10) require any exporter of a sensitive nuclear
10 facility or sensitive nuclear technology to a non-nu-
11 clear-weapon state to notify the IAEA prior to ex-
12 port and to require safeguards over that facility or
13 technology, regardless of its destination; and

14 (11) seek agreement among the parties to the
15 Treaty to apply IAEA safeguards in perpetuity and
16 to establish new limits on the right to withdraw from
17 the Treaty.

18 **SEC. 242. IAEA INTERNAL REFORMS.**

19 In order to promote the early adoption of reforms in
20 the implementation of the safeguards responsibilities of
21 the IAEA, the Congress urges the President to negotiate
22 with other nations and groups of nations, including the
23 IAEA Board of Governors and the Nuclear Suppliers
24 Group, to—

1 (1) improve the access of the IAEA within nu-
2 clear facilities that are capable of producing, proc-
3 essing, or fabricating special nuclear material suit-
4 able for use in a nuclear explosive device;

5 (2)(A) facilitate the IAEA's efforts to meet and
6 to maintain its own goals for detecting the diversion
7 of nuclear materials and equipment, giving particu-
8 lar attention to facilities in which there are bulk
9 quantities of plutonium; and

10 (B) if it is not technically feasible for the IAEA
11 to meet those detection goals in a particular facility,
12 require the IAEA to declare publicly that it is un-
13 able to do so;

14 (3) enable the IAEA to issue fines for violations
15 of safeguards procedures, to pay rewards for infor-
16 mation on possible safeguards violations, and to es-
17 tablish a "hot line" for the reporting of such viola-
18 tions and other illicit uses of weapons-grade nuclear
19 material;

20 (4) establish safeguards at facilities engaged in
21 the manufacture of equipment or material that is es-
22 pecially designated or prepared for the processing,
23 use, or production of special fissionable material or,
24 in the case of non-nuclear-weapon states, of any nu-
25 clear explosive device;

1 (5) establish safeguards over nuclear research
2 and development activities and facilities;

3 (6) implement special inspections of undeclared
4 nuclear facilities, as provided for under existing safe-
5 guards procedures, and seek authority for the IAEA
6 to conduct challenge inspections on demand at sus-
7 pected nuclear sites;

8 (7) expand the scope of safeguards to include
9 tritium, uranium concentrates, and nuclear waste
10 containing special fissionable material, and increase
11 the scope of such safeguards on heavy water;

12 (8) revise downward the IAEA's official mini-
13 mum amounts of nuclear material ("significant
14 quantity") needed to make a nuclear explosive device
15 and establish these amounts as national rather than
16 facility standards;

17 (9) expand the use of full-time resident IAEA
18 inspectors at sensitive fuel cycle facilities;

19 (10) promote the use of near real time material
20 accountancy in the conduct of safeguards at facili-
21 ties that use, produce, or store significant quantities
22 of special fissionable material;

23 (11) develop with other IAEA member nations
24 an agreement on procedures to expedite approvals of
25 visa applications by IAEA inspectors;

1 (12) provide the IAEA the additional funds,
2 technical assistance, and political support necessary
3 to carry out the goals set forth in this subsection;
4 and

5 (13) make public the annual safeguards imple-
6 mentation report of the IAEA, establishing a public
7 registry of commodities in international nuclear com-
8 merce, including dual-use goods, and creating a pub-
9 lic repository of current nuclear trade control laws,
10 agreements, regulations, and enforcement and judi-
11 cial actions by IAEA member nations.

12 **SEC. 243. REPORTING REQUIREMENT.**

13 (a) **REPORT REQUIRED.**—The President shall, in the
14 report required by section 601(a) of the Nuclear Non-Pro-
15 liferation Act of 1978, describe—

16 (1) the steps he has taken to implement sec-
17 tions 241 and 242, and

18 (2) the progress that has been made and the
19 obstacles that have been encountered in seeking to
20 meet the objectives set forth in sections 241 and
21 242.

22 (b) **CONTENTS OF REPORT.**—Each report under
23 paragraph (1) shall describe—

24 (1) the bilateral and multilateral initiatives that
25 the President has taken during the period since the

1 enactment of this Act in pursuit of each of the ob-
2 jectives set forth in sections 241 and 242;

3 (2) any obstacles that have been encountered in
4 the pursuit of those initiatives;

5 (3) any additional initiatives that have been
6 proposed by other countries or international organi-
7 zations to strengthen the implementation of IAEA
8 safeguards;

9 (4) all activities of the Federal Government in
10 support of the objectives set forth in sections 241
11 and 242;

12 (5) any recommendations of the President on
13 additional measures to enhance the effectiveness of
14 IAEA safeguards; and

15 (6) any initiatives that the President plans to
16 take in support of each of the objectives set forth in
17 sections 241 and 242.

18 **SEC. 244. DEFINITIONS.**

19 As used in this part—

20 (1) the term “highly enriched uranium” means
21 uranium enriched to 20 percent or more in the iso-
22 tope U-235;

23 (2) the term “IAEA” means the International
24 Atomic Energy Agency;

1 (3) the term “near real time material account-
2 ancy” means a method of accounting for the loca-
3 tion, quantity, and disposition of special fissionable
4 material at facilities that store or process such mate-
5 rial, in which verification of peaceful use is continu-
6 ously achieved by means of frequent physical inven-
7 tories and the use of in-process instrumentation;

8 (4) the term “special fissionable material” has
9 the meaning given that term by Article XX(1) of the
10 Statute of the International Atomic Energy Agency,
11 done at the Headquarters of the United Nations on
12 October 26, 1956;

13 (5) the term “the Treaty” means the Treaty on
14 the Non-Proliferation of Nuclear Weapons, signed at
15 Washington, London, and Moscow on July 1, 1968;
16 and

17 (6) the terms “IAEA safeguards”, “non-nu-
18 clear-weapon state”, “nuclear explosive device”, and
19 “special nuclear material” have the meanings given
20 those terms in section 231 of this Act.

21 **PART D—REPEAL OF DUPLICATIVE PROVISIONS**

22 **SEC. 251. REPEAL.**

23 Effective on the date of the enactment of this Act—

24 (1) title VIII of the Foreign Relations Author-
25 ization Act, Fiscal Years 1994 and 1995, the

1 amendments made by that title, and the items relat-
2 ing to such title in the table of contents of that Act,
3 are repealed; and

4 (2) with respect to any provisions of law re-
5 pealed by title VIII of that Act, such title shall be
6 deemed not to have been enacted.



HR 4663 IH—2

HR 4663 IH—3

HR 4663 IH—4

HR 4663 IH—5

HR 4663 IH—6

HR 4663 IH—7

HR 4663 IH—8

HR 4663 IH—9

HR 4663 IH—10

HR 4663 IH—11

HR 4663 IH—12

HR 4663 IH—13

HR 4663 IH—14

HR 4663 IH—15

HR 4663 IH—16

HR 4663 IH—17

HR 4663 IH—18

HR 4663 IH—19

HR 4663 IH—20