

104TH CONGRESS
1ST SESSION

H. R. 361

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. ROTH introduced the following bill; which was referred to the Committee on International Relations

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 Ad-
5 ministration Act of 1995”.

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.
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- Sec. 121. 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.
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- 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.
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- Sec. 241. Bilateral and multilateral initiatives.
- Sec. 242. IAEA internal reforms.
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1 **TITLE I—EXPORT**
2 **ADMINISTRATION**

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

4 This title may be cited as the “Export Act of 1995”.

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, and a short supply
8 control list of all commodities on which export
9 controls 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 use 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 International Relations of the House of Rep-
24 resentatives and the Committee on Banking,
25 Housing, and Urban Affairs of the Senate on

1 the progress made toward meeting the objec-
2 tives 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 International Relations of the House of Rep-
19 resentatives that the President has begun such
20 negotiations and why the President believes it is
21 important to the national security that export
22 controls 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 International Relations of the House of Rep-
9 resentatives that the President has begun such
10 negotiations, indicating whether the President
11 believes it is important that export controls on
12 the item involved be maintained to avoid a sig-
13 nificant 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 investigate 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 concur-
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 paragraph (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
7 eliminaton of controls on such equipment in ac-
8 cordance with the procedures of the appropriate
9 regime and shall publish a notice of such pro-
10 posal 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) the effect of export controls on
17 the competitiveness of the United States
18 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 the pro-
12 visions of this section, unilaterally prohibit or curtail
13 the export of any commodity or technology subject
14 to the jurisdiction of the United States or exported
15 by any person subject to the jurisdiction of the Unit-
16 ed States.

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

23 (3) EXPIRATION OF AUTHORITY.—

24 (A) IN GENERAL.—Any controls imposed
25 under this section shall expire 6 months after

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

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

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

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

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

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

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

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

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

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

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

1 (b) CONSULTATION WITH INDUSTRY.—The Sec-
2 retary in every possible instance shall consult with and
3 seek advice from affected United States industries and ex-
4 port advisory committees appointed under section 104(f)
5 before the imposition, expansion, or extension of any ex-
6 port control under this section.

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

17 (d) CONSULTATIONS WITH THE CONGRESS.—

18 (1) CONSULTATIONS.—The Secretary may im-
19 pose, expand, or extend export controls under this
20 section only after consultation with the Congress, in-
21 cluding the Committee on International Relations of
22 the House of Representatives and the Committee on
23 Banking, Housing, and Urban Affairs of the Senate.

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

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

7 (B) specifying the purpose of the controls;

8 (C) describing the nature, the subjects,
9 and the results of, or plans for, the consultation
10 with industry under subsection (b) and with
11 other countries under subsections (a)(5) and
12 (c);

13 (D) specifying the nature and results of
14 any alternative means attempted to achieve the
15 objectives of the controls, or the reasons for im-
16 posing or expanding the controls without at-
17 tempting any such alternative means; and

18 (E) describing the availability from other
19 countries of items comparable to the items sub-
20 ject to the controls, and describing the nature
21 and results of the efforts made to secure the co-
22 operation of foreign governments in controlling
23 the foreign availability of such comparable com-
24 modities or technology.

1 Such report shall also indicate how such controls will
2 further significantly the policies of the United States
3 as set forth in section 103 or will further its de-
4 clared international obligations.

5 (3) SUBMISSION OF REPORT TO GAO.—Each re-
6 port required by paragraph (2) shall, at the same
7 time it is submitted to the Congress, also be submit-
8 ted to the General Accounting Office for the purpose
9 of assessing the report's full compliance with the
10 purpose of this subsection.

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

16 (f) PROCEDURES AND LIMITATIONS ON EMERGENCY
17 CONTROLS.—

18 (1) IMPOSITION OF AN EMBARGO.—An embargo
19 under subsection (a)(3)(A) shall include the prohibi-
20 tion of all exports to and imports from the country
21 against which the controls under this section were
22 imposed, except that such an embargo need not in-
23 clude a prohibition on exports of items described in
24 section 114(k).

25 (2) CESSATION OF EMERGENCY CONTROLS.—

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

4 (i) the imposition of multilateral con-
5 trols under section 105 on the same com-
6 modities and technology to the country or
7 end user, or for the end use, with respect
8 to which the controls were imposed under
9 this section; or

10 (ii) the imposition, under the Inter-
11 national Emergency Economic Powers Act,
12 the Trading with the Enemy Act, or other
13 provision of law, of an embargo described
14 in paragraph (1).

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

1 for the same end use, shall immediately cease
2 to be in effect.

3 (3) LIMITATIONS ON REIMPOSITION.—Controls
4 which have ceased to be in effect under subsection
5 (a)(3), and which have not been extended under sub-
6 section (g), may not be reimposed by the President
7 under subsection (a) for a period of 6 months begin-
8 ning on the date on which the original controls ex-
9 pire.

10 (g) EXTENSION OF EMERGENCY CONTROLS.—

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

21 (A) contain determinations by the Presi-
22 dent—

23 (i) that the controls continue to be es-
24 sential to the national security or foreign
25 policy of the United States;

1 (ii) that no other alternative means
2 can achieve the national security or foreign
3 policy objectives of the United States with-
4 in a reasonable period of time, as described
5 in subsection (a)(4)(B);

6 (iii) that the United States has dem-
7 onstrated the ability to enforce all aspects
8 of the controls effectively; and

9 (iv) that the effect of the controls on
10 those factors described in subsection
11 (a)(4)(E) has not exceeded the benefits to
12 the foreign policy or national security in-
13 terests of the United States;

14 (B) identify those commodities and tech-
15 nology to be controlled, specify that they must
16 be controlled in order to achieve the intended
17 purpose of the controls, and describe the rea-
18 sons for the selection of such items;

19 (C) specify the reasons why negotiations
20 required under subsection (a)(5) or (c) failed to
21 result in the adoption of the controls under sec-
22 tion 105, and the prospects for the multilateral
23 adoption of such controls;

24 (D) specify the reasons why an embargo
25 described in paragraph (1) is not presently jus-

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

3 (E) include an assessment by the Secretary
4 of the economic consequences of the controls
5 during the preceding 4 months (in the case of
6 the first extension of the controls under this
7 section) or during the preceding 10 months (in
8 the case of any subsequent extension of the con-
9 trols under this section), including estimates of
10 any lost United States exports and jobs;

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

19 (G) include an assessment by the Secretary
20 of Defense of the impact the controls have had
21 on the national security of the United States in
22 the preceding 4 months (in the case of the first
23 extension of the controls under this section) or
24 in the preceding 10 months (in the case of any

1 subsequent extension of the controls under this
2 section).

3 (2) CONSIDERATION OF EXTENSION.—The con-
4 trols shall remain in effect unless the Congress,
5 within 60 calendar days after its receipt of the re-
6 port under paragraph (1), enacts a joint resolution
7 pursuant to paragraph (3) disapproving the exten-
8 sion of the controls. Any controls remaining in effect
9 shall continue for the period specified in the report
10 or until terminated by the President, whichever oc-
11 curs first, but in no case longer than 1 year after
12 the date on which the controls would otherwise ex-
13 pire under subsection (a)(3), unless the Congress by
14 law terminates the controls. If the Congress, within
15 60 calendar days after the date of its receipt of such
16 report, enacts a joint resolution disapproving the ex-
17 tension of such controls, then such controls shall
18 cease to be effective upon the expiration of that 60-
19 day period.

20 (3) JOINT RESOLUTIONS.—

21 (A) DEFINITION.—For purposes of this
22 paragraph, the term “joint resolution” means
23 only a joint resolution the matter after the re-
24 solving clause of which is as follows: “That,
25 pursuant to section 106(g) of the Export Act of

1 1995, the President may not extend emergency
2 controls as specified in the report submitted to
3 the Congress on _____.”,
4 with the blank space being filled with the ap-
5 propriate date.

6 (B) INTRODUCTION.—On the day on which
7 a report is submitted to the House of Rep-
8 resentatives and the Senate under paragraph
9 (1), a joint resolution with respect to the exten-
10 sion of controls specified in such report shall be
11 introduced (by request) in the House of Rep-
12 resentatives by the chairman of the Committee
13 on International Relations, for the chairman
14 and the ranking minority member of the Com-
15 mittee, or by Members of the House designated
16 by the chairman and ranking minority member;
17 and shall be introduced (by request) in the Sen-
18 ate by the majority leader of the Senate, for the
19 majority leader and the minority leader of the
20 Senate, or by Members of the Senate des-
21 ignated by the majority leader and the minority
22 leader of the Senate. If either House of Con-
23 gress is not in session on the day on which such
24 a report is submitted, the joint resolution shall
25 be introduced in that House, as provided for in

1 the preceding sentence, on the first day there-
2 after on which that House is in session.

3 (C) DISCHARGE.—If the Committee of ei-
4 ther House to which a joint resolution has been
5 referred has not reported the joint resolution by
6 the end of 30 calendar days after its referral,
7 the committee shall be discharged from further
8 consideration of the joint resolution or of any
9 other joint resolution introduced with respect to
10 the same matter.

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

1 the International Security Assistance and Arms
2 Export Control Act of 1976.

3 (E) DUPLICATIVE RESOLUTIONS.—In the
4 case of a joint resolution described in subpara-
5 graph (A), if, before the passage by one House
6 of a joint resolution of that House, that House
7 receives a resolution with respect to the same
8 matter from the other House, then—

9 (i) the procedure in that House shall
10 be the same as if no joint resolution had
11 been received from the other House; and

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

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

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

1 tain or because of an adjournment of the Congress
2 sine die.

3 (h) EFFECT ON OTHER AUTHORITY.—

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

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

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

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

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

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

16 (B) The commodities or technology referred to
17 in subparagraph (A) are—

18 (i) any commodities or technology the ex-
19 port of which is controlled under this title pur-
20 suant to the Missile Technology Control Regime
21 or the Australia Group, or controlled under this
22 title pursuant to section 309(c) of the Nuclear
23 Non-Proliferation Act of 1978,

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

4 (iii) any commodities or technology the ex-
5 port of which could make a significant contribu-
6 tion to the military potential of a country de-
7 scribed in subparagraph (A), including its mili-
8 tary logistics capability, or could enhance the
9 ability of such country to support acts of inter-
10 national terrorism,

11 other than commodities or technology that the Presi-
12 dent determines will be used only for humanitarian
13 purposes. A validated license shall be required for
14 the export under this paragraph of any such com-
15 modities or technology that will be used only for hu-
16 manitarian purposes.

17 (C) Paragraphs (3)(A) and (4) of subsection (a)
18 shall not apply to exports prohibited or restricted
19 under this subsection.

20 (D)(i) The Secretary shall review the list of
21 items described in subparagraph (B)(iii) at least an-
22 nually. At the conclusion of the review, the Secretary
23 shall justify the inclusion of each item on the list,
24 remove items from the list, change the specifications
25 of items on the list, or add items to the list, in order

1 to ensure that the items on the list meet the require-
2 ments of subparagraph (B)(iii).

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

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

20 (3) PUBLICATION OF DETERMINATIONS.—Each
21 determination of the Secretary of State under para-
22 graph (1)(A), and each determination under section
23 6(j)(1)(A) of the Export Administration Act of 1979
24 in effect at the time this title takes effect, shall be
25 published in the Federal Register.

1 (4) RESCISSION OF DETERMINATIONS.—A de-
2 termination made by the Secretary of State under
3 paragraph (1)(A) may not be rescinded unless the
4 President submits to the Speaker of the House of
5 Representatives and the chairman of the Committee
6 on Banking, Housing, and Urban Affairs and the
7 chairman of the Committee on Foreign Relations of
8 the Senate—

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

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

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

16 (iii) that government has provided as-
17 surances that it will not support acts of
18 international terrorism in the future; or

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

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

1 (ii) the government concerned has
2 provided assurances that it will not sup-
3 port acts of international terrorism in the
4 future.

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

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

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

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

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

24 (I) the name of any country in-
25 volved in the proposed transaction,

1 the identity of any recipient of the
2 items to be provided pursuant to the
3 proposed transaction, and the antici-
4 pated use of those items;

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

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

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

18 (V) the name of every United
19 States Government department, agen-
20 cy, or other entity involved in the pro-
21 posed transaction, and every foreign
22 government involved in the proposed
23 transaction.

24 To the extent possible, the information specified in
25 clause (ii) of subparagraph (B) shall be provided in

1 unclassified form, with any classified information
2 provided in an addendum to the report.

3 (6) MULTILATERAL REGIMES.—The Secretary
4 of State shall propose to COCOM, to the Australia
5 Group, to the countries participating in the Missile
6 Technology Control Regime, and to the Nuclear
7 Suppliers Group, that each such group adopt those
8 controls that are imposed by this subsection on ex-
9 ports of commodities or technology subject to control
10 by such group. The Secretary of State shall continue
11 to make such proposals until such export controls
12 are so adopted.

13 (7) EFFECT ON OTHER LAWS.—The provisions
14 of this subsection do not affect any other provision
15 of law to the extent such other provision imposes
16 greater restrictions on exports to any country the
17 government of which the Secretary of State has de-
18 termined has repeatedly provided support for acts of
19 international terrorism than are imposed under this
20 subsection.

21 (j) CRIME CONTROL INSTRUMENTS.—

22 (1) VALIDATED LICENSE REQUIRED.—Crime
23 control and detection instruments and equipment
24 shall be approved for export by the Secretary only
25 pursuant to a validated export license. Paragraphs

1 (3)(A) and (4) of subsection (a) shall not apply to
2 the export controls imposed by this subsection.

3 (2) CONSULTATION WITH SECRETARY OF
4 STATE.—

5 (A) ITEMS ON CONTROL LIST.—Any deter-
6 mination of the Secretary of what commodities
7 or technology shall be included on the control
8 index as a result of the export restrictions im-
9 posed by this subsection shall be made after
10 consultation with the Secretary of State.

11 (B) ACTION ON LICENSE APPLICATION.—
12 Any determination of the Secretary to approve
13 or deny an export license application to export
14 crime control or detection instruments or equip-
15 ment shall be made after consultation with the
16 Secretary of State.

17 (3) DISPUTE RESOLUTION.—If the Secretary of
18 State does not agree with the Secretary with respect
19 to any determination under paragraph (2), the Sec-
20 retary of State shall refer the matter to the Presi-
21 dent for resolution.

22 (4) EXCEPTIONS.—The provisions of this sub-
23 section shall not apply with respect to exports to
24 countries which are members of the North Atlantic
25 Treaty Organization or to Japan, Australia, or New

1 Zealand, or to such other countries as the President
2 shall designate consistent with the purposes of this
3 subsection and section 502B of the Foreign Assist-
4 ance Act of 1961.

5 (k) SPARE PARTS.—At the same time as the Presi-
6 dent imposes or expands export controls under this sec-
7 tion, the President shall determine whether such export
8 controls will apply to replacement parts or parts in com-
9 modities subject to such export controls.

10 **SEC. 107. SHORT SUPPLY CONTROLS.**

11 (a) AUTHORITY.—

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

1 (2) PUBLIC PARTICIPATION.—Upon imposing
2 quantitative restrictions on exports of any commod-
3 ities to carry out the policy set forth in section
4 103(4), the Secretary shall include in a notice pub-
5 lished in the Federal Register with respect to such
6 restrictions an invitation to all interested parties to
7 submit written comments within 15 days after the
8 date of publication on the impact of such restrictions
9 and the method of licensing used to implement
10 them.

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

15 (b) MONITORING.—

16 (1) IN GENERAL.—In order to carry out the
17 policy set forth in section 103(4), the Secretary shall
18 monitor exports, and contracts for exports, of any
19 commodity when the volume of such exports in rela-
20 tion to domestic supply contributes, or may contrib-
21 ute, to an increase in domestic prices or a domestic
22 shortage, and such price increase or shortage has, or
23 may have, a serious adverse impact on the economy
24 or any sector thereof. Any such monitoring shall
25 commence at a time adequate to assure that the

1 monitoring will result in a data base sufficient to en-
2 able policies to be developed, in accordance with sec-
3 tion 103(4), to mitigate a short supply situation or
4 serious inflationary price rise or, if export controls
5 are needed, to permit imposition of such controls in
6 a timely manner. Information which the Secretary
7 requires to be furnished in effecting such monitoring
8 shall be confidential, except as provided in para-
9 graph (2).

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

19 (3) CONSULTATION WITH SECRETARY OF EN-
20 ERGY.—The Secretary shall consult with the Sec-
21 retary of Energy to determine whether monitoring or
22 export controls under this section are warranted
23 with respect to exports of facilities, machinery, or
24 equipment normally and principally used, or in-
25 tended to be used, in the production, conversion, or

1 transportation of fuels and energy (except nuclear
2 energy), including, but not limited to—

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

4 (B) petroleum refineries, and natural gas
5 processing, liquefaction, and gasification plants;

6 (C) facilities for production of synthetic
7 natural gas or synthetic crude oil;

8 (D) oil and gas pipelines, pumping sta-
9 tions, and associated equipment; and

10 (E) vessels for transporting oil, gas, coal,
11 and other fuels.

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

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

24 (B) Each petition shall be in such form as the
25 Secretary shall prescribe and shall contain informa-

1 tion in support of the action requested. The petition
2 shall include any information reasonably available to
3 the petitioner indicating that each of the criteria set
4 forth in paragraph (3)(A) is satisfied.

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

9 (A) include the name of the material that
10 is the subject to the petition;

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

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

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

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

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

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

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

1 (iii) exports of such material are as impor-
2 tant as any other cause of a domestic price in-
3 crease or shortage relative to demand found
4 under clause (ii);

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

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

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

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

1 after the publication of such proposed regulations,
2 and after considering any public comments on the
3 proposed regulations, the Secretary shall publish and
4 implement final regulations with respect to such
5 monitoring or controls.

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

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

23 (7) PRECEDENCE OF PROCEDURES OVER
24 OTHER REVIEWS.—The procedures and time limits
25 set forth in this subsection with respect to a petition

1 filed under this subsection shall take precedence over
2 any review undertaken at the initiative of the Sec-
3 retary with respect to the same subject as that of
4 the petition.

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

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

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

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

1 the export of metallic materials capable of being re-
2 cycled, under the authority of this section, the Sec-
3 retary shall publish the reasons for such action in
4 accordance with paragraph (3)(A) and (B).

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

16 (d) DOMESTICALLY PRODUCED CRUDE OIL.—

17 (1) PROHIBITION ON EXPORTS.—Notwithstand-
18 ing any other provision of this title and notwith-
19 standing subsection (u) of section 28 of the Mineral
20 Leasing Act of 1920 (30 U.S.C. 185), no domesti-
21 cally produced crude oil transported by pipeline over
22 right-of-way granted pursuant to section 203 of the
23 Trans-Alaska Pipeline Authorization Act (43 U.S.C.
24 1652) may, subject to paragraph (2), be exported

1 from the United States, except any such crude oil
2 which—

3 (A) is exported to an adjacent foreign
4 country to be refined and consumed therein in
5 an exchange that—

6 (i) is for the same quantity of crude
7 oil being exported from that country to the
8 United States; and

9 (ii) results through convenience or in-
10 creased efficiency of transportation in
11 lower prices for consumers of petroleum
12 products in the United States as described
13 in paragraph (2)(A)(ii);

14 (B) is temporarily exported for convenience
15 or increased efficiency of transportation across
16 parts of an adjacent foreign country and reen-
17 ters the United States; or

18 (C) is transported to Canada, to be
19 consumed therein, in amounts not to exceed an
20 annual average of 50,000 barrels per day, in
21 addition to exports under subparagraphs (A)
22 and (B), except that any ocean transportation
23 of such oil shall be by vessels documented under
24 section 12106 of title 46, United States Code.

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

4 (A) the President so recommends to the
5 Congress after making and publishing express
6 findings that exports of such crude oil, includ-
7 ing exchanges—

8 (i) will not diminish the total quantity
9 or quality of petroleum refined within,
10 stored within, or legally committed to be
11 transported to and sold within the United
12 States;

13 (ii) will, within 3 months following the
14 initiation of such exports or exchanges, re-
15 sult in—

16 (I) acquisition costs to the refin-
17 ers that purchase the imported crude
18 oil being lower than the acquisition
19 costs such refiners would have to pay
20 for the domestically produced oil in
21 the absence of such an export or ex-
22 change, and

23 (II) not less than 75 percent of
24 such savings in costs being reflected
25 in wholesale and retail prices of prod-

1 ucts refined from such imported crude
2 oil;

3 (iii) will be made only pursuant to
4 contracts which may be terminated if the
5 crude oil supplies of the United States are
6 interrupted, threatened, or diminished;

7 (iv) are clearly necessary to protect
8 the national interest; and

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

11 (B) the President includes such findings in
12 the recommendation to the Congress and the
13 Congress, within 60 days after receiving that
14 recommendation, agrees to a joint resolution
15 which approves such exports on the basis of
16 those findings, and which is thereafter enacted
17 into law.

18 (3) EXPORTS UNDER BILATERAL AGREE-
19 MENTS.—Notwithstanding any other provision of
20 this section or any other provision of law, including
21 subsection (u) of section 28 of the Mineral Leasing
22 Act of 1920, the President may export oil to any
23 country pursuant to a bilateral international oil sup-
24 ply agreement entered into by the United States
25 with such country before June 25, 1979, or to any

1 country pursuant to the International Emergency
2 Oil Sharing Plan of the International Energy Agen-
3 cy.

4 (e) REFINED PETROLEUM PRODUCTS.—

5 (1) EXPORT LICENSES.—In any case in which
6 the President determines that it is necessary to im-
7 pose export controls on refined petroleum products
8 in order to carry out the policy set forth in section
9 103(4), the President shall notify the Congress of
10 that determination. The President shall also notify
11 the Congress if and when the President determines
12 that such export controls are no longer necessary.
13 During any period in which a determination that
14 such export controls are necessary is in effect, no re-
15 fined petroleum product may be exported except pur-
16 suant to an export license specifically authorizing
17 such export.

18 (2) NOTIFICATION TO CONGRESS AND LAY-
19 OVER.—(A) Not later than 5 days after an applica-
20 tion for a license to export any refined petroleum
21 product is received, the Secretary shall notify the
22 Congress of such application, together with the
23 name of the exporter, the destination of the pro-
24 posed export, and the amount and price of the pro-
25 posed export. Such notification shall be made to the

1 chairman of the Committee on International Rela-
2 tions of the House of Representatives and the chair-
3 man of the Committee on Banking, Housing, and
4 Urban Affairs of the Senate.

5 (B) The Secretary may not grant such license
6 during the 30-day period beginning on the date on
7 which notification to the Congress under paragraph
8 (1) is received, unless the President certifies in writ-
9 ing to the Speaker of the House of Representatives
10 and the President pro tempore of the Senate that
11 the proposed export is vital to the national interest
12 and that a delay in issuing the license would ad-
13 versely affect that interest.

14 (3) EXCEPTION.—This subsection shall not
15 apply to—

16 (A) any export license application for ex-
17 ports to a country with respect to which histori-
18 cal export quotas established by the Secretary
19 on the basis of past trading relationships apply;
20 or

21 (B) any license application for exports to a
22 country if exports under the license would not
23 result in the export from the United States of
24 more than 250,000 barrels of refined petroleum
25 products to such country in any fiscal year.

1 (4) DEFINITION.—For purposes of this sub-
2 section, the term “refined petroleum product” means
3 gasoline, kerosene, distillates, propane or butane
4 gas, diesel fuel, and residual fuel oil, that is refined
5 within the United States or entered for consumption
6 within the United States.

7 (5) EXTENSION OF LICENSE APPLICATION
8 PROCESSING TIME.—The Secretary may extend any
9 time period prescribed in section 109 to the extent
10 necessary to take into account delays in action by
11 the Secretary on a license application on account of
12 the provisions of this subsection.

13 (f) CERTAIN PETROLEUM PRODUCTS.—Petroleum
14 products refined in United States foreign trade zones, or
15 in the United States Territory of Guam, from foreign
16 crude oil shall be excluded from any quantitative restric-
17 tions imposed under this section, except that, if the Sec-
18 retary finds that a product is in short supply, the Sec-
19 retary may issue such regulations as may be necessary to
20 limit exports.

21 (g) AGRICULTURAL COMMODITIES.—

22 (1) APPROVAL OF CONTROLS BY SECRETARY OF
23 AGRICULTURE.—The authority conferred by this sec-
24 tion shall not be exercised with respect to any agri-
25 cultural commodity, including fats and oils or animal

1 hides or skins, without the approval of the Secretary
2 of Agriculture. The Secretary of Agriculture shall
3 not approve the exercise of such authority with re-
4 spect to any such commodity during any period for
5 which the supply of such commodity is determined
6 by the Secretary of Agriculture to be in excess of the
7 requirements of the domestic economy, except to the
8 extent the President determines that the controls on
9 such agricultural commodities are also imposed
10 under section 106. The Secretary of Agriculture
11 shall, by exercising the authority which the Sec-
12 retary of Agriculture has under other applicable pro-
13 visions of law, collect data with respect to export
14 sales of animal hides and skins.

15 (2) PROTECTION OF STORED COMMODITIES
16 FROM FUTURE CONTROLS.—Upon approval of the
17 Secretary, in consultation with the Secretary of Ag-
18 riculture, agricultural commodities purchased by or
19 for use in a foreign country may remain in the Unit-
20 ed States for export at a later date free from any
21 quantitative limitations on export which may be im-
22 posed to carry out the policy set forth in section
23 103(4) subsequent to such approval. The Secretary
24 may not grant such approval unless the Secretary

1 receives adequate assurance and, in conjunction with
2 the Secretary of Agriculture, finds—

3 (A) that such commodities will eventually
4 be exported,

5 (B) that neither the sale nor export thereof
6 will result in an excessive drain of scarce mate-
7 rial and have a serious domestic inflationary
8 impact,

9 (C) that storage of such commodities in
10 the United States will not unduly limit the
11 space available for storage of domestically
12 owned commodities, and

13 (D) that the purpose of such storage is to
14 establish a reserve of such commodities for later
15 use, not including resale to or use by another
16 country.

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

19 (3) PROCEDURES FOR IMPOSING CONTROLS.—

20 (A) If the President imposes export controls on any
21 agricultural commodity under section 106 (including
22 section 106(i)) or this section, the President shall
23 immediately transmit a report on such action to the
24 Congress, setting forth the reasons for the controls
25 in detail and specifying the period of time, which

1 may not exceed 1 year, that the controls are pro-
2 posed to be in effect. If the Congress, within 60 days
3 after the date of the receipt of the report, adopts a
4 joint resolution pursuant to paragraph (4) approving
5 the imposition of the export controls, then such con-
6 trols shall remain in effect for the period specified
7 in the report, or until terminated by the President,
8 whichever occurs first. If the Congress, within 60
9 days after the date of its receipt of such report, fails
10 to adopt a joint resolution approving such controls,
11 then such controls shall cease to be effective upon
12 the expiration of that 60-day period.

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

15 (i) which are extended under this title if
16 the controls, when imposed, were approved by
17 the Congress under subparagraph (A) and
18 paragraph (4); or

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

22 (4) EXPEDITED PROCEDURES.—(A) For pur-
23 poses of this paragraph, the term “joint resolution”
24 means only a joint resolution the matter after the
25 resolving clause of which is as follows: “That pursu-

1 ant to section 107(g)(3) of the Export Act of 1994,
2 the President may impose export controls as speci-
3 fied in the report submitted to the Congress on
4 _____.”, with the blank space being filled with the
5 appropriate date.

6 (B) On the day on which a report is submitted
7 to the House of Representatives and the Senate
8 under paragraph (3), a joint resolution with respect
9 to the export controls specified in such report shall
10 be introduced (by request) in the House by the
11 chairman of the Committee on International Rela-
12 tions, for the chairman and the ranking minority
13 member of the Committee, or by Members of the
14 House designated by the chairman and ranking mi-
15 nority member; and shall be introduced (by request)
16 in the Senate by the majority leader of the Senate,
17 for the chairman and the minority leader of the Sen-
18 ate, or by Members of the Senate designated by the
19 majority leader and minority leader of the Senate. If
20 either House is not in session on the day on which
21 such a report is submitted, the joint resolution shall
22 be introduced in that House, as provided in the pre-
23 ceding sentence, on the first day thereafter on which
24 that House is in session.

1 (C) If the committee of either House to which
2 a joint resolution has been referred has not reported
3 the joint resolution at the end of 30 days after its
4 referral, the committee shall be discharged from fur-
5 ther consideration of the resolution or of any other
6 joint resolution introduced with respect to the same
7 matter.

8 (D) A joint resolution under this paragraph
9 shall be considered in the Senate in accordance with
10 the provisions of section 601(b)(4) of the Inter-
11 national Security Assistance and Arms Export Con-
12 trol Act of 1976. For the purpose of expediting the
13 consideration and passage of joint resolutions re-
14 ported or discharged pursuant to the provisions of
15 this paragraph, it shall be in order for the Commit-
16 tee on Rules of the House of Representatives to
17 present for consideration a resolution of the House
18 of Representatives providing procedures for the im-
19 mediate consideration of a joint resolution under
20 this paragraph which may be similar, if applicable,
21 to the procedure set forth in section 601(b)(4) of the
22 International Security Assistance and Arms Export
23 Control Act of 1976.

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

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

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

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

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

17 (h) BARTER AGREEMENTS.—

18 (1) EXEMPTION FROM CONTROLS.—The expor-
19 tation pursuant to a barter agreement of any com-
20 modities which may lawfully be exported from the
21 United States, for any commodities which may law-
22 fully be imported into the United States, may be ex-
23 empted, in accordance with paragraph (2), from any
24 quantitative limitation on exports (other than any

1 reporting requirement) imposed to carry out the pol-
2 icy set forth in section 103(4).

3 (2) CRITERIA FOR EXEMPTION.—The Secretary
4 shall grant an exemption under paragraph (1) if the
5 Secretary finds, after consultation with the appro-
6 priate department or agency of the United States,
7 that—

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

10 (i) the average annual quantity of the
11 commodities to be exported pursuant to
12 the barter agreement will not be required
13 to satisfy the average amount of such com-
14 modities estimated to be required annually
15 by the domestic economy and will be sur-
16 plus thereto; and

17 (ii) the average annual quantity of the
18 commodities to be imported will be less
19 than the average amount of such commod-
20 ities estimated to be required annually to
21 supplement domestic production; and

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

1 (3) DEFINITION.—For purposes of this sub-
2 section, the term “barter agreement” means any
3 agreement which is made for the exchange, without
4 monetary consideration, of any commodities pro-
5 duced in the United States for any commodities pro-
6 duced outside of the United States.

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

10 (i) UNPROCESSED RED CEDAR.—

11 (1) PROHIBITION.—No unprocessed western red
12 cedar (*Thuja plicata*) logs harvested from State or
13 Federal lands may be exported from the United
14 States.

15 (2) RED CEDAR NOT AN AGRICULTURAL COM-
16 MODITY.—Unprocessed western red cedar logs shall
17 not be considered to be an agricultural commodity
18 for purposes of subsection (g).

19 (3) DEFINITION.—As used in this subsection,
20 the term “unprocessed western red cedar” means
21 red cedar timber which has not been processed
22 into—

23 (A) lumber of American Lumber Stand-
24 ards Grades of Number 3 dimension or better,

1 or Pacific Lumber Inspection Bureau Export
2 R-List Grades of Number 3 common or better;

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

4 (C) veneer and plywood;

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

8 (E) shakes and shingles.

9 (j) EFFECT OF CONTROLS ON EXISTING CON-
10 TRACTS.—

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

14 (A) any contract to harvest unprocessed
15 western red cedar from State lands which was
16 entered into before October 1, 1979, and the
17 performance of which would make the red cedar
18 available for export; or

19 (B) any contract to harvest unprocessed
20 red cedar which was entered into after Septem-
21 ber 30, 1979, and before October 1, 1982, and
22 the performance of which would make the red
23 cedar available for export, to the extent such
24 exports were permitted under section 7(i) of the
25 Export Administration Act of 1979.

1 (2) OTHER COMMODITIES.—Any export controls
2 imposed under this section on any agricultural com-
3 modity (including fats, oils, and animal hides and
4 skins), or on any forest product or fishery product,
5 shall not affect any contract to export entered into
6 before the date on which such controls are imposed.
7 For purposes of this paragraph, the term “contract
8 to export” includes, but is not limited to, an export
9 sales agreement and an agreement to invest in an
10 enterprise which involves the export of commodities
11 or technology.

12 (k) OIL EXPORTS FOR USE BY UNITED STATES
13 MILITARY FACILITIES.—For purposes of subsection (d),
14 and for purposes of any export controls imposed under
15 this title, shipments of crude oil, refined petroleum prod-
16 ucts, or partially refined petroleum products from the
17 United States for use by the Department of Defense or
18 United States-supported installations or facilities shall not
19 be considered to be exports.

20 **SEC. 108. FOREIGN BOYCOTTS.**

21 (a) PROHIBITIONS AND EXCEPTIONS.—

22 (1) PROHIBITIONS.—In order to carry out the
23 policies set forth in section 103(10), the President
24 shall issue regulations prohibiting any United States
25 person, with respect to that person’s activities in the

1 interstate or foreign commerce of the United States,
2 from taking or knowingly agreeing to take any of
3 the following actions with intent to comply with, fur-
4 ther, or support any boycott fostered or imposed by
5 a foreign country against a country which is friendly
6 to the United States and which is not itself the ob-
7 ject of any form of boycott pursuant to United
8 States law or regulation:

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

1 (B) Refusing, or requiring any other per-
2 son to refuse, to employ or otherwise discrimi-
3 nating against any United States person on the
4 basis of race, religion, sex, or national origin of
5 that person or of any owner, officer, director, or
6 employee of such person.

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

11 (D) Furnishing information about whether
12 any person has, has had, or proposes to have
13 any business relationship (including a relation-
14 ship by way of sale, purchase, legal or commer-
15 cial representation, shipping or other transport,
16 insurance, investment, or supply) with or in the
17 boycotted country, with any business concern
18 organized under the laws of the boycotted coun-
19 try, with any national or resident of the boy-
20 cotted country, or with any other person that is
21 known or believed to be restricted from having
22 any business relationship with or in the boy-
23 cotted country. Nothing in this paragraph shall
24 prohibit the furnishing of normal business in-

1 formation in a commercial context as defined by
2 the Secretary.

3 (E) Furnishing information about whether
4 any person is a member of, has made a con-
5 tribution to, or is otherwise associated with or
6 involved in the activities of any charitable or
7 fraternal organization which supports the boy-
8 cotted country.

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

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

20 (A) complying or agreeing to comply with
21 requirements—

22 (i) prohibiting the import of commod-
23 ities or services from the boycotted country
24 or commodities produced or services pro-
25 vided by any business concern organized

1 under the laws of the boycotted country or
2 by nationals or residents of the boycotted
3 country; or

4 (ii) prohibiting the shipment of com-
5 modities to the boycotted country on a car-
6 rier of the boycotted country, or by a route
7 other than that prescribed by the boycott-
8 ing country or the recipient of the ship-
9 ment;

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

24 (C) complying or agreeing to comply in the
25 normal course of business with the unilateral

1 and specific selection by a boycotting country,
2 or national or resident thereof, of carriers, in-
3 surers, suppliers of services to be performed
4 within the boycotting country, or specific com-
5 modities which, in the normal course of busi-
6 ness, are identifiable by source when imported
7 into the boycotting country;

8 (D) complying or agreeing to comply with
9 export requirements of the boycotting country
10 relating to shipments or transshipment of ex-
11 ports to the boycotted country, to any business
12 concern of or organized under the laws of the
13 boycotted country, or to any national or resi-
14 dent of the boycotted country;

15 (E) compliance by an individual or agree-
16 ment by an individual to comply with the immi-
17 gration or passport requirements of any country
18 with respect to such individual or any member
19 of such individual's family or with requests for
20 information regarding requirements of employ-
21 ment of such individual within the boycotting
22 country; and

23 (F) compliance by a United States person
24 resident in a foreign country or agreement by
25 such person to comply with the laws of the

1 country with respect to such person's activities
2 exclusively therein, and such regulations may
3 contain exceptions for such resident complying
4 with the laws or regulations of the foreign coun-
5 try governing imports into such country of
6 trademarked, trade named, or similarly specifi-
7 cally identifiable products, or components of
8 products for such person's own use, including
9 the performance of contractual services within
10 that country, as may be defined by such regula-
11 tions.

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

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

20 (5) EVASION.—This section shall apply to any
21 transaction or activity undertaken, by or through a
22 United States person or any other person, with in-
23 tent to evade the provisions of this section as imple-
24 mented by the regulations issued pursuant to this
25 subsection, and such regulations shall expressly pro-

1 vide that the exceptions set forth in paragraph (2)
2 shall not permit activities or agreements (expressed
3 or implied by a course of conduct, including a pat-
4 tern of responses) otherwise prohibited, which are
5 not within the intent of such exceptions.

6 (b) EMERGENCY CONTROLS.—

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

11 (2) REPORTS BY UNITED STATES PERSONS.—
12 Such regulations shall require that any United
13 States person receiving a request for the furnishing
14 of information, the entering into or implementing of
15 agreements, or the taking of any other action re-
16 ferred to in section 103(10) shall report that fact to
17 the Secretary, together with such other information
18 concerning such request as the Secretary may re-
19 quire, for such action as the Secretary considers ap-
20 propriate for carrying out the policies of that sec-
21 tion. Such person shall also report to the Secretary
22 whether such person intends to comply and whether
23 such person has complied with such request. Any re-
24 port filed pursuant to this paragraph shall be made
25 available promptly for public inspection and copying,

1 except that information regarding the quantity, de-
2 scription, and value of any commodities or tech-
3 nology to which such report relates may be kept con-
4 fidential if the Secretary determines that disclosure
5 thereof would place the United States person in-
6 volved at a competitive disadvantage. The Secretary
7 shall periodically transmit summaries of the infor-
8 mation contained in such reports to the Secretary of
9 State for such action as the Secretary of State, in
10 consultation with the Secretary, considers appro-
11 priate for carrying out the policies set forth in sec-
12 tion 103(10).

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

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

20 (2) pertains to participation in, compliance
21 with, implementation of, or the furnishing of infor-
22 mation regarding restrictive trade practices or boy-
23 cotts fostered or imposed by foreign countries
24 against other countries.

1 **SEC. 109. PROCEDURES FOR PROCESSING EXPORT LI-**
2 **CENSE APPLICATIONS; OTHER INQUIRIES.**

3 (a) PRIMARY RESPONSIBILITY OF THE SEC-
4 RETARY.—

5 (1) IN GENERAL.—All export license applica-
6 tions required under this title shall be submitted by
7 the applicant to the Secretary. All determinations
8 with respect to any such application shall be made
9 by the Secretary, subject to the procedures provided
10 in this section.

11 (2) REGULATIONS.—In regulations that carry
12 out this section, the Secretary shall describe the pro-
13 cedures required by this section, the responsibilities
14 of the Secretary and of other departments and agen-
15 cies in reviewing applications, the rights of the appli-
16 cant, and the extent of any multilateral review of a
17 given license application.

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

24 (4) CONSIDERATION OF RELIABILITY OF PAR-
25 TIES.—In reviewing applications for validated export
26 licenses, the Secretary may in each case consider the

1 reliability of the parties to the proposed export. In
2 making such an evaluation, the Secretary may con-
3 sider all sources of information, including intel-
4 ligence information. The consideration of intelligence
5 information in connection with the evaluation of the
6 reliability of parties shall not authorize the direct or
7 indirect disclosure of classified information or
8 sources and methods of gathering classified informa-
9 tion.

10 (b) ACTION BY OTHER DEPARTMENTS AND AGEN-
11 CIES.—

12 (1) REFERRALS.—(A) At the direction of the
13 President, the Secretary shall refer appropriate li-
14 cense applications required under section 105 or 106
15 to appropriate departments and agencies of the Gov-
16 ernment to make recommendations and provide in-
17 formation to the Secretary on such applications.

18 (B) The President shall restrict referrals of li-
19 cense applications to Government departments and
20 agencies that possess particular expertise and infor-
21 mation that is relevant to the licensing process and
22 is not possessed by the Secretary.

23 (2) ORGANIZATION OF REVIEWING AGENCIES.—
24 Departments and agencies reviewing license applica-
25 tions shall organize their resources and units to plan

1 for the prompt and expeditious internal dissemina-
2 tion of export license applications, if necessary, so as
3 to avoid delays in responding to the Secretary's re-
4 quest for information and recommendations.

5 (3) REQUESTS FOR ADDITIONAL INFORMA-
6 TION.—Within 5 days after an export license appli-
7 cation is referred to a department or agency under
8 this subsection, the agency or department shall
9 specify to the Secretary all information that is not
10 in the application that would be required to respond
11 to the referral of the application, and the Secretary
12 shall, pursuant to subsection (d)(1)(C), request such
13 information from the applicant. The time that may
14 elapse between the date the information is requested
15 from the applicant and the date the information is
16 received by the Secretary shall not be included in
17 calculating the time periods prescribed in this sec-
18 tion.

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

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

4 (2) the application has been denied by the Sec-
5 retary under this section and the applicant has been
6 so informed.

7 (d) PROCEDURES FOR PROCESSING EXPORT LI-
8 CENSE APPLICATIONS.—

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

13 (A) send the applicant an acknowledgment
14 of the receipt of the application and the date of
15 the receipt;

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

21 (C) on the basis of information the Sec-
22 retary has, including information provided to
23 the Secretary under subsection (b)(3), return
24 the application without action if the application
25 is improperly completed or if additional infor-

1 mation is required, with sufficient information
2 to permit the application to be properly resub-
3 mitted; and

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

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

1 (B) A recommendation that the Secretary deny
2 a validated license shall include a statement of rea-
3 sons for the recommendation that are consistent
4 with the provisions of this title, and shall cite both
5 the statutory and the regulatory basis for the rec-
6 ommendation.

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

14 (A) deadlines for decisions within the
15 interagency committee consistent with the duty
16 of the Secretary to reach his or her final deci-
17 sion on an application within 30 days after the
18 date of filing of the license application;

19 (B) that a department or agency dissent-
20 ing from the position of the Secretary shall
21 have the burden to bring the issue in writing to
22 the next level of review provided within the
23 interagency committee and may only dissent on
24 the basis of the criteria set forth in section
25 105(c)(1)(D) or section 106(a)(4); and

1 (C) that a department or agency that fails
2 to make a timely escalation of a disputed mat-
3 ter shall be deemed to have no objection to the
4 decision of the Secretary.

5 (4) ACTIONS BY THE SECRETARY.—(A) When a
6 referral of a license application to other departments
7 or agencies is not required, the Secretary shall issue
8 a license or notify the applicant of the intent to deny
9 within 10 days after receiving the application.

10 (B) If an application is to be denied because
11 the export would be made to a controlled end user,
12 no referral to other departments or agencies is re-
13 quired, and the applicant shall be informed of the
14 reason for the denial.

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

20 (A) the determination;

21 (B) the statutory and regulatory basis for
22 the proposed denial;

23 (C) the reasons for such denial, with ref-
24 erences to the criteria set forth in section 105,
25 106, or 107 (as the case may be);

1 (D) what, if any, modifications in, or re-
2 strictions on, the commodities or technology for
3 which the license was sought would allow the
4 export or reexport of the commodities or tech-
5 nology to be compatible with controls imposed
6 under this title;

7 (E) which officers and employees of the
8 Department of Commerce who are familiar with
9 the application will be made reasonably avail-
10 able to the applicant for considerations with re-
11 gard to such modifications or restrictions, if ap-
12 propriate;

13 (F) to the extent consistent with the na-
14 tional security and foreign policy of the United
15 States, the specific considerations which led to
16 the determination to deny the application; and

17 (G) the availability of appeal procedures.

18 The Secretary shall allow the applicant not less than
19 30 days to respond to the Secretary's determination
20 before the license application is finally denied.

21 (e) RECORDKEEPING.—The Secretary shall make and
22 keep records of all advice and recommendations given by
23 Federal departments and agencies, and decisions made by
24 the Department of Commerce, in connection with any ex-
25 port license application or revision of an export license ap-

1 plication under this title, including the factual and analyt-
2 ical basis of the advice, recommendations, or decisions.

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

11 (g) APPEALS.—The Secretary shall establish appro-
12 priate procedures for any applicant to appeal to the Sec-
13 retary the denial of an export license application under
14 this title.

15 (h) OTHER INQUIRIES.—

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

23 (2) APPLICABILITY OF REQUIREMENTS.—In
24 any case in which the Secretary receives a written
25 request for information about the applicability of ex-

1 port license requirements under this title to a pro-
2 posed transaction or series of transactions, the Sec-
3 retary shall, not more than 30 days after receiving
4 the request, reply with that information to the per-
5 son making the request.

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

12 (i) REPORTS ON LICENSE APPLICATIONS.—

13 (1) QUARTERLY REPORT.—Not later than 180
14 days after the date of the enactment of this Act, and
15 not later than the end of each 3-month period there-
16 after, the Secretary shall submit to the Committee
17 on International Relations of the House of Rep-
18 resentatives and to the Committee on Banking,
19 Housing, and Urban Affairs of the Senate a report
20 listing all applications on which action was com-
21 pleted during the preceding 3-month period and
22 which required a period longer than the period per-
23 mitted under subsection (c) or (d)(4), as the case
24 may be, before notification on a decision to approve
25 or deny the application was sent to the applicant.

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

4 (A) the application case number;

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

7 (C) the country of destination of the com-
8 modities or technology;

9 (D) the date on which the application was
10 received by the Secretary;

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

13 (F) the date on which the notification of
14 approval or denial of the application was sent to
15 the applicant.

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

23 (A) the office responsible for processing
24 the application and the officer responsible for
25 the office; and

1 (B) the period of time that elapsed before
2 the recommendations were submitted or that
3 has elapsed since referral of the application, as
4 the case may be.

5 **SEC. 110. VIOLATIONS.**

6 (a) CRIMINAL PENALTIES.—

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

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

21 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
22 CEEDS.—

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

1 (A) any of that person's interest in, secu-
2 rity of, claim against, or property or contractual
3 rights of any kind in the commodities or tan-
4 gible items that were the subject of the viola-
5 tion;

6 (B) any of that person's interest in, secu-
7 rity of, claim against, or property or contractual
8 rights of any kind in tangible property that was
9 used in the export or attempt to export that
10 was the subject of the violation; and

11 (C) any of that person's property con-
12 stituting, or derived from, any proceeds ob-
13 tained directly or indirectly as a result of the
14 violation.

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

23 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
24 TIONS.—

1 (1) CIVIL PENALTIES.—The Secretary may im-
2 pose a civil penalty of not more than \$250,000 for
3 each violation of this title or any regulation, license,
4 or order issued under this title, either in addition to
5 or in lieu of any other liability or penalty which may
6 be imposed, except that the civil penalty for each
7 such violation of regulations issued under section
8 108 may not exceed \$50,000.

9 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
10 retary may deny the export privileges of any person,
11 including suspending or revoking the authority of
12 any person to export or receive United States-origin
13 commodities or technology, on account of any viola-
14 tion of this title or any regulation, license, or order
15 issued under this title.

16 (d) PAYMENT OF CIVIL PENALTIES.—The payment
17 of any civil penalty imposed under subsection (c) may be
18 made a condition, for a period not exceeding 1 year after
19 the penalty has become due but has not been paid, to the
20 granting, restoration, or continuing validity of any export
21 license, permission, or privilege granted or to be granted
22 to the person upon whom such penalty is imposed. In addi-
23 tion, the payment of any civil penalty imposed under sub-
24 section (c) may be deferred or suspended in whole or in
25 part for a period of time no longer than any probation

1 period (which may exceed 1 year) that may be imposed
2 upon such person. Such deferral or suspension shall not
3 operate as a bar to the collection of the penalty in the
4 event that the conditions of the suspension, deferral, or
5 probation are not fulfilled.

6 (e) REFUNDS.—Any amounts realized from the for-
7 feiture of any property interest or proceeds under sub-
8 section (b), and any amount paid in satisfaction of any
9 civil penalty imposed under subsection (c) shall be covered
10 into the Treasury as a miscellaneous receipt. The head
11 of the department or agency concerned may, in his or her
12 discretion, refund any such civil penalty imposed under
13 subsection (c), within 2 years after payment, on the
14 ground of a material error of fact or law in the imposition
15 of the penalty. Notwithstanding section 1346(a) of title
16 28, United States Code, no action for the refund of any
17 such penalty may be maintained in any court.

18 (f) EFFECT OF OTHER CONVICTIONS.—

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

21 (A) this title or the Export Administration
22 Act of 1979 (or any regulation, license, or order
23 issued under this title or that Act),

1 (B) any regulation, license, or order issued
2 under the International Emergency Economic
3 Powers Act,

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

6 (D) section 371 or 1001 of title 18, United
7 States Code, if in connection with the export of
8 commodities or technology controlled under this
9 title, or defense articles or defense services con-
10 trolled under the Arms Export Control Act,

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

13 (F) section 38 of the Arms Export Control
14 Act,

15 may, at the discretion of the Secretary, be denied ex-
16 port privileges under this title for a period of up to
17 10 years from the date of the conviction. The Sec-
18 retary may also revoke any export license under this
19 title in which such person had an interest at the
20 time of the conviction.

21 (2) RELATED PERSONS.—The Secretary may
22 exercise the authority under paragraph (1) with re-
23 spect to any person related, through affiliation, own-
24 ership, control, or position of responsibility, to any
25 person convicted of any violation of a law set forth

1 in paragraph (1), upon a showing of such relation-
2 ship with the convicted person, after providing notice
3 and opportunity for a hearing.

4 (g) STATUTE OF LIMITATIONS.—Any proceeding in
5 which a civil penalty or other administrative sanction
6 (other than a temporary denial order) is sought under sub-
7 section (c) may not be instituted more than 5 years after
8 the date of the alleged violation, except that, in any case
9 in which a criminal indictment alleging a violation of this
10 title is returned within the time limits prescribed by law
11 for the institution of such action, the statute of limitations
12 for bringing a proceeding to impose such a civil penalty
13 or other administrative sanction under this title shall,
14 upon the return of the criminal indictment, be tolled
15 against all persons named as a defendant. The tolling of
16 the statute of limitations shall continue for a period of
17 6 months from the date a conviction becomes final or the
18 indictment is dismissed.

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

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

24 (1) the availability of other administrative or
25 judicial remedies with respect to violations of this

1 title, or any regulation, order, or license issued
2 under this title;

3 (2) the authority to compromise and settle ad-
4 ministrative proceedings brought with respect to any
5 such violation; or

6 (3) the authority to compromise, remit, or miti-
7 gate seizures and forfeitures pursuant to section
8 1(b) of title VI of the Act of June 15, 1917 (22
9 U.S.C. 401(b)).

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

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

13 (2) who, on account of a violation of the regula-
14 tions issued pursuant to section 108(a), loses an op-
15 portunity to engage in a commercial venture pursu-
16 ant to a contract, joint venture, or other commercial
17 transaction, including an opportunity to bid or ten-
18 der an offer for a contract,

19 may bring an action in an appropriate district court of
20 the United States against the United States person com-
21 mitting the violation, for recovery of actual damages in-
22 curred on account of such act of discrimination or lost
23 opportunity. In any such action the court may award puni-
24 tive damages. An action may be brought under this sub-
25 section against a United States person whether or not the

1 United States person has been determined under this sec-
2 tion to have violated the regulations issued pursuant to
3 section 108(a) on account of which the action is brought.

4 **SEC. 111. CONTROLLING PROLIFERATION ACTIVITY.**

5 (a) ESTABLISHMENT OF PROLIFERATION LISTS.—

6 (1) ESTABLISHMENT OF CHEMICAL AND BIO-
7 LOGICAL WEAPONS CONTROL LIST UNDER THIS
8 TITLE.—

9 (A) IN GENERAL.—The Secretary, in con-
10 sultation with the Secretary of State, the Sec-
11 retary of Defense, and the heads of other ap-
12 propriate departments and agencies, shall es-
13 tablish and maintain a list of commodities and
14 technology, which shall include those commod-
15 ities and technology controlled pursuant to mul-
16 tilateral export control regimes such as the Aus-
17 tralia Group—

18 (i) that would directly and substan-
19 tially assist a foreign government, group,
20 entity, or project in acquiring the capabil-
21 ity to develop, produce, stockpile, or deliver
22 chemical or biological weapons; and

23 (ii) the licensing of which would be ef-
24 fective in barring the acquisition or en-
25 hancement of such capability.

1 (B) REQUIREMENT FOR VALIDATED LI-
2 CENSES.—Subject to the provisions of this title,
3 the Secretary shall require a validated license
4 for any export of commodities or technology on
5 the list established under subparagraph (A) to
6 any country of concern.

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

10 (i) a country with whose government
11 the United States has entered into a bilat-
12 eral or multilateral arrangement for the
13 control of commodities or technology on
14 the list established under subparagraph
15 (A); and

16 (ii) such other countries as the Sec-
17 retary of State, in consultation with the
18 Secretary and the Secretary of Defense,
19 shall designate consistent with the pur-
20 poses of this section.

21 (2) ESTABLISHMENT OF MISSILE TECHNOLOGY
22 CONTROL LIST UNDER THIS TITLE.—

23 (A) The Secretary, in consultation with the
24 Secretary of State, the Secretary of Defense,

1 and the heads of other appropriate departments
2 and agencies—

3 (i) shall establish and maintain a list
4 of all dual use commodities and technology
5 on the MTCR Annex; and

6 (ii) may include on that list any com-
7 modities or technology that would provide
8 a direct and significant impact on the de-
9 velopment of missile delivery systems.

10 (B) REQUIREMENT OF INDIVIDUAL VALI-
11 DATED LICENSES.—Subject to the provisions of
12 this title, the Secretary shall require an individ-
13 ual validated license for—

14 (i) any export of commodities or tech-
15 nology on the list established under sub-
16 paragraph (A) to any country; and

17 (ii) any export of commodities or tech-
18 nology that the exporter knows is destined
19 for a project or facility for the design, de-
20 velopment, or manufacture of a missile in
21 a country that is not an MTCR adherent.

22 (C) POLICY OF DENIAL OF LICENSES.—(i)
23 Licenses under subparagraph (B) should in
24 general be denied if the ultimate consignee of
25 the commodities or technology is a facility in a

1 country that is not an MTCR adherent and the
2 facility is designed to develop or build missiles.

3 (ii) Licenses under subparagraph (B) shall
4 be denied if the ultimate consignee of the com-
5 modities or technology is a facility in a country
6 the government of which has been determined
7 under section 106(i)(1) to have repeatedly pro-
8 vided support for acts of international terror-
9 ism.

10 (D) DEFINITION.—For purposes of this
11 paragraph, the term “MTCR adherent” means
12 a country that participates in the MTCR or
13 that, pursuant to an international understand-
14 ing to which the United States is a party, con-
15 trols MTCR equipment or technology in accord-
16 ance with the criteria and standards set forth
17 in the MTCR.

18 (b) ESTABLISHMENT OF LISTS UNDER ARMS EX-
19 PORT CONTROL ACT.—

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

1 **“SEC. 81. ESTABLISHMENT OF CHEMICAL AND BIOLOGICAL**
2 **WEAPONS CONTROL LIST.**

3 “(a) IN GENERAL.—The Secretary of State, in con-
4 sultation with the Secretary of Defense, and the heads of
5 other appropriate departments and agencies, shall estab-
6 lish and maintain, as part of the United States Munitions
7 List, a list of items, which shall include those items con-
8 trolled pursuant to multilateral export control regimes,
9 such as the Australia Group—

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

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

17 “(3) the export of which is not subject to con-
18 trol under section 111(a)(1) of the Export Act of
19 1995.

20 “(b) REQUIREMENT FOR VALIDATED LICENSES.—
21 The Secretary of State shall require a validated license
22 for any export of items on the list established under sub-
23 section (a).

24 “(c) DEFINITIONS.—For purposes of this section, the
25 terms ‘multilateral export control regime’ and ‘Australia

1 Group' have the meanings given those terms in section
2 116 of the Export Act of 1995.'.

3 (2) MISSILE TECHNOLOGY CONTROL LIST.—

4 Section 71 of the Arms Export Control Act (22
5 U.S.C. 2797) is amended to read as follows:

6 **“SEC. 71. LICENSING.**

7 “(a) ESTABLISHMENT OF MISSILE TECHNOLOGY
8 CONTROL LIST.—The Secretary of State, in consultation
9 with the Secretary of Defense and the heads of other ap-
10 propriate departments and agencies, shall establish and
11 maintain a list of all items, which shall include those items
12 listed on the MTCR Annex, that would provide a direct
13 and significant impact on the development of missile deliv-
14 ery systems and the export of which is not subject to con-
15 trol under section 111(a)(2) of the Export Act of 1995.

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

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

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

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

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

6 “(2) EXPORTS TO TERRORIST COUNTRIES.—Li-
7 censes under subsection (b) shall be denied if the ul-
8 timate consignee of the items is a facility in a coun-
9 try the government of which has been determined
10 under section 106(i)(1) of the Export Act of 1995
11 to have repeatedly provided support for acts of inter-
12 national terrorism.”.

13 (c) SANCTIONS FOR ACTIVITIES SUPPORTING THE
14 PROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAP-
15 ONS AND MISSILES.—

16 (1) VIOLATIONS BY UNITED STATES PER-
17 SONS.—(A) If the President determines that a
18 United States person, on or after the date of the
19 enactment of this Act, with requisite knowledge—

20 (i) exports or transfers—

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

23 (II) any item on the list established
24 under section 71(a) or 81(a) of the Arms
25 Export Control Act,

1 in violation of United States law,

2 (ii) conspires to or attempts to engage in
3 such export or transfer, or

4 (iii) facilitates such export or transfer by
5 any other person,

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

9 (B) The sanctions referred to in subparagraph
10 (A) are the following:

11 (i) All export licenses under this title to
12 the sanctioned entity for items controlled under
13 section 105, or for items controlled under sec-
14 tion 106 that meet the requirements of section
15 105(a)(1)(A) or (B), and all export licenses
16 under the Arms Export Control Act for items
17 on the United States Munitions List, shall be
18 denied.

19 (ii) The United States Government shall
20 not procure, or enter into any contract for the
21 procurement of, any services, commodities,
22 technology, or other products from or produced
23 by the sanctioned entity.

24 (C) In the case of a determination made under
25 subparagraph (A), the President may pursue any

1 penalty provided in section 38(c) of the Arms Ex-
2 port Control Act.

3 (2) VIOLATIONS BY FOREIGN PERSONS.—(A) If
4 the President determines that a foreign person, on
5 or after the date of the enactment of this Act, with
6 requisite knowledge contributed to the efforts of any
7 government, group, entity, or project to use, design,
8 develop, produce, stockpile, or otherwise acquire
9 chemical or biological weapons or missiles—

10 (i) through the export or transfer of—

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

13 (II) any item on the list established
14 under subsection (a)(1) of this section or
15 section 81(a) of the Arms Export Control
16 Act, whether or not of United States ori-
17 gin,

18 (ii) by conspiring or attempting to engage
19 in such export or transfer or,

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

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

1 (B) The sanctions referred to in subparagraph
2 (A) are the following:

3 (i) All export licenses under this title for
4 items controlled under section 105, or items
5 controlled under section 106 that meet the re-
6 quirements of section 105(a)(1)(A) or (B), and
7 all export licenses under the Arms Export Con-
8 trol Act for items on the United States Muni-
9 tions List, shall be denied to the sanctioned en-
10 tity.

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 (iii) Imports of all products from or pro-
17 duced by the sanctioned entity shall be prohib-
18 ited.

19 (3) ENTITIES AGAINST WHICH SANCTIONS ARE
20 IMPOSED.—The President shall impose sanctions
21 under paragraphs (1) and (2) on—

22 (A) the person that committed the conduct
23 that is the subject of the determination giving
24 rise to the sanctions;

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

3 (C) any foreign person or United States
4 person that is a parent or subsidiary of a per-
5 son or entity described in subparagraph (A), if
6 that parent or subsidiary with requisite knowl-
7 edge assisted in the activities which are the
8 basis of that determination; and

9 (D) any foreign person or United States
10 person that is an affiliate of a person or entity
11 described in subparagraph (A), if that affiliate
12 with requisite knowledge assisted in the activi-
13 ties which were the basis of that determination
14 and if that affiliate is controlled in fact by that
15 person or entity.

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

19 (4) EXEMPTION OF CERTAIN EXPORTS FROM
20 SANCTIONS.—The requirement in paragraph
21 (1)(B)(i) and (2)(B)(i) that licenses to export items
22 controlled under section 105 or 106 be denied shall
23 not apply to items which require individual validated
24 licenses solely by virtue of the imposition of controls
25 under the Enhanced Proliferation Control Initiative

1 regulations set forth in section 778.7(c) of title 15,
2 Code of Federal Regulations.

3 (5) EXEMPTION FOR MTCR ADHERENTS.—

4 (A) EXEMPTION.—Paragraphs (1) and (2)
5 do not apply with respect to any export or
6 transfer—

7 (i) that is authorized by the laws of
8 an MTCR adherent, if such authorization
9 is not obtained by misrepresentation or
10 fraud; or

11 (ii) to an end user in a country that
12 is an MTCR adherent.

13 (B) DEFINITION.—For purposes of this
14 paragraph, the term “MTCR adherent” has the
15 meaning given that term in subsection
16 (a)(2)(D).

17 (6) CONSULTATION WITH AND ACTIONS BY
18 FOREIGN GOVERNMENT OF JURISDICTION.—

19 (A) CONSULTATIONS.—If the President
20 makes a determination described in paragraph
21 (2) with respect to a foreign person, the Con-
22 gress urges the President to initiate consulta-
23 tions immediately with the government with pri-
24 mary jurisdiction over that foreign person with

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

3 (B) ACTIONS BY GOVERNMENT OF JURIS-
4 DICTION.—In order to pursue such consulta-
5 tions with that government, the President may
6 delay imposition of sanctions pursuant to this
7 subsection for up to 90 days. Following these
8 consultations, the President shall impose sanc-
9 tions unless the President determines and cer-
10 tifies to the Congress that that government has
11 taken specific and effective actions, including
12 appropriate penalties, to terminate the involve-
13 ment of the foreign person in the activities de-
14 scribed in paragraph (2). The President may
15 delay the imposition of sanctions for up to an
16 additional 90 days if the President determines
17 and certifies to the Congress that that govern-
18 ment is in the process of taking the actions de-
19 scribed in the preceding sentence.

20 (C) REPORT TO CONGRESS.—Not later
21 than 90 days after making a determination
22 under paragraph (2), the President shall submit
23 to the Committee on Foreign Relations and the
24 Committee on Governmental Affairs of the Sen-
25 ate and the Committee on International Rela-

1 tions of the House of Representatives a report
2 on the status of consultations with the appro-
3 priate government under this paragraph, and
4 the basis for any determination under subpara-
5 graph (B) that such government has taken spe-
6 cific and effective actions.

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

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

22 (B) REGIME ADHERENT DEFINED.—For
23 purposes of subparagraph (A), a “regime ad-
24 herent” is a country that is a member of a mul-
25 tilateral regime that controls the export or

1 transfer giving rise to the sanctions, or that,
2 pursuant to an international understanding to
3 which the United States is a party, controls the
4 export or transfer in accordance with the cri-
5 teria and standards set forth in the regime.

6 (8) REQUISITE KNOWLEDGE DEFINED.—For
7 purposes of this subsection, the term “requisite
8 knowledge” means situations in which a person
9 “knows”, as “knowing” is defined in section 104 of
10 the Foreign Corrupt Practices Act of 1977 (15
11 U.S.C. 78dd-2).

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

20 (i) all activities of the government of any
21 such country relating to the development or
22 production of any missile equipment or tech-
23 nology; and

24 (ii) all activities of that government affect-
25 ing the development or production of elec-

1 tronics, space systems or equipment, and mili-
2 tary aircraft.

3 (B) As used in subparagraph (A), the term
4 “missile equipment or technology” means those items
5 listed in category I or II of the MTCR Annex.

6 (d) SANCTIONS AGAINST COUNTRIES FOR USE OF
7 CHEMICAL OR BIOLOGICAL WEAPONS.—

8 (1) DETERMINATION.—

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

1 (B) MATTERS TO BE CONSIDERED.—In
2 making the determination under subparagraph
3 (A), the President shall consider the following:

4 (i) All physical and circumstantial evi-
5 dence available bearing on the possible use
6 of chemical or biological weapons.

7 (ii) All information provided by al-
8 leged victims, witnesses, and independent
9 observers.

10 (iii) The extent of the availability of
11 the weapons in question to the purported
12 user.

13 (iv) All official and unofficial state-
14 ments bearing on the possible use of such
15 weapons.

16 (v) Whether, and to what extent, the
17 government in question is willing to honor
18 a request from the Secretary General of
19 the United Nations to grant timely access
20 to a United Nations fact-finding team to
21 investigate the possibility of chemical or bi-
22 ological weapons use or to grant such ac-
23 cess to other legitimate outside parties.

24 (2) DETERMINATION TO BE REPORTED TO CON-
25 GRESS.—Upon making a determination under para-

1 graph (1), the President shall promptly report that
2 determination to the Congress. If the determination
3 is that a foreign government has used such weapons
4 as described in that paragraph, the report shall
5 specify the sanctions to be imposed pursuant to
6 paragraph (4).

7 (3) CONGRESSIONAL REQUESTS; REPORT.—

8 (A) REQUEST.—The Chairman of the
9 Committee on Foreign Relations of the Senate
10 (upon consultation with the ranking minority
11 member of such committee) or the Chairman of
12 the Committee on International Relations of the
13 House of Representatives (upon consultation
14 with the ranking minority member of such com-
15 mittee) may at any time request the President
16 to consider whether a particular foreign govern-
17 ment, on or after the date of the enactment of
18 this Act, has used chemical or biological weap-
19 ons in violation of international law or has used
20 lethal chemical or biological weapons against its
21 own nationals.

22 (B) REPORT TO CONGRESS.—Not later
23 than 60 days after receiving such a request, the
24 President shall provide to the Chairman of the
25 Committee on Foreign Relations of the Senate

1 and the Chairman of the Committee on Inter-
2 national Relations of the House of Representa-
3 tives a written report on the information held
4 by the executive branch which is pertinent to
5 the issue of whether the specified government,
6 on or after the date of the enactment of this
7 Act, has used chemical or biological weapons in
8 violation of international law or has used lethal
9 chemical or biological weapons against its own
10 nationals. The report under this subparagraph
11 shall contain an analysis of each of the items
12 enumerated in paragraph (1)(B).

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

19 (A) FOREIGN ASSISTANCE.—The United
20 States Government shall terminate assistance to
21 that country under the Foreign Assistance Act
22 of 1961, except for urgent humanitarian assist-
23 ance and food or other agricultural commodities
24 or products.

1 (B) ARMS SALES.—The United States
2 Government shall—

3 (i) terminate sales to that country
4 under the Arms Export Control Act of any
5 defense articles, defense services, or design
6 and construction services; and

7 (ii) terminate and deny licenses for
8 the export to that country of any item on
9 the United States Munitions list.

10 (C) ARMS SALES FINANCING.—The United
11 States Government shall terminate all foreign
12 military financing for that country under the
13 Arms Export Control Act.

14 (D) DENIAL OF UNITED STATES GOVERN-
15 MENT CREDIT OR OTHER FINANCIAL ASSIST-
16 ANCE.—The United States Government shall
17 deny to that country any credit, credit guaran-
18 tees, or other financial assistance by any de-
19 partment, agency, or instrumentality of the
20 United States Government, including the Ex-
21 port-Import Bank of the United States.

22 (E) EXPORTS OF NATIONAL SECURITY-
23 SENSITIVE ITEMS.—The authorities of this title
24 shall be used to prohibit the export to that
25 country of any commodities or technology con-

1 trolled or prohibited for export under section
2 106(i).

3 (F) IMPORTS.—There shall be a prohibi-
4 tion on the importation into the United States
5 of goods that are the growth, produce, or man-
6 ufacture of that country. The President shall
7 determine the type and volume of imports to be
8 prohibited, taking into consideration the volume
9 of exports prohibited under subparagraph (E).

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

16 (A) the government is no longer using
17 chemical or biological weapons in violation of
18 international law or using lethal chemical or bi-
19 ological weapons against its own nationals,

20 (B) the government has provided reliable
21 assurances that it will not, in the future, en-
22 gage in any such activities, and

23 (C) the government is willing to allow on-
24 site inspections by United Nations observers or
25 other internationally recognized, impartial ob-

1 servers, or other reliable means exist, to ensure
2 that government is not using chemical or bio-
3 logical weapons in violation of international law
4 and is not using lethal chemical or biological
5 weapons against its own nationals,

6 then the President, after consultation with the Con-
7 gress, shall impose on that country for a period of
8 at least 2 years the sanctions set forth in at least
9 3 of subparagraphs (A) through (F) of paragraph
10 (6).

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

14 (A) MULTILATERAL DEVELOPMENT BANK
15 ASSISTANCE.—The United States Government
16 shall oppose, in accordance with section 701 of
17 the International Financial Institutions Act (22
18 U.S.C. 262d), the extension of any loan or fi-
19 nancial or technical assistance to the foreign
20 country by international financial institutions.

21 (B) BANK LOANS.—The United States
22 Government shall prohibit any United States
23 bank from making any loan or providing any
24 credit to the government of that country, except
25 for loans or credits for the purpose of purchas-

1 ing food or other agricultural commodities or
2 products.

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

7 (ii) Restrictions shall be imposed on the
8 importation into the United States of goods
9 (which may include petroleum or any petroleum
10 product) that are the growth, product, or man-
11 ufacture of that country.

12 (D) DIPLOMATIC RELATIONS.—The Presi-
13 dent shall use his constitutional authorities to
14 downgrade or suspend diplomatic relations be-
15 tween the United States and the government of
16 that country.

17 (E) PRESIDENTIAL ACTION REGARDING
18 AVIATION.—

19 (i)(I) The President is authorized to
20 notify the government of that country of
21 his intention to suspend the authority of
22 foreign air carriers owned or controlled by
23 the government of that country to engage
24 in foreign air transportation to or from the
25 United States.

1 (II) Within 10 days after the date of
2 notification of a government under
3 subclause (I), the Secretary of Transpor-
4 tation shall take all steps necessary to sus-
5 pend at the earliest possible date the au-
6 thority of any foreign air carrier owned or
7 controlled, directly or indirectly, by that
8 government to engage in foreign air trans-
9 portation to or from the United States,
10 notwithstanding any agreement relating to
11 air services.

12 (ii)(I) The President may direct the
13 Secretary of State to terminate any air
14 service agreement between the United
15 States and that country, in accordance
16 with the provisions of that agreement.

17 (II) Upon termination of an agree-
18 ment under this clause, the Secretary of
19 Transportation shall take such steps as
20 may be necessary to revoke at the earliest
21 possible date the right of any foreign air
22 carrier owned or controlled, directly or in-
23 directly, by the government of that country
24 to engage in foreign air transportation to
25 or from the United States.

1 (iii) The Secretary of Transportation
2 may provide for such exceptions from
3 clauses (i) and (ii) as the Secretary consid-
4 ers necessary to provide for emergencies in
5 which the safety of an aircraft or its crew
6 or passengers is threatened.

7 (iv) For purposes of this subpara-
8 graph, the terms “air transportation”, “air
9 carrier”, “foreign air carrier”, and “for-
10 eign air transportation” have the meanings
11 given those terms in section 101 of the
12 Federal Aviation Act of 1958 (49 U.S.C.
13 App. 1301).

14 (e) REMOVAL OF SANCTIONS.—

15 (1) FOR VIOLATIONS UNDER SUBSECTION (c).—
16 The President shall remove the sanctions imposed
17 under paragraph (1) or (2) of subsection (c) if the
18 President determines and so certifies to the Con-
19 gress, after the end of the 12-month period begin-
20 ning on the date on which the sanctions were ini-
21 tially imposed, that—

22 (A) reliable information indicates that—

23 (i) the United States person with re-
24 spect to which the determination was made

1 under subsection (c)(1) has ceased all ac-
2 tivities that gave rise to the sanctions; or

3 (ii) the foreign person with respect to
4 which the determination was made under
5 subsection (c)(2) has ceased to contribute
6 to the efforts of any government, group,
7 entity, or project to use, design, develop,
8 produce, stockpile, or otherwise acquire
9 chemical or biological weapons or missiles;
10 and

11 (B) the President has received reliable as-
12 surances from that United States person or for-
13 eign person that such person will not, in the fu-
14 ture, perform any of the actions described in
15 subsection (c)(1) or (2) (as the case may be).

16 (2) FOR VIOLATIONS UNDER SUBSECTION
17 (d).—The President shall remove the sanctions im-
18 posed with respect to a country under paragraph (4)
19 or (6) of subsection (d) if the President determines
20 and so certifies to the Congress, after the end of the
21 12-month period beginning on the date on which
22 such sanctions were initially imposed, that—

23 (A) the government of that country has
24 provided reliable assurances that it will not use
25 chemical or biological weapons in violation of

1 international law and will not use lethal chemi-
2 cal or biological weapons against its own na-
3 tionals;

4 (B) the government is not making prepara-
5 tions to use chemical or biological weapons in
6 violation of international law or to use lethal
7 chemical or biological weapons against its own
8 nationals;

9 (C) the government is willing to allow on-
10 site inspections by United Nations observers or
11 other internationally recognized, impartial ob-
12 servers to verify that it 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, or other reliable means exist to verify
17 that it is not making such preparations; and

18 (D) the government is making restitution
19 to those affected by any use of chemical or bio-
20 logical weapons in violation of international law
21 or by any use of lethal chemical or biological
22 weapons against its own nationals.

23 (3) AUTHORITY TO REVOKE IMPORT SANCTIONS
24 IN CERTAIN CIRCUMSTANCES.—The President may
25 revoke any import sanction imposed under sub-

1 section (c) or (d) if the President determines, as a
2 result of applicable international dispute settlement
3 proceedings, that the imposition of such sanctions is
4 inconsistent with international legal obligations of
5 the United States and that it is appropriate under
6 the circumstances to comply with such obligations.

7 (f) WAIVERS FOR VIOLATIONS UNDER SUBSECTION
8 (c).—

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

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

15 (B) the sanctioned entity is a sole source
16 supplier of the product or service, the product
17 or service is not available from any alternative
18 reliable supplier, and the need for the product
19 or service cannot be met in a timely manner by
20 improved manufacturing processes or techno-
21 logical developments.

22 (2) ADDITIONAL WAIVER.—(A) The President
23 may waive the imposition of any sanction under sub-
24 section (c)(2) if the President determines such waiv-

1 er is essential to the national security of the United
2 States.

3 (B) If the President decides to apply the waiver
4 described in subparagraph (A), the President shall
5 so notify the Congress not less than 20 days before
6 issuing the waiver. Such notification shall include a
7 report fully articulating the rationale and cir-
8 cumstances which led the President to exercise the
9 waiver authority.

10 (3) EXCEPTIONS.—The President shall not
11 apply the sanction under subsection (c)(2) prohibit-
12 ing the importation of the products of a sanctioned
13 entity—

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

16 (i) under existing contracts or sub-
17 contracts, including the exercise of options
18 for production quantities to satisfy require-
19 ments essential to the national security of
20 the United States;

21 (ii) if the President determines that
22 the entity to which the sanctions would be
23 applied is a sole source supplier of the de-
24 fense articles and services, that the defense
25 articles or services are essential to the na-

1 tional security of the United States, and
2 that alternative sources are not readily or
3 reasonably available; or

4 (iii) if the President determines that
5 such articles or services are essential to the
6 national security of the United States
7 under defense coproduction agreements or
8 Programs of Cooperation of the North At-
9 lantic Treaty Organization;

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

14 (C) to—

15 (i) spare parts;

16 (ii) components parts, but not finished
17 products, essential to United States prod-
18 ucts or production;

19 (iii) routine services and maintenance
20 of products, to the extent that alternative
21 sources are not readily or reasonably avail-
22 able; or

23 (iv) information or technology essen-
24 tial to United States products or produc-
25 tion.

1 (g) WAIVERS OF VIOLATIONS UNDER SUBSECTION
2 (d).—

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

7 (A) if—

8 (i) in the case of any sanction other
9 than a sanction specified in subsection
10 (d)(4)(F) or (d)(6)(C)(ii) (relating to im-
11 port restrictions) or (d)(6)(D) (relating to
12 the downgrading or suspension of diplo-
13 matic relations), the President determines
14 and certifies to the Congress that such
15 waiver is essential to the national security
16 interests of the United States, and the
17 President notifies the Committee on For-
18 eign Relations of the Senate and the Com-
19 mittee on International Relations of the
20 House of Representatives of his determina-
21 tion and certification at least 15 days be-
22 fore the waiver takes effect, in accordance
23 with the procedures applicable to
24 reprogramming notifications under section

1 634A of the Foreign Assistance Act of
2 1961; or

3 (ii) in the case of any sanction speci-
4 fied in subsection (d)(4)(F) or (d)(6)(C)(ii)
5 (relating to import restrictions), the Presi-
6 dent determines and certifies to the Con-
7 gress that such waiver is essential to the
8 national security interests of the United
9 States, and the President notifies the Com-
10 mittee on Finance of the Senate and the
11 Committee on Ways and Means and the
12 Committee on International Relations of
13 the House of Representatives of his deter-
14 mination and certification at least 15 days
15 before the waiver takes effect; or

16 (B) if the President determines and cer-
17 tifies to the Congress that there has been a fun-
18 damental change in the leadership and policies
19 of the government of that country, and if the
20 President notifies the Congress at least 20 days
21 before the waiver takes effect.

22 (2) REPORT.—In the event that the President
23 decides to exercise the waiver authority provided in
24 paragraph (1) with respect to a country, the Presi-
25 dent's notification to the Congress under such para-

1 graph shall include a report fully articulating the ra-
2 tionale and circumstances which led the President to
3 exercise that waiver authority, including a descrip-
4 tion of the steps which the government of that coun-
5 try has taken to satisfy the conditions set forth in
6 subparagraphs (A) through (D) of subsection (e)(2).

7 (h) CONTRACT SANCTITY.—

8 (1) SANCTIONS NOT APPLIED TO EXISTING
9 CONTRACTS.—(A) A sanction described in subpara-
10 graph (D), (E), or (F) of subsection (d)(4) or in any
11 of subparagraphs (A) through (C) of subsection
12 (d)(6) shall not apply to any activity pursuant to
13 any contract or international agreement entered into
14 before the date of the presidential determination
15 under subsection (d)(1) unless the President deter-
16 mines, on a case-by-case basis, that to apply such
17 sanction to that activity would prevent the perform-
18 ance of a contract or agreement that would have the
19 effect of assisting a country in using chemical or bi-
20 ological weapons in violation of international law or
21 in using lethal chemical or biological weapons
22 against its own nationals.

23 (B) The same restrictions of section 114(l) (re-
24 lating to contract sanctity) which are applicable to
25 exports prohibited under this title shall apply to ex-

1 ports prohibited under subsection (d)(4)(E) or
2 (d)(6)(C)(i). For purposes of this subparagraph, any
3 contract or agreement the performance of which (as
4 determined by the President) would have the effect
5 of assisting a foreign government in using chemical
6 or biological weapons in violation of international
7 law or in using chemical or biological weapons
8 against its own nationals shall be treated as con-
9 stituting a breach of the peace that poses a serious
10 and direct threat to the strategic interest of the
11 United States, within the meaning of subparagraph
12 (A) of section 114(l)(2).

13 (2) SANCTIONS APPLIED TO EXISTING CON-
14 TRACTS.—The sanctions described in subparagraphs
15 (A), (B), and (C) of subsection (d)(4) shall apply to
16 contracts, agreements, and licenses without regard
17 to the date the contract or agreement was entered
18 into or the license was issued (as the case may be),
19 except that such sanctions shall not apply to any
20 contract or agreement entered into or license issued
21 before the date of the presidential determination
22 under subsection (d)(1) if the President determines
23 that the application of such sanction would be det-
24 rimental to the national security interests of the
25 United States.

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

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

6 (a) APPLICABILITY.—

7 (1) EXEMPTIONS FROM ADMINISTRATIVE PRO-
8 CEDURE.—Except as provided in this section, sec-
9 tions 551 and 553 through 559 of title 5, United
10 States Code, do not apply to the functions exercised
11 under this title.

12 (2) JUDICIAL REVIEW.—(A) Subject to sub-
13 paragraphs (B) and (C) and except as otherwise
14 provided in this section, actions under this title shall
15 be subject to judicial review under chapter 7 of title
16 5, United States Code.

17 (B) Any discretionary determination of whether
18 a commodity or technology should or should not be
19 on the control index shall not be subject to judicial
20 review.

21 (C) An action to obtain judicial review under
22 this subsection may be brought in the appropriate
23 United States district court.

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

1 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
2 ministrative sanction imposed under section 110(c)
3 may be imposed only after notice and opportunity
4 for an agency hearing on the record in accordance
5 with sections 554 through 557 of title 5, United
6 States Code.

7 (2) AVAILABILITY OF CHARGING LETTER.—Any
8 charging letter or other document initiating adminis-
9 trative proceedings for the imposition of sanctions
10 for violations of the regulations issued under section
11 108(a) shall be made available for public inspection
12 and copying.

13 (c) COLLECTION.—If any person fails to pay a civil
14 penalty imposed under section 110(c), the Secretary may
15 ask the Attorney General to bring a civil action in an ap-
16 propriate district court to recover the amount imposed
17 (plus interest at currently prevailing rates from the date
18 of the final order).

19 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

20 (1) GROUNDS FOR IMPOSITION.—In any case in
21 which there is reasonable cause to believe that a per-
22 son is engaged in or is about to engage in any act
23 or practice which constitutes or would constitute a
24 violation of this title, or any regulation, order, or li-
25 cense issued under this title, or in any case in which

1 a criminal indictment has been returned against a
2 person alleging a violation of this title or any of the
3 statutes listed in section 110(f), the Secretary may,
4 without a hearing, issue an order temporarily deny-
5 ing that person's United States export privileges
6 (hereafter in this subsection referred to a "tem-
7 porary denial order"). A temporary denial order may
8 be effective for no longer than 180 days, but may be
9 renewed by the Secretary, following notice and an
10 opportunity for a hearing, for additional periods of
11 not more than 180 days each.

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

22 (A) there is reasonable cause to believe
23 that the person subject to the order is engaged
24 in or is about to engage in any act or practice
25 which constitutes or would constitute a violation

1 of this title, or any regulation, order, or license
2 issued under this title, or

3 (B) a criminal indictment has been re-
4 turned against the person subject to the order
5 alleging a violation of this title or any of the
6 statutes listed in section 110(f).

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

20 (3) COURT APPEALS.—An order of the Sec-
21 retary affirming, in whole or in part, the issuance or
22 renewal of a temporary denial order may, within 15
23 days after the order is issued, be appealed by a per-
24 son subject to the order to the United States Court
25 of Appeals for the District of Columbia Circuit,

1 which shall have jurisdiction of the appeal. The
2 court may review only those issues necessary to de-
3 termine whether the issuance of the temporary de-
4 nial order was based on reasonable cause to believe
5 that the person subject to the order was engaged in
6 or was about to engage in any act or practice which
7 constitutes or would constitute a violation of this
8 title, or any regulation, order, or license issued
9 under this title, or if a criminal indictment has been
10 returned against the person subject to the order al-
11 leging a violation of this title or any of the statutes
12 listed in section 110(f). The court shall vacate the
13 Secretary's order if the court finds that the Sec-
14 retary's order is arbitrary, capricious, an abuse of
15 discretion, or otherwise not in accordance with law.

16 (e) APPEALS FROM LICENSING AND CLASSIFICATION
17 ACTIONS.—

18 (1) LICENSE DENIALS.—A determination of the
19 Secretary under section 109 to deny a license may
20 be appealed by the applicant to an administrative
21 law judge who shall have the authority to conduct
22 proceedings to determine only whether the item
23 sought to be exported is in fact on the control list.
24 Such proceedings shall be conducted within 90 days
25 after the appeal is filed. Any determination by an

1 administrative law judge under this subsection and
2 all materials filed before such judge in the proceed-
3 ings shall be reviewed by the Secretary, who shall ei-
4 ther affirm or vacate the determination in a written
5 decision within 30 days after receiving the deter-
6 mination.

7 (2) CLASSIFICATION DECISIONS.—(A) Within
8 30 days after the issuance of a classification decision
9 under section 109(h)(1), or within 30 days after the
10 failure to issue such a classification decision in re-
11 sponse to a request for such a decision, any United
12 States person aggrieved by such decision or failure
13 may file an appeal thereof to an administrative law
14 judge, but only on issues regarding such classifica-
15 tion decision including, but not limited to, decisions
16 of whether an item is covered by any general or spe-
17 cific note. The administrative law judge may not re-
18 view determinations as to the reliability of an end
19 user or the nature of an end use or end user. The
20 administrative law judge shall, within 90 days after
21 such appeal is filed, issue his or her decision and
22 issue any order that is necessary or appropriate to
23 carry out such decision. Such order shall be binding
24 upon the Secretary unless and until vacated or modi-
25 fied under subparagraph (B). Such order may be

1 stayed by the administrative law judge or the Sec-
2 retary pending the filing and determination of an
3 appeal under subparagraph (B).

4 (B) Any United States person aggrieved by a
5 decision of the administrative law judge under sub-
6 paragraph (A) may appeal such decision to the Sec-
7 retary within 45 days after receiving notification of
8 such decision. The Secretary shall, in a written
9 order, affirm, modify, or vacate the decision of the
10 administrative law judge within 30 days after such
11 appeal is filed. The authority of the Secretary under
12 this paragraph may not be delegated to an officer or
13 employee of the Bureau of Export Administration.

14 (3) PUBLICATION AND INDEXING OF DECI-
15 SIONS.—Subject to the limitations of section 114(g),
16 final decisions of administrative law judges and the
17 Secretary under this subsection shall be published in
18 the Federal Register within 15 days after they are
19 rendered. The Secretary shall index decisions on ap-
20 peals of license denials.

21 (4) CONDUCT OF PROCEEDINGS.—Except as
22 provided in this subsection, proceedings under this
23 subsection shall be conducted in accordance with
24 sections 554 (notwithstanding subsection (a)(4) of

1 such section), 556, and 557 of title 5, United States
2 Code.

3 (5) REGULATIONS.—The Secretary shall issue
4 such regulations as are necessary to carry out this
5 subsection.

6 (6) OTHER RIGHTS NOT AFFECTED.—The
7 rights granted by this subsection do not abridge any
8 other rights provided by law.

9 (7) EFFECTIVE DATE.—This subsection shall
10 take effect 120 days after the date of the enactment
11 of this Act. Regulations implementing this sub-
12 section shall be promulgated no later than such ef-
13 fective date.

14 **SEC. 113. ENFORCEMENT.**

15 (a) GENERAL AUTHORITY AND DESIGNATION.—

16 (1) POLICY GUIDANCE ON ENFORCEMENT.—
17 The Secretary, in consultation with the Secretary of
18 the Treasury and the heads of other appropriate de-
19 partments and agencies, shall be responsible for pro-
20 viding policy guidance on the enforcement of this
21 title.

22 (2) GENERAL AUTHORITIES.—(A) To the extent
23 necessary or appropriate to the enforcement of this
24 title or to the imposition of any penalty, forfeiture,
25 or liability arising under the Export Administration

1 Act of 1979, officers or employees of the Depart-
2 ment of Commerce designated by the Secretary and
3 officers and employees of the United States Customs
4 Service designated by the Commissioner may exer-
5 cise the enforcement authorities described in para-
6 graph (3).

7 (B) In carrying out the enforcement authorities
8 described in paragraph (3), the Commissioner of
9 Customs, and employees of the United States Cus-
10 toms Service designated by the Commissioner, may
11 make investigations within or outside the United
12 States and at those ports of entry or exit from the
13 United States where officers of the United States
14 Customs Service are authorized by law to carry out
15 such enforcement responsibilities. Subject to para-
16 graph (3), the United States Customs Service is au-
17 thorized, in the enforcement of this title, to search,
18 detain (after search), and seize commodities or tech-
19 nology at those ports of entry or exit from the
20 United States where officers of the Customs Service
21 are authorized by law to conduct such searches, de-
22 tentions, and seizures, and at those places outside
23 the United States where the Customs Service, pursu-
24 ant to agreements or other arrangements with other

1 countries, is authorized to perform enforcement ac-
2 tivities.

3 (C) In carrying out the enforcement authorities
4 described in paragraph (3), the Secretary, and offi-
5 cers and employees of the Department of Commerce
6 designated by the Secretary, may make investiga-
7 tions within the United States, and shall conduct,
8 outside the United States, pre-license and post-ship-
9 ment verifications of items licensed for export and
10 investigations in the enforcement of section 108. The
11 Secretary, and officers and employees of the Depart-
12 ment of Commerce designated by the Secretary, are
13 authorized to search, detain (after search), and seize
14 items at those places within the United States other
15 than those ports and borders specified in subpara-
16 graph (B). The search, detention (after search), or
17 seizure of items at those ports and borders specified
18 in subparagraph (B) may be conducted by officers
19 and employees of the Department of Commerce only
20 with the concurrence of the Commissioner of Cus-
21 toms or a person designated by the Commissioner.

22 (D) The Secretary and the Commissioner of
23 Customs may enter into agreements and arrange-
24 ments for the enforcement of this title, including for-
25 eign investigations and information exchange.

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

5 (i) Make investigations of, obtain informa-
6 tion from, make inspection of any books,
7 records, or reports (including any writings re-
8 quired to be kept by the Secretary), premises,
9 or property of, and take the sworn testimony of,
10 any person.

11 (ii) Administer oaths or affirmations, and
12 by subpoena require any person to appear and
13 testify or to appear and produce books, records,
14 and other writings, or both. In the case of con-
15 tumacy by, or refusal to obey a subpoena issued
16 to, any such person, a district court of the
17 United States, after notice to any such person
18 and a hearing, shall have jurisdiction to issue
19 an order requiring such person to appear and
20 give testimony or to appear and produce books,
21 records, and other writings, or both. Any failure
22 to obey such order of the court may be pun-
23 ished by such court as a contempt thereof.

24 (B) Any officer or employee of the Office of Ex-
25 port Enforcement of the Department of Commerce

1 who is designated by the Secretary under paragraph
2 (2), and any officer or employee of the United
3 States Customs Service who is designated by the
4 Commissioner of Customs under paragraph (2), may
5 do the following in carrying out the enforcement au-
6 thority under this title:

7 (i) Execute any warrant or other process
8 issued by a court or officer of competent juris-
9 diction with respect to the enforcement of this
10 title.

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

17 (iii) Carry firearms.

18 (C) Any officer or employee of the United
19 States Customs Service designated by the Commis-
20 sioner of Customs under paragraph (2) may do the
21 following in carrying out the enforcement authority
22 under this title:

23 (i) Stop, search, and examine a vehicle,
24 vessel, aircraft, or person on which or whom the
25 officer or employee has reasonable cause to sus-

1 pect there is any item that has been, is being,
2 or is about to be exported from or transited
3 through the United States in violation of this
4 title.

5 (ii) Detain and search any package or con-
6 tainer in which the officer or employee has rea-
7 sonable cause to suspect there is any item that
8 has been, is being, or is about to be exported
9 from or transited through the United States in
10 violation of this title.

11 (D) Any officer or employee designated under
12 paragraph (2) may detain (after search under sub-
13 paragraph (C)) or seize any item, for purposes of se-
14 curing for trial or forfeiture to the United States, on
15 or about a vehicle, vessel, aircraft, or person de-
16 scribed in subparagraph (C)(i), or in a package or
17 container described in subparagraph (C)(ii), if the
18 officer or employee has probable cause to believe the
19 item has been, is being, or is about to be exported
20 from or transited through the United States in viola-
21 tion of this title.

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

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

5 (1) the seizure, summary and judicial forfeiture,
6 and condemnation of property for violations of the
7 customs laws,

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

10 (3) the remission or mitigation of such forfeit-
11 ures, and

12 (4) the compromise of claims,

13 shall apply to seizures and forfeitures incurred, or alleged
14 to have been incurred, under the provisions of this sub-
15 section, insofar as applicable and not inconsistent with
16 this title; except that such duties as are imposed upon the
17 customs officer or any other person with respect to the
18 seizure and forfeiture of property under the customs laws
19 may be performed with respect to seizures and forfeitures
20 of property under this subsection by the Secretary or such
21 officers and employees of the Department of Commerce
22 as may be authorized or designated for that purpose by
23 the Secretary, or, upon the request of the Secretary, by
24 any other agency that has authority to manage and dis-
25 pose of seized property.

1 (c) REFERRAL OF CASES.—All cases involving viola-
2 tions of this title shall be referred to the Secretary for
3 purposes of determining civil penalties and administrative
4 sanctions under section 110(c), or to the Attorney General
5 for criminal action in accordance with this title.

6 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

7 (1) USE OF FUNDS.—With respect to any un-
8 dercover investigative operation conducted by the Of-
9 fice of Export Enforcement of the Department of
10 Commerce (hereafter in this subsection referred to
11 as “OEE”) necessary for the detection and prosecu-
12 tion of violations of this title—

13 (A) funds made available for export en-
14 forcement under this title may be used to pur-
15 chase property, buildings, and other facilities,
16 and to lease space within the United States,
17 without regard to sections 1341 and 3324 of
18 title 31, United States Code, the third undesign-
19 ated paragraph under the heading of “MIS-
20 CELLANEOUS” of the Act of March 3, 1877, (40
21 U.S.C. 34), sections 3732(a) and 3741 of the
22 Revised Statutes of the United States (41
23 U.S.C. 11(a) and 22), and subsections (a) and
24 (c) of section 304, and section 305 of the Fed-

1 eral Property and Administrative Services Act
2 of 1949 (41 U.S.C. 254(a) and (c) and 255),

3 (B) funds made available for export en-
4 forcement under this title may be used to estab-
5 lish or to acquire proprietary corporations or
6 business entities as part of an undercover oper-
7 ation, and to operate such corporations or busi-
8 ness entities on a commercial basis, without re-
9 gard to section 9102 of title 31, United States
10 Code,

11 (C) funds made available for export en-
12 forcement under this title and the proceeds
13 from undercover operations may be deposited in
14 banks or other financial institutions without re-
15 gard to the provisions of section 648 of title 18,
16 United States Code, and section 3302 of title
17 31, United States Code, and

18 (D) the proceeds from undercover oper-
19 ations may be used to offset necessary and rea-
20 sonable expenses incurred in such operations
21 without regard to the provisions of section 3302
22 of title 31, United States Code,

23 if the Director of OEE (or an officer or employee
24 designated by the Director) certifies, in writing, that
25 the action authorized by subparagraph (A), (B), (C),

1 or (D) for which the funds would be used is nec-
2 essary for the conduct of the undercover operation.

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

16 (3) DEPOSIT OF PROCEEDS.—As soon as the
17 proceeds from an OEE undercover investigative op-
18 eration with respect to which an action is authorized
19 and carried out under this subsection are no longer
20 necessary for the conduct of such operation, such
21 proceeds or the balance of such proceeds remaining
22 at the time shall be deposited into the Treasury of
23 the United States as miscellaneous receipts.

24 (4) AUDIT AND REPORT.—(A) The Director of
25 OEE shall conduct a detailed financial audit of each

1 OEE undercover investigative operation which is
2 closed and shall submit the results of the audit in
3 writing to the Secretary. Not later than 180 days
4 after an undercover operation is closed, the Sec-
5 retary shall submit to the Congress a report on the
6 results of the audit.

7 (B) The Secretary shall submit annually to the
8 Congress a report, which may be included in the an-
9 nual report under section 115, specifying the follow-
10 ing information:

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

14 (ii) The number of undercover investigative
15 operations commenced in the 1-year period pre-
16 ceding the period for which such report is sub-
17 mitted.

18 (iii) The number of undercover investiga-
19 tive operations closed in the 1-year period pre-
20 ceding the period for which such report is sub-
21 mitted and, with respect to each such closed un-
22 dercover operation, the results obtained and any
23 civil claims made with respect thereto.

24 (5) DEFINITIONS.—For purposes of paragraph

25 (4)—

1 (A) the term “closed”, with respect to an
2 undercover investigative operation, refers to the
3 earliest point in time at which all criminal pro-
4 ceedings (other than appeals) pursuant to the
5 investigative operation are concluded, or covert
6 activities pursuant to such operation are con-
7 cluded, whichever occurs later;

8 (B) the terms “undercover investigative
9 operation” and “undercover operation” mean
10 any undercover investigative operation con-
11 ducted by OEE—

12 (i) in which the gross receipts (exclud-
13 ing interest earned) exceed \$25,000, or ex-
14 penditures (other than expenditures for
15 salaries of employees) exceed \$75,000, and

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

18 except that clauses (i) and (ii) shall not apply
19 with respect to the report to the Congress re-
20 quired by subparagraph (B) of paragraph (4);
21 and

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

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

6 **SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCE-**
7 **DURES.**

8 (a) POLICY GUIDANCE.—

9 (1) IN GENERAL.—As directed by the Presi-
10 dent, annual policy guidance shall be issued to pro-
11 vide detailed implementing guidance to export licens-
12 ing officials in all appropriate departments and
13 agencies.

14 (2) ELEMENTS OF ANNUAL POLICY REVIEW.—
15 In order to develop such annual policy guidance, ex-
16 port controls and other regulations to implement
17 this title shall be reviewed annually. This annual pol-
18 icy review shall include an evaluation of the benefits
19 and costs of the imposition, extension, or removal of
20 controls under this title. This review shall include—

21 (A) an assessment by the Secretary of the
22 economic consequences of the imposition, exten-
23 sion, or removal of controls during the preced-
24 ing 12 months, including the impact on United
25 States exports or jobs;

1 (B) an assessment by the Secretary of
2 State of the objectives of the controls in effect
3 during the preceding 12 months, and the extent
4 to which the controls have served those objec-
5 tives; and

6 (C) an assessment by the Secretary of De-
7 fense of the impact that the imposition, exten-
8 sion, or removal of controls during the preced-
9 ing 12 months has had on United States na-
10 tional security.

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

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

18 (2) DELEGATION OF FUNCTIONS OF THE SEC-
19 RETARY.—The Secretary may delegate any function
20 under this title to the Under Secretary of Commerce
21 for Export Administration appointed under sub-
22 section (d) or to any other officer of the Department
23 of Commerce.

24 (c) EXPORT CONTROL POLICY COMMITTEE.—

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

4 (2) FUNCTIONS.—The Committee shall—

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

8 (B) review policy recommendations pro-
9 posed by the Secretary and other members of
10 the Committee; and

11 (C) receive policy recommendations from
12 other agencies and resolve any policy disputes
13 among departments and agencies under this
14 title.

15 (3) MEMBERSHIP.—The Committee shall be
16 comprised of—

17 (A) the Secretary;

18 (B) the Secretary of Defense;

19 (C) the Secretary of Energy;

20 (D) the Secretary of State;

21 (E) the National Security Adviser;

22 (F) the National Economic Adviser;

23 (G) the Secretary of the Treasury;

24 (H) the United States Trade Representa-
25 tive; and

1 (I) the Director of the Arms Control and
2 Disarmament Agency.

3 (4) CHAIR.—The Committee shall be jointly
4 chaired by the National Economic Adviser and the
5 National Security Adviser.

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

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

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

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

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

7 (2) TRANSITION PROVISIONS.—Those individ-
8 uals serving in the positions of Under Secretary of
9 Commerce for Export Administration and Assistant
10 Secretaries of Commerce under section 15(a) of the
11 Export Administration Act of 1979, on the day be-
12 fore the date of the enactment of this Act, shall be
13 deemed to have been appointed under paragraph (1)
14 as of such date of enactment.

15 (e) ISSUANCE OF REGULATIONS.—The President and
16 the Secretary may issue such regulations as are necessary
17 to carry out this title. Any such regulations the purpose
18 of which is to carry out section 105 or 106 may be issued
19 only after the regulations are submitted for review to such
20 departments or agencies as the President considers appro-
21 priate, and to any appropriate export advisory committee
22 appointed under section 104(f). The preceding sentence
23 does not require the concurrence or approval of any offi-
24 cial, department, or agency to which such regulations are
25 submitted.

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

14 (g) CONFIDENTIALITY OF INFORMATION.—

15 (1) EXEMPTIONS FROM DISCLOSURE.—

16 (A) Except as otherwise provided by the
17 third sentence of section 108(b)(2), information
18 obtained under the Export Administration Act
19 of 1979 and its predecessor statutes on or be-
20 fore June 30, 1980, which is deemed confiden-
21 tial, including Shipper's Export Declarations, or
22 with reference to which a request for confiden-
23 tial treatment is made by the person furnishing
24 such information, shall be exempt from disclo-
25 sure under section 552 of title 5, United States

1 Code, and such information shall not be pub-
2 lished or disclosed unless the Secretary deter-
3 mines that the withholding thereof is contrary
4 to the national interest.

5 (B) Except as otherwise provided by the
6 third sentence of section 108(b)(2), information
7 obtained under this title or under the Export
8 Administration Act of 1979 after June 30,
9 1980, may be withheld from disclosure only to
10 the extent permitted by statute, except that in-
11 formation submitted, obtained, or considered in
12 connection with an application for an export li-
13 cense or other export authorization under the
14 Export Administration Act of 1979 or this title,
15 including the export license or other export au-
16 thorization itself, classification requests de-
17 scribed in section 109(h)(1), information ob-
18 tained during the course of a foreign availabil-
19 ity assessment, information or evidence ob-
20 tained in the course of any investigation, and
21 information obtained or furnished under this
22 title in connection with international agree-
23 ments, treaties, or obligations shall be withheld
24 from public disclosure unless the release of such

1 information is determined by the Secretary to
2 be in the national interest.

3 (2) INFORMATION TO CONGRESS AND GAO.—

4 (A) IN GENERAL.—Nothing in this title
5 shall be construed as authorizing the withhold-
6 ing of information from the Congress or from
7 the General Accounting Office.

8 (B) AVAILABILITY TO THE CONGRESS.—

9 (i) IN GENERAL.—All information ob-
10 tained at any time under this title or pre-
11 vious Acts regarding the control of exports,
12 including any report or license application
13 required under this title, shall be made
14 available to any committee or subcommit-
15 tee of Congress of appropriate jurisdiction
16 upon the request of the chairman or rank-
17 ing minority member of such committee or
18 subcommittee.

19 (ii) PROHIBITION ON FURTHER DIS-
20 CLOSURE.—No committee, subcommittee,
21 or Member of Congress shall disclose any
22 information obtained under this title or
23 previous Acts regarding the control of ex-
24 ports which is submitted on a confidential
25 basis to the Congress under clause (i) un-

1 less the full committee to which the infor-
2 mation is made available determines that
3 the withholding of the information is con-
4 trary to the national interest.

5 (C) AVAILABILITY TO THE GAO.—

6 (i) IN GENERAL.—Notwithstanding
7 paragraph (1), information referred to in
8 subparagraph (B) shall, consistent with
9 the protection of intelligence, counterintel-
10 ligence, and law enforcement sources,
11 methods, and activities, as determined by
12 the agency that originally obtained the in-
13 formation, and consistent with the provi-
14 sions of section 716 of title 31, United
15 States Code, be made available only by the
16 agency, upon request, to the Comptroller
17 General of the United States or to any of-
18 ficer or employee of the General Account-
19 ing Office authorized by the Comptroller
20 General to have access to such informa-
21 tion.

22 (ii) PROHIBITION ON FURTHER DIS-
23 CLOSURES.—No officer or employee of the
24 General Accounting Office shall disclose,
25 except to the Congress in accordance with

1 this paragraph, any such information
2 which is submitted on a confidential basis
3 and from which any individual can be iden-
4 tified.

5 (3) INFORMATION EXCHANGE.—Notwithstand-
6 ing paragraph (1), the Secretary and the Commis-
7 sioner of Customs shall exchange licensing and en-
8 forcement information with each other which is nec-
9 essary to facilitate enforcement efforts and effective
10 license decisions.

11 (4) PENALTIES FOR DISCLOSURE OF CON-
12 FIDENTIAL INFORMATION.—Any officer or employee
13 of the United States, or any department or agency
14 thereof, who publishes, divulges, discloses, or makes
15 known in any manner or to any extent not author-
16 ized by law any information that—

17 (A) he or she obtains in the course of his
18 or her employment or official duties or by rea-
19 son of any examination or investigation made
20 by, or report or record made to or filed with,
21 such department or agency, or officer or em-
22 ployee thereof, and

23 (B) is exempt from disclosure under this
24 subsection,

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

6 (h) AUTHORITY FOR SEMINAR AND PUBLICATIONS
7 FUND.—The Secretary is authorized to cooperate with
8 public agencies, other governments, international organi-
9 zations, private individuals, private associations, and other
10 groups in connection with seminars, publications, and re-
11 lated activities to carry out export activities, including
12 educating the public or government officials on the appli-
13 cation of this title and the regulations issued under this
14 title. The Secretary is further authorized to accept con-
15 tributions of funds, property, or services in connection
16 with such activities to recover the cost of such programs
17 and activities. Contributions may include payments for
18 materials or services provided as part of such activities.
19 The contributions collected may be retained for use in cov-
20 ering the costs of such activities, and for providing infor-
21 mation to the public with respect to this title and other
22 export control programs of the United States and other
23 governments.

24 (i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
25 TROL PROGRAM.—The Secretary is authorized to provide

1 training to officials of other countries on the principles
2 and procedures for the implementation of effective export
3 controls and shall participate in any such training pro-
4 vided by other departments and agencies of the United
5 States.

6 (j) INCORPORATED COMMODITIES AND TECH-
7 NOLOGY.—

8 (1) COMMODITIES CONTAINING CONTROLLED
9 PARTS AND COMPONENTS.—Export licenses may not
10 be required under this title or any other provision of
11 law for a commodity solely because the commodity
12 contains parts or components on which export con-
13 trols are in effect under this title if such parts or
14 components—

15 (A) are essential to the functioning of the
16 commodity;

17 (B) are customarily included in sales of the
18 commodity in countries other than controlled
19 countries; and

20 (C) comprise 25 percent or less of the total
21 value of the commodity,

22 unless the commodity itself, if exported, would by
23 virtue of the functional characteristics of the com-
24 modity as a whole meet the requirements of sub-
25 paragraph (A) or (B) of section 105(a)(1).

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

3 (A) COMMODITIES.—(i) Subject to clause
4 (ii), no authority or permission may be required
5 under section 105 or 106 to reexport a com-
6 modity that is produced in a country other than
7 the United States and incorporates commodities
8 that are subject to the jurisdiction of the Unit-
9 ed States, if the value of the controlled United
10 States content of the commodity produced in
11 such other country is 25 percent or less of the
12 total value of the commodity.

13 (ii) No authority or permission may be re-
14 quired under section 106 to reexport to a ter-
15 rorist country, or to a country against which an
16 embargo described in section 106(f)(1) is in ef-
17 fect, a commodity that is produced in a country
18 other than the United States and incorporates
19 commodities that are subject to the jurisdiction
20 of the United States, if the value of the con-
21 trolled United States content of the commodity
22 produced in such other country is 10 percent or
23 less of the total value of the commodity.

24 (iii) For purposes of clause (ii), a “terror-
25 ist country” is a country with respect to which

1 a determination is in effect that was made
2 under section 106(i)(1)(A) of this Act, or sec-
3 tion 6(j)(1)(A) of the Export Administration
4 Act of 1979, that the government of such coun-
5 try has repeatedly provided support for acts of
6 international terrorism.

7 (B) TECHNOLOGY.—(i) No authority or
8 permission may be required under section 105
9 to reexport technology that is produced in a
10 country other than the United States and is
11 commingled with or drawn from technology that
12 is produced in the United States, if the value
13 of the controlled United States content of the
14 technology produced in such other country is 25
15 percent or less of the total value of the tech-
16 nology.

17 (ii) No authority or permission may be re-
18 quired under section 106 to reexport technology
19 that is produced in a country other than the
20 United States and is commingled with or drawn
21 from technology that is produced in the United
22 States, if the value of the controlled United
23 States content of the technology produced in
24 such other country is 10 percent or less of the
25 total value of the technology.

1 (C) CONTROLLED CONTENT.—For pur-
2 poses of this paragraph, the “controlled United
3 States content” of a commodity or technology
4 means those commodities or technology that—

5 (i) are subject to the jurisdiction of
6 the United States;

7 (ii) are incorporated into the commod-
8 ity or technology; and

9 (iii) would, at the time of the reex-
10 port, require a validated license under sec-
11 tion 105 or 106 if exported from the Unit-
12 ed States to a country to which the com-
13modity or technology is to be reexported.

14 (D) TREATMENT OF CERTAIN TECHNICAL
15 DATA.—For purposes of this subsection, tech-
16 nology and source code used to design or
17 produce commodities or software produced in a
18 country other than the United States are not
19 incorporated into such commodities or software.

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

22 (1) medicine or medical supplies; or

23 (2) donations of items that are intended to
24 meet basic human needs, including food, educational
25 materials, seeds, hand tools, water resources equip-

1 ment, clothing and shelter materials, and basic
2 household supplies.

3 (l) SANCTITY OF EXISTING CONTRACTS AND LI-
4 CENSES.—

5 (1) IN GENERAL.—The President may not pro-
6 hibit the export of items under section 105 or 106—

7 (A) in performance of a contract, agree-
8 ment, or other contractual commitment entered
9 into before the effective date of any export con-
10 trols imposed on such items by this title, or the
11 date on which the President reports to the Con-
12 gress the President's intention to impose con-
13 trols on the export of such items, whichever
14 date occurs first, or

15 (B) under a validated license or other au-
16 thorization issued under this title before the ef-
17 fective date of any export controls imposed on
18 such items by this title, or the date on which
19 the President reports to the Congress the Presi-
20 dent's intention to impose controls on the ex-
21 port of such items, whichever date occurs first.

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

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

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

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

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

13 (m) PUBLICATION OF ACTIONS.—

14 (1) DECISIONS AND ACTIONS OF THE SEC-
15 RETARY.—

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

1 (i) Classification of a commodity or
2 technology on the control index.

3 (ii) Calculation of a commonly-used
4 control index parameter for a commodity
5 or technology, including all officially ac-
6 cepted composite theoretical performance
7 calculations for computers and
8 microprocessors.

9 (B) NOTICE OF REVISIONS.—Whenever the
10 Secretary makes any revision in the control
11 index with respect to any commodity or tech-
12 nology, or with respect to any country or des-
13 tination affected by controls imposed under sec-
14 tion 105 or section 106, the Secretary shall
15 publish in the Federal Register a notice of such
16 revision and shall specify in such notice under
17 which authority the revision is being made.

18 (2) EXPORT CONTROL REGIME ACTIONS.—

19 (A) IN GENERAL.—Not more than 90 days
20 after the date of the enactment of this Act, the
21 Secretary shall publish in the Federal Register
22 the full text of the lists of controlled items of
23 all export control regimes and all notes and un-
24 derstandings of the regimes concerning such
25 lists. The Secretary shall update the publication

1 under the preceding sentence at least once in
2 each 1-year period occurring after the original
3 publication under this subparagraph.

4 (B) CONTENTS.—The Secretary shall pub-
5 lish in the Federal Register—

6 (i) the full text of any agreements af-
7 fecting the lists of controlled items of all
8 export control regimes, together with all
9 notes, understandings, and other aspects of
10 such agreements and all revisions to such
11 texts;

12 (ii) subject to the limitations set forth
13 in subsection (g), decisions on requests for
14 exceptions permitted by such export con-
15 trol regimes for particular exports;

16 (iii) other actions and decisions of
17 such export control regimes, to the maxi-
18 mum extent possible; and

19 (iv) unreliable end users with respect
20 to items on which export controls are im-
21 posed under this title, and persons to
22 whom sanctions have been applied, or
23 whose export privileges have been denied,
24 under this title.

1 (C) TIMING.—Such publication shall be
2 made not more than 30 days after the agree-
3 ments are reached, the decisions are made, the
4 actions are taken, or the information becomes
5 available, as the case may be.

6 (D) EXCEPTION.—The publication of a
7 particular matter need not be made under this
8 paragraph to the extent that the Secretary sub-
9 mits a written finding to the Congress that to
10 publish that matter would be contrary to na-
11 tional or international security, would abridge
12 the confidentiality of the decision-making proc-
13 esses of an export control regime, or would oth-
14 erwise be inconsistent with the obligations of
15 the United States to an export control regime.

16 (n) NOTIFICATION OF THE PUBLIC; CONSULTATION
17 WITH INDUSTRY; RECORDKEEPING.—

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

22 (2) CONSULTATION WITH INDUSTRY.—The Sec-
23 retary shall meet regularly with export advisory com-
24 mittees appointed under section 104(f) in order to
25 obtain their views on United States export control

1 policy and the foreign availability of commodities
2 and technology.

3 (o) DELEGATION TO COCOM.—The Secretary, or an
4 officer or employee of the Department of Commerce des-
5 ignated by the Secretary, shall be a member of the perma-
6 nent United States delegation to COCOM or its successor
7 export control regime.

8 (p) EXPORT CONTROL ATTACHES.—The Secretary
9 shall assign a full-time export control attache to each of
10 those countries that—

11 (1) pose the greatest threat to the United
12 States and its allies with respect to the proliferation
13 of weapons of mass destruction and missiles; and

14 (2) received exports pursuant to the largest
15 number of licenses issued under sections 105 and
16 106, during the preceding 2 calendar years, as com-
17 pared to licenses issued under such sections for ex-
18 ports to all countries.

19 Each such attache shall give priority to conducting post-
20 shipment verifications, prelicense checks, and other mon-
21 itoring of end uses in the country to which the attache
22 is assigned.

23 (q) AUTHORIZATION FOR TECHNICAL DATA.—A
24 validated license authorizing the export of any commod-
25 ities or technology under this title shall also authorize the

1 export of operation technical data related to such commod-
2 ities or technology, whether or not such data is specifically
3 referenced in the license or license application, if the tech-
4 nical level of the data does not exceed the level reasonably
5 necessary to install, repair, maintain, inspect, operate, or
6 use the commodities or technology.

7 (r) LICENSES FOR SPARE PARTS NOT REQUIRED.—
8 An individual validated license shall not be required under
9 this title for replacement parts which are exported to re-
10 place on a one-for-one basis parts that were in a commod-
11 ity that was lawfully exported from the United States, un-
12 less the President determines that such a license should
13 be required for such parts.

14 **SEC. 115. ANNUAL REPORT.**

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

21 (1) The implementation of the policies set forth
22 in section 103, including delegations of authority by
23 the President under section 104(d), consultations
24 with the export advisory committees established
25 under section 104(f), and any changes in the exer-

1 cise of the authorities contained in sections 105(a),
2 106(a), 107(a), and 108(a).

3 (2) With respect to multilateral export controls
4 imposed or maintained under section 105, the fol-
5 lowing:

6 (A) The effectiveness of each export con-
7 trol regime, as required by section 105(h), in-
8 cluding all information required by section
9 105(h)(2).

10 (B) Adjustments to multilateral export
11 controls.

12 (C) The implementation of the export li-
13 censing treatment authorized by section 105(e).

14 (D) Determinations of foreign availability
15 made under section 105(i), the criteria used to
16 make such determinations, the removal of any
17 export controls under such subsection, and any
18 evidence demonstrating a need to maintain ex-
19 port controls notwithstanding foreign availabil-
20 ity.

21 (E) The operation of the indexing system
22 under section 105(k).

23 (3) With respect to unilateral export controls
24 imposed under section 106, the following:

25 (A) The effectiveness of such controls.

1 (B) Adjustments to such controls pursuant
2 to negotiations under subsections (a)(5) and (c)
3 of section 106.

4 (C) Embargoes imposed, maintained, or re-
5 moved in accordance with section 106, including
6 descriptions of each embargo and the rationale
7 for imposing, maintaining, or removing such
8 embargo.

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

11 (5) Organizational and procedural changes un-
12 dertaken in furtherance of the policies set forth in
13 this title, including changes to increase the efficiency
14 of the export licensing process and to fulfill the re-
15 quirements of section 109, including an accounting
16 of appeals received, and actions taken pursuant
17 thereto, under section 109(g).

18 (6) Violations under section 110 and enforce-
19 ment activities under section 113.

20 (7) The issuance of regulations under this title.

21 (8) The results, in as much detail as may be in-
22 cluded consistent with the strategic and political in-
23 terests of the United States and the need to main-
24 tain the confidentiality of proprietary information, of
25 the reviews of the security control list, and any revi-

1 sions to the list resulting from such reviews, re-
2 quired by section 105.

3 (9) Each of the assessments described in sec-
4 tion 114(a)(2).

5 (b) INFORMATION ON SECTION 111.—

6 (1) INFORMATION TO BE INCLUDED.—The
7 President shall include in each annual report under
8 subsection (a)—

9 (A) a description of the actions taken to
10 carry out section 111, including the imposition
11 and removal of sanctions under such section;

12 (B) a description of the current efforts of
13 foreign countries and subnational groups to ac-
14 quire equipment, materials, or technology to de-
15 velop, produce, or use chemical or biological
16 weapons, together with an assessment of the
17 current and likely future capabilities of such
18 countries and groups to develop, produce, stock-
19 pile, deliver, transfer, or use such weapons;

20 (C) a description of—

21 (i) the use of chemical or biological
22 weapons by foreign countries in violation of
23 international law,

24 (ii) the use of chemical or biological
25 weapons by subnational groups,

1 (iii) substantial preparations by for-
2 eign countries and subnational groups to
3 do so, and

4 (iv) the development, production,
5 stockpiling, or use of chemical or biological
6 weapons by foreign countries and
7 subnational groups; and

8 (D) a description of the extent to which
9 foreign persons or governments have knowingly
10 and materially assisted third countries or
11 subnational groups to acquire equipment, mate-
12 rial, or technology intended to develop, produce,
13 or use chemical or biological weapons.

14 (2) INFORMATION SHOULD BE UNCLASSI-
15 FIED.—To the extent practicable, information sub-
16 mitted under paragraph (1) should be based on un-
17 classified information.

18 **SEC. 116. DEFINITIONS.**

19 As used in this title:

20 (1) AUSTRALIA GROUP.—The term “Australia
21 Group” means the multilateral arrangement in
22 which the United States participates that seeks to
23 prevent the proliferation of chemical and biological
24 weapons.

1 (2) COCOM.—The term “COCOM” means the
2 Coordinating Committee for Multilateral Export
3 Controls, and any successor entity.

4 (3) COMMODITY.—The term “commodity”
5 means any article, natural or manmade substance,
6 material, supply, or manufactured product, including
7 inspection and test equipment, and excluding tech-
8 nical data.

9 (4) CONTROL OR CONTROLLED.—The terms
10 “control” and “controlled” refer to a requirement
11 that an export have a validated license or written re-
12 export authorization.

13 (5) CONTROL INDEX.—The term “control
14 index” means the United States Commodity Control
15 Index established under section 104(c)(1).

16 (6) CONTROLLABLE.—The term “controllable”
17 means capable of being made subject to an effective
18 prohibition or significant restriction on exports. A
19 commodity or technology shall not be considered to
20 be controllable unless it is—

21 (A) manufactured or sold by only a limited
22 number of suppliers who can be positively iden-
23 tified;

24 (B) consumed or used by only a limited
25 number of end users who can be positively iden-

1 tified and whose export activities can be con-
2 trolled; and

3 (C) individually traceable or not easily con-
4 cealed or disguised.

5 (7) CONTROLLED COUNTRY, CONTROLLED END
6 USE, AND CONTROLLED END USER.—(A) The term
7 “controlled country” means a country identified
8 under section 105(b)(3), and a country on which
9 controls are imposed under section 106.

10 (B) The term “controlled end use” means an
11 end use identified under section 105(b)(3) and an
12 end use for which exports are controlled under sec-
13 tion 106.

14 (C) The term “controlled end user” means an
15 end user identified under section 105(b)(3) and an
16 end user to which exports are controlled under sec-
17 tion 106.

18 (8) COOPERATING COUNTRY.—The term “co-
19 operating country” means a country that, pursuant
20 to an agreement or other arrangement with the
21 United States or an export control regime, controls
22 exports of items that are consistent with the criteria
23 and standards of that export control regime.

24 (9) END USE AND END USER.—(A) The term
25 “end use” means the intended application or use of

1 an item as represented by an export license appli-
2 cant.

3 (B) The term “end user” means the person lo-
4 cated abroad who is the true party in interest in ac-
5 tually receiving an export for the end use designated
6 for the export.

7 (10) EXPORT.—The term “export”—

8 (A) means—

9 (i) an actual shipment, transfer, or
10 transmission of items out of the United
11 States; and

12 (ii) a transfer to any person of items
13 either within the United States or outside
14 of the United States with the knowledge or
15 intent that the items will be shipped out-
16 side the United States, transferred, or
17 transmitted to an unauthorized end user,
18 end use, or destination;

19 (B) includes the transfer of the registra-
20 tion of a satellite or operational control of a
21 satellite from a party resident in the United
22 States to a party resident in another country;
23 and

24 (C) includes the term “reexport”.

1 (11) EXPORT CONTROL REGIME, MULTILAT-
2 ERAL EXPORT CONTROL REGIME, MULTILATERAL
3 REGIME, AND REGIME.—The terms “export control
4 regime”, “multilateral export control regime”, “mul-
5 tilateral regime”, and “regime” each mean a group
6 of two or more countries which includes the United
7 States and the purpose of which is to curtail, by
8 means of cooperative export controls, access to cer-
9 tain items by certain countries, by certain end users,
10 or for certain end uses.

11 (12) FOREIGN AVAILABILITY, AVAILABLE IN
12 FACT TO CONTROLLED COUNTRIES.—The terms
13 “foreign availability” and “available in fact to con-
14 trolled countries” each include production or avail-
15 ability of any item from any country—

16 (A) in which the item is not restricted for
17 export to any controlled country; or

18 (B) in which such export restrictions are
19 determined by the Secretary to be ineffective.

20 For purposes of subparagraph (B), the mere inclu-
21 sion of items on a list of items subject to export con-
22 trols imposed pursuant to a multilateral export con-
23 trol regime shall not alone constitute credible evi-
24 dence that the government of a country provides an

1 effective means of controlling the export of such
2 items to controlled countries.

3 (13) FOREIGN PERSON.—The term “foreign
4 person” means—

5 (A) an individual who is not a United
6 States citizen or an alien admitted for perma-
7 nent residence to the United States;

8 (B) any corporation, partnership, business
9 association, society, trust, organization, or other
10 nongovernmental entity created or organized
11 under the laws of a foreign country or that has
12 its principal place of business outside the Unit-
13 ed States; and

14 (C) any governmental entity of a foreign
15 country that is operating as a business enter-
16 prise.

17 (14) ITEM.—The term “item” means any com-
18 modity or technology.

19 (15) LICENSE.—The term “license” includes
20 both validated licenses and written reexport author-
21 izations.

22 (16) MEMBER OF AN EXPORT CONTROL RE-
23 GIME.—A “member” of an export control regime is
24 a country that participates in that regime.

1 (17) MISSILE.—The term “missile” means any
2 missile system or component listed in category I of
3 the MTCR Annex, and any other unmanned delivery
4 system or component of similar capability, as well as
5 the specially designed production facilities for these
6 systems.

7 (18) MISSILE TECHNOLOGY CONTROL REGIME;
8 MTCR.—The term “Missile Technology Control Re-
9 gime” or “MTCR” means the policy statement and
10 guidelines between the United States, the United
11 Kingdom, the Federal Republic of Germany, France,
12 Italy, Canada, and Japan, announced on April 16,
13 1987, to restrict sensitive missile-related transfers
14 based on the MTCR Annex, and any amendments
15 thereto.

16 (19) MTCR ANNEX.—The term “MTCR
17 Annex” means the Equipment and Technology
18 Annex of the MTCR, and any amendments thereto.

19 (20) NUCLEAR EXPLOSIVE DEVICE.—The term
20 “nuclear explosive device” means any device, wheth-
21 er assembled or disassembled, that is designed to
22 produce an instantaneous release of an amount of
23 nuclear energy from special nuclear material that is
24 greater than the amount of energy that would be re-

1 leased from the detonation of one pound of trinitro-
2 toluene (TNT).

3 (21) NUCLEAR SUPPLIERS' GROUP.—The term
4 “Nuclear Suppliers' Group” means the multilateral
5 arrangement in which the United States participates
6 whose purpose is to restrict the transfers of items
7 with relevance to the nuclear fuel cycle or nuclear
8 explosive applications.

9 (22) PERSON.—The term “person” includes the
10 singular and the plural and any individual, partner-
11 ship, corporation, or other form of association, in-
12 cluding (except when used in the term “foreign per-
13 son” or “United States person”) any government or
14 agency thereof.

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

18 (24) SECRETARY.—The term “Secretary”
19 means the Secretary of Commerce.

20 (25) SOFTWARE.—The term “software” means
21 one or more computer programs or microprograms
22 fixed in any tangible medium of expression.

23 (26) TECHNOLOGY.—The term “technology”
24 means specific information necessary for the devel-

1 opment, production, or use of a commodity, and in-
2 cludes software.

3 (27) UNILATERAL AND UNILATERALLY.—(A)
4 The terms “unilateral” and “unilaterally”, with re-
5 spect to an export control or license treatment, refer
6 to a license requirement or license treatment that is
7 not agreed to by a multilateral regime for any or all
8 of the following elements: the purpose of the license
9 requirement or treatment, the items subject to the
10 license requirement or treatment, the standard of re-
11 view for applications for such license, the domestic
12 and international procedures for review of such li-
13 cense applications, and the controlled countries, and
14 end uses or end users, to which the review policy ap-
15 plies.

16 (B) An export control or license treatment shall
17 be considered to be unilateral or unilaterally main-
18 tained by the United States if it is a restriction, con-
19 dition, or interpretation imposed by the Secretary
20 upon commodities or technology, or upon a license
21 application for the export of commodities or tech-
22 nology, that is not imposed or implemented in simi-
23 lar circumstances by other members of an export
24 control regime, or that is not otherwise specifically
25 permitted by this title.

1 (28) UNITED STATES.—The term “United
2 States” means the States of the United States, the
3 District of Columbia, and any commonwealth, terri-
4 tory, dependency, or possession of the United States,
5 and includes the Outer Continental Shelf, as defined
6 in section 2(a) of the Outer Continental Shelf Lands
7 Act (43 U.S.C. 1331(a)).

8 (29) UNITED STATES PERSON.—The term
9 “United States person” means any United States
10 resident or national (other than an individual resi-
11 dent outside the United States and employed by
12 other than a United States person), any domestic
13 concern (including any permanent domestic estab-
14 lishment of any foreign concern) and any foreign
15 subsidiary or affiliate (including any permanent for-
16 eign establishment) of any domestic concern which is
17 controlled in fact by such domestic concern, as de-
18 termined under regulations of the President.

19 (30) WEAPONS OF MASS DESTRUCTION.—The
20 term “weapons of mass destruction” means any
21 chemical, biological, or nuclear weapon, including a
22 nuclear explosive device.

23 **SEC. 117. EFFECTS ON OTHER ACTS.**

24 (a) COMMODITY JURISDICTION.—

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

3 (A) an item agreed for control on the
4 International Munitions List of COCOM shall
5 be subject to control under the Arms Export
6 Control Act and not under this title;

7 (B) except as provided in paragraphs (2),
8 (3), and (5), an item which is on the Inter-
9 national Industrial List of COCOM shall be
10 subject to control under this title and not under
11 the Arms Export Control Act; and

12 (C) no item may be included on both the
13 control index and the United States Munitions
14 List after publication of the lists required under
15 paragraph (4) and resolution of any dispute
16 with respect to such lists under paragraph (5).

17 (2) EXCEPTIONS.—(A) An item described in
18 subparagraph (B) that is not on the International
19 Munitions List may be subject to control under the
20 Arms Export Control Act—

21 (i)(I) for a period of 9 months after the
22 date on which the United States proposes to
23 COCOM that the item be added to the Inter-
24 national Munitions List; and

1 (II) for an additional 9-month period, but
2 only if negotiations in COCOM to add the item
3 to the International Munitions List are continu-
4 ing; or

5 (ii) if the Secretary of State, in consulta-
6 tion with the Secretary, so determines, except
7 that if the Secretary disagrees with the Sec-
8 retary of State with respect to such item, the
9 item may be subject to control under the Arms
10 Export Control Act only if the disagreement is
11 resolved by the Secretaries or by the President
12 pursuant to the procedures set forth in sub-
13 paragraphs (B) and (C) of paragraph (5).

14 (B) An item referred to in subparagraph (A) is
15 an item that—

16 (i) is specifically designed, developed, con-
17 figured, adapted, or modified for military or in-
18 telligence application;

19 (ii) does not have significant civil applica-
20 tions; and

21 (iii) is not a component the performance
22 capacity and function of which are essentially
23 equivalent to those used for civil applications.

24 (3) PRESIDENTIAL DETERMINATIONS.—An item
25 that is not on the International Munitions List may

1 be subject to control under the Arms Export Control
2 Act if the President—

3 (A) determines that extraordinary cir-
4 cumstances exist affecting the national security
5 of the United States, which require that the
6 item be controlled under the Arms Export Con-
7 trol Act;

8 (B) proposes to COCOM that the item be
9 added to the International Munitions List; and

10 (C) not later than 10 days after making
11 the determination under subparagraph (A),
12 submits a report to the Speaker of the House
13 of Representatives and the President pro tem-
14 pore of the Senate, describing in detail the rea-
15 sons for the determination, in appropriate clas-
16 sified form, as necessary.

17 (4) PUBLICATION OF LISTS.—

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

24 (ii) Not later than 3 months after the date
25 of the enactment of this Act, the Secretary of

1 State shall publish in a separate list those items
2 remaining subject to control under the Arms
3 Export Control Act under paragraph (2).

4 (iii) The publications required by clauses
5 (i) and (ii) shall be made in the Federal Reg-
6 ister.

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

14 (5) COMMODITY JURISDICTION DISPUTE RESO-
15 LUTION.—

16 (A) Whenever—

17 (i) the Secretary or the Secretary of
18 State receives a request to determine
19 whether an item is subject to control under
20 this title or the Arms Export Control Act,

21 (ii) either Secretary finds that an item
22 is included on both the control index and
23 the United States Munitions List,

24 (iii) an item appearing on the list of
25 one Secretary under paragraph (4)(A)(i) is

1 considered by the other Secretary to be
2 under the jurisdiction of that other Sec-
3 retary, or

4 (iv) the Secretary disagrees with the
5 inclusion of an item on the list published
6 under paragraph (4)(A)(ii),

7 the Secretary or the Secretary of State (as the
8 case may be) shall refer the matter and any rel-
9 evant information to the other Secretary.

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

14 (C) If the 2 Secretaries fail to resolve such
15 differences within that 15-day period, either
16 Secretary may refer the matter to the Presi-
17 dent, who, not later than 15 days after receiv-
18 ing the referral, shall notify the 2 Secretaries of
19 his determination on the matter in dispute.

20 (D) In the event that either the Secretary
21 or the Secretary of State does not respond to
22 a referral under subparagraph (A) by the other
23 Secretary, the Secretary that did not so respond
24 shall be deemed to concur with the other Sec-
25 retary on the matter involved.

1 (6) REFERENCES.—For purposes of this sub-
2 section, any reference to the “International Muni-
3 tions List” or the “International Industrial List” in-
4 cludes a reference to any successor list to the Inter-
5 national Munitions List or the International Indus-
6 trial List, as the case may be.

7 (b) EXPORT CONTROLS ON TELECOMMUNI-
8 CATIONS.—

9 (1) NO LICENSE REQUIRED FOR CIVIL END
10 USES.—The Secretary shall not require a validated
11 license for export or authorization for reexport of
12 telecommunications equipment to civil end users for
13 civil end uses in any of the republics of the former
14 Soviet Union, the People’s Republic of China, Po-
15 land, the Czech Republic, Slovakia, Bulgaria, Roma-
16 nia, Albania, Estonia, Lithuania, Latvia, Cambodia,
17 Laos, Mongolia, or Vietnam.

18 (2) DEFINITIONS.—For purposes of this sub-
19 section, the term “telecommunications equipment”
20 includes—

21 (A) those items described in the Advisory
22 Notes to Category 5 of the Commerce Control
23 List set forth in part 799 of title 15, Code of
24 Federal Regulations, as of April 4, 1994, that
25 indicate likelihood of approval—

1 (i) for country groups QWY and the
2 People's Republic of China,

3 (ii) only for the People's Republic of
4 China, or

5 (iii) to specified destinations in coun-
6 try group Y; and

7 (B) those entries and subentries listed in
8 export control classification numbers 5A02A
9 (except subentries h and i), 5A03A, 5A04A,
10 5A05A, 5A06A, 5B01A, 5B02A, 5C01A,
11 5D01A, 5D02A, and 5D03A of the Commerce
12 Control List set forth in part 799 of title 15,
13 Code of Federal Regulations, as of April 4,
14 1994, but not including software designed or
15 modified for the development, production, or
16 use of items controlled under export control
17 classification number 5A01A of the Commerce
18 Control List.

19 (c) ASSESSMENT OF ENCRYPTION SOFTWARE MAR-
20 KET.—

21 (1) PRESIDENTIAL REPORT REQUIRED.—Not
22 later than 150 days after the date of enactment of
23 this Act, the President shall submit a report to the
24 Committee on Banking, Housing, and Urban Affairs

1 of the Senate and the Committee on International
2 Relations of the House of Representatives.

3 (2) CONTENTS OF REPORT.—The report re-
4 quired by paragraph (1) shall—

5 (A) assess the current and future inter-
6 national market for computer software with
7 encryption;

8 (B) assess the impact of United States
9 encryption export controls on the international
10 competitiveness of the United States computer
11 software industry and their economic con-
12 sequences, including the impact on exports and
13 jobs in the United States computer software in-
14 dustry; and

15 (C) review the types, quality and market
16 penetration of foreign produced encryption soft-
17 ware products and any controls that influence
18 the international marketability of encryption
19 software products.

20 (3) CONSULTATION.—In preparing the report
21 required under paragraph (1), the President shall
22 consult with representatives of the United States
23 computer software industry. Confidential business
24 information provided by United States industry in
25 the course of preparing the report shall not be dis-

1 closed, except with the permission of the submitter
2 or when aggregated so that the source of the infor-
3 mation cannot be identified.

4 (d) IN GENERAL.—To the extent provided in this
5 title, this title shall be construed to modify, repeal, super-
6 sede, and otherwise affect the provisions of any other laws
7 authorizing control over exports of any commodities or
8 technology.

9 (e) COORDINATION OF CONTROLS.—The authority
10 granted under this title and under section 38 of the Arms
11 Export Control Act (22 U.S.C. 2778) shall be exercised
12 in such a manner as to share information regarding the
13 trustworthiness of parties.

14 (f) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding
15 any other provision of law, any civil aircraft product, or
16 any technology used in a civil aircraft product, that is
17 standard equipment certified or scheduled to be certified
18 by the Federal Aviation Administration and is an integral
19 part of such aircraft, shall be subject to export controls
20 exclusively under this title.

21 (g) NONPROLIFERATION CONTROLS.—The provisions
22 of section 109 shall supersede the procedures published
23 pursuant to section 309(c) of the Nuclear Non-Prolifera-
24 tion Act of 1978 (42 U.S.C. 2139a(c)) to the extent such

1 procedures are inconsistent with the provisions of section
2 109.

3 (h) AMENDMENTS TO THE INTERNATIONAL EMER-
4 GENCY ECONOMIC POWERS ACT.—

5 (1) PRESIDENTIAL AUTHORIZATION.—Section
6 203(a) of the International Emergency Economic
7 Powers Act (50 U.S.C. 1702(a)) is amended—

8 (A) by redesignating paragraphs (2) and
9 (3) as paragraphs (3) and (4), respectively, and

10 (B) by inserting after paragraph (1) the
11 following new paragraph:

12 “(2) The President may prohibit or curtail the expor-
13 tation of any items on the United States Commodity Con-
14 trol Index that are subject to the jurisdiction of the United
15 States under this title only to the extent provided in, and
16 subject to the criteria of, sections 105, 106, and 114 of
17 the Export Act of 1994, unless such prohibition or curtail-
18 ment is part of an embargo (as described in section
19 106(f)(1) of the Export Act of 1994) against the country
20 concerned. The preceding sentence shall continue to apply
21 notwithstanding the expiration of the Export Act of
22 1994.”.

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

1 (A) by redesignating section 208 as section
2 209; and

3 (B) by inserting after section 207 the fol-
4 lowing:

5 **“SEC. 208. CONFIDENTIALITY OF INFORMATION.**

6 “(a) EXEMPTIONS FROM DISCLOSURE.—Information
7 obtained under this title before or after the enactment of
8 this section may be withheld only to the extent permitted
9 by statute, except that information submitted, obtained,
10 or considered in connection with an application for an ex-
11 port license or other export authorization under this title,
12 including the export license or other export authorization
13 itself, classification requests, information or evidence ob-
14 tained in the course of any investigation, and information
15 obtained or furnished under this title in connection with
16 international agreements, treaties, or obligations shall be
17 withheld from public disclosure unless the release of such
18 information is determined by the Secretary to be in the
19 national interest.

20 “(b) INFORMATION TO CONGRESS AND GAO.—

21 “(1) IN GENERAL.—Nothing in this title shall
22 be construed as authorizing the withholding of infor-
23 mation from the Congress or from the General Ac-
24 counting Office.

25 “(2) AVAILABILITY TO THE CONGRESS.—

1 “(A) IN GENERAL.—All information ob-
2 tained at any time under this title regarding
3 the control of exports, including any report or
4 license application required under this title,
5 shall be made available to any committee or
6 subcommittee of Congress of appropriate juris-
7 diction upon the request of the chairman or
8 ranking minority member of such committee or
9 subcommittee.

10 “(B) PROHIBITION ON FURTHER DISCLO-
11 SURE.—No committee, subcommittee, or Mem-
12 ber of Congress shall disclose any information
13 obtained under this title or previous Acts re-
14 garding the control of exports which is submit-
15 ted on a confidential basis to the Congress
16 under subparagraph (A) unless the full commit-
17 tee to which the information is made available
18 determines that the withholding of the informa-
19 tion is contrary to the national interest.

20 “(3) AVAILABILITY TO THE GAO.—

21 “(A) IN GENERAL.—Notwithstanding para-
22 graph (1), information referred to in paragraph
23 (2) shall, consistent with the protection of intel-
24 ligence, counterintelligence, and law enforce-
25 ment sources, methods, and activities, as deter-

1 mined by the agency that originally obtained
2 the information, and consistent with the provi-
3 sions of section 716 of title 31, United States
4 Code, be made available only by the agency,
5 upon request, to the Comptroller General of the
6 United States or to any officer or employee of
7 the General Accounting Office authorized by
8 the Comptroller General to have access to such
9 information.

10 “(B) PROHIBITION ON FURTHER DISCLO-
11 SURES.—No officer or employee of the General
12 Accounting Office shall disclose, except to the
13 Congress in accordance with this subsection,
14 any such information which is submitted on a
15 confidential basis and from which any individ-
16 ual can be identified.

17 “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-
18 TIAL INFORMATION.—Any officer or employee of the
19 United States, or any department or agency thereof, who
20 publishes, divulges, discloses, or makes known in any man-
21 ner or to any extent not authorized by law any information
22 that—

23 “(1) he or she obtains in the course of his or
24 her employment or official duties or by reason of any
25 examination or investigation made by, or report or

1 record made to or filed with, such department or
2 agency, or officer or employee thereof, and

3 “(2) is exempt from disclosure under this sec-
4 tion,

5 shall be fined not more than \$10,000, or imprisoned not
6 more than 1 year, or both, shall be removed from office
7 or employment, and shall be subject to a civil penalty of
8 not more than \$1,000.”.

9 (i) REGULATION OF EXPORT OF CERTAIN COMMER-
10 CIAL COMMUNICATIONS SATELLITES AND ASSOCIATED
11 EQUIPMENT.—

12 (1) REGULATION SOLELY UNDER THIS
13 TITLE.—Notwithstanding any other provision of law,
14 the export of commercial communications satellites,
15 including any integral components of such satellites,
16 which are designed for civil applications, including
17 items necessary to achieve the ultimate orbit location
18 of such satellites, and associated ground and test
19 equipment, when exported as part of a satellite sys-
20 tem for purposes of launch, shall be regulated under
21 this title. The Secretary shall consult with the Sec-
22 retary of Defense and the Secretary of State to de-
23 termine the satellites and components to which this
24 paragraph applies. The Secretary, in consultation
25 with the Secretary of State and the Secretary of De-

1 fense, shall prohibit the unauthorized transfer of
2 missile equipment, data, or technology that are com-
3 ponents of any such satellite which is authorized for
4 export.

5 (2) AMENDMENT TO ARMS EXPORT CONTROL
6 ACT.—Section 38(a) of the Arms Export Control Act
7 (22 U.S.C. 2778(a)) is amended—

8 (A) in paragraph (3), by striking “In exer-
9 cising the authorities” and inserting “Except as
10 provided in paragraph (4), in exercising the au-
11 thorities”; and

12 (B) by adding at the end the following new
13 paragraph:

14 “(4) The export of commercial communications sat-
15 ellites, including any integral components of such sat-
16 ellites, which are designed for civil applications, including
17 items necessary to achieve the ultimate orbit location of
18 such satellites, and associated ground and test equipment,
19 when exported as part of a satellite system for purposes
20 of launch, may be regulated only by the Secretary of Com-
21 merce under the Export Act of 1994, pursuant to section
22 117(i)(1) of that Act.”.

23 (3) APPLICABILITY.—The amendments made
24 by this subsection shall apply only with respect to

1 the export of satellites on or after the date of the
2 enactment of this Act.

3 **SEC. 118. SECONDARY ARAB BOYCOTT.**

4 (a) FINDINGS.—The Congress finds that—

5 (1) certain countries maintain an economic boy-
6 cott of Israel, including a secondary boycott of com-
7 panies that refuse to cooperate with the economic
8 boycott of Israel;

9 (2) the secondary Arab boycott has caused eco-
10 nomic damage to the countries that maintain the
11 boycott as well as to Israel;

12 (3) the secondary Arab boycott causes great
13 difficulties for United States firms that trade with
14 Israel, depriving them of trade opportunities and
15 violating internationally accepted principles of free
16 trade;

17 (4) the United States has a longstanding policy
18 opposing the Arab League boycott of Israel and
19 United States law prohibits American firms from
20 providing information to Arab countries to dem-
21 onstrate compliance with the boycott;

22 (5) American companies on the list maintained
23 by the Arab League of companies prohibited from
24 doing business in Arab League countries can be de-
25 nied contracts by the Kuwaiti Government for the

1 reconstruction of Kuwait because they conduct busi-
2 ness with Israel;

3 (6) under the leadership of the executive
4 branch, the United States has sent a clear, consist-
5 ent, and unambiguous message that the Arab
6 League boycott of companies that do business with
7 Israel is an obstacle to peace and should be termi-
8 nated;

9 (7) the United States Trade Representative, in
10 August 1993, commissioned the International Trade
11 Commission to undertake a study of the boycott's
12 impact on United States businesses which will pro-
13 vide, for the first time, a carefully researched esti-
14 mate of the impact of the boycott on the United
15 States;

16 (8) the executive branch has conducted an ac-
17 tive diplomatic campaign to convince Arab League
18 countries that the time to end the secondary Arab
19 boycott and the economic discrimination against
20 United States businesses is now;

21 (9) under United States leadership, the G-7
22 countries have unconditionally called for an end to
23 the Arab boycott;

24 (10) the President, the Vice President, the Sec-
25 retary of State, the Secretary of Commerce, and

1 other senior executive branch officials have assured
2 the Congress that they will speak forcefully and can-
3 didly, in every forum which touches upon the search
4 for peace in the Middle East, about the need to end
5 the secondary Arab boycott;

6 (11) the Congress wishes to support the efforts
7 of the executive branch and to help see the promises
8 made to date translated into tangible results;

9 (12) the quarterly reports from the Office of
10 Anti-Boycott Compliance of the Department of Com-
11 merce show no loosening in enforcement by Arab
12 League countries of the secondary Arab boycott; and

13 (13) the recent statements made by Arab lead-
14 ers indicating that the secondary Arab boycott is no
15 longer being enforced must be translated into action,
16 as measured by quarterly reports from the Office of
17 Anti-Boycott Compliance of the Department of Com-
18 merce.

19 (b) SENSE OF CONGRESS.—

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

23 (2) ACTIONS TO END SECONDARY BOYCOTT.—
24 The United States will consider the secondary Arab
25 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. CONFORMING AMENDMENTS TO OTHER LAWS.**

4 (a) ARMS EXPORT CONTROL ACT.—

5 (1) Section 38 of the Arms Export Control Act
6 (22 U.S.C. 2778) is amended—

7 (A) in subsection (e)—

8 (i) in the first sentence by striking
9 “subsections (c)” and all that follows
10 through “12 of such Act” and inserting
11 “subsections (b), (c), (d) and (e) of section
12 110 of the Export Act of 1994, by sub-
13 sections (a) and (b) of section 113 of such
14 Act, and by section 114(g) of such Act”;
15 and

16 (ii) in the third sentence by striking
17 “11(c) of the Export Administration Act of
18 1979” and inserting “110(c) of the Export
19 Act of 1995”; and

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

22 “(ii) section 110 of the Export Act of
23 1995,”.

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

4 (A) by striking “(c),” and all that follows
5 through “12(a)” and inserting “(c), (d), and (e)
6 of section 110, section 112(c), and subsections
7 (a) and (b) of section 113, of the Export Act
8 of 1995”; and

9 (B) by striking “11(c)” and inserting
10 “110(c)”.

11 (3) Section 40(k) of the Arms Export Control
12 Act (22 U.S.C. 2780(k)) is amended—

13 (A) by striking “11(c), 11(e), 11(g), and
14 12(a) of the Export Administration Act of
15 1979” and inserting “110(b), 110(c), and
16 110(e) of the Export Act of 1995”; and

17 (B) by striking “11(c)” and inserting
18 “110(c)”.

19 (4) Sections 72 and 73 of the Arms Export
20 Control Act (22 U.S.C. 2797a and 2797b) are here-
21 by repealed.

22 (5) Section 73A of the Arms Export Control
23 Act, as added by the Foreign Relations Authoriza-
24 tion Act, Fiscal Years 1995 and 1995, is amended

1 by striking “a MTCR adherent” and inserting “an
2 MTCR adherent”.

3 (6) Section 74 of the Arms Export Control Act
4 (22 U.S.C. 2797c) is amended—

5 (A) by striking paragraphs (6), (7), (8),
6 and (9);

7 (B) in paragraph (4) by adding “and”
8 after the semicolon; and

9 (C) in paragraph (5) by striking the semi-
10 colon and inserting a period.

11 (b) CHEMICAL AND BIOLOGICAL WEAPONS.—The
12 Chemical and Biological Weapons Control and Warfare
13 Elimination Act of 1991 (title III of Public Law 102–182;
14 22 U.S.C. 5601 and following) is hereby repealed.

15 (c) OTHER PROVISIONS OF LAW.—

16 (1) Section 5(b)(4) of the Trading with the
17 Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.
18 5(b)(4)) is amended by striking “5 of the Export
19 Administration Act of 1979, or under section 6” and
20 inserting “105 of the Export Act of 1995, or under
21 section 106”.

22 (2) Section 16(a) of the Trading with the
23 Enemy Act (50 U.S.C. App. 16(a)) is amended by
24 striking “participants” and inserting “participates”.

1 (3) Section 502B(a)(2) of the Foreign Assist-
2 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
3 ed in the second sentence—

4 (A) by striking “Export Administration
5 Act of 1979” the first place it appears and in-
6 serting “Export Act of 1995”; and

7 (B) by striking “Administration Act of
8 1979)” and inserting “Act of 1995)”.

9 (4)(A) Section 140(a)(2) of the Foreign Rela-
10 tions Authorization Act, Fiscal Years 1988 and
11 1989 (22 U.S.C. 2656f(a)(2)) is amended by strik-
12 ing “6(j) of the Export Administration Act of 1979”
13 and inserting “106(i) of the Export Act of 1995”.

14 (B) For purposes of the report required by
15 March 31, 1995, under section 140(a) of the For-
16 eign Relations Authorization Act, Fiscal Years 1988
17 and 1989, the reference in paragraph (2) of such
18 section to “section 106(i) of the Export Act of
19 1995” shall be deemed to refer to “section 6(j) of
20 the Export Administration Act of 1979 or section
21 106(i) of the Export Act of 1995”.

22 (5) Section 40(e)(1) of the State Department
23 Basic Authorities Act of 1956 (22 U.S.C.
24 2712(e)(1)) is amended by striking “6(j)(1) of the

1 Export Administration Act of 1979” and inserting
2 “106(i)(1) of the Export Act of 1995”.

3 (6) Section 110 of the International Security
4 and Development Cooperation Act of 1980 (22
5 U.S.C. 2778a) is amended by striking “Administra-
6 tion Act of 1979” and inserting “Act of 1995”.

7 (7) Section 205(d)(4) of the State Department
8 Basic Authorities Act of 1956 (22 U.S.C.
9 4305(d)(4)) is amended by striking “6(j) of the Ex-
10 port Administration Act of 1979” and inserting
11 “106(i) of the Export Act of 1995”.

12 (8) Section 203(b)(3) of the International
13 Emergency Economic Powers Act (50 U.S.C.
14 1702(b)(3)) is amended by striking “5 of the Export
15 Administration Act of 1979, or under section 6” and
16 inserting “105 of the Export Act of 1995, or under
17 section 106”.

18 (9) Section 491(f) of the Forest Resources Con-
19 servation and Shortage Relief Act of 1990 (16
20 U.S.C. 620c(f)) is amended by striking “supersede
21 section 7(i) of the Export Administration Act of
22 1979 (50 U.S.C. App. 2406(i))” and inserting “af-
23 fect section 107(i) of the Export Act of 1995”.

24 **SEC. 120. EXPIRATION DATE.**

25 This title expires on June 30, 1999.

1 **SEC. 121. SAVINGS PROVISIONS.**

2 (a) IN GENERAL.—All delegations, rules, regulations,
3 orders, determinations, licenses, or other forms of admin-
4 istrative action which have been made, issued, conducted,
5 or allowed to become effective under—

6 (1) the Export Control Act of 1949, the Export
7 Administration Act of 1969, or the Export Adminis-
8 tration Act of 1979, or

9 (2) those provisions of the Arms Export Control
10 Act or the Chemical and Biological Weapons Control
11 and Warfare Elimination Act of 1991 which are re-
12 pealed and amended by section 119,

13 and are in effect at the time this title takes effect, shall
14 continue in effect according to their terms until modified,
15 superseded, set aside, or revoked under this title.

16 (b) ADMINISTRATIVE AND JUDICIAL PROCEED-
17 INGS.—

18 (1) EXPORT ADMINISTRATION ACT.—This title
19 shall not affect any administrative or judicial pro-
20 ceedings commenced or any application for a license
21 made, under the Export Administration Act of 1979,
22 which is pending at the time this title takes effect.
23 Any such proceedings, and any action on such appli-
24 cation, shall continue under the Export Administra-
25 tion Act of 1979 as if that Act had not expired.

1 (2) OTHER PROVISIONS OF LAW.—This title
2 shall not affect any administrative or judicial pro-
3 ceedings commenced or any application for a license
4 made, under those provisions of the Arms Export
5 Control Act or the Chemical and Biological Weapons
6 Control and Warfare Elimination Act of 1991 which
7 are repealed and amended by section 119, if such
8 proceedings or application is pending at the time
9 this title takes effect. Any such proceedings, and any
10 action on such application, shall continue under
11 those provisions as if those provisions had not been
12 amended or repealed by section 119.

13 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
14 Any determination with respect to the government of a
15 foreign country under section 6(j) of the Export Adminis-
16 tration Act of 1979, that is in effect at the time this title
17 takes effect, shall, for purposes of this title or any other
18 provision of law, be deemed to be made under section
19 106(i) of this Act until superseded by a determination
20 under such section 106(i).

21 **TITLE II—NUCLEAR PROLIF-** 22 **ERATION PREVENTION ACT**

23 **SEC. 201. SHORT TITLE.**

24 This title may be cited as the “Nuclear Proliferation
25 Prevention Act of 1995”.

1 **PART A—REPORTING ON NUCLEAR EXPORTS**

2 **SEC. 211. REPORTS TO CONGRESS.**

3 Section 601(a) of the Nuclear Non-Proliferation Act
4 of 1978 (22 U.S.C. 3281(a)) is amended—

5 (1) in paragraph (4), by striking “and” after
6 the semicolon;

7 (2) in paragraph (5), by striking the period and
8 inserting a semicolon; and

9 (3) by adding after paragraph (5) the following:

10 “(6) a description of the implementation of nu-
11 clear and nuclear-related dual-use export controls in
12 the preceding calendar year, including a summary by
13 type of commodity and destination of—

14 “(A) all transactions for which—

15 “(i) an export license was issued for
16 any good controlled under section 309(c)
17 of this Act;

18 “(ii) an export license was issued
19 under section 109 b. of the 1954 Act;

20 “(iii) approvals were issued under the
21 Export Act of 1995, or section 109 b.(3)
22 of the 1954 Act, for the retransfer of any
23 item, technical data, component, or sub-
24 stance; or

25 “(iv) authorizations were made as re-
26 quired by section 57 b.(2) of the 1954 Act

1 to engage, directly or indirectly, in the pro-
2 duction of special nuclear material;

3 “(B) each instance in which—

4 “(i) a sanction has been imposed
5 under section 221(a), 224(h), or 226(a) of
6 the Nuclear Proliferation Prevention Act of
7 1995;

8 “(ii) sales or leases have been denied
9 under section 3(f) of the Arms Export
10 Control Act or transactions prohibited by
11 reason of acts relating to proliferation of
12 nuclear explosive devices as described in
13 section 40(d) of that Act;

14 “(iii) a sanction has not been imposed
15 by reason of section 221(c)(2) of the Nu-
16 clear Proliferation Prevention Act of 1995
17 or the imposition of a sanction has been
18 delayed under section 226(d) of that Act;
19 or

20 “(iv) a waiver of a sanction has been
21 made under—

22 “(I) section 221(f), section 224,
23 or subsection (e) or (f)(2) of section
24 226, of the Nuclear Proliferation Pre-
25 vention Act of 1995,

1 “(II) section 620E(d) of the For-
2 eign Assistance Act of 1961,

3 “(III) section 40(g) of the Arms
4 Export Control Act with respect to
5 the last sentence of section 40(d) of
6 that Act, or

7 “(IV) section 614 of the Foreign
8 Assistance Act of 1961 with respect to
9 section 620E of that Act or section
10 3(f), or the last sentence of section
11 40(d), of the Arms Export Control
12 Act; and

13 “(7) the progress of those independent states of
14 the former Soviet Union that are non-nuclear-weap-
15 on states and of the Baltic states towards achieving
16 the objective of applying full scope safeguards to all
17 their peaceful nuclear activities.

18 Portions of the information required by paragraphs (6)
19 and (7) may be submitted in classified form, as necessary.
20 Any such information that may not be published or dis-
21 closed under section 114(g)(1) of the Export Act of 1995
22 shall be submitted as confidential.”.

23 **SEC. 212. EFFECTIVE DATE.**

24 The amendments made by this part shall take effect
25 60 days after the date of the enactment of this Act.

1 **PART B—SANCTIONS FOR NUCLEAR**

2 **PROLIFERATION**

3 **SEC. 221. IMPOSITION OF SANCTIONS ON PERSONS ENGAG-**
4 **ING IN EXPORT ACTIVITIES THAT CONTRIB-**
5 **UTE TO PROLIFERATION.**

6 (a) DETERMINATION BY THE PRESIDENT.—

7 (1) IN GENERAL.—Except as provided in sub-
8 section (b)(2), the President shall impose the sanc-
9 tions described in subsection (c) if the President de-
10 termines in writing that, on or after the effective
11 date of this part, a foreign person or a United
12 States person has materially and with requisite
13 knowledge contributed, through the export from the
14 United States or any other country of any goods or
15 technology (as defined in section 231(2)), to the ef-
16 forts by any individual, group, or non-nuclear-weap-
17 on state to acquire unsafeguarded special nuclear
18 material or to use, develop, produce, stockpile, or
19 otherwise acquire any nuclear explosive device.

20 (2) PERSONS AGAINST WHICH THE SANCTIONS
21 ARE TO BE IMPOSED.—The sanctions shall be im-
22 posed pursuant to paragraph (1) on—

23 (A) the foreign person or United States
24 person with respect to which the President
25 makes the determination described in that para-
26 graph;

1 (B) any successor entity to that foreign
2 person or United States person;

3 (C) any foreign person or United States
4 person that is a parent or subsidiary of that
5 person if that parent or subsidiary materially
6 and with requisite knowledge assisted in the ac-
7 tivities which were the basis of that determina-
8 tion; and

9 (D) any foreign person or United States
10 person that is an affiliate of that person if that
11 affiliate materially and with requisite knowledge
12 assisted in the activities which were the basis of
13 that determination and if that affiliate is con-
14 trolled in fact by that person.

15 (3) OTHER SANCTIONS AVAILABLE.—The sanc-
16 tions which are required to be imposed for activities
17 described in this subsection is in addition to any
18 other sanction which may be imposed for the same
19 activities under any other provision of law.

20 (4) DEFINITION.—For purposes of this sub-
21 section, the term “requisite knowledge” means situa-
22 tions in which a person “knows”, as “knowing” is
23 defined in section 104 of the Foreign Corrupt Prac-
24 tices Act of 1977 (15 U.S.C. 78dd-2).

1 (b) CONSULTATION WITH AND ACTIONS BY FOREIGN
2 GOVERNMENT OF JURISDICTION.—

3 (1) CONSULTATIONS.—If the President makes a
4 determination described in subsection (a)(1) with re-
5 spect to a foreign person, the Congress urges the
6 President to initiate consultations immediately with
7 the government with primary jurisdiction over that
8 foreign person with respect to the imposition of the
9 sanctions pursuant to this section.

10 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
11 TION.—In order to pursue such consultations with
12 that government, the President may delay imposition
13 of the sanctions pursuant to this section for up to
14 90 days. Following these consultations, the Presi-
15 dent shall impose the sanctions unless the President
16 determines and certifies in writing to the Congress
17 that that government has taken specific and effective
18 actions, including appropriate penalties, to terminate
19 the involvement of the foreign person in the activi-
20 ties described in subsection (a)(1). The President
21 may delay the imposition of the sanctions for up to
22 an additional 90 days if the President determines
23 and certifies in writing to the Congress that that
24 government is in the process of taking the actions
25 described in the preceding sentence.

1 (3) REPORT TO CONGRESS.—Not later than 90
2 days after making a determination under subsection
3 (a)(1), the President shall submit to the Committee
4 on Foreign Relations and the Committee on Govern-
5 mental Affairs of the Senate and the Committee on
6 International Relations of the House of Representa-
7 tives a report on the status of consultations with the
8 appropriate government under this subsection, and
9 the basis for any determination under paragraph (2)
10 of this subsection that such government has taken
11 specific corrective actions.

12 (c) SANCTIONS.—

13 (1) DESCRIPTION OF SANCTIONS.—The sanc-
14 tions to be imposed pursuant to subsection (a)(1)
15 are, except as provided in paragraph (2) of this sub-
16 section, the following:

17 (A) The United States Government shall
18 not procure, or enter into any contract for the
19 procurement of, any goods or services from any
20 person described in subsection (a)(2).

21 (B) The importation into the United
22 States of products produced by any person de-
23 scribed in subsection (a)(2) shall be prohibited.

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

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

6 (i) under existing contracts or sub-
7 contracts, including the exercise of options
8 for production quantities to satisfy require-
9 ments essential to the national security of
10 the United States;

11 (ii) if the President determines in
12 writing that the person or other entity to
13 which the sanctions would otherwise be ap-
14 plied is a sole source supplier of the de-
15 fense articles or services, that the defense
16 articles or services are essential, and that
17 alternative sources are not readily or rea-
18 sonably available; or

19 (iii) if the President determines in
20 writing that such articles or services are
21 essential to the national security under de-
22 fense coproduction agreements;

23 (B) to products or services provided under
24 contracts entered into before the date on which

1 the President publishes his intention to impose
2 the sanctions;

3 (C) to—

4 (i) spare parts which are essential to
5 United States products or production;

6 (ii) component parts, but not finished
7 products, essential to United States prod-
8 ucts or production; or

9 (iii) routine servicing and mainte-
10 nance of products, to the extent that alter-
11 native sources are not readily or reason-
12 ably available;

13 (D) to information and technology essen-
14 tial to United States products or production; or

15 (E) to medical or other humanitarian
16 items.

17 (d) ADVISORY OPINIONS.—Upon the request of any
18 person, the Secretary of State may, in consultation with
19 the Secretary of Defense, issue in writing an advisory
20 opinion to that person as to whether a proposed activity
21 by that person would subject that person to the sanctions
22 under this section. Any person who relies in good faith
23 on such an advisory opinion which states that the pro-
24 posed activity would not subject a person to such sanc-
25 tions, and any person who thereafter engages in such ac-

1 tivity, may not be made subject to such sanctions on ac-
2 count of such activity.

3 (e) TERMINATION OF THE SANCTIONS.—The sanc-
4 tions imposed pursuant to this section shall apply for a
5 period of at least 12 months following the imposition of
6 the sanctions and shall cease to apply thereafter only if
7 the President determines and certifies in writing to the
8 Congress that—

9 (1) reliable information indicates that the for-
10 eign person or United States person with respect to
11 which the determination was made under subsection
12 (a)(1) has ceased to aid or abet any individual,
13 group, or non-nuclear-weapon state in its efforts to
14 acquire unsafeguarded special nuclear material or
15 any nuclear explosive device, as described in that
16 subsection; and

17 (2) the President has received reliable assur-
18 ances from the foreign person or United States per-
19 son, as the case may be, that such person will not,
20 in the future, aid or abet any individual, group, or
21 non-nuclear-weapon state in its efforts to acquire
22 unsafeguarded special nuclear material or any nu-
23 clear explosive device, as described in subsection
24 (a)(1).

25 (f) WAIVER.—

1 (1) CRITERION FOR WAIVER.—The President
2 may waive the application of the sanctions imposed
3 on any person pursuant to this section, after the end
4 of the 12-month period beginning on the date on
5 which that sanctions was imposed on that person, if
6 the President determines and certifies in writing to
7 the Congress that the continued imposition of the
8 sanctions would have a serious adverse effect on
9 vital United States interests.

10 (2) NOTIFICATION OF AND REPORT TO CON-
11 GRESS.—If the President decides to exercise the
12 waiver authority provided in paragraph (1), the
13 President shall so notify the Congress not less than
14 20 days before the waiver takes effect. Such notifica-
15 tion shall include a report fully articulating the ra-
16 tionale and circumstances which led the President to
17 exercise the waiver authority.

18 **SEC. 222. ELIGIBILITY FOR ASSISTANCE.**

19 (a) AMENDMENTS TO THE ARMS EXPORT CONTROL
20 ACT.—

21 (1) PROHIBITION.—Section 3 of the Arms Ex-
22 port Control Act (22 U.S.C. 2753) is amended by
23 adding at the end the following new subsection:

24 “(f) No sales or leases shall be made to any country
25 that the President has determined is in material breach

1 of its binding commitments to the United States under
2 international treaties or agreements concerning the non-
3 proliferation of nuclear explosive devices (as defined in
4 section 231(4) of the Nuclear Proliferation Prevention Act
5 of 1995) and unsafeguarded special nuclear material (as
6 defined in section 231(8) of that Act).”.

7 (2) DEFINITION OF SUPPORT FOR INTER-
8 NATIONAL TERRORISM.—Section 40 of such Act (22
9 U.S.C. 2780) is amended—

10 (A) in subsection (d), by adding at the end
11 the following new sentence: “For purposes of
12 this subsection, such acts shall include all ac-
13 tivities that the Secretary determines willfully
14 aid or abet the international proliferation of nu-
15 clear explosive devices to individuals or group or
16 willfully aid or abet an individual or groups in
17 acquiring unsafeguarded special nuclear mate-
18 rial.”; and

19 (B) in subsection (l)—

20 (i) in paragraph (2), by striking
21 “and” after the semicolon;

22 (ii) in paragraph (3), by striking the
23 period at the end and inserting a semi-
24 colon; and

1 (iii) by adding at the end the follow-
2 ing:

3 “(4) the term ‘nuclear explosive device’ has the
4 meaning given that term in section 231(4) of the
5 Nuclear Proliferation Prevention Act of 1995; and

6 “(5) the term ‘unsafeguarded special nuclear
7 material’ has the meaning given that term in section
8 231(8) of the Nuclear Proliferation Prevention Act
9 of 1995.”.

10 (b) FOREIGN ASSISTANCE ACT OF 1961.—

11 (1) PRESIDENTIAL DETERMINATION 82-7.—

12 Notwithstanding any other provision of law, Presi-
13 dential Determination No. 82-7 of February 10,
14 1982, made pursuant to section 670(a)(2) of the
15 Foreign Assistance Act of 1961, shall have no force
16 or effect with respect to any grounds for the prohibi-
17 tion of assistance under section 102(a) of the Arms
18 Export Control Act arising on or after the effective
19 date of this part.

20 (2) AMENDMENT.—Section 620E(d) of the For-
21 eign Assistance Act of 1961 (22 U.S.C. 2375(d)) is
22 amended to read as follows:

23 “(d) The President may waive the prohibitions of sec-
24 tion 101 of the Arms Export Control Act with respect to
25 any grounds for the prohibition of assistance under that

1 section arising before the effective date of part B of the
2 Nuclear Proliferation Prevention Act of 1995 to provide
3 assistance to Pakistan if he determines that to do so is
4 in the national interest of the United States.”.

5 **SEC. 223. ROLE OF INTERNATIONAL FINANCIAL INSTITU-**
6 **TIONS.**

7 (a) IN GENERAL.—The Secretary of the Treasury
8 shall instruct the United States executive director to each
9 of the international financial institutions described in sec-
10 tion 701(a) of the International Financial Institutions Act
11 (22 U.S.C. 262d(a)) to use the voice and vote of the
12 United States to oppose any use of the institution’s funds
13 to promote the acquisition of unsafeguarded special nu-
14 clear material or the development, stockpiling, or use of
15 any nuclear explosive device by any non-nuclear-weapon
16 state.

17 (b) DUTIES OF UNITED STATES EXECUTIVE DIREC-
18 TORS.—Section 701(b)(3) of the International Financial
19 Institutions Act (22 U.S.C. 262d(b)(3)) is amended to
20 read as follows:

21 “(3) whether the recipient country—

22 “(A) is seeking to acquire unsafeguarded
23 special nuclear material (as defined in section
24 231(8) of the Nuclear Proliferation Prevention

1 Act of 1995) or a nuclear explosive device (as
2 defined in section 231(4) of that Act);

3 “(B) is not a State Party to the Treaty on
4 the Non-Proliferation of Nuclear Weapons; or

5 “(C) has detonated a nuclear explosive de-
6 vice; and”.

7 **SEC. 224. PROHIBITION ON ASSISTING NUCLEAR PRO-**
8 **LIFERATION THROUGH THE PROVISION OF**
9 **FINANCING.**

10 (a) PROHIBITED ACTIVITY DEFINED.—For purposes
11 of this section, the term “prohibited activity” means the
12 act of knowingly, materially, and directly contributing or
13 attempting to contribute, through the provision of financ-
14 ing, to—

15 (1) the acquisition of unsafeguarded special nu-
16 clear material; or

17 (2) the use, development, production, stock-
18 piling, or other acquisition of any nuclear explosive
19 device,

20 by any individual, group, or non-nuclear-weapon state.

21 (b) PROHIBITION.—To the extent that the United
22 States has jurisdiction to prohibit such activity by such
23 person, no United States person and no foreign person
24 may engage in any prohibited activity.

1 (c) PRESIDENTIAL DETERMINATION AND ORDER
2 WITH RESPECT TO UNITED STATES AND FOREIGN PER-
3 SONS.—If the President determines, in writing after op-
4 portunity for a hearing on the record, that a United States
5 person or a foreign person has engaged in a prohibited
6 activity (without regard to whether subsection (b) applies),
7 the President shall, by order, impose the sanctions de-
8 scribed in subsection (d) on such person.

9 (d) SANCTIONS.—The following sanctions shall be
10 imposed pursuant to any order issued under subsection
11 (c) with respect to any United States person or any for-
12 eign person:

13 (1) BAN ON DEALINGS IN GOVERNMENT FI-
14 NANCE.—

15 (A) DESIGNATION AS PRIMARY DEALER.—
16 Neither the Board of Governors of the Federal
17 Reserve System nor the Federal Reserve Bank
18 of New York may designate, or permit the con-
19 tinuation of any prior designation of, the person
20 as a primary dealer in United States Govern-
21 ment debt instruments.

22 (B) SERVICE AS DEPOSITARY.—The person
23 may not serve as a depositary for United States
24 Government funds.

1 (2) RESTRICTIONS ON OPERATIONS.—The per-
2 son may not, directly or indirectly—

3 (A) commence any line of business in the
4 United States in which the person was not en-
5 gaged as of the date of the order; or

6 (B) conduct business from any location in
7 the United States at which the person did not
8 conduct business as of the date of the order.

9 (e) JUDICIAL REVIEW.—Any determination of the
10 President under subsection (c) shall be subject to judicial
11 review in accordance with chapter 7 of part I of title 5,
12 United States Code.

13 (f) CONSULTATION WITH AND ACTIONS BY FOREIGN
14 GOVERNMENT OF JURISDICTION.—

15 (1) CONSULTATIONS.—If the President makes a
16 determination under subsection (c) with respect to a
17 foreign person, the Congress urges the President to
18 initiate consultations immediately with any appro-
19 priate foreign government with respect to the impo-
20 sition of any sanction pursuant to this section.

21 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
22 TION.—

23 (A) SUSPENSION OF IMPOSITION OF SANC-
24 TIONS.—In order to pursue consultations de-
25 scribed in paragraph (1) with any government

1 referred to in such paragraph, the President
2 may delay, for up to 90 days, the effective date
3 of an order under subsection (c) imposing any
4 sanction.

5 (B) COORDINATION WITH ACTIVITIES OF
6 FOREIGN GOVERNMENT.—Following consulta-
7 tions described in paragraph (1), the order is-
8 sued by the President under subsection (c) im-
9 posing any sanction on a foreign person shall
10 take effect unless the President determines, and
11 certifies in writing to the Congress, that the
12 government referred to in paragraph (1) has
13 taken specific and effective actions, including
14 the imposition of appropriate penalties, to ter-
15minate the involvement of the foreign person in
16 any prohibited activity.

17 (C) EXTENSION OF PERIOD.—After the
18 end of the period described in subparagraph
19 (A), the President may delay, for up to an addi-
20 tional 90 days, the effective date of an order is-
21 sued under subsection (c) imposing any sanc-
22 tion on a foreign person if the President deter-
23 mines, and certifies in writing to the Congress,
24 that the appropriate foreign government is in

1 the process of taking actions described in sub-
2 paragraph (B).

3 (3) REPORT TO CONGRESS.—Before the end of
4 the 90-day period beginning on the date on which an
5 order is issued under subsection (c), the President
6 shall submit to the Congress a report on—

7 (A) the status of consultations under this
8 subsection with the government referred to in
9 paragraph (1); and

10 (B) the basis for any determination under
11 paragraph (2) that such government has taken
12 specific corrective actions.

13 (g) TERMINATION OF THE SANCTIONS.—Any sanc-
14 tion imposed on any person pursuant to an order issued
15 under subsection (c) shall—

16 (1) remain in effect for a period of not less
17 than 12 months; and

18 (2) cease to apply after the end of such 12-
19 month period only if the President determines, and
20 certifies in writing to the Congress, that—

21 (A) the person has ceased to engage in any
22 prohibited activity; and

23 (B) the President has received reliable as-
24 surances from such person that the person will

1 not, in the future, engage in any prohibited ac-
2 tivity.

3 (h) WAIVER.—The President may waive the contin-
4 ued application of any sanction imposed on any person
5 pursuant to an order issued under subsection (c) if the
6 President determines, and certifies in writing to the Con-
7 gress, that the continued imposition of the sanction would
8 have a serious adverse effect on the safety and soundness
9 of the domestic or international financial system or on do-
10 mestic or international payments systems.

11 (i) ENFORCEMENT ACTION.—The Attorney General
12 may bring an action in an appropriate district court of
13 the United States for injunctive and other appropriate re-
14 lief with respect to—

- 15 (1) any violation of subsection (b); or
- 16 (2) any order issued under subsection (c).

17 (j) KNOWINGLY DEFINED.—

18 (1) IN GENERAL.—For purposes of this section,
19 the term “knowingly” means the state of mind of a
20 person with respect to conduct, a circumstance, or a
21 result in which—

- 22 (A) such person is aware that such person
23 is engaging in such conduct, that such cir-
24 cumstance exists, or that such result is substan-
25 tially certain to occur; or

1 (B) such person has a firm belief that such
2 circumstance exists or that such result is sub-
3 stantially certain to occur.

4 (2) KNOWLEDGE OF THE EXISTENCE OF A PAR-
5 TICULAR CIRCUMSTANCE.—If knowledge of the exist-
6 ence of a particular circumstance is required for an
7 offense, such knowledge is established if a person is
8 aware of a high probability of the existence of such
9 circumstance, unless the person actually believes
10 that such circumstance does not exist.

11 (k) SCOPE OF APPLICATION.—This section shall
12 apply with respect to prohibited activities which occur on
13 or after the date this part takes effect.

14 **SEC. 225. EXPORT-IMPORT BANK.**

15 Section 2(b)(4) of the Export-Import Bank Act of
16 1945 (12 U.S.C. 635(b)(4)) is amended in the first sen-
17 tence by inserting after “device” the following: “(as de-
18 fined in section 231(4) of the Nuclear Proliferation Pre-
19 vention Act of 1995), or that any country has willfully
20 aided or abetted any non-nuclear-weapon state (as defined
21 in section 231(5) of that Act) to acquire any such nuclear
22 explosive device or to acquire unsafeguarded special nu-
23 clear material (as defined in section 231(8) of that Act)”.

1 **SEC. 226. SANCTIONS AGAINST COUNTRIES INVOLVED IN**
2 **TRANSFER OF NUCLEAR WEAPONS OR DE-**
3 **SIGN INFORMATION OR COMPONENTS.**

4 (a) DETERMINATION OF THE PRESIDENT.—Except
5 as provided in subsections (d), (e), and (f), in the event
6 that the President determines that any country, on or
7 after the effective date of this part—

8 (1) transfers to a non-nuclear-weapon state a
9 nuclear explosive device,

10 (2) is a non-nuclear-weapon state and either—

11 (A) receives a nuclear explosive device, or

12 (B) detonates a nuclear explosive device,

13 (3) transfers to a non-nuclear-weapon state any
14 design information or component which is deter-
15 mined by the President to be important to, and
16 known by the transferring country to be intended by
17 the recipient state for use in, the development or
18 manufacture of any nuclear explosive device, or

19 (4) is a non-nuclear-weapon state and seeks and
20 receives any design information or component which
21 is determined by the President to be important to,
22 and intended by the recipient state for use in, the
23 development or manufacture of any nuclear explosive
24 device,

25 then the President shall forthwith report to the Congress
26 in writing his determination with respect to that country

1 and shall forthwith impose the sanctions described in sub-
2 section (b) against that country.

3 (b) SANCTIONS.—The sanctions referred to in sub-
4 section (a) are as follows:

5 (1) The United States Government shall termi-
6 nate assistance to that country under the Foreign
7 Assistance Act of 1961, except for humanitarian as-
8 sistance or food or other agricultural commodities.

9 (2) The United States Government shall—

10 (A) terminate sales to that country under
11 the Arms Export Control Act of any defense ar-
12 ticles, defense services, or design and construc-
13 tion services, and

14 (B) terminate and deny licenses for the ex-
15 port to that country of any item on the United
16 States Munitions List.

17 (3) The United States Government shall termi-
18 nate all foreign military financing for that country
19 under the Arms Export Control Act.

20 (4) The United States Government shall deny
21 to that country any credit, credit guarantees, or
22 other financial assistance by any department, agen-
23 cy, or instrumentality of the United States Govern-
24 ment, except that the sanction of this paragraph
25 shall not apply—

1 (A) to any transaction subject to the re-
2 porting requirements of title V of the National
3 Security Act of 1947 (relating to congressional
4 oversight of intelligence activities), or

5 (B) to humanitarian assistance.

6 (5) The United States Government shall op-
7 pose, in accordance with section 701 of the Inter-
8 national Financial Institutions Act (22 U.S.C.
9 262d), the extension of any loan or financial or tech-
10 nical assistance to that country by any international
11 financial institution.

12 (6) The United States Government shall pro-
13 hibit any United States bank from making any loan
14 or providing any credit to the government of that
15 country, except for loans or credits for the purpose
16 of purchasing food or other agricultural commod-
17 ities.

18 (7) The authorities of section 106 of the Export
19 Act of 1995 shall be used to prohibit exports to that
20 country of specific goods and technology (excluding
21 food and other agricultural commodities), except
22 that such prohibition shall not apply to any trans-
23 action subject to the reporting requirements of title
24 V of the National Security Act of 1947 (relating to
25 congressional oversight of intelligence activities).

1 (8) In addition to the sanctions provided for in
2 paragraphs (1) through (7), the President may pro-
3 hibit the importation into the United States of goods
4 that are the growth, product, or manufacture of that
5 country. The President shall determine the type and
6 volume of imports to be prohibited.

7 (c) DEFINITIONS.—As used in this section—

8 (1) the term “design information” means spe-
9 cific information that relates to the design of a nu-
10 clear explosive device and that is not available to the
11 public; and

12 (2) the term “component” means a specific
13 component of a nuclear explosive device.

14 (d) AUTHORITY TO DELAY SANCTIONS RELATING TO
15 NUCLEAR EXPLOSIVE DEVICES.—

16 (1) PRESIDENTIAL CERTIFICATION.—Notwith-
17 standing subsection (a), the President may, for a pe-
18 riod of not more than 30 days of continuous session,
19 delay the imposition of sanctions which would other-
20 wise be required under subsection (a)(1) or (2) if the
21 President first transmits to the Speaker of the
22 House of Representatives, and to the chairman of
23 the Committee on Foreign Relations of the Senate,
24 a certification that he has determined that an imme-
25 diate imposition of sanctions on that country would

1 be detrimental to the national security of the United
2 States. Not more than one such certification may be
3 transmitted for a country with respect to the same
4 detonation, transfer, or receipt of a nuclear explosive
5 device.

6 (2) AUTHORITY TO GRANT WAIVER.—(A) If the
7 President transmits a certification to the Congress
8 under paragraph (1), a joint resolution which would
9 permit the President to exercise the waiver authority
10 of subsection (e) shall, if introduced in either House
11 within 30 days of continuous session after the Con-
12 gress receives this certification, be considered in the
13 Senate in accordance with subparagraph (B).

14 (B) Any joint resolution under this paragraph
15 shall be considered in the Senate in accordance with
16 the provisions of section 601(b) of the International
17 Security Assistance and Arms Export Control Act of
18 1976.

19 (C) For purposes of this paragraph, the term
20 “joint resolution” means a joint resolution the mat-
21 ter after the resolving clause of which is as follows:
22 “That the Congress having received on ____ a cer-
23 tification by the President under section 226(d)(1)
24 of the Nuclear Proliferation Prevention Act of 1995
25 with respect to ____, the Congress hereby authorizes

1 the President to exercise the waiver authority con-
2 tained in section 226(e) of that Act.”, with the date
3 of receipt of the certification inserted in the first
4 blank and the name of the country inserted in the
5 second blank.

6 (e) WAIVER AUTHORITY.—Notwithstanding sub-
7 section (a), if the Congress enacts a joint resolution under
8 subsection (d), the President may waive any sanction
9 which would otherwise be required under subsection (a)(1)
10 or (2) if he determines and certifies in writing to the
11 Speaker of the House of Representatives and the Commit-
12 tee on Foreign Relations of the Senate that the imposition
13 of such sanction would be seriously prejudicial to the
14 achievement of United States nonproliferation objectives
15 or otherwise jeopardize the common defense and security.
16 The President shall transmit with such certification a
17 statement setting forth the specific reasons therefor.

18 (f) SANCTIONS RELATING TO INFORMATION AND
19 COMPONENTS.—

20 (1) IMPOSITION.—In the event the President is
21 required to impose sanctions against a country
22 under subsection (a)(3) or (a)(4), the President shall
23 forthwith so inform such country and shall impose
24 the required sanctions beginning 30 days after sub-
25 mitting to the Congress the report required by sub-

1 section (a) unless, and to the extent that, there is
2 enacted during the 30-day period a law prohibiting
3 the imposition of such sanctions.

4 (2) WAIVER.—Notwithstanding any other provi-
5 sion of law, the sanctions which are required to be
6 imposed against a country under subsection (a)(3)
7 or (4) shall not apply if the President determines
8 and certifies in writing to the Committee on Foreign
9 Relations and the Committee on Governmental Af-
10 fairs of the Senate and the Committee on Inter-
11 national Relations of the House of Representatives
12 that the application of such sanctions against such
13 country would have a serious adverse effect on vital
14 United States interests. The President shall trans-
15 mit with such certification a statement setting forth
16 the specific reasons therefor.

17 (g) CONTINUITY OF SESSION.—For purposes of this
18 section, continuity of session is broken only by an adjourn-
19 ment of the Congress sine die and the days on which either
20 House of Congress is not in session because of an adjourn-
21 ment of more than three days to a day certain are ex-
22 cluded in the computation of any period of time in which
23 the Congress is in continuous session.

24 (h) AUTHORITY OF THE PRESIDENT NOT DELE-
25 GABLE.—The President may not delegate or transfer his

1 power, authority, or discretion to make or modify deter-
2 minations under this section.

3 **SEC. 227. AMENDMENT TO THE ARMS EXPORT CONTROL**
4 **ACT.**

5 (a) IN GENERAL.—The Arms Export Control Act is
6 amended by adding at the end the following new chapter:

7 **“CHAPTER 10—NUCLEAR**
8 **NONPROLIFERATION CONTROLS**

9 **“SEC. 101. NUCLEAR ENRICHMENT TRANSFERS.**

10 “(a) PROHIBITIONS; SAFEGUARDS AND MANAGE-
11 MENT.—Except as provided in subsection (b), no funds
12 made available to carry out the Foreign Assistance Act
13 of 1961 or this Act may be used for the purpose of provid-
14 ing economic assistance (including assistance under chap-
15 ter 4 of part II of the Foreign Assistance Act of 1961),
16 providing military assistance or grant military education
17 and training, providing assistance under chapter 6 of part
18 II of that Act, or extending military credits or making
19 guarantees, to any country which the President deter-
20 mines delivers nuclear enrichment equipment, materials,
21 or technology to any other country on or after August 4,
22 1977, or receives such equipment, materials, or technology
23 from any other country on or after August 4, 1977, unless
24 before such delivery—

1 “(1) the supplying country and receiving coun-
2 try have reached agreement to place all such equip-
3 ment, materials, or technology, upon delivery, under
4 multilateral auspices and management when avail-
5 able; and

6 “(2) the recipient country has entered into an
7 agreement with the International Atomic Energy
8 Agency to place all such equipment, materials, tech-
9 nology, and all nuclear fuel and facilities in such
10 country, under the safeguards system of such
11 Agency.

12 “(b) CERTIFICATION BY PRESIDENT OF NECESSITY
13 OF CONTINUED ASSISTANCE; DISAPPROVAL BY CON-
14 GRESS.—(1) Notwithstanding subsection (a), the Presi-
15 dent may furnish assistance which would otherwise be pro-
16 hibited under such subsection if he determines and cer-
17 tifies in writing to the Speaker of the House of Represent-
18 atives and the Committee on Foreign Relations of the Sen-
19 ate that—

20 “(A) the termination of such assistance would
21 have a serious adverse effect on vital United States
22 interests; and

23 “(B) he has received reliable assurances that
24 the country in question will not acquire or develop
25 nuclear weapons or assist other nations in doing so.

1 Such certification shall set forth the reasons supporting
2 such determination in each particular case.

3 “(2)(A) A certification under paragraph (1) shall
4 take effect on the date on which the certification is re-
5 ceived by the Congress. However, if, within 30 calendar
6 days after receiving this certification, the Congress enacts
7 a joint resolution stating in substance that the Congress
8 disapproves the furnishing of assistance pursuant to the
9 certification, then upon the enactment of that resolution
10 the certification shall cease to be effective and all deliveries
11 of assistance furnished under the authority of that certifi-
12 cation shall be suspended immediately.

13 “(B) Any joint resolution under this paragraph shall
14 be considered in the Senate in accordance with the provi-
15 sions of section 601(b) of the International Security As-
16 sistance and Arms Export Control Act of 1976.

17 **“SEC. 102. NUCLEAR REPROCESSING TRANSFERS AND ILLE-**
18 **GAL EXPORTS FOR NUCLEAR EXPLOSIVE DE-**
19 **VICES.**

20 “(a) PROHIBITIONS ON ASSISTANCE TO COUNTRIES
21 INVOLVED IN TRANSFER OF NUCLEAR REPROCESSING
22 EQUIPMENT, MATERIALS, OR TECHNOLOGY.—Except as
23 provided in subsection (b), no funds made available to
24 carry out the Foreign Assistance Act of 1961 or this Act
25 may be used for the purpose of providing economic assist-

1 ance (including assistance under chapter 4 of part II of
2 the Foreign Assistance Act of 1961), providing military
3 assistance or grant military education and training, pro-
4 viding assistance under chapter 6 of part II of that Act,
5 or extending military credits or making guarantees, to any
6 country which the President determines—

7 “(1) delivers nuclear reprocessing equipment,
8 materials, or technology to any other country on or
9 after August 4, 1977, or receives such equipment,
10 materials, or technology from any other country on
11 or after August 4, 1977 (except for the transfer of
12 reprocessing technology associated with the inves-
13 tigation, under international evaluation programs in
14 which the United States participates, of technologies
15 which are alternatives to pure plutonium reprocess-
16 ing), or

17 “(2) is a non-nuclear-weapon state which, on or
18 after August 8, 1985, exports illegally (or attempts
19 to export illegally) from the United States any mate-
20 rial, equipment, or technology which would contrib-
21 ute significantly to the ability of such country to
22 manufacture a nuclear explosive device, if the Presi-
23 dent determines that the material, equipment, or
24 technology was to be used by such country in the
25 manufacture of a nuclear explosive device.

1 For purposes of paragraph (2), an export (or attempted
2 export) by a person who is an agent of, or is otherwise
3 acting on behalf of or in the interests of, a country shall
4 be considered to be an export (or attempted export) by
5 that country.

6 “(b) EXCEPTION.—(1) Notwithstanding subsection
7 (a), the President in any fiscal year may furnish assist-
8 ance which would otherwise be prohibited under that sub-
9 section if he determines and certifies in writing during
10 that fiscal year to the Speaker of the House of Represent-
11 atives and the Committee on Foreign Relations of the Sen-
12 ate that the termination of such assistance would be seri-
13 ously prejudicial to the achievement of United States non-
14 proliferation objectives or would otherwise jeopardize the
15 common defense and security. The President shall trans-
16 mit with such certification a statement setting forth the
17 specific reasons therefor.

18 “(2)(A) A certification under paragraph (1) shall
19 take effect on the date on which the certification is re-
20 ceived by the Congress. However, if, within 30 calendar
21 days after receiving this certification, the Congress enacts
22 a joint resolution stating in substance that the Congress
23 disapproves the furnishing of assistance pursuant to the
24 certification, then upon the enactment of that resolution
25 the certification shall cease to be effective and all deliveries

1 of assistance furnished under the authority of that certifi-
2 cation shall be suspended immediately.

3 “(B) Any joint resolution under this paragraph shall
4 be considered in the Senate in accordance with the provi-
5 sions of section 601(b) of the International Security As-
6 sistance and Arms Export Control Act of 1976.

7 **“SEC. 103. DEFINITION OF NUCLEAR EXPLOSIVE DEVICE.**

8 “As used in this chapter, the term ‘nuclear explosive
9 device’ has the meaning given that term in section 231(4)
10 of the Nuclear Proliferation Prevention Act of 1995.”.

11 (b) REPEALS.—Sections 669 and 670 of the Foreign
12 Assistance Act of 1961 are hereby repealed.

13 (c) REFERENCES IN LAW.—Any reference in law as
14 of the effective date of this part to section 669 or 670
15 of the Foreign Assistance Act of 1961 shall, on and after
16 such date, be deemed to be a reference to section 101 or
17 102 of the Arms Export Control Act, or section 226 of
18 this Act, as the case may be.

19 **SEC. 228. REWARD.**

20 Section 36(a) of the State Department Basic Au-
21 thorities Act of 1956 (22 U.S.C. 2708(a)) is amended—

22 (1) by redesignating paragraphs (1) through

23 (3) as subparagraphs (A) through (C), respectively;

24 (2) by inserting “(1)” after “(a)”; and

25 (3) by adding at the end the following:

1 “(2) For purposes of this subsection, the term ‘act
2 of international terrorism’ includes any act substantially
3 contributing to the acquisition of unsafeguarded special
4 nuclear material (as defined in section 231(8) of the Nu-
5 clear Proliferation Prevention Act of 1995) or any nuclear
6 explosive device (as defined in section 231(4) of that Act)
7 by an individual, group, or non-nuclear-weapon state (as
8 defined in section 231(5) of that Act).”.

9 **SEC. 229. REPORTS.**

10 (a) CONTENT OF ACDA ANNUAL REPORT.—Section
11 51 of the Arms Control and Disarmament Act, as amend-
12 ed by section 717 of the Foreign Relations Authorization
13 Act, Fiscal Years 1995 and 1995, is amended—

14 (1) in subsection (a)—

15 (A) by striking “and” at the end of para-
16 graph (5);

17 (B) by striking the period at the end of
18 paragraph (6) and inserting “; and”; and

19 (C) by adding after paragraph (6) the fol-
20 lowing new paragraph:

21 “(7) a discussion of any material noncompliance
22 by foreign governments with their binding commit-
23 ments to the United States with respect to the pre-
24 ventation of the spread of nuclear explosive devices (as
25 defined in section 231(4) of the Nuclear Prolifera-

1 tion Prevention Act of 1995) by non-nuclear-weapon
2 states (as defined in section 231(5) of that Act) or
3 the acquisition by such states of unsafeguarded spe-
4 cial nuclear material (as defined in section 231(8) of
5 that Act), including—

6 “(A) a net assessment of the aggregate
7 military significance of all such violations;

8 “(B) a statement of the compliance policy
9 of the United States with respect to violations
10 of those commitments; and

11 “(C) what actions, if any, the President
12 has taken or proposes to take to bring any na-
13 tion committing such a violation into compli-
14 ance with those commitments.”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(c) REPORTING CONSECUTIVE NONCOMPLIANCE.—
18 If the President in consecutive reports submitted to the
19 Congress under this section reports that any designated
20 nation is not in full compliance with its binding non-
21 proliferation commitments to the United States, then the
22 President shall include in the second such report an as-
23 sessment of what actions are necessary to compensate for
24 such violations.”.

1 (b) REPORTING ON DEMARCHES.—(1) It is the sense
2 of the Congress that the Department of State should, in
3 the course of implementing its reporting responsibilities
4 under section 602(c) of the Nuclear Non-Proliferation Act
5 of 1978, include a summary of demarches that the United
6 States has issued or received from foreign governments
7 with respect to activities which are of significance from
8 the proliferation standpoint.

9 (2) For purposes of this section, the term “de-
10 marche” means any official communication by one govern-
11 ment to another, by written or oral means, intended by
12 the originating government to express—

13 (A) a concern over a past, present, or possible
14 future action or activity of the recipient government,
15 or of a person within the jurisdiction of that govern-
16 ment, contributing to the global spread of
17 unsafeguarded special nuclear material or of nuclear
18 explosive devices;

19 (B) a request for the recipient government to
20 counter such action or activity; or

21 (C) both the concern and request described in
22 subparagraphs (A) and (B).

1 **SEC. 230. TECHNICAL CORRECTION.**

2 Section 133 b. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2160c) is amended by striking “20 kilograms” and
4 inserting “5 kilograms”.

5 **SEC. 231. DEFINITIONS.**

6 For purposes of this part—

7 (1) the term “foreign person” means—

8 (A) an individual who is not a citizen of
9 the United States or an alien admitted for per-
10 manent residence to the United States; or

11 (B) a corporation, partnership, or other
12 nongovernment entity which is created or orga-
13 nized under the laws of a foreign country or
14 which has its principal place of business outside
15 the United States;

16 (2) the term “goods or technology” means—

17 (A) nuclear materials and equipment and
18 sensitive nuclear technology (as such terms are
19 defined in section 4 of the Nuclear Non-Pro-
20 liferation Act of 1978), all export items des-
21 ignated by the President pursuant to section
22 309(c) of the Nuclear Non-Proliferation Act of
23 1978, and all technical assistance requiring au-
24 thorization under section 57 b. of the Atomic
25 Energy Act of 1954; and

1 (B) in the case of exports from a country
2 other than the United States, any goods or
3 technology that, if exported from the United
4 States, would be goods or technology described
5 in subparagraph (A);

6 (3) the term “IAEA safeguards” means the
7 safeguards set forth in an agreement between a
8 country and the International Atomic Energy Agen-
9 cy, as authorized by Article III(A)(5) of the Statute
10 of the International Atomic Energy Agency;

11 (4) the term “nuclear explosive device” means
12 any device, whether assembled or disassembled, that
13 is designed to produce an instantaneous release of
14 an amount of nuclear energy from special nuclear
15 material that is greater than the amount of energy
16 that would be released from the detonation of one
17 pound of trinitrotoluene (TNT);

18 (5) the term “non-nuclear-weapon state” means
19 any country which is not a nuclear-weapon state, as
20 defined by Article IX (3) of the Treaty on the Non-
21 Proliferation of Nuclear Weapons, signed at Wash-
22 ington, London, and Moscow on July 1, 1968;

23 (6) the term “special nuclear material” has the
24 meaning given that term in section 11 aa. of the
25 Atomic Energy Act of 1954 (42 U.S.C. 2014aa);

1 (7) the term “United States person” means—

2 (A) an individual who is a citizen of the
3 United States or an alien admitted for perma-
4 nent residence to the United States; or

5 (B) a corporation, partnership, or other
6 nongovernment entity which is not a foreign
7 person; and

8 (8) the term “unsafeguarded special nuclear
9 material” means special nuclear material which is
10 held in violation of IAEA safeguards or not subject
11 to IAEA safeguards (excluding any quantity of ma-
12 terial that could, if it were exported from the United
13 States, be exported under a general license issued by
14 the Nuclear Regulatory Commission).

15 **SEC. 232. EFFECTIVE DATE.**

16 The provisions of this part, and the amendments
17 made by this part, shall take effect 60 days after the date
18 of the enactment of this Act.

19 **PART C—INTERNATIONAL ATOMIC ENERGY**
20 **AGENCY**

21 **SEC. 241. BILATERAL AND MULTILATERAL INITIATIVES.**

22 It is the sense of the Congress that in order to main-
23 tain and enhance international confidence in the effective-
24 ness of IAEA safeguards and in other multilateral under-
25 takings to halt the global proliferation of nuclear weapons,

1 the United States should seek to negotiate with other na-
2 tions and groups of nations, including the IAEA Board
3 of Governors and the Nuclear Suppliers Group, to—

4 (1) build international support for the principle
5 that nuclear supply relationships must require pur-
6 chasing nations to agree to full-scope international
7 safeguards;

8 (2) encourage each nuclear-weapon state within
9 the meaning of the Treaty to undertake a com-
10 prehensive review of its own procedures for declas-
11 sifying information relating to the design or produc-
12 tion of nuclear explosive devices and to investigate
13 any measures that would reduce the risk of such in-
14 formation contributing to nuclear weapons prolifera-
15 tion;

16 (3) encourage the deferral of efforts to produce
17 weapons-grade nuclear material for large-scale com-
18 mercial uses until such time as safeguards are devel-
19 oped that can detect, on a timely and reliable basis,
20 the diversion of significant quantities of such mate-
21 rial for nuclear explosive purposes;

22 (4) pursue greater financial support for the im-
23 plementation and improvement of safeguards from
24 all IAEA member nations with significant nuclear
25 programs, particularly from those nations that are

1 currently using or planning to use weapons-grade
2 nuclear material for commercial purposes;

3 (5) arrange for the timely payment of annual fi-
4 nancial contributions by all members of the IAEA,
5 including the United States;

6 (6) pursue the elimination of international com-
7 merce in highly enriched uranium for use in research
8 reactors while encouraging multilateral cooperation
9 to develop and to use low-enriched alternative nu-
10 clear fuels;

11 (7) oppose efforts by non-nuclear-weapon states
12 to develop or use unsafeguarded nuclear fuels for
13 purposes of naval propulsion;

14 (8) pursue an international open skies arrange-
15 ment that would authorize the IAEA to operate sur-
16 veillance aircraft and would facilitate IAEA access
17 to satellite information for safeguards verification
18 purposes;

19 (9) develop an institutional means for IAEA
20 member nations to share intelligence material with
21 the IAEA on possible safeguards violations without
22 compromising national security or intelligence
23 sources or methods;

24 (10) require any exporter of a sensitive nuclear
25 facility or sensitive nuclear technology to a non-nu-

1 clear-weapon state to notify the IAEA prior to ex-
2 port and to require safeguards over that facility or
3 technology, regardless of its destination; and

4 (11) seek agreement among the parties to the
5 Treaty to apply IAEA safeguards in perpetuity and
6 to establish new limits on the right to withdraw from
7 the Treaty.

8 **SEC. 242. IAEA INTERNAL REFORMS.**

9 In order to promote the early adoption of reforms in
10 the implementation of the safeguards responsibilities of
11 the IAEA, the Congress urges the President to negotiate
12 with other nations and groups of nations, including the
13 IAEA Board of Governors and the Nuclear Suppliers
14 Group, to—

15 (1) improve the access of the IAEA within nu-
16 clear facilities that are capable of producing, proc-
17 essing, or fabricating special nuclear material suit-
18 able for use in a nuclear explosive device;

19 (2)(A) facilitate the IAEA's efforts to meet and
20 to maintain its own goals for detecting the diversion
21 of nuclear materials and equipment, giving particu-
22 lar attention to facilities in which there are bulk
23 quantities of plutonium; and

24 (B) if it is not technically feasible for the IAEA
25 to meet those detection goals in a particular facility,

1 require the IAEA to declare publicly that it is un-
2 able to do so;

3 (3) enable the IAEA to issue fines for violations
4 of safeguards procedures, to pay rewards for infor-
5 mation on possible safeguards violations, and to es-
6 tablish a “hot line” for the reporting of such viola-
7 tions and other illicit uses of weapons-grade nuclear
8 material;

9 (4) establish safeguards at facilities engaged in
10 the manufacture of equipment or material that is es-
11 pecially designated or prepared for the processing,
12 use, or production of special fissionable material or,
13 in the case of non-nuclear-weapon states, of any nu-
14 clear explosive device;

15 (5) establish safeguards over nuclear research
16 and development activities and facilities;

17 (6) implement special inspections of undeclared
18 nuclear facilities, as provided for under existing safe-
19 guards procedures, and seek authority for the IAEA
20 to conduct challenge inspections on demand at sus-
21 pected nuclear sites;

22 (7) expand the scope of safeguards to include
23 tritium, uranium concentrates, and nuclear waste
24 containing special fissionable material, and increase
25 the scope of such safeguards on heavy water;

1 (8) revise downward the IAEA's official mini-
2 mum amounts of nuclear material ("significant
3 quantity") needed to make a nuclear explosive device
4 and establish these amounts as national rather than
5 facility standards;

6 (9) expand the use of full-time resident IAEA
7 inspectors at sensitive fuel cycle facilities;

8 (10) promote the use of near real time material
9 accountancy in the conduct of safeguards at facili-
10 ties that use, produce, or store significant quantities
11 of special fissionable material;

12 (11) develop with other IAEA member nations
13 an agreement on procedures to expedite approvals of
14 visa applications by IAEA inspectors;

15 (12) provide the IAEA the additional funds,
16 technical assistance, and political support necessary
17 to carry out the goals set forth in this subsection;
18 and

19 (13) make public the annual safeguards imple-
20 mentation report of the IAEA, establishing a public
21 registry of commodities in international nuclear com-
22 merce, including dual-use goods, and creating a pub-
23 lic repository of current nuclear trade control laws,
24 agreements, regulations, and enforcement and judi-
25 cial actions by IAEA member nations.

1 **SEC. 243. REPORTING REQUIREMENT.**

2 (a) REPORT REQUIRED.—The President shall, in the
3 report required by section 601(a) of the Nuclear Non-Pro-
4 liferation Act of 1978, describe—

5 (1) the steps he has taken to implement sec-
6 tions 241 and 242, and

7 (2) the progress that has been made and the
8 obstacles that have been encountered in seeking to
9 meet the objectives set forth in sections 241 and
10 242.

11 (b) CONTENTS OF REPORT.—Each report under
12 paragraph (1) shall describe—

13 (1) the bilateral and multilateral initiatives that
14 the President has taken during the period since the
15 enactment of this Act in pursuit of each of the ob-
16 jectives set forth in sections 241 and 242;

17 (2) any obstacles that have been encountered in
18 the pursuit of those initiatives;

19 (3) any additional initiatives that have been
20 proposed by other countries or international organi-
21 zations to strengthen the implementation of IAEA
22 safeguards;

23 (4) all activities of the Federal Government in
24 support of the objectives set forth in sections 241
25 and 242;

1 (5) any recommendations of the President on
2 additional measures to enhance the effectiveness of
3 IAEA safeguards; and

4 (6) any initiatives that the President plans to
5 take in support of each of the objectives set forth in
6 sections 241 and 242.

7 **SEC. 244. DEFINITIONS.**

8 As used in this part—

9 (1) the term “highly enriched uranium” means
10 uranium enriched to 20 percent or more in the iso-
11 tope U-235;

12 (2) the term “IAEA” means the International
13 Atomic Energy Agency;

14 (3) the term “near real time material account-
15 ancY” means a method of accounting for the loca-
16 tion, quantity, and disposition of special fissionable
17 material at facilities that store or process such mate-
18 rial, in which verification of peaceful use is continu-
19 ously achieved by means of frequent physical inven-
20 tories and the use of in-process instrumentation;

21 (4) the term “special fissionable material” has
22 the meaning given that term by Article XX(1) of the
23 Statute of the International Atomic Energy Agency,
24 done at the Headquarters of the United Nations on
25 October 26, 1956;

1 (5) the term “the Treaty” means the Treaty on
2 the Non-Proliferation of Nuclear Weapons, signed at
3 Washington, London, and Moscow on July 1, 1968;
4 and

5 (6) the terms “IAEA safeguards”, “non-nu-
6 clear-weapon state”, “nuclear explosive device”, and
7 “special nuclear material” have the meanings given
8 those terms in section 231 of this Act.

9 **PART D—REPEAL OF DUPLICATIVE PROVISIONS**

10 **SEC. 251. REPEAL.**

11 Effective 60 days after the date of the enactment of
12 this Act—

13 (1) title VIII of the Foreign Relations Author-
14 ization Act, Fiscal Years 1995 and 1995, the
15 amendments made by that title, and the items relat-
16 ing to such title in the table of contents of that Act,
17 are repealed; and

18 (2) with respect to any provisions of law re-
19 pealed by title VIII of that Act, such title shall be
20 deemed not to have been enacted.

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