

Union Calendar No. 322

104TH CONGRESS
2^D SESSION

H. R. 361

[Report No. 104-605, Parts I and II]

A BILL

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

JUNE 27, 1996

Reported from the Committee on Ways and Means, com-
mitted to the Committee of the Whole House on the
State of the Union, and ordered to be printed

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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

JUNE 5, 1996

Reported with an amendment, referred to the Committee on Ways and Means for a period ending not later than June 28, 1996, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(s) of rule X

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

JUNE 27, 1996

Reported from the Committee on Ways and Means, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 4, 1995]

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,*

1 **SECTION 1. TABLE OF CONTENTS.**

2 *The table of contents of this Act is as follows:*

Sec. 1. Table of contents.

TITLE I—EXPORT ADMINISTRATION

Sec. 101. Short title.

Sec. 102. Findings.

Sec. 103. Policy statement.

Sec. 104. General provisions.

Sec. 105. Multilateral controls.

Sec. 106. Emergency controls.

Sec. 107. Short supply controls.

Sec. 108. Foreign boycotts.

Sec. 109. Procedures for processing export license applications; other inquiries.

Sec. 110. Violations.

Sec. 111. Controlling proliferation activity.

Sec. 112. Administrative and judicial review.

Sec. 113. Enforcement.

Sec. 114. Export control authorities and procedures.

Sec. 115. Annual report.

Sec. 116. Definitions.

Sec. 117. Effects on other Acts.

Sec. 118. Secondary Arab boycott.

Sec. 119. Conforming amendments to other laws.

Sec. 120. Expiration date.

Sec. 121. Savings provision.

TITLE II—NUCLEAR PROLIFERATION PREVENTION

Sec. 201. Repeal of termination of provisions of the Nuclear Proliferation Prevention Act of 1994.

Sec. 202. Seeking multilateral support for unilateral sanctions.

Sec. 203. Sanctions under the Nuclear Proliferation Prevention Act of 1994.

3 **TITLE I—EXPORT**
4 **ADMINISTRATION**

5 **SEC. 101. SHORT TITLE.**

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

8 **SEC. 102. FINDINGS.**

9 *The Congress makes the following findings:*

10 (1) *Export controls are a part of a comprehen-*
11 *sive response to national security threats. United*

1 *States exports should be restricted only for significant*
2 *national security, nonproliferation, and foreign policy*
3 *reasons.*

4 (2) *Exports of certain commodities and tech-*
5 *nology may adversely affect the national security and*
6 *foreign policy of the United States by making a sig-*
7 *nificant contribution to the military potential of in-*
8 *dividual countries or by disseminating the capability*
9 *to design, develop, test, produce, stockpile, or use*
10 *weapons of mass destruction, missile delivery systems,*
11 *and other significant military capabilities. Therefore,*
12 *the administration of export controls should empha-*
13 *size the control of these exports.*

14 (3) *The acquisition of sensitive commodities and*
15 *technology by those countries and end users whose ac-*
16 *tions or policies run counter to United States na-*
17 *tional security or foreign policy interests may en-*
18 *hance the military capabilities of those countries, par-*
19 *ticularly their ability to design, develop, test, produce,*
20 *stockpile, use, and deliver nuclear, chemical, and bio-*
21 *logical weapons, missile delivery systems, and other*
22 *significant military capabilities. This enhancement*
23 *threatens the security of the United States and its al-*
24 *lies, and places additional demands on the defense*
25 *budget of the United States. Availability to countries*

1 *and end users of items that contribute to military ca-*
2 *pabilities or the proliferation of weapons of mass de-*
3 *struction is a fundamental concern of the United*
4 *States and should be eliminated through negotiations*
5 *and other appropriate means whenever possible.*

6 *(4) With the growing importance of exports to*
7 *sustained United States economic growth and vital-*
8 *ity, restrictions on exports must be evaluated in terms*
9 *of their effects on the United States economy.*

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

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

20 *(7) International treaties, such as the Chemical*
21 *Weapons Convention, and international agreements*
22 *and arrangements intended to control, lessen, or*
23 *eliminate weapons of mass destruction should be fully*
24 *implemented by, among other things, imposing re-*
25 *strictions on imports and exports of designated items,*

1 *monitoring, and transmitting reports on, the produc-*
2 *tion, processing, consumption, export, and import of*
3 *designated items, and complying with verification re-*
4 *gimes mandated by such treaties, agreements, and ar-*
5 *rangements.*

6 *(8) Except in the event the United States is the*
7 *sole source of critical supplies, unilateral export con-*
8 *trols are generally not truly effective in influencing*
9 *the behavior of other governments or impeding access*
10 *to controlled items. Unilateral controls alone may im-*
11 *pede access to United States sources of supply without*
12 *affecting the ability of countries to obtain controlled*
13 *items elsewhere. Moreover, unilateral controls gen-*
14 *erally permit foreign competitors to serve markets the*
15 *United States Government denies to United States*
16 *firms and workers, thus impairing the reliability of*
17 *United States suppliers in comparison with their for-*
18 *foreign competitors. At the same time, the need to lead*
19 *the international community or overriding national*
20 *security or foreign policy interests may justify unilat-*
21 *eral controls in specific cases.*

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

1 (10) *The United States export control system*
2 *must not be overly restrictive or bureaucratic, or un-*
3 *dermine the competitive position of United States in-*
4 *dustry. The export control system must be efficient,*
5 *responsive, transparent, and effective.*

6 (11) *Export restrictions that negatively affect the*
7 *United States industrial base may ultimately weaken*
8 *United States military capabilities and lead to de-*
9 *pendencies on foreign sources for key components.*

10 (12) *Minimization of restrictions on exports of*
11 *agricultural commodities and products is of critical*
12 *importance to the maintenance of a sound agricul-*
13 *tural sector, to a positive contribution to the balance*
14 *of payments, to reducing the level of Federal expendi-*
15 *tures for agricultural support programs, and to Unit-*
16 *ed States cooperation in efforts to eliminate malnutri-*
17 *tion and world hunger.*

18 (13) *Minimization of restrictions on the export*
19 *of information technology products and services is of*
20 *critical importance to United States leadership in re-*
21 *moving obstacles to the effective development of a su-*
22 *perior global information infrastructure and the new*
23 *jobs and markets, increased trade and information*
24 *flows, improved national security, and new tools for*

1 *the improvement of the quality of life for people glob-*
2 *ally that will be created.*

3 *(14) The United States should play a leading*
4 *role in promoting transparency and responsibility*
5 *with regard to the transfers of conventional arma-*
6 *ments and sensitive dual-use goods and technologies.*

7 **SEC. 103. POLICY STATEMENT.**

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

9 *(1) To stem the proliferation of weapons of mass*
10 *destruction, and the means to deliver them, and other*
11 *significant military capabilities by—*

12 *(A) leading international efforts to control*
13 *the proliferation of chemical and biological*
14 *weapons, nuclear explosive devices, missile deliv-*
15 *ery systems, and other significant military capa-*
16 *bilities;*

17 *(B) controlling involvement of United*
18 *States persons in, and contributions by United*
19 *States persons to, foreign programs intended to*
20 *develop weapons of mass destruction, missiles,*
21 *and other significant military capabilities, and*
22 *the means to design, test, develop, produce, stock-*
23 *pile, or use them; and*

24 *(C) implementing international treaties or*
25 *other agreements or arrangements concerning*

1 *controls on exports of designated items, reports*
2 *on the production, processing, consumption, and*
3 *exports and imports of such items, and compli-*
4 *ance with verification programs.*

5 *(2) To restrict the export of items—*

6 *(A) that would significantly contribute to*
7 *the military potential of countries so as to prove*
8 *detrimental to the national security of the Unit-*
9 *ed States or its allies; or*

10 *(B) where necessary to further significantly*
11 *the foreign policy of the United States or to ful-*
12 *fill its declared international commitments.*

13 *(3) To—*

14 *(A) minimize uncertainties in export con-*
15 *trol policy; and*

16 *(B) encourage trade with all countries with*
17 *which the United States has diplomatic or trad-*
18 *ing relations, except those countries with which*
19 *such trade has been determined by the President*
20 *to be against the national interest.*

21 *(4) To restrict export trade when necessary to*
22 *protect the domestic economy from the excessive drain*
23 *of scarce materials and to reduce the serious infla-*
24 *tionary impact of foreign demand.*

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

12 (6) *To impose unilateral controls only when it is*
13 *necessary to further significantly the national secu-*
14 *rity or foreign policy of the United States, and only*
15 *after full consideration of the economic impact of the*
16 *controls and their effectiveness in achieving their in-*
17 *tended objectives.*

18 (7) *To make all licensing determinations in a*
19 *timely manner so undue delays in the licensing proc-*
20 *ess will not cause a United States person to lose an*
21 *export sale.*

22 (8) *To use export controls to deter and punish*
23 *acts of international terrorism and to encourage other*
24 *countries to take immediate steps to prevent the use*
25 *of their territories or resources to aid, encourage, or*

1 *give sanctuary to those persons involved in directing,*
2 *supporting, or participating in acts of international*
3 *terrorism. To this end, consistent with the policies of*
4 *this section and the provisions of this title, the United*
5 *States should, by restricting exports to countries that*
6 *have violated international norms of behavior by re-*
7 *peatedly supporting acts of international terrorism,*
8 *distance itself from those countries.*

9 *(9)(A) To counteract restrictive trade practices*
10 *or boycotts fostered or imposed by foreign countries*
11 *against other countries friendly to the United States*
12 *or against any United States person.*

13 *(B) To encourage and, in specified cases, require*
14 *United States persons engaged in the export of com-*
15 *modities, technology, and other information to refuse*
16 *to take actions, including furnishing information or*
17 *entering into or implementing agreements, which*
18 *have the effect of furthering or supporting the restric-*
19 *tive trade practices or boycotts fostered or imposed by*
20 *any foreign country against a country friendly to the*
21 *United States or against any United States person.*

22 *(10) To streamline export control functions and*
23 *increase administrative accountability, and thereby*
24 *better serve the exporting public by reducing and*

1 *eliminating overlapping, conflicting, and inconsistent*
2 *regulatory burdens.*

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

5 *(12) To minimize restrictions on the export of*
6 *information technology products and services as part*
7 *of a flexible regulatory environment that can keep*
8 *pace with the rapid technological changes necessary to*
9 *realize the full economic, societal, and national secu-*
10 *rity benefits of United States leadership in the devel-*
11 *opment of a superior global information infrastruc-*
12 *ture.*

13 *(13) To cooperate with other countries to pro-*
14 *mote greater transparency and responsibility with re-*
15 *gard to the transfers of armaments and sensitive*
16 *goods and technologies, both for the purpose of devel-*
17 *oping common understandings of the risks to inter-*
18 *national peace and regional security associated with*
19 *the transfers of such items and to coordinate national*
20 *control policies to combat those risks.*

21 *(14) To enhance the national security and non-*
22 *proliferation interests of the United States. To this*
23 *end and consistent with the other policies of this sec-*
24 *tion and the provisions of this title, the United States*
25 *will use export controls when necessary to ensure that*

1 *access to weapons of mass destruction, missile deliv-*
2 *ery systems, and other significant military capabili-*
3 *ties is restricted. While the multilateral nonprolifera-*
4 *tion regimes will be the primary instruments through*
5 *which the United States will pursue its nonprolifera-*
6 *tion goals, it may also, consistent with the policies of*
7 *this section and the provisions of this title, take uni-*
8 *lateral action.*

9 *(15) To promote international peace, stability,*
10 *and respect for fundamental human rights. The Unit-*
11 *ed States may establish controls on exports that con-*
12 *tribute to the military capabilities of countries that*
13 *threaten international peace or stability or to coun-*
14 *tries that abuse the fundamental rights of their citi-*
15 *zens, or to promote other important foreign policy ob-*
16 *jectives of the United States, consistent with the poli-*
17 *cies of this section and the provisions of this title.*

18 **SEC. 104. GENERAL PROVISIONS.**

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

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

1 (2) *MULTIPLE EXPORTS.*—*Licenses authorizing*
2 *multiple exports, issued pursuant to an application*
3 *by the exporter, in lieu of a license for each such ex-*
4 *port. Licenses under this paragraph shall be designed*
5 *to encourage and acknowledge exporters' internal con-*
6 *trol programs for ensuring compliance with the terms*
7 *of the license.*

8 (b) *UNITED STATES COMMODITY CONTROL INDEX.*—

9 (1) *IN GENERAL.*—*The Secretary shall establish*
10 *and maintain, in consultation with the Secretary of*
11 *Defense and the heads of other appropriate depart-*
12 *ments and agencies, a United States Commodity Con-*
13 *trol Index specifying the license requirements under*
14 *this title that are applicable to the items on the list.*

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

16 (A) *consist of a multilateral control list of*
17 *items on which export controls are imposed*
18 *under section 105, an emergency control list of*
19 *items on which export controls are imposed*
20 *under section 106, and a short supply control*
21 *list of commodities on which export controls are*
22 *imposed under section 107;*

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

1 (C) for each item on the control index,
2 specify with particularity the performance
3 (where applicable) and other identifying charac-
4 teristics of the item and provide a rationale for
5 why the item is on the control list;

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

11 (E) be sufficiently specific and clear as to
12 guide exporters and licensing officers in deter-
13 minations of licensing requirements under this
14 title.

15 (c) *DENIED OR DEBARRED PARTIES, SANCTIONED*
16 *PARTIES, BLOCKED PERSONS, SPECIALLY DESIGNATED*
17 *NATIONALS, AND OTHER PARTIES PRESENTING UNACCEPT-*
18 *ABLE RISKS OF DIVERSION.*—

19 (1) *DENIED OR DEBARRED PARTIES, SANC-*
20 *TIONED PARTIES, BLOCKED PERSONS, AND SPECIALLY*
21 *DESIGNATED NATIONALS.*—*The President shall ensure*
22 *that an official list is published semiannually in the*
23 *Federal Register of all parties denied or debarred*
24 *from export privileges under this title or under the*
25 *Arms Export Control Act, all parties sanctioned for*

1 *prohibited proliferation activity under this title or*
2 *other statutes, and all blocked persons and specially*
3 *designated nationals. For purposes of this paragraph,*
4 *a “blocked person” or “specially designated national”*
5 *is a person or entity so designated by the President*
6 *or the Secretary of the Treasury under the Trading*
7 *With the Enemy Act, or the International Emergency*
8 *Economic Powers Act, with whom transactions are*
9 *prohibited on account of the relationship of that per-*
10 *son or entity with a country, organization, or activ-*
11 *ity against which sanctions are imposed under either*
12 *such Act. Promptly after any person is designated a*
13 *“blocked person” or “specially designated national”,*
14 *the Secretary of the Treasury shall publish such des-*
15 *ignation in the Federal Register.*

16 (2) *OTHER PARTIES.*—*The Secretary shall main-*
17 *tain a list of parties for whom licenses under this title*
18 *will be presumptively denied.*

19 (d) *DELEGATION OF AUTHORITY.*—*Subject to the pro-*
20 *visions of this title, the President may delegate the power,*
21 *authority, and discretion conferred upon the President by*
22 *this title to such departments, agencies, and officials of the*
23 *Government as the President considers appropriate, except*
24 *that no authority under this title may be delegated to, or*
25 *exercised by, any official of any department or agency the*

1 *head of which is not appointed by the President, by and*
2 *with the advice and consent of the Senate. The President*
3 *may not delegate or transfer his power, authority, or discre-*
4 *tion to overrule or modify any recommendation or decision*
5 *made by the Secretary, the Secretary of Defense, or the Sec-*
6 *retary of State under this title and may not delegate the*
7 *authority under section 106(a)(4).*

8 *(e) NOTIFICATION OF THE PUBLIC; CONSULTATION*
9 *WITH BUSINESS.—The Secretary shall keep the public fully*
10 *apprised of changes in export control policy and procedures*
11 *instituted in conformity with this title with a view to en-*
12 *couraging trade. The Secretary shall consult regularly with*
13 *representatives of a broad spectrum of enterprises, labor or-*
14 *ganizations, and citizens interested in or affected by export*
15 *controls, in order to obtain their views on United States*
16 *export control policy and the foreign availability of items*
17 *subject to controls.*

18 *(f) EXPORT ADVISORY COMMITTEES.—*

19 *(1) APPOINTMENT.—Upon his or her own initia-*
20 *tive or upon the written request of representatives of*
21 *a substantial segment of any industry which produces*
22 *any items subject to export controls under this title or*
23 *under the International Emergency Economic Powers*
24 *Act, or being considered for such controls, the Sec-*
25 *retary shall appoint export advisory committees with*

1 *respect to any such items. Each such committee shall*
2 *consist of representatives of United States industry*
3 *and Government, including the Department of Com-*
4 *merce and other appropriate departments and agen-*
5 *cies of the Government. The Secretary shall permit*
6 *the widest possible participation by the business com-*
7 *munity on the export advisory committees.*

8 (2) *FUNCTIONS.—Export advisory committees*
9 *appointed under paragraph (1) shall advise and as-*
10 *sist the Secretary, and any other department, agency,*
11 *or official of the Government carrying out functions*
12 *under this title, on actions (including all aspects of*
13 *controls imposed or proposed) designed to carry out*
14 *the policies of this title concerning the items with re-*
15 *spect to which such export advisory committees were*
16 *appointed. Such committees, where they have exper-*
17 *tise in such matters, shall be consulted on questions*
18 *involving—*

19 (A) *technical matters,*

20 (B) *worldwide availability and actual utili-*
21 *zation of production technology,*

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

24 (D) *revisions of the multilateral control list*
25 *(as provided in section 105(g)), including pro-*

1 *posed revisions of multilateral controls in which*
2 *the United States participates,*

3 *(E) the issuance of regulations,*

4 *(F) the impact and interpretation of exist-*
5 *ing regulations,*

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

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

10 *(I) the operation and conduct of inter-*
11 *national business transactions.*

12 *Nothing in this subsection shall prevent the United*
13 *States Government from consulting, at any time, with*
14 *any person representing an industry or the general*
15 *public, regardless of whether such person is a member*
16 *of an export advisory committee. Members of the pub-*
17 *lic shall be given a reasonable opportunity, pursuant*
18 *to regulations prescribed by the Secretary, to present*
19 *evidence to such committees.*

20 *(3) REIMBURSEMENT OF EXPENSES.—Upon the*
21 *request of any member of any export advisory com-*
22 *mittee appointed under paragraph (1), the Secretary*
23 *may, if the Secretary determines it to be appropriate,*
24 *reimburse such member for travel, subsistence, and*

1 *other necessary expenses incurred by such member in*
2 *connection with the duties of such member.*

3 (4) *CHAIRPERSON.—Each export advisory com-*
4 *mittee appointed under paragraph (1) shall elect a*
5 *chairperson, and shall meet at least every 3 months*
6 *at the call of the chairperson, unless the chairperson*
7 *determines, in consultation with the other members of*
8 *the committee, that such a meeting is not necessary*
9 *to achieve the purposes of this subsection. Each such*
10 *committee shall be terminated after a period of 2*
11 *years, unless extended by the Secretary for additional*
12 *periods of 2 years each. The Secretary shall consult*
13 *with each such committee on such termination or ex-*
14 *tension of that committee.*

15 (5) *ACCESS TO INFORMATION.—To facilitate the*
16 *work of the export advisory committees appointed*
17 *under paragraph (1), the Secretary, in conjunction*
18 *with other departments and agencies participating in*
19 *the administration of this title, shall disclose to each*
20 *such committee adequate information, consistent with*
21 *national security, pertaining to the reasons for the ex-*
22 *port controls which are in effect or contemplated for*
23 *the items or policies for which that committee fur-*
24 *nishes advice. Information provided by the export ad-*
25 *visory committees shall not be subject to disclosure*

1 *under section 552 of title 5, United States Code, and*
2 *such information shall not be published or disclosed*
3 *unless the Secretary determines that the withholding*
4 *thereof is contrary to the national interest.*

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

7 *(1) IN GENERAL.—*

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

14 *(i) commodities and technology for in-*
15 *clusion on, or deletion from, the multilat-*
16 *eral and emergency control lists; and*

17 *(ii) the licensing requirements that*
18 *should or should not apply to these com-*
19 *modities and technology.*

20 *(B) The Secretary of Defense shall have pri-*
21 *mary responsibility for identifying commodities*
22 *and technologies that are critical to the design,*
23 *development, test, production, stockpiling, or use*
24 *of weapons of mass destruction and other mili-*
25 *tary capabilities, including nuclear, biological,*

1 *and chemical weapons, and manned and un-*
2 *manned vehicles capable of delivering such weap-*
3 *ons, in determining recommendations for inclu-*
4 *sion of items on the control index.*

5 *(C) If the Secretary of Defense, the Sec-*
6 *retary of State, or the Secretary of Energy dis-*
7 *agrees with the decision of the Secretary regard-*
8 *ing the inclusion or deletion, or licensing re-*
9 *quirements of, any commodity or technology, the*
10 *Secretary of Defense, State, or Energy (as the*
11 *case may be) may, within 30 days after the Sec-*
12 *retary makes the decision, appeal the Secretary's*
13 *decision to the President in writing, but only on*
14 *the basis of the specific provisions of this title. If*
15 *the Secretary of Defense, the Secretary of State,*
16 *or the Secretary of Energy fails to appeal a deci-*
17 *sion of the Secretary in accordance with the pre-*
18 *ceding sentence, he or she shall be deemed to have*
19 *no objection to the decision. The President shall*
20 *resolve a disagreement under this subsection not*
21 *later than 30 days after the appeal is made*
22 *under this paragraph.*

23 *(2) NEGOTIATIONS.—The Secretary of State, in*
24 *consultation with appropriate departments and agen-*
25 *cies, shall be responsible for conducting negotiations*

1 *with other countries regarding multilateral arrange-*
2 *ments for restricting the export of items to carry out*
3 *the policies of this title. All appropriate departments*
4 *and agencies shall develop initial technical param-*
5 *eters and product definitions in connection with the*
6 *development of proposals within the United States*
7 *Government to be made to multilateral regimes, in*
8 *consultation with the export advisory committees as*
9 *provided in paragraph (3).*

10 (3) *CONSULTATIONS WITH EXPORT ADVISORY*
11 *COMMITTEES.—The Secretary shall consult with the*
12 *appropriate export advisory committee appointed*
13 *under this section with respect to changes in the con-*
14 *trol index, and such export advisory committee may*
15 *submit recommendations to the Secretary with respect*
16 *to such changes. The Secretary shall consider the rec-*
17 *ommendations of the export advisory committee and*
18 *shall inform the committee of the disposition of its*
19 *recommendations. The Secretary shall also seek com-*
20 *ments and recommendations from the public in con-*
21 *nection with changes in the control index. To the*
22 *maximum extent practicable and consistent with the*
23 *conduct of international negotiations, such comments*
24 *and recommendations should be taken into consider-*
25 *ation in the development of United States Govern-*

1 *ment proposals and positions to be taken in multilat-*
2 *eral regimes.*

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

7 *(i) INTERNATIONAL OBLIGATIONS UNDER TREA-*
8 *TIES.—Notwithstanding any other provision of this title*
9 *containing limitations on authority to control exports, the*
10 *Secretary, in consultation with the Secretary of State, may*
11 *impose controls on exports to a particular country or coun-*
12 *tries in order to fulfill obligations of the United States*
13 *under resolutions of the United Nations and under treaties*
14 *to which the United States is a party. The Secretary may*
15 *regulate domestic and foreign conduct consistent with the*
16 *policies of such United Nations resolutions, treaties, and*
17 *other international agreements. Such authority shall in-*
18 *clude, but not be limited to, authority to prohibit activity*
19 *such as financing, contracting, providing services, or em-*
20 *ployment, to deny access to items in the United States and*
21 *abroad, to conduct audits of records and inspections of fa-*
22 *cilities, to compel reports, and to curtail travel.*

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

1 **SEC. 105. MULTILATERAL CONTROLS.**

2 (a) *AUTHORITY.*—

3 (1) *IN GENERAL.*—*In order to carry out the poli-*
4 *cies set forth in paragraphs (1), (2), (5), (13), (14),*
5 *and (15) of section 103, the President may, in accord-*
6 *ance with this section, prohibit, curtail, or require the*
7 *provision of information regarding, the export of any*
8 *commodities, technology, or other information subject*
9 *to the jurisdiction of the United States, or exported*
10 *by any person subject to the jurisdiction of the United*
11 *States, in order to implement multilateral export con-*
12 *trol regimes. The authority under this paragraph*
13 *shall include, but not be limited to, the authority to*
14 *regulate domestic and foreign conduct, to prohibit ac-*
15 *tivity such as financing, contracting, providing serv-*
16 *ices, or employment, to deny access to items in the*
17 *United States and abroad, to conduct audits of*
18 *records and inspections of facilities, and to compel re-*
19 *ports. The authority granted by this subsection may*
20 *not be exercised to impose unilateral controls.*

21 (2) *EXERCISE OF AUTHORITY.*—*The authority*
22 *granted by this subsection shall be implemented by*
23 *the Secretary, in consultation with appropriate de-*
24 *partments and agencies.*

25 (3) *CONSISTENCY WITH EXPORT CONTROL RE-*
26 *GIMES.*—*Any provision of this title that provides that*

1 *no authority or permission to export may be required*
2 *under this title shall not apply to the extent that such*
3 *a provision is inconsistent with an international*
4 *commitment of the United States under a multilateral*
5 *export control regime.*

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

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

18 (d) *MULTILATERAL CONTROL REGIMES.*—

19 (1) *POLICY.*—*In order to carry out the policies*
20 *set forth in section 103, the Secretary of State, in con-*
21 *sultation with appropriate departments and agencies,*
22 *should seek multilateral arrangements that are in-*
23 *tended to secure effective achievement of these policies*
24 *and, in so doing, also establish fairer and more pre-*

1 *dictable competitive opportunities for United States*
2 *exporters.*

3 (2) *STANDARDS FOR NATIONAL SYSTEMS.—In the*
4 *establishment and maintenance of multilateral re-*
5 *gimes, the Secretary of State, in consultation with*
6 *appropriate departments and agencies, shall take*
7 *steps to attain the cooperation of members of the re-*
8 *gimes in the effective implementation of export control*
9 *systems. Such systems should contain the following*
10 *elements:*

11 (A) *National laws providing enforcement*
12 *authorities, civil and criminal penalties, and*
13 *statutes of limitations sufficient to deter poten-*
14 *tial violations and punish violators.*

15 (B) *A program to evaluate export license*
16 *applications that includes sufficient technical ex-*
17 *pertise to assess the licensing status of exports*
18 *and ensure the reliability of end users.*

19 (C) *An enforcement mechanism that pro-*
20 *vides authority for trained enforcement officers*
21 *to investigate and prevent illegal exports.*

22 (D) *A system of export control documenta-*
23 *tion to verify the movement of items.*

1 (E) *Procedures for the coordination and ex-*
2 *change of information concerning licensing, end*
3 *users, and enforcement.*

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

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

13 (A) *FULL MEMBERSHIP.—Achieve member-*
14 *ship of all supplier countries whose policies and*
15 *activities are consistent with the objectives and*
16 *membership criteria of the multilateral regime.*

17 (B) *EFFECTIVE ENFORCEMENT AND COMPLI-*
18 *ANCE.—Promote enforcement and compliance*
19 *with the rules and guidelines of the members of*
20 *the regime through maintenance of an effective*
21 *control list.*

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

1 (D) *EFFECTIVE IMPLEMENTATION PROCEDURE*.—Achieve procedures for effective imple-
2 mentation of the rules and guidelines of the re-
3 gime through uniform and consistent interpreta-
4 tions of export controls agreed to by the govern-
5 ments participating in the regime.
6

7 (E) *ENHANCED COOPERATION AMONG RE-*
8 *GIME MEMBERS*.—Reach agreement to enhance
9 cooperation among members of the regime in ob-
10 taining the agreement of governments outside the
11 regime to restrict the export of items controlled
12 by the regime, to establish an ongoing mecha-
13 nism in the regime to coordinate planning and
14 implementation of export control measures relat-
15 ed to such agreements, and to remove items from
16 the list of items controlled by the regime if the
17 control of such items no longer serves the objec-
18 tives of the members of the regime.

19 (F) *PERIODIC HIGH-LEVEL MEETINGS*.—
20 Conduct periodic meetings of high-level rep-
21 resentatives of participating governments for the
22 purpose of coordinating export control policies
23 and issuing policy guidance to members of the
24 regime.

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

4 (H) TREATMENT OF CERTAIN COUNTRIES.—
5 Prevent the export or diversion of the most sen-
6 sitive items to countries whose activities are
7 threatening to the national security of the United
8 States or its allies.

9 (I) DISCLOSURE OF NONPROPRIETARY IN-
10 FORMATION.—Promote transparency and timely
11 disclosure of nonproprietary information with
12 respect to the transfers of sensitive dual-use com-
13 modities and technologies, when appropriate, for
14 the purpose of developing common understand-
15 ings of the risks to international peace and re-
16 gional security associated with such transfers
17 and to coordinate national control policies to
18 combat those risks.

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

22 (1) the Secretary, in consultation with appro-
23 priate departments and agencies, may provide for ex-
24 ports free of license requirements to and among mem-

1 *bers of a multilateral regime for items subject to con-*
2 *trols under such a multilateral regime; and*

3 *(2) the Secretary, in consultation with appro-*
4 *propriate departments and agencies, may adjust licens-*
5 *ing policies with respect to a particular country or*
6 *entity for access to items controlled under this title to*
7 *the extent of the adherence of that country or entity*
8 *to the export control policies of this section.*

9 *Actions by the Secretary under paragraphs (1) and (2)*
10 *shall be consistent with the requirements of section*
11 *111(a)(1)(C).*

12 *(f) TRANSPARENCY OF MULTILATERAL CONTROL RE-*
13 *GIMES.—*

14 *(1) PUBLICATION OF INFORMATION ON EACH EX-*
15 *ISTING REGIME.—Within 6 months after the date of*
16 *the enactment of this Act, the Secretary shall, to the*
17 *extent doing so is not inconsistent with arrangements*
18 *in multilateral export control regimes, publish in the*
19 *Federal Register the following information with re-*
20 *spect to each multilateral control regime existing on*
21 *the date of the enactment of this Act:*

22 *(A) Purposes of the control regime.*

23 *(B) Members of the regime.*

24 *(C) Licensing policy.*

1 (D) *Items subject to the controls under the*
2 *regime, together with all public notes, under-*
3 *standings, and other aspects of the agreement of*
4 *the regime, and all changes thereto.*

5 (E) *Any countries, end uses, or end users*
6 *that are subject to the controls.*

7 (F) *Rules of interpretation.*

8 (G) *Major policy actions.*

9 (H) *The rules and procedures of the regime*
10 *for establishing and modifying any matter de-*
11 *scribed in subparagraphs (A) through (G) and*
12 *for reviewing export license applications.*

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

20 (3) *PUBLICATION OF CHANGES.—Within 2*
21 *months after the applicable regime adopts any*
22 *changes in the information published under this sub-*
23 *section, the Secretary shall, to the extent doing so is*
24 *not inconsistent with arrangements in the regime,*
25 *publish such changes in the Federal Register.*

1 *(g) REVIEW OF CONTROLLED ITEMS.—*

2 *(1) IN GENERAL.—Under the policy guidance of*
3 *the Export Control Policy Committee established in*
4 *section 114(c), and consistent with the procedures in*
5 *section 104(g), the Secretary shall review all items on*
6 *the multilateral control list maintained under sub-*
7 *section (b) at least every 2 years, except that the Sec-*
8 *retary shall review annually whether the policy set*
9 *forth in section 103(12) is being achieved. At the con-*
10 *clusion of each review, the Secretary shall decide*
11 *whether to maintain or remove items from the multi-*
12 *lateral control list, maintain, change, or eliminate the*
13 *specifications, performance thresholds, or licensing re-*
14 *quirements on items on the list, or add items to the*
15 *list.*

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

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

20 *(B) consult with the appropriate export ad-*
21 *visory committees appointed under section 104(f)*
22 *and consider recommendations of such commit-*
23 *tees with respect to proposed changes in the mul-*
24 *tilateral control list;*

1 (C) consider whether controlled items or
2 their equivalent are so widely available in the
3 United States (in terms of quantity, cost, and
4 means of sale and delivery) that the requirement
5 for a license is ineffective in achieving the pur-
6 pose of the control;

7 (D) consider whether the differences between
8 the export controls of the United States and that
9 of governments of foreign suppliers or competing
10 items effectively has placed or will place the
11 United States exporter at a significant commer-
12 cial disadvantage with respect to its competitors
13 abroad, and has placed, or will place, employ-
14 ment in the United States in jeopardy;

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

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

20 (3) PROCEDURES.—

21 (A) NOTICE OF REVIEW.—Before beginning
22 each review under this subsection, the Secretary
23 shall publish a notice of that review in the Fed-
24 eral Register and shall provide a 30-day period

1 *for comments and submission of data, including*
2 *by exporters and other interested parties.*

3 (B) *PROPOSALS TO EXPORT CONTROL RE-*
4 *GIMES.—If a revision to the multilateral control*
5 *list or to a licensing requirement under this*
6 *paragraph is inconsistent with the control lists,*
7 *guidelines, or the licensing requirements of, an*
8 *export control regime, the Secretary of State*
9 *shall propose such revision to that regime. Such*
10 *revision shall become effective only to the extent*
11 *such revision is agreed to by the export control*
12 *regime.*

13 (C) *PUBLICATION OF REVISIONS.—The Sec-*
14 *retary shall publish in the Federal Register any*
15 *revisions in the list, with an explanation of the*
16 *reasons for the revisions.*

17 **SEC. 106. EMERGENCY CONTROLS.**

18 (a) *AUTHORITY.—*

19 (1) *IN GENERAL.—In order to carry out the pol-*
20 *icy set forth in paragraphs (1), (2), (6), (8), (14), and*
21 *(15) of section 103, the President may, in accordance*
22 *with the provisions of this section, unilaterally pro-*
23 *hibit, curtail, or require the provision of information*
24 *regarding the export of any commodity, technology, or*
25 *other information subject to the jurisdiction of the*

1 *United States or exported by any person subject to the*
2 *jurisdiction of the United States. The authority under*
3 *this paragraph shall include, but not be limited to,*
4 *the authority to regulate domestic and foreign con-*
5 *duct, to prohibit activity such as financing, contract-*
6 *ing, providing services, or employment, to deny access*
7 *to items in the United States and abroad, to conduct*
8 *audits of records and inspections of facilities, and to*
9 *compel reports.*

10 (2) *EXERCISE OF AUTHORITY.—The authority*
11 *contained in this section shall be exercised by the Sec-*
12 *retary, in consultation with the Secretary of State,*
13 *the Secretary of Defense, and such other departments*
14 *and agencies as the President considers appropriate,*
15 *and consistent with the procedures in section 104(g).*

16 (3) *EXPIRATION OF CONTROLS.—*

17 (A) *IN GENERAL.—Any controls imposed*
18 *under this section shall expire 12 months after*
19 *they are imposed, unless they are terminated*
20 *earlier by the President or unless they are ex-*
21 *tended under this section, except that such con-*
22 *trols may be adopted as multilateral controls*
23 *under section 105 or included in an embargo*
24 *that is imposed by the President under the Inter-*
25 *national Emergency Economic Powers Act, the*

1 *Trading with the Enemy Act, or other provision*
2 *of law other than this title. Any extension or*
3 *subsequent extension of the controls under this*
4 *section shall be for a period of not more than*
5 *1 year each. The controls shall expire at the end*
6 *of each such extension unless they are terminated*
7 *earlier by the President or unless they are fur-*
8 *ther extended under this section, except that such*
9 *controls may be adopted as multilateral controls*
10 *under section 105 or included in an embargo de-*
11 *scribed in the first sentence of this subparagraph.*

12 *(B) EXCEPTION FOR MULTILATERAL AGREE-*
13 *MENTS.—Subparagraph (A) shall not apply to*
14 *controls imposed by the President in order to ful-*
15 *fill obligations of the United States under resolu-*
16 *tions of the United Nations or under treaties to*
17 *which the United States is a party. If such a res-*
18 *olution or treaty ceases to be in effect, controls*
19 *imposed by the President pursuant to such reso-*
20 *lution or treaty shall immediately cease to be in*
21 *effect.*

22 *(4) CRITERIA.—Controls may be imposed, ex-*
23 *panded, or extended under this section only if the*
24 *President determines that—*

1 (A) *the controls are necessary to further sig-*
2 *nificantly the nonproliferation, national secu-*
3 *rity, or foreign policies of the United States pro-*
4 *vided in section 103, the objective of the controls*
5 *is in the overall national interest of the United*
6 *States, and reasonable alternative means to the*
7 *controls are not available;*

8 (B) *the controls are likely to make substan-*
9 *tial progress toward achieving the intended pur-*
10 *pose of—*

11 (i) *changing, modifying, or constrain-*
12 *ing the undesirable conduct or policies of*
13 *the country to which the controls apply;*

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

16 (iii) *establishing multilateral coopera-*
17 *tion to deny the country access to controlled*
18 *items from all sources; or*

19 (iv) *denying exports or assistance that*
20 *significantly contributes to the proliferation*
21 *of weapons of mass destruction or other im-*
22 *portant military capabilities, terrorism, or*
23 *human rights abuses;*

24 (C) *the proposed controls are compatible*
25 *with the foreign policy objectives of the United*

1 *States and with overall United States policy to-*
2 *ward the country to which the controls apply;*

3 *(D) the reaction of other countries to the*
4 *imposition, expansion, or extension of such ex-*
5 *port controls by the United States is not likely*
6 *to render the controls ineffective in achieving the*
7 *intended purpose or to be counter-productive to*
8 *United States policy interests;*

9 *(E) the effect of the proposed controls on the*
10 *export performance of the United States, the*
11 *competitive position of the United States as a*
12 *supplier of items, or on the economic well-being*
13 *of individual United States companies and their*
14 *employees and communities does not exceed the*
15 *benefit to the United States foreign policy, non-*
16 *proliferation, or national security interests; and*

17 *(F) the United States has the ability to en-*
18 *force the proposed controls effectively.*

19 ***(b) CONSULTATION WITH INDUSTRY.—The Secretary***
20 *shall consult with and seek advice from affected United*
21 *States industries and export advisory committees appointed*
22 *under section 104(f) before the imposition, expansion, or ex-*
23 *tension of any export control under this section.*

24 ***(c) CONSULTATION WITH OTHER COUNTRIES.—When***
25 *expanding or extending export controls under this section*

1 *(unless such action is taken under subsection (a)(3)(B)), the*
2 *Secretary of State, in consultation with appropriate de-*
3 *partments and agencies, shall, at the earliest appropriate*
4 *opportunity, consult with the countries with which the*
5 *United States maintains export controls cooperatively, and*
6 *with other countries, as appropriate, to advise them of the*
7 *reasons for the action and to urge them to adopt similar*
8 *controls.*

9 *(d) CONSULTATIONS WITH THE CONGRESS.—*

10 *(1) CONSULTATIONS.—The Secretary may im-*
11 *pose, expand, or extend export controls under this sec-*
12 *tion only after consultation with the Congress, includ-*
13 *ing the Committee on International Relations of the*
14 *House of Representatives and the Committee on*
15 *Banking, Housing, and Urban Affairs of the Senate.*

16 *(2) REPORTS.—The Secretary may not impose*
17 *or expand controls under subsection (a) until the Sec-*
18 *retary has submitted to the Congress a report—*

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

21 *(B) specifying the purpose of the controls;*

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

1 (D) specifying the nature and results of any
2 alternative means attempted to achieve the objec-
3 tives of the controls, or the reasons for imposing
4 or expanding the controls without attempting
5 any such alternative means; and

6 (E) describing the availability from other
7 countries of items comparable to the items sub-
8 ject to the controls, and describing the nature
9 and results of the efforts made to secure the co-
10 operation of foreign governments in controlling
11 the foreign availability of such comparable items.

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

16 (e) *SEEKING MULTILATERAL SUPPORT FOR UNILAT-*
17 *ERAL CONTROLS.*—The Secretary of State, in consultation
18 with appropriate departments and agencies, shall have a
19 continuing duty to seek support for controls imposed under
20 this section by other countries and by effective multilateral
21 control regimes.

22 (f) *PROCEDURES AND LIMITATIONS ON EMERGENCY*
23 *CONTROLS.*—

24 (1) *CESSATION OF EMERGENCY CONTROLS.*—

1 (A) *IN GENERAL.*—Controls imposed under
2 this section on commodities, technology, or other
3 information shall cease to be in effect imme-
4 diately upon—

5 (i) the imposition of similarly restric-
6 tive controls under section 105 on the same
7 commodities, technology, or information to
8 the country or end user, or for the end use,
9 with respect to which the controls were im-
10 posed under this section; or

11 (ii) the imposition of an embargo,
12 under the International Emergency Eco-
13 nomic Powers Act, the Trading with the
14 Enemy Act, or other provision of law, on
15 exports to, and imports from the country
16 with respect to which the controls were im-
17 posed under this section.

18 (B) *CONVERSION TO MULTILATERAL AGREE-*
19 *MENTS.*—If the President imposes controls on
20 commodities, technology, or other information to
21 a country or end user, or for an end use, under
22 this section in order to fulfill obligations of the
23 United States under resolutions of the United
24 Nations or under a treaty to which the United
25 States is a party, any equivalent controls im-

1 posed prior thereto under this section on the
2 same commodities, technology, or information to
3 the same country or end user, or for the same
4 end use, shall immediately cease to be in effect.

5 (2) *LIMITATIONS ON REIMPOSITION.*—Controls
6 which have ceased to be in effect under subsection
7 (a)(3), and which have not been extended under sub-
8 section (g), may not be reimposed by the President
9 under subsection (a) for a period of 6 months begin-
10 ning on the date on which the original controls ex-
11 pire, unless the President determines that reimposi-
12 tion of controls is warranted due to significant
13 changes in circumstances since the expiration of the
14 controls.

15 (g) *EXTENSION OF EMERGENCY CONTROLS.*—

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

1 (A) contain determinations by the Presi-
2 dent—

3 (i) that the controls are likely to con-
4 tinue to make substantial progress toward
5 achieving the intended purpose of—

6 (I) changing, modifying, or con-
7 straining the undesirable conduct or
8 policies of the country to which the
9 controls apply;

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

12 (III) establishing multilateral co-
13 operation to deny the country access to
14 controlled items from all sources; or

15 (IV) denying exports or assistance
16 that significantly contributes to the
17 proliferation of weapons of mass de-
18 struction or other important military
19 capabilities, terrorism, or human
20 rights abuses;

21 (ii) that the impact of the controls has
22 been compatible with the foreign policy ob-
23 jectives of the United States and with over-
24 all United States policy toward the con-
25 trolled country;

1 (iii) that the reaction of other countries
2 to the imposition or expansion of the con-
3 trols by the United States has not rendered
4 the controls ineffective in achieving the in-
5 tended purpose and have not been counter-
6 productive to United States policy interests;

7 (iv) that the effect of the controls on the
8 export performance of the United States, the
9 competitive position of the United States as
10 a supplier of items, and the economic well-
11 being of individual United States compa-
12 nies and their employees and communities
13 has not exceeded the benefit to the United
14 States foreign policy, nonproliferation, or
15 national security interests; and

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

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

24 (h) *EFFECT ON OTHER AUTHORITY.*—

1 (1) *EMBARGO AUTHORITY.*—*Nothing in this sec-*
2 *tion shall be construed to limit the authority of the*
3 *President to impose an embargo on exports to, and*
4 *imports from, a specific country under the Inter-*
5 *national Emergency Economic Powers Act, the Trad-*
6 *ing with the Enemy Act, or other provision of law*
7 *(other than this title). In any case in which the Presi-*
8 *dent exercises any such authority to impose an em-*
9 *bargo, the requirements of this section shall not apply*
10 *for so long as such embargo is in effect.*

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

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

1 *that date, and are being exercised with respect to such*
2 *country on such date of enactment.*

3 *(i) COUNTRIES SUPPORTING INTERNATIONAL TERROR-*
4 *ISM.—*

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

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

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

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

23 *(iii) of any commodity or technology which*
24 *could make a significant contribution to the*
25 *military potential of a country described in sub-*

1 *paragraph (A), including its military logistics*
2 *capability, or could enhance the ability of such*
3 *country to support acts of international terror-*
4 *ism,*
5 *other than food, medicine, or medical supplies that*
6 *the President determines will be used only for human-*
7 *itarian purposes. An individual validated license*
8 *shall be required for the export under this subpara-*
9 *graph of any such food, medicine, or medical sup-*
10 *plies.*

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

13 *(D)(i) The Secretary shall maintain a list of*
14 *commodities and technology described in subpara-*
15 *graph (B)(iii). The Secretary shall review the list of*
16 *items on that list at least annually. At the conclusion*
17 *of the review, the Secretary shall determine whether*
18 *to remove items from the list, change the specifica-*
19 *tions of items on the list, or add items to the list, in*
20 *order to ensure that the items on the list meet the re-*
21 *quirements of subparagraph (B)(iii).*

22 *(ii) The procedures set forth in subparagraphs*
23 *(A) and (C) of section 105(g)(3) shall apply to re-*
24 *views under clause (i) of the list of items described in*
25 *subparagraph (B)(iii) to the same extent as such sec-*

1 *tion applies to reviews of the control list under section*
2 *105(g).*

3 (2) *NOTIFICATION OF CONGRESS OF LICENSES*
4 *ISSUED.—The Secretary and the Secretary of State*
5 *shall notify the Speaker of the House of Representa-*
6 *tives and the Committee on Banking, Housing, and*
7 *Urban Affairs and the Committee on Foreign Rela-*
8 *tions of the Senate at least 30 days before issuing any*
9 *license under this title for exports to a country the*
10 *government of which the Secretary of State has deter-*
11 *mined has repeatedly provided support for acts of*
12 *international terrorism.*

13 (3) *PUBLICATION OF DETERMINATIONS.—Each*
14 *determination of the Secretary of State under para-*
15 *graph (1)(A) shall be published in the Federal Reg-*
16 *ister.*

17 (4) *RESCISSION OF DETERMINATIONS.—A deter-*
18 *mination made by the Secretary of State under para-*
19 *graph (1)(A) may not be rescinded unless the Presi-*
20 *dent submits to the Speaker of the House of Rep-*
21 *resentatives and the chairman of the Committee on*
22 *Banking, Housing, and Urban Affairs and the chair-*
23 *man of the Committee on Foreign Relations of the*
24 *Senate—*

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

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

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

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

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

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

18 (ii) the government concerned has pro-
19 vided assurances that it will not support
20 acts of international terrorism in the future.

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

1 (A) *the President determines that the trans-*
2 *action is essential to the national security inter-*
3 *ests of the United States; and*

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

6 (i) *consults with the Committee on*
7 *International Relations of the House of*
8 *Representatives and the Committee on*
9 *Banking, Housing, and Urban Affairs of*
10 *the Senate regarding the proposed trans-*
11 *action; and*

12 (ii) *submits to the Speaker of the*
13 *House of Representatives and the chairman*
14 *of the Committee on Banking, Housing, and*
15 *Urban Affairs of the Senate a report con-*
16 *taining—*

17 (I) *the name of any country in-*
18 *volved in the proposed transaction, the*
19 *identity of any recipient of the items*
20 *to be provided pursuant to the pro-*
21 *posed transaction, and the anticipated*
22 *use of those items;*

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

1 *tual sale price at each step in the*
2 *transaction;*

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

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

11 *(V) the name of any foreign gov-*
12 *ernments involved in the proposed*
13 *transaction.*

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

17 *(6) MULTILATERAL REGIMES.—The Secretary of*
18 *State, in consultation with appropriate departments*
19 *and agencies, shall seek support by other countries*
20 *and by effective multilateral control regimes of con-*
21 *trols imposed by this subsection.*

22 *(7) EFFECT ON OTHER LAWS.—The provisions of*
23 *this subsection do not affect any other provision of*
24 *law to the extent such other provision imposes greater*
25 *restrictions on exports to any country the government*

1 *of which the Secretary of State has determined has re-*
2 *peatedly provided support for acts of international*
3 *terrorism than are imposed under this subsection.*

4 *(j) CRIME CONTROL INSTRUMENTS.—*

5 *(1) LICENSE REQUIRED.—Crime control and de-*
6 *tection instruments and equipment shall be approved*
7 *for export by the Secretary only pursuant to an ex-*
8 *port license. Paragraphs (3)(A) and (4) of subsection*
9 *(a) shall not apply to the export controls imposed by*
10 *this subsection.*

11 *(2) CONCURRENCE OF SECRETARY OF STATE.—*

12 *(A) ITEMS ON CONTROL INDEX.—Any deter-*
13 *mination of the Secretary of what commodities*
14 *or technology shall be included on the control*
15 *index as a result of the export restrictions im-*
16 *posed by this subsection shall be made with the*
17 *concurrence of the Secretary of State.*

18 *(B) ACTION ON LICENSE APPLICATION.—*

19 *Any determination of the Secretary to approve*
20 *or deny an export license application to export*
21 *crime control or detection instruments or equip-*
22 *ment shall be made with the concurrence of the*
23 *Secretary of State.*

24 *(3) DISPUTE RESOLUTION.—If the Secretary of*
25 *State does not agree with the Secretary with respect*

1 to any determination under paragraph (2), the Sec-
2 retary of State shall refer the matter to the President
3 for resolution.

4 (4) *EXCEPTIONS.*—The provisions of this sub-
5 section shall not apply with respect to exports to
6 countries which are members of the North Atlantic
7 Treaty Organization or to Japan, Australia, or New
8 Zealand, or to such other countries as the President
9 shall designate consistent with the purposes of this
10 subsection and section 502B of the Foreign Assistance
11 Act of 1961.

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

17 (l) *EFFECT ON OTHER LAWS.*—None of the prohibi-
18 tions contained in this section shall apply to any trans-
19 action subject to the reporting requirements of title V of the
20 National Security Act of 1947.

21 **SEC. 107. SHORT SUPPLY CONTROLS.**

22 (a) *AUTHORITY.*—

23 (1) *IN GENERAL.*—In order to carry out the pol-
24 icy set forth in section 103(4), the President may pro-
25 hibit or curtail the export of any commodities subject

1 to the jurisdiction of the United States or exported by
2 any person subject to the jurisdiction of the United
3 States. In curtailing exports to carry out the policy
4 set forth in section 103(4), the President shall allocate
5 a portion of export licenses on the basis of factors
6 other than a prior history of exportation. Such factors
7 shall include the extent to which a country engages in
8 equitable trade practices with respect to United States
9 commodities and treats the United States equitably in
10 times of short supply.

11 (2) *PUBLIC PARTICIPATION.*—Upon imposing
12 quantitative restrictions on exports of any commod-
13 ities to carry out the policy set forth in section
14 103(4), the Secretary shall include in a notice pub-
15 lished in the Federal Register with respect to such re-
16 strictions an invitation to all interested parties to
17 submit written comments within 15 days after the
18 date of publication on the impact of such restrictions
19 and the method of licensing used to implement them.

20 (3) *LICENSE FEES.*—In imposing export controls
21 under this section, the President's authority shall in-
22 clude, but not be limited to, the imposition of export
23 license fees.

24 (b) *MONITORING.*—

1 (1) *IN GENERAL.*—*In order to carry out the pol-*
2 *icy set forth in section 103(4), the Secretary shall*
3 *monitor exports, and contracts for exports, of any*
4 *commodity when the volume of such exports in rela-*
5 *tion to domestic supply contributes, or may contrib-*
6 *ute, to an increase in domestic prices or a domestic*
7 *shortage, and such price increase or shortage has, or*
8 *may have, a serious adverse impact on the economy*
9 *or any sector thereof. Any such monitoring shall com-*
10 *mence at a time adequate to assure that the monitor-*
11 *ing will result in a data base sufficient to enable poli-*
12 *cies to be developed, in accordance with section*
13 *103(4), to mitigate a short supply situation or serious*
14 *inflationary price rise or, if export controls are need-*
15 *ed, to permit imposition of such controls in a timely*
16 *manner. Information which the Secretary requires to*
17 *be furnished in effecting such monitoring shall be con-*
18 *fidential, except as provided in paragraph (2).*

19 (2) *REPORTS ON MONITORING.*—*The results of*
20 *monitoring under paragraph (1) shall, to the extent*
21 *practicable, be aggregated and included in weekly re-*
22 *ports setting forth, with respect to each item mon-*
23 *itored, actual and anticipated exports, the destination*
24 *by country, and the domestic and worldwide price,*
25 *supply, and demand. Such reports may be made*

1 *monthly if the Secretary determines that there is in-*
2 *sufficient information to justify weekly reports.*

3 (3) *CONSULTATION WITH SECRETARY OF EN-*
4 *ERGY.—The Secretary shall consult with the Sec-*
5 *retary of Energy to determine whether monitoring or*
6 *export controls under this section are warranted with*
7 *respect to exports of facilities, machinery, or equip-*
8 *ment normally and principally used, or intended to*
9 *be used, in the production, conversion, or transpor-*
10 *tation of fuels and energy (except nuclear energy), in-*
11 *cluding, but not limited to—*

12 (A) *drilling rigs, platforms, and equipment;*

13 (B) *petroleum refineries, and natural gas*
14 *processing, liquefaction, and gasification plants;*

15 (C) *facilities for production of synthetic*
16 *natural gas or synthetic crude oil;*

17 (D) *oil and gas pipelines, pumping sta-*
18 *tions, and associated equipment; and*

19 (E) *vessels for transporting oil, gas, coal,*
20 *and other fuels.*

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

23 (1) *IN GENERAL.—(A) Any entity, including a*
24 *trade association, firm, or certified or recognized*
25 *union or group of workers, that is representative of*

1 *an industry or a substantial segment of an industry*
2 *that processes metallic materials capable of being re-*
3 *cycled may transmit a written petition to the Sec-*
4 *retary requesting the monitoring of exports or the im-*
5 *position of export controls, or both, with respect to*
6 *any such material, in order to carry out the policy*
7 *set forth in section 103(4).*

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

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

18 *(A) include the name of the material that is*
19 *the subject to the petition;*

20 *(B) include the schedule B number of the*
21 *material as set forth in the Statistical Classifica-*
22 *tion of Domestic and Foreign Commodities Ex-*
23 *ported from the United States;*

24 *(C) indicate whether the petition is request-*
25 *ing that controls or monitoring, or both, be im-*

1 posed with respect to the exportation of such ma-
2 terial; and

3 (D) provide that interested persons shall
4 have a period of 30 days beginning on the date
5 on which the notice is published to submit to the
6 Secretary written data, views, or arguments,
7 with or without opportunity for oral presen-
8 tation, with respect to the matter involved.

9 At the request of the petitioner or any other entity de-
10 scribed in paragraph (1)(A) with respect to the mate-
11 rial which is the subject of the petition, or at the re-
12 quest of any entity representative of producers or ex-
13 porters of such material, the Secretary shall conduct
14 public hearings with respect to the subject of the peti-
15 tion, in which case the 30-day period may be ex-
16 tended to 45 days.

17 (3) DETERMINATION OF MONITORING OR CON-
18 TROLS.—(A) Within 45 days after the end of the 30-
19 or 45-day period described in paragraph (2), as the
20 case may be, the Secretary shall determine whether to
21 impose monitoring or controls, or both, on the export
22 of the material that is the subject of the petition in
23 order to carry out the policy set forth in section
24 103(4). In making such determination, the Secretary
25 shall determine whether—

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

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

8 (iii) exports of such material are as impor-
9 tant as any other cause of a domestic price in-
10 crease or shortage relative to demand found
11 under clause (ii);

12 (iv) a domestic price increase or shortage
13 relative to demand found under clause (ii) has
14 significantly adversely affected or may signifi-
15 cantly adversely affect the national economy or
16 any sector thereof, including a domestic indus-
17 try; and

18 (v) monitoring or controls, or both, are nec-
19 essary in order to carry out the policy set forth
20 in section 103(4).

21 (B) The Secretary shall publish in the Federal
22 Register a detailed statement of the reasons for the
23 Secretary's determination under subparagraph (A) of
24 whether to impose monitoring or controls, or both, in-

1 *cluding the findings of fact in support of that deter-*
2 *mination.*

3 (4) *PUBLICATION OF REGULATIONS.*—*Within 15*
4 *days after making a determination under paragraph*
5 *(3) to impose monitoring or controls on the export of*
6 *a material, the Secretary shall publish in the Federal*
7 *Register proposed regulations with respect to such*
8 *monitoring or controls. Within 30 days after the pub-*
9 *lication of such proposed regulations, and after con-*
10 *sidering any public comments on the proposed regula-*
11 *tions, the Secretary shall publish and implement final*
12 *regulations with respect to such monitoring or con-*
13 *trols.*

14 (5) *CONSOLIDATION OF PETITIONS.*—*For pur-*
15 *poses of publishing notices in the Federal Register*
16 *and scheduling public hearings pursuant to this sub-*
17 *section, the Secretary may consolidate petitions, and*
18 *responses to such petitions, which involve the same or*
19 *related materials.*

20 (6) *SUBSEQUENT PETITIONS ON SAME MATE-*
21 *RIAL.*—*If a petition with respect to a particular ma-*
22 *terial or group of materials has been considered in ac-*
23 *cordance with all the procedures described in this sub-*
24 *section, the Secretary may determine, in the absence*
25 *of significantly changed circumstances, that any other*

1 *petition with respect to the same material or group*
2 *of materials which is filed within 6 months after the*
3 *consideration of the prior petition has been completed*
4 *does not merit complete consideration under this sub-*
5 *section.*

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

13 (8) *TEMPORARY CONTROLS.—The Secretary may*
14 *impose monitoring or controls, on a temporary basis,*
15 *on the export of a metallic material after a petition*
16 *is filed under paragraph (1)(A) with respect to that*
17 *material but before the Secretary makes a determina-*
18 *tion under paragraph (3) with respect to that mate-*
19 *rial only if—*

20 (A) *the failure to take such temporary ac-*
21 *tions would result in irreparable harm to the en-*
22 *tity filing the petition, or to the national econ-*
23 *omy or segment thereof, including a domestic in-*
24 *dustry, and*

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

4 (9) OTHER AUTHORITY NOT AFFECTED.—The
5 authority under this subsection shall not be construed
6 to affect the authority of the Secretary under any
7 other provision of this title, except that if the Sec-
8 retary determines, on the Secretary's own initiative,
9 to impose monitoring or controls, or both, on the ex-
10 port of metallic materials capable of being recycled,
11 under the authority of this section, the Secretary shall
12 publish the reasons for such action in accordance with
13 paragraphs (3) (A) and (B).

14 (10) SUBMISSION AND CONSIDERATION OF ADDI-
15 TIONAL INFORMATION.—Nothing contained in this
16 subsection shall be construed to preclude submission
17 on a confidential basis to the Secretary of informa-
18 tion relevant to a decision to impose or remove mon-
19 itoring or controls under the authority of this title, or
20 to preclude consideration of such information by the
21 Secretary in reaching decisions required under this
22 subsection. The provisions of this paragraph shall not
23 be construed to affect the applicability of section
24 552(b) of title 5, United States Code.

25 (d) AGRICULTURAL COMMODITIES.—

1 (1) *APPROVAL OF CONTROLS BY SECRETARY OF*
2 *AGRICULTURE.*—*The authority conferred by this sec-*
3 *tion shall not be exercised with respect to any agricul-*
4 *tural commodity, including fats and oils, forest prod-*
5 *ucts, or animal hides or skins, without the approval*
6 *of the Secretary of Agriculture. The Secretary of Agri-*
7 *culture shall not approve the exercise of such author-*
8 *ity with respect to any such commodity during any*
9 *period for which the supply of such commodity is de-*
10 *termined by the Secretary of Agriculture to be in ex-*
11 *cess of the requirements of the domestic economy, ex-*
12 *cept to the extent the President determines that the*
13 *controls on such agricultural commodities are also*
14 *imposed under section 106. The Secretary of Agri-*
15 *culture shall, by exercising the authority which the*
16 *Secretary of Agriculture has under other applicable*
17 *provisions of law, collect data with respect to export*
18 *sales of animal hides and skins.*

19 (2) *PROTECTION OF STORED COMMODITIES FROM*
20 *FUTURE CONTROLS.*—*Upon approval of the Secretary,*
21 *in consultation with the Secretary of Agriculture, ag-*
22 *ricultural commodities purchased by or for use in a*
23 *foreign country may remain in the United States for*
24 *export at a later date free from any quantitative lim-*
25 *itations on export which may be imposed to carry out*

1 *the policy set forth in section 103(4) subsequent to*
2 *such approval. The Secretary may not grant such ap-*
3 *proval unless the Secretary receives adequate assur-*
4 *ance and, in conjunction with the Secretary of Agri-*
5 *culture, finds—*

6 *(A) that such commodities will eventually*
7 *be exported,*

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

12 *(C) that storage of such commodities in the*
13 *United States will not unduly limit the space*
14 *available for storage of domestically owned com-*
15 *modities, and*

16 *(D) that the purpose of such storage is to es-*
17 *tablish a reserve of such commodities for later*
18 *use, not including resale to or use by another*
19 *country.*

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

22 *(3) PROCEDURES FOR IMPOSING CONTROLS.—*

23 *(A) If the President imposes export controls on any*
24 *agricultural commodity under section 106 or this sec-*
25 *tion, the President shall immediately transmit a re-*

1 *port on such action to the Congress, setting forth the*
2 *reasons for the controls in detail and specifying the*
3 *period of time, which may not exceed 1 year, that the*
4 *controls are proposed to be in effect. If the Congress,*
5 *within 60 days after the date of the receipt of the re-*
6 *port, adopts a joint resolution pursuant to paragraph*
7 *(4) approving the imposition of the export controls,*
8 *then such controls shall remain in effect for the period*
9 *specified in the report, or until terminated by the*
10 *President, whichever occurs first. If the Congress,*
11 *within 60 days after the date of its receipt of such re-*
12 *port, fails to adopt a joint resolution approving such*
13 *controls, then such controls shall cease to be effective*
14 *upon the expiration of that 60-day period.*

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

17 *(i) which are extended under this title if the*
18 *controls, when imposed, were approved by the*
19 *Congress under subparagraph (A) and para-*
20 *graph (4); or*

21 *(ii) which are imposed with respect to a*
22 *country as part of the prohibition or curtailment*
23 *of all exports to that country.*

24 *(4) EXPEDITED PROCEDURES.—(A) For pur-*
25 *poses of this paragraph, the term “joint resolution”*

1 *means only a joint resolution the matter after the re-*
2 *solving clause of which is as follows: “That pursuant*
3 *to section 107(d)(3) of the Export Administration Act*
4 *of 1996, the President may impose export controls as*
5 *specified in the report submitted to the Congress on*
6 *_____.”, with the blank space being filled with the*
7 *appropriate date.*

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

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

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

23 (E) *In the case of a joint resolution described in*
24 *subparagraph (A), if, before the passage by one House*
25 *of a joint resolution of that House, that House re-*

1 *ceives a resolution with respect to the same matter*
2 *from the other House, then—*

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

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

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

16 *(e) BARTER AGREEMENTS.—*

17 *(1) EXEMPTION FROM CONTROLS.—The expor-*
18 *tation pursuant to a barter agreement of any com-*
19 *modities which may lawfully be exported from the*
20 *United States, for any commodities which may law-*
21 *fully be imported into the United States, may be ex-*
22 *empted, in accordance with paragraph (2), from any*
23 *quantitative limitation on exports (other than any re-*
24 *porting requirement) imposed to carry out the policy*
25 *set forth in section 103(4).*

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

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

8 (i) *the average annual quantity of the*
9 *commodities to be exported pursuant to the*
10 *barter agreement will not be required to sat-*
11 *isfy the average amount of such commod-*
12 *ities estimated to be required annually by*
13 *the domestic economy and will be surplus*
14 *thereto; and*

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

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

24 (3) *DEFINITION.*—*For purposes of this sub-*
25 *section, the term “barter agreement” means any*

1 *agreement which is made for the exchange, without*
2 *monetary consideration, of any commodities produced*
3 *in the United States for any commodities produced*
4 *outside of the United States.*

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

8 (f) *EFFECT OF CONTROLS ON EXISTING CONTRACTS.*—

9 (1) *WESTERN RED CEDAR.*—*Any export controls*
10 *imposed under section 7(i) of the Export Administra-*
11 *tion Act of 1979 or this section shall not affect any*
12 *contract to harvest unprocessed western red cedar*
13 *from State lands which was entered into before Octo-*
14 *ber 1, 1979, and the performance of which would*
15 *make the red cedar available for export.*

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

1 *which involves the export of commodities or tech-*
2 *nology.*

3 *(g) OIL EXPORTS FOR USE BY UNITED STATES MILI-*
4 *TARY FACILITIES.—For purposes of this section, and for*
5 *purposes of any export controls imposed under this title,*
6 *shipments of crude oil, refined petroleum products, or par-*
7 *tially refined petroleum products from the United States*
8 *for use by the Department of Defense or United States-sup-*
9 *ported installations or facilities shall not be considered to*
10 *be exports.*

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

12 *(a) PROHIBITIONS AND EXCEPTIONS.—*

13 *(1) PROHIBITIONS.—In order to carry out the*
14 *policies set forth in section 103(9), the President shall*
15 *issue regulations prohibiting any United States per-*
16 *son, with respect to that person's activities in the*
17 *interstate or foreign commerce of the United States,*
18 *from taking or knowingly agreeing to take any of the*
19 *following actions with intent to comply with, further,*
20 *or support any boycott fostered or imposed by a for-*
21 *foreign country against a country which is friendly to*
22 *the United States and which is not itself the object of*
23 *any form of boycott pursuant to United States law or*
24 *regulation:*

1 (A) *Refusing, or requiring any other person*
2 *to refuse, to do business with or in the boycotted*
3 *country, with any business concern organized*
4 *under the laws of the boycotted country, with*
5 *any national or resident of the boycotted coun-*
6 *try, or with any other person, pursuant to an*
7 *agreement with, a requirement of, or a request*
8 *from or on behalf of the boycotting country. The*
9 *mere absence of a business relationship with or*
10 *in the boycotted country, with any business con-*
11 *cern organized under the laws of the boycotted*
12 *country, with any national or resident of the*
13 *boycotted country, or with any other person, does*
14 *not indicate the existence of the intent required*
15 *to establish a violation of regulations issued to*
16 *carry out this subparagraph.*

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

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

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

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

18 *(E) Furnishing information about whether*
19 *any person is a member of, has made a contribu-*
20 *tion to, or is otherwise associated with or in-*
21 *involved in the activities of any charitable or fra-*
22 *ternal organization which supports the boycotted*
23 *country.*

24 *(F) Paying, honoring, confirming, or other-*
25 *wise implementing a letter of credit which con-*

1 *tains any condition or requirement compliance*
2 *with which is prohibited by regulations issued*
3 *pursuant to this paragraph, and no United*
4 *States person shall, as a result of the application*
5 *of this paragraph, be obligated to pay or other-*
6 *wise honor or implement such letter of credit.*

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

9 (A) *complying or agreeing to comply with*
10 *requirements—*

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

18 (ii) *prohibiting the shipment of com-*
19 *modities to the boycotting country on a car-*
20 *rier of the boycotted country, or by a route*
21 *other than that prescribed by the boycotting*
22 *country or the recipient of the shipment;*

23 (B) *complying or agreeing to comply with*
24 *import and shipping document requirements*
25 *with respect to the country of origin, the name*

1 *of the carrier and route of shipment, the name*
2 *of the supplier of the shipment, or the name of*
3 *the provider of other services, except that no in-*
4 *formation knowingly furnished or conveyed in*
5 *response to such requirements may be stated in*
6 *negative, blacklisting, or similar exclusionary*
7 *terms, other than with respect to carriers or*
8 *route of shipment as may be permitted by such*
9 *regulations in order to comply with precaution-*
10 *ary requirements protecting against war risks*
11 *and confiscation;*

12 *(C) complying or agreeing to comply in the*
13 *normal course of business with the unilateral*
14 *and specific selection by a boycotting country, or*
15 *national or resident thereof, of carriers, insurers,*
16 *suppliers of services to be performed within the*
17 *boycotting country, or specific commodities*
18 *which, in the normal course of business, are*
19 *identifiable by source when imported into the*
20 *boycotting country;*

21 *(D) complying or agreeing to comply with*
22 *export requirements of the boycotting country re-*
23 *lating to shipments or transshipment of exports*
24 *to the boycotted country, to any business concern*
25 *of or organized under the laws of the boycotted*

1 country, or to any national or resident of the
2 boycotted country;

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

11 (F) compliance by a United States person
12 resident in a foreign country or agreement by
13 such person to comply with the laws of the coun-
14 try with respect to such person's activities exclu-
15 sively therein, and such regulations may contain
16 exceptions for such resident complying with the
17 laws or regulations of the foreign country govern-
18 ing imports into such country of trademarked,
19 trade named, or similarly specifically identifi-
20 able products, or components of products for such
21 person's own use, including the performance of
22 contractual services within that country, as may
23 be defined by such regulations.

24 (3) *LIMITATION ON EXCEPTIONS.*—Regulations
25 issued pursuant to paragraphs (2)(C) and (2)(F)

1 shall not provide exceptions from paragraphs (1)(B)
2 and (1)(C).

3 (4) *ANTITRUST AND CIVIL RIGHTS LAWS NOT AF-*
4 *FECTED.*—*Nothing in the subsection may be construed*
5 *to supersede or limit the operation of the antitrust or*
6 *civil rights laws of the United States.*

7 (5) *EVASION.*—*This section shall apply to any*
8 *transaction or activity undertaken, by or through a*
9 *United States person or any other person, with intent*
10 *to evade the provisions of this section as implemented*
11 *by the regulations issued pursuant to this subsection,*
12 *and such regulations shall expressly provide that the*
13 *exceptions set forth in paragraph (2) shall not permit*
14 *activities or agreements (expressed or implied by a*
15 *course of conduct, including a pattern of responses)*
16 *otherwise prohibited, which are not within the intent*
17 *of such exceptions.*

18 (b) *ADDITIONAL REGULATIONS AND REPORTS.*—

19 (1) *REGULATIONS.*—*In addition to the regula-*
20 *tions issued pursuant to subsection (a), regulations is-*
21 *ssued under section 106 shall implement the policies*
22 *set forth in section 103(9).*

23 (2) *REPORTS BY UNITED STATES PERSONS.*—
24 *Such regulations shall require that any United States*
25 *person receiving a request for the furnishing of infor-*

1 *mation, the entering into or implementing of agree-*
2 *ments, or the taking of any other action referred to*
3 *in section 103(9) shall report that fact to the Sec-*
4 *retary, together with such other information concern-*
5 *ing such request as the Secretary may require, for*
6 *such action as the Secretary considers appropriate for*
7 *carrying out the policies of that section. Such person*
8 *shall also report to the Secretary whether such person*
9 *intends to comply and whether such person has com-*
10 *plied with such request. Any report filed pursuant to*
11 *this paragraph shall be made available promptly for*
12 *public inspection and copying, except that informa-*
13 *tion regarding the quantity, description, and value of*
14 *any commodities or technology to which such report*
15 *relates may be kept confidential if the Secretary de-*
16 *termines that disclosure thereof would place the Unit-*
17 *ed States person involved at a competitive disadvan-*
18 *tage. The Secretary shall periodically transmit sum-*
19 *maries of the information contained in such reports*
20 *to the Secretary of State for such action as the Sec-*
21 *retary of State, in consultation with the Secretary,*
22 *considers appropriate for carrying out the policies set*
23 *forth in section 103(9).*

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

4 (1) *is a law, rule, or regulation of any of the sev-*
5 *eral States or the District of Columbia, or any of the*
6 *territories or possessions of the United States, or of*
7 *any governmental subdivision thereof; and*

8 (2) *pertains to participation in, compliance*
9 *with, implementation of, or the furnishing of infor-*
10 *mation regarding restrictive trade practices or boy-*
11 *cotts fostered or imposed by foreign countries against*
12 *other countries.*

13 **SEC. 109. PROCEDURES FOR PROCESSING EXPORT LICENSE**
14 **APPLICATIONS; OTHER INQUIRIES.**

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

16 (1) *IN GENERAL.*—*All export license applications*
17 *required under this title shall be submitted by the ap-*
18 *plicant to the Secretary. Subject to the procedures*
19 *provided in this section—*

20 (A) *if referral of an application to other de-*
21 *partments or agencies for review is not required,*
22 *the Secretary shall, within 9 days after receiving*
23 *the application, issue a license or notify the ap-*
24 *plicant of the intent to deny the application; or*

1 (B) if referral of the application to other de-
2 partments or agencies for review is required, the
3 Secretary shall, within 30 days after referral of
4 any such application to other departments or
5 agencies—

6 (i) issue a license;

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

9 (iii) ensure that the application is sub-
10 ject to the interagency resolution process set
11 forth in subsection (d).

12 (2) *RECOMMENDATIONS OF OTHER AGENCIES.*—

13 *The Secretary shall seek information and rec-*
14 *ommendations from the Department of Defense and*
15 *other departments and agencies of the United States*
16 *that are identified by the President as being con-*
17 *cerned with factors having an important bearing on*
18 *exports administered under this title. Such depart-*
19 *ments and agencies shall cooperate fully and prompt-*
20 *ly in rendering information and recommendations.*

21 (3) *PROCEDURES.*—*In guidance and regulations*

22 *that implement this section, the Secretary shall de-*
23 *scribe the procedures required by this section, the re-*
24 *sponsibilities of the Secretary and of other depart-*
25 *ments and agencies in reviewing applications, the*

1 *rights of the applicant, and other relevant matters af-*
2 *fecting the review of license applications.*

3 (4) *CALCULATION OF PROCESSING TIMES.—In*
4 *calculating the processing times set forth in this sec-*
5 *tion, the Secretary shall use calendar days, except*
6 *that if the final day for a required action falls on a*
7 *weekend or holiday, that action shall be taken no*
8 *later than the following business day.*

9 (5) *RELIABILITY OF PARTIES.—In reviewing ap-*
10 *plications for export licenses, the Secretary may in*
11 *each case consider the reliability of the parties to the*
12 *proposed export. In making such an evaluation, the*
13 *Secretary may consider all sources of information, in-*
14 *cluding results of other United States Government ac-*
15 *tions, such as actions by the Committee on Foreign*
16 *Investment in the United States, investigations of di-*
17 *versions from authorized end uses or end users, and*
18 *intelligence information, except that the consideration*
19 *of such information in connection with the evaluation*
20 *of the reliability of parties shall not authorize the di-*
21 *rect or indirect disclosure of classified information or*
22 *sources and methods of gathering classified informa-*
23 *tion and shall not confer a right on private parties*
24 *to have access to classified information.*

25 (b) *INITIAL SCREENING.—*

1 (1) *UPON RECEIPT OF APPLICATION.*—Upon re-
2 *ceipt of an export license application, the Secretary*
3 *shall enter and maintain in the records of the Depart-*
4 *ment of Commerce information regarding the receipt*
5 *and status of the application.*

6 (2) *INITIAL PROCEDURES.*—Promptly upon re-
7 *ceiving any license application, the Secretary shall—*

8 (A) *contact the applicant if the application*
9 *is improperly completed or if additional infor-*
10 *mation is required, and hold the application for*
11 *a reasonable time while the applicant provides*
12 *the necessary corrections or information, and*
13 *such time shall not be included in calculating the*
14 *time periods prescribed in this section;*

15 (B) *refer the application, including all in-*
16 *formation submitted by the applicant, and all*
17 *necessary recommendations and analyses by the*
18 *Secretary to the Department of Defense and*
19 *other departments and agencies identified by the*
20 *President under subsection (a)(2); and*

21 (C) *ensure that the classification stated on*
22 *the application for the export items is correct, re-*
23 *turn the application if a license is not required,*
24 *and, if referral to other departments or agencies*
25 *is not required, grant the application or notify*

1 *the applicant of the Secretary's intent to deny*
2 *the application.*

3 *In the event that the head of a department or agency*
4 *determines that certain types of applications need not*
5 *be referred to the department or agency, such depart-*
6 *ment or agency head shall notify the Secretary of the*
7 *specific types of such applications that the depart-*
8 *ment or agency does not wish to review.*

9 (c) *ACTION BY OTHER DEPARTMENTS AND AGEN-*
10 *CIES.—*

11 (1) *REFERRAL TO OTHER AGENCIES.—The Sec-*
12 *retary shall promptly refer license applications to de-*
13 *partments and agencies under subsection (b) to make*
14 *recommendations and provide information to the Sec-*
15 *retary.*

16 (2) *RESPONSIBILITY OF REFERRAL AGENCIES.—*
17 *The Department of Defense and other reviewing de-*
18 *partments and agencies shall organize their resources*
19 *and units to plan for the prompt and expeditious in-*
20 *ternal dissemination of export license applications, if*
21 *necessary, so as to avoid delays in responding to the*
22 *referral of applications.*

23 (3) *ADDITIONAL INFORMATION REQUESTS.—*
24 *Each department or agency to which a license appli-*
25 *cation is referred shall specify to the Secretary any*

1 *information that is not in the application that would*
2 *be required for the department or agency to make a*
3 *determination with respect to the application, and the*
4 *Secretary shall promptly request such information*
5 *from the applicant. The time that may elapse between*
6 *the date the information is requested by that depart-*
7 *ment or agency and the date the information is re-*
8 *ceived by that department or agency shall not be in-*
9 *cluded in calculating the time periods prescribed in*
10 *this section.*

11 *(4) TIME PERIOD FOR ACTION BY REFERRAL DE-*
12 *PARTMENTS AND AGENCIES.—Within 30 days after*
13 *receiving a referral of an application under this sec-*
14 *tion, the department or agency concerned shall pro-*
15 *vide the Secretary with a recommendation either to*
16 *approve the license or to deny the license. A rec-*
17 *ommendation that the Secretary deny a license shall*
18 *include a statement of reasons for the recommenda-*
19 *tion that are consistent with the provisions of this*
20 *title, and shall cite both the specific statutory and the*
21 *regulatory basis for the recommendation. A depart-*
22 *ment or agency that fails to provide a recommenda-*
23 *tion in accordance with this paragraph within that*
24 *30-day period shall be deemed to have no objection to*
25 *the decision of the Secretary on the application.*

1 (d) *INTERAGENCY RESOLUTION.*—

2 (1) *INITIAL RESOLUTION.*—*The Secretary shall*
3 *establish, select the chairperson of, and determine pro-*
4 *cedures for an interagency committee to review ini-*
5 *tially all license applications on which the depart-*
6 *ments and agencies reviewing the applications under*
7 *this section are not in agreement. The chairperson of*
8 *such committee shall consider the recommendations of*
9 *the departments and agencies reviewing a particular*
10 *application and inform them of his or her decision on*
11 *the application, which may include a decision that*
12 *the particular application requires further consider-*
13 *ation under the procedures established under para-*
14 *graph (2). An application may also be referred to fur-*
15 *ther consideration under the procedures established*
16 *under paragraph (2) if an appeal from the chair-*
17 *person’s decision is made in writing by an official of*
18 *the department or agency concerned who is appointed*
19 *by the President by and with the advice and consent*
20 *of the Senate, or an officer properly acting in such*
21 *capacity.*

22 (2) *FURTHER RESOLUTION.*—*The President shall*
23 *establish a process for the further review and deter-*
24 *mination of export license applications pursuant to a*
25 *decision by the chairperson under paragraph (1) or*

1 *an appeal by a department or agency under para-*
2 *graph (1). Such process shall—*

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

5 *(B) ensure that license applications are re-*
6 *solved or referred to the President no later than*
7 *90 days after the date the license application is*
8 *initially received by the Secretary;*

9 *(C) provide that a department or agency*
10 *dissenting from the decision reached under sub-*
11 *paragraph (B) may appeal the decision to the*
12 *President; and*

13 *(D) provide that a department or agency*
14 *that fails to take a timely position, citing the*
15 *specific statutory and regulatory bases for a de-*
16 *denial, shall be deemed to have no objection to the*
17 *pending decision.*

18 *(e) ACTIONS BY THE SECRETARY IF APPLICATION DE-*
19 *NIED.—In cases where the Secretary has determined that*
20 *an application should be denied, the applicant shall be in-*
21 *formed in writing of—*

22 *(1) the determination to deny;*

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

1 (3) *what, if any, modifications in or restrictions*
2 *on the items for which the license was sought would*
3 *allow such export to be compatible with export con-*
4 *trols imposed under this title, and which officer or*
5 *employee of the Department of Commerce would be in*
6 *a position to discuss modifications or restrictions*
7 *with the applicant and the specific statutory and reg-*
8 *ulatory bases for imposing such modifications or re-*
9 *strictions;*

10 (4) *to the extent consistent with the national se-*
11 *curity and foreign policy of the United States, the*
12 *specific considerations that led to the determination*
13 *to deny the application; and*

14 (5) *the availability of appeal procedures.*
15 *The Secretary shall allow the applicant 20 days to re-*
16 *spond to the determination before the license applica-*
17 *tion is denied.*

18 (f) *EXCEPTIONS FROM REQUIRED TIME PERIODS.—*
19 *The following actions related to processing an application*
20 *shall not be included in calculating the time periods pre-*
21 *scribed in this section:*

22 (1) *AGREEMENT OF THE APPLICANT.—Delays*
23 *upon which the Secretary and the applicant mutually*
24 *agree.*

1 (2) *PRELICENSE CHECKS.*—*A prelicense check*
2 *that may be required to establish the identity and re-*
3 *liability of the recipient of items controlled under this*
4 *title, if—*

5 (A) *the need for the prelicense check is de-*
6 *termined by the Secretary, or by another depart-*
7 *ment or agency if the request for the prelicense*
8 *check is made by such department or agency;*

9 (B) *the request for the prelicense check is*
10 *sent by the Secretary within 5 days after the de-*
11 *termination that the prelicense check is required;*
12 *and*

13 (C) *the analysis of the result of the*
14 *prelicense check is completed by the Secretary*
15 *within 5 days.*

16 (3) *REQUESTS FOR GOVERNMENT-TO-GOVERN-*
17 *MENT ASSURANCES.*—*Any request by the Secretary or*
18 *another department or agency for government-to-gov-*
19 *ernment assurances of suitable end uses of items ap-*
20 *proved for export, when failure to obtain such assur-*
21 *ances would result in rejection of the application, if—*

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

1 (B) the Secretary of State initiates the re-
2 quest of the relevant government within 10 days
3 thereafter; and

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

6 Whenever a prelicense check described in paragraph
7 (2) and assurances described in this paragraph are
8 not requested within the time periods set forth there-
9 in, then the time expended for such prelicense check
10 or assurances shall be included in calculating the
11 time periods established by this section.

12 (4) *MULTILATERAL REVIEW.*—Multilateral re-
13 view of a license application to the extent that such
14 multilateral review is required by a relevant multilat-
15 eral regime.

16 (5) *CONGRESSIONAL NOTIFICATION.*—Such time
17 as is required for mandatory congressional notifica-
18 tions under this title.

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

23 (g) *APPEALS.*—

24 (1) *IN GENERAL.*—The Secretary shall establish
25 appropriate procedures for any applicant to appeal to

1 *the Secretary the denial of an export license applica-*
2 *tion or other administrative action under this title.*

3 (2) *FILING OF PETITION.*—*In any case in which*
4 *any action prescribed in this section is not taken on*
5 *a license application within the time periods estab-*
6 *lished by this section (except in the case of a time pe-*
7 *riod extended under subsection (f) of which the appli-*
8 *cant is notified), the applicant may file a petition*
9 *with the Secretary requesting compliance with the re-*
10 *quirements of this section. When such petition is filed,*
11 *the Secretary shall take immediate steps to correct the*
12 *situation giving rise to the petition and shall imme-*
13 *diately notify the applicant of such steps.*

14 (3) *BRINGING COURT ACTION.*—*If, within 20*
15 *days after a petition is filed under paragraph (2), the*
16 *processing of the application has not been brought*
17 *into conformity with the requirements of this section,*
18 *or the application has been brought into conformity*
19 *with such requirements but the Secretary has not so*
20 *notified the applicant, the applicant may bring an*
21 *action in an appropriate United States district court*
22 *for an order requiring compliance with the time peri-*
23 *ods required by this section. The United States dis-*
24 *trict courts shall have jurisdiction to provide such re-*
25 *lief, as appropriate.*

1 (h) *CLASSIFICATION REQUESTS AND OTHER INQUIR-*
2 *IES.—*

3 (1) *CLASSIFICATION REQUESTS.—In any case in*
4 *which the Secretary receives a written request asking*
5 *for the proper classification of an item on the control*
6 *index, the Secretary shall, within 14 days after re-*
7 *ceiving the request, inform the person making the re-*
8 *quest of the proper classification.*

9 (2) *OTHER INQUIRIES.—In any case in which*
10 *the Secretary receives a written request for informa-*
11 *tion about the applicability of licensing requirements*
12 *under this title to a proposed export transaction or*
13 *series of transactions, the Secretary shall, within 30*
14 *days after receiving the request, reply with that infor-*
15 *mation to the person making the request.*

16 **SEC. 110. VIOLATIONS.**

17 (a) *CRIMINAL PENALTIES.—*

18 (1) *VIOLATIONS BY AN INDIVIDUAL.—Except as*
19 *provided in paragraph (3), any individual who*
20 *knowingly violates or conspires to or attempts to vio-*
21 *late any provision of this title or any regulation, li-*
22 *cence, or order issued under this title shall be fined*
23 *not more than 5 times the value of the exports in-*
24 *volved or \$500,000, whichever is greater, or impris-*
25 *oned not more than 10 years, or both.*

1 (2) *VIOLATIONS BY A PERSON OTHER THAN AN*
2 *INDIVIDUAL.—Except as provided in paragraph (3),*
3 *any person other than an individual who knowingly*
4 *violates or conspires to or attempts to violate any*
5 *provision of this title or any regulation, license, or*
6 *order issued under this title shall be fined not more*
7 *than 10 times the value of the exports involved or*
8 *\$1,000,000, whichever is greater.*

9 (3) *ANTIBOYCOTT VIOLATIONS.—*

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

17 (B) *Any person other than an individual*
18 *who knowingly violates or conspires to or at-*
19 *tempts to violate any regulation or order issued*
20 *under section 108 shall be fined, for each viola-*
21 *tion, not more than 5 times the value of the ex-*
22 *ports involved or \$500,000, whichever is greater.*

23 (b) *FORFEITURE OF PROPERTY INTEREST AND PRO-*
24 *CEEDS.—*

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

4 (A) *any of that person’s interest in, security*
5 *of, claim against, or property or contractual*
6 *rights of any kind in the commodities or tangible*
7 *items that were the subject of the violation;*

8 (B) *any of that person’s interest in, security*
9 *of, claim against, or property or contractual*
10 *rights of any kind in tangible property that was*
11 *used in the export or attempt to export that was*
12 *the subject of the violation; and*

13 (C) *any of that person’s property constitut-*
14 *ing, or derived from, any proceeds obtained di-*
15 *rectly or indirectly as a result of the violation.*

16 (2) *PROCEDURES.*—*The procedures in any for-*
17 *feiture under this subsection, and the duties and au-*
18 *thority of the courts of the United States and the At-*
19 *torney General with respect to any forfeiture action*
20 *under this subsection or with respect to any property*
21 *that may be subject to forfeiture under this subsection,*
22 *shall be governed by the provisions of chapter 46 of*
23 *title 18, United States Code, to the same extent as*
24 *property subject to forfeiture under that chapter.*

25 (c) *CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.*—

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 such*
7 *violation of regulations issued under section 108 may*
8 *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 any*
12 *person to export or receive United States-origin com-*
13 *modities or technology subject to this title, on account*
14 *of any violation of this title or any regulation, li-*
15 *cence, or order issued under this title.*

16 (d) *PAYMENT OF CIVIL PENALTIES.*—*The payment of*
17 *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 pe-*

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

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

16 (f) EFFECT OF OTHER CONVICTIONS.—

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

19 (A) this title or the Export Administration
20 Act of 1979,

21 (B) the International Emergency Economic
22 Powers Act,

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

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

3 (E) section 38 of the Arms Export Control
4 Act,

5 (F) section 16 of the Trading with the
6 Enemy Act (59 U.S.C. App. 16),

7 (G) any regulation, license, or order issued
8 under any provision of law listed in subpara-
9 graph (A), (B), (C), (D), (E), or (F), or

10 (H) section 371 or 1001 of title 18, United
11 States Code, if in connection with the export of
12 commodities or technology controlled under this
13 title, any regulation, license or order issued
14 under the International Emergency Economic
15 Powers Act, or defense articles or defense services
16 controlled under the Arms Export Control Act,
17 may, at the discretion of the Secretary, be denied ex-
18 port privileges under this title for a period of up to
19 10 years from the date of the conviction. The Sec-
20 retary may also revoke any export license under this
21 title in which such person had an interest at the time
22 of the conviction.

23 (2) *RELATED PERSONS.*—The Secretary may ex-
24 ercise the authority under paragraph (1) with respect
25 to any person related, through affiliation, ownership,

1 *control, or position of responsibility, to any person*
2 *convicted of any violation of a law set forth in para-*
3 *graph (1), upon a showing of such relationship with*
4 *the convicted person, after providing notice and op-*
5 *portunity for a hearing.*

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

21 *(h) VIOLATIONS DEFINED BY REGULATION.—Nothing*
22 *in this section shall limit the power of the Secretary to de-*
23 *fine by regulation violations under this title.*

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

1 (1) *the availability of other administrative or ju-*
2 *dicial remedies with respect to violations of this title,*
3 *or any regulation, order, or license issued under this*
4 *title;*

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

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

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

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

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

21 *may bring an action in an appropriate district court of*
22 *the United States against the United States person commit-*
23 *ting the violation, for recovery of actual damages incurred*
24 *on account of such act of discrimination or lost oppor-*
25 *tunity. In any such action the court may award punitive*

1 *damages. An action may be brought under this subsection*
2 *against a United States person whether or not the United*
3 *States person has been determined under this section to*
4 *have violated the regulations issued pursuant to section*
5 *108(a) on account of which the action is brought. In an*
6 *action brought under this subsection, unless the court finds*
7 *that the interests of justice require otherwise, the court shall*
8 *designate the substantially prevailing party or parties in*
9 *the action, and the remaining parties shall pay the reason-*
10 *able attorneys' fees of the substantially prevailing party or*
11 *parties in such proportion as the court shall determine.*

12 **SEC. 111. CONTROLLING PROLIFERATION ACTIVITY.**

13 *(a) PROLIFERATION CONTROLS.—*

14 *(1) MISSILE TECHNOLOGY CONTROLS.—The Sec-*
15 *retary, in consultation with the Secretary of Defense*
16 *and the heads of other appropriate departments and*
17 *agencies and consistent with sections 103 and*
18 *104(g)—*

19 *(A) shall establish and maintain, as part of*
20 *the control index established under section*
21 *104(b), dual-use items on the MTCR Annex;*

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

1 (i) would make a material contribu-
2 tion to the design, development, test, pro-
3 duction, stockpiling, or use of missile deliv-
4 ery systems, and

5 (ii) are not included in the MTCR
6 Annex but which the United States has pro-
7 posed to the other members of the MTCR for
8 inclusion in the MTCR Annex; and

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

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

15 (ii) any export of items that the ex-
16 porter knows is destined for a project or fa-
17 cility for the design, development, or manu-
18 facture of a missile in a country that is not
19 an adherent to the MTCR.

20 (2) *CHEMICAL AND BIOLOGICAL WEAPONS CON-*
21 *TROLS.—The Secretary, in consultation with the Sec-*
22 *retary of Defense and the heads of other appropriate*
23 *departments and agencies and consistent with sections*
24 *103 and 104(g)—*

1 (A) shall establish and maintain, as part of
2 the control index established under section
3 104(b), dual-use items listed by the Australia
4 Group or the Chemical Weapons Convention;

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

8 (i) would make a material contribu-
9 tion to the design, development, test, pro-
10 duction, stockpiling, or use of chemical or
11 biological weapons, and

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

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

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

1 (ii) any export of items that the ex-
2 porter knows is destined for a project or fa-
3 cility for the design, development, or manu-
4 facture of a chemical or biological weapon.

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

11 (B) *Licenses under paragraph (1)(C) shall be de-*
12 *nied if the ultimate consignee of the commodities or*
13 *technology is a facility in a country the government*
14 *of which has been determined under section 106(i)(1)*
15 *to have repeatedly provided support for acts of inter-*
16 *national terrorism.*

17 (b) *TECHNICAL AMENDMENTS TO ARMS EXPORT CON-*
18 *TROL ACT.*—(1) *Section 71(a) of the Arms Export Control*
19 *Act (22 U.S.C. 2797(a)) is amended by striking “6(l) of*
20 *the Export Administration Act of 1979” and inserting*
21 *“111(a) of the Export Administration Act of 1996”.*

22 (2) *Section 81(a)(1) of the Arms Export Control Act*
23 *(22 U.S.C. 2798(a)(1)) is amended in subparagraphs (A)*
24 *and (B) by inserting “under this Act” after “United States”*
25 *the second place it appears in each subparagraph.*

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

10 (d) *CHEMICAL AND BIOLOGICAL WEAPONS PRO-*
11 *LIFERATION SANCTIONS.*—

12 (1) *IMPOSITION OF SANCTIONS.*—

13 (A) *DETERMINATION BY THE PRESIDENT.*—

14 Except as provided in paragraph (2)(B), the
15 President shall impose both of the sanctions de-
16 scribed in paragraph (3) if the President deter-
17 mines that a foreign person, on or after the date
18 of the enactment of this Act, has knowingly and
19 materially contributed—

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

24 (ii) through the export from any other
25 country of any goods or technology that

1 *would be, if they were United States goods*
2 *or technology, subject to the jurisdiction of*
3 *the United States under this title,*
4 *to the efforts by any foreign country, project, or*
5 *entity described in subparagraph (B) to use, de-*
6 *velop, produce, stockpile, or otherwise acquire*
7 *chemical or biological weapons.*

8 *(B) COUNTRIES, PROJECTS, OR ENTITIES*
9 *RECEIVING ASSISTANCE.—Subparagraph (A) ap-*
10 *plies in the case of—*

11 *(i) any foreign country that the Presi-*
12 *dent determines has, at any time after Jan-*
13 *uary 1, 1980—*

14 *(I) used chemical or biological*
15 *weapons in violation of international*
16 *law;*

17 *(II) used lethal chemical or bio-*
18 *logical weapons against its own na-*
19 *tionals; or*

20 *(III) made substantial prepara-*
21 *tions to engage in the activities de-*
22 *scribed in subclause (I) or (II);*

23 *(ii) any foreign country whose govern-*
24 *ment is determined for purposes of section*
25 *106(i) to be a government that has repeat-*

1 *edly provided support for acts of inter-*
2 *national terrorism; or*

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

6 *(C) PERSONS AGAINST WHICH SANCTIONS*
7 *ARE TO BE IMPOSED.—Sanctions shall be im-*
8 *posed pursuant to subparagraph (A) on—*

9 *(i) the foreign person with respect to*
10 *which the President makes the determina-*
11 *tion described in that subparagraph;*

12 *(ii) any successor entity to that foreign*
13 *person;*

14 *(iii) any foreign person that is a par-*
15 *ent or subsidiary of that foreign person if*
16 *that parent or subsidiary knowingly as-*
17 *sisted in the activities which were the basis*
18 *of that determination; and*

19 *(iv) any foreign person that is an affil-*
20 *iate of that foreign person if that affiliate*
21 *knowingly assisted in the activities which*
22 *were the basis of that determination and if*
23 *that affiliate is controlled in fact by that*
24 *foreign person.*

1 (2) *CONSULTATIONS WITH AND ACTIONS BY FOR-*
2 *EIGN GOVERNMENT OF JURISDICTION.*—

3 (A) *CONSULTATIONS.*—*If the President*
4 *makes the determinations described in paragraph*
5 *(1)(A) with respect to a foreign person, the Con-*
6 *gress urges the President to initiate consultations*
7 *immediately with the government with primary*
8 *jurisdiction over that foreign person with respect*
9 *to the imposition of sanctions pursuant to this*
10 *subsection.*

11 (B) *ACTIONS BY GOVERNMENT OF JURISDIC-*
12 *TION.*—*In order to pursue such consultations*
13 *with that government, the President may delay*
14 *imposition of sanctions pursuant to this sub-*
15 *section for a period of up to 90 days. Following*
16 *these consultations, the President shall impose*
17 *sanctions unless the President determines and*
18 *certifies to the Congress that that government has*
19 *taken specific and effective actions, including ap-*
20 *propriate penalties, to terminate the involvement*
21 *of the foreign person in the activities described*
22 *in paragraph (1)(A). The President may delay*
23 *imposition of sanctions for an additional period*
24 *of up to 90 days if the President determines and*
25 *certifies to the Congress that that government is*

1 *in the process of taking the actions described in*
2 *the preceding sentence.*

3 (C) *REPORT TO CONGRESS.*—*The President*
4 *shall report to the Congress, not later than 90*
5 *days after making a determination under para-*
6 *graph (1)(A), on the status of consultations with*
7 *the appropriate government under this sub-*
8 *section, and the basis for any determination*
9 *under subparagraph (B) of this paragraph that*
10 *such government has taken specific corrective ac-*
11 *tions.*

12 (3) *SANCTIONS.*—

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

17 (i) *PROCUREMENT SANCTION.*—*The*
18 *United States Government shall not pro-*
19 *cure, or enter into any contract for the pro-*
20 *curement of, any goods or services from any*
21 *person described in paragraph (1)(C).*

22 (ii) *IMPORT SANCTIONS.*—*The impor-*
23 *tation into the United States of products*
24 *produced by any person described in para-*
25 *graph (1)(C) shall be prohibited.*

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

4 (i) *in the case of procurement of de-*
5 *fense articles or defense services—*

6 (I) *under existing contracts or*
7 *subcontracts, including the exercise of*
8 *options for production quantities to*
9 *satisfy United States operational mili-*
10 *tary requirements;*

11 (II) *if the President determines*
12 *that the person or other entity to which*
13 *the sanctions would otherwise be ap-*
14 *plied is a sole source supplier of the de-*
15 *fense articles or services, that the de-*
16 *fense articles or services are essential,*
17 *and that alternative sources are not*
18 *readily or reasonably available; or*

19 (III) *if the President determines*
20 *that such articles or services are essen-*
21 *tial to the national security under de-*
22 *fense coproduction agreements;*

23 (ii) *to products or services provided*
24 *under contracts entered into before the date*

1 *on which the President publishes his inten-*
2 *tion to impose sanctions;*

3 *(iii) to—*

4 *(I) spare parts,*

5 *(II) component parts, but not fin-*
6 *ished products, essential to United*
7 *States products or production, or*

8 *(III) routine servicing and main-*
9 *tenance of products, to the extent that*
10 *alternative sources are not readily or*
11 *reasonably available;*

12 *(iv) to information and technology es-*
13 *sential to United States products or produc-*
14 *tion; or*

15 *(v) to medical or other humanitarian*
16 *items.*

17 *(4) TERMINATION OF SANCTIONS.—The sanctions*
18 *imposed pursuant to this subsection shall apply for a*
19 *period of at least 12 months following the imposition*
20 *of sanctions and shall cease to apply thereafter only*
21 *if the President determines and certifies to the Con-*
22 *gress that reliable information indicates that the for-*
23 *ign person with respect to which the determination*
24 *was made under paragraph (1)(A) has ceased to aid*
25 *or abet any foreign government, project, or entity in*

1 *its efforts to acquire chemical or biological weapons*
2 *capability as described in that paragraph.*

3 (5) *WAIVER.—*

4 (A) *CRITERION FOR WAIVER.—The Presi-*
5 *dent may waive the application of any sanction*
6 *imposed on any person pursuant to this sub-*
7 *section, after the end of the 12-month period be-*
8 *ginning on the date on which that sanction was*
9 *imposed on that person, if the President deter-*
10 *mines and certifies to the Congress that such*
11 *waiver is important to the national security in-*
12 *terests of the United States.*

13 (B) *NOTIFICATION OF AND REPORT TO CON-*
14 *GRESS.—If the President decides to exercise the*
15 *waiver authority provided in subparagraph (A),*
16 *the President shall so notify the Congress not less*
17 *than 20 days before the waiver takes effect. Such*
18 *notification shall include a report fully articu-*
19 *lating the rationale and circumstances which led*
20 *the President to exercise the waiver authority.*

21 (6) *DEFINITION OF FOREIGN PERSON.—For pur-*
22 *poses of this subsection, the term “foreign person”*
23 *means—*

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

4 (B) *a corporation, partnership, or other en-*
5 *tity which is created or organized under the laws*
6 *of a foreign country or which has its principal*
7 *place of business outside the United States.*

8 (e) *MISSILE PROLIFERATION CONTROL VIOLATIONS.—*

9 (1) *VIOLATIONS BY UNITED STATES PERSONS.—*

10 (A) *SANCTIONS.—(i) If the President deter-*
11 *mines that a United States person knowingly—*

12 (I) *exports, transfers, or otherwise en-*
13 *gages in the trade of any item on the*
14 *MTCR Annex, in violation of the provisions*
15 *of section 38 (22 U.S.C. 2778) or chapter 7*
16 *of the Arms Export Control Act, this title,*
17 *or any regulations or orders issued under*
18 *any such provisions,*

19 (II) *conspires to or attempts to engage*
20 *in such export, transfer, or trade, or*

21 (III) *facilitates such export, transfer,*
22 *or trade by any other person,*

23 *then the President shall impose the applicable*
24 *sanctions described in clause (i).*

1 (ii) *The sanctions which apply to a United*
2 *States person under clause (i) are the following:*

3 (I) *If the item on the MTCR Annex in-*
4 *volved in the export, transfer, or trade is*
5 *missile equipment or technology within cat-*
6 *egory II of the MTCR Annex, then the*
7 *President shall deny to such United States*
8 *person, for a period of 2 years, licenses for*
9 *the transfer of missile equipment or tech-*
10 *nology controlled under this title.*

11 (II) *If the item on the MTCR Annex*
12 *involved in the export, transfer, or trade is*
13 *missile equipment or technology within cat-*
14 *egory I of the MTCR Annex, then the Presi-*
15 *dent shall deny to such United States per-*
16 *son, for a period of not less than 2 years,*
17 *all licenses for items the export of which is*
18 *controlled under this title.*

19 (B) *DISCRETIONARY SANCTIONS.—In the*
20 *case of any determination referred to in sub-*
21 *paragraph (A), the Secretary may pursue any*
22 *other appropriate penalties under section 110.*

23 (C) *WAIVER.—The President may waive the*
24 *imposition of sanctions under subparagraph (A)*

1 *on a person with respect to a product or service*
2 *if the President certifies to the Congress that—*

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

6 *(ii) such person is a sole source sup-*
7 *plier of the product or service, the product*
8 *or service is not available from any alter-*
9 *native reliable supplier, and the need for the*
10 *product or service cannot be met in a time-*
11 *ly manner by improved manufacturing*
12 *processes or technological developments.*

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

15 (A) *SANCTIONS.—(i) Subject to subpara-*
16 *graphs (C) through (G), if the President deter-*
17 *mines that a foreign person, after the date of the*
18 *enactment of this section, knowingly—*

19 (I) *exports, transfers, or otherwise en-*
20 *gages in the trade of any MTCR equipment*
21 *or technology that contributes to the design,*
22 *development, or production of missiles in a*
23 *country that is not an adherent to the*
24 *MTCR and would be, if it were United*
25 *States-origin equipment or technology, sub-*

1 *ject to the jurisdiction of the United States*
2 *under this title,*

3 *(II) conspires to or attempts to engage*
4 *in such export, transfer, or trade, or*

5 *(III) facilitates such export, transfer,*
6 *or trade by any other person,*

7 *or if the President has made a determination*
8 *with respect to a foreign person, under section*
9 *73(a) of the Arms Export Control Act, then the*
10 *President shall impose on that foreign person the*
11 *applicable sanctions under clause (ii).*

12 *(ii) The sanctions which apply to a foreign*
13 *person under clause (i) are the following:*

14 *(I) If the item involved in the export,*
15 *transfer, or trade is within category II of*
16 *the MTCR Annex, then the President shall*
17 *deny, for a period of 2 years, licenses for the*
18 *transfer to such foreign person of missile*
19 *equipment or technology the export of which*
20 *is controlled under this title.*

21 *(II) If the item involved in the export,*
22 *transfer, or trade is within category I of the*
23 *MTCR Annex, then the President shall*
24 *deny, for a period of not less than 2 years,*
25 *licenses for the transfer to such foreign per-*

1 son of items the export of which is con-
2 trolled under this title.

3 (III) *If, in addition to actions taken*
4 *under subclauses (I) and (II), the President*
5 *determines that the export, transfer, or*
6 *trade has substantially contributed to the*
7 *design, development, or production of mis-*
8 *siles in a country that is not an adherent*
9 *to the MTCR, then the President shall pro-*
10 *hibit, for a period of not less than 2 years,*
11 *the importation into the United States of*
12 *products produced by that foreign person.*

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

16 (i) *any export, transfer, or trading ac-*
17 *tivity that is authorized by the laws of an*
18 *adherent to the MTCR, if such authoriza-*
19 *tion is not obtained by misrepresentation or*
20 *fraud; or*

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

24 (C) *EFFECT OF ENFORCEMENT ACTIONS BY*
25 *MTCR ADHERENTS.—Sanctions set forth in sub-*

1 paragraph (A) may not be imposed under this
2 paragraph on a person with respect to acts de-
3 scribed in such subparagraph or, if such sanc-
4 tions are in effect against a person on account
5 of such acts, such sanctions shall be terminated,
6 if an adherent to the MTCR is taking judicial or
7 other enforcement against that person with re-
8 spect to such acts, or that person has been found
9 by the government of an adherent to the MTCR
10 to be innocent of wrongdoing with respect to such
11 acts.

12 (D) *ADVISORY OPINIONS.*—The Secretary,
13 in consultation with the Secretary of State and
14 the Secretary of Defense, may, upon the request
15 of any person, issue an advisory opinion to that
16 person as to whether a proposed activity by that
17 person would subject that person to sanctions
18 under this paragraph. Any person who relies in
19 good faith on such an advisory opinion which
20 states that the proposed activity would not sub-
21 ject a person to such sanctions, and any person
22 who thereafter engages in such activity, may not
23 be made subject to such sanctions on account of
24 such activity.

1 (E) *WAIVER AND REPORT TO CONGRESS.*—

2 (i) *In any case other than one in which an advisory*
3 *opinion has been issued under subparagraph*
4 *(D) stating that a proposed activity would*
5 *not subject a person to sanctions under this*
6 *paragraph, the President may waive the applica-*
7 *tion of subparagraph (A) to a foreign person if*
8 *the President determines that such waiver is es-*
9 *sential to the national security of the United*
10 *States.*

11 (ii) *In the event that the President decides*
12 *to apply the waiver described in clause (i), the*
13 *President shall so notify the Congress not less*
14 *than 20 working days before issuing the waiver.*
15 *Such notification shall include a report fully ar-*
16 *ticulating the rationale and circumstances which*
17 *led the President to apply the waiver.*

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

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

1 (ii) such person is a sole source sup-
2 plier of the product or service, the product
3 or service is not available from any alter-
4 native reliable supplier, and the need for the
5 product or service cannot be met in a time-
6 ly manner by improved manufacturing
7 processes or technological developments.

8 (G) *EXCEPTIONS FROM IMPORT SANC-*
9 *TIONS.—The President shall not apply the sanc-*
10 *tion under this subsection prohibiting the impor-*
11 *tation of the products of a foreign person—*

12 (i) in the case of procurement of de-
13 fense articles or defense services—

14 (I) under existing contracts or
15 subcontracts, including the exercise of
16 options for production quantities to
17 satisfy requirements essential to the
18 national security of the United States;

19 (II) if the President determines
20 that the person to which the sanctions
21 would be applied is a sole source sup-
22 plier of the defense articles and serv-
23 ices, that the defense articles or services
24 are essential to the national security of
25 the United States, and that alternative

1 *sources are not readily or reasonably*
2 *available; or*

3 *(III) if the President determines*
4 *that such articles or services are essen-*
5 *tial to the national security of the*
6 *United States under defense coproduc-*
7 *tion agreements;*

8 *(ii) to products or services provided*
9 *under contracts entered into before the date*
10 *on which the President publishes his inten-*
11 *tion to impose the sanctions; or*

12 *(iii) to—*

13 *(I) spare parts,*

14 *(II) component parts, but not fin-*
15 *ished products, essential to United*
16 *States products or production,*

17 *(III) routine services and mainte-*
18 *nance of products, to the extent that al-*
19 *ternative sources are not readily or*
20 *reasonably available, or*

21 *(IV) information and technology*
22 *essential to United States products or*
23 *production.*

24 (3) *DEFINITIONS.—For purposes of this sub-*
25 *section—*

1 (A) the terms “missile equipment or tech-
2 nology” and “MTCR equipment or technology”
3 mean those items listed in category I or category
4 II of the MTCR Annex;

5 (B) the term “foreign person” means any
6 person other than a United States person;

7 (C)(i) the term “person” means a natural
8 person as well as a corporation, business associa-
9 tion, partnership, society, trust, any other non-
10 governmental entity, organization, or group, and
11 any governmental entity operating as a business
12 enterprise, and any successor of any such entity;
13 and

14 (ii) in the case of a country where it may
15 be impossible to identify a specific governmental
16 entity referred to in clause (i), the term “person”
17 means—

18 (I) all activities of that government re-
19 lating to the development or production of
20 any missile equipment or technology; and

21 (II) all activities of that government
22 affecting the development or production of
23 aircraft, electronics, and space systems or
24 equipment; and

1 (D) the term “otherwise engaged in the
2 trade of” means, with respect to a particular ex-
3 port or transfer, to be a freight forwarder or des-
4 ignated exporting agent, or a consignee or end
5 user of the item to be exported or transferred.

6 (f) *EFFECT ON OTHER LAWS.*—The provisions of this
7 section do not affect any activities subject to the reporting
8 requirements contained in title V of the National Security
9 Act of 1947.

10 (g) *SEEKING MULTILATERAL SUPPORT FOR UNILAT-*
11 *ERAL SANCTIONS.*—The Secretary of State, in consultation
12 with appropriate departments and agencies, shall seek the
13 support of other countries for sanctions imposed under this
14 section.

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

16 (a) *APPLICABILITY.*—

17 (1) *EXEMPTIONS FROM ADMINISTRATIVE PROCE-*
18 *DURE.*—Except as provided in this section, the func-
19 tions exercised under this title are excluded from the
20 operation of sections 551, 553 through 559, and 701
21 through 706 of title 5, United States Code.

22 (2) *JUDICIAL REVIEW.*—Except as otherwise pro-
23 vided in this section, a final agency action under this
24 title may be reviewed by appeal to the United States
25 Court of Appeals for the District of Columbia Circuit,

1 *to the extent provided in this paragraph. The court's*
2 *review in any such appeal shall be limited to deter-*
3 *mining whether—*

4 *(A) a regulation—*

5 *(i) fails to take an action required by*
6 *this title;*

7 *(ii) takes an action prohibited by this*
8 *title; or*

9 *(iii) otherwise violates this title;*

10 *(B) an agency action violates this title;*

11 *(C) an agency action violates an agency*
12 *regulation establishing time requirements or*
13 *other procedural requirements of a non-discre-*
14 *tionary nature;*

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

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

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

1 (G) *unfair impact determinations under*
2 *section 114(k) are in compliance with time re-*
3 *strictions imposed by that section; or*

4 (H) *the United States has complied with*
5 *the requirements of section 114(k) after an un-*
6 *fair impact determination has been made.*

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

9 (1) *ADMINISTRATIVE PROCEDURES.—Any ad-*
10 *ministrative sanction imposed under section 110(c)*
11 *may be imposed only after notice and opportunity for*
12 *an agency hearing on the record in accordance with*
13 *sections 554 through 557 of title 5, United States*
14 *Code. The imposition of any such administrative*
15 *sanction shall be subject to judicial review in accord-*
16 *ance with sections 701 through 706 of title 5, United*
17 *States Code.*

18 (2) *AVAILABILITY OF CHARGING LETTER.—Any*
19 *charging letter or other document initiating adminis-*
20 *trative proceedings for the imposition of sanctions for*
21 *violations of the regulations issued under section*
22 *108(a) shall be made available for public inspection*
23 *and copying.*

24 (c) *COLLECTION.—If any person fails to pay a civil*
25 *penalty imposed under section 110(c), the Secretary may*

1 *ask the Attorney General to bring a civil action in an ap-*
2 *propriate district court to recover the amount imposed (plus*
3 *interest at currently prevailing rates from the date of the*
4 *final order). No such action may be commenced more than*
5 *5 years after the order imposing the civil penalty becomes*
6 *final. In such an action, the validity, amount, and appro-*
7 *priateness of such penalty shall not be subject to review.*

8 *(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—*

9 *(1) GROUNDS FOR IMPOSITION.—In any case in*
10 *which there is reasonable cause to believe that a per-*
11 *son is engaged in or is about to engage in any act*
12 *or practice which constitutes or would constitute a*
13 *violation of this title, or any regulation, order, or li-*
14 *cence issued under this title, including any diversion*
15 *of goods or technology from an authorized end use or*
16 *end user, or in any case in which a criminal indict-*
17 *ment has been returned against a person alleging a*
18 *violation of this title or any of the statutes listed in*
19 *section 110(f), the Secretary may, without a hearing,*
20 *issue an order temporarily denying that person's*
21 *United States export privileges (hereafter in this sub-*
22 *section referred to a "temporary denial order"). A*
23 *temporary denial order may be effective for no longer*
24 *than 180 days, but may be renewed by the Secretary,*

1 following notice and an opportunity for a hearing, for
2 additional periods of not more than 180 days each.

3 (2) *ADMINISTRATIVE APPEALS.*—The person or
4 persons subject to the issuance or renewal of a tem-
5 porary denial order may appeal the issuance or re-
6 newal of the temporary denial order, supported by
7 briefs and other material, to an administrative law
8 judge who shall, within 15 working days after the ap-
9 peal is filed, issue a decision affirming, modifying, or
10 vacating the temporary denial order. The temporary
11 denial order shall be affirmed if it is shown that—

12 (A) there is reasonable cause to believe that
13 the person subject to the order is engaged in or
14 is about to engage in any act or practice which
15 constitutes or would constitute a violation of this
16 title, or any regulation, order, or license issued
17 under this title, or

18 (B) a criminal indictment has been re-
19 turned against the person subject to the order al-
20 leging a violation of this title or any of the stat-
21 utes listed in section 110(f).

22 The decision of the administrative law judge shall be
23 final unless, within 10 working days after the date of
24 the administrative law judge's decision, an appeal is
25 filed with the Secretary. On appeal, the Secretary

1 shall either affirm, modify, reverse, or vacate the deci-
2 sion of the administrative law judge by written order
3 within 10 working days after receiving the appeal.
4 The written order of the Secretary shall be final and
5 is not subject to judicial review, except as provided
6 in paragraph (3). The materials submitted to the ad-
7 ministrative law judge and the Secretary shall con-
8 stitute the administrative record for purposes of re-
9 view by the court.

10 (3) COURT APPEALS.—An order of the Secretary
11 affirming, in whole or in part, the issuance or re-
12 newal of a temporary denial order may, within 15
13 days after the order is issued, be appealed by a person
14 subject to the order to the United States Court of Ap-
15 peals for the District of Columbia Circuit, which shall
16 have jurisdiction of the appeal. The court may review
17 only those issues necessary to determine whether the
18 issuance of the temporary denial order was based on
19 reasonable cause to believe that the person subject to
20 the order was engaged in or was about to engage in
21 any act or practice which constitutes or would con-
22 stitute a violation of this title, or any regulation,
23 order, or license issued under this title, or if a crimi-
24 nal indictment has been returned against the person
25 subject to the order alleging a violation of this title

1 *or any of the statutes listed in section 110(f). The*
2 *court shall vacate the Secretary's order if the court*
3 *finds that the Secretary's order is arbitrary, capri-*
4 *cious, an abuse of discretion, or otherwise not in ac-*
5 *cordance with law.*

6 **SEC. 113. ENFORCEMENT.**

7 *(a) GENERAL AUTHORITY AND DESIGNATION.—*

8 *(1) POLICY GUIDANCE ON ENFORCEMENT.—The*
9 *Secretary, in consultation with the Secretary of the*
10 *Treasury and the heads of other appropriate depart-*
11 *ments and agencies, shall be responsible for providing*
12 *policy guidance on the enforcement of this title.*

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

22 *(B) In carrying out the enforcement authorities*
23 *described in paragraph (3), the Commissioner of Cus-*
24 *toms, and employees of the United States Customs*
25 *Service designated by the Commissioner, may make*

1 *investigations within or outside the United States*
2 *and at those ports of entry or exit from the United*
3 *States where officers of the United States Customs*
4 *Service are authorized by law to carry out such en-*
5 *forcement responsibilities. Subject to paragraph (3),*
6 *the United States Customs Service is authorized, in*
7 *the enforcement of this title, to search, detain (after*
8 *search), and seize commodities or technology at those*
9 *ports of entry or exit from the United States where*
10 *officers of the Customs Service are authorized by law*
11 *to conduct such searches, detentions, and seizures, and*
12 *at those places outside the United States where the*
13 *Customs Service, pursuant to agreements or other ar-*
14 *rangements with other countries, is authorized to per-*
15 *form enforcement activities.*

16 *(C) In carrying out the enforcement authorities*
17 *described in paragraph (3), the Secretary, and officers*
18 *and employees of the Department of Commerce des-*
19 *ignated by the Secretary, may make investigations*
20 *within the United States, and shall conduct, outside*
21 *the United States, prelicense and postshipment ver-*
22 *ifications of items licensed for export and investiga-*
23 *tions in the enforcement of section 108. The Secretary,*
24 *and officers and employees of the Department of Com-*
25 *merce designated by the Secretary, are authorized to*

1 search, detain (after search), and seize items at those
2 places within the United States other than those ports
3 specified in subparagraph (B). The search, detention
4 (after search), or seizure of items at those ports and
5 places specified in subparagraph (B) may be con-
6 ducted by officers and employees of the Department
7 of Commerce only with the concurrence of the Com-
8 missioner of Customs or a person designated by the
9 Commissioner.

10 (D) The Secretary and the Commissioner of Cus-
11 toms may enter into agreements and arrangements
12 for the enforcement of this title, including foreign in-
13 vestigations and information exchange.

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

18 (i) Make investigations of, obtain informa-
19 tion from, make inspection of any books, records,
20 or reports (including any writings required to be
21 kept by the Secretary), premises, or property of,
22 and take the sworn testimony of, any person.

23 (ii) Administer oaths or affirmations, and
24 by subpoena require any person to appear and
25 testify or to appear and produce books, records,

1 *and other writings, or both. In the case of contu-*
2 *macy by, or refusal to obey a subpoena issued to,*
3 *any such person, a district court of the United*
4 *States, on request of the Attorney General and*
5 *after notice to any such person and a hearing,*
6 *shall have jurisdiction to issue an order requir-*
7 *ing such person to appear and give testimony or*
8 *to appear and produce books, records, and other*
9 *writings, or both. Any failure to obey such order*
10 *of the court may be punished by such court as*
11 *a contempt thereof. The attendance of witnesses*
12 *and the production of documents provided for in*
13 *this clause may be required from any State, the*
14 *District of Columbia, or in any territory of the*
15 *United States at any designated place. Witnesses*
16 *subpoenaed under this subsection shall be paid*
17 *the same fees and mileage as are paid witnesses*
18 *in the district courts of the United States.*

19 *(B)(i) Any officer or employee of the Office of*
20 *Export Enforcement of the Department of Commerce*
21 *who is designated by the Secretary under paragraph*
22 *(2), and any officer or employee of the United States*
23 *Customs Service who is designated by the Commis-*
24 *sioner of Customs under paragraph (2), may do the*

1 following in carrying out the enforcement authority
2 under this title:

3 (I) Execute any warrant or other process is-
4 sued by a court or officer of competent jurisdic-
5 tion with respect to the enforcement of this title.

6 (II) Make arrests without warrant for any
7 violation of this title committed in his or her
8 presence or view, or if the officer or employee has
9 probable cause to believe that the person to be ar-
10 rested has committed, is committing, or is about
11 to commit such a violation.

12 (III) Carry firearms.

13 (ii) Officers and employees of the Office of Ex-
14 port Enforcement designated by the Secretary under
15 paragraph (2) shall exercise the authorities set forth
16 in clause (i) pursuant to guidelines approved by the
17 Attorney General.

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

23 (i) Stop, search, and examine a vehicle, ves-
24 sel, aircraft, or person on which or whom the of-
25 ficer or employee has reasonable cause to suspect

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

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

10 *(iii) Detain (after search) or seize any item,*
11 *for purposes of securing for trial or forfeiture to*
12 *the United States, on or about such vehicle, ves-*
13 *sel, aircraft, or person or in such package or con-*
14 *tainer, if the officer or employee has probable*
15 *cause to believe the item has been, is being, or is*
16 *about to be exported from or transited through*
17 *the United States in violation of this title.*

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

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

1 (1) *the seizure, summary and judicial forfeiture,*
2 *and condemnation of property for violations of the*
3 *customs laws,*

4 (2) *the disposition of such property or the pro-*
5 *ceeds from the sale thereof,*

6 (3) *the remission or mitigation of such forfeit-*
7 *ures, and*

8 (4) *the compromise of claims,*

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

22 (c) *REFERRAL OF CASES.—All cases involving viola-*
23 *tions of this title shall be referred to the Secretary for pur-*
24 *poses of determining civil penalties and administrative*
25 *sanctions under section 110(c), or to the Attorney General*

1 *for criminal action in accordance with this title or to both*
2 *the Secretary and the Attorney General.*

3 *(d) UNDERCOVER INVESTIGATION OPERATIONS.—*

4 *(1) USE OF FUNDS.—With respect to any under-*
5 *cover investigative operation conducted by the Office*
6 *of Export Enforcement of the Department of Com-*
7 *merce (hereafter in this subsection referred to as*
8 *“OEE”) necessary for the detection and prosecution of*
9 *violations of this title—*

10 *(A) funds made available for export enforce-*
11 *ment under this title may be used to purchase*
12 *property, buildings, and other facilities, and to*
13 *lease space within the United States, without re-*
14 *gard to sections 1341 and 3324 of title 31, Unit-*
15 *ed States Code, the third undesignated para-*
16 *graph under the heading of “MISCELLANEOUS” of*
17 *the Act of March 3, 1877 (40 U.S.C. 34), sections*
18 *3732(a) and 3741 of the Revised Statutes of the*
19 *United States (41 U.S.C. 11(a) and 22), and*
20 *subsections (a) and (c) of section 304, and sec-*
21 *tion 305 of the Federal Property and Adminis-*
22 *trative Services Act of 1949 (41 U.S.C. 254 (a)*
23 *and (c) and 255),*

24 *(B) funds made available for export enforce-*
25 *ment under this title may be used to establish or*

1 to acquire proprietary corporations or business
2 entities as part of an undercover operation, and
3 to operate such corporations or business entities
4 on a commercial basis, without regard to section
5 9102 of title 31, United States Code,

6 (C) funds made available for export enforce-
7 ment under this title and the proceeds from un-
8 dercover operations may be deposited in banks or
9 other financial institutions without regard to the
10 provisions of section 648 of title 18, United
11 States Code, and section 3302 of title 31, United
12 States Code, and

13 (D) the proceeds from undercover operations
14 may be used to offset necessary and reasonable
15 expenses incurred in such operations without re-
16 gard to the provisions of section 3302 of title 31,
17 United States Code,

18 if the Director of OEE (or an officer or employee des-
19 ignated by the Director) certifies, in writing, that the
20 action authorized by subparagraph (A), (B), (C), or
21 (D) for which the funds would be used is necessary for
22 the conduct of the undercover operation.

23 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
24 corporation or business entity established or acquired
25 as part of an undercover operation with a net value

1 of more than \$50,000 is to be liquidated, sold, or oth-
2 erwise disposed of, the Director of OEE shall report
3 the circumstances to the Secretary and the Control-
4 ler General, as much in advance of such disposition
5 as the Director of OEE or his or her designee deter-
6 mines is practicable. The proceeds of the liquidation,
7 sale, or other disposition, after obligations incurred
8 by the corporation or business enterprise are met,
9 shall be deposited in the Treasury of the United
10 States as miscellaneous receipts.

11 (3) *DEPOSIT OF PROCEEDS.*—As soon as the pro-
12 ceeds from an OEE undercover investigative oper-
13 ation with respect to which an action is authorized
14 and carried out under this subsection are no longer
15 necessary for the conduct of such operation, such pro-
16 ceeds or the balance of such proceeds remaining at the
17 time shall be deposited into the Treasury of the Unit-
18 ed States as miscellaneous receipts.

19 (4) *AUDIT AND REPORT.*—(A) The Director of
20 OEE shall conduct a detailed financial audit of each
21 OEE undercover investigative operation which is
22 closed and shall submit the results of the audit in
23 writing to the Secretary. Not later than 180 days
24 after an undercover operation is closed, the Secretary

1 *shall submit to the Congress a report on the results*
2 *of the audit.*

3 *(B) The Secretary shall submit annually to the*
4 *Congress a report, which may be included in the an-*
5 *annual report under section 115, specifying the follow-*
6 *ing information:*

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

10 *(ii) The number of undercover investigative*
11 *operations commenced in the 1-year period pre-*
12 *ceding the period for which such report is sub-*
13 *mitted.*

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

20 (5) *DEFINITIONS.*—*For purposes of paragraph*
21 (4)—

22 *(A) the term “closed”, with respect to an*
23 *undercover investigative operation, refers to the*
24 *earliest point in time at which all criminal pro-*
25 *ceedings (other than appeals) pursuant to the in-*

1 *vestigative operation are concluded, or covert ac-*
2 *tivities pursuant to such operation are con-*
3 *cluded, whichever occurs later;*

4 *(B) the terms “undercover investigative op-*
5 *eration” and “undercover operation” mean any*
6 *undercover investigative operation conducted by*
7 *OEE—*

8 *(i) in which the gross receipts (exclud-*
9 *ing interest earned) exceed \$25,000, or ex-*
10 *penditures (other than expenditures for sal-*
11 *aries of employees) exceed \$75,000, and*

12 *(ii) which is exempt from section 3302*
13 *or 9102 of title 31, United States Code,*
14 *except that clauses (i) and (ii) shall not apply*
15 *with respect to the report to the Congress re-*
16 *quired by subparagraph (B) of paragraph (4);*
17 *and*

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

21 *(e) REFERENCE TO ENFORCEMENT.—For purposes of*
22 *this section, a reference to the enforcement of this title or*
23 *to a violation of this title includes a reference to the enforce-*
24 *ment or a violation of any regulation, license, or order is-*
25 *sued under this title.*

1 **SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCE-**
2 **DURES.**

3 (a) *POLICY GUIDANCE.*—

4 (1) *IN GENERAL.*—As directed by the President,
5 annual policy guidance shall be issued to provide de-
6 tailed implementing guidance to export licensing offi-
7 cials in all appropriate departments and agencies.

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

15 (A) an assessment by the Secretary of the
16 economic consequences of the imposition, exten-
17 sion, or removal of controls during the preceding
18 12 months, including the impact on United
19 States exports or jobs;

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

24 (C) an assessment by the Secretary of De-
25 fense of the impact that the imposition, exten-
26 sion, or removal of controls during the preceding

1 *12 months has had on United States national se-*
2 *curity.*

3 **(b) EXPORT CONTROL AUTHORITY AND FUNCTIONS.—**

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

9 **(2) DELEGATION OF FUNCTIONS OF THE SEC-**
10 **RETARY.—***The Secretary may delegate any function*
11 *under this title to the Under Secretary of Commerce*
12 *for Export Administration appointed under sub-*
13 *section (d) or to any other officer of the Department*
14 *of Commerce.*

15 **(c) EXPORT CONTROL POLICY COMMITTEE.—**

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

19 **(2) FUNCTIONS.—***The Committee shall—*

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

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

1 (C) receive policy recommendations from
2 other departments and agencies and resolve pol-
3 icy disputes among departments and agencies
4 under this title.

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

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

12 (5) DELEGATION; OTHER REPRESENTATIVES.—A
13 member of the Committee under paragraph (3) may
14 designate the deputy head of his or her department or
15 agency to serve in his or her absence as a member of
16 the Committee, but this authority may not be dele-
17 gated to any other individual. The chair may also in-
18 vite the temporary participation in the Committee's
19 meetings of representatives from other offices and
20 agencies as appropriate to the issues under consider-
21 ation.

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

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

3 (1) *APPOINTMENT.*—*The President shall appoint,*
4 *by and with the advice and consent of the Senate, an*
5 *Under Secretary of Commerce for Export Administra-*
6 *tion who shall carry out all functions of the Secretary*
7 *under this title and other provisions of law relating*
8 *to national security, as the Secretary may delegate.*
9 *The President shall appoint, by and with the advice*
10 *and consent of the Senate, two Assistant Secretaries*
11 *of Commerce to assist the Under Secretary in carry-*
12 *ing out such functions.*

13 (2) *TRANSITION PROVISIONS.*—*Those individuals*
14 *serving in the positions of Under Secretary of Com-*
15 *merce for Export Administration and Assistant Sec-*
16 *retaries of Commerce under section 15(a) of the Ex-*
17 *port Administration Act of 1979, on the day before*
18 *the date of the enactment of this Act, shall be deemed*
19 *to have been appointed under paragraph (1), by and*
20 *with the advice and consent of the Senate, as of such*
21 *date of enactment.*

22 (e) *ISSUANCE OF REGULATIONS.*—*The President and*
23 *the Secretary may issue such regulations as are necessary*
24 *to carry out this title. Any such regulations the purpose*
25 *of which is to carry out section 105, 106, or 111(a) may*

1 *be issued only after the regulations are submitted for review*
2 *to such departments or agencies as the President considers*
3 *appropriate. The Secretary shall consult with the appro-*
4 *priate export advisory committee appointed under section*
5 *104(f) in formulating regulations under this title. The sec-*
6 *ond sentence of this subsection does not require the concur-*
7 *rence or approval of any official, department, or agency*
8 *to which such regulations are submitted.*

9 *(f) AMENDMENTS TO REGULATIONS.—If the Secretary*
10 *proposes to amend regulations issued under this title, the*
11 *Secretary shall report to the Committee on Banking, Hous-*
12 *ing, and Urban Affairs of the Senate and the Speaker of*
13 *the House of Representatives on the intent and rationale*
14 *of such amendments. Such report shall evaluate the cost and*
15 *burden to the United States exporters of the proposed*
16 *amendments in relation to any enhancement of licensing*
17 *objectives. The Secretary shall consult with the appropriate*
18 *export advisory committees appointed under section 104(f)*
19 *in amending regulations issued under this title.*

20 *(g) CONFIDENTIALITY OF INFORMATION.—*

21 *(1) EXEMPTIONS FROM DISCLOSURE.—*

22 *(A) INFORMATION OBTAINED ON OR BEFORE*
23 *JUNE 30, 1980.—Except as otherwise provided by*
24 *the third sentence of section 108(b)(2), informa-*
25 *tion obtained under the Export Administration*

1 *Act of 1979 and its predecessor statutes on or be-*
2 *fore June 30, 1980, which is deemed confidential,*
3 *including Shipper's Export Declarations, or*
4 *with reference to which a request for confidential*
5 *treatment is made by the person furnishing such*
6 *information, shall not be subject to disclosure*
7 *under section 552 of title 5, United States Code,*
8 *and such information shall not be published or*
9 *disclosed unless the Secretary determines that the*
10 *withholding thereof is contrary to the national*
11 *interest.*

12 (B) *INFORMATION OBTAINED AFTER JUNE*
13 30, 1980.—*Except as otherwise provided by the*
14 *third sentence of section 108(b)(2), information*
15 *obtained under this title or under the Export Ad-*
16 *ministration Act of 1979 after June 30, 1980,*
17 *may be withheld from disclosure only to the ex-*
18 *tent permitted by statute, except that informa-*
19 *tion submitted, obtained, or considered in con-*
20 *nection with an application for an export license*
21 *or other export authorization under the Export*
22 *Administration Act of 1979 or this title, includ-*
23 *ing—*

24 (i) *the export license or other export*
25 *authorization itself,*

1 (ii) classification requests described in
2 section 109(h)(1),

3 (iii) information obtained during the
4 course of an assessment under subsection
5 (k),

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

8 (v) information obtained or furnished
9 under this title in connection with inter-
10 national agreements, treaties, or obligations,
11 shall be withheld from public disclosure and shall
12 not be subject to disclosure under section 552 of
13 title 5, United States Code, unless the release of
14 such information is determined by the Secretary
15 to be in the national interest.

16 (2) INFORMATION TO CONGRESS AND GAO.—

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

21 (B) AVAILABILITY TO THE CONGRESS.—

22 (i) IN GENERAL.—All information ob-
23 tained at any time under this title or pre-
24 vious Acts regarding the control of exports,
25 including any report or license application

1 *required under this title, shall be made*
2 *available to any committee or subcommittee*
3 *of Congress of appropriate jurisdiction upon*
4 *the request of the chairman or ranking mi-*
5 *nority member of such committee or sub-*
6 *committee.*

7 *(ii) PROHIBITION ON FURTHER DIS-*
8 *CLOSURE.—No committee, subcommittee, or*
9 *Member of Congress shall disclose any infor-*
10 *mation obtained under this title or previous*
11 *Acts regarding the control of exports which*
12 *is submitted on a confidential basis to the*
13 *Congress under clause (i) unless the full*
14 *committee to which the information is made*
15 *available determines that the withholding of*
16 *the information is contrary to the national*
17 *interest.*

18 *(C) AVAILABILITY TO THE GAO.—*

19 *(i) IN GENERAL.—Notwithstanding*
20 *paragraph (1), information referred to in*
21 *subparagraph (B) shall, consistent with the*
22 *protection of intelligence, counterintel-*
23 *ligence, and law enforcement sources, meth-*
24 *ods, and activities, as determined by the*
25 *agency that originally obtained the infor-*

1 *mation, and consistent with the provisions*
2 *of section 716 of title 31, United States*
3 *Code, be made available only by the agency,*
4 *upon request, to the Comptroller General of*
5 *the United States or to any officer or em-*
6 *ployee of the General Accounting Office au-*
7 *thorized by the Comptroller General to have*
8 *access to such information.*

9 *(ii) PROHIBITION ON FURTHER DIS-*
10 *CLOSURES.—No officer or employee of the*
11 *General Accounting Office shall disclose, ex-*
12 *cept to the Congress in accordance with this*
13 *paragraph, any such information which is*
14 *submitted on a confidential basis and from*
15 *which any individual can be identified.*

16 *(3) INFORMATION EXCHANGE.—Notwithstanding*
17 *paragraph (1), the Secretary and the Commissioner of*
18 *Customs shall exchange licensing and enforcement in-*
19 *formation with each other which is necessary to facili-*
20 *tate enforcement efforts and effective license decisions.*

21 *(4) PENALTIES FOR DISCLOSURE OF CONFIDEN-*
22 *TIAL INFORMATION.—Any officer or employee of the*
23 *United States, or any department or agency thereof,*
24 *who publishes, divulges, discloses, or makes known in*

1 *any manner or to any extent not authorized by law*
2 *any confidential information that—*

3 *(A) he or she obtains in the course of his or*
4 *her employment or official duties or by reason of*
5 *any examination or investigation made by, or*
6 *report or record made to or filed with, such de-*
7 *partment or agency, or officer or employee there-*
8 *of, and*

9 *(B) is exempt from disclosure under this*
10 *subsection,*

11 *shall be fined not more than \$10,000, or imprisoned*
12 *not more than one year, or both, shall be removed*
13 *from office or employment, and shall be subject to a*
14 *civil penalty of not more than \$1,000 imposed by the*
15 *Secretary under section 110(c).*

16 *(h) AUTHORITY FOR SEMINAR AND PUBLICATIONS*

17 *FUND.—The Secretary is authorized to cooperate with pub-*
18 *lic agencies, other governments, international organiza-*
19 *tions, private individuals, private associations, and other*
20 *groups in connection with seminars, publications, and re-*
21 *lated activities to carry out export activities, including edu-*
22 *cating the public or government officials on the application*
23 *of this title and the regulations issued under this title. The*
24 *Secretary is further authorized to accept contributions of*
25 *funds, property, or services in connection with such activi-*

1 *ties to recover the cost of such programs and activities. Con-*
2 *tributions may include payments for materials or services*
3 *provided as part of such activities. The contributions col-*
4 *lected may be retained for use in covering the costs of such*
5 *activities, and for providing information to the public with*
6 *respect to this title and other export control programs of*
7 *the United States and other governments.*

8 *(i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-*
9 *TROL PROGRAM.—The Secretary is authorized to partici-*
10 *pate in and provide training to officials of other countries*
11 *on the principles and procedures for the implementation of*
12 *effective export controls and may participate in any such*
13 *training provided by other departments and agencies of the*
14 *United States.*

15 *(j) INCORPORATED COMMODITIES AND TECH-*
16 *NOLOGY.—*

17 *(1) COMMODITIES CONTAINING CONTROLLED*
18 *PARTS AND COMPONENTS.—Controls may not be im-*
19 *posed under this title or any other provision of law*
20 *for a commodity solely because the commodity con-*
21 *tains parts or components subject to export controls*
22 *under this title if such parts or components—*

23 *(A) are essential to the functioning of the*
24 *commodity,*

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

4 (C) comprise 25 percent or less of the total
5 value of the commodity,
6 unless the commodity itself, if exported, would by vir-
7 tue of the functional characteristics of the commodity
8 as a whole make a significant contribution to the
9 military or proliferation potential of a controlled
10 country or end user which would prove detrimental to
11 the national security of the United States.

12 (2) REEXPORTS OF FOREIGN-MADE ITEMS INCOR-
13 PORATING U.S. ITEMS.—

14 (A) COMMODITIES.—(i) No authority or
15 permission may be required under section 105 or
16 section 106 to reexport to a country other than
17 a terrorist country or an embargoed country a
18 commodity that is produced in a country other
19 than the United States and incorporates com-
20 modities that are subject to the jurisdiction of the
21 United States, if the value of the controlled Unit-
22 ed States content of the commodity produced in
23 such other country is 25 percent or less of the
24 total value of the commodity.

1 (ii) No authority or permission may be re-
2 quired under section 105 or section 106 to reex-
3 port to a terrorist country or to an embargoed
4 country a commodity that is produced in a
5 country other than the United States and incor-
6 porates commodities that are subject to the juris-
7 diction of the United States, if the value of the
8 controlled United States content of the commod-
9 ity produced in such other country is 10 percent
10 or less of the total value of the commodity.

11 (B) TECHNOLOGY.—(i) No authority or per-
12 mission may be required under section 105 or
13 section 106 to reexport to a country other than
14 a terrorist country or an embargoed country
15 technology that is produced in a country other
16 than the United States and is commingled with
17 or drawn from technology that is produced in the
18 United States, if the value of the controlled Unit-
19 ed States content of the technology produced in
20 such other country is 25 percent or less of the
21 total value of the technology.

22 (ii) No authority or permission may be re-
23 quired under section 105 or section 106 to reex-
24 port to a terrorist country or an embargoed
25 country technology that is produced in a country

1 *other than the United States and is commingled*
2 *with or drawn from technology that is produced*
3 *in the United States, if the value of the con-*
4 *trolled United States content of the technology*
5 *produced in such other country is 10 percent or*
6 *less of the total value of the technology.*

7 (C) *DEFINITIONS.—For purposes of this*
8 *paragraph—*

9 (i) *the “controlled United States con-*
10 *tent” of a commodity or technology means*
11 *those commodities or technology that—*

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

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

16 (III) *would, at the time of the re-*
17 *export, require a license under section*
18 *105 or 106 if exported from the United*
19 *States to a country to which the com-*
20 *modity or technology is to be reex-*
21 *ported;*

22 (ii) *an “embargoed country” is a coun-*
23 *try against which an embargo is in effect*
24 *under the Trading with the Enemy Act, the*

1 *International Emergency Economic Powers*
2 *Act, or other provision of law; and*

3 *(iii) a “terrorist country” is a country*
4 *with respect to which a determination is in*
5 *effect that was made under section*
6 *106(i)(1)(A) of this Act, or section*
7 *6(j)(1)(A) of the Export Administration Act*
8 *of 1979, that the government of such coun-*
9 *try has repeatedly provided support for acts*
10 *of international terrorism.*

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

16 *(4) REPORTING REQUIREMENTS.—Notwithstand-*
17 *ing paragraphs (1) through (3), the Secretary may*
18 *require persons to report to the Department of Com-*
19 *merce their proposed calculations and underlying*
20 *data sufficient for the Department of Commerce to*
21 *evaluate the adequacy of those calculations and data*
22 *related to commodities and technology before a re-*
23 *exporter may rely upon the exclusions from controls*
24 *provided in this subsection.*

1 (5) *EXCEPTIONS.*—*Paragraphs (1) and (2) do*
2 *not require any changes to regulations in effect on the*
3 *effective date of this title and, notwithstanding para-*
4 *graphs (1) and (2), controls may be imposed on com-*
5 *modities or technology transferred, after March 1,*
6 *1996, from export control under the Arms Export*
7 *Control Act to control under this title if those com-*
8 *modities or technology are designated by the President*
9 *for exemption from paragraph (1) or (2), as the case*
10 *may be.*

11 *(k) UNFAIR IMPACT ON UNITED STATES EXPORTER.*—

12 (1) *POLICY.*—*It is the policy of the United*
13 *States that no United States exporter should be af-*
14 *fected unfairly by export control policies or practices*
15 *unless relief from such controls would create a signifi-*
16 *cant risk to the foreign policy, nonproliferation, or*
17 *national security interests of the United States.*

18 (2) *RELIEF FROM EXPORT CONTROLS.*—*(A) A*
19 *person may petition the Secretary for relief from cur-*
20 *rent export control requirements (other than control*
21 *requirements specifically imposed by this title or*
22 *other provisions of law) on the basis of foreign avail-*
23 *ability. A person may also petition the Secretary for*
24 *approval of an export license application on other*
25 *grounds which the Secretary, with the concurrence of*

1 *the Secretary of Defense, shall establish by regulation.*

2 *The Secretary shall, upon receipt of such petitions,*
3 *and may, on his or her initiative, conduct assess-*
4 *ments for providing relief based upon these grounds.*

5 *(B) For purposes of this subsection, foreign*
6 *availability exists when the controlled item is avail-*
7 *able in fact, under terms and conditions established*
8 *by the Secretary with the concurrence of the Secretary*
9 *of Defense, to controlled countries or end users from*
10 *sources outside the United States so that the require-*
11 *ment for a license is or would be ineffective in achiev-*
12 *ing the purpose of the control.*

13 *(3) PROVISIONS FOR RELIEF.—The Secretary, in*
14 *consultation with appropriate departments and agen-*
15 *cies, shall make determinations of facts under para-*
16 *graph (2), addressing, in the case of a petition filed*
17 *under paragraph (2), each ground for relief asserted*
18 *in the petition, and, subject to paragraph (4), shall*
19 *provide at least one of the following forms of relief to*
20 *persons that meet the criteria in paragraph (2):*

21 *(A) Change the control status of, or licens-*
22 *ing requirements on, all or some of the items in*
23 *question so as to eliminate the unfair impact.*

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

1 (C) *Seek multilateral support to eliminate*
2 *the source of unfair impact. If relief under this*
3 *subparagraph is chosen and if such efforts fail to*
4 *achieve multilateral support, then the Secretary,*
5 *not later than 330 days from the date of the Sec-*
6 *retary's initiation of the assessment under para-*
7 *graph (2), shall provide other relief pursuant to*
8 *subparagraph (A) or (B) or conclude pursuant to*
9 *paragraph (4) that the granting of such relief*
10 *would create a significant risk to United States*
11 *nonproliferation, foreign policy, or national se-*
12 *curity interests.*

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

17 (4) *EXCEPTIONS FROM RELIEF.—The Secretary*
18 *shall provide relief under paragraph (3) to a peti-*
19 *tioner who qualifies for relief under paragraph (2)*
20 *unless the Secretary concludes that the granting of*
21 *such relief would create a significant risk to United*
22 *States nonproliferation, foreign policy, or national se-*
23 *curity interests. In the event the Secretary determines*
24 *to grant such relief, he or she may do so unless the*
25 *President determines that such relief would create a*

1 *significant risk to the foreign policy, nonproliferation,*
2 *or national security interests of the United States.*

3 (5) *PROCEDURES.*—

4 (A) *PUBLICATION.*—*In any case in which*
5 *the President or the Secretary determines that*
6 *relief under paragraph (3) will not be granted,*
7 *notwithstanding the existence of facts that con-*
8 *stitute a basis for granting relief, the Secretary*
9 *shall publish that determination, together with a*
10 *concise statement of its basis and the estimated*
11 *economic impact of the decision.*

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

17 (C) *PROCEDURES FOR MAKING DETERMINA-*
18 *TIONS.*—*During the conduct of an assessment*
19 *under this subsection, the Secretary shall consult*
20 *with other appropriate departments and agencies*
21 *concerning the assessment. The Secretary shall*
22 *make a determination as to whether relief is re-*
23 *quired under paragraph (2) within 120 days*
24 *after the date of the Secretary's receipt of the pe-*
25 *tition requesting relief or the date of the Sec-*

1 *retary's initiation of the assessment (as the case*
2 *may be) and shall so notify the applicant. If the*
3 *Secretary has determined that relief is appro-*
4 *priate, the Secretary shall, upon making such a*
5 *determination, submit the determination for re-*
6 *view to the Department of Defense and other ap-*
7 *propriate departments and agencies for consulta-*
8 *tions regarding the findings and the relief se-*
9 *lected. If the Secretary of Defense or other de-*
10 *partment or agency head disagrees with the Sec-*
11 *retary's determination, he or she may appeal the*
12 *determination to the President in writing, but*
13 *only on the basis of the criteria set forth in*
14 *paragraph (4). The President shall resolve any*
15 *such disagreement so that, in all cases, not later*
16 *than 150 days after the date of the Secretary's*
17 *receipt of the petition requesting relief or the*
18 *date of the Secretary's initiation of the assess-*
19 *ment (as the case may be), the Secretary re-*
20 *sponds in writing to the petitioner and submits*
21 *for publication in the Federal Register, that—*

22 *(i) unfair impact exists and—*

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

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

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

8 (IV) export controls under this
9 title are to be maintained notwith-
10 standing the finding under paragraph
11 (2); or

12 (V) the United States rec-
13 ommendation to remove the license re-
14 quirement or change the control status
15 will be submitted to a relevant multi-
16 lateral regime for consideration for a
17 period of not more than 180 days be-
18 ginning on the date of the publication;
19 or

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

22 The reasons for maintaining export controls
23 under clause (i)(IV) shall be included in the sub-
24 mission to the petitioner and the publication. In
25 any case in which the submission for publication

1 *is not made within the 150-day period required*
2 *by this subparagraph, the Secretary may not*
3 *thereafter require a license for the export of items*
4 *that are the subject of the allegation under para-*
5 *graph (2).*

6 (D) *NEGOTIATIONS TO ELIMINATE UNFAIR*
7 *IMPACT.—(i) In any case in which export con-*
8 *trols are maintained under this section pursuant*
9 *to paragraph (4) despite a determination of un-*
10 *fair impact, the Secretary of State shall actively*
11 *pursue negotiations with the governments of the*
12 *appropriate foreign countries for the purpose of*
13 *eliminating the unfair impact. No later than the*
14 *commencement of such negotiations, the Sec-*
15 *retary of State shall notify the Congress in writ-*
16 *ing that the Secretary of State has begun such*
17 *negotiations and why it is important that export*
18 *controls on the items involved be maintained to*
19 *avoid a significant risk to the foreign policy,*
20 *nonproliferation, or national security interests of*
21 *the United States.*

22 (ii) *Whenever the Secretary of State has*
23 *reason to believe that items subject to export con-*
24 *trols by the United States may become available*
25 *in fact from other countries to controlled coun-*

1 tries and that such availability can be prevented
2 or eliminated by means of negotiations with such
3 other countries, the Secretary of State shall
4 promptly initiate negotiations with the govern-
5 ments of such other countries to prevent such for-
6 eign availability.

7 (6) *SHARING OF INFORMATION.*—Each depart-
8 ment or agency of the United States, including any
9 intelligence agency, and all contractors with any such
10 department or agency, shall, upon the request of the
11 Secretary and consistent with the protection of intel-
12 ligence sources and methods, furnish information to
13 the Department of Commerce concerning foreign
14 availability of items subject to export controls under
15 this title. Consistent with the protection of intelligence
16 sources and methods and classification restrictions,
17 each such department or agency shall allow the De-
18 partment of Commerce access to such information
19 from a laboratory or other facility within such de-
20 partment or agency.

21 (7) *CONGRESSIONAL NOTIFICATION AND REPORT-*
22 *ING REQUIREMENTS.*—The Secretary shall each year
23 notify the Congress of all petitions for relief under
24 this subsection and the status of all such petitions.

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

3 (1) *medicine or medical supplies; or*

4 (2) *donations of items that are intended to meet*
5 *basic human needs, including food, educational mate-*
6 *rials, seeds, hand tools, water resources equipment,*
7 *clothing and shelter materials, and basic household*
8 *supplies.*

9 (m) *SANCTITY OF EXISTING CONTRACTS AND LI-*
10 *CENSES.*—

11 (1) *IN GENERAL.*—*In the case of a control im-*
12 *posed under section 106 on the export of any items,*
13 *the President may not prohibit the export of those*
14 *items—*

15 (A) *in performance of a contract, agree-*
16 *ment, or other contractual commitment entered*
17 *into before the date on which the control is ini-*
18 *tially imposed, or the date on which the Presi-*
19 *dent reports to the Congress the President's in-*
20 *tention to impose the control, whichever date oc-*
21 *currs first, or*

22 (B) *under a license or other authorization*
23 *issued under this title before the date on which*
24 *the control is initially imposed, or the date on*
25 *which the President reports to the Congress the*

1 *President's intention to impose the control,*
2 *whichever date occurs first.*

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

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

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

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

16 *The authority of the President to make determina-*
17 *tions under this paragraph may not be delegated.*

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

20 (1) *IN GENERAL.*—*The Secretary shall publish in*
21 *the Federal Register, to the greatest extent practicable,*
22 *actions, procedures, and decisions of the Secretary*
23 *under this title, taking into account restrictions on*
24 *disclosure of classified or confidential information.*

25 *The Secretary shall publish in the Federal Register*

1 *calculations by the Secretary of commonly-used con-*
2 *trol index parameters for commodities and tech-*
3 *nologies, including all officially accepted composite*
4 *theoretical performance calculations for computers*
5 *and microprocessors, except in a case in which a pri-*
6 *vate party requested the calculation and asked that it*
7 *not be published.*

8 (2) *NOTICE OF REVISIONS.*—Whenever the Sec-
9 *retary makes any revision in the control index with*
10 *respect to any commodity or technology, or with re-*
11 *spect to any country or destination affected by con-*
12 *trols imposed under section 105 or section 106, the*
13 *Secretary shall publish in the Federal Register a no-*
14 *tice of such revision and shall specify in such notice*
15 *under which authority the revision is being made.*

16 (o) *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 ob-*
25 *tain their views on United States export control pol-*

1 *icy and the foreign availability of commodities and*
2 *technology.*

3 *(p) EXPORT CONTROL DUTIES.—*

4 *(1) ASSIGNMENT.—The Secretary shall ensure*
5 *that at least one full-time representative of the De-*
6 *partment of Commerce stationed in the People’s Re-*
7 *public of China has duties related to the implementa-*
8 *tion of export controls under this title. These duties*
9 *shall include giving priority to conducting*
10 *postshipment verifications and prelicense checks, and*
11 *to using other means to ensure that United States ex-*
12 *ports from the United States of dual use items are not*
13 *diverted to unauthorized end uses or end users.*

14 *(2) OTHER RESOURCES.—The Secretary shall*
15 *ensure that appropriate resources are made available*
16 *and, if necessary, new procedures established to assist*
17 *the representative or representatives of the Depart-*
18 *ment of Commerce referred to in paragraph (1) in*
19 *carrying out their duties and to ensure that sensitive*
20 *items are not diverted to inappropriate end uses or*
21 *end users in the People’s Republic of China. Efforts*
22 *to carry out this paragraph shall include appropriate*
23 *coordination with United States officials in Hong*
24 *Kong to ensure that sensitive items exported to Hong*
25 *Kong are protected from diversion.*

1 (3) *AUTHORIZATION OF APPROPRIATIONS.*—

2 *There are authorized to be appropriated such sums as*
3 *may be necessary to carry out paragraph (1).*

4 (q) *AUTHORIZATION FOR TECHNICAL DATA.*—A li-
5 *cence authorizing the export of any commodities or tech-*
6 *nology under this title shall also authorize the export of op-*
7 *eration technical data related to such commodities or tech-*
8 *nology, if the technical level of the data does not exceed the*
9 *minimum necessary to install, repair, maintain, inspect,*
10 *operate, or use the commodities or technology.*

11 (r) *LICENSES FOR SPARE PARTS NOT REQUIRED.*—
12 *A license shall not be required under this title for replace-*
13 *ment parts which are exported to replace on a one-for-one*
14 *basis parts that were in a commodity that was lawfully*
15 *exported from the United States, unless the President deter-*
16 *mines that such a license should be required for such parts.*

17 **SEC. 115. ANNUAL REPORT.**

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

24 (1) *The implementation of the policies set forth*
25 *in section 103, including delegations of authority by*

1 *the President under section 104(d), consultations with*
2 *the export advisory committees established under sec-*
3 *tion 104(f), and any changes in the exercise of the au-*
4 *thorities contained in sections 105(a), 106(a), 107(a),*
5 *and 108(a).*

6 (2) *With respect to multilateral export controls*
7 *imposed or maintained under section 105, the follow-*
8 *ing:*

9 (A) *Adjustments to multilateral export con-*
10 *trols.*

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

13 (3) *Determinations made under section 114(k),*
14 *the criteria used to make such determinations, the re-*
15 *moval of any export controls under such section, and*
16 *any evidence demonstrating a need to maintain ex-*
17 *port controls notwithstanding determinations made*
18 *under paragraph (2) of section 114(k).*

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

21 (5) *Organizational and procedural changes un-*
22 *dertaken in furtherance of the policies set forth in this*
23 *title, including changes to increase the efficiency of*
24 *the export licensing process and to fulfill the require-*
25 *ments of section 109, including an accounting of ap-*

1 *peals received, and actions taken pursuant thereto,*
2 *under section 109(g).*

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

5 *(7) The issuance of regulations under this title.*

6 *(8) The results, in as much detail as may be in-*
7 *cluded consistent with the strategic and political in-*
8 *terests of the United States and the need to maintain*
9 *the confidentiality of proprietary information, of the*
10 *reviews of the multilateral control list, and any revi-*
11 *sions to the list resulting from such reviews, required*
12 *by section 105.*

13 *(b) COMPARATIVE REPORT ON EXPORT CONTROL SYS-*
14 *TEMS AMONG COUNTRIES.—The Secretary shall include, in*
15 *each annual report under subsection (a), a description of*
16 *significant differences between the export control laws and*
17 *regulations of the United States and its major trade com-*
18 *petitors, particularly as these differences relate to the imple-*
19 *mentation of multilateral export control regimes. The Sec-*
20 *retary shall include—*

21 *(1) an assessment of the impact of these dif-*
22 *ferences on important interests of the United States;*

23 *(2) a description of the extent to which the execu-*
24 *tive branch intends to address these differences; and*

1 (3) *a listing of unilateral controls and embargoes*
2 *imposed by the United States that are in effect, with*
3 *a quantification of their economic impact, including*
4 *the effect of such controls and embargoes on employ-*
5 *ment in the United States.*

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

10 **SEC. 116. DEFINITIONS.**

11 *As used in this title:*

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

15 (2) *ADHERENT.*—*An “adherent” to a multilat-*
16 *eral regime is a country that is a member of that re-*
17 *gime or that, pursuant to an international under-*
18 *standing to which the United States is a party, con-*
19 *trols exports in accordance with the criteria and*
20 *standards of that regime.*

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

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

6 (5) *COMMODITY.*—*The term “commodity” means*
7 *any article, natural or manmade substance, material,*
8 *software, source code, supply, or manufactured prod-*
9 *uct, including inspection and test equipment, and ex-*
10 *cluding technical data.*

11 (6) *CONTROL OR CONTROLLED.*—*The terms “con-*
12 *trol” and “controlled” refer to a licensing require-*
13 *ment, a written reexport authorization requirement,*
14 *or a prohibition on an export.*

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

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

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

22 (i) *means—*

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

1 (ii) a transfer to any person of items
2 either within the United States or outside of
3 the United States with the knowledge or in-
4 tent that the items will be shipped, trans-
5 ferred, or transmitted outside the United
6 States; and

7 (i) includes the term “reexport”.

8 (B) The Secretary may further define the term
9 export by regulation to include, among other concepts,
10 that—

11 (i) a transfer of items in the United States
12 to an embassy or affiliate of a country is an ex-
13 port to the country,

14 (ii) disclosure of technology to a foreign per-
15 son is deemed to be an export to the country of
16 which he or she is a national, and

17 (iii) transfer of effective control from one
18 country to another over a satellite above the
19 earth is an export from one country to another.

20 (C) As used in this paragraph, the term “foreign
21 person” means—

22 (i) an individual who is not a United
23 States citizen or an alien lawfully admitted for
24 permanent residence to the United States;

1 (ii) any corporation, partnership, business
2 association, society, trust, organization, or other
3 nongovernmental entity created or organized
4 under the laws of a foreign country or that has
5 its principal place of business outside the United
6 States; and

7 (iii) any governmental entity of a foreign
8 country that is operating as a business enter-
9 prise.

10 (10) *EXPORT CONTROL REGIME, MULTILATERAL*
11 *EXPORT CONTROL REGIME, MULTILATERAL REGIME,*
12 *AND REGIME.—The terms “export control regime”,*
13 *“multilateral export control regime”, “multilateral re-*
14 *gime”, and “regime” each means an international*
15 *agreement or an arrangement among two or more*
16 *countries, including the United States, a purpose of*
17 *which is to coordinate national export control policies*
18 *of participating countries regarding certain items.*
19 *Such terms include the Australia Group, the*
20 *Wassenaar Arrangement, the MTCR, and the Nuclear*
21 *Supplies Group.*

22 (11) *FOREIGN AVAILABILITY, AVAILABLE IN FACT*
23 *TO CONTROLLED COUNTRIES.—The terms “foreign*
24 *availability” and “available in fact to controlled*

1 *countries” each include production or availability of*
2 *any item from any country—*

3 *(A) in which the item is not restricted for*
4 *export to any controlled country; or*

5 *(B) in which such export restrictions are*
6 *determined by the Secretary to be ineffective.*

7 *For purposes of subparagraph (B), the mere inclusion*
8 *of items on a list of items subject to export controls*
9 *imposed pursuant to a multilateral export control re-*
10 *gime shall not alone constitute credible evidence that*
11 *the government of a country provides an effective*
12 *means of controlling the export of such items to con-*
13 *trolled countries.*

14 *(12) ITEM.—The term “item” means any com-*
15 *modity, technology, or other information.*

16 *(13) LICENSING REQUIREMENT.—The term “li-*
17 *censing requirement” includes any restriction or con-*
18 *dition, including recordkeeping and reporting, im-*
19 *posed by the Secretary under this title in licensing*
20 *the export of a commodity, technology, or other infor-*
21 *mation.*

22 *(14) MEMBER OF AN EXPORT CONTROL RE-*
23 *GIME.—A “member” of an export control regime,*
24 *multilateral export control regime, multilateral re-*

1 *gime, or regime is a country that participates in that*
2 *regime.*

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

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

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

21 (18) *NUCLEAR EXPLOSIVE DEVICE.*—*The term*
22 *“nuclear explosive device” means any device, whether*
23 *assembled or disassembled, that is designed to produce*
24 *an instantaneous release of an amount of nuclear en-*
25 *ergy from special nuclear material that is greater*

1 *than the amount of energy that would be released*
2 *from the detonation of one pound of trinitrotoluene*
3 *(TNT).*

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

10 (20) *PERSON.*—*Except as provided in section*
11 *111, the term “person” includes—*

12 (A) *the singular and the plural and any in-*
13 *dividual, partnership, corporation, business asso-*
14 *ciation, society, trust, organization, or any other*
15 *group created or organized under the laws of a*
16 *country; and*

17 (B) *any government, or any governmental*
18 *body, corporation, trust, agency, department, or*
19 *group, operating as a business enterprise.*

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

23 (22) *SECRETARY.*—*The term “Secretary” means*
24 *the Secretary of Commerce or any successor officer*

1 *performing functions of the Secretary of Commerce*
2 *under this title.*

3 (23) *TECHNOLOGY.*—*The term “technology”*
4 *means specific information that is necessary for the*
5 *development, production, or use of a commodity, in-*
6 *cluding source code, and that takes the form of tech-*
7 *nical data or technical assistance.*

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

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

22 (26) *UNITED STATES PERSON.*—*The term “Unit-*
23 *ed States person” means any United States citizen,*
24 *resident, or national (other than an individual resi-*
25 *dent outside the United States and employed by other*

1 *than a United States person), any domestic concern*
2 *(including any permanent domestic establishment of*
3 *any foreign concern) and any foreign subsidiary or*
4 *affiliate (including any permanent foreign establish-*
5 *ment) of any domestic concern which is controlled in*
6 *fact by such domestic concern, as determined under*
7 *regulations of the President.*

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

14 (28) *WEAPON OF MASS DESTRUCTION.*—*The term*
15 *“weapon of mass destruction” means any chemical,*
16 *biological, or nuclear weapon, including a nuclear ex-*
17 *plosive device.*

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

19 (a) *COMMODITY JURISDICTION.*—

20 (1) *COORDINATION OF CONTROLS.*—*The author-*
21 *ity granted under this title and under section 38 of*
22 *the Arms Export Control Act (22 U.S.C. 2778) shall*
23 *be exercised in such a manner as to achieve effective*
24 *coordination between the licensing systems under this*

1 *title and such section 38 and to share information re-*
2 *garding the trustworthiness of parties.*

3 (2) *ELIMINATION OF OVERLAPPING CONTROLS.—*
4 *Notwithstanding any other provision of law, no item*
5 *may be included on both the control index and the*
6 *United States Munitions List after the date of the en-*
7 *actment of this Act.*

8 (3) *COMMODITY JURISDICTION DISPUTE RESOLU-*
9 *TION.—The President shall establish procedures for*
10 *the resolution of commodity jurisdiction disputes*
11 *among departments and agencies of the United*
12 *States. Such disputes shall normally be resolved with-*
13 *in 60 days, and the procedures shall allow disputes*
14 *to be referred to the President normally within 90*
15 *days. These procedures shall also—*

16 (A) *require the Secretary and the Secretary*
17 *of State to refer matters to each other in accord-*
18 *ance with their respective jurisdictions;*

19 (B) *require transparency, among the Sec-*
20 *retary, the Secretary of State, and the Secretary*
21 *of Defense, in commodity jurisdiction cases and*
22 *commodity classification requests and deter-*
23 *minations;*

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

4 (D) provide deadlines for action and stand-
5 ards for decision, and ensure that disputes that
6 cannot be resolved may be referred to the Presi-
7 dent by the Secretary of State, the Secretary of
8 Defense, or the Secretary.

9 (b) *IN GENERAL.*—Except as otherwise provided in
10 this title, nothing in this title shall be construed to modify,
11 repeal, supersede, or otherwise affect the provisions of any
12 other laws authorizing control over exports of any commod-
13 ities, technology, or other information.

14 (c) *LICENSING PROCESS.*—The provisions of section
15 109 shall supersede the procedures published pursuant to
16 section 309(c) of the Nuclear Non-Proliferation Act of 1978
17 (42 U.S.C. 2139a(c)) to the extent such procedures are in-
18 consistent with the provisions of section 109.

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

21 (1) *EXERCISE OF PRESIDENTIAL AUTHORITY.*—

22 (A) Section 204(b) of the International Emergency
23 Economic Powers Act (50 U.S.C. 1703(b)) is amend-
24 ed—

1 *(i) by striking “and” at the end of para-*
2 *graph (4);*

3 *(ii) by striking the period at the end of*
4 *paragraph (5) and inserting “; and”; and*

5 *(iii) by adding at the end the following:*

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

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

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

12 *(B) Section 204(c) of that Act (50 U.S.C.*
13 *1703(c)) is amended—*

14 *(i) by striking “(5)” and inserting “(6)”;*
15 *and*

16 *(ii) by striking the period and inserting “,*
17 *and, in the case of controls referred to in para-*
18 *graph (6) of subsection (b), the President shall*
19 *report to the Congress on the economic losses that*
20 *have occurred as a result of the unilateral ac-*
21 *tion”.*

22 *(2) CONFIDENTIALITY OF INFORMATION.—The*
23 *International Emergency Economic Powers Act is*
24 *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, or
10 considered in connection with any transaction that would
11 otherwise be prohibited under this title, including—

12 “(1) the license or other authorization itself,

13 “(2) classification requests or other inquiries on
14 the applicability of export license requirements to a
15 proposed transaction or series of transactions,

16 “(3) information or evidence obtained in the
17 course of any investigation, and

18 “(4) information obtained or furnished under
19 this title in connection with international agreements,
20 treaties, or obligations,

21 shall be withheld from public disclosure, and shall not be
22 subject to disclosure under section 552 of title 5, United
23 States Code, unless the release of such information is deter-
24 mined by the Secretary of Commerce or the Secretary of
25 the Treasury to be in the national interest. In the case of

1 *information obtained or furnished under this title in con-*
2 *nection with international agreements, treaties, or obliga-*
3 *tions, such a determination may be made only after con-*
4 *sultation with the Secretary of State.*

5 “(b) *INFORMATION TO CONGRESS AND GAO.*—

6 “(1) *IN GENERAL.*—*Nothing in this title shall be*
7 *construed as authorizing the withholding of informa-*
8 *tion from the Congress or from the General Account-*
9 *ing Office.*

10 “(2) *AVAILABILITY TO THE CONGRESS.*—

11 “(A) *IN GENERAL.*—*All information ob-*
12 *tained at any time under this title regarding the*
13 *control of exports, including any report or li-*
14 *cence application required under this title, shall*
15 *be made available to any committee or sub-*
16 *committee of Congress of appropriate jurisdic-*
17 *tion upon the request of the chairman or ranking*
18 *minority member of such committee or sub-*
19 *committee.*

20 “(B) *PROHIBITION ON FURTHER DISCLO-*
21 *SURE.*—*No committee, subcommittee, or Member*
22 *of Congress shall disclose any information ob-*
23 *tained under this title or previous Acts regarding*
24 *the control of exports which is submitted on a*
25 *confidential basis to the Congress under subpara-*

1 *graph (A) unless the full committee to which the*
2 *information is made available determines that*
3 *the withholding of the information is contrary to*
4 *the national interest.*

5 *“(3) AVAILABILITY TO THE GAO.—*

6 *“(A) IN GENERAL.—Notwithstanding para-*
7 *graph (1), information referred to in paragraph*
8 *(2) shall, consistent with the protection of intel-*
9 *ligence, counterintelligence, and law enforcement*
10 *sources, methods, and activities, as determined*
11 *by the agency that originally obtained the infor-*
12 *mation, and consistent with the provisions of*
13 *section 716 of title 31, United States Code, be*
14 *made available only by the agency, upon request,*
15 *to the Comptroller General of the United States*
16 *or to any officer or employee of the General Ac-*
17 *counting Office authorized by the Comptroller*
18 *General to have access to such information.*

19 *“(B) PROHIBITION ON FURTHER DISCLO-*
20 *SURES.—No officer or employee of the General*
21 *Accounting Office shall disclose, except to the*
22 *Congress in accordance with this subsection, any*
23 *such information which is submitted on a con-*
24 *fidential basis and from which any individual*
25 *can be identified.*

1 “(c) *PENALTIES FOR DISCLOSURE OF CONFIDENTIAL*
2 *INFORMATION.*—*Any officer or employee of the United*
3 *States, or any department or agency thereof, who publishes,*
4 *divulges, discloses, or makes known in any manner or to*
5 *any extent not authorized by law any confidential informa-*
6 *tion that—*

7 “(1) *he or she obtains in the course of his or her*
8 *employment or official duties or by reason of any ex-*
9 *amination or investigation made by, or report or*
10 *record made to or filed with, such department or*
11 *agency, or officer or employee thereof, and*

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

17 (3) *PENALTIES.*—*Section 206 of the Inter-*
18 *national Emergency Economic Powers Act (50 U.S.C.*
19 *1705) is amended—*

20 (A) *in subsection (a) by inserting “, or at-*
21 *tempts to violate,” after “violates”; and*

22 (B) *in subsection (b) by inserting “, or will-*
23 *fully attempt to violate,” after “violates”.*

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

4 (1) *in subsection (a)*—

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

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

9 (2) *in subsection (b)(1) by inserting “, or at-*
10 *tempts to violate,” after “violates”.*

11 (f) *REPORT ON OFAC AND ODTC.*—

12 (1) *STUDY ON OFAC.*—*The Secretary of the*
13 *Treasury shall study ways to make the operations of*
14 *the Office of Foreign Assets Control of the Department*
15 *of the Treasury more effective and efficient in re-*
16 *sponding to licensing requests and other inquiries of*
17 *United States exporters, including through the up-*
18 *grading of technology in that office.*

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

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

8 **SEC. 118. SECONDARY ARAB BOYCOTT.**

9 (a) *SENSE OF CONGRESS.*—

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

13 (2) *ACTIONS TO END SECONDARY BOYCOTT.*—The
14 United States will consider the secondary Arab boy-
15 cott to have ended when—

16 (A) the Arab League issues a public pro-
17 nouncement that the Arab League has ended the
18 secondary Arab boycott;

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

22 (C) the Arab League and the individual
23 countries that are members of the Arab League
24 have terminated the practice of barring United
25 States persons and foreign companies that do not

1 *comply with the secondary Arab boycott from*
2 *doing business with countries that are members*
3 *of the Arab League, and have declared null and*
4 *void any existing list of such barred persons and*
5 *companies; and*

6 *(D) the Arab League, and the individual*
7 *countries that are the members of the Arab*
8 *League, have ceased requesting United States*
9 *persons to take actions prohibited under section*
10 *108(a).*

11 *(b) DEFINITION.—For purposes of this section, the*
12 *term “secondary Arab boycott” means the refusal to do busi-*
13 *ness with persons who do not comply with requests to take*
14 *any action prohibited under section 108(a) with respect to*
15 *Israel.*

16 **SEC. 119. CONFORMING AMENDMENTS.**

17 *(a) ARMS EXPORT CONTROL ACT.—*

18 *(1) Section 38 of the Arms Export Control Act*
19 *(22 U.S.C. 2778) is amended—*

20 *(A) in subsection (e)—*

21 *(i) in the first sentence by striking*
22 *“subsections (c)” and all that follows*
23 *through “12 of such Act” and inserting*
24 *“subsections (b), (c), (d) and (e) of section*
25 *110 of the Export Administration Act of*

1 1996, by subsections (a) and (b) of section
2 113 of such Act, and by section 114(g) of
3 such Act”; and

4 (ii) in the third sentence by striking
5 “11(c) of the Export Administration Act of
6 1979” and inserting “110(c) of the Export
7 Administration Act of 1996”; and

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

10 “(ii) section 110 of the Export Administra-
11 tion Act of 1996.”.

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

15 (A) by striking “(c),” and all that follows
16 through “12(a) of such Act” and inserting “(c),
17 (d), and (e) of section 110, section 112(c), and
18 subsections (a) and (b) of section 113, of the Ex-
19 port Administration Act of 1996”; and

20 (B) by striking “11(c)” and inserting
21 “110(c)”.

22 (3) Section 40(k) of the Arms Export Control Act
23 (22 U.S.C. 2780(k)) is amended—

24 (A) by striking “11(c), 11(e), 11(g), and
25 12(a) of the Export Administration Act of 1979”

1 and inserting “110(b), 110(c), 110(e), 113(a),
2 and 113(b) of the Export Administration Act of
3 1996”; and

4 (B) by striking “11(c)” and inserting
5 “110(c)”.

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

11 (b) OTHER PROVISIONS OF LAW.—

12 (1) Section 5(b)(4) of the Trading with the
13 Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.
14 5(b)(4)) is amended by striking “section 5 of the Ex-
15 port Administration Act of 1979, or under section 6
16 of that Act to the extent that such controls promote
17 the nonproliferation or antiterrorism policies of the
18 United States” and inserting “the Export Adminis-
19 tration Act of 1996”.

20 (2) Section 502B(a)(2) of the Foreign Assistance
21 Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the
22 second sentence—

23 (A) by striking “Export Administration Act
24 of 1979” the first place it appears and inserting
25 “Export Administration Act of 1996”; and

1 (B) by striking “Act of 1979)” and insert-
2 ing “Act of 1996”).

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

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

9 (ii) in paragraph (2) by striking “6(j) of
10 the Export Administration Act of 1979” and in-
11 serting “106(i) of the Export Administration Act
12 of 1996”.

13 (B) For purposes of the report required by
14 March 31, 1996, under section 140(a) of the Foreign
15 Relations Authorization Act, Fiscal Years 1988 and
16 1989, the reference in paragraph (2) of such section
17 to “section 106(i) of the Export Administration Act
18 of 1996” shall be deemed to refer to “section 6(j) of
19 the Export Administration Act of 1979 or section
20 106(i) of the Export Administration Act of 1996”.

21 (4) Section 40(e)(1) of the State Department
22 Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1))
23 is amended by striking “6(j)(1) of the Export Admin-
24 istration Act of 1979” and inserting “106(i)(1) of the
25 Export Administration Act of 1996”.

1 (5) *Section 110 of the International Security*
2 *and Development Cooperation Act of 1980 (22 U.S.C.*
3 *2778a) is amended by striking “Act of 1979” and in-*
4 *serting “Act of 1996”.*

5 (6) *Section 205(d)(4)(B) of the State Depart-*
6 *ment Basic Authorities Act of 1956 (22 U.S.C.*
7 *4305(d)(4)(B)) is amended by striking “6(j) of the*
8 *Export Administration Act of 1979” and inserting*
9 *“106(i) of the Export Administration Act of 1996”.*

10 (7) *Section 203(b)(3) of the International Emer-*
11 *gency Economic Powers Act (50 U.S.C. 1702(b)(3)) is*
12 *amended by striking “section 5 of the Export Admin-*
13 *istration Act of 1979, or under section 6 of such Act*
14 *to the extent that such controls promote the non-*
15 *proliferation or antiterrorism policies of the United*
16 *States” and inserting “the Export Administration*
17 *Act of 1996”.*

18 (8) *Section 491(f) of the Forest Resources Con-*
19 *servation and Shortage Relief Act of 1990 (16 U.S.C.*
20 *620c(f)) is repealed.*

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

23 **SEC. 120. EXPIRATION DATE.**

24 *This title expires on June 30, 2001.*

1 **SEC. 121. SAVINGS PROVISIONS.**

2 (a) *IN GENERAL.*—All delegations, rules, regulations,
3 orders, determinations, licenses, or other forms of adminis-
4 trative action which have been made, issued, conducted, or
5 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 which are amended by section 119,*

11 *and are in effect at the time this title takes effect, shall con-*
12 *tinue in effect according to their terms until modified, su-*
13 *perseded, set aside, or revoked under this title or the Arms*
14 *Export Control Act.*

15 (b) *ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.*—

16 (1) *EXPORT ADMINISTRATION ACT.*—*This title*
17 *shall not affect any administrative or judicial pro-*
18 *ceedings commenced or any application for a license*
19 *made, under the Export Administration Act of 1979,*
20 *which is pending at the time this title takes effect.*
21 *Any such proceedings, and any action on such appli-*
22 *cation, shall continue under the Export Administra-*
23 *tion Act of 1979 as if that Act had not been repealed.*

24 (2) *OTHER PROVISIONS OF LAW.*—*This title shall*
25 *not affect any administrative or judicial proceedings*
26 *commenced or any application for a license made,*

1 *under those provisions of the Arms Export Control*
2 *Act which are amended by section 119, if such pro-*
3 *ceedings or application is pending at the time this*
4 *title takes effect. Any such proceedings, and any ac-*
5 *tion on such application, shall continue under those*
6 *provisions as if those provisions had not been amend-*
7 *ed by section 119.*

8 *(c) TREATMENT OF CERTAIN DETERMINATIONS.—Any*
9 *determination with respect to the government of a foreign*
10 *country under section 6(j) of the Export Administration Act*
11 *of 1979, that is in effect at the time this title takes effect,*
12 *shall, for purposes of this title or any other provision of*
13 *law, be deemed to be made under section 106(i) of this Act*
14 *until superseded by a determination under such section*
15 *106(i).*

16 **TITLE II—NUCLEAR**
17 **PROLIFERATION PREVENTION**

18 **SEC. 201. REPEAL OF TERMINATION OF PROVISIONS OF**
19 **THE NUCLEAR PROLIFERATION PREVENTION**
20 **ACT OF 1994.**

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

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

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

7 (1) *by striking subsection (e); and*

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

10 (d) *CONFORMING AMENDMENT.*—Section 102(b)(2)(G)
11 *of the Arms Export Control Act (22 U.S.C. 2799aa–*
12 *1(b)(2)(G)) is amended by striking “section 6 of the Export*
13 *Administration Act of 1979” and inserting “section 105 or*
14 *106 of the Export Administration Act of 1996”.*

15 **SEC. 202. SEEKING MULTILATERAL SUPPORT FOR UNILAT-**
16 **ERAL SANCTIONS.**

17 *The Secretary of State, in consultation with appro-*
18 *priate departments and agencies, shall seek the support of*
19 *other countries for sanctions imposed under the Nuclear*
20 *Proliferation Prevention Act of 1994 or the amendments*
21 *made by that Act.*

1 **SEC. 203. SANCTIONS UNDER THE NUCLEAR PROLIFERA-**
2 **TION PREVENTION ACT OF 1994.**

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

6 *“(H)(i) The President shall prohibit the impor-*
7 *tation into the United States of specific products pro-*
8 *duced in that country by persons who have engaged*
9 *in the activities described in paragraph (1) that were*
10 *the basis of the President’s determination under such*
11 *paragraph.*

12 *“(ii) In the event that it is not possible to iden-*
13 *tify the persons who have engaged in the activities de-*
14 *scribed in paragraph (1) that were the basis of the*
15 *President’s determination under such paragraph, the*
16 *President shall prohibit the importation into the*
17 *United States of products produced in that country*
18 *by those persons that the President shall designate as*
19 *most closely identified with those activities.*

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

22 *“(I) a natural person;*

23 *“(II) a corporation, business association,*
24 *partnership, society, or trust, or any other non-*
25 *governmental entity, organization, or group;*

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

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

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

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