

106TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Export Administration Act of 1999”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—GENERAL AUTHORITY

- Sec. 101. Commerce Control List.
- Sec. 102. Delegation of authority.
- Sec. 103. Public information; consultation requirements.

- Sec. 104. Right of export.
- Sec. 105. Export control advisory committees.
- Sec. 106. Prohibition on charging fees.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

- Sec. 201. Authority for national security export controls.
- Sec. 202. National Security Control List.
- Sec. 203. Country tiers.
- Sec. 204. Incorporated parts and components.
- Sec. 205. Petition process for modifying export status.

Subtitle B—Foreign Availability and Mass-Market Status

- Sec. 211. Determination of foreign availability and mass-market status.
- Sec. 212. Presidential set-aside of foreign availability determination.
- Sec. 213. Presidential set-aside of mass-market status determination.
- Sec. 214. Office of Technology Evaluation.

TITLE III—FOREIGN POLICY EXPORT CONTROLS

- Sec. 301. Authority for foreign policy export controls.
- Sec. 302. Procedures for imposing controls.
- Sec. 303. Criteria for foreign policy export controls.
- Sec. 304. Presidential report before imposition of control.
- Sec. 305. Imposition of controls.
- Sec. 306. Deferral authority.
- Sec. 307. Review, renewal, and termination.
- Sec. 308. Termination of controls under this title.
- Sec. 309. Compliance with international obligations.
- Sec. 310. Designation of countries supporting international terrorism.

TITLE IV—EXEMPTION FOR AGRICULTURAL COMMODITIES, MEDICINE, AND MEDICAL SUPPLIES

- Sec. 401. Exemption for agricultural commodities, medicine, and medical supplies.
- Sec. 402. Termination of export controls required by law.
- Sec. 403. Exclusions.

TITLE V—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

- Sec. 501. Export license procedures.
- Sec. 502. Interagency dispute resolution process.

TITLE VI—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT

- Sec. 601. International arrangements.
- Sec. 602. Foreign boycotts.
- Sec. 603. Penalties.
- Sec. 604. Multilateral export control regime violation sanctions.
- Sec. 605. Missile proliferation control violations.
- Sec. 606. Chemical and biological weapons proliferation sanctions.
- Sec. 607. Enforcement.

Sec. 608. Administrative procedure.

TITLE VII—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 701. Export control authority and regulations.

Sec. 702. Confidentiality of information.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Annual and periodic reports.

Sec. 802. Savings provisions.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AFFILIATE.**—The term “affiliate” includes
4 both governmental entities and commercial entities
5 that are controlled in fact by the government of a
6 country.

7 (2) **AGRICULTURE COMMODITY.**—The term “ag-
8 riculture commodity” means any agricultural com-
9 modity, food, fiber, or livestock (including livestock,
10 as defined in section 602(2) of the Emergency Live-
11 stock Feed Assistance Act of 1988 (title VI of the
12 Agricultural Act of 1949 (7 U.S.C. 1471(2))), and
13 including insects), and any product thereof.

14 (3) **CONTROL OR CONTROLLED.**—The terms
15 “control” and “controlled” mean any requirement,
16 condition, authorization, or prohibition on the export
17 or reexport of an item.

18 (4) **CONTROL LIST.**—The term “Control List”
19 means the Commerce Control List established under
20 section 101.

1 (5) CONTROLLED COUNTRY.—The term “con-
2 trolled country” means a country with respect to
3 which exports are controlled under section 201 or
4 301.

5 (6) CONTROLLED ITEM.—The term “controlled
6 item” means an item the export of which is con-
7 trolled under this Act.

8 (7) COUNTRY.—The term “country” means a
9 sovereign country or an autonomous customs terri-
10 tory.

11 (8) COUNTRY SUPPORTING INTERNATIONAL
12 TERRORISM.—The term “country supporting inter-
13 national terrorism” means a country designated by
14 the Secretary of State pursuant to section 310.

15 (9) DEPARTMENT.—The term “Department”
16 means the Department of Commerce.

17 (10) EXPORT.—

18 (A) The term “export” means—

19 (i) an actual shipment, transfer, or
20 transmission of an item out of the United
21 States;

22 (ii) a transfer to any person of an
23 item either within the United States or
24 outside of the United States with the
25 knowledge or intent that the item will be

1 shipped, transferred, or transmitted to an
2 unauthorized recipient outside the United
3 States; and

4 (iii) a transfer of an item in the Unit-
5 ed States to an embassy or affiliate of a
6 country, which shall be considered an ex-
7 port to that country.

8 (B) The term includes a reexport.

9 (11) FOREIGN AVAILABILITY STATUS.—The
10 term “foreign availability status” means the status
11 described in section 211(d)(1).

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

14 (A) an individual who is not—

15 (i) a United States citizen;

16 (ii) an alien lawfully admitted for per-
17 manent residence to the United States; or

18 (iii) a protected individual as defined
19 in section 274B(a)(3) of the Immigration
20 and Nationality Act. (8 U.S.C.
21 1324b(a)(3));

22 (B) any corporation, partnership, business
23 association, society, trust, organization, or other
24 nongovernmental entity created or organized
25 under the laws of a foreign country or that has

1 its principal place of business outside the Unit-
2 ed States; and

3 (C) any governmental entity of a foreign
4 country.

5 (13) ITEM.—

6 (A) IN GENERAL.—The term “item”
7 means any good, service, or technology.

8 (B) OTHER DEFINITIONS.—In this para-
9 graph:

10 (i) GOOD.—The term “good” means
11 any article, natural or manmade substance,
12 material, supply or manufactured product,
13 including inspection and test equipment,
14 including source code, and excluding tech-
15 nical data.

16 (ii) TECHNOLOGY.—The term “tech-
17 nology” means specific information that is
18 necessary for the development, production,
19 or use of an item, and takes the form of
20 technical data or technical assistance.

21 (iii) SERVICE.—The term “service”
22 means any act of assistance, help or aid.

23 (14) MASS-MARKET STATUS.—The term “mass-
24 market status” means the status described in section
25 211(d)(2).

1 (15) MULTILATERAL EXPORT CONTROL RE-
2 GIME.—The term “multilateral export control re-
3 gime” means an international agreement or arrange-
4 ment among two or more countries, including the
5 United States, a purpose of which is to coordinate
6 national export control policies of its members re-
7 garding certain items. The term includes regimes
8 such as the Australia Group, the Wassenaar Ar-
9 rangement, the Missile Technology Control Regime
10 (MTCR), and the Nuclear Suppliers’ Group Dual
11 Use Arrangement.

12 (16) NATIONAL SECURITY CONTROL LIST.—The
13 term “National Security Control List” means the
14 list established under section 202(a).

15 (17) PERSON.—The term “person” includes—
16 (A) any individual, or partnership, corpora-
17 tion, business association, society, trust, organi-
18 zation, or any other group created or organized
19 under the laws of a country; and
20 (B) any government, or any governmental
21 entity.

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

1 (19) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce.

3 (20) UNITED STATES.—The term “United
4 States” means the States of the United States, the
5 District of Columbia, and any commonwealth, terri-
6 tory, dependency, or possession of the United States,
7 and includes the outer Continental Shelf, as defined
8 in section 2(a) of the Outer Continental Shelf Lands
9 Act (42 U.S.C. 1331(a)).

10 (21) UNITED STATES PERSON.—The term
11 “United States person” means—

12 (A) any United States citizen, resident, or
13 national (other than an individual resident out-
14 side the United States who is employed by a
15 person other than a United States person);

16 (B) any domestic concern (including any
17 permanent domestic establishment of any for-
18 eign concern); and

19 (C) any foreign subsidiary or affiliate (in-
20 cluding any permanent foreign establishment)
21 of any domestic concern which is controlled in
22 fact by such domestic concern, as determined
23 under regulations prescribed by the President.

1 **TITLE I—GENERAL AUTHORITY**

2 **SEC. 101. COMMERCE CONTROL LIST.**

3 (a) IN GENERAL.—Under such conditions as the Sec-
4 retary may impose, consistent with the provisions of this
5 Act, the Secretary—

6 (1) shall establish and maintain a Commerce
7 Control List (in this Act referred to as the “Control
8 List”) consisting of items the export of which are
9 subject to licensing or other authorization or re-
10 quirement; and

11 (2) may require any type of license, or other
12 authorization, including recordkeeping and report-
13 ing, appropriate to the effective and efficient imple-
14 mentation of this Act with respect to the export of
15 an item on the Control List.

16 (b) TYPES OF LICENSE OR OTHER AUTHORIZA-
17 TION.—The types of license or other authorization re-
18 ferred to in subsection (a)(2) include the following:

19 (1) SPECIFIC EXPORTS.—A license that author-
20 izes a specific export.

21 (2) MULTIPLE EXPORTS.—A license that au-
22 thorizes multiple exports in lieu of a license for each
23 such export.

24 (3) NOTIFICATION IN LIEU OF LICENSE.— A
25 notification in lieu of a license that authorizes a spe-

1 cific export or multiple exports subject to the condi-
2 tion that the exporter file with the Department ad-
3 vance notification of the intent to export in accord-
4 ance with regulations prescribed by the Secretary.

5 (4) LICENSE EXCEPTION.—Authority to export
6 an item on the Control List without prior license or
7 notification in lieu of a license.

8 (c) AFTER-MARKET SERVICE AND REPLACEMENT
9 PARTS.—A license or other authorization to export an
10 item under this Act shall not be required for an exporter
11 to provide after-market service or replacement parts, to
12 replace on a one-for-one basis parts that were in an item
13 that was lawfully exported from the United States, un-
14 less—

15 (1) the Secretary determines that such license
16 or other authorization is required to export such
17 parts; or

18 (2) the after-market service or replacement
19 parts materially enhance the capability of an item
20 which was the basis for the item being controlled.

21 (d) INCIDENTAL TECHNOLOGY.—A license or other
22 authorization to export an item under this Act includes
23 authorization to export technology related to the item, if
24 the level of the technology does not exceed the minimum

1 necessary to install, repair, maintain, inspect, operate, or
2 use the item.

3 (e) REGULATIONS.—The Secretary may prescribe
4 such regulations as are necessary to carry out the provi-
5 sions of this Act.

6 **SEC. 102. DELEGATION OF AUTHORITY.**

7 (a) IN GENERAL.—Except as provided in subsection
8 (b) and subject to the provisions of this Act, the President
9 may delegate the power, authority, and discretion con-
10 ferred upon the President by this Act to such depart-
11 ments, agencies, and officials of the Government as the
12 President considers appropriate.

13 (b) EXCEPTIONS.—

14 (1) DELEGATION TO APPOINTEES CONFIRMED
15 BY SENATE.—No authority delegated to the Presi-
16 dent under this Act may be delegated by the Presi-
17 dent to, or exercised by, any official of any depart-
18 ment or agency the head of which is not appointed
19 by the President, by and with the advice and consent
20 of the Senate.

21 (2) OTHER LIMITATIONS.—The President may
22 not delegate or transfer the President's power, au-
23 thority, or discretion to overrule or modify any rec-
24 ommendation or decision made by the Secretary, the

1 Secretary of Defense, or the Secretary of State
2 under this Act.

3 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**
4 **MENTS.**

5 (a) PUBLIC INFORMATION.—The Secretary shall
6 keep the public fully informed of changes in export control
7 policy and procedures instituted in conformity with this
8 Act.

9 (b) CONSULTATION WITH PERSONS AFFECTED.—
10 The Secretary shall consult regularly with representatives
11 of a broad spectrum of enterprises, labor organizations,
12 and citizens interested in or affected by export controls
13 in order to obtain their views on United States export con-
14 trol policy and the foreign availability or mass-market sta-
15 tus of controlled items.

16 **SEC. 104. RIGHT OF EXPORT.**

17 No license or other authorization to export may be
18 required under this Act, or under regulations issued under
19 this Act, except to carry out the provisions of this Act.

20 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

21 (a) APPOINTMENT.—Upon the Secretary's own initia-
22 tive or upon the written request of representatives of a
23 substantial segment of any industry which produces any
24 items subject to export controls under this Act or under
25 the International Emergency Economic Powers Act, or

1 being considered for such controls, the Secretary may ap-
2 point export control advisory committees with respect to
3 any such items. Each such committee shall consist of rep-
4 resentatives of United States industry and Government,
5 including the Department of Commerce and other appro-
6 priate departments and agencies of the Government. The
7 Secretary shall permit the widest possible participation by
8 the business community on the export control advisory
9 committees.

10 (b) FUNCTIONS.—

11 (1) IN GENERAL.—Export control advisory
12 committees appointed under subsection (a) shall ad-
13 vise and assist the Secretary, and any other depart-
14 ment, agency, or official of the Government carrying
15 out functions under this Act, on actions (including
16 all aspects of controls imposed or proposed) designed
17 to carry out the provisions of this Act concerning the
18 items with respect to which such export control advi-
19 sory committees were appointed.

20 (2) OTHER CONSULTATIONS.—Nothing in para-
21 graph (1) shall prevent the United States Govern-
22 ment from consulting, at any time, with any person
23 representing an industry or the general public, re-
24 gardless of whether such person is a member of an
25 export control advisory committee. Members of the

1 public shall be given a reasonable opportunity, pur-
2 suant to regulations prescribed by the Secretary, to
3 present evidence to such committees.

4 (c) REIMBURSEMENT OF EXPENSES.—Upon the re-
5 quest of any member of any export control advisory com-
6 mittee appointed under subsection (a), the Secretary may,
7 if the Secretary determines it to be appropriate, reimburse
8 such member for travel, subsistence, and other necessary
9 expenses incurred by such member in connection with the
10 duties of such member.

11 (d) CHAIRPERSON.—Each export control advisory
12 committee appointed under subsection (a) shall elect a
13 chairperson, and shall meet at least every 3 months at
14 the call of the chairperson, unless the chairperson deter-
15 mines, in consultation with the other members of the com-
16 mittee, that such a meeting is not necessary to achieve
17 the purposes of this section. Each such committee shall
18 be terminated after a period of 2 years, unless extended
19 by the Secretary for additional periods of 2 years each.
20 The Secretary shall consult with each such committee on
21 such termination or extension of that committee.

22 (e) ACCESS TO INFORMATION.—To facilitate the
23 work of the export control advisory committees appointed
24 under subsection (a), the Secretary, in conjunction with
25 other departments and agencies participating in the ad-

1 ministration of this Act, shall disclose to each such com-
2 mittee adequate information, consistent with national se-
3 curity, pertaining to the reasons for the export controls
4 which are in effect or contemplated for the items or poli-
5 cies for which that committee furnishes advice. Informa-
6 tion provided by the export control advisory committees
7 shall not be subject to disclosure under section 552 of title
8 5, United States Code, and such information shall not be
9 published or disclosed unless the Secretary determines
10 that the withholding thereof is contrary to the national
11 interest.

12 **SEC. 106. PROHIBITION ON CHARGING FEES.**

13 No fee may be charged in connection with the submis-
14 sion or processing of an application for an export license
15 under this Act.

16 **TITLE II—NATIONAL SECURITY**
17 **EXPORT CONTROLS**

18 **Subtitle A—Authority and**
19 **Procedures**

20 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**
21 **CONTROLS.**

22 (a) **AUTHORITY.**—

23 (1) **IN GENERAL.**—In order to carry out the
24 purposes set forth in subsection (b), the President
25 may, in accordance with the provisions of this Act,

1 prohibit, curtail, or require a license, or other au-
2 thorization for the export of any item subject to the
3 jurisdiction of the United States or exported by any
4 person subject to the jurisdiction of the United
5 States. The President may also require record-
6 keeping and reporting with respect to the export of
7 such item.

8 (2) EXERCISE OF AUTHORITY.—The authority
9 contained in this subsection shall be exercised by the
10 Secretary, in consultation with the Secretary of De-
11 fense, the intelligence agencies, and such other de-
12 partments and agencies as the Secretary considers
13 appropriate.

14 (b) PURPOSES.—The purposes of national security
15 export controls are the following:

16 (1) To restrict the export of items that would
17 contribute to the military potential of countries so as
18 to prove detrimental to the national security of the
19 United States or its allies.

20 (2) To stem the proliferation of weapons of
21 mass destruction, and the means to deliver them,
22 and other significant military capabilities by—

23 (A) leading international efforts to control
24 the proliferation of chemical and biological
25 weapons, nuclear explosive devices, missile deliv-

1 ery systems, key-enabling technologies, and
2 other significant military capabilities;

3 (B) controlling involvement of United
4 States persons in, and contributions by United
5 States persons to, foreign programs intended to
6 develop weapons of mass destruction, missiles,
7 and other significant military capabilities, and
8 the means to design, test, develop, produce,
9 stockpile, or use them; and

10 (C) implementing international treaties or
11 other agreements or arrangements concerning
12 controls on exports of designated items, reports
13 on the production, processing, consumption,
14 and exports and imports of such items, and
15 compliance with verification programs.

16 (3) To deter acts of international terrorism.

17 (c) END USE AND END USER CONTROLS.—Notwith-
18 standing any other provision of this title, controls may be
19 imposed, based on the end use or end user, on the export
20 of any item, that could materially contribute to the pro-
21 liferation of weapons of mass destruction or the means
22 to deliver them.

23 **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

24 (a) ESTABLISHMENT OF LIST.—

1 (1) ESTABLISHMENT.—The Secretary shall es-
2 tablish and maintain a National Security Control
3 List as part of the Control List.

4 (2) CONTENTS.—The National Security Control
5 List shall be composed of a list of items the export
6 of which is controlled for national security purposes
7 under this title.

8 (3) IDENTIFICATION OF ITEMS FOR NATIONAL
9 SECURITY CONTROL LIST.—The Secretary, with the
10 concurrence of the Secretary of Defense and in con-
11 sultation with the head of any other department or
12 agency of the United States that the Secretary con-
13 siders appropriate, shall identify the items to be in-
14 cluded on the National Security Control List.

15 (b) RISK ASSESSMENT.—

16 (1) REQUIREMENT.—The Secretary shall, in es-
17 tablishing and maintaining the National Security
18 Control List, balance the national security risks of
19 not controlling the export of an item against the eco-
20 nomic costs of controlling the item, taking into con-
21 sideration the risk factors set forth in paragraph
22 (2).

23 (2) RISK FACTORS.—The risk factors referred
24 to in paragraph (1), with respect to each item, are
25 as follows:

1 (A) The characteristics of the item.

2 (B) The threat, if any, to the United
3 States or the national security interest of the
4 United States from the misuse or diversion of
5 such item.

6 (C) The controllability of the item.

7 (D) Any other risk factor the Secretary
8 deems appropriate to consider.

9 **SEC. 203. COUNTRY TIERS.**

10 (a) IN GENERAL.—

11 (1) ESTABLISHMENT AND ASSIGNMENT.—In
12 administering export controls for national security
13 purposes under this title, the President shall, not
14 later than 120 days after the date of enactment of
15 this Act—

16 (A) establish and maintain a country
17 tiering system in accordance with subsection
18 (b); and

19 (B) based on the assessments required
20 under subsection (c), assign each country to a
21 tier for each item or group of items the export
22 of which is controlled for national security pur-
23 poses under this title.

24 (2) CONSULTATION.—The establishment and
25 assignment of country tiers under this section shall

1 be made after consultation with the Secretary, the
2 Secretary of Defense, the Secretary of State, the in-
3 telligence agencies, and such other departments and
4 agencies as the President considers appropriate.

5 (3) REDETERMINATION AND REVIEW OF AS-
6 SIGNMENTS.—The President may redetermine the
7 assignment of a country to a particular tier at any
8 time and shall review and, as the President consid-
9 ers appropriate, reassign country tiers on an on-
10 going basis.

11 (4) EFFECTIVE DATE OF TIER ASSIGNMENT.—
12 An assignment of a country to a particular tier shall
13 take effect on the date on which notice of the assign-
14 ment is published in the Federal Register.

15 (b) TIERS.—

16 (1) IN GENERAL.—The President shall establish
17 a country tiering system consisting of 5 tiers for
18 purposes of this section, ranging from tier 1 through
19 tier 5.

20 (2) RANGE.—Countries that represent the low-
21 est risk of diversion or misuse of an item on the Na-
22 tional Security Control List shall be assigned to tier
23 1. Countries that represent the highest risk of diver-
24 sion or misuse of an item on the National Security
25 Control List shall be assigned to tier 5.

1 (3) OTHER COUNTRIES.—Countries that fall be-
2 tween the lowest and highest risk to the national se-
3 curity interest of the United States with respect to
4 the risk of diversion or misuse of an item on the Na-
5 tional Security Control List shall be assigned to tier
6 2, 3, or 4, respectively, based on the assessments re-
7 quired under subsection (c).

8 (c) ASSESSMENTS.—The President shall make an as-
9 sessment of each country in assigning a country tier tak-
10 ing into consideration the following risk factors:

11 (1) The present and potential relationship of
12 the country with the United States.

13 (2) The present and potential relationship of
14 the country with countries friendly to the United
15 States and with countries hostile to the United
16 States.

17 (3) The country's capabilities regarding chemi-
18 cal, biological, and nuclear weapons and the coun-
19 try's membership in, and level of compliance with,
20 relevant multilateral export control regimes.

21 (4) The country's position regarding missile
22 systems and the country's membership in, and level
23 of compliance with, relevant multilateral export con-
24 trol regimes.

1 (5) The country's other military capabilities
2 and the potential threat posed by the country to the
3 United States or its allies.

4 (6) The effectiveness of the country's export
5 control system.

6 (7) The level of the country's cooperation with
7 United States export control enforcement and other
8 efforts.

9 (8) The risk of export diversion by the country
10 to a higher tier country.

11 (9) The designation of the country as a country
12 supporting international terrorism under section
13 310.

14 **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

15 (a) EXPORT OF ITEMS CONTAINING CONTROLLED
16 PARTS AND COMPONENTS.—Controls may not be imposed
17 under this title or any other provision of law on an item
18 solely because the item contains parts or components sub-
19 ject to export controls under this title, if the parts or com-
20 ponents—

21 (1) are essential to the functioning of the item,

22 (2) are customarily included in sales of the item
23 in countries other than controlled countries, and

24 (3) comprise 25 percent or less of the total
25 value of the item,

1 unless the item itself, if exported, would by virtue of
2 the functional characteristics of the item as a whole
3 make a significant contribution to the military or
4 proliferation potential of a controlled country or end
5 user which would prove detrimental to the national
6 security of the United States.

7 (b) REEXPORTS OF FOREIGN-MADE ITEMS INCOR-
8 PORATING UNITED STATES CONTROLLED CONTENT.—

9 (1) IN GENERAL.—No authority or permission
10 may be required under this title to reexport to a
11 country (other than a country designated as a coun-
12 try supporting international terrorism pursuant to
13 section 310) an item that is produced in a country
14 other than the United States and incorporates parts
15 or components that are subject to the jurisdiction of
16 the United States, if the value of the controlled
17 United States content of the item produced in such
18 other country is 25 percent or less of the total value
19 of the item.

20 (2) REEXPORT TO CERTAIN TERRORIST COUN-
21 TRIES.—No authority or permission may be required
22 under this title to reexport to a country designated
23 as a country supporting international terrorism pur-
24 suant to section 310 an item that is produced in a
25 country other than the United States and incor-

1 porates parts or components that are subject to the
2 jurisdiction of the United States, if the value of the
3 controlled United States content of the item pro-
4 duced in such other country is 10 percent or less of
5 the total value of the item.

6 (3) DEFINITION OF CONTROLLED UNITED
7 STATES CONTENT.—For purposes of this paragraph,
8 the term “controlled United States content” of an
9 item means those parts or components that—

10 (A) are subject to the jurisdiction of the
11 United States;

12 (B) are incorporated into the item; and

13 (C) would, at the time of the reexport, re-
14 quire a license under this title if exported from
15 the United States to a country to which the
16 item is to be reexported.

17 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**
18 **STATUS.**

19 (a) ESTABLISHMENT.—The Secretary shall establish
20 a process for interested persons to petition the Secretary
21 to change the status of an item on the National Security
22 Control List.

23 (b) EVALUATIONS AND DETERMINATIONS.—Evalu-
24 ations and determinations with respect to a petition filed

1 pursuant to this section shall be made in accordance with
2 the procedures set forth in section 202.

3 **Subtitle B—Foreign Availability**
4 **and Mass-Market Status**

5 **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND**
6 **MASS-MARKET STATUS.**

7 (a) IN GENERAL.—The Secretary shall—

8 (1) on a continuing basis,

9 (2) upon a request from the Office of Tech-
10 nology Evaluation, or

11 (3) upon receipt of a petition filed by an inter-
12 ested party,

13 review and determine the foreign availability and the
14 mass-market status of any item the export of which is con-
15 trolled under this title.

16 (b) PETITION AND CONSULTATION.—The Secretary
17 shall establish a process for an interested party to petition
18 the Secretary for a determination that an item has a for-
19 eign availability or mass-market status. In evaluating and
20 making a determination with respect to a petition filed
21 under this section, the Secretary shall consult with the
22 Secretary of Defense and other appropriate Government
23 agencies and with the Office of Technology Evaluation (es-
24 tablished pursuant to section 214).

25 (c) RESULT OF DETERMINATION.—

1 (1) IN GENERAL.—In any case in which the
2 Secretary determines, in accordance with procedures
3 and criteria which the Secretary shall by regulation
4 establish, that an item described in subsection (a)
5 has—

6 (A) a foreign availability status, or

7 (B) a mass-market status,

8 the Secretary shall notify the President (and other
9 appropriate departments and agencies) and publish
10 the notice of the determination in the Federal Reg-
11 ister. The Secretary's determination shall become
12 final 30 days after the date the notice is published,
13 the item shall be removed from the National Secu-
14 rity Control List, and a license or other authoriza-
15 tion shall not be required under this title or under
16 section 1211 of the National Defense Authorization
17 Act of Fiscal Year 1998 with respect to the item,
18 unless the President makes a determination de-
19 scribed in section 212 or 213 with respect to the
20 item in that 30-day period.

21 (2) CONFORMING AMENDMENT.—Section
22 1211(d) of the National Defense Authorization Act
23 for Fiscal Year 1998 is amended in the second sen-
24 tence by striking “180” and inserting “60”.

1 (d) CRITERIA FOR DETERMINING FOREIGN AVAIL-
2 ABILITY AND MASS-MARKET STATUS.—

3 (1) FOREIGN AVAILABILITY STATUS.—The Sec-
4 retary shall determine that an item has foreign
5 availability status under this subtitle, if the item (or
6 a substantially identical or directly competitive
7 item)—

8 (A) is available to controlled countries
9 from sources outside the United States, includ-
10 ing countries that participate with the United
11 States in multilateral export controls;

12 (B) can be acquired at a price that is not
13 excessive when compared to the price at which
14 a controlled country could acquire such item
15 from sources within the United States in the
16 absence of export controls; and

17 (C) is available in sufficient quantity so
18 that the requirement of a license or other au-
19 thorization with respect to the export of such
20 item is or would be ineffective.

21 (2) MASS-MARKET STATUS.—The Secretary
22 shall determine that an item has mass-market status
23 under this subtitle, if the item (or a substantially
24 identical or directly competitive item)—

1 (A) is produced and is available for sale in
2 a large volume to multiple potential purchasers;

3 (B) is widely distributed through normal
4 commercial channels, such as retail stores, di-
5 rect marketing catalogues, electronic commerce,
6 and other channels;

7 (C) is conducive to shipment and delivery
8 by generally accepted commercial means of
9 transport; and

10 (D) may be used for its normal intended
11 purpose without substantial and specialized
12 service provided by the manufacturer, distribu-
13 tor, or other third party.

14 (3) SPECIAL RULES.—For purposes of this sub-
15 title—

16 (A) SUBSTANTIALLY IDENTICAL ITEM.—
17 The determination of whether an item in rela-
18 tion to another item is a substantially identical
19 item shall include a fair assessment of end-uses,
20 the properties, nature, and quality of the item.

21 (B) DIRECTLY COMPETITIVE ITEM.—

22 (i) IN GENERAL.—The determination
23 of whether an item in relation to another
24 item is a directly competitive item shall in-
25 clude a fair assessment of whether the

1 item, although not substantially identical
2 in its intrinsic or inherent characteristics,
3 is substantially equivalent for commercial
4 purposes and may be adapted for substan-
5 tially the same uses.

6 (ii) EXCEPTION.—An item is not di-
7 rectly competitive with a controlled item if
8 the item is substantially inferior to the
9 controlled item with respect to characteris-
10 ties that resulted in the export of the item
11 being controlled.

12 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**
13 **ABILITY DETERMINATION.**

14 (a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

15 (1) POTENTIAL FOR ELIMINATION.—If the
16 President determines that—

17 (A) the absence of export controls with re-
18 spect to an item would prove detrimental to the
19 national security of the United States, and

20 (B) there is a high probability that the for-
21 eign availability status of an item will be elimi-
22 nated through multilateral negotiations within a
23 reasonable period of time taking into account
24 the characteristics of the item,

1 the President may set aside the Secretary's deter-
2 mination of foreign availability status with respect to
3 the item.

4 (2) REPORT TO CONGRESS.—The President
5 shall promptly—

6 (A) report any set-aside determination de-
7 scribed in paragraph (1) to the Committee on
8 Banking, Housing, and Urban Affairs of the
9 Senate and the Committee on International Re-
10 lations of the House of Representatives; and

11 (B) publish the determination in the Fed-
12 eral Register.

13 (b) PRESIDENTIAL ACTION IN CASE OF SET-
14 ASIDE.—

15 (1) IN GENERAL.—

16 (A) NEGOTIATIONS.—In any case in which
17 export controls are maintained on an item be-
18 cause the President has made a determination
19 under subsection (a), the President shall ac-
20 tively pursue negotiations with the governments
21 of the appropriate foreign countries for the pur-
22 pose of eliminating such availability.

23 (B) REPORT TO CONGRESS.—Not later
24 than the date the President begins negotiations,
25 the President shall notify in writing the Com-

1 committee on Banking, Housing, and Urban Affairs
2 of the Senate and the Committee on Inter-
3 national Relations of the House of Representa-
4 tives that the President has begun such nego-
5 tiations and why the President believes it is im-
6 portant to the national security that export con-
7 trols on the item involved be maintained.

8 (2) PERIODIC REVIEW OF DETERMINATION.—

9 The President shall review a determination described
10 in subsection (a) at least every 6 months. Promptly
11 after each review is completed, the Secretary shall
12 submit to the committees of Congress referred to in
13 paragraph (1)(B) a report on the results of the re-
14 view, together with the status of multilateral nego-
15 tiations to eliminate the foreign availability of the
16 item.

17 (3) EXPIRATION OF PRESIDENTIAL SET-
18 ASIDE.—A determination by the President described
19 in subsection (a) shall cease to apply with respect to
20 an item on the earlier of—

21 (A) the date that is 6 months after the date
22 on which the determination is made under sub-
23 section (a), if the President has not commenced
24 multilateral negotiations to eliminate the for-

1 eign availability of the item within that 6-month
2 period;

3 (B) the date on which the negotiations de-
4 scribed in paragraph (1) have terminated with-
5 out achieving an agreement to eliminate foreign
6 availability;

7 (C) the date on which the President deter-
8 mines that there is not a high probability of
9 eliminating foreign availability of the item
10 through negotiation; or

11 (D) the date that is 18 months after the
12 date on which the determination described in
13 subsection (a) is made if the President has been
14 unable to achieve an agreement to eliminate
15 foreign availability within that 18-month period.

16 (4) ACTION ON EXPIRATION OF PRESIDENTIAL
17 SET-ASIDE.—Upon the expiration of a Presidential
18 set-aside under paragraph (3) with respect to an
19 item, the Secretary shall not require a license or
20 other authorization to export the item.

21 **SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-**
22 **TUS DETERMINATION.**

23 (a) CRITERIA FOR SET-ASIDE.—If the President de-
24 termines that—

1 (1) decontrolling or failing to control an item
2 constitutes a serious threat to the national security
3 of the United States, and

4 (2) export controls on the item would be likely
5 to diminish the threat to, and advance the national
6 security interests of, the United States,

7 the President may set aside the Secretary's determination
8 of mass-market status with respect to the item.

9 (b) **PRESIDENTIAL ACTION IN CASE OF SET-**
10 **ASIDE.—**

11 (1) **IN GENERAL.—**In any case in which export
12 controls are maintained on an item because the
13 President has made a determination under sub-
14 section (a), the President shall publish notice of the
15 determination in the Federal Register not later than
16 30 days after the Secretary publishes notice of the
17 Secretary's determination that an item has mass-
18 market status.

19 (2) **PERIODIC REVIEW OF DETERMINATION.—**
20 The President shall review a determination made
21 under subsection (a) at least every 6 months.
22 Promptly after each review is completed, the Sec-
23 retary shall submit a report on the results of the re-
24 view to the Committee on Banking, Housing, and
25 Urban Affairs of the Senate and the Committee on

1 International Relations of the House of Representa-
2 tives.

3 **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

4 (a) IN GENERAL.—The Secretary shall establish in
5 the Department of Commerce an Office of Technology
6 Evaluation (in this subtitle referred to as the “Office”),
7 which shall be under the direction of the Secretary. The
8 Office shall be responsible for gathering and analyzing all
9 the necessary information in order for the Secretary to
10 make determinations of foreign availability and mass-mar-
11 ket status under this Act.

12 (b) RESPONSIBILITIES.—The Office shall be respon-
13 sible for—

14 (1) conducting foreign availability assessments
15 to determine whether a controlled item is available
16 to controlled countries and whether requiring a li-
17 cense, or denial of a license for the export of such
18 item, is or would be ineffective;

19 (2) conducting mass-market assessments to de-
20 termine whether a controlled item is available to
21 controlled countries because of the mass-market sta-
22 tus of the item;

23 (3) monitoring and evaluating worldwide tech-
24 nological developments in industry sectors critical to
25 the national security interests of the United States

1 to determine foreign availability and mass-market
2 status of controlled items;

3 (4) monitoring and evaluating multilateral ex-
4 port control regimes and foreign government export
5 control policies and practices that affect the national
6 security interests of the United States;

7 (5) conducting assessments of United States in-
8 dustrial sectors critical to the United States defense
9 industrial base and how the sectors are affected by
10 technological developments, technology transfers,
11 and foreign competition; and

12 (6) conducting assessments of the impact of
13 United States export control policies on—

14 (A) United States industrial sectors critical
15 to the national security interests of the United
16 States; and

17 (B) the United States economy in general.

18 (c) REPORTS TO CONGRESS.—The Secretary shall
19 make available to the Committee on International Rela-
20 tions of the House of Representatives and the Committee
21 on Banking, Housing, and Urban Affairs of the Senate
22 as part of the Secretary's annual report required under
23 section 801 information on the operations of the Office,
24 and on improvements in the Government's ability to assess
25 foreign availability and mass-market status, during the

1 fiscal year preceding the report, including information on
2 the training of personnel, and the use of Commercial Serv-
3 ice Officers of the United States and Foreign Commercial
4 Service to assist in making determinations. The informa-
5 tion shall also include a description of representative de-
6 terminations made under this Act during the preceding
7 fiscal year that foreign availability or mass-market status
8 did or did not exist (as the case may be), together with
9 an explanation of the determinations.

10 (d) SHARING OF INFORMATION.—Each department
11 or agency of the United States, including any intelligence
12 agency, and all contractors with any such department or
13 agency, shall, consistent with the protection of intelligence
14 sources and methods, furnish information to the Office
15 concerning foreign availability and the mass-market status
16 of items subject to export controls under this Act.

17 **TITLE III—FOREIGN POLICY**
18 **EXPORT CONTROLS**

19 **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**
20 **TROLS.**

21 (a) AUTHORITY.—

22 (1) IN GENERAL.—In order to carry out the
23 purposes set forth in subsection (b), the President
24 may, in accordance with the provisions of this Act,
25 prohibit, curtail, or require a license, other author-

1 ization, recordkeeping, or reporting for the export of
2 any item subject to the jurisdiction of the United
3 States or exported by any person subject to the ju-
4 risdiction of the United States.

5 (2) EXERCISE OF AUTHORITY.—The authority
6 contained in this subsection shall be exercised by the
7 Secretary, in consultation with the Secretary of
8 State and such other departments and agencies as
9 the Secretary considers appropriate.

10 (b) PURPOSES.—The purposes of foreign policy ex-
11 port controls are the following:

12 (1) To promote the foreign policy objectives of
13 the United States, consistent with the purposes of
14 this section and the provisions of this Act.

15 (2) To promote international peace, stability,
16 and respect for fundamental human rights.

17 (3) To use export controls to deter and punish
18 acts of international terrorism and to encourage
19 other countries to take immediate steps to prevent
20 the use of their territories or resources to aid, en-
21 courage, or give sanctuary to those persons involved
22 in directing, supporting, or participating in acts of
23 international terrorism.

24 (c) EXCEPTION.—The President may not control
25 under this title the export from a foreign country (whether

1 or not by a United States person) of any item produced
2 or originating in a foreign country that contains parts or
3 components produced or originating in the United States.

4 (d) CONTRACT SANCTITY.—

5 (1) IN GENERAL.—The President may not pro-
6 hibit the export of any item under this title if that
7 item is to be exported—

8 (A) in performance of a binding contract,
9 agreement, or other contractual commitment
10 entered into before the date on which the Presi-
11 dent reports to Congress the President's inten-
12 tion to impose controls on that item under this
13 title; or

14 (B) under a license or other authorization
15 issued under this Act before the earlier of the
16 date on which the control is initially imposed or
17 the date on which the President reports to Con-
18 gress the President's intention to impose con-
19 trols under this title.

20 (2) EXCEPTION.—The prohibition contained in
21 paragraph (1) shall not apply in any case in which
22 the President determines and certifies to the Com-
23 mittee on Banking, Housing, and Urban Affairs of
24 the Senate and the Committee on International Re-
25 lations of the House of Representatives that—

1 (A) there is a serious threat to a foreign
2 policy interest of the United States;

3 (B) the prohibition of exports under each
4 binding contract, agreement, commitment, li-
5 cense, or authorization will be directly instru-
6 mental in remedying the situation posing the
7 serious threat; and

8 (C) the export controls will be in effect
9 only as long as the serious threat exists.

10 **SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.**

11 (a) NOTICE.—

12 (1) INTENT TO IMPOSE FOREIGN POLICY EX-
13 PORT CONTROL.—Except as provided in section 306,
14 not later than 45 days before imposing or imple-
15 menting an export control under this title, the Presi-
16 dent shall publish in the Federal Register—

17 (A) a notice of intent to do so; and

18 (B) provide for a period of not less than
19 30 days for any interested person to submit
20 comments on the export control proposed under
21 this title.

22 (2) PURPOSES OF NOTICE.—The purposes of
23 the notice are—

24 (A) to provide an opportunity for the for-
25 mulation of an effective export control policy

1 under this title that advances United States
2 economic and foreign policy interests; and

3 (B) to provide an opportunity for negotia-
4 tions to achieve the purposes set forth in sec-
5 tion 301(b).

6 (b) NEGOTIATIONS.—During the 45-day period that
7 begins on the date of notice described in subsection (a),
8 the President may negotiate with the government of the
9 foreign country against which the export control is pro-
10 posed in order to resolve the reasons underlying the pro-
11 posed export control.

12 (c) CONSULTATION.—

13 (1) REQUIREMENT.—The President shall con-
14 sult with the Committee on Banking, Housing, and
15 Urban Affairs of the Senate and the Committee on
16 International Relations of the House of Representa-
17 tives regarding any export control proposed under
18 this title and the efforts to achieve or increase multi-
19 lateral cooperation on the issues or problems under-
20 lying the proposed export control.

21 (2) CLASSIFIED CONSULTATION.—The con-
22 sultations described in paragraph (1) may be con-
23 ducted on a classified basis if the Secretary consid-
24 ers it necessary.

1 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
2 **TROLS.**

3 Each export control imposed by the President under
4 this title shall—

5 (1) have clearly stated, specific, and compelling
6 United States foreign policy objectives;

7 (2) have objective standards for evaluating the
8 success or failure of the export control;

9 (3) include an assessment by the President
10 that—

11 (A) the export control is likely to achieve
12 such objectives and the expected time for
13 achieving the objectives; and

14 (B) the achievement of the objectives of
15 the export control outweighs any potential costs
16 of the export control to other United States
17 economic, foreign policy, humanitarian, or na-
18 tional security interests;

19 (4) be targeted narrowly; and

20 (5) seek to minimize any adverse impact on the
21 humanitarian activities of United States and foreign
22 nongovernmental organizations in the country sub-
23 ject to the export control.

1 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**
2 **CONTROL.**

3 (a) REQUIREMENT.—Before imposing an export con-
4 trol under this title, the President shall submit to the
5 Committee on Banking, Housing, and Urban Affairs of
6 the Senate and the Committee on International Relations
7 of the House of Representatives a report on the proposed
8 export control. The report may be provided on a classified
9 basis if the Secretary considers it necessary.

10 (b) CONTENT.—The report shall contain a descrip-
11 tion and assessment of each of the criteria described in
12 section 303. In addition, the report shall contain a descrip-
13 tion and assessment of—

14 (1) any diplomatic and other steps that the
15 United States has taken to accomplish the intended
16 objective of the proposed export control;

17 (2) unilateral export controls imposed, and
18 other measures taken, by other countries to achieve
19 the intended objective of the proposed export con-
20 trol;

21 (3) the likelihood of multilateral adoption of
22 comparable export controls;

23 (4) alternative measures to promote the same
24 objectives and the likelihood of their potential suc-
25 cess;

1 (5) any United States obligations under inter-
2 national trade agreements, treaties, or other inter-
3 national arrangements, with which the proposed ex-
4 port control may conflict;

5 (6) the likelihood that the proposed export con-
6 trol could lead to retaliation against United States
7 interests;

8 (7) the likely economic impact of the proposed
9 export control on the United States economy, United
10 States international trade and investment, and Unit-
11 ed States agricultural interests, commercial inter-
12 ests, and employment; and

13 (8) a conclusion that the probable achievement
14 of the objectives of the proposed export control out-
15 weighs any likely costs to United States economic,
16 foreign policy, humanitarian, or national security in-
17 terests, including any potential harm to the United
18 States agricultural and business firms and to the
19 international reputation of the United States as a
20 reliable supplier of goods, services, or technology.

21 **SEC. 305. IMPOSITION OF CONTROLS.**

22 The President may impose an export control under
23 this title after the submission of the report required under
24 section 304 and publication in the Federal Register of a
25 notice of the imposition of the export control .

1 **SEC. 306. DEFERRAL AUTHORITY.**

2 (a) **AUTHORITY.**—The President may defer compli-
3 ance with any requirement contained in section 302(a),
4 304, or 305 in the case of a proposed export control if—

5 (1) the President determines that a deferral of
6 compliance with the requirement is in the national
7 interest of the United States; and

8 (2) the requirement is satisfied not later than
9 60 days after the date on which the export control
10 is imposed under this title.

11 (b) **TERMINATION OF CONTROL.**—An export control
12 with respect to which a deferral has been made under sub-
13 section (a) shall terminate 60 days after the date the ex-
14 port control is imposed unless all requirements have been
15 satisfied before the expiration of the 60-day period.

16 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

17 (a) **RENEWAL AND TERMINATION.**—

18 (1) **IN GENERAL.**—Any export control imposed
19 under this title shall terminate on March 31 of each
20 renewal year unless the President renews the export
21 control on or before such date. For purposes of this
22 section, the term “renewal year” means 2002 and
23 every 2 years thereafter.

24 (2) **EXCEPTION.**—This section shall not apply
25 to an export control imposed under this title that—

26 (A) is required by law;

1 (B) is targeted against any country des-
2 igned as a country supporting international
3 terrorism pursuant to section 310; or

4 (C) has been in effect for less than 1 year
5 as of February 1 of a renewal year.

6 (b) REVIEW.—

7 (1) IN GENERAL.—Not later than February 1
8 of each renewal year, the President shall review all
9 export controls in effect under this title.

10 (2) CONSULTATION.—

11 (A) REQUIREMENT.—Before completing a
12 review under paragraph (1), the President shall
13 consult with the Committee on Banking, Hous-
14 ing, and Urban Affairs of the Senate and the
15 Committee on International Relations of the
16 House of Representative regarding each export
17 control that is being reviewed.

18 (B) CLASSIFIED CONSULTATION.—The
19 consultations may be conducted on a classified
20 basis if the Secretary considers it necessary.

21 (3) PUBLIC COMMENT.—In conducting the re-
22 view of each export control under paragraph (1), the
23 President shall provide a period of not less than 30
24 days for any interested person to submit comments
25 on renewal of the export control. The President shall

1 publish notice of the opportunity for public comment
2 in the Federal Register not less than 45 days before
3 the review is required to be completed.

4 (c) REPORT TO CONGRESS.—

5 (1) REQUIREMENT.—Before renewing an export
6 control imposed under this title, the President shall
7 submit to the committees of Congress referred to in
8 subsection (b)(2)(A) a report on each export control
9 that the President intends to renew.

10 (2) FORM AND CONTENT OF REPORT.—The re-
11 port may be provided on a classified basis if the Sec-
12 retary considers it necessary. Each report shall con-
13 tain the following:

14 (A) A clearly stated explanation of the spe-
15 cific and compelling United States foreign pol-
16 icy objective that the existing export control
17 was intended to achieve.

18 (B) An assessment of—

19 (i) the extent to the which the existing
20 export control achieved its objectives before
21 renewal based on the objective criteria es-
22 tablished for evaluating the export control;
23 and

24 (ii) the reasons why the existing ex-
25 port control has failed to fully achieve its

1 objectives and, if renewed, how the export
2 control will achieve that objective before
3 the next renewal year.

4 (C) An updated description and assess-
5 ment of—

6 (i) each of the criteria described in
7 section 303, and

8 (ii) each matter required to be re-
9 ported under section 304(b)(1) through
10 (8).

11 (3) RENEWAL OF EXPORT CONTROL.—The
12 President may renew an export control under this
13 title after submission of the report described in
14 paragraph (2) and publication of notice of renewal
15 in the Federal Register.

16 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of law, the President—

19 (1) shall terminate any export control imposed
20 under this title if the President determines that the
21 control has substantially achieved the objective for
22 which it was imposed; and

23 (2) may terminate any export control imposed
24 under this title that is not required by law at any
25 time.

1 (b) EXCEPTION.—Paragraphs (1) and (2) of sub-
2 section (a) do not apply to any export control imposed
3 under this title that is targeted against any country des-
4 ignated as a country supporting international terrorism
5 pursuant to section 310.

6 (c) EFFECTIVE DATE OF TERMINATION.—The termi-
7 nation of an export control pursuant to this section shall
8 take effect on the date notice of the termination is pub-
9 lished in the Federal Register.

10 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**
11 **TIONS.**

12 Notwithstanding any other provision of this Act set-
13 ting forth limitations on authority to control exports and
14 except as provided in section 304, the President may im-
15 pose controls on exports to a particular country or coun-
16 tries in order to fulfill obligations of the United States
17 under resolutions of the United Nations and under trea-
18 ties, or other international agreements and arrangements,
19 to which the United States is a party.

20 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**
21 **INTERNATIONAL TERRORISM.**

22 (a) LICENSE REQUIRED.—A license shall be required
23 for the export of an item to a country if the Secretary
24 of State has determined that—

1 (1) the government of such country has repeat-
2 edly provided support for acts of international ter-
3 rorism; and

4 (2) the export of the item could make a signifi-
5 cant contribution to the military potential of such
6 country, including its military logistics capability, or
7 could enhance the ability of such country to support
8 acts of international terrorism.

9 (b) NOTIFICATION.—The Secretary and the Sec-
10 retary of State shall notify the Committee on International
11 Relations of the House of Representatives and the Com-
12 mittee on Banking, Housing, and Urban Affairs and the
13 Committee on Foreign Relations of the Senate at least 30
14 days before issuing any license required by subsection (a).

15 (c) DETERMINATIONS REGARDING REPEATED SUP-
16 PORT.—Each determination of the Secretary of State
17 under subsection (a)(1), including each determination in
18 effect on the date of the enactment of the Antiterrorism
19 and Arms Export Amendments Act of 1989, shall be pub-
20 lished in the Federal Register.

21 (d) LIMITATIONS ON RESCINDING DETERMINA-
22 TION.—A determination made by the Secretary of State
23 under subsection (a)(1) may not be rescinded unless the
24 President submits to the Speaker of the House of Rep-
25 resentatives and the Chairman of the Committee on Bank-

1 ing, Housing, and Urban Affairs and the Chairman of the
2 Committee on Foreign Relations of the Senate—

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

5 (A) there has been a fundamental change
6 in the leadership and policies of the government
7 of the country concerned;

8 (B) that government is not supporting acts
9 of international terrorism; and

10 (C) that government has provided assur-
11 ances that it will not support acts of inter-
12 national terrorism in the future; or

13 (2) at least 45 days before the proposed rescis-
14 sion would take effect, a report justifying the rescis-
15 sion and certifying that—

16 (A) the government concerned has not pro-
17 vided any support for international terrorism
18 during the preceding 6-month period; and

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

22 (e) INFORMATION TO BE INCLUDED IN NOTIFICA-
23 TION.—The Secretary and the Secretary of State shall in-
24 clude in the notification required by subsection (b)—

1 (1) a detailed description of the item to be of-
2 ferred, including a brief description of the capabilities
3 of any item for which a license to export is sought;

4 (2) the reasons why the foreign country or
5 international organization to which the export or
6 transfer is proposed to be made needs the item
7 which is the subject of such export or transfer and
8 a description of the manner in which such country
9 or organization intends to use the item;

10 (3) the reasons why the proposed export or
11 transfer is in the national interest of the United
12 States;

13 (4) an analysis of the impact of the proposed
14 export or transfer on the military capabilities of the
15 foreign country or international organization to
16 which such export or transfer would be made;

17 (5) an analysis of the manner in which the pro-
18 posed export would affect the relative military
19 strengths of countries in the region to which the
20 item which is the subject of such export would be de-
21 livered and whether other countries in the region
22 have comparable kinds and amounts of the item; and

23 (6) an analysis of the impact of the proposed
24 export or transfer on the United States relations
25 with the countries in the region to which the item

1 which is the subject of such export would be deliv-
2 ered.

3 **TITLE IV—EXEMPTION FOR AG-**
4 **RICULTURAL COMMODITIES,**
5 **MEDICINE, AND MEDICAL**
6 **SUPPLIES**

7 **SEC. 401. EXEMPTION FOR AGRICULTURAL COMMODITIES,**
8 **MEDICINE, AND MEDICAL SUPPLIES.**

9 Notwithstanding any other provision of law, the ex-
10 port controls imposed on items under title III shall not
11 apply to agricultural commodities, medicine, and medical
12 supplies.

13 **SEC. 402. TERMINATION OF EXPORT CONTROLS REQUIRED**
14 **BY LAW.**

15 Notwithstanding any other provision of law, the
16 President shall terminate any export control mandated by
17 law on agricultural commodities, medicine, and medical
18 supplies upon the date of enactment of this Act except
19 for a control that is specifically reimposed by law.

20 **SEC. 403. EXCLUSIONS.**

21 Sections 401 and 402 do not apply to the following:

22 (1) The export of agricultural commodities,
23 medicine, and medical supplies that are subject to
24 national security export controls under title II.

1 (2) The export of agricultural commodities,
2 medicine, and medical supplies to a country against
3 which an embargo is in effect under the Trading
4 With the Enemy Act.

5 **TITLE V—PROCEDURES FOR EX-**
6 **PORT LICENSES AND INTER-**
7 **AGENCY DISPUTE RESOLU-**
8 **TION**

9 **SEC. 501. EXPORT LICENSE PROCEDURES.**

10 (a) RESPONSIBILITY OF THE SECRETARY.—

11 (1) IN GENERAL.—All applications for a license
12 or other authorization to export a controlled item
13 shall be filed in such manner and include such infor-
14 mation as the Secretary may, by regulation, pre-
15 scribe.

16 (2) PROCEDURES.—In guidance and regulations
17 that implement this section, the Secretary shall de-
18 scribe the procedures required by this section, the
19 responsibilities of the Secretary and of other depart-
20 ments and agencies in reviewing applications, the
21 rights of the applicant, and other relevant matters
22 affecting the review of license applications.

23 (3) CALCULATION OF PROCESSING TIMES.—In
24 calculating the processing times set forth in this
25 title, the Secretary shall use calendar days, except

1 that if the final day for a required action falls on a
2 weekend or holiday, that action shall be taken no
3 later than the following business day.

4 (4) CRITERIA FOR EVALUATING APPLICA-
5 TIONS.—In determining whether to grant an appli-
6 cation to export a controlled item under this Act, the
7 following criteria shall be considered:

8 (A) The characteristics of the controlled
9 item.

10 (B) The threat to the United States or the
11 national security interests of the United States
12 from the misuse of the item.

13 (C) The risk of export diversion or misuse
14 by—

15 (i) the exporter;

16 (ii) the method of export;

17 (iii) the end-user;

18 (iv) the country where the end-user is
19 located; and

20 (v) the end-use.

21 (D) Risk mitigating factors including, but
22 not limited to—

23 (i) changing the characteristics of the
24 controlled item;

1 (ii) after-market monitoring by the ex-
2 porter; and

3 (iii) post-shipment verification.

4 (b) INITIAL SCREENING.—

5 (1) UPON RECEIPT OF APPLICATION.—Upon re-
6 ceipt of an export license application, the Secretary
7 shall enter and maintain in the records of the De-
8 partment information regarding the receipt and sta-
9 tus of the application.

10 (2) INITIAL PROCEDURES.—

11 (A) IN GENERAL.—Not later than 9 days
12 after receiving any license application, the Sec-
13 retary shall—

14 (i) contact the applicant if the appli-
15 cation is improperly completed or if addi-
16 tional information is required, and hold the
17 application for a reasonable time while the
18 applicant provides the necessary correc-
19 tions or information, and such time shall
20 not be included in calculating the time pe-
21 riods prescribed in this title;

22 (ii) refer the application, through the
23 use of a common data base or other
24 means, and all information submitted by
25 the applicant, and all necessary rec-

1 ommendations and analyses by the Sec-
2 retary to the Department of Defense and
3 other departments and agencies as the
4 Secretary considers appropriate;

5 (iii) ensure that the classification stat-
6 ed on the application for the export items
7 is correct; and

8 (iv) return the application if a license
9 is not required.

10 (B) REFERRAL NOT REQUIRED.—In the
11 event that the head of a department or agency
12 determines that certain types of applications
13 need not be referred to the department or agen-
14 cy, such department or agency head shall notify
15 the Secretary of the specific types of such appli-
16 cations that the department or agency does not
17 wish to review.

18 (3) WITHDRAWAL OF APPLICATION.—An appli-
19 cant may, by written notice to the Secretary, with-
20 draw an application at any time before final action.

21 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
22 CIES.—

23 (1) REFERRAL TO OTHER AGENCIES.—The Sec-
24 retary shall promptly refer a license application to
25 the departments and agencies under subsection (b)

1 to make recommendations and provide information
2 to the Secretary.

3 (2) RESPONSIBILITY OF REFERRAL DEPART-
4 MENTS AND AGENCIES.—The Department of De-
5 fense and other reviewing departments and agencies
6 shall take all necessary actions in a prompt and re-
7 sponsible manner on an application. Each depart-
8 ment or agency reviewing an application under this
9 section shall establish and maintain records properly
10 identifying and monitoring the status of the matter
11 referred to the department or agency.

12 (3) ADDITIONAL INFORMATION REQUESTS.—
13 Each department or agency to which a license appli-
14 cation is referred shall specify to the Secretary any
15 information that is not in the application that would
16 be required for the department or agency to make
17 a determination with respect to the application, and
18 the Secretary shall promptly request such informa-
19 tion from the applicant. The time that may elapse
20 between the date the information is requested by
21 that department or agency and the date the infor-
22 mation is received by that department or agency
23 shall not be included in calculating the time periods
24 prescribed in this title.

1 (4) TIME PERIOD FOR ACTION BY REFERRAL
2 DEPARTMENTS AND AGENCIES.—Within 25 days
3 after the Secretary refers an application under this
4 section, each department or agency to which an ap-
5 plication has been referred shall provide the Sec-
6 retary with a recommendation either to approve the
7 license or to deny the license. A recommendation
8 that the Secretary deny a license shall include a
9 statement of reasons for the recommendation that
10 are consistent with the provisions of this title, and
11 shall cite both the specific statutory and regulatory
12 basis for the recommendation. A department or
13 agency that fails to provide a recommendation in ac-
14 cordance with this paragraph within that 25-day pe-
15 riod shall be deemed to have no objection to the de-
16 cision of the Secretary on the application.

17 (d) ACTION BY THE SECRETARY.—Not later than 25
18 days after the date the application is referred, the Sec-
19 retary shall—

20 (1) if there is agreement among the referral de-
21 partments and agencies to issue or deny the li-
22 cense—

23 (A) issue the license and ensure all appro-
24 priate personnel in the Department (including

1 the Office of Export Enforcement) are notified
2 of all approved license applications; or

3 (B) notify the applicant of the intention to
4 deny the license; or

5 (2) if there is no agreement among the referral
6 departments and agencies, notify the applicant that
7 the application is subject to the interagency dispute
8 resolution process.

9 (e) CONSEQUENCES OF APPLICATION DENIAL.—

10 (1) IN GENERAL.—If a determination is made
11 to deny a license, the applicant shall be informed in
12 writing by the Secretary of—

13 (A) the determination;

14 (B) the specific statutory and regulatory
15 bases for the proposed denial;

16 (C) what, if any, modifications to, or re-
17 strictions on, the items for which the license
18 was sought would allow such export to be com-
19 patible with export controls imposed under this
20 Act, and which officer or employee of the De-
21 partment would be in a position to discuss
22 modifications or restrictions with the applicant
23 and the specific statutory and regulatory bases
24 for imposing such modifications or restrictions;

1 (D) to the extent consistent with the na-
2 tional security and foreign policy interests of
3 the United States, the specific considerations
4 that led to the determination to deny the appli-
5 cation; and

6 (E) the availability of appeal procedures.

7 (2) PERIOD FOR APPLICANT TO RESPOND.—

8 The applicant shall have 20 days from the date of
9 the notice of intent to deny the application to re-
10 spond in a manner that addresses and corrects the
11 reasons for the denial. If the applicant does not ade-
12 quately address or correct the reasons for denial or
13 does not respond, the license shall be denied. If the
14 applicant does address or correct the reasons for de-
15 nial, the application shall receive consideration in a
16 timely manner.

17 (f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

18 (1) IN GENERAL.—The Secretary shall establish
19 appropriate procedures for an applicant to appeal to
20 the Secretary the denial of an application or other
21 administrative action under this Act. In any case in
22 which the Secretary intends to reverse the decision
23 with respect to the application, the appeal under this
24 subsection shall be handled in accordance with the
25 interagency dispute resolution process.

1 (2) ENFORCEMENT OF TIME LIMITS.—

2 (A) IN GENERAL.—In any case in which
3 an action prescribed in this section is not taken
4 on an application within the time period estab-
5 lished by this section (except in the case of a
6 time period extended under subsection (g) of
7 which the applicant is notified), the applicant
8 may file a petition with the Secretary request-
9 ing compliance with the requirements of this
10 section. When such petition is filed, the Sec-
11 retary shall take immediate steps to correct the
12 situation giving rise to the petition and shall
13 immediately notify the applicant of such steps.

14 (B) BRINGING COURT ACTION.—If, within
15 20 days after a petition is filed under subpara-
16 graph (A), the processing of the application has
17 not been brought into conformity with the re-
18 quirements of this section, or the processing of
19 the application has been brought into conform-
20 ity with such requirements but the Secretary
21 has not so notified the applicant, the applicant
22 may bring an action in an appropriate United
23 States district court for an order requiring com-
24 pliance with the time periods required by this
25 section.

1 (g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—
2 The following actions related to processing an application
3 shall not be included in calculating the time periods pre-
4 scribed in this section:

5 (1) AGREEMENT OF THE APPLICANT.—Delays
6 upon which the Secretary and the applicant mutu-
7 ally agree.

8 (2) PRELICENSE CHECKS.—A prelicense check
9 (for a period not to exceed 60 days) that may be re-
10 quired to establish the identity and reliability of the
11 recipient of items controlled under this Act, if—

12 (A) the need for the prelicense check is de-
13 termined by the Secretary or by another depart-
14 ment or agency in any case in which the re-
15 quest for the prelicense check is made by such
16 department or agency;

17 (B) the request for the prelicense check is
18 initiated by the Secretary within 5 days after
19 the determination that the prelicense check is
20 required; and

21 (C) the analysis of the result of the
22 prelicense check is completed by the Secretary
23 within 5 days.

24 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
25 MENT ASSURANCES.—Any request by the Secretary

1 or another department or agency for government-to-
2 government assurances of suitable end-uses of items
3 approved for export, when failure to obtain such as-
4 surances would result in rejection of the application,
5 if—

6 (A) the request for such assurances is sent
7 to the Secretary of State within 5 days after
8 the determination that the assurances are re-
9 quired;

10 (B) the Secretary of State initiates the re-
11 quest of the relevant government within 10
12 days thereafter; and

13 (C) the license is issued within 5 days
14 after the Secretary receives the requested assur-
15 ances.

16 (4) EXCEPTION.—Whenever a prelicense check
17 described in paragraph (2) or assurances described
18 in paragraph (3) are not requested within the time
19 periods set forth therein, then the time expended for
20 such prelicense check or assurances shall be included
21 in calculating the time periods established by this
22 section.

23 (5) MULTILATERAL REVIEW.—Multilateral re-
24 view of a license application to the extent that such

1 multilateral review is required by a relevant multilat-
2 eral regime.

3 (6) CONGRESSIONAL NOTIFICATION.—Such
4 time as is required for mandatory congressional noti-
5 fications under this Act.

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

10 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
11 IES.—

12 (1) CLASSIFICATION REQUESTS.—In any case
13 in which the Secretary receives a written request
14 asking for the proper classification of an item on the
15 Control List or the applicability of licensing require-
16 ments under this title, the Secretary shall promptly
17 notify the Secretary of Defense and other depart-
18 ments and agencies the Secretary considers appro-
19 priate. The Secretary shall, within 14 days after re-
20 ceiving the request, inform the person making the
21 request of the proper classification.

22 (2) OTHER INQUIRIES.—In any case in which
23 the Secretary receives a written request for informa-
24 tion under this Act, the Secretary shall, within 30

1 days after receiving the request, reply with that in-
2 formation to the person making the request.

3 **SEC. 502. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

4 (a) IN GENERAL.—All license applications on which
5 agreement cannot be reached shall be referred to the inter-
6 agency dispute resolution process for decision.

7 (b) INTERAGENCY DISPUTE RESOLUTION PROC-
8 ESS.—

9 (1) INITIAL RESOLUTION.—The Secretary shall
10 establish, select the chairperson of, and determine
11 procedures for an interagency committee to review
12 initially all license applications described in sub-
13 section (a) with respect to which the Secretary and
14 any of the referral departments and agencies are not
15 in agreement. The chairperson shall consider the po-
16 sitions of all the referral departments and agencies
17 (which shall be included in the minutes described
18 subsection (c)(2)) and make a decision on the license
19 application, including appropriate revisions or condi-
20 tions thereto.

21 (2) FURTHER RESOLUTION.—The President
22 shall establish additional levels for review or appeal
23 of any matter that cannot be resolved pursuant to
24 the process described in paragraph (1). Each such
25 review shall—

1 (A) provide for decision-making based on
2 the majority vote of the participating depart-
3 ments and agencies;

4 (B) provide that a department or agency
5 that fails to take a timely position, citing the
6 specific statutory and regulatory bases for a de-
7 nial, shall be deemed to have no objection to the
8 pending decision;

9 (C) provide that any decision of an inter-
10 agency committee established under paragraph
11 (1) or interagency dispute resolution process es-
12 tablished under this paragraph may be esca-
13 lated to the next higher level of review at the
14 request of any representative of a department
15 or agency that participated in the interagency
16 committee or dispute resolution process that
17 made the decision; and

18 (D) ensure that matters are resolved or re-
19 ferred to the President not later than 90 days
20 after the date the completed license application
21 is referred by the Secretary.

22 (c) FINAL ACTION.—

23 (1) IN GENERAL.—Once a final decision is
24 made under subsection (b), the Secretary shall
25 promptly—

1 (A) issue the license and ensure that all
2 appropriate personnel in the Department (in-
3 cluding the Office of Export Enforcement) are
4 notified of all approved license applications; or
5 (B) notify the applicant of the intention to
6 deny the application.

7 (2) MINUTES.—The interagency committee and
8 each level of the interagency dispute resolution proc-
9 ess shall keep reasonably detailed minutes of all
10 meetings. On each matter before the interagency
11 committee or before any other level of the inter-
12 agency dispute resolution process in which members
13 disagree, each member shall clearly state the reasons
14 for the member's position and the reasons shall be
15 entered in the minutes.

16 **TITLE VI—INTERNATIONAL AR-**
17 **RANGEMENTS; FOREIGN BOY-**
18 **COTTS; SANCTIONS; AND EN-**
19 **FORCEMENT**

20 **SEC. 601. INTERNATIONAL ARRANGEMENTS.**

21 (a) MULTILATERAL EXPORT CONTROL REGIMES.—

22 (1) POLICY.—It is the policy of the United
23 States to seek multilateral arrangements that sup-
24 port the national security objectives of the United
25 States (as described in title II) and that establish

1 fairer and more predictable competitive opportunities
2 for United States exporters.

3 (2) PARTICIPATION IN EXISTING REGIMES.—
4 Congress encourages the United States to continue
5 its active participation in and to strengthen existing
6 multilateral export control regimes.

7 (3) PARTICIPATION IN NEW REGIMES.—It is the
8 policy of the United States to participate in addi-
9 tional multilateral export control regimes if such
10 participation would serve the national security inter-
11 ests of the United States.

12 (b) ANNUAL REPORT ON MULTILATERAL EXPORT
13 CONTROL REGIMES.—Not later than February 1 of each
14 year, the President shall submit to the Committee on
15 Banking, Housing, and Urban Affairs of the Senate and
16 the Committee on International Relations of the House
17 of Representatives a report evaluating the effectiveness of
18 each multilateral export control regime, including an as-
19 sessment of the steps undertaken pursuant to subsections
20 (c) and (d). The report, or any part of this report, may
21 be submitted in classified form to the extent the Secretary
22 considers necessary.

23 (c) STANDARDS FOR MULTILATERAL EXPORT CON-
24 TROL REGIMES.—The President shall take steps to estab-
25 lish the following features in any multilateral export con-

1 trol regime in which the United States is participating or
2 may participate:

3 (1) FULL MEMBERSHIP.—All supplier countries
4 are members of the regime, and the policies and ac-
5 tivities of the members are consistent with the objec-
6 tives and membership criteria of the multilateral ex-
7 port control regime.

8 (2) EFFECTIVE ENFORCEMENT AND COMPLI-
9 ANCE.—The regime promotes enforcement and com-
10 pliance with the regime's rules and guidelines.

11 (3) PUBLIC UNDERSTANDING.—The regime
12 makes an effort to enhance public understanding of
13 the purpose and procedures of the multilateral ex-
14 port control regime.

15 (4) EFFECTIVE IMPLEMENTATION PROCE-
16 DURES.—The multilateral export control regime has
17 procedures for the implementation of its rules and
18 guidelines through uniform and consistent interpre-
19 tations of its export controls.

20 (5) ENHANCED COOPERATION WITH REGIME
21 NONMEMBERS.—There is agreement among the
22 members of the multilateral export control regime
23 to—

1 (A) cooperate with governments outside
2 the regime to restrict the export of items con-
3 trolled by such regime; and

4 (B) establish an ongoing mechanism in the
5 regime to coordinate planning and implementa-
6 tion of export control measures related to such
7 cooperation.

8 (6) PERIODIC HIGH-LEVEL MEETINGS.—There
9 are regular periodic meetings of high-level represent-
10 atives of the governments of members of the multi-
11 lateral export control regime for the purpose of co-
12 ordinating export control policies and issuing policy
13 guidance to members of the regime.

14 (7) COMMON LIST OF CONTROLLED ITEMS.—
15 There is agreement on a common list of items con-
16 trolled by the multilateral export control regime.

17 (8) REGULAR UPDATES OF COMMON LIST.—
18 There is a procedure for removing items from the
19 list of controlled items when the control of such
20 items no longer serves the objectives of the members
21 of the multilateral export control regime.

22 (9) TREATMENT OF CERTAIN COUNTRIES.—
23 There is agreement to prevent the export or diver-
24 sion of the most sensitive items to countries whose

1 activities are threatening to the national security of
2 the United States or its allies.

3 (10) HARMONIZATION OF LICENSE APPROVAL
4 PROCEDURES.—There is harmonization among the
5 members of the regime of their national export li-
6 cense approval procedures and practices.

7 (11) UNDERCUTTING.—There is a limit with re-
8 spect to when members of a multilateral export con-
9 trol regime—

10 (A) grant export licenses for any item that
11 is substantially identical to or directly competi-
12 tive with an item controlled pursuant to the re-
13 gime, where the United States has denied an
14 export license for such item, or

15 (B) approve exports to a particular end
16 user to which the United States has denied ex-
17 port license for a similar item.

18 (d) STANDARDS FOR NATIONAL EXPORT CONTROL
19 SYSTEMS.—The President shall take steps to attain the
20 cooperation of members of each regime in implementing
21 effective national export control systems containing the
22 following features:

23 (1) EXPORT CONTROL LAW.—Enforcement au-
24 thority, civil and criminal penalties, and statutes of
25 limitations are sufficient to deter potential violations

1 and punish violators under the member's export con-
2 trol law.

3 (2) LICENSE APPROVAL PROCESS.—The system
4 for evaluating export license applications includes
5 sufficient technical expertise to assess the licensing
6 status of exports and ensure the reliability of end
7 users.

8 (3) ENFORCEMENT.—The enforcement mecha-
9 nism provides authority for trained enforcement offi-
10 cers to investigate and prevent illegal exports.

11 (4) DOCUMENTATION.—There is a system of
12 export control documentation and verification with
13 respect to controlled items.

14 (5) INFORMATION.—There are procedures for
15 the coordination and exchange of information con-
16 cerning licensing, end users, and enforcement with
17 other members of the multilateral export control re-
18 gime.

19 (6) RESOURCES.—The member has devoted
20 adequate resources to administer effectively the au-
21 thorities, systems, mechanisms, and procedures de-
22 scribed in paragraphs (1) through (5).

23 (e) OBJECTIVES REGARDING MULTILATERAL EX-
24 PORT CONTROL REGIMES.—The President shall seek to

1 achieve the following objectives with regard to multilateral
2 export control regimes:

3 (1) STRENGTHEN EXISTING REGIMES.—

4 Strengthen existing multilateral export control re-
5 gimes—

6 (A) by creating a requirement to share in-
7 formation about export license applications
8 among members before a member approves an
9 export license; and

10 (B) harmonizing national export license
11 approval procedures and practices, including
12 the elimination of undercutting.

13 (2) REVIEW AND UPDATE.—Review and update
14 multilateral regime export control lists with other
15 members, taking into account—

16 (A) national security concerns;

17 (B) the controllability of items; and

18 (C) the costs and benefits of controls.

19 (3) ENCOURAGE COMPLIANCE BY NONMEM-
20 BERS.—Encourage nonmembers of the multilateral
21 export control regime—

22 (A) to strengthen their national export
23 control regimes and improve enforcement;

24 (B) to adhere to the appropriate multilat-
25 eral export control regime; and

1 (C) not to undermine an existing multilat-
2 eral export control regime by exporting con-
3 trolled items in a manner inconsistent with the
4 guidelines of the regime.

5 (f) TRANSPARENCY OF MULTILATERAL EXPORT
6 CONTROL REGIMES.—

7 (1) PUBLICATION OF INFORMATION ON EACH
8 EXISTING REGIME.—Not later than 120 days after
9 the date of enactment of this Act, the Secretary
10 shall, for each multilateral export control regime (to
11 the extent that it is not inconsistent with the ar-
12 rangements of that regime or with the national in-
13 terest), publish in the Federal Register the following
14 information with respect to the regime:

15 (A) The purposes of the regime.

16 (B) The members of the regime.

17 (C) The export licensing policy of the re-
18 gime.

19 (D) The items that are subject to export
20 controls under the regime, together with all
21 public notes, understandings, and other aspects
22 of the agreement of the regime, and all changes
23 thereto.

1 (E) Any countries, end uses, or end users
2 that are subject to the export controls of the re-
3 gime.

4 (F) Rules of interpretation.

5 (G) Major policy actions.

6 (H) The rules and procedures of the re-
7 gime for establishing and modifying any matter
8 described in subparagraphs (A) through (G)
9 and for reviewing export license applications.

10 (2) NEW REGIMES.—Not later than 60 days
11 after the United States joins or organizes a new
12 multilateral export control regime, the Secretary
13 shall, to the extent not inconsistent with arrange-
14 ments under the regime or with the national inter-
15 est, publish in the Federal Register the information
16 described in subparagraphs (A) through (H) of
17 paragraph (1) with respect to the regime.

18 (3) PUBLICATION OF CHANGES.—Not later
19 than 60 days after a multilateral export control re-
20 gime adopts any change in the information published
21 under this subsection, the Secretary shall, to the ex-
22 tent not inconsistent with the arrangements under
23 the regime or the national interest, publish such
24 changes in the Federal Register.

1 (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
2 TROL SYSTEMS.—The Secretary is encouraged to continue
3 to—

4 (1) participate in training of, and provide train-
5 ing to, officials of other countries on the principles
6 and procedures for implementing effective export
7 controls; and

8 (2) participate in any such training provided by
9 other departments and agencies of the United
10 States.

11 **SEC. 602. FOREIGN BOYCOTTS.**

12 (a) PURPOSES.—The purposes of this section are as
13 follows:

14 (1) To counteract restrictive trade practices or
15 boycotts fostered or imposed by foreign countries
16 against other countries friendly to the United States
17 or against any United States person.

18 (2) To encourage and, in specified cases, re-
19 quire United States persons engaged in the export of
20 items to refuse to take actions, including furnishing
21 information or entering into or implementing agree-
22 ments, which have the effect of furthering or sup-
23 porting the restrictive trade practices or boycotts
24 fostered or imposed by any foreign country against

1 a country friendly to the United States or against
2 any United States person.

3 (b) PROHIBITIONS AND EXCEPTIONS.—

4 (1) PROHIBITIONS.—In order to carry out the
5 purposes set forth in subsection (a), the President
6 shall issue regulations prohibiting any United States
7 person, with respect to that person's activities in the
8 interstate or foreign commerce of the United States,
9 from taking or knowingly agreeing to take any of
10 the following actions with intent to comply with, fur-
11 ther, or support any boycott fostered or imposed by
12 a foreign country against a country that is friendly
13 to the United States and is not itself the object of
14 any form of boycott pursuant to United States law
15 or regulation:

16 (A) Refusing, or requiring any other per-
17 son to refuse, to do business with or in the boy-
18 cotted country, with any business concern orga-
19 nized under the laws of the boycotted country,
20 with any national or resident of the boycotted
21 country, or with any other person, pursuant to
22 an agreement with, or requirement of, or a re-
23 quest from or on behalf of the boycotting coun-
24 try (subject to the condition that the intent re-
25 quired to be associated with such an act in

1 order to constitute a violation of the prohibition
2 is not indicated solely by the mere absence of
3 a business relationship with or in the boycotted
4 country, with any business concern organized
5 under the laws of the boycotted country, with
6 any national or resident of the boycotted coun-
7 try, or with any other person).

8 (B) Refusing, or requiring any other per-
9 son to refuse, to employ or otherwise discrimi-
10 nate against any United States person on the
11 basis of the race, religion, sex, or national ori-
12 gin of that person or of any owner, officer, di-
13 rector, or employee of such person.

14 (C) Furnishing information with respect to
15 the race, religion, sex, or national origin of any
16 United States person or of any owner, officer,
17 director, or employee of such person.

18 (D) Furnishing information (other than
19 furnishing normal business information in a
20 commercial context, as defined by the Sec-
21 retary) about whether any person has, has had,
22 or proposes to have any business relationship
23 (including a relationship by way of sale, pur-
24 chase, legal or commercial representation, ship-
25 ping or other transport, insurance, investment,

1 or supply) with or in the boycotted country,
2 with any business concern organized under the
3 laws of the boycotted country, with any national
4 or resident of the boycotted country, or with
5 any other person that is known or believed to
6 be restricted from having any business relation-
7 ship with or in the boycotting country.

8 (E) Furnishing information about whether
9 any person is a member of, has made a con-
10 tribution to, or is otherwise associated with or
11 involved in the activities of any charitable or
12 fraternal organization which supports the boy-
13 cotted country.

14 (F) Paying, honoring, confirming, or other-
15 wise implementing a letter of credit which con-
16 tains any condition or requirement the compli-
17 ance with which is prohibited by regulations is-
18 sued pursuant to this paragraph, and no United
19 States person shall, as a result of the applica-
20 tion of this paragraph, be obligated to pay or
21 otherwise honor or implement such letter of
22 credit.

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

1 (A) compliance, or agreement to comply,
2 with requirements—

3 (i) prohibiting the import of items
4 from the boycotted country or items pro-
5 duced or provided, by any business concern
6 organized under the laws of the boycotted
7 country or by nationals or residents of the
8 boycotted country; or

9 (ii) prohibiting the shipment of items
10 to the boycotting country on a carrier of
11 the boycotted country or by a route other
12 than that prescribed by the boycotting
13 country or the recipient of the shipment;

14 (B) compliance, or agreement to comply,
15 with import and shipping document require-
16 ments with respect to the country of origin, the
17 name of the carrier and route of shipment, the
18 name of the supplier of the shipment, or the
19 name of the provider of other services, except
20 that, for purposes of applying any exception
21 under this subparagraph, no information know-
22 ingly furnished or conveyed in response to such
23 requirements may be stated in negative, black-
24 listing, or similar exclusionary terms, other
25 than with respect to carriers or route of ship-

1 ment as may be permitted by such regulations
2 in order to comply with precautionary require-
3 ments protecting against war risks and
4 confiscation;

5 (C) compliance, or agreement to comply, in
6 the normal course of business with the unilat-
7 eral and specific selection by a boycotting coun-
8 try, or a national or resident thereof, or car-
9 riers, insurers, suppliers of services to be per-
10 formed within the boycotting country, or spe-
11 cific items which, in the normal course of busi-
12 ness, are identifiable by source when imported
13 into the boycotting country;

14 (D) compliance, or agreement to comply,
15 with export requirements of the boycotting
16 country relating to shipment or transshipment
17 of exports to the boycotted country, to any busi-
18 ness concern of or organized under the laws of
19 the boycotted country, or to any national or
20 resident of the boycotted country;

21 (E) compliance by an individual, or agree-
22 ment by an individual to comply, with the immi-
23 gration or passport requirements of any country
24 with respect to such individual or any member
25 of such individual's family or with requests for

1 information regarding requirements of employ-
2 ment of such individual within the boycotting
3 country; and

4 (F) compliance by a United States person
5 resident in a foreign country, or agreement by
6 such a person to comply, with the laws of the
7 country with respect to the person's activities
8 exclusively therein, and such regulations may
9 contain exceptions for such resident complying
10 with the laws or regulations of the foreign coun-
11 try governing imports into such country of
12 trademarked, trade-named, or similarly specifi-
13 cally identifiable products, or components of
14 products for such person's own use, including
15 the performance of contractual services within
16 that country.

17 (3) LIMITATION ON EXCEPTIONS.—Regulations
18 issued pursuant to paragraphs (2)(C) and (2)(F)
19 shall not provide exceptions from paragraphs (1)(B)
20 and (1)(C).

21 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
22 AFFECTED.—Nothing in this subsection may be con-
23 strued to supersede or limit the operation of the
24 antitrust or civil rights laws of the United States.

1 (5) EVASION.—This section applies to any
2 transaction or activity undertaken by or through a
3 United States person or any other person with in-
4 tent to evade the provisions of this section or the
5 regulations issued pursuant to this subsection. The
6 regulations issued pursuant to this section shall ex-
7 pressly provide that the exceptions set forth in para-
8 graph (2) do not permit activities or agreements (ex-
9 pressed or implied by a course of conduct, including
10 a pattern of responses) that are otherwise prohib-
11 ited, pursuant to the intent of such exceptions.

12 (c) ADDITIONAL REGULATIONS AND REPORTS.—

13 (1) REGULATIONS.—In addition to the regula-
14 tions issued pursuant to subsection (b), regulations
15 issued pursuant to title III shall implement the pur-
16 poses set forth in subsection (a).

17 (2) REPORTS BY UNITED STATES PERSONS.—

18 The regulations shall require that any United States
19 person receiving a request to furnish information,
20 enter into or implement an agreement, or take any
21 other action referred to in subsection (a) shall report
22 that request to the Secretary, together with any
23 other information concerning the request that the
24 Secretary determines appropriate. The person shall
25 also submit to the Secretary a statement regarding

1 whether the person intends to comply, and whether
2 the person has complied, with the request. Any re-
3 port filed pursuant to this paragraph shall be made
4 available promptly for public inspection and copying,
5 except that information regarding the quantity, de-
6 scription, and value of any item to which such report
7 relates may be treated as confidential if the Sec-
8 retary determines that disclosure of that information
9 would place the United States person involved at a
10 competitive disadvantage. The Secretary shall peri-
11 odically transmit summaries of the information con-
12 tained in the reports to the Secretary of State for
13 such action as the Secretary of State, in consultation
14 with the Secretary, considers appropriate to carry
15 out the purposes set forth in subsection (a).

16 (d) **PREEMPTION.**—The provisions of this section and
17 the regulations issued under this section shall preempt any
18 law, rule, or regulation that—

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

23 (2) pertains to participation in, compliance
24 with, implementation of, or the furnishing of infor-
25 mation regarding restrictive trade practices or boy-

1 cotts fostered or imposed by foreign countries
2 against other countries.

3 **SEC. 603. PENALTIES.**

4 (a) CRIMINAL PENALTIES.—

5 (1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-
6 vidual who knowingly violates, conspires to violate,
7 or attempts to violate any provision of this Act or
8 any regulation, license, or order issued under this
9 Act shall be fined up to 10 times the value of the
10 exports involved or \$1,000,000, whichever is greater,
11 imprisoned for not more than 10 years, or both, for
12 each violation, except that the term of imprisonment
13 may be increased to life for multiple violations or ag-
14 gravated circumstances.

15 (2) VIOLATIONS BY A PERSON OTHER THAN AN
16 INDIVIDUAL.—Any person other than an individual
17 who knowingly violates, conspires to violate, or at-
18 tempts to violate any provision of this Act or any
19 regulation, license, or order issued under this Act
20 shall be fined up to 10 times the value of the exports
21 involved or \$10,000,000, whichever is greater, for
22 each violation.

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

1 (1) FORFEITURE.—Any person who is convicted
2 under paragraph (1) or (2) of subsection (a) shall,
3 in addition to any other penalty, forfeit to the Unit-
4 ed States—

5 (A) any of that person's security or other
6 interest in, claim against, or property or con-
7 tractual rights of any kind in the tangible items
8 that were the subject of the violation;

9 (B) any of that person's security or other
10 interest in, claim against, or property or con-
11 tractual rights of any kind in the tangible prop-
12 erty that was used in the export or attempt to
13 export that was the subject of the violation; and

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

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

1 same extent as property subject to forfeiture under
2 that chapter.

3 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
4 TIONS.—

5 (1) CIVIL PENALTIES.—The Secretary may im-
6 pose a civil penalty of up to \$1,000,000 for each vio-
7 lation of a provision of this Act or any regulation,
8 license, or order issued under this Act. A civil pen-
9 alty under this paragraph may be in addition to, or
10 in lieu of, any other liability or penalty which may
11 be imposed for such a violation.

12 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
13 retary may deny the export privileges of any person,
14 including the suspension or revocation of the author-
15 ity of such person to export or receive United
16 States-origin items subject to this Act, for a viola-
17 tion of a provision of this Act or any regulation, li-
18 cense, or order issued under this Act.

19 (3) EXCLUSION FROM PRACTICE.—The Sec-
20 retary may exclude any person acting as an attor-
21 ney, accountant, consultant, freight forwarder, or in
22 any other representative capacity from participating
23 before the Department with respect to a license ap-
24 plication or any other matter under this Act.

25 (d) PAYMENT OF CIVIL PENALTIES.—

1 (1) PAYMENT AS CONDITION OF FURTHER EX-
2 PORT PRIVILEGES.—The payment of a civil penalty
3 imposed under subsection (c) may be made a condi-
4 tion for the granting, restoration, or continuing va-
5 lidity of any export license, permission, or privilege
6 granted or to be granted to the person upon whom
7 such penalty is imposed. The period for which the
8 payment of a penalty may be made such a condition
9 may not exceed 1 year after the date on which the
10 payment is due.

11 (2) DEFERRAL OR SUSPENSION.—

12 (A) IN GENERAL.—The payment of a civil
13 penalty imposed under subsection (c) may be
14 deferred or suspended in whole or in part for a
15 period no longer than any probation period
16 (which may exceed 1 year) that may be imposed
17 upon the person on whom the penalty is im-
18 posed.

19 (B) NO BAR TO COLLECTION OF PEN-
20 ALTY.—A deferral or suspension under sub-
21 paragraph (A) shall not operate as a bar to the
22 collection of the penalty concerned in the event
23 that the conditions of the suspension, deferral,
24 or probation are not fulfilled.

1 (3) TREATMENT OF PAYMENTS.—Any amount
2 paid in satisfaction of a civil penalty imposed under
3 subsection (c) shall be covered into the Treasury as
4 miscellaneous receipts except as set forth in section
5 607(h).

6 (e) REFUNDS.—

7 (1) AUTHORITY.—

8 (A) IN GENERAL.—The Secretary may, in
9 the Secretary's discretion, refund any civil pen-
10 alty imposed under subsection (c) on the
11 ground of a material error of fact or law in im-
12 position of the penalty.

13 (B) LIMITATION.—A civil penalty may not
14 be refunded under subparagraph (A) later than
15 2 years after payment of the penalty.

16 (2) PROHIBITION ON ACTIONS FOR REFUND.—
17 Notwithstanding section 1346(a) of title 28, United
18 States Code, no action for the refund of any civil
19 penalty referred to in paragraph (1) may be main-
20 tained in any court.

21 (f) EFFECT OF OTHER CONVICTIONS.—

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

24 (A) a provision of this Act or the Export
25 Administration Act of 1979,

1 (B) a provision of the International Emer-
2 gency Economic Powers Act (50 U.S.C. 1701 et
3 seq.),

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

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

8 (E) section 38 of the Arms Export Control
9 Act (22 U.S.C. 2778),

10 (F) section 16 of the Trading with the
11 Enemy Act (50 U.S.C. App. 16),

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

15 (H) section 371 or 1001 of title 18, United
16 States Code, if in connection with the export of
17 controlled items under this Act or any regula-
18 tion, license, or order issued under the Inter-
19 national Emergency Economic Powers Act, or
20 the export of items controlled under the Arms
21 Export Control Act,

22 (I) section 175 of title 18, United States
23 Code,

24 (J) section 229, of title 18, United States
25 Code,

1 (K) a provision of the Atomic Energy Act
2 (42 U.S.C. 201 et seq.),

3 (L) section 831 of title 18, United States
4 Code, or

5 (M) section 2332a of title 18, United
6 States Code,

7 may, at the discretion of the Secretary, be denied ex-
8 port privileges under this Act for a period not to ex-
9 ceed 10 years from the date of the conviction. The
10 Secretary may also revoke any export license under
11 this Act in which such person had an interest at the
12 time of the conviction.

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

22 (g) STATUTE OF LIMITATIONS.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), a proceeding in which a civil penalty or
25 other administrative sanction (other than a tem-

1 porary denial order) is sought under subsection (c)
2 may not be instituted more than 5 years after the
3 later of the date of the alleged violation or the date
4 of discovery of the alleged violation.

5 (2) EXCEPTION.—

6 (A) TOLLING.—In any case in which a
7 criminal indictment alleging a violation under
8 subsection (a) is returned within the time limits
9 prescribed by law for the institution of such ac-
10 tion, the limitation under paragraph (1) for
11 bringing a proceeding to impose a civil penalty
12 or other administrative sanction under this sec-
13 tion shall, upon the return of the criminal in-
14 dictment, be tolled against all persons named as
15 a defendant.

16 (B) DURATION.—The tolling of the limita-
17 tion with respect to a defendant under subpara-
18 graph (A) as a result of a criminal indictment
19 shall continue for a period of 6 months from
20 the date on which the conviction of the defend-
21 ant becomes final, the indictment against the
22 defendant is dismissed, or the criminal action
23 has concluded.

1 (h) VIOLATIONS DEFINED BY REGULATION.—Noth-
2 ing in this section shall limit the authority of the Secretary
3 to define by regulation violations under this Act.

4 (i) CONSTRUCTION.—Nothing in subsection (c), (d),
5 (e), (f), or (g) limits—

6 (1) the availability of other administrative or
7 judicial remedies with respect to a violation of a pro-
8 vision of this Act, or any regulation, order, or license
9 issued under this Act;

10 (2) the authority to compromise and settle ad-
11 ministrative proceedings brought with respect to any
12 such violation; or

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

17 **SEC. 604. MULTILATERAL EXPORT CONTROL REGIME VIO-**
18 **LATION SANCTIONS.**

19 (a) IMPOSITION OF SANCTIONS.—

20 (1) IN GENERAL.—The President, subject to
21 subsection (c), shall apply sanctions under sub-
22 section (b) for a period of not less than 2 years and
23 not more than 5 years, if the President determines
24 that—

1 (A) a foreign person has violated any regu-
2 lation issued by a country to control exports for
3 national security purposes pursuant to a multi-
4 lateral export control regime; and

5 (B) such violation has substantially aided a
6 country in—

7 (i) acquiring military significant capa-
8 bilities or weapons, if the country is an ac-
9 tual or potential adversary of the United
10 States;

11 (ii) acquiring nuclear weapons pro-
12 vided such country is other than the de-
13 clared nuclear states of the People's Re-
14 public China, the Republic of France, the
15 Russian Federation, the United Kingdom,
16 and the United States;

17 (iii) acquiring biological or chemical
18 weapons; or

19 (iv) acquiring missiles.

20 (2) NOTIFICATION OF CONGRESS.—The Presi-
21 dent shall notify Congress of each action taken
22 under this section.

23 (b) APPLICABILITY AND FORMS OF SANCTIONS.—
24 The sanctions referred to in subsection (a) shall apply to
25 the foreign person committing the violation, as well as to

1 any parent, affiliate, subsidiary, and successor entity of
2 the foreign person, and, except as provided in subsection
3 (c), are as follows:

4 (1) A prohibition on contracting with, and the
5 procurement of products and services from, a sanc-
6 tioned person, by any department, agency, or instru-
7 mentality of the United States Government.

8 (2) A prohibition on the importation into the
9 United States of all items produced by a sanctioned
10 person.

11 (c) EXCEPTIONS.—The President shall not apply
12 sanctions under this section—

13 (1) in the case of procurement of defense
14 items—

15 (A) under existing contracts or sub-
16 contracts, including the exercise of options for
17 production quantities to satisfy United States
18 operational military requirements;

19 (B) if the President determines that the
20 foreign person or other entity to which the
21 sanctions would otherwise be applied is a sole
22 source supplier of essential defense items and
23 no alternative supplier can be identified; or

1 (C) if the President determines that such
2 items are essential to the national security
3 under defense coproduction agreements;

4 (2) in any case in which such sanctions would
5 violate United States international obligations in-
6 cluding treaties, agreements, or understandings; or

7 (3) to—

8 (A) items provided under contracts or
9 other binding agreements (as such terms are
10 defined by the President in regulations) entered
11 into before the date on which the President no-
12 tifies Congress of the intention to impose the
13 sanctions;

14 (B) after-market service and replacement
15 parts including upgrades;

16 (C) component parts, but not finished
17 products, essential to United States products or
18 productions; or

19 (D) information and technology.

20 (d) EXCLUSION.—The President shall not apply
21 sanctions under this section to a parent, affiliate, subsidi-
22 ary, and successor entity of a foreign person if the Presi-
23 dent determines that—

24 (1) the parent, affiliate, subsidiary, or successor
25 entity (as the case may be) has not knowingly vio-

1 lated the export control regulation violated by the
2 foreign person; and

3 (2) the government of the country with jurisdic-
4 tion over the parent, affiliate, subsidiary, or succes-
5 sor entity had in effect, at the time of the violation
6 by the foreign person, an effective export control
7 system consistent with principles set forth in section
8 601(b)(2).

9 (e) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—

10 The President may, after consultation with the Committee
11 on Banking, Housing, and Urban Affairs of the Senate
12 and the Committee on International Relations of the
13 House of Representatives, limit the scope of sanctions ap-
14 plied to a parent, affiliate, subsidiary, or successor entity
15 of the foreign person determined to have committed the
16 violation on account of which the sanctions were imposed,
17 if the President determines that—

18 (1) the parent, affiliate, subsidiary, or successor
19 entity (as the case may be) has not, on the basis of
20 evidence available to the United States, itself vio-
21 lated the export control regulation involved, either
22 directly or through a course of conduct;

23 (2) the government with jurisdiction over the
24 parent, affiliate, subsidiary, or successor entity has

1 improved its export control system as measured by
2 the criteria set forth in section 601(b)(2); and

3 (3) the parent, affiliate, subsidiary, or successor
4 entity, has instituted improvements in internal con-
5 trols sufficient to detect and prevent violations of
6 the multilateral export control regime.

7 **SEC. 605. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

8 (a) VIOLATIONS BY UNITED STATES PERSONS.—

9 (1) SANCTIONS.—

10 (A) IN GENERAL.—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 provi-
15 sions of section 38 (22 U.S.C. 2778) or
16 chapter 7 of the Arms Export Control Act,
17 title II or III of this Act, or any regula-
18 tions or orders issued under any such pro-
19 visions,

20 (ii) conspires to or attempts to engage
21 in such export, transfer, or trade, or

22 (iii) facilitates such export, transfer,
23 or trade by any other person,

24 then the President shall impose the applicable
25 sanctions described in subparagraph (B).

1 (B) SANCTIONS DESCRIBED.—The sanc-
2 tions which apply to a United States person
3 under subparagraph (A) are the following:

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

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

20 (2) DISCRETIONARY SANCTIONS.—In the case
21 of any determination referred to in paragraph (1),
22 the Secretary may pursue any other appropriate
23 penalties under section 603.

24 (3) WAIVER.—The President may waive the im-
25 position of sanctions under paragraph (1) on a per-

1 son with respect to an item if the President certifies
2 to Congress that—

3 (A) the item is essential to the national se-
4 curity of the United States; and

5 (B) such person is a sole source supplier of
6 the item, the item is not available from any al-
7 ternative reliable supplier, and the need for the
8 item cannot be met in a timely manner by im-
9 proved manufacturing processes or technological
10 developments.

11 (b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-
12 NOLOGY BY FOREIGN PERSONS.—

13 (1) SANCTIONS.—

14 (A) IN GENERAL.—Subject to paragraphs
15 (3) through (7), if the President determines
16 that a foreign person, after the date of enact-
17 ment of this section, knowingly—

18 (i) exports, transfers, or otherwise en-
19 gages in the trade of any MTCR equip-
20 ment or technology that contributes to the
21 design, development, or production of mis-
22 siles in a country that is not an MTCR ad-
23 herent and would be, if it were United
24 States-origin equipment or technology,

1 subject to the jurisdiction of the United
2 States under this Act,

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
11 the applicable sanctions under subparagraph
12 (B).

13 (B) SANCTIONS DESCRIBED.—The sanc-
14 tions which apply to a foreign person under
15 subparagraph (A) are the following:

16 (i) If the item involved in the export,
17 transfer, or trade is within category II of
18 the MTCR Annex, then the President shall
19 deny, for a period of 2 years, licenses for
20 the transfer to such foreign person of mis-
21 sile equipment or technology the export of
22 which is controlled under this Act.

23 (ii) If the item involved in the export,
24 transfer, or trade is within category I of
25 the MTCR Annex, then the President shall

1 deny, for a period of not less than 2 years,
2 licenses for the transfer to such foreign
3 person of items the export of which is con-
4 trolled under this Act.

5 (iii) If, in addition to actions taken
6 under clauses (i) and (ii), the President de-
7 termines that the export, transfer, or trade
8 has substantially contributed to the design,
9 development, or production of missiles in a
10 country that is not an MTCR adherent,
11 then the President shall prohibit, for a pe-
12 riod of not less than 2 years, the importa-
13 tion into the United States of products
14 produced by that foreign person.

15 (2) INAPPLICABILITY WITH RESPECT TO MTCR
16 ADHERENTS.—Paragraph (1) does not apply with
17 respect to—

18 (A) any export, transfer, or trading activ-
19 ity that is authorized by the laws of an MTCR
20 adherent, if such authorization is not obtained
21 by misrepresentation or fraud; or

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

1 (3) EFFECT OF ENFORCEMENT ACTIONS BY
2 MTCR ADHERENTS.—Sanctions set forth in para-
3 graph (1) may not be imposed under this subsection
4 on a person with respect to acts described in such
5 paragraph or, if such sanctions are in effect against
6 a person on account of such acts, such sanctions
7 shall be terminated, if an MTCR adherent is taking
8 judicial or other enforcement action against that
9 person with respect to such acts, or that person has
10 been found by the government of an MTCR adher-
11 ent to be innocent of wrongdoing with respect to
12 such acts.

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

25 (5) WAIVER AND REPORT TO CONGRESS.—

1 (A) WAIVER.—In any case other than one
2 in which an advisory opinion has been issued
3 under paragraph (4) stating that a proposed ac-
4 tivity would not subject a person to sanctions
5 under this subsection, the President may waive
6 the application of paragraph (1) to a foreign
7 person if the President determines that such
8 waiver is essential to the national security of
9 the United States.

10 (B) REPORT TO CONGRESS.—In the event
11 that the President decides to apply the waiver
12 described in subparagraph (A), the President
13 shall so notify Congress not less than 20 work-
14 ing days before issuing the waiver. Such notifi-
15 cation shall include a report fully articulating
16 the rationale and circumstances which led the
17 President to apply the waiver.

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

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

24 (B) such person is a sole source supplier of
25 the product or service, the product or service is

1 not available from any alternative reliable sup-
2 plier, and the need for the product or service
3 cannot be met in a timely manner by improved
4 manufacturing processes or technological devel-
5 opments.

6 (7) EXCEPTIONS.—The President shall not
7 apply the sanction under this subsection prohibiting
8 the importation of the products of a foreign per-
9 son—

10 (A) in the case of procurement of defense
11 articles or defense services—

12 (i) under existing contracts or sub-
13 contracts, including the exercise of options
14 for production quantities to satisfy require-
15 ments essential to the national security of
16 the United States;

17 (ii) if the President determines that
18 the person to which the sanctions would be
19 applied is a sole source supplier of the de-
20 fense articles and services, that the defense
21 articles or services are essential to the na-
22 tional security of the United States, and
23 that alternative sources are not readily or
24 reasonably available; or

1 (iii) if the President determines that
2 such articles or services are essential to the
3 national security of the United States
4 under defense coproduction agreements or
5 NATO Programs of Cooperation;

6 (B) to products or services provided under
7 contracts entered into before the date on which
8 the President publishes his intention to impose
9 the sanctions; or

10 (C) to—

11 (i) spare parts,

12 (ii) component parts, but not finished
13 products, essential to United States prod-
14 ucts or production,

15 (iii) routine services and maintenance
16 of products, to the extent that alternative
17 sources are not readily or reasonably avail-
18 able, or

19 (iv) information and technology essen-
20 tial to United States products or produc-
21 tion.

22 (c) DEFINITIONS.—In this section:

23 (1) MISSILE.—The term “missile” means a cat-
24 egory I system as defined in the MTCR Annex, and
25 any other unmanned delivery system of similar capa-

1 bility, as well as the specially designed production
2 facilities for these systems.

3 (2) MISSILE TECHNOLOGY CONTROL REGIME;
4 MTCR.—The term “Missile Technology Control Re-
5 gime” or “MTCR” means the policy statement, be-
6 tween the United States, the United Kingdom, the
7 Federal Republic of Germany, France, Italy, Can-
8 ada, and Japan, announced on April 16, 1987, to re-
9 strict sensitive missile-relevant transfers based on
10 the MTCR Annex, and any amendments thereto.

11 (3) MTCR ADHERENT.—The term “MTCR ad-
12 herent” means a country that participates in the
13 MTCR or that, pursuant to an international under-
14 standing to which the United States is a party, con-
15 trols MTCR equipment or technology in accordance
16 with the criteria and standards set forth in the
17 MTCR.

18 (4) MTCR ANNEX.—The term “MTCR Annex”
19 means the Guidelines and Equipment and Tech-
20 nology Annex of the MTCR, and any amendments
21 thereto.

22 (5) MISSILE EQUIPMENT OR TECHNOLOGY;
23 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
24 “missile equipment or technology” and “MTCR

1 equipment or technology” mean those items listed in
2 category I or category II of the MTCR Annex.

3 (6) FOREIGN PERSON.—The term “foreign per-
4 son” means any person other than a United States
5 person.

6 (7) PERSON.—

7 (A) IN GENERAL.—The term “person”
8 means a natural person as well as a corpora-
9 tion, business association, partnership, society,
10 trust, any other nongovernmental entity, orga-
11 nization, or group, and any governmental entity
12 operating as a business enterprise, and any suc-
13 cessor of any such entity.

14 (B) IDENTIFICATION IN CERTAIN CASES.—
15 In the case of countries where it may be impos-
16 sible to identify a specific governmental entity
17 referred to in subparagraph (A), the term “per-
18 son” means—

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

22 (ii) all activities of that government
23 affecting the development or production of
24 aircraft, electronics, and space systems or
25 equipment.

1 produce, stockpile, or otherwise acquire chemical or
2 biological weapons.

3 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
4 CEIVING ASSISTANCE.—Paragraph (1) applies in the
5 case of—

6 (A) any foreign country that the President
7 determines has, at any time after the date of
8 enactment of this Act—

9 (i) used chemical or biological weap-
10 ons in violation of international law;

11 (ii) used lethal chemical or biological
12 weapons against its own nationals; or

13 (iii) made substantial preparations to
14 engage in the activities described in clause
15 (i) or (ii);

16 (B) any foreign country whose government
17 is determined for purposes of section 310 to be
18 a government that has repeatedly provided sup-
19 port for acts of international terrorism; or

20 (C) any other foreign country, project, or
21 entity designated by the President for purposes
22 of this section.

23 (3) PERSONS AGAINST WHICH SANCTIONS ARE
24 TO BE IMPOSED.—Sanctions shall be imposed pursu-
25 ant to paragraph (1) on—

1 (A) the foreign person with respect to
2 which the President makes the determination
3 described in that paragraph;

4 (B) any successor entity to that foreign
5 person;

6 (C) any foreign person that is a parent or
7 subsidiary of that foreign person if that parent
8 or subsidiary knowingly assisted in the activities
9 which were the basis of that determination; and

10 (D) any foreign person that is an affiliate
11 of that foreign person if that affiliate knowingly
12 assisted in the activities which were the basis of
13 that determination and if that affiliate is con-
14 trolled in fact by that foreign person.

15 (b) CONSULTATIONS WITH AND ACTIONS BY FOR-
16 EIGN GOVERNMENT OF JURISDICTION.—

17 (1) CONSULTATIONS.—If the President makes
18 the determinations described in subsection (a)(1)
19 with respect to a foreign person, Congress urges the
20 President to initiate consultations immediately with
21 the government with primary jurisdiction over that
22 foreign person with respect to the imposition of
23 sanctions pursuant to this section.

24 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
25 TION.—In order to pursue such consultations with

1 that government, the President may delay imposition
2 of sanctions pursuant to this section for a period of
3 up to 90 days. Following the consultations, the
4 President shall impose sanctions unless the Presi-
5 dent determines and certifies to Congress that that
6 government has taken specific and effective actions,
7 including appropriate penalties, to terminate the in-
8 volvement of the foreign person in the activities de-
9 scribed in subsection (a)(1). The President may
10 delay imposition of sanctions for an additional pe-
11 riod of up to 90 days if the President determines
12 and certifies to Congress that that government is in
13 the process of taking the actions described in the
14 preceding sentence.

15 (3) REPORT TO CONGRESS.—The President
16 shall report to Congress, not later than 90 days
17 after making a determination under subsection
18 (a)(1), on the status of consultations with the appro-
19 priate government under this subsection, and the
20 basis for any determination under paragraph (2) of
21 this subsection that such government has taken spe-
22 cific corrective actions.

23 (c) SANCTIONS.—

24 (1) DESCRIPTION OF SANCTIONS.—The sanc-
25 tions to be imposed pursuant to subsection (a)(1)

1 are, except as provided in paragraph (2) of this sub-
2 section, the following:

3 (A) PROCUREMENT SANCTION.—The Unit-
4 ed States Government shall not procure, or
5 enter into any contract for the procurement of,
6 any goods or services from any person described
7 in subsection (a)(3).

8 (B) IMPORT SANCTIONS.—The importation
9 into the United States of products produced by
10 any person described in subsection (a)(3) shall
11 be prohibited.

12 (2) EXCEPTIONS.—The President shall not be
13 required to apply or maintain sanctions under this
14 section—

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

17 (i) under existing contracts or sub-
18 contracts, including the exercise of options
19 for production quantities to satisfy United
20 States operational military requirements;

21 (ii) if the President determines that
22 the person or other entity to which the
23 sanctions would otherwise be applied is a
24 sole source supplier of the defense articles
25 or services, that the defense articles or

1 services are essential, and that alternative
2 sources are not readily or reasonably avail-
3 able; or

4 (iii) if the President determines that
5 such articles or services are essential to the
6 national security under defense coproduc-
7 tion agreements;

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

12 (C) to—

13 (i) spare parts,

14 (ii) component parts, but not finished
15 products, essential to United States prod-
16 ucts or production, or

17 (iii) routine servicing and mainte-
18 nance of products, to the extent that alter-
19 native sources are not readily or reason-
20 ably available;

21 (D) to information and technology essen-
22 tial to United States products or production; or

23 (E) to medical or other humanitarian
24 items.

1 (d) TERMINATION OF SANCTIONS.—The sanctions
2 imposed pursuant to this section shall apply for a period
3 of at least 12 months following the imposition of sanctions
4 and shall cease to apply thereafter only if the President
5 determines and certifies to the Congress that reliable in-
6 formation indicates that the foreign person with respect
7 to which the determination was made under subsection
8 (a)(1) has ceased to aid or abet any foreign government,
9 project, or entity in its efforts to acquire chemical or bio-
10 logical weapons capability as described in that subsection.

11 (e) WAIVER.—

12 (1) CRITERION FOR WAIVER.—The President
13 may waive the application of any sanction imposed
14 on any person pursuant to this section, after the end
15 of the 12-month period beginning on the date on
16 which that sanction was imposed on that person, if
17 the President determines and certifies to Congress
18 that such waiver is important to the national secu-
19 rity interests of the United States.

20 (2) NOTIFICATION OF AND REPORT TO CON-
21 GRESS.—If the President decides to exercise the
22 waiver authority provided in paragraph (1), the
23 President shall so notify the Congress not less than
24 20 days before the waiver takes effect. Such notifica-
25 tion shall include a report fully articulating the ra-

1 tionale and circumstances which led the President to
2 exercise the waiver authority.

3 (f) DEFINITION OF FOREIGN PERSON.—For the pur-
4 poses of this section, the term “foreign person” means—

5 (1) an individual who is not a citizen of the
6 United States or an alien admitted for permanent
7 residence to the United States; or

8 (2) a corporation, partnership, or other entity
9 which is created or organized under the laws of a
10 foreign country or which has its principal place of
11 business outside the United States.

12 **SEC. 607. ENFORCEMENT.**

13 (a) GENERAL AUTHORITY AND DESIGNATION.—

14 (1) POLICY GUIDANCE ON ENFORCEMENT.—

15 The Secretary, in consultation with the Secretary of
16 the Treasury and the heads of other departments
17 and agencies that the Secretary considers appro-
18 priate, shall be responsible for providing policy guid-
19 ance on the enforcement of this Act.

20 (2) GENERAL AUTHORITIES.—

21 (A) EXERCISE OF AUTHORITY.—To the ex-
22 tent necessary or appropriate to the enforce-
23 ment of this Act, officers or employees of the
24 Department designated by the Secretary, offi-
25 cers and employees of the United States Cus-

1 toms Service designated by the Commissioner of
2 Customs, and officers and employees of any
3 other department or agency designated by the
4 head of the department or agency, may exercise
5 the enforcement authority under paragraph (3).

6 (B) CUSTOMS SERVICE.—In carrying out
7 enforcement authority under paragraph (3), the
8 Commissioner of Customs and employees of the
9 United States Customs Services designated by
10 the Commissioner may make investigations
11 within or outside the United States and at
12 ports of entry into or exit from the United
13 States where officers of the United States Customs
14 Service are authorized by law to carry out
15 law enforcement responsibilities. Subject to
16 paragraph (3), the United States Customs
17 Service is authorized, in the enforcement of this
18 Act, to search, detain (after search), and seize
19 commodities or technology at the ports of entry
20 into or exit from the United States where offi-
21 cers of the United States Customs Service are
22 authorized by law to conduct searches, deten-
23 tions, and seizures, and at the places outside
24 the United States where the United States Customs
25 Service, pursuant to agreement or other

1 arrangement with other countries, is authorized
2 to perform enforcement activities.

3 (C) OTHER EMPLOYEES.—In carrying out
4 enforcement authority under paragraph (3), the
5 Secretary and officers and employees of the De-
6 partment designated by the Secretary may
7 make investigations within the United States,
8 and may conduct, outside the United States,
9 pre-license and post-shipment verifications of
10 controlled items and investigations in the en-
11 forcement of section 602. The Secretary and of-
12 ficers and employees of the Department des-
13 igned by the Secretary are authorized to
14 search, detain (after search), and seize items at
15 places within the United States other than
16 ports referred to in subparagraph (B). The
17 search, detention (after search), or seizure of
18 items at the ports and places referred to in sub-
19 paragraph (B) may be conducted by officers
20 and employees of the Department only with the
21 concurrence of the Commissioner of Customs or
22 a person designated by the Commissioner.

23 (D) AGREEMENTS AND ARRANGEMENTS.—
24 The Secretary and the Commissioner of Cus-
25 toms may enter into agreements and arrange-

1 order requiring such person to appear and
2 give testimony or to appear and produce
3 books, records, and other writings, or both.
4 Any failure to obey such order of the court
5 may be punished by such court as a con-
6 tempt thereof. The attendance of witnesses
7 and the production of documents provided
8 for in this clause may be required from
9 any State, the District of Columbia, or in
10 any territory of the United States at any
11 designated place. Witnesses subpoenaed
12 under this subsection shall be paid the
13 same fees and mileage allowance as paid
14 witnesses in the district courts of the Unit-
15 ed States.

16 (B) ACTIONS BY OFFICE OF EXPORT EN-
17 FORCEMENT AND CUSTOMS SERVICE PERSON-
18 NEL.—

19 (i) OFFICE OF EXPORT ENFORCE-
20 MENT AND CUSTOMS SERVICE PERSON-
21 NEL.—Any officer or employee of the Of-
22 fice of Export Enforcement of the Depart-
23 ment of Commerce (in this Act referred to
24 as “OEE”) who is designated by the Sec-
25 retary under paragraph (2), and any offi-

1 cer or employee of the United States Cus-
2 toms Service who is designated by the
3 Commissioner of Customs under paragraph
4 (2), may do the following in carrying out
5 the enforcement authority under this Act:

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

10 (II) Make arrests without war-
11 rant for any violation of this Act com-
12 mitted in his or her presence or view,
13 or if the officer or employee has prob-
14 able cause to believe that the person
15 to be arrested has committed, is com-
16 mitting, or is about to commit such a
17 violation.

18 (III) Carry firearms.

19 (ii) OEE PERSONNEL.—Any officer
20 and employee of the OEE designated by
21 the Secretary under paragraph (2) shall
22 exercise the authority set forth in clause (i)
23 pursuant to guidelines approved by the At-
24 torney General.

1 (C) OTHER ACTIONS BY CUSTOMS SERVICE
2 PERSONNEL.—Any officer or employee of the
3 United States Customs Service designated by
4 the Commissioner of Customs under paragraph
5 (2) may do the following in carrying out the en-
6 forcement authority under this Act:

7 (i) Stop, search, and examine a vehi-
8 cle, vessel, aircraft, or person on which or
9 whom the officer or employee has reason-
10 able cause to suspect there is any item
11 that has been, is being, or is about to be
12 exported from or transited through the
13 United States in violation of this Act.

14 (ii) Detain and search any package or
15 container in which the officer or employee
16 has reasonable cause to suspect there is
17 any item that has been, is being, or is
18 about to be exported from or transited
19 through the United States in violation of
20 this Act.

21 (iii) Detain (after search) or seize any
22 item, for purposes of securing for trial or
23 forfeiture to the United States, on or
24 about such vehicle, vessel, aircraft, or per-
25 son or in such package or container, if the

1 officer or employee has probable cause to
2 believe the item has been, is being, or is
3 about to be exported from or transited
4 through the United States in violation of
5 this Act.

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

9 (b) FORFEITURE.—

10 (1) IN GENERAL.—Any tangible items lawfully
11 seized under subsection (a) by designated officers or
12 employees shall be subject to forfeiture to the United
13 States.

14 (2) APPLICABLE LAWS.—Those provisions of
15 law relating to—

16 (A) the seizure, summary and judicial for-
17 feiture, and condemnation of property for viola-
18 tions of the customs laws;

19 (B) the disposition of such property or the
20 proceeds from the sale thereof;

21 (C) the remission or mitigation of such for-
22 feitures; and

23 (D) the compromise of claims,
24 shall apply to seizures and forfeitures incurred, or
25 alleged to have been incurred, under the provisions

1 of this subsection, insofar as applicable and not in-
2 consistent with this Act.

3 (3) FORFEITURES UNDER CUSTOMS LAWS.—

4 Duties that are imposed upon the customs officer or
5 any other person with respect to the seizure and for-
6 feiture of property under the customs laws may be
7 performed with respect to seizures and forfeitures of
8 property under this subsection by the Secretary or
9 any officer or employee of the Department that may
10 be authorized or designated for that purpose by the
11 Secretary, or, upon the request of the Secretary, by
12 any other agency that has authority to manage and
13 dispose of seized property.

14 (c) REFERRAL OF CASES.—All cases involving viola-
15 tions of this Act shall be referred to the Secretary for pur-
16 poses of determining civil penalties and administrative
17 sanctions under section 603 or to the Attorney General
18 for criminal action in accordance with this Act or to both
19 the Secretary and the Attorney General.

20 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

21 (1) USE OF FUNDS.—With respect to any un-
22 dercover investigative operation conducted by the
23 OEE that is necessary for the detection and pros-
24 ecution of violations of this Act—

1 (A) funds made available for export en-
2 forcement under this Act may be used to pur-
3 chase property, buildings, and other facilities,
4 and to lease equipment, conveyances, and space
5 within the United States, without regard to sec-
6 tions 1341 and 3324 of title 31, United States
7 Code, the third undesignated paragraph under
8 the heading of “miscellaneous” of the Act of
9 March 3, 1877, (40 U.S.C. 34), sections
10 3732(a) and 3741 of the Revised Statutes of
11 the United States (41 U.S.C. 11(a) and 22),
12 and subsections (a) and (c) of section 304, and
13 section 305 of the Federal Property and Ad-
14 ministrative Services Act of 1949 (41 U.S.C.
15 254 (a) and (c) and 255);

16 (B) funds made available for export en-
17 forcement under this Act may be used to estab-
18 lish or to acquire proprietary corporations or
19 business entities as part of an undercover oper-
20 ation, and to operate such corporations or busi-
21 ness entities on a commercial basis, without re-
22 gard to sections 1341, 3324, and 9102 of title
23 31, United States Code;

24 (C) funds made available for export en-
25 forcement under this Act and the proceeds from

1 undercover operations may be deposited in
2 banks or other financial institutions without re-
3 gard to the provisions of section 648 of title 18,
4 United States Code, and section 3302 of title
5 31, United States Code; and

6 (D) the proceeds from undercover oper-
7 ations may be used to offset necessary and rea-
8 sonable expenses incurred in such operations
9 without regard to the provisions of section 3302
10 of title 31, United States Code,

11 if the Director of OEE (or an officer or employee
12 designated by the Director) certifies, in writing, that
13 the action authorized by subparagraph (A), (B), (C),
14 or (D) for which the funds would be used is nec-
15 essary for the conduct of the undercover operation.

16 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
17 corporation or business entity established or ac-
18 quired as part of an undercover operation has a net
19 value of more than \$250,000 and is to be liquidated,
20 sold, or otherwise disposed of, the Director of OEE
21 shall report the circumstances to the Secretary and
22 the Comptroller General of the United States as
23 much in advance of such disposition as the Director
24 of the OEE (or the Director's designee) determines
25 is practicable. The proceeds of the liquidation, sale,

1 or other disposition, after obligations incurred by the
2 corporation or business enterprise are met, shall be
3 deposited in the Treasury of the United States as
4 miscellaneous receipts. Any property or equipment
5 purchased pursuant to paragraph (1) may be re-
6 tained for subsequent use in undercover operations
7 under this section. When such property or equip-
8 ment is no longer needed, it shall be considered sur-
9 plus and disposed of as surplus government prop-
10 erty.

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

19 (4) AUDIT AND REPORT.—

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

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

3 (B) REPORT.—The Secretary shall submit
4 annually to Congress a report, which may be in-
5 cluded in the annual report under section 801,
6 specifying the following information:

7 (i) The number of undercover inves-
8 tigative operations pending as of the end of
9 the period for which such report is submit-
10 ted.

11 (ii) The number of undercover inves-
12 tigative operations commenced in the 1-
13 year period preceding the period for which
14 such report is submitted.

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

22 (5) DEFINITIONS.—For purposes of paragraph
23 (4)—

24 (A) the term “closed”, with respect to an
25 undercover investigative operation, refers to the

1 earliest point in time at which all criminal pro-
2 ceedings (other than appeals) pursuant to the
3 investigative operation are concluded, or covert
4 activities pursuant to such operation are con-
5 cluded, whichever occurs later; and

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

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

14 (ii) which is exempt from section 3302
15 or 9102 of title 31, United States Code,
16 except that clauses (i) and (ii) shall not
17 apply with respect to the report to Con-
18 gress required by paragraph (4)(B).

19 (e) WIRETAPS.—

20 (1) AUTHORITY.—Interceptions of communica-
21 tions in accordance with section 2516 of title 18,
22 United States Code, are authorized to further the
23 enforcement of this Act.

1 (2) CONFORMING AMENDMENT.—Section
2 2516(1) of title 18, United States Code, is amended
3 by adding at the end the following:

4 “(q)(i) any violation of, or conspiracy to
5 violate, the Export Administration Act of 1999
6 or the Export Administration Act of 1979.”.

7 (f) POST-SHIPMENT VERIFICATION.—

8 (1) IN GENERAL.—The Secretary shall target
9 post-shipment verifications to exports involving the
10 greatest risk to national security including, but not
11 limited to, exports of high performance computers.

12 (2) REPEAL.—Section 1213 of the National
13 Defense Authorization Act for Fiscal Year 1998 is
14 repealed.

15 (g) REFUSAL TO ALLOW POST-SHIPMENT VERIFICA-
16 TION.—

17 (1) IN GENERAL.—If an end-user refuses to
18 allow post-shipment verification of a controlled item,
19 the Secretary shall deny a license for the export of
20 any controlled item to such end-user until such post-
21 shipment verification occurs.

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

1 end-user refusing to allow post-shipment verification
2 of a controlled item.

3 (3) REFUSAL BY COUNTRY.—If the country in
4 which the end-user is located refuses to allow post-
5 shipment verification of a controlled item, the Sec-
6 retary may deny a license for the export of that item
7 or any substantially identical or directly competitive
8 item or class of items to all end-users in that coun-
9 try until such post-shipment verification is allowed.

10 (h) AWARD OF COMPENSATION; PATRIOT PROVI-
11 SION.—

12 (1) IN GENERAL.—If—

13 (A) any person, who is not an employee or
14 officer of the United States, furnishes to a
15 United States attorney, to the Secretary of the
16 Treasury or the Secretary, or to appropriate of-
17 ficials in the Department of the Treasury or the
18 Department of Commerce, original information
19 concerning a violation of this Act or any regula-
20 tion, order, or license issued under this Act,
21 which is being, or has been, perpetrated or con-
22 templated by any other person, and

23 (B) such information leads to the recovery
24 of any criminal fine, civil penalty, or forfeiture,

1 the Secretary may award and pay such person an
2 amount that does not exceed 25 percent of the net
3 amount of the criminal fine or civil penalty recovered
4 or the amount forfeited.

5 (2) DOLLAR LIMITATION.—The amount award-
6 ed and paid to any person under this section may
7 not exceed \$250,000 for any case.

8 (3) SOURCE OF PAYMENT.—The amount paid
9 under this section shall be paid out of any penalties,
10 forfeitures, or appropriated funds.

11 (i) FREIGHT FORWARDERS BEST PRACTICES PRO-
12 GRAM AUTHORIZATION.—There is authorized to be appro-
13 priated for the Department of Commerce \$3,500,000 and
14 such sums as may be necessary to hire 20 additional em-
15 ployees to assist United States freight forwarders and
16 other interested parties in developing and implementing,
17 on a voluntary basis, a “best practices” program to ensure
18 that exports of controlled items are undertaken in compli-
19 ance with this Act.

20 (j) END-USE VERIFICATION AUTHORIZATION.—
21 There is authorized to be appropriated for the Department
22 of Commerce \$4,500,000 and such sums as may be nec-
23 essary to hire 10 additional overseas investigators to be
24 posted in the People’s Republic of China, the Russian
25 Federation, the Hong Kong Special Administrative Re-

1 gion, the Republic of India, Singapore, Egypt, and Tai-
2 wan, or any other place the Secretary deems appropriate,
3 for the purpose of verifying the end use of high-risk, dual-
4 use technology.

5 (k) ENHANCED COOPERATION WITH UNITED
6 STATES CUSTOMS SERVICE.—Consistent with the pur-
7 poses of this Act, the Secretary is authorized to undertake,
8 in cooperation with the United States Customs Service,
9 such measures as may be necessary or required to enhance
10 the ability of the United States to detect unlawful exports
11 and to enforce violations of this Act.

12 (l) REFERENCE TO ENFORCEMENT.—For purposes
13 of this section, a reference to the enforcement of this Act
14 or to a violation of this Act includes a reference to the
15 enforcement or a violation of any regulation, license, or
16 order issued under this Act.

17 (m) AUTHORIZATION FOR EXPORT LICENSING AND
18 ENFORCEMENT COMPUTER SYSTEM.—There is author-
19 ized to be appropriated for the Department \$5,000,000
20 and such other sums as may be necessary for planning,
21 design, and procurement of a computer system to replace
22 the Department's primary export licensing and computer
23 enforcement system.

1 **SEC. 608. ADMINISTRATIVE PROCEDURE.**

2 (a) EXEMPTIONS FROM ADMINISTRATIVE PROCE-
3 DURE.—Except as provided in this section, the functions
4 exercised under this Act are excluded from the operation
5 of sections 551, 553 through 559, and 701 through 706
6 of title 5, United States Code.

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

9 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
10 ministrative sanction imposed under section 603
11 may be imposed only after notice and opportunity
12 for an agency hearing on the record in accordance
13 with sections 554 through 557 of title 5, United
14 States Code. The imposition of any such administra-
15 tive sanction shall be subject to judicial review in ac-
16 cordance with sections 701 through 706 of title 5,
17 United 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
21 for violations of the regulations issued under section
22 602 shall be made available for public inspection and
23 copying.

24 (c) COLLECTION.—If any person fails to pay a civil
25 penalty imposed under section 603, the Secretary may ask
26 the Attorney General to commence a civil action in an ap-

1 appropriate district court of the United States to recover the
2 amount imposed (plus interest at currently prevailing
3 rates from the date of the final order). No such action
4 may be commenced more than 5 years after the order im-
5 posing the civil penalty becomes final. In such an action,
6 the validity, amount, and appropriateness of such penalty
7 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 Act, or any regulation, order, or li-
14 cense issued under this Act, including any diversion
15 of goods or technology from an authorized end use
16 or end user, and in any case in which a criminal in-
17 dictment has been returned against a person alleging
18 a violation of this Act or any of the statutes listed
19 in section 603, the Secretary may, without a hear-
20 ing, issue an order temporarily denying that person's
21 United States export privileges (hereafter in this
22 subsection referred to as a “temporary denial
23 order”). A temporary denial order shall be effective
24 for such period (not in excess of 180 days) as the
25 Secretary specifies in the order, but may be renewed

1 by the Secretary, following notice and an oppor-
2 tunity for a hearing, for additional periods of not
3 more than 180 days each.

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

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

20 (B) a criminal indictment has been re-
21 turned against the person subject to the order
22 alleging a violation of this Act or any of the
23 statutes listed in section 603.

24 The decision of the administrative law judge shall be
25 final unless, within 10 working days after the date

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

12 (3) COURT APPEALS.—An order of the Sec-
13 retary affirming, in whole or in part, the issuance or
14 renewal of a temporary denial order may, within 15
15 days after the order is issued, be appealed by a per-
16 son subject to the order to the United States Court
17 of Appeals for the District of Columbia Circuit,
18 which shall have the jurisdiction of the appeal. The
19 court may review only those issues necessary to de-
20 termine whether the issuance of the temporary de-
21 nial order was based on reasonable cause to believe
22 that the person subject to the order was engaged in
23 or was about to engage in any act or practice that
24 constitutes or would constitute a violation of this
25 title, or any regulation, order, or license issued

1 under this Act, or whether a criminal indictment has
2 been returned against the person subject to the
3 order alleging a violation of this Act or of any of the
4 statutes listed in section 603. The court shall vacate
5 the Secretary's order if the court finds that the Sec-
6 retary's order is arbitrary, capricious, an abuse of
7 discretion, or otherwise not in accordance with law.

8 **TITLE VII—EXPORT CONTROL**
9 **AUTHORITY AND REGULATIONS**

10 **SEC. 701. EXPORT CONTROL AUTHORITY AND REGULA-**
11 **TIONS.**

12 (a) EXPORT CONTROL AUTHORITY.—

13 (1) IN GENERAL.—Unless otherwise reserved to
14 the President or a department (other than the De-
15 partment) or agency of the United States, all power,
16 authority, and discretion conferred by this Act shall
17 be exercised by the Secretary.

18 (2) DELEGATION OF FUNCTIONS OF THE SEC-
19 RETARY.—The Secretary may delegate any function
20 under this Act, unless otherwise provided, to the
21 Under Secretary of Commerce for Export Adminis-
22 tration or to any other officer of the Department.

23 (b) UNDER SECRETARY OF COMMERCE; ASSISTANT
24 SECRETARIES.—

1 (1) UNDER SECRETARY OF COMMERCE.—There
2 shall be within the Department an Under Secretary
3 of Commerce for Export Administration (in this sec-
4 tion referred to as the “Under Secretary”) who shall
5 be appointed by the President, by and with the ad-
6 vice and consent of the Senate. The Under Secretary
7 shall carry out all functions of the Secretary under
8 this Act and other provisions of law relating to na-
9 tional security, as the Secretary may delegate.

10 (2) ADDITIONAL ASSISTANT SECRETARIES.—In
11 addition to the number of Assistant Secretaries oth-
12 erwise authorized for the Department of Commerce,
13 there shall be within the Department of Commerce
14 the following Assistant Secretaries of Commerce:

15 (A) An Assistant Secretary for Export Ad-
16 ministration who shall be appointed by the
17 President, by and with the advice and consent
18 of the Senate, and who shall assist the Sec-
19 retary and the Under Secretary in carrying out
20 functions relating to export listing and licens-
21 ing.

22 (B) An Assistant Secretary for Export En-
23 forcement who shall be appointed by the Presi-
24 dent, by and with the advice and consent of the
25 Senate, and who shall assist the Secretary and

1 the Under Secretary in carrying out functions
2 relating to export enforcement.

3 (c) ISSUANCE OF REGULATIONS.—

4 (1) IN GENERAL.—The President and the Sec-
5 retary may issue such regulations as are necessary
6 to carry out this Act. Any such regulations the pur-
7 pose of which is to carry out title II or title III may
8 be issued only after the regulations are submitted
9 for review to such departments or agencies as the
10 President considers appropriate. The Secretary shall
11 consult with the appropriate export control advisory
12 committee appointed under section 105(f) in formu-
13 lating regulations under this title. The second sen-
14 tence of this subsection does not require the concur-
15 rence or approval of any official, department, or
16 agency to which such regulations are submitted.

17 (2) AMENDMENTS TO REGULATIONS.—If the
18 Secretary proposes to amend regulations issued
19 under this Act, the Secretary shall report to the
20 Committee on Banking, Housing, and Urban Affairs
21 of the Senate and the Committee on International
22 Relations of the House of Representatives on the in-
23 tent and rationale of such amendments. Such report
24 shall evaluate the cost and burden to the United
25 States exporters of the proposed amendments in re-

1 lation to any enhancement of licensing objectives.
2 The Secretary shall consult with the appropriate ex-
3 port control advisory committees appointed under
4 section 105(f) in amending regulations issued under
5 this Act.

6 **SEC. 702. CONFIDENTIALITY OF INFORMATION.**

7 (a) EXEMPTIONS FROM DISCLOSURE.—

8 (1) INFORMATION OBTAINED ON OR BEFORE
9 JUNE 30, 1980.—Except as otherwise provided by the
10 third sentence of section 602(c)(2), information ob-
11 tained under the Export Administration Act of
12 1979, or any predecessor statute, on or before June
13 30, 1980, which is deemed confidential, including
14 Shipper's Export Declarations, or with respect to
15 which a request for confidential treatment is made
16 by the person furnishing such information, shall not
17 be subject to disclosure under section 552 of title 5,
18 United States Code, and such information shall not
19 be published or disclosed, unless the Secretary deter-
20 mines that the withholding thereof is contrary to the
21 national interest.

22 (2) INFORMATION OBTAINED AFTER JUNE 30,
23 1980.—Except as otherwise provided by the third
24 sentence of section 13(b)(2) of the Export Adminis-
25 tration Act of 1979, information obtained under this

1 Act, under the Export Administration Act of 1979
2 after June 30, 1980, or under the Export Adminis-
3 tration regulations as maintained and amended
4 under the authority of the International Emergency
5 Economic Powers Act (50 U.S.C. 1706), may be
6 withheld from disclosure only to the extent permitted
7 by statute, except that information submitted, ob-
8 tained, or considered in connection with an applica-
9 tion for an export license or other export authoriza-
10 tion (or recordkeeping or reporting requirement)
11 under the Export Administration Act of 1979, under
12 this Act, or under the Export Administration regula-
13 tions as maintained and amended under the author-
14 ity of the International Emergency Economic Pow-
15 ers Act (50 U.S.C. 1706), including—

16 (A) the export license or other export au-
17 thorization itself,

18 (B) classification requests described in sec-
19 tion 501(h),

20 (C) information or evidence obtained in the
21 course of any investigation,

22 (D) information obtained or furnished
23 under title VII in connection with any inter-
24 national agreement, treaty, or other obligation,
25 and

1 (E) information obtained in making the
2 determinations set forth in section 211 of this
3 Act,
4 and information obtained in any investigation of an
5 alleged violation of section 602 of this Act except for
6 information required to be disclosed by section
7 602(c)(2) or 606(b)(2) of this Act, shall be withheld
8 from public disclosure and shall not be subject to
9 disclosure under section 552 of title 5, United States
10 Code, unless the release of such information is deter-
11 mined by the Secretary to be in the national inter-
12 est.

13 (b) INFORMATION TO CONGRESS AND GAO.—

14 (1) IN GENERAL.—Nothing in this title shall be
15 construed as authorizing the withholding of informa-
16 tion from Congress or from the General Accounting
17 Office.

18 (2) AVAILABILITY TO THE CONGRESS—

19 (A) IN GENERAL.—Any information ob-
20 tained at any time under this title or under any
21 predecessor Act regarding the control of ex-
22 ports, including any report or license applica-
23 tion required under this title, shall be made
24 available to any committee or subcommittee of
25 Congress of appropriate jurisdiction upon the

1 request of the chairman or ranking minority
2 member of such committee or subcommittee.

3 (B) PROHIBITION ON FURTHER DISCLO-
4 SURE.—No committee, subcommittee, or Mem-
5 ber of Congress shall disclose any information
6 obtained under this Act or any predecessor Act
7 regarding the control of exports which is sub-
8 mitted on a confidential basis to the Congress
9 under subparagraph (A) unless the full commit-
10 tee to which the information is made available
11 determines that the withholding of the informa-
12 tion is contrary to the national interest.

13 (3) AVAILABILITY TO THE GAO.—

14 (A) IN GENERAL.—Notwithstanding sub-
15 section (a), information described in paragraph
16 (2) shall, consistent with the protection of intel-
17 ligence, counterintelligence, and law enforce-
18 ment sources, methods, and activities, as deter-
19 mined by the agency that originally obtained
20 the information, and consistent with the provi-
21 sions of section 716 of title 31, United States
22 Code, be made available only by the agency,
23 upon request, to the Comptroller General of the
24 United States or to any officer or employee of
25 the General Accounting Office authorized by

1 the Comptroller General to have access to such
2 information.

3 (B) PROHIBITION ON FURTHER DISCLO-
4 SURES.—No officer or employee of the General
5 Accounting Office shall disclose, except to Con-
6 gress in accordance with this paragraph, any
7 such information which is submitted on a con-
8 fidential basis and from which any individual
9 can be identified.

10 (c) INFORMATION EXCHANGE.—Notwithstanding
11 subsection (a), the Secretary and the Commissioner of
12 Customs shall exchange licensing and enforcement infor-
13 mation with each other as necessary to facilitate enforce-
14 ment efforts and effective license decisions.

15 (d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL
16 INFORMATION.—

17 (1) DISCLOSURE PROHIBITED.—No officer or
18 employee of the United States, or any department or
19 agency thereof, may publish, divulge, disclose, or
20 make known in any manner or to any extent not au-
21 thorized by law any information that—

22 (A) the officer or employee obtains in the
23 course of his or her employment or official du-
24 ties or by reason of any examination or inves-
25 tigation made by, or report or record made to

1 or filed with, such department or agency, or of-
2 ficer or employee thereof; and

3 (B) is exempt from disclosure under this
4 section.

5 (2) CRIMINAL PENALTIES.—Any such officer or
6 employee who knowingly violates paragraph (1) shall
7 be fined not more than \$50,000, imprisoned not
8 more than 1 year, or both, for each violation of
9 paragraph (1). Any such officer or employee may
10 also be removed from office or employment.

11 (3) CIVIL PENALTIES; ADMINISTRATIVE SANC-
12 TIONS.—The Secretary may impose a civil penalty of
13 not more than \$5,000 for each violation of para-
14 graph (1). Any officer or employee who commits
15 such violation may also be removed from office or
16 employment for the violation of paragraph (1). Sub-
17 sections 603 (e), (g), (h), and (i) and 606 (a), (b),
18 and (c) shall apply to violations described in this
19 paragraph.

20 **TITLE VIII—MISCELLANEOUS** 21 **PROVISIONS**

22 **SEC. 801. ANNUAL AND PERIODIC REPORTS.**

23 (a) ANNUAL REPORT.—Not later than February 1 of
24 each year, the Secretary shall submit to Congress a report
25 on the administration of this Act during the fiscal year

1 ending September 30 of the preceding calendar year. All
2 Federal agencies shall cooperate fully with the Secretary
3 in providing information for each such report.

4 (b) REPORT ELEMENTS.—Each such report shall in-
5 clude in detail—

6 (1) a description of the implementation of the
7 export control policies established by this Act, in-
8 cluding any delegations of authority by the President
9 and any other changes in the exercise of delegated
10 authority;

11 (2) a description of the changes to and the
12 year-end status of country tiering and the Control
13 List;

14 (3) a description of the determinations made
15 with respect to foreign availability and mass-market
16 status, the set-asides of foreign availability and
17 mass-market status determinations, and negotiations
18 to eliminate foreign availability;

19 (4) a description of the regulations issued under
20 this Act;

21 (5) a description of organizational and proce-
22 dural changes undertaken in furtherance of this Act;

23 (6) a description of the enforcement activities,
24 violations, and sanctions imposed under section 604;

1 (7) a statistical summary of all applications and
2 notifications, including—

3 (A) the number of applications and notifi-
4 cations pending review at the beginning of the
5 fiscal year;

6 (B) the number of notifications returned
7 and subject to full license procedure;

8 (C) the number of notifications with no ac-
9 tion required;

10 (D) the number of applications that were
11 approved, denied, or withdrawn, and the num-
12 ber of applications where final action was
13 taken; and

14 (E) the number of applications and notifi-
15 cations pending review at the end of the fiscal
16 year;

17 (8) summary of export license data by export
18 identification code and dollar value by country;

19 (9) an identification of processing time by—

20 (A) overall average, and

21 (B) top 25 export identification codes;

22 (10) an assessment of the effectiveness of mul-
23 tilateral regimes, and a description of negotiations
24 regarding export controls;

1 (11) a description of the significant differences
2 between the export control requirements of the Unit-
3 ed States and those of other multilateral control re-
4 gime members, the specific differences between Unit-
5 ed States requirements and those of other significant
6 supplier countries, and a description of the extent to
7 which the executive branch intends to address the
8 differences;

9 (12) an assessment of the costs of export con-
10 trols;

11 (13) a description of the progress made toward
12 achieving the goals established for the Department
13 dealing with export controls under the Government
14 Performance Results Act; and

15 (14) any other reports required by this Act to
16 be submitted to the Committee on Banking, Hous-
17 ing, and Urban Affairs of the Senate and the Com-
18 mittee on International Relations of the House of
19 Representatives.

20 (c) CONGRESSIONAL NOTIFICATION.—Whenever the
21 Secretary determines, in consultation with other appro-
22 priate departments and agencies, that a significant viola-
23 tion of this Act poses a direct and imminent threat to
24 United States national security interests, the Secretary,
25 in consultation with other appropriate departments and

1 agencies, shall advise the Committee on Banking, Hous-
2 ing, and Urban Affairs of the Senate and the Committee
3 on International Relations of the House of Representa-
4 tives of such violation consistent with the protection of law
5 enforcement sources, methods, and activities.

6 (d) FEDERAL REGISTER PUBLICATION REQUIRE-
7 MENTS.—Whenever information under this Act is required
8 to be published in the Federal Register, such information
9 shall, in addition, be made available on the appropriate
10 Internet website of the Department.

11 **SEC. 802. SAVINGS PROVISIONS.**

12 (a) IN GENERAL.—All delegations, rules, regulations,
13 orders, determinations, licenses, or other forms of admin-
14 istrative action which have been made, issued, conducted,
15 or allowed to become effective under—

16 (1) the Export Control Act of 1949, the Export
17 Administration Act of 1969, the Export Administra-
18 tion Act of 1979, or the International Emergency
19 Economic Powers Act when invoked to maintain and
20 continue the Export Administration regulations, or

21 (2) those provisions of the Arms Export Control
22 Act which are amended by section 802,
23 and are in effect on the date of enactment of this Act,
24 shall continue in effect according to their terms until

1 modified, superseded, set aside, or revoked under this Act
2 or the Arms Export Control Act.

3 (b) ADMINISTRATIVE AND JUDICIAL PROCEED-
4 INGS.—

5 (1) EXPORT ADMINISTRATION ACT.—This Act
6 shall not affect any administrative or judicial pro-
7 ceedings commenced or any application for a license
8 made, under the Export Administration Act of 1979
9 or pursuant to Executive Order 12924, which is
10 pending at the time this Act takes effect. Any such
11 proceedings, and any action on such application,
12 shall continue under the Export Administration Act
13 of 1979 as if that Act had not been repealed.

14 (2) OTHER PROVISIONS OF LAW.—This Act
15 shall not affect any administrative or judicial pro-
16 ceeding commenced or any application for a license
17 made, under those provisions of the Arms Export
18 Control Act which are amended by section 802, if
19 such proceeding or application is pending at the time
20 this Act takes effect. Any such proceeding, and any
21 action on such application, shall continue under
22 those provisions as if those provisions had not been
23 amended by section 802.

24 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
25 Any determination with respect to the government of a

1 foreign country under section 6(j) of the Export Adminis-
2 tration Act of 1979, or Executive Order 12924, that is
3 in effect on the day before the date of enactment of this
4 Act, shall, for purposes of this title or any other provision
5 of law, be deemed to be made under section 310 of this
6 Act until superseded by a determination under such sec-
7 tion 310.

8 (d) IMPLEMENTATION.—The Secretary shall make
9 any revisions to the Export Administration regulations re-
10 quired by this Act no later than 180 days after the date
11 of enactment of this Act.