

107TH CONGRESS  
1ST SESSION

# H. R. 2581

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2001

Mr. GILMAN introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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 2001”.

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. President's Technology Export Council.
- Sec. 107. 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 status 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.
- Sec. 311. Crime control instruments.

## TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

- Sec. 401. Export license procedures.
- Sec. 402. Interagency dispute resolution process.

## TITLE V—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT

- Sec. 501. International arrangements.
- Sec. 502. Foreign boycotts.
- Sec. 503. Penalties.
- Sec. 504. Missile proliferation control violations.
- Sec. 505. Chemical and biological weapons proliferation sanctions.
- Sec. 506. Enforcement.
- Sec. 507. Administrative procedure.

## TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 601. Export control authority and regulations.  
 Sec. 602. Confidentiality of information.

#### TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.  
 Sec. 702. Enhancement of congressional oversight of nuclear transfers to North Korea.  
 Sec. 703. Procedures for consideration of joint resolutions.  
 Sec. 704. Technical and conforming amendments.  
 Sec. 705. 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) **CONTROL OR CONTROLLED.**—The terms  
 8 “control” and “controlled” mean any requirement,  
 9 condition, authorization, or prohibition on the export  
 10 or reexport of an item.

11 (3) **CONTROL LIST.**—The term “Control List”  
 12 means the Commerce Control List established under  
 13 section 101.

14 (4) **CONTROLLED COUNTRY.**—The term “con-  
 15 trolled country” means a country with respect to  
 16 which exports are controlled under section 201 or  
 17 301.

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

1           (6) COUNTRY.—The term “country” means a  
2       sovereign country or an autonomous customs terri-  
3       tory.

4           (7) COUNTRY SUPPORTING INTERNATIONAL  
5       TERRORISM.—The term “country supporting inter-  
6       national terrorism” means a country designated by  
7       the Secretary of State pursuant to section 310.

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

10          (9) EXPORT.—

11               (A) The term “export” means—

12                       (i) an actual shipment, transfer, or  
13                       transmission of an item out of the United  
14                       States;

15                       (ii) a transfer to any person of an  
16                       item either within the United States or  
17                       outside of the United States with the  
18                       knowledge or intent that the item will be  
19                       shipped, transferred, or transmitted to an  
20                       unauthorized recipient outside the United  
21                       States; or

22                       (iii) a transfer of an item in the  
23                       United States to an embassy or affiliate of  
24                       a country, which shall be considered an ex-  
25                       port to that country.

1 (B) The term includes a reexport.

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

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

7 (A) an individual who is not—

8 (i) a United States citizen;

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

11 (iii) a protected individual as defined  
12 in section 274B(a)(3) of the Immigration  
13 and Nationality Act. (8 U.S.C.  
14 1324b(a)(3));

15 (B) any corporation, partnership, business  
16 association, society, trust, organization, or other  
17 nongovernmental entity created or organized  
18 under the laws of a foreign country or that has  
19 its principal place of business outside the  
20 United States; and

21 (C) any governmental entity of a foreign  
22 country.

23 (12) ITEM.—

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

1 (B) OTHER DEFINITIONS.—In this para-  
2 graph:

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

9 (ii) TECHNOLOGY.—The term “tech-  
10 nology” means specific information that is  
11 necessary for the development, production,  
12 or use of an item, and takes the form of  
13 technical data or technical assistance.

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

16 (13) MASS-MARKET STATUS.—The term “mass-  
17 market status” means the status described in section  
18 211(d)(2).

19 (14) MULTILATERAL EXPORT CONTROL RE-  
20 GIME.—The term “multilateral export control re-  
21 gime” means an international agreement or arrange-  
22 ment among two or more countries, including the  
23 United States, a purpose of which is to coordinate  
24 national export control policies of its members re-  
25 garding certain items. The term includes regimes

1 such as the Australia Group, the Wassenaar Ar-  
2 rangement, the Missile Technology Control Regime  
3 (MTCR), and the Nuclear Suppliers' Group Dual  
4 Use Arrangement.

5 (15) NATIONAL SECURITY CONTROL LIST.—The  
6 term “National Security Control List” means the  
7 list established under section 202(a).

8 (16) PERSON.—The term “person” includes—

9 (A) any individual, or partnership, corpora-  
10 tion, business association, society, trust, organi-  
11 zation, or any other group created or organized  
12 under the laws of a country; and

13 (B) any government, or any governmental  
14 entity, including any governmental entity oper-  
15 ating as a business enterprise.

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

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

21 (19) UNITED STATES.—The term “United  
22 States” means the States of the United States, the  
23 District of Columbia, and any commonwealth, terri-  
24 tory, dependency, or possession of the United States,  
25 and includes the outer Continental Shelf, as defined

1 in section 2(a) of the Outer Continental Shelf Lands  
2 Act (42 U.S.C. 1331(a)).

3 (20) UNITED STATES PERSON.—The term  
4 “United States person” means—

5 (A) any United States citizen, resident, or  
6 national (other than an individual resident out-  
7 side the United States who is employed by a  
8 person other than a United States person);

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

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

## 17 **TITLE I—GENERAL AUTHORITY**

### 18 **SEC. 101. COMMERCE CONTROL LIST.**

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

22 (1) shall establish and maintain a Commerce  
23 Control List (in this Act referred to as the “Control  
24 List”) consisting of items the export of which are



1 subject to licensing or other authorization or re-  
2 quirement; and

3 (2) may require any type of license, or other  
4 authorization, including recordkeeping and report-  
5 ing, appropriate to the effective and efficient imple-  
6 mentation of this Act with respect to the export of  
7 an item on the Control List or otherwise subject to  
8 control under title II or III of this Act.

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

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

14 (2) MULTIPLE EXPORTS.—A license that au-  
15 thorizes multiple exports in lieu of a license for each  
16 export.

17 (3) NOTIFICATION IN LIEU OF LICENSE.— A  
18 notification in lieu of a license that authorizes a spe-  
19 cific export or multiple exports subject to the condi-  
20 tion that the exporter file with the Department ad-  
21 vance notification of the intent to export in accord-  
22 ance with regulations prescribed by the Secretary.

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

1       (c) AFTER-MARKET SERVICE AND REPLACEMENT  
2 PARTS.—A license to export an item under this Act shall  
3 not be required for an exporter to provide after-market  
4 service or replacement parts in order to replace on a one-  
5 for-one basis parts that were in an item that was lawfully  
6 exported from the United States, unless—

7           (1) the Secretary determines that such license  
8       is required to export such parts; or

9           (2) the after-market service or replacement  
10       parts would materially enhance the capability of an  
11       item which was the basis for the item being con-  
12       trolled.

13       (d) INCIDENTAL TECHNOLOGY.—A license or other  
14 authorization to export an item under this Act includes  
15 authorization to export technology related to the item, if  
16 the level of the technology does not exceed the minimum  
17 necessary to install, repair, maintain, inspect, operate, or  
18 use the item.

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

22 **SEC. 102. DELEGATION OF AUTHORITY.**

23       (a) IN GENERAL.—Except as provided in subsection  
24 (b) and subject to the provisions of this Act, the President  
25 may delegate the power, authority, and discretion con-

1 ferred upon the President by this Act to such depart-  
2 ments, agencies, and officials of the Government as the  
3 President considers appropriate.

4 (b) EXCEPTIONS.—

5 (1) DELEGATION TO APPOINTEES CONFIRMED  
6 BY SENATE.—No authority delegated to the Presi-  
7 dent under this Act may be delegated by the Presi-  
8 dent to, or exercised by, any official of any depart-  
9 ment or agency the head of which is not appointed  
10 by the President, by and with the advice and consent  
11 of the Senate.

12 (2) OTHER LIMITATIONS.—The President may  
13 not delegate or transfer the President's power, au-  
14 thority, or discretion to overrule or modify any rec-  
15 ommendation or decision made by the Secretary, the  
16 Secretary of Defense, or the Secretary of State  
17 under this Act.

18 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**  
19 **MENTS.**

20 (a) PUBLIC INFORMATION.—The Secretary shall  
21 keep the public fully informed of changes in export control  
22 policy and procedures instituted in conformity with this  
23 Act.

24 (b) CONSULTATION WITH PERSONS AFFECTED.—  
25 The Secretary shall consult regularly with representatives

1 of a broad spectrum of enterprises, labor organizations,  
2 and citizens interested in or affected by export controls  
3 in order to obtain their views on United States export con-  
4 trol policy and the foreign availability or mass-market sta-  
5 tus of controlled items.

6 **SEC. 104. RIGHT OF EXPORT.**

7 No license or other authorization to export may be  
8 required under this Act, or under regulations issued under  
9 this Act, except to carry out the provisions of this Act.

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

11 (a) APPOINTMENT.—Upon the Secretary's own initia-  
12 tive or upon the written request of representatives of a  
13 substantial segment of any industry which produces any  
14 items subject to export controls under this Act or being  
15 considered for such controls, the Secretary may appoint  
16 export control advisory committees with respect to any  
17 such items. Each such committee shall consist of rep-  
18 resentatives of United States industry and Government of-  
19 ficials, including officials from the Departments of Com-  
20 merce, Defense, and State, and other appropriate depart-  
21 ments and agencies of the Government. The Secretary  
22 shall permit the widest possible participation by the busi-  
23 ness community on the export control advisory commit-  
24 tees.

25 (b) FUNCTIONS.—

1           (1) IN GENERAL.—Export control advisory  
2       committees appointed under subsection (a) shall ad-  
3       vise and assist the Secretary, and any other depart-  
4       ment, agency, or official of the Government carrying  
5       out functions under this Act, on actions (including  
6       all aspects of controls imposed or proposed) designed  
7       to carry out the provisions of this Act concerning the  
8       items with respect to which such export control advi-  
9       sory committees were appointed.

10          (2) OTHER CONSULTATIONS.—Nothing in para-  
11       graph (1) shall prevent the United States Govern-  
12       ment from consulting, at any time, with any person  
13       representing an industry or the general public, re-  
14       gardless of whether such person is a member of an  
15       export control advisory committee. Members of the  
16       public shall be given a reasonable opportunity, pur-  
17       suant to regulations prescribed by the Secretary, to  
18       present information to such committees.

19          (c) REIMBURSEMENT OF EXPENSES.—Upon the re-  
20       quest of any member of any export control advisory com-  
21       mittee appointed under subsection (a), the Secretary may,  
22       if the Secretary determines it to be appropriate, reimburse  
23       such member for travel, subsistence, and other necessary  
24       expenses incurred by such member in connection with the  
25       duties of such member.

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

12       (e) ACCESS TO INFORMATION.—To facilitate the  
13 work of the export control advisory committees appointed  
14 under subsection (a), the Secretary, in conjunction with  
15 other departments and agencies participating in the ad-  
16 ministration of this Act, shall disclose to each such com-  
17 mittee adequate information, consistent with national se-  
18 curity and intelligence sources and methods, pertaining to  
19 the reasons for the export controls which are in effect or  
20 contemplated for the items or policies for which that com-  
21 mittee furnishes advice. Information provided by the ex-  
22 port control advisory committees shall not be subject to  
23 disclosure under section 552 of title 5, United States  
24 Code, and such information shall not be published or dis-

1 closed unless the Secretary determines that the with-  
2 holding thereof is contrary to the national interest.

3 **SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.**

4 The President may establish a President's Tech-  
5 nology Export Council to advise the President on the im-  
6 plementation, operation, and effectiveness of this Act.

7 **SEC. 107. PROHIBITION ON CHARGING FEES.**

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

11 **TITLE II—NATIONAL SECURITY**  
12 **EXPORT CONTROLS**  
13 **Subtitle A—Authority and**  
14 **Procedures**

15 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**  
16 **CONTROLS.**

17 (a) **AUTHORITY.—**

18 (1) **IN GENERAL.—**In order to carry out the  
19 purposes set forth in subsection (b), the President  
20 may, in accordance with the provisions of this Act,  
21 prohibit, curtail, or require a license, or other au-  
22 thorization for the export of any item subject to the  
23 jurisdiction of the United States or exported by any  
24 person subject to the jurisdiction of the United  
25 States. The President may also require record-

1 keeping and reporting with respect to the export of  
2 such item.

3 (2) EXERCISE OF AUTHORITY.—The authority  
4 contained in this subsection shall be exercised by the  
5 Secretary, in consultation with the Secretary of De-  
6 fense, the intelligence agencies, and such other de-  
7 partments and agencies as the Secretary considers  
8 appropriate.

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

11 (1) To restrict the export of items that would  
12 contribute to the military potential of countries so as  
13 to prove detrimental to the national security of the  
14 United States, its allies or countries sharing com-  
15 mon strategic objectives with the United States.

16 (2) To stem the proliferation of weapons of  
17 mass destruction, and the means to deliver them,  
18 and other significant military capabilities by—

19 (A) leading international efforts to control  
20 the proliferation of chemical and biological  
21 weapons, nuclear explosive devices, missile deliv-  
22 ery systems, key-enabling technologies, and  
23 other significant military capabilities;

24 (B) controlling involvement of United  
25 States persons in, and contributions by United



1 States persons to, foreign programs intended to  
2 develop weapons of mass destruction, missiles,  
3 and other significant military capabilities, and  
4 the means to design, test, develop, produce,  
5 stockpile, or use them; and

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

12 (3) To deter acts of international terrorism.

13 (c) END USE AND END USER CONTROLS.—Notwith-  
14 standing any other provision of this title, controls may be  
15 imposed, based on the end use or end user, on the export  
16 of any item, that could contribute to the proliferation of  
17 weapons of mass destruction or the means to deliver them.

18 (d) ENHANCED CONTROLS.—

19 (1) IN GENERAL.—Notwithstanding any other  
20 provisions of this title, the President may determine  
21 that applying the provisions of section 204 or 211  
22 with respect to an item on the National Security  
23 Control List would constitute a significant threat to  
24 the national security of the United States and that  
25 such item requires enhanced control. If the Presi-

1       dent determines that enhanced control should apply  
2       to such item, the item may be excluded from the  
3       provisions of section 204, section 211, or both, until  
4       such time as the President shall determine that such  
5       enhanced control should no longer apply to such  
6       item. The President may not delegate the authority  
7       provided for in this subsection.

8               (2) REPORT TO CONGRESS.—The President  
9       shall promptly report any determination described in  
10      paragraph (1), along with the specific reasons for  
11      the determination, to the Committee on Banking,  
12      Housing, and Urban Affairs of the Senate and the  
13      Committee on International Relations of the House  
14      of Representatives.

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

16      (a) ESTABLISHMENT OF LIST.—

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

20               (2) CONTENTS.—The National Security Control  
21      List shall be composed of a list of items the export  
22      of which is controlled for national security purposes  
23      under this title.

24               (3) IDENTIFICATION OF ITEMS FOR NATIONAL  
25      SECURITY CONTROL LIST.—The Secretary, with the

1 concurrence of the Secretary of Defense and in con-  
2 sultation with the head of any other department or  
3 agency of the United States that the Secretary con-  
4 sider appropriate, shall identify the items to be in-  
5 cluded on the National Security Control List pro-  
6 vided that the National Security Control List shall,  
7 on the date of enactment of this Act, include all of  
8 the items on the Commerce Control List controlled  
9 on the day before the date of enactment of this Act  
10 to protect the national security of the United States,  
11 to prevent the proliferation of weapons of mass de-  
12 struction and the means to deliver them, and to  
13 deter acts of international terrorism. The Secretary  
14 shall review on a continuing basis and, with the con-  
15 currence of the Secretary of Defense and in con-  
16 sultation with the head of any other department or  
17 agency of the United States that the Secretary con-  
18 sider appropriate, adjust the National Security  
19 Control List to add items that require control under  
20 this section and to remove items that no longer war-  
21 rant control under this section.

22 (b) RISK ASSESSMENT.—

23 (1) REQUIREMENT.—In establishing and main-  
24 taining the National Security Control List, the risk  
25 factors set forth in paragraph (2) shall be consid-

1       ered, weighing national security concerns and eco-  
2       nomic costs.

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

6           (A) The characteristics of the item.

7           (B) The threat, if any, to the United  
8       States or the national security interest of the  
9       United States from the misuse or diversion of  
10      such item.

11          (C) The effectiveness of controlling the  
12      item for national security purposes of the  
13      United States, taking into account mass-market  
14      status, foreign availability, and other relevant  
15      factors.

16          (D) The threat to the national security in-  
17      terests of the United States if the item is not  
18      controlled.

19          (E) Any other appropriate risk factors.

20      (c) REPORT ON CONTROL LIST.—Not later than 90  
21      days after the date of enactment of this Act, the Secretary  
22      shall submit a report to Congress which lists all items on  
23      the Commerce Control List controlled on the day before  
24      the date of enactment of this Act to protect the national  
25      security of the United States, to prevent the proliferation

1 of weapons of mass destruction and the means to deliver  
2 them, and to deter acts of international terrorism, not in-  
3 cluded on the National Security Control List pursuant to  
4 the provisions of this Act.

5 **SEC. 203. COUNTRY TIERS.**

6 (a) IN GENERAL.—

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

12 (A) establish and maintain a country  
13 tiering system in accordance with subsection  
14 (b); and

15 (B) based on the assessments required  
16 under subsection (c), assign each country to an  
17 appropriate tier for each item or group of items  
18 the export of which is controlled for national se-  
19 curity purposes under this title.

20 (2) CONSULTATION.—The establishment and  
21 assignment of country tiers under this section shall  
22 be made after consultation with the Secretary, the  
23 Secretary of Defense, the Secretary of State, the in-  
24 telligence agencies, and such other departments and  
25 agencies as the President considers appropriate.

1           (3) REDETERMINATION AND REVIEW OF AS-  
2           SIGNMENTS.—The President may redetermine the  
3           assignment of a country to a particular tier at any  
4           time and shall review and, as the President con-  
5           siders appropriate, reassign country tiers on an on-  
6           going basis. The Secretary shall provide notice of  
7           any such reassignment to the Committee on Bank-  
8           ing, Housing, and Urban Affairs of the Senate and  
9           the Committee on International Relations of the  
10          House of Representatives.

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 not less than  
18               3 tiers for purposes of this section.

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

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 a  
6       tier other than the lowest or highest tier, based on  
7       the assessments required 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 risk factors including the following:

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 chem-  
18      ical, 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 capabilities 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) Whether the country, if a NATO or major  
2       non-NATO ally with whom the United States has  
3       entered into a free trade agreement as of January  
4       1, 1986, controls exports in accordance with the cri-  
5       teria and standards of a multilateral export control  
6       regime as defined in section 2(14) pursuant to an  
7       international agreement to which the United States  
8       is a party.

9           (6) The country's other military capabilities  
10      and the potential threat posed by the country to the  
11      United States or its allies.

12          (7) The effectiveness of the country's export  
13      control system.

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

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

19          (10) The designation of the country as a coun-  
20      try supporting international terrorism under section  
21      310.

22      (d) TIER APPLICATION.—The country tiering system  
23      shall be used in the determination of license requirements  
24      pursuant to section 201(a)(1).



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

2 (a) EXPORT OF ITEMS CONTAINING CONTROLLED  
3 PARTS AND COMPONENTS.—Controls may not be imposed  
4 under this title or any other provision of law on an item  
5 solely because the item contains parts or components sub-  
6 ject to export controls under this title, if the parts or  
7 components—

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

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

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

13 unless the item itself, if exported, would by virtue of the  
14 functional characteristics of the item as a whole make a  
15 significant contribution to the military or proliferation po-  
16 tential of a controlled country or end user which would  
17 prove detrimental to the national security of the United  
18 States, or unless failure to control the item would be con-  
19 trary to the provisions of section 201(c), section 201(d),  
20 or section 309 of this Act.

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

23 (1) IN GENERAL.—No authority or permission  
24 may be required under this title to reexport to a  
25 country an item that is produced in a country other  
26 than the United States and incorporates parts or

1 components that are subject to the jurisdiction of  
2 the United States, if the value of the controlled  
3 United States content of the item produced in such  
4 other country is 25 percent or less of the total value  
5 of the item; except that in the case of reexports of  
6 an item to a country designated as a country sup-  
7 porting international terrorism pursuant to section  
8 310, controls may be maintained if the value of the  
9 controlled United States content is more than 10  
10 percent of the total value of the item.

11 (2) DEFINITION OF CONTROLLED UNITED  
12 STATES CONTENT.—For purposes of this paragraph,  
13 the term “controlled United States content” of an  
14 item means those parts or components that—

15 (A) are subject to the jurisdiction of the  
16 United States;

17 (B) are incorporated into the item; and

18 (C) would, at the time of the reexport, re-  
19 quire a license under this title if exported from  
20 the United States to a country to which the  
21 item is to be reexported.

22 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**  
23 **STATUS.**

24 (a) ESTABLISHMENT.—The Secretary shall establish  
25 a process for interested persons to petition the Secretary

1 to change the status of an item on the National Security  
2 Control List.

3 (b) EVALUATIONS AND DETERMINATIONS.—Evalua-  
4 tions and determinations with respect to a petition filed  
5 pursuant to this section shall be made in accordance with  
6 section 202.

## 7 **Subtitle B—Foreign Availability** 8 **and Mass-Market Status**

### 9 **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND** 10 **MASS-MARKET STATUS.**

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

12 (1) on a continuing basis,

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

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

17 review and determine the foreign availability and the  
18 mass-market status of any item the export of which is con-  
19 trolled under this title.

20 (b) PETITION AND CONSULTATION.—

21 (1) IN GENERAL.—The Secretary shall establish  
22 a process for an interested party to petition the Sec-  
23 retary for a determination that an item has a for-  
24 eign availability or mass-market status. In evalu-  
25 ating and making a determination with respect to a

1 petition filed under this section, the Secretary shall  
2 consult with the Secretary of Defense, Secretary of  
3 State, and other appropriate Government agencies  
4 and with the Office of Technology Evaluation (estab-  
5 lished pursuant to section 214).

6 (2) TIME FOR MAKING DETERMINATION.—The  
7 Secretary shall, within 6 months after receiving a  
8 petition described in subsection (a)(3), determine  
9 whether the item that is the subject of the petition  
10 has foreign availability or mass-market status and  
11 shall notify the petitioner of the determination.

12 (c) RESULT OF DETERMINATION.—In any case in  
13 which the Secretary determines, in accordance with proce-  
14 dures and criteria which the Secretary shall by regulation  
15 establish, that an item described in subsection (a) has—

16 (1) a foreign availability status, or

17 (2) a mass-market status,

18 the Secretary shall notify the President (and other appro-  
19 priate departments and agencies) and publish the notice  
20 of the determination in the Federal Register. The Sec-  
21 retary's determination shall become final 30 days after the  
22 date the notice is published, the item shall be removed  
23 from the National Security Control List, and a license or  
24 other authorization shall not be required under this title  
25 with respect to the item, unless the President makes a

1 determination described in section 212 or 213, or takes  
2 action under section 309, with respect to the item in that  
3 30-day period.

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

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

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

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

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

24 (2) MASS-MARKET STATUS.—

1 (A) IN GENERAL.—In determining whether  
2 an item has mass-market status under this sub-  
3 title, the Secretary shall consider the following  
4 criteria with respect to the item (or a substan-  
5 tially identical or directly competitive item):

6 (i) The production and availability for  
7 sale in a large volume to multiple potential  
8 purchasers.

9 (ii) The widespread distribution  
10 through normal commercial channels, such  
11 as retail stores, direct marketing cata-  
12 logues, electronic commerce, and other  
13 channels.

14 (iii) The conduciveness to shipment  
15 and delivery by generally accepted commer-  
16 cial means of transport.

17 (iv) The use for the item's normal in-  
18 tended purpose without substantial and  
19 specialized service provided by the manu-  
20 facturer, distributor, or other third party.

21 (B) DETERMINATION BY SECRETARY.—If  
22 the Secretary finds that the item (or a substan-  
23 tially identical or directly competitive item)  
24 meets the criteria set forth in subparagraph

1 (A), the Secretary shall determine that the item  
2 has mass-market status.

3 (3) SPECIAL RULES.—For purposes of this  
4 subtitle—

5 (A) SUBSTANTIALLY IDENTICAL ITEM.—

6 The determination of whether an item in rela-  
7 tion to another item is a substantially identical  
8 item shall include a fair assessment of end-uses,  
9 the properties, nature, and quality of the item.

10 (B) DIRECTLY COMPETITIVE ITEM.—

11 (i) IN GENERAL.—The determination  
12 of whether an item in relation to another  
13 item is a directly competitive item shall in-  
14 clude a fair assessment of whether the  
15 item, although not substantially identical  
16 in its intrinsic or inherent characteristics,  
17 is substantially equivalent for commercial  
18 purposes and may be adapted for substan-  
19 tially the same uses.

20 (ii) EXCEPTION.—An item is not di-  
21 rectly competitive with a controlled item if  
22 the item is substantially inferior to the  
23 controlled item with respect to characteris-  
24 tics that resulted in the export of the item  
25 being controlled.

1 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**  
2 **ABILITY STATUS DETERMINATION.**

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

4 (1) GENERAL CRITERIA.—

5 (A) IN GENERAL.—If the President deter-  
6 mines that—

7 (i) decontrolling or failing to control  
8 an item constitutes a threat to the national  
9 security of the United States, and export  
10 controls on the item would advance the na-  
11 tional security interests of the United  
12 States,

13 (ii) there is a high probability that the  
14 foreign availability of an item will be elimi-  
15 nated through international negotiations  
16 within a reasonable period of time taking  
17 into account the characteristics of the  
18 item, or

19 (iii) United States controls on the  
20 item have been imposed under section 309,  
21 the President may set aside the Secretary's de-  
22 termination of foreign availability status with  
23 respect to the item.

24 (B) NONDELEGATION.—The President  
25 may not delegate the authority provided for in  
26 this paragraph.



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

3           (A) report any set-aside determination de-  
4 scribed in paragraph (1), along with the specific  
5 reasons for the determination, to the Committee  
6 on Banking, Housing, and Urban Affairs of the  
7 Senate and the Committee on International Re-  
8 lations of the House of Representatives; and

9           (B) publish the determination in the Fed-  
10 eral Register.

11       (b) PRESIDENTIAL ACTION IN CASE OF SET-  
12 ASIDE.—

13           (1) IN GENERAL.—

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

21           (B) REPORT TO CONGRESS.—Not later  
22 than the date the President begins negotiations,  
23 the President shall notify in writing the Com-  
24 mittee on Banking, Housing, and Urban Affairs  
25 of the Senate and the Committee on Inter-

1           national Relations of the House of Representa-  
2           tives that the President has begun such nego-  
3           tiations and why the President believes it is im-  
4           portant to the national security that export con-  
5           trols on the item involved be maintained.

6           (2) PERIODIC REVIEW OF DETERMINATION.—

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

15          (3) EXPIRATION OF PRESIDENTIAL SET-  
16          ASIDE.—A determination by the President described  
17          in subsection (a)(1)(A) (i) or (ii) shall cease to apply  
18          with respect to an item on the earlier of—

19                (A) the date that is 6 months after the date  
20                on which the determination is made under sub-  
21                section (a), if the President has not commenced  
22                international negotiations to eliminate the for-  
23                eign availability of the item within that 6-month  
24                period;

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

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

9 (D) the date that is 18 months after the  
 10 date on which the determination described in  
 11 subsection (a)(1)(A) (i) or (ii) is made if the  
 12 President has been unable to achieve an agree-  
 13 ment to eliminate foreign availability within  
 14 that 18-month period.

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

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

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

23 (1) GENERAL CRITERIA.—If the President de-  
 24 termines that—

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

4 (ii) export controls on the item would ad-  
5 vance the national security interests of the  
6 United States, or

7 (B) United States controls on the item  
8 have been imposed under section 309,  
9 the President may set aside the Secretary's deter-  
10 mination of mass-market status with respect to the  
11 item.

12 (2) NONDELEGATION.—The President may not  
13 delegate the authority provided for in this sub-  
14 section.

15 (b) PRESIDENTIAL ACTION IN CASE OF SET-  
16 ASIDE.—

17 (1) IN GENERAL.—In any case in which export  
18 controls are maintained on an item because the  
19 President has made a determination under sub-  
20 section (a), the President shall promptly report the  
21 determination, along with the specific reasons for  
22 the determination, to the Committee on Banking,  
23 Housing, and Urban Affairs of the Senate and the  
24 Committee on International Relations of the House  
25 of Representatives, and shall publish notice of the

1 determination in the Federal Register not later than  
2 30 days after the Secretary publishes notice of the  
3 Secretary's determination that an item has mass-  
4 market status.

5 (2) PERIODIC REVIEW OF DETERMINATION.—

6 The President shall review a determination made  
7 under subsection (a) at least every 6 months.  
8 Promptly after each review is completed, the Sec-  
9 retary shall submit a report on the results of the re-  
10 view to the Committee on Banking, Housing, and  
11 Urban Affairs of the Senate and the Committee on  
12 International Relations of the House of Representa-  
13 tives.

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

15 (a) IN GENERAL.—

16 (1) ESTABLISHMENT OF OFFICE.—The Sec-  
17 retary shall establish in the Department of Com-  
18 merce an Office of Technology Evaluation (in this  
19 section referred to as the “Office”), which shall be  
20 under the direction of the Secretary. The Office  
21 shall be responsible for gathering, coordinating, and  
22 analyzing all the necessary information in order for  
23 the Secretary to make determinations of foreign  
24 availability and mass-market status under this Act.

25 (2) STAFF.—

1 (A) IN GENERAL.—The Secretary shall en-  
2 sure that the Office include persons to carry  
3 out the responsibilities set forth in subsection  
4 (b) of this section that have training, expertise,  
5 and experience in—

- 6 (i) economic analysis;  
7 (ii) the defense industrial base;  
8 (iii) technological developments; and  
9 (iv) national security and foreign pol-  
10 icy export controls.

11 (B) DETAILEES.—In addition to employees  
12 of the Department of Commerce, the Secretary  
13 may accept on nonreimbursable detail to the  
14 Office, employees of the Departments of De-  
15 fense, State, and Energy and other departments  
16 and agencies as appropriate.

17 (b) RESPONSIBILITIES.—The Office shall be respon-  
18 sible for—

19 (1) conducting foreign availability assessments  
20 to determine whether a controlled item is available  
21 to controlled countries and whether requiring a li-  
22 cense, or denial of a license for the export of such  
23 item, is or would be ineffective;

24 (2) conducting mass-market assessments to de-  
25 termine whether a controlled item is available to

1 controlled countries because of the mass-market sta-  
2 tus of the item;

3 (3) monitoring and evaluating worldwide tech-  
4 nological developments in industry sectors critical to  
5 the national security interests of the United States  
6 to determine foreign availability and mass-market  
7 status of controlled items;

8 (4) monitoring and evaluating multilateral ex-  
9 port control regimes and foreign government export  
10 control policies and practices that affect the national  
11 security interests of the United States;

12 (5) conducting assessments of United States in-  
13 dustrial sectors critical to the United States defense  
14 industrial base and how the sectors are affected by  
15 technological developments, technology transfers,  
16 and foreign competition; and

17 (6) conducting assessments of the impact of  
18 United States export control policies on—

19 (A) United States industrial sectors critical  
20 to the national security interests of the United  
21 States; and

22 (B) the United States economy in general.

23 (c) REPORTS TO CONGRESS.—The Secretary shall  
24 make available to the Committee on International Rela-  
25 tions of the House of Representatives and the Committee

1 on Banking, Housing, and Urban Affairs of the Senate  
2 as part of the Secretary's annual report required under  
3 section 701 information on the operations of the Office,  
4 and on improvements in the Government's ability to assess  
5 foreign availability and mass-market status, during the  
6 fiscal year preceding the report, including information on  
7 the training of personnel, and the use of Commercial Serv-  
8 ice Officers of the United States and Foreign Commercial  
9 Service to assist in making determinations. The informa-  
10 tion shall also include a description of determinations  
11 made under this Act during the preceding fiscal year that  
12 foreign availability or mass-market status did or did not  
13 exist (as the case may be), together with an explanation  
14 of the determinations.

15 (d) SHARING OF INFORMATION.—Each department  
16 or agency of the United States, including any intelligence  
17 agency, and all contractors with any such department or  
18 agency, shall, consistent with the need to protect intel-  
19 ligence sources and methods, furnish information to the  
20 Office concerning foreign availability and the mass-market  
21 status of items subject to export controls under this Act.



1       **TITLE III—FOREIGN POLICY**  
2               **EXPORT CONTROLS**

3   **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**  
4               **TROLS.**

5       (a) **AUTHORITY.**—

6           (1) **IN GENERAL.**—In order to carry out the  
7       purposes set forth in subsection (b), the President  
8       may, in accordance with the provisions of this Act,  
9       prohibit, curtail, or require a license, other author-  
10      ization, recordkeeping, or reporting for the export of  
11      any item subject to the jurisdiction of the United  
12      States or exported by any person subject to the ju-  
13      risdiction of the United States.

14          (2) **EXERCISE OF AUTHORITY.**—The authority  
15      contained in this subsection shall be exercised by the  
16      Secretary, in consultation with the Secretary of  
17      State and such other departments and agencies as  
18      the Secretary considers appropriate.

19      (b) **PURPOSES.**—The purposes of foreign policy ex-  
20      port controls are the following:

21           (1) To promote the foreign policy objectives of  
22      the United States, consistent with the purposes of  
23      this section and the provisions of this Act.

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

1           (3) To use export controls to deter and punish  
2       acts of international terrorism and to encourage  
3       other countries to take immediate steps to prevent  
4       the use of their territories or resources to aid, en-  
5       courage, or give sanctuary to those persons involved  
6       in directing, supporting, or participating in acts of  
7       international terrorism.

8       (c) FOREIGN PRODUCTS.—No authority or permis-  
9       sion may be required under this title to reexport to a coun-  
10      try an item that is produced in a country other than the  
11      United States and incorporates parts or components that  
12      are subject to the jurisdiction of the United States, except  
13      that in the case of reexports of an item to a country des-  
14      ignated as a country supporting international terrorism  
15      pursuant to section 310, controls may be maintained if  
16      the value of the controlled United States content is more  
17      than 10 percent of the value of the item.

18      (d) CONTRACT SANCTITY.—

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

22           (A) in performance of a binding contract,  
23           agreement, or other contractual commitment  
24           entered into before the date on which the Presi-  
25           dent reports to Congress the President's inten-

1           tion to impose controls on that item under this  
2           title; or

3                 (B) under a license or other authorization  
4           issued under this Act before the earlier of the  
5           date on which the control is initially imposed or  
6           the date on which the President reports to Con-  
7           gress the President's intention to impose con-  
8           trols under this title.

9           (2) EXCEPTION.—The prohibition contained in  
10          paragraph (1) shall not apply in any case in which  
11          the President determines and certifies to the Com-  
12          mittee on Banking, Housing, and Urban Affairs of  
13          the Senate and the Committee on International Re-  
14          lations of the House of Representatives that—

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

17                 (B) the prohibition of exports under each  
18          binding contract, agreement, commitment, li-  
19          cense, or authorization will be instrumental in  
20          remedying the situation posing the serious  
21          threat; and

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

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

25          (a) NOTICE.—

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

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

7                   (B) provide for a period of not less than  
8           30 days for any interested person to submit  
9           comments on the export control proposed under  
10          this title.

11          (2) PURPOSES OF NOTICE.—The purposes of  
12          the notice are—

13                   (A) to provide an opportunity for the for-  
14           mulation of an effective export control policy  
15           under this title that advances United States  
16           economic and foreign policy interests; and

17                   (B) to provide an opportunity for negotia-  
18           tions to achieve the purposes set forth in sec-  
19           tion 301(b).

20          (b) NEGOTIATIONS.—During the 45-day period that  
21          begins on the date of notice described in subsection (a),  
22          the President may negotiate with the government of the  
23          foreign country against which the export control is pro-  
24          posed in order to resolve the reasons underlying the pro-  
25          posed export control.

1 (c) CONSULTATION.—

2 (1) REQUIREMENT.—The President shall con-  
3 sult with the Committee on Banking, Housing, and  
4 Urban Affairs of the Senate and the Committee on  
5 International Relations of the House of Representa-  
6 tives regarding any export control proposed under  
7 this title and the efforts to achieve or increase multi-  
8 lateral cooperation on the issues or problems under-  
9 lying the proposed export control.

10 (2) CLASSIFIED CONSULTATION.—The con-  
11 sultations described in paragraph (1) may be con-  
12 ducted on a classified basis if the Secretary con-  
13 siders it necessary.

14 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**  
15 **TROLS.**

16 Each export control imposed by the President under  
17 this title shall—

18 (1) have clearly stated and specific United  
19 States foreign policy objectives;

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

22 (3) include an assessment by the President  
23 that—

1 (A) the export control is likely to achieve  
2 such objectives and the expected time for  
3 achieving the objectives; and

4 (B) the achievement of the objectives of  
5 the export control outweighs any potential costs  
6 of the export control to other United States  
7 economic, foreign policy, humanitarian, or na-  
8 tional security interests;

9 (4) be targeted narrowly; and

10 (5) seek to minimize any adverse impact on the  
11 humanitarian activities of United States and foreign  
12 nongovernmental organizations in the country sub-  
13 ject to the export control.

14 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**  
15 **CONTROL.**

16 (a) REQUIREMENT.—Before imposing an export con-  
17 trol under this title, the President shall submit to the  
18 Committee on Banking, Housing, and Urban Affairs of  
19 the Senate and the Committee on International Relations  
20 of the House of Representatives a report on the proposed  
21 export control. The report may be provided on a classified  
22 basis if the Secretary considers it necessary.

23 (b) CONTENT.—The report shall contain a descrip-  
24 tion and assessment of each of the criteria described in

1 section 303. In addition, the report shall contain a descrip-  
2 tion and assessment of—

3 (1) any diplomatic and other steps that the  
4 United States has taken to accomplish the intended  
5 objective of the proposed export control;

6 (2) unilateral export controls imposed, and  
7 other measures taken, by other countries to achieve  
8 the intended objective of the proposed export con-  
9 trol;

10 (3) the likelihood of multilateral adoption of  
11 comparable export controls;

12 (4) alternative measures to promote the same  
13 objectives and the likelihood of their potential suc-  
14 cess;

15 (5) any United States obligations under inter-  
16 national trade agreements, treaties, or other inter-  
17 national arrangements, with which the proposed ex-  
18 port control may conflict;

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

22 (7) the likely economic impact of the proposed  
23 export control on the United States economy, United  
24 States international trade and investment, and

1 United States agricultural interests, commercial in-  
2 terests, and employment; and

3 (8) a conclusion that the probable achievement  
4 of the objectives of the proposed export control out-  
5 weighs any likely costs to United States economic,  
6 foreign policy, humanitarian, or national security in-  
7 terests, including any potential harm to the United  
8 States agricultural and business firms and to the  
9 international reputation of the United States as a  
10 reliable supplier of goods, services, or technology.

11 **SEC. 305. IMPOSITION OF CONTROLS.**

12 The President may impose an export control under  
13 this title after the submission of the report required under  
14 section 304 and publication in the Federal Register of a  
15 notice of the imposition of the export control.

16 **SEC. 306. DEFERRAL AUTHORITY.**

17 (a) **AUTHORITY.**—The President may defer compli-  
18 ance with any requirement contained in section 302(a),  
19 304, or 305 in the case of a proposed export control if—

20 (1) the President determines that a deferral of  
21 compliance with the requirement is in the national  
22 interest of the United States; and

23 (2) the requirement is satisfied not later than  
24 60 days after the date on which the export control  
25 is imposed under this title.



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

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

7 (a) RENEWAL AND TERMINATION.—

8 (1) IN GENERAL.—Any export control imposed  
9 under this title shall terminate on March 31 of each  
10 renewal year unless the President renews the export  
11 control on or before such date. For purposes of this  
12 section, the term “renewal year” means 2003 and  
13 every 2 years thereafter.

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

16 (A) is required by law;

17 (B) is targeted against any country des-  
18 ignated as a country supporting international  
19 terrorism pursuant to section 310; or

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

22 (b) REVIEW.—

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

1 (2) CONSULTATION.—

2 (A) REQUIREMENT.—Before completing a  
3 review under paragraph (1), the President shall  
4 consult with the Committee on Banking, Hous-  
5 ing, and Urban Affairs of the Senate and the  
6 Committee on International Relations of the  
7 House of Representative regarding each export  
8 control that is being reviewed.

9 (B) CLASSIFIED CONSULTATION.—The  
10 consultations may be conducted on a classified  
11 basis if the Secretary considers it necessary.

12 (3) PUBLIC COMMENT.—In conducting the re-  
13 view of each export control under paragraph (1), the  
14 President shall provide a period of not less than 30  
15 days for any interested person to submit comments  
16 on renewal of the export control. The President shall  
17 publish notice of the opportunity for public comment  
18 in the Federal Register not less than 45 days before  
19 the review is required to be completed.

20 (c) REPORT TO CONGRESS.—

21 (1) REQUIREMENT.—Before renewing an export  
22 control imposed under this title, the President shall  
23 submit to the committees of Congress referred to in  
24 subsection (b)(2)(A) a report on each export control  
25 that the President intends to renew.

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

5           (A) A clearly stated explanation of the spe-  
6       cific United States foreign policy objective that  
7       the existing export control was intended to  
8       achieve.

9           (B) An assessment of—

10           (i) the extent to which the existing ex-  
11       port control achieved its objectives before  
12       renewal based on the objective criteria es-  
13       tablished for evaluating the export control;  
14       and

15           (ii) the reasons why the existing ex-  
16       port control has failed to fully achieve its  
17       objectives and, if renewed, how the export  
18       control will achieve that objective before  
19       the next renewal year.

20           (C) An updated description and assess-  
21       ment of—

22           (i) each of the criteria described in  
23       section 303, and

1 (ii) each matter required to be re-  
2 ported under section 304(b) (1) through  
3 (8).

4 (3) RENEWAL OF EXPORT CONTROL.—The  
5 President may renew an export control under this  
6 title after submission of the report described in  
7 paragraph (2) and publication of notice of renewal  
8 in the Federal Register.

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

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

12 (1) shall terminate any export control imposed  
13 under this title if the President determines that the  
14 control has substantially achieved the objective for  
15 which it was imposed; and

16 (2) may terminate at any time any export con-  
17 trol imposed under this title that is not required by  
18 law.

19 (b) EXCEPTION.—Paragraphs (1) and (2) of sub-  
20 section (a) do not apply to any export control imposed pur-  
21 suant to section 310.

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

1 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**  
2 **TIONS.**

3 Notwithstanding any other provision of this Act set-  
4 ting forth limitations on authority to control exports and  
5 except as provided in section 304, the President may im-  
6 pose controls on exports to a particular country or  
7 countries—

8 (1) of items listed on the control list of a multi-  
9 lateral export control regime, as defined in section  
10 2(14); or

11 (2) in order to fulfill obligations or commit-  
12 ments of the United States under resolutions of the  
13 United Nations and under treaties, or other inter-  
14 national agreements and arrangements, to which the  
15 United States is a party.

16 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**  
17 **INTERNATIONAL TERRORISM.**

18 (a) **LICENSE REQUIRED.**—Notwithstanding any  
19 other provision of this Act setting forth limitations on the  
20 authority to control exports, a license shall be required for  
21 the export of any item to a country if the Secretary of  
22 State has determined that—

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

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

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

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

18          (d) LIMITATIONS ON RESCINDING DETERMINA-  
19          TION.—A determination made by the Secretary of State  
20          under subsection (a)(1) may not be rescinded unless the  
21          President submits to the Speaker of the House of Rep-  
22          resentatives and the Chairman of the Committee on Bank-  
23          ing, Housing, and Urban Affairs and the Chairman of the  
24          Committee on Foreign Relations of the Senate—

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

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

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

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

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

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

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

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

23          (1) a detailed description of the item to be of-  
24 fered, including a brief description of the capabilities  
25 of any item for which a license to export is sought;

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

7           (3) the reasons why the proposed export or  
8           transfer is in the national interest of the United  
9           States;

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

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

20          (6) an analysis of the impact of the proposed  
21          export or transfer on the United States relations  
22          with the countries in the region to which the item  
23          which is the subject of such export would be deliv-  
24          ered.



1 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

2 (a) IN GENERAL.—Crime control and detection in-  
3 struments and equipment shall be approved for export by  
4 the Secretary only pursuant to an individual export li-  
5 cense. Notwithstanding any other provision of this Act—

6 (1) any determination by the Secretary of what  
7 goods or technology shall be included on the list es-  
8 tablished pursuant to this subsection as a result of  
9 the export restrictions imposed by this section shall  
10 be made with the concurrence of the Secretary of  
11 State, and

12 (2) any determination by the Secretary to ap-  
13 prove or deny an export license application to export  
14 crime control or detection instruments or equipment  
15 shall be made in concurrence with the recommenda-  
16 tions of the Secretary of State submitted to the Sec-  
17 retary with respect to the application pursuant to  
18 section 401 of this Act,

19 except that, if the Secretary does not agree with the Sec-  
20 retary of State with respect to any determination under  
21 paragraph (1) or (2), the matter shall be referred to the  
22 President for resolution.

23 (b) EXCEPTION.—The provisions of this section shall  
24 not apply with respect to exports to countries that are  
25 members of the North Atlantic Treaty Organization or to  
26 Japan, Australia, or New Zealand, or to such other coun-

1 tries as the President shall designate consistent with the  
2 purposes of this section and section 502B of the Foreign  
3 Assistance Act of 1961 (22 U.S.C. 2304).

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

8 **SEC. 401. EXPORT LICENSE PROCEDURES.**

9 (a) RESPONSIBILITY OF THE SECRETARY.—

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

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

22 (3) CALCULATION OF PROCESSING TIMES.—In  
23 calculating the processing times set forth in this  
24 title, the Secretary shall use calendar days, except  
25 that if the final day for a required action falls on a

1 weekend or holiday, that action shall be taken no  
2 later than the following business day.

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

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

9 (B) The threat to—

10 (i) the national security interests of  
11 the United States from items controlled  
12 under title II of this Act; or

13 (ii) the foreign policy of the United  
14 States from items controlled under title III  
15 of this Act.

16 (C) The country tier designation of the  
17 country to which a controlled item is to be ex-  
18 ported pursuant to section 203.

19 (D) The risk of export diversion or misuse  
20 by—

21 (i) the exporter;

22 (ii) the method of export;

23 (iii) the end-user;

24 (iv) the country where the end-user is  
25 located; and

1 (v) the end-use.

2 (E) Risk mitigating factors including, but  
3 not limited to—

4 (i) changing the characteristics of the  
5 controlled item;

6 (ii) after-market monitoring by the ex-  
7 porter; and

8 (iii) post-shipment verification.

9 (b) INITIAL SCREENING.—

10 (1) UPON RECEIPT OF APPLICATION.—Upon re-  
11 ceipt of an export license application, the Secretary  
12 shall enter and maintain in the records of the De-  
13 partment information regarding the receipt and sta-  
14 tus of the application.

15 (2) INITIAL PROCEDURES.—

16 (A) IN GENERAL.—Not later than 9 days  
17 after receiving any license application, the Sec-  
18 retary shall—

19 (i) contact the applicant if the appli-  
20 cation is improperly completed or if addi-  
21 tional information is required, and hold the  
22 application for a reasonable time while the  
23 applicant provides the necessary correc-  
24 tions or information, and such time shall

1 not be included in calculating the time pe-  
2 riods prescribed in this title;

3 (ii) refer the application, through the  
4 use of a common data base or other  
5 means, and all information submitted by  
6 the applicant, and all necessary rec-  
7 ommendations and analyses by the Sec-  
8 retary to the Secretary of Defense, the  
9 Secretary of State, and the heads of and  
10 other departments and agencies the Sec-  
11 retary considers appropriate;

12 (iii) ensure that the classification stat-  
13 ed on the application for the export items  
14 is correct; and

15 (iv) return the application if a license  
16 is not required.

17 (B) REFERRAL NOT REQUIRED.—In the  
18 event that the head of a department or agency  
19 determines that certain types of applications  
20 need not be referred to the department or agen-  
21 cy, such department or agency head shall notify  
22 the Secretary of the specific types of such appli-  
23 cations that the department or agency does not  
24 wish to review.

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

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

6           (1) REFERRAL TO OTHER AGENCIES.—The Sec-  
7       retary shall promptly refer a license application to  
8       the departments and agencies under subsection (b)  
9       to make recommendations and provide information  
10      to the Secretary.

11          (2) RESPONSIBILITY OF REFERRAL DEPART-  
12      MENTS AND AGENCIES.—The Secretary of Defense,  
13      the Secretary of State, and the heads of other re-  
14      viewing departments and agencies shall take all nec-  
15      essary actions in a prompt and responsible manner  
16      on an application. Each department or agency re-  
17      viewing an application under this section shall estab-  
18      lish and maintain records properly identifying and  
19      monitoring the status of the matter referred to the  
20      department or agency.

21          (3) ADDITIONAL INFORMATION REQUESTS.—  
22      Each department or agency to which a license appli-  
23      cation is referred shall specify to the Secretary any  
24      information that is not in the application that would  
25      be required for the department or agency to make

1 a determination with respect to the application, and  
2 the Secretary shall promptly request such informa-  
3 tion from the applicant. The time that may elapse  
4 between the date the information is requested by  
5 that department or agency and the date the infor-  
6 mation is received by that department or agency  
7 shall not be included in calculating the time periods  
8 prescribed in this title.

9 (4) TIME PERIOD FOR ACTION BY REFERRAL  
10 DEPARTMENTS AND AGENCIES.—Within 30 days  
11 after the Secretary refers an application under this  
12 section, each department or agency to which an ap-  
13 plication has been referred shall provide the Sec-  
14 retary with a recommendation either to approve the  
15 license or to deny the license. A recommendation  
16 that the Secretary deny a license shall include a  
17 statement of reasons for the recommendation that  
18 are consistent with the provisions of this title, and  
19 shall cite both the specific statutory and regulatory  
20 basis for the recommendation. A department or  
21 agency that fails to provide a recommendation in ac-  
22 cordance with this paragraph within that 30-day pe-  
23 riod shall be deemed to have no objection to the de-  
24 cision of the Secretary on the application.

1 (d) ACTION BY THE SECRETARY.—Not later than 30  
2 days after the date the application is referred, the Sec-  
3 retary shall—

4 (1) if there is agreement among the referral de-  
5 partments and agencies to issue or deny the  
6 license—

7 (A) issue the license and ensure all appro-  
8 priate personnel in the Department (including  
9 the Office of Export Enforcement) are notified  
10 of all approved license applications; or

11 (B) notify the applicant of the intention to  
12 deny the license; or

13 (2) if there is no agreement among the referral  
14 departments and agencies, notify the applicant that  
15 the application is subject to the interagency dispute  
16 resolution process provided for in section 402.

17 (e) CONSEQUENCES OF APPLICATION DENIAL.—

18 (1) IN GENERAL.—If a determination is made  
19 to deny a license, the applicant shall be informed in  
20 writing, consistent with the protection of intelligence  
21 information sources and methods, by the Secretary  
22 of—

23 (A) the determination;

24 (B) the specific statutory and regulatory  
25 bases for the proposed denial;



1 (C) what, if any, modifications to, or re-  
2 strictions on, the items for which the license  
3 was sought would allow such export to be com-  
4 patible with export controls imposed under this  
5 Act, and which officer or employee of the De-  
6 partment would be in a position to discuss  
7 modifications or restrictions with the applicant  
8 and the specific statutory and regulatory bases  
9 for imposing such modifications or restrictions;

10 (D) to the extent consistent with the na-  
11 tional security and foreign policy interests of  
12 the United States, the specific considerations  
13 that led to the determination to deny the appli-  
14 cation; and

15 (E) the availability of appeal procedures.

16 (2) PERIOD FOR APPLICANT TO RESPOND.—

17 The applicant shall have 20 days from the date of  
18 the notice of intent to deny the application to re-  
19 spond in a manner that addresses and corrects the  
20 reasons for the denial. If the applicant does not ade-  
21 quately address or correct the reasons for denial or  
22 does not respond, the license shall be denied. If the  
23 applicant does address or correct the reasons for de-  
24 nial, the application shall be considered in a timely  
25 manner.

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

2 (1) IN GENERAL.—The Secretary shall establish  
3 appropriate procedures for an applicant to appeal to  
4 the Secretary the denial of an application or other  
5 administrative action under this Act. In any case in  
6 which the Secretary proposes to reverse the decision  
7 with respect to the application, the appeal under this  
8 subsection shall be handled in accordance with the  
9 interagency dispute resolution process provided for  
10 in section 402(b)(3).

11 (2) ENFORCEMENT OF TIME LIMITS.—

12 (A) IN GENERAL.—In any case in which  
13 an action prescribed in this section is not taken  
14 on an application within the time period estab-  
15 lished by this section (except in the case of a  
16 time period extended under subsection (g) of  
17 which the applicant is notified), the applicant  
18 may file a petition with the Secretary request-  
19 ing compliance with the requirements of this  
20 section. When such petition is filed, the Sec-  
21 retary shall take immediate steps to correct the  
22 situation giving rise to the petition and shall  
23 immediately notify the applicant of such steps.

24 (B) BRINGING COURT ACTION.—If, within  
25 20 days after a petition is filed under subpara-

1 graph (A), the processing of the application has  
2 not been brought into conformity with the re-  
3 quirements of this section, or the processing of  
4 the application has been brought into con-  
5 formity with such requirements but the Sec-  
6 retary has not so notified the applicant, the ap-  
7 plicant may bring an action in an appropriate  
8 United States district court for an order requir-  
9 ing compliance with the time periods required  
10 by this section.

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

15 (1) AGREEMENT OF THE APPLICANT.—Delays  
16 upon which the Secretary and the applicant mutu-  
17 ally agree.

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

22 (A) the need for the prelicense check is de-  
23 termined by the Secretary or by another depart-  
24 ment or agency in any case in which the re-

1           quest for the prelicense check is made by such  
2           department or agency;

3           (B) the request for the prelicense check is  
4           initiated by the Secretary within 5 days after  
5           the determination that the prelicense check is  
6           required; and

7           (C) the analysis of the result of the  
8           prelicense check is completed by the Secretary  
9           within 5 days.

10          (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-  
11          MENT ASSURANCES.—Any request by the Secretary  
12          or another department or agency for government-to-  
13          government assurances of suitable end-uses of items  
14          approved for export, when failure to obtain such as-  
15          surances would result in rejection of the application,  
16          if—

17                (A) the request for such assurances is sent  
18                to the Secretary of State within 5 days after  
19                the determination that the assurances are re-  
20                quired;

21                (B) the Secretary of State initiates the re-  
22                quest of the relevant government within 10  
23                days thereafter; and

1 (C) the license is issued within 5 days  
2 after the Secretary receives the requested assur-  
3 ances.

4 (4) EXCEPTION.—Whenever a prelicense check  
5 described in paragraph (2) or assurances described  
6 in paragraph (3) are not requested within the time  
7 periods set forth therein, then the time expended for  
8 such prelicense check or assurances shall be included  
9 in calculating the time periods established by this  
10 section.

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

15 (6) CONGRESSIONAL NOTIFICATION.—Such  
16 time as is required for mandatory congressional noti-  
17 fications under this Act.

18 (7) CONSULTATIONS.—Consultation with for-  
19 eign governments, if such consultation is provided  
20 for by a relevant multilateral regime as a pre-  
21 condition for approving a license.

22 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-  
23 IES.—

24 (1) CLASSIFICATION REQUESTS.—In any case  
25 in which the Secretary receives a written request

1 asking for the proper classification of an item on the  
2 Control List or the applicability of licensing require-  
3 ments under this title, the Secretary shall promptly  
4 notify the Secretary of Defense and the head of any  
5 department or agency the Secretary considers appro-  
6 priate. The Secretary shall, within 14 days after re-  
7 ceiving the request, inform the person making the  
8 request of the proper classification.

9 (2) OTHER INQUIRIES.—In any case in which  
10 the Secretary receives a written request for informa-  
11 tion under this Act, the Secretary shall, within 30  
12 days after receiving the request, reply with that in-  
13 formation to the person making the request.

14 **SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

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

18 (b) INTERAGENCY DISPUTE RESOLUTION PROC-  
19 ESS.—

20 (1) INITIAL RESOLUTION.—The Secretary shall  
21 establish, select the chairperson of, and determine  
22 procedures for an interagency committee to review  
23 initially all license applications described in sub-  
24 section (a) with respect to which the Secretary and  
25 any of the referral departments and agencies are not

1 in agreement. The chairperson shall consider the po-  
2 sitions of all the referral departments and agencies  
3 (which shall be included in the minutes described in  
4 subsection (c)(2)) and make a decision on the license  
5 application, including appropriate revisions or condi-  
6 tions thereto.

7 (2) INTELLIGENCE COMMUNITY.—The analytic  
8 product of the intelligence community should be fully  
9 considered with respect to any proposed license  
10 under this title.

11 (3) FURTHER RESOLUTION.—The President  
12 shall establish additional levels for review or appeal  
13 of any matter that cannot be resolved pursuant to  
14 the process described in paragraph (1). Each such  
15 review shall—

16 (A) provide for decision-making based on  
17 the majority vote of the participating depart-  
18 ments and agencies;

19 (B) provide that a department or agency  
20 that fails to take a timely position, citing the  
21 specific statutory and regulatory bases for a po-  
22 sition, shall be deemed to have no objection to  
23 the pending decision;

24 (C) provide that any decision of an inter-  
25 agency committee established under paragraph

(1) or interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary.

(c) FINAL ACTION.—

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

(A) issue the license and ensure that all appropriate personnel in the Department (including the Office of Export Enforcement) are notified of all approved license applications; or

(B) notify the applicant of the intention to deny the application.

(2) MINUTES.—The interagency committee and each level of the interagency dispute resolution proc-



1       ess shall keep reasonably detailed minutes of all  
2       meetings. On each matter before the interagency  
3       committee or before any other level of the inter-  
4       agency dispute resolution process in which members  
5       disagree, each member shall clearly state the reasons  
6       for the member's position and the reasons shall be  
7       entered in the minutes.

8       **TITLE V—INTERNATIONAL AR-**  
9       **RANGEMENTS; FOREIGN BOY-**  
10      **COTTS; SANCTIONS; AND EN-**  
11      **FORCEMENT**

12     **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

13       (a) MULTILATERAL EXPORT CONTROL REGIMES.—

14           (1) POLICY.—It is the policy of the United  
15       States to seek multilateral arrangements that sup-  
16       port the national security objectives of the United  
17       States (as described in title II) and that establish  
18       fairer and more predictable competitive opportunities  
19       for United States exporters.

20           (2) PARTICIPATION IN EXISTING REGIMES.—

21       Congress encourages the United States to continue  
22       its active participation in and to strengthen existing  
23       multilateral export control regimes.

24           (3) PARTICIPATION IN NEW REGIMES.—It is the  
25       policy of the United States to participate in addi-

1 tional multilateral export control regimes if such  
2 participation would serve the national security inter-  
3 ests of the United States.

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

15 (c) STANDARDS FOR MULTILATERAL EXPORT CON-  
16 TROL REGIMES.—The President shall take steps to estab-  
17 lish the following features in any multilateral export con-  
18 trol regime in which the United States is participating or  
19 may participate:

20 (1) FULL MEMBERSHIP.—All supplier countries  
21 are members of the regime, and the policies and ac-  
22 tivities of the members are consistent with the objec-  
23 tives and membership criteria of the multilateral ex-  
24 port control regime.

1           (2) EFFECTIVE ENFORCEMENT AND COMPLI-  
2           ANCE.—The regime promotes enforcement and com-  
3           pliance with the regime’s rules and guidelines.

4           (3) PUBLIC UNDERSTANDING.—The regime  
5           makes an effort to enhance public understanding of  
6           the purpose and procedures of the multilateral ex-  
7           port control regime.

8           (4) EFFECTIVE IMPLEMENTATION PROCEDURE-  
9           DURES.—The multilateral export control regime has  
10          procedures for the uniform and consistent interpre-  
11          tation and implementation of its rules and guide-  
12          lines.

13          (5) ENHANCED COOPERATION WITH REGIME  
14          NONMEMBERS.—There is agreement among the  
15          members of the multilateral export control regime  
16          to—

17                (A) cooperate with governments outside  
18                the regime to restrict the export of items con-  
19                trolled by such regime; and

20                (B) establish an ongoing mechanism in the  
21                regime to coordinate planning and implementa-  
22                tion of export control measures related to such  
23                cooperation.

24          (6) PERIODIC HIGH-LEVEL MEETINGS.—There  
25          are regular periodic meetings of high-level represent-

1       atives of the governments of members of the multi-  
2       lateral export control regime for the purpose of co-  
3       ordinating export control policies and issuing policy  
4       guidance to members of the regime.

5           (7) COMMON LIST OF CONTROLLED ITEMS.—

6       There is agreement on a common list of items con-  
7       trolled by the multilateral export control regime.

8           (8) REGULAR UPDATES OF COMMON LIST.—

9       There is a procedure for removing items from the  
10      list of controlled items when the control of such  
11      items no longer serves the objectives of the members  
12      of the multilateral export control regime.

13          (9) TREATMENT OF CERTAIN COUNTRIES.—

14      There is agreement to prevent the export or diver-  
15      sion of the most sensitive items to countries whose  
16      activities are threatening to the national security of  
17      the United States or its allies.

18          (10) HARMONIZATION OF LICENSE APPROVAL

19      PROCEDURES.—There is harmonization among the  
20      members of the regime of their national export li-  
21      cense approval procedures, practices, and standards.

22          (11) UNDERCUTTING.—There is a limit with re-

23      spect to when members of a multilateral export con-  
24      trol regime—

1 (A) grant export licenses for any item that  
2 is substantially identical to or directly competi-  
3 tive with an item controlled pursuant to the re-  
4 gime, where the United States has denied an  
5 export license for such item, or

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

9 (d) STANDARDS FOR NATIONAL EXPORT CONTROL  
10 SYSTEMS.—The President shall take steps to attain the  
11 cooperation of members of each regime in implementing  
12 effective national export control systems containing the  
13 following features:

14 (1) EXPORT CONTROL LAW.—Enforcement au-  
15 thority, civil and criminal penalties, and statutes of  
16 limitations are sufficient to deter potential violations  
17 and punish violators under the member's export con-  
18 trol law.

19 (2) LICENSE APPROVAL PROCESS.—The system  
20 for evaluating export license applications includes  
21 sufficient technical expertise to assess the licensing  
22 status of exports and ensure the reliability of end  
23 users.

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

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

7           (5) INFORMATION.—There are procedures for  
8           the coordination and exchange of information con-  
9           cerning licensing, end users, and enforcement with  
10          other members of the multilateral export control re-  
11          gime.

12          (6) RESOURCES.—The member has devoted  
13          adequate resources to administer effectively the au-  
14          thorities, systems, mechanisms, and procedures de-  
15          scribed in paragraphs (1) through (5).

16          (e) OBJECTIVES REGARDING MULTILATERAL EX-  
17          PORT CONTROL REGIMES.—The President shall seek to  
18          achieve the following objectives with regard to multilateral  
19          export control regimes:

20               (1) STRENGTHEN EXISTING REGIMES.—  
21          Strengthen existing multilateral export control  
22          regimes—

23                       (A) by creating a requirement to share in-  
24          formation about export license applications

1 among members before a member approves an  
2 export license; and

3 (B) harmonizing national export license  
4 approval procedures and practices, including  
5 the elimination of undercutting.

6 (2) REVIEW AND UPDATE.—Review and update  
7 multilateral regime export control lists with other  
8 members, taking into account—

9 (A) national security concerns;

10 (B) the controllability of items; and

11 (C) the costs and benefits of controls.

12 (3) ENCOURAGE COMPLIANCE BY NONMEM-  
13 BERS.—Encourage nonmembers of the multilateral  
14 export control regime—

15 (A) to strengthen their national export  
16 control regimes and improve enforcement;

17 (B) to adhere to the appropriate multilat-  
18 eral export control regime; and

19 (C) not to undermine an existing multilat-  
20 eral export control regime by exporting con-  
21 trolled items in a manner inconsistent with the  
22 guidelines of the regime.

23 (f) TRANSPARENCY OF MULTILATERAL EXPORT  
24 CONTROL REGIMES.—

1           (1) PUBLICATION OF INFORMATION ON EACH  
2       EXISTING REGIME.—Not later than 120 days after  
3       the date of enactment of this Act, the Secretary  
4       shall, for each multilateral export control regime, to  
5       the extent that it is not inconsistent with the ar-  
6       rangements of that regime (in the judgment of the  
7       Secretary of State) or with the national interest,  
8       publish in the Federal Register and post on the De-  
9       partment of Commerce website the following infor-  
10      mation with respect to the regime:

11                   (A) The purposes of the regime.

12                   (B) The members of the regime.

13                   (C) The export licensing policy of the re-  
14      gime.

15                   (D) The items that are subject to export  
16      controls under the regime, together with all  
17      public notes, understandings, and other aspects  
18      of the agreement of the regime, and all changes  
19      thereto.

20                   (E) Any countries, end uses, or end users  
21      that are subject to the export controls of the re-  
22      gime.

23                   (F) Rules of interpretation.

24                   (G) Major policy actions.



1           (H) The rules and procedures of the re-  
2           gime for establishing and modifying any matter  
3           described in subparagraphs (A) through (G)  
4           and for reviewing export license applications.

5           (2) NEW REGIMES.—Not later than 60 days  
6           after the United States joins or organizes a new  
7           multilateral export control regime, the Secretary  
8           shall, to the extent that it is not inconsistent with  
9           arrangements under the regime (in the judgment of  
10          the Secretary of State) or with the national interest,  
11          publish in the Federal Register and post on the De-  
12          partment of Commerce website the information de-  
13          scribed in subparagraphs (A) through (H) of para-  
14          graph (1) with respect to the regime.

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

23          (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-  
24          TROL SYSTEMS.—The Secretary is encouraged to continue  
25          to—

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

5           (2) participate in any such training provided by  
6           other departments and agencies of the United  
7           States.

8   **SEC. 502. FOREIGN BOYCOTTS.**

9           (a) PURPOSES.—The purposes of this section are as  
10          follows:

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

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

24          (b) PROHIBITIONS AND EXCEPTIONS.—

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

13                 (A) Refusing, or requiring any other per-  
14                 son to refuse, to do business with or in the boy-  
15                 cotted country, with any business concern orga-  
16                 nized under the laws of the boycotted country,  
17                 with any national or resident of the boycotted  
18                 country, or with any other person, pursuant to  
19                 an agreement with, or requirement of, or a re-  
20                 quest from or on behalf of the boycotting coun-  
21                 try (subject to the condition that the intent re-  
22                 quired to be associated with such an act in  
23                 order to constitute a violation of the prohibition  
24                 is not indicated solely by the mere absence of  
25                 a business relationship with or in the boycotted

1 country, with any business concern organized  
2 under the laws of the boycotted country, with  
3 any national or resident of the boycotted coun-  
4 try, or with any other person).

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

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

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

1 or resident of the boycotted country, or with  
2 any other person that is known or believed to  
3 be restricted from having any business relation-  
4 ship with or in the boycotting country.

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

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

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

22 (A) compliance, or agreement to comply,  
23 with requirements—

24 (i) prohibiting the import of items  
25 from the boycotted country or items pro-

1           duced or provided, by any business concern  
2           organized under the laws of the boycotted  
3           country or by nationals or residents of the  
4           boycotted country; or

5           (ii) prohibiting the shipment of items  
6           to the boycotting country on a carrier of  
7           the boycotted country or by a route other  
8           than that prescribed by the boycotting  
9           country or the recipient of the shipment;

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

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

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

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

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

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

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

22 (5) EVASION.—This section applies to any  
23 transaction or activity undertaken by or through a  
24 United States person or any other person with in-  
25 tent to evade the provisions of this section or the



1 regulations issued pursuant to this subsection. The  
2 regulations issued pursuant to this section shall ex-  
3 pressly provide that the exceptions set forth in para-  
4 graph (2) do not permit activities or agreements (ex-  
5 pressed or implied by a course of conduct, including  
6 a pattern of responses) that are otherwise prohib-  
7 ited, pursuant to the intent of such exceptions.

8 (c) ADDITIONAL REGULATIONS AND REPORTS.—

9 (1) REGULATIONS.—In addition to the regula-  
10 tions issued pursuant to subsection (b), regulations  
11 issued pursuant to title III shall implement the pur-  
12 poses set forth in subsection (a).

13 (2) REPORTS BY UNITED STATES PERSONS.—

14 The regulations shall require that any United States  
15 person receiving a request to furnish information,  
16 enter into or implement an agreement, or take any  
17 other action referred to in subsection (a) shall report  
18 that request to the Secretary, together with any  
19 other information concerning the request that the  
20 Secretary determines appropriate. The person shall  
21 also submit to the Secretary a statement regarding  
22 whether the person intends to comply, and whether  
23 the person has complied, with the request. Any re-  
24 port filed pursuant to this paragraph shall be made  
25 available promptly for public inspection and copying,

1       except that information regarding the quantity, de-  
2       scription, and value of any item to which such report  
3       relates may be treated as confidential if the Sec-  
4       retary determines that disclosure of that information  
5       would place the United States person involved at a  
6       competitive disadvantage. The Secretary shall peri-  
7       odically transmit summaries of the information con-  
8       tained in the reports to the Secretary of State for  
9       such action as the Secretary of State, in consultation  
10      with the Secretary, considers appropriate to carry  
11      out the purposes set forth in subsection (a).

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

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

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

24      **SEC. 503. PENALTIES.**

25      (a) CRIMINAL PENALTIES.—

1           (1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-  
2       vidual who willfully violates, conspires to violate, or  
3       attempts to violate any provision of this Act or any  
4       regulation, license, or order issued under this Act  
5       shall be fined up to 10 times the value of the exports  
6       involved or \$1,000,000, whichever is greater, impris-  
7       oned for not more than 10 years, or both, for each  
8       violation.

9           (2) VIOLATIONS BY A PERSON OTHER THAN AN  
10      INDIVIDUAL.—Any person other than an individual  
11      who willfully violates, conspires to violate, or at-  
12      tempts to violate any provision of this Act or any  
13      regulation, license, or order issued under this Act  
14      shall be fined up to 10 times the value of the exports  
15      involved or \$5,000,000, whichever is greater, for  
16      each violation.

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

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

23           (A) any of that person's security or other  
24      interest in, claim against, or property or con-

1           tractual rights of any kind in the tangible items  
2           that were the subject of the violation;

3           (B) any of that person's security or other  
4           interest in, claim against, or property or con-  
5           tractual rights of any kind in the tangible prop-  
6           erty that was used in the export or attempt to  
7           export that was the subject of the violation; and

8           (C) any of that person's property consti-  
9           tuting, or derived from, any proceeds obtained  
10          directly or indirectly as a result of the violation.

11          (2) PROCEDURES.—The procedures in any for-  
12          feiture under this subsection, and the duties and au-  
13          thority of the courts of the United States and the  
14          Attorney General with respect to any forfeiture ac-  
15          tion under this subsection, or with respect to any  
16          property that may be subject to forfeiture under this  
17          subsection, shall be governed by the provisions of  
18          chapter 46 of title 18, United States Code (relating  
19          to criminal forfeiture), to the same extent as prop-  
20          erty subject to forfeiture under that chapter.

21          (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-  
22          TIONS.—

23          (1) CIVIL PENALTIES.—The Secretary may im-  
24          pose a civil penalty of up to \$500,000 for each viola-  
25          tion of a provision of this Act or any regulation, li-

1       cense, or order issued under this Act. A civil penalty  
2       under this paragraph may be in addition to, or in  
3       lieu of, any other liability or penalty which may be  
4       imposed for such a violation.

5           (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-  
6       retary may deny the export privileges of any person,  
7       including the suspension or revocation of the author-  
8       ity of such person to export or receive United  
9       States-origin items subject to this Act, for a viola-  
10      tion of a provision of this Act or any regulation, li-  
11      cense, or order issued under this Act.

12          (3) EXCLUSION FROM PRACTICE.—The Sec-  
13      retary may exclude any person acting as an attor-  
14      ney, accountant, consultant, freight forwarder, or in  
15      any other representative capacity from participating  
16      before the Department with respect to a license ap-  
17      plication or any other matter under this Act.

18      (d) PAYMENT OF CIVIL PENALTIES.—

19          (1) PAYMENT AS CONDITION OF FURTHER EX-  
20      PORT PRIVILEGES.—The payment of a civil penalty  
21      imposed under subsection (c) may be made a condi-  
22      tion for the granting, restoration, or continuing va-  
23      lidity of any export license, permission, or privilege  
24      granted or to be granted to the person upon whom  
25      such penalty is imposed. The period for which the

1 payment of a penalty may be made such a condition  
2 may not exceed 1 year after the date on which the  
3 payment is due.

4 (2) DEFERRAL OR SUSPENSION.—

5 (A) IN GENERAL.—The payment of a civil  
6 penalty imposed under subsection (c) may be  
7 deferred or suspended in whole or in part for a  
8 period no longer than any probation period  
9 (which may exceed 1 year) that may be imposed  
10 upon the person on whom the penalty is im-  
11 posed.

12 (B) NO BAR TO COLLECTION OF PEN-  
13 ALTY.—A deferral or suspension under sub-  
14 paragraph (A) shall not operate as a bar to the  
15 collection of the penalty concerned in the event  
16 that the conditions of the suspension, deferral,  
17 or probation are not fulfilled.

18 (3) TREATMENT OF PAYMENTS.—Any amount  
19 paid in satisfaction of a civil penalty imposed under  
20 subsection (c) shall be covered into the Treasury as  
21 miscellaneous receipts.

22 (e) REFUNDS.—

23 (1) AUTHORITY.—

24 (A) IN GENERAL.—The Secretary may, in  
25 the Secretary's discretion, refund any civil pen-

1            alty imposed under subsection (c) on the  
2            ground of a material error of fact or law in im-  
3            position of the penalty.

4            (B) LIMITATION.—A civil penalty may not  
5            be refunded under subparagraph (A) later than  
6            2 years after payment of the penalty.

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

12          (f) EFFECT OF OTHER CONVICTIONS.—

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

15            (A) a provision of this Act or the Export  
16            Administration Act of 1979,

17            (B) a provision of the International Emer-  
18            gency Economic Powers Act (50 U.S.C. 1701 et  
19            seq.),

20            (C) section 793, 794, or 798 of title 18,  
21            United States Code,

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

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

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

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

6 (H) section 371 or 1001 of title 18, United  
7 States Code, if in connection with the export of  
8 controlled items under this Act or any regula-  
9 tion, license, or order issued under the Inter-  
10 national Emergency Economic Powers Act, or  
11 the export of items controlled under the Arms  
12 Export Control Act,

13 (I) section 175 of title 18, United States  
14 Code,

15 (J) a provision of the Atomic Energy Act  
16 (42 U.S.C. 201 et seq.),

17 (K) section 831 of title 18, United States  
18 Code, or

19 (L) section 2332a of title 18, United  
20 States Code,

21 may, at the discretion of the Secretary, be denied ex-  
22 port privileges under this Act for a period not to ex-  
23 ceed 10 years from the date of the conviction. The  
24 Secretary may also revoke any export license under



1       this Act in which such person had an interest at the  
2       time of the conviction.

3           (2) RELATED PERSONS.—The Secretary may  
4       exercise the authority under paragraph (1) with re-  
5       spect to any person related through affiliation, own-  
6       ership, control, or position of responsibility to a per-  
7       son convicted of any violation of a law set forth in  
8       paragraph (1) upon a showing of such relationship  
9       with the convicted person. The Secretary shall make  
10      such showing only after providing notice and oppor-  
11      tunity for a hearing.

12      (g) STATUTE OF LIMITATIONS.—

13           (1) IN GENERAL.—Except as provided in para-  
14      graph (2), a proceeding in which a civil penalty or  
15      other administrative sanction (other than a tem-  
16      porary denial order) is sought under subsection (c)  
17      may not be instituted more than 5 years after the  
18      later of the date of the alleged violation or the date  
19      of discovery of the alleged violation.

20           (2) EXCEPTION.—

21           (A) TOLLING.—In any case in which a  
22      criminal indictment alleging a violation under  
23      subsection (a) is returned within the time limits  
24      prescribed by law for the institution of such ac-  
25      tion, the limitation under paragraph (1) for

1 bringing a proceeding to impose a civil penalty  
2 or other administrative sanction under this sec-  
3 tion shall, upon the return of the criminal in-  
4 dictment, be tolled against all persons named as  
5 a defendant.

6 (B) DURATION.—The tolling of the limita-  
7 tion with respect to a defendant under subpara-  
8 graph (A) as a result of a criminal indictment  
9 shall continue for a period of 6 months from  
10 the date on which the conviction of the defend-  
11 ant becomes final, the indictment against the  
12 defendant is dismissed, or the criminal action  
13 has concluded.

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

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

19 (1) the availability of other administrative or  
20 judicial remedies with respect to a violation of a pro-  
21 vision of this Act, or any regulation, order, or license  
22 issued under this Act;

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

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

5   **SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

6       (a) VIOLATIONS BY UNITED STATES PERSONS.—

7           (1) SANCTIONS.—

8               (A) IN GENERAL.—If the President deter-  
9       mines that a United States person knowingly—

10               (i) exports, transfers, or otherwise en-  
11               gages in the trade of any item on the  
12               MTCR Annex, in violation of the provi-  
13               sions of section 38 (22 U.S.C. 2778) or  
14               chapter 7 of the Arms Export Control Act,  
15               title II or III of this Act, or any regula-  
16               tions or orders issued under any such pro-  
17               visions,

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

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

22       then the President shall impose the applicable  
23       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 503.

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

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

(A) the item is essential to the national security of the United States; and

(B) such person is a sole source supplier of the item, the item is not available from any alternative reliable supplier, and the need for the item cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

(1) SANCTIONS.—

(A) IN GENERAL.—Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of enactment of this section, knowingly—

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United 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  
9 person—

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 (8) OTHERWISE ENGAGED IN THE TRADE OF.—

2 The term “otherwise engaged in the trade of”  
3 means, with respect to a particular export or trans-  
4 fer, to be a freight forwarder or designated export-  
5 ing agent, or a consignee or end user of the item to  
6 be exported or transferred.

7 **SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**  
8 **LIFERATION SANCTIONS.**

9 (a) IMPOSITION OF SANCTIONS.—

10 (1) DETERMINATION BY THE PRESIDENT.—Ex-  
11 cept as provided in subsection (b)(2), the President  
12 shall impose both of the sanctions described in sub-  
13 section (c) if the President determines that a foreign  
14 person, on or after the date of enactment of this sec-  
15 tion, has knowingly and materially contributed—

16 (A) through the export from the United  
17 States of any item that is subject to the juris-  
18 diction of the United States under this Act, or

19 (B) through the export from any other  
20 country of any item that would be, if it were a  
21 United States item, subject to the jurisdiction  
22 of the United States under this Act,

23 to the efforts by any foreign country, project, or en-  
24 tity described in paragraph (2) to use, develop,

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 gov-  
6       ernment has taken specific and effective actions, in-  
7       cluding 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 government is in the  
13      process of taking the actions described in the pre-  
14      ceding 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  
4 United 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. 506. 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 and 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 a department or agency exercising func-  
5           tions under this Act, may exercise the enforce-  
6           ment authority under paragraph (3).

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

1           suant to agreement or other arrangement with  
2           other countries, is authorized to perform en-  
3           forcement activities.

4           (C) OTHER EMPLOYEES.—In carrying out  
5           enforcement authority under paragraph (3), the  
6           Secretary and officers and employees of the De-  
7           partment designated by the Secretary may  
8           make investigations within the United States,  
9           and may conduct, outside the United States,  
10          pre-license and post-shipment verifications of  
11          controlled items and investigations in the en-  
12          forcement of section 502. The Secretary and of-  
13          ficers and employees of the Department des-  
14          ignated by the Secretary are authorized to  
15          search, detain (after search), and seize items at  
16          places within the United States other than  
17          ports referred to in subparagraph (B). The  
18          search, detention (after search), or seizure of  
19          items at the ports and places referred to in sub-  
20          paragraph (B) may be conducted by officers  
21          and employees of the Department only with the  
22          concurrence of the Commissioner of Customs or  
23          a person designated by the Commissioner.

24          (D) AGREEMENTS AND ARRANGEMENTS.—  
25          The Secretary and the Commissioner of Cus-

1           toms may enter into agreements and arrange-  
2           ments for the enforcement of this Act, including  
3           foreign investigations and information ex-  
4           change.

5           (3) SPECIFIC AUTHORITIES.—

6                 (A) ACTIONS BY ANY DESIGNATED PER-  
7           SONNEL.—Any officer or employee designated  
8           under paragraph (2), in carrying out the en-  
9           forcement authority under this Act, may do the  
10          following:

11                   (i) Make investigations of, obtain in-  
12                   formation from, make inspection of any  
13                   books, records, or reports (including any  
14                   writings required to be kept by the Sec-  
15                   retary), premises, or property of, and take  
16                   the sworn testimony of, any person.

17                   (ii) Administer oaths or affirmations,  
18                   and by subpoena require any person to ap-  
19                   pear and testify or to appear and produce  
20                   books, records, and other writings, or both.  
21                   In the case of contumacy by, or refusal to  
22                   obey a subpoena issued to, any such per-  
23                   son, a district court of the United States,  
24                   on request of the Attorney General and  
25                   after notice to any such person and a hear-



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

17 (B) ACTIONS BY OFFICE OF EXPORT EN-  
18 FORCEMENT AND CUSTOMS SERVICE PER-  
19 SONNEL.—

20 (i) OFFICE OF EXPORT ENFORCE-  
21 MENT AND CUSTOMS SERVICE PER-  
22 SONNEL.—Any officer or employee of the  
23 Office of Export Enforcement of the De-  
24 partment of Commerce (in this Act re-  
25 ferred to as “OEE”) who is designated by

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

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

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

20 (III) Carry firearms.

21 (ii) OEE PERSONNEL.—Any officer or  
22 employee of the OEE designated by the  
23 Secretary under paragraph (2) shall exer-  
24 cise the authority set forth in clause (i)

1           pursuant to guidelines approved by the At-  
2           torney General.

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

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

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

23                  (iii) Detain (after search) or seize any  
24                  item, for purposes of securing for trial or  
25                  forfeiture to the United States, on or

1           about such vehicle, vessel, aircraft, or per-  
2           son or in such package or container, if the  
3           officer or employee has probable cause to  
4           believe the item has been, is being, or is  
5           about to be exported from or transited  
6           through the United States in violation of  
7           this Act.

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

11         (b) FORFEITURE.—

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

16           (2) APPLICABLE LAWS.—Those provisions of  
17          law relating to—

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

21           (B) the disposition of such property or the  
22          proceeds from the sale thereof;

23           (C) the remission or mitigation of such for-  
24          feitures; and

25           (D) the compromise of claims,

1 shall apply to seizures and forfeitures incurred, or  
2 alleged to have been incurred, under the provisions  
3 of this subsection, insofar as applicable and not in-  
4 consistent with this Act.

5 (3) FORFEITURES UNDER CUSTOMS LAWS.—

6 Duties that are imposed upon a customs officer or  
7 any other person with respect to the seizure and for-  
8 feiture of property under the customs laws may be  
9 performed with respect to seizures and forfeitures of  
10 property under this subsection by the Secretary or  
11 any officer or employee of the Department that may  
12 be authorized or designated for that purpose by the  
13 Secretary (or by the Commissioner of Customs or  
14 any officer or employee of the United States Cus-  
15 toms Service designated by the Commissioner), or,  
16 upon the request of the Secretary, by any other  
17 agency that has authority to manage and dispose of  
18 seized property.

19 (c) REFERRAL OF CASES.—All cases involving viola-  
20 tions of this Act shall be referred to the Secretary for pur-  
21 poses of determining civil penalties and administrative  
22 sanctions under section 503 or to the Attorney General  
23 for criminal action in accordance with this Act or to both  
24 the Secretary and the Attorney General.

25 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

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

5           (A) funds made available for export en-  
6       forcement under this Act may be used to pur-  
7       chase property, buildings, and other facilities,  
8       and to lease equipment, conveyances, and space  
9       within the United States, without regard to sec-  
10      tions 1341 and 3324 of title 31, United States  
11      Code, the third undesignated paragraph under  
12      the heading of “miscellaneous” of the Act of  
13      March 3, 1877, (40 U.S.C. 34), sections  
14      3732(a) and 3741 of the Revised Statutes of  
15      the United States (41 U.S.C. 11(a) and 22),  
16      subsections (a) and (c) of section 304 of the  
17      Federal Property and Administrative Services  
18      Act of 1949 (41 U.S.C. 254 (a) and (c)), and  
19      section 305 of the Federal Property and Ad-  
20      ministrative Services Act of 1949 (41 U.S.C.  
21      255);

22           (B) funds made available for export en-  
23      forcement under this Act may be used to estab-  
24      lish or to acquire proprietary corporations or  
25      business entities as part of an undercover oper-

1           ation, and to operate such corporations or busi-  
2           ness entities on a commercial basis, without re-  
3           gard to sections 1341, 3324, and 9102 of title  
4           31, United States Code;

5           (C) funds made available for export en-  
6           forcement under this Act and the proceeds from  
7           undercover operations may be deposited in  
8           banks or other financial institutions without re-  
9           gard to the provisions of section 648 of title 18,  
10          United States Code, and section 3302 of title  
11          31, United States Code; and

12          (D) the proceeds from undercover oper-  
13          ations may be used to offset necessary and rea-  
14          sonable expenses incurred in such operations  
15          without regard to the provisions of section 3302  
16          of title 31, United States Code,

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

22          (2) DISPOSITION OF BUSINESS ENTITIES.—If a  
23          corporation or business entity established or ac-  
24          quired as part of an undercover operation has a net  
25          value of more than \$250,000 and is to be liquidated,

1 sold, or otherwise disposed of, the Director of OEE  
2 shall report the circumstances to the Secretary and  
3 the Comptroller General of the United States as  
4 much in advance of such disposition as the Director  
5 of the OEE (or the Director's designee) determines  
6 is practicable. The proceeds of the liquidation, sale,  
7 or other disposition, after obligations incurred by the  
8 corporation or business enterprise are met, shall be  
9 deposited in the Treasury of the United States as  
10 miscellaneous receipts. Any property or equipment  
11 purchased pursuant to paragraph (1) may be re-  
12 tained for subsequent use in undercover operations  
13 under this section. When such property or equip-  
14 ment is no longer needed, it shall be considered sur-  
15 plus and disposed of as surplus government prop-  
16 erty.

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

25 (4) AUDIT AND REPORT.—



1           (A) AUDIT.—The Director of OEE shall  
2           conduct a detailed financial audit of each closed  
3           OEE undercover investigative operation and  
4           shall submit the results of the audit in writing  
5           to the Secretary. Not later than 180 days after  
6           an undercover operation is closed, the Secretary  
7           shall submit to Congress a report on the results  
8           of the audit.

9           (B) REPORT.—The Secretary shall submit  
10          annually to Congress a report, which may be in-  
11          cluded in the annual report under section 701,  
12          specifying the following information:

13               (i) The number of undercover inves-  
14               tigative operations pending as of the end of  
15               the period for which such report is sub-  
16               mitted.

17               (ii) The number of undercover inves-  
18               tigative operations commenced in the 1-  
19               year period preceding the period for which  
20               such report is submitted.

21               (iii) The number of undercover inves-  
22               tigative operations closed in the 1-year pe-  
23               riod preceding the period for which such  
24               report is submitted and, with respect to  
25               each such closed undercover operation, the

1 results obtained and any civil claims made  
2 with respect to the operation.

3 (5) DEFINITIONS.—For purposes of paragraph  
4 (4)—

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

12 (B) the terms “undercover investigative  
13 operation” and “undercover operation” mean  
14 any undercover investigative operation con-  
15 ducted by the OEE—

16 (i) in which the gross receipts (exclud-  
17 ing interest earned) exceed \$25,000, or ex-  
18 penditures (other than expenditures for  
19 salaries of employees) exceed \$75,000, and

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

25 (e) WIRETAPS.—

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

5           (2) CONFORMING AMENDMENT.—Section  
6           2516(1) of title 18, United States Code, is amended  
7           by adding at the end the following:

8                     “(q)(i) any violation of, or conspiracy to  
9                     violate, the Export Administration Act of 2001  
10                    or the Export Administration Act of 1979.”.

11          (f) POST-SHIPMENT VERIFICATION.—The Secretary  
12          shall target post-shipment verifications to exports involv-  
13          ing the greatest risk to national security.

14          (g) REFUSAL TO ALLOW POST-SHIPMENT  
15          VERIFICATION.—

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

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

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

19 (i) END-USE VERIFICATION AUTHORIZATION.—

20 (1) IN GENERAL.—There is authorized to be  
21 appropriated for the Department of Commerce  
22 \$4,500,000 and such sums as may be necessary to  
23 hire 10 additional overseas investigators to be posted  
24 in the People’s Republic of China, the Russian Fed-  
25 eration, the Hong Kong Special Administrative Re-

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

5           (2) REPORT.—Not later than 2 years after the  
6       date of enactment of this Act and annually there-  
7       after, the Department shall, in its annual report to  
8       Congress on export controls, include a report on the  
9       effectiveness of the end-use verification activities au-  
10      thorized under subsection (a). The report shall in-  
11      clude the following information:

12           (A) The activities of the overseas investiga-  
13      tors of the Department.

14           (B) The types of goods and technologies  
15      that were subject to end-use verification.

16           (C) The ability of the Department’s inves-  
17      tigators to detect the illegal transfer of high  
18      risk, dual-use goods and technologies.

19           (3) ENHANCEMENTS.—In addition to the au-  
20      thorization provided in paragraph (1), there is au-  
21      thorized to be appropriated for the Department of  
22      Commerce \$5,000,000 to enhance its program for  
23      verifying the end use of items subject to controls  
24      under this Act.

1       (j) ENHANCED COOPERATION WITH UNITED STATES  
2 CUSTOMS SERVICE.—Consistent with the purposes of this  
3 Act, the Secretary is authorized to undertake, in coopera-  
4 tion with the United States Customs Service, such meas-  
5 ures as may be necessary or required to enhance the abil-  
6 ity of the United States to detect unlawful exports and  
7 to enforce violations of this Act.

8       (k) REFERENCE TO ENFORCEMENT.—For purposes  
9 of this section, a reference to the enforcement of this Act  
10 or to a violation of this Act includes a reference to the  
11 enforcement or a violation of any regulation, license, or  
12 order issued under this Act.

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

20       (m) AUTHORIZATION FOR BUREAU OF EXPORT AD-  
21 MINISTRATION.—The Secretary may authorize, without  
22 fiscal year limitation, the expenditure of funds transferred  
23 to, paid to, received by, or made available to the Bureau  
24 of Export Administration as a reimbursement in accord-  
25 ance with section 9703 of title 31, United States Code

1 (as added by Public Law 102–393). The Secretary may  
2 also authorize, without fiscal year limitation, the expendi-  
3 ture of funds transferred to, paid to, received by, or made  
4 available to the Bureau of Export Administration as a re-  
5 imbursement from the Department of Justice Assets For-  
6 feiture Fund in accordance with section 524 of title 28,  
7 United States Code. Such funds shall be deposited in an  
8 account and shall remain available until expended.

9 (n) AMENDMENTS TO TITLE 31.—

10 (1) Section 9703(a) of title 31, United States  
11 Code (as added by Public Law 102–393) is amended  
12 by striking “or the United States Coast Guard” and  
13 inserting “, the United States Coast Guard, or the  
14 Bureau of Export Administration of the Department  
15 of Commerce”.

16 (2) Section 9703(a)(2)(B)(i) of title 31, United  
17 States Code is amended (as added by Public Law  
18 102–393)—

19 (A) by striking “or” at the end of sub-  
20 clause (I);

21 (B) by inserting “or” at the end of sub-  
22 clause (II); and

23 (C) by inserting at the end, the following  
24 new subclause:

1 “(III) a violation of the Export  
2 Administration Act of 1979, the Ex-  
3 port Administration Act of 2001, or  
4 any regulation, license, or order issued  
5 under those Acts;”.

6 (3) Section 9703(p)(1) of title 31, United  
7 States Code (as added by Public Law 102–393) is  
8 amended by adding at the end the following: “In ad-  
9 dition, for purposes of this section, the Bureau of  
10 Export Administration of the Department of Com-  
11 merce shall be considered to be a Department of the  
12 Treasury law enforcement organization.”.

13 (o) AUTHORIZATION FOR LICENSE REVIEW OFFI-  
14 CERS.—

15 (1) IN GENERAL.—There is authorized to be  
16 appropriated to the Department of Commerce  
17 \$2,000,000 to hire additional license review officers.

18 (2) TRAINING.—There is authorized to be ap-  
19 propriated to the Department of Commerce  
20 \$2,000,000 to conduct professional training of li-  
21 cense review officers, auditors, and investigators  
22 conducting post-shipment verification checks. These  
23 funds shall be used to—



1 (A) train and certify, through a formal  
2 program, new employees entering these posi-  
3 tions for the first time; and

4 (B) the ongoing professional training of ex-  
5 perience employees on an as needed basis.

6 (p) AUTHORIZATION.—

7 (1) IN GENERAL.—There are authorized to be  
8 appropriated to the Department of Commerce to  
9 carry out the purposes of this Act—

10 (A) \$72,000,000 for the fiscal year 2002,  
11 of which no less than \$27,701,000 shall be used  
12 for compliance and enforcement activities;

13 (B) \$73,000,000 for the fiscal year 2003,  
14 of which no less than \$28,312,000 shall be used  
15 for compliance and enforcement activities;

16 (C) \$74,000,000 for the fiscal year 2004,  
17 of which no less than \$28,939,000 shall be used  
18 for compliance and enforcement activities;

19 (D) \$76,000,000 for the fiscal year 2005,  
20 of which no less than \$29,582,000 shall be used  
21 for compliance and enforcement activities; and

22 (E) such additional amounts, for each such  
23 fiscal year, as may be necessary for increases in  
24 salary, pay, retirement, other employee benefits

1 authorized by law, and other nondiscretionary  
2 costs.

3 (2) LIMITATION.—The authority granted by  
4 this Act shall terminate on September 30, 2004, un-  
5 less the President carries out the following duties:

6 (A) Provides to Congress a detailed report  
7 on—

8 (i) the implementation and operation  
9 of this Act; and

10 (ii) the operation of United States ex-  
11 port controls in general.

12 (B)(i) Provides to Congress legislative re-  
13 form proposals in connection with the report  
14 described in subparagraph (A); or

15 (ii) certifies to Congress that no legislative  
16 reforms are necessary in connection with such  
17 report.

18 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

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

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

1           (1) ADMINISTRATIVE PROCEDURES.—Any ad-  
2           ministrative sanction imposed under section 503  
3           may be imposed only after notice and opportunity  
4           for an agency hearing on the record in accordance  
5           with sections 554 through 557 of title 5, United  
6           States Code. The imposition of any such administra-  
7           tive sanction shall be subject to judicial review in ac-  
8           cordance with sections 701 through 706 of title 5,  
9           United States Code, except that the review shall be  
10          initiated in the United States Court of Appeals for  
11          the District of Columbia Circuit, which shall have  
12          jurisdiction of the review.

13          (2) AVAILABILITY OF CHARGING LETTER.—Any  
14          charging letter or other document initiating adminis-  
15          trative proceedings for the imposition of sanctions  
16          for violations of the regulations issued under section  
17          502 shall be made available for public inspection and  
18          copying.

19          (c) COLLECTION.—If any person fails to pay a civil  
20          penalty imposed under section 503, the Secretary may ask  
21          the Attorney General to commence a civil action in an ap-  
22          propriate district court of the United States to recover the  
23          amount imposed (plus interest at currently prevailing  
24          rates from the date of the final order). No such action  
25          may be commenced more than 5 years after the order im-

1 posing the civil penalty becomes final. In such an action,  
2 the validity, amount, and appropriateness of such penalty  
3 shall not be subject to review.

4 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

5 (1) GROUNDS FOR IMPOSITION.—In any case in  
6 which there is reasonable cause to believe that a per-  
7 son is engaged in or is about to engage in any act  
8 or practice which constitutes or would constitute a  
9 violation of this Act, or any regulation, order, or li-  
10 cense issued under this Act, including any diversion  
11 of goods or technology from an authorized end use  
12 or end user, and in any case in which a criminal in-  
13 dictment has been returned against a person alleging  
14 a violation of this Act or any of the statutes listed  
15 in section 503, the Secretary may, without a hear-  
16 ing, issue an order temporarily denying that person's  
17 United States export privileges (hereafter in this  
18 subsection referred to as a “temporary denial  
19 order”). A temporary denial order shall be effective  
20 for such period (not in excess of 180 days) as the  
21 Secretary specifies in the order, but may be renewed  
22 by the Secretary, following notice and an oppor-  
23 tunity for a hearing, for additional periods of not  
24 more than 180 days each.

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

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

17                   (B) a criminal indictment has been re-  
18                   turned against the person subject to the order  
19                   alleging a violation of this Act or any of the  
20                   statutes listed in section 503.

21          The decision of the administrative law judge shall be  
22          final unless, within 10 working days after the date  
23          of the administrative law judge's decision, an appeal  
24          is filed with the Secretary. On appeal, the Secretary  
25          shall either affirm, modify, reverse, or vacate the de-

1 cision of the administrative law judge by written  
2 order within 10 working days after receiving the ap-  
3 peal. The written order of the Secretary shall be  
4 final and is not subject to judicial review, except as  
5 provided in paragraph (3). The materials submitted  
6 to the administrative law judge and the Secretary  
7 shall constitute the administrative record for pur-  
8 poses of review by the court.

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

1 the statutes listed in section 503. The court shall  
 2 vacate the Secretary's order if the court finds that  
 3 the Secretary's order is arbitrary, capricious, an  
 4 abuse of discretion, or otherwise not in accordance  
 5 with law.

6 (e) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-  
 7 MATION.—Any classified information that is included in  
 8 the administrative record that is subject to review pursu-  
 9 ant to subsection (b)(1) or (d)(3) may be reviewed by the  
 10 court only on an ex parte basis and in camera.

## 11 **TITLE VI—EXPORT CONTROL** 12 **AUTHORITY AND REGULATIONS**

### 13 **SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-** 14 **TIONS.**

15 (a) EXPORT CONTROL AUTHORITY.—

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

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

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

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

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

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

24 (B) An Assistant Secretary for Export En-  
25 forcement who shall be appointed by the Presi-



1           dent, by and with the advice and consent of the  
2           Senate, and who shall assist the Secretary and  
3           the Under Secretary in carrying out functions  
4           relating to export enforcement.

5       (c) ISSUANCE OF REGULATIONS.—

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

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

1       shall evaluate the cost and burden to the United  
2       States exporters of the proposed amendments in re-  
3       lation to any enhancement of licensing objectives.  
4       The Secretary shall consult with the appropriate ex-  
5       port control advisory committees appointed under  
6       section 105(a) in amending regulations issued under  
7       this Act.

8   **SEC. 602. CONFIDENTIALITY OF INFORMATION.**

9       (a) EXEMPTIONS FROM DISCLOSURE.—

10           (1) INFORMATION OBTAINED ON OR BEFORE  
11       JUNE 30, 1980.—Except as otherwise provided by the  
12       third sentence of section 502(c)(2) and by section  
13       507(b)(2), information obtained under the Export  
14       Administration Act of 1979, or any predecessor stat-  
15       ute, on or before June 30, 1980, which is deemed  
16       confidential, including Shipper's Export Declara-  
17       tions, or with respect to which a request for con-  
18       fidential treatment is made by the person furnishing  
19       such information, shall not be subject to disclosure  
20       under section 552 of title 5, United States Code,  
21       and such information shall not be published or dis-  
22       closed, unless the Secretary determines that the  
23       withholding thereof is contrary to the national inter-  
24       est.

1           (2) INFORMATION OBTAINED AFTER JUNE 30,  
2           1980.—Except as otherwise provided by the third  
3           sentence of section 502(c)(2) and by section  
4           507(b)(2), information obtained under this Act,  
5           under the Export Administration Act of 1979 after  
6           June 30, 1980, or under the Export Administration  
7           regulations as maintained and amended under the  
8           authority of the International Emergency Economic  
9           Powers Act (50 U.S.C. 1706), may be withheld from  
10          disclosure only to the extent permitted by statute,  
11          except that information submitted, obtained, or con-  
12          sidered in connection with an application for an ex-  
13          port license or other export authorization (or record-  
14          keeping or reporting requirement) under the Export  
15          Administration Act of 1979, under this Act, or  
16          under the Export Administration regulations as  
17          maintained and amended under the authority of the  
18          International Emergency Economic Powers Act (50  
19          U.S.C. 1706), including—

20                 (A) the export license or other export au-  
21                 thorization itself,

22                 (B) classification requests described in sec-  
23                 tion 401(h),

24                 (C) information or evidence obtained in the  
25                 course of any investigation,

1 (D) information obtained or furnished  
2 under title V in connection with any inter-  
3 national agreement, treaty, or other obligation,  
4 and

5 (E) information obtained in making the  
6 determinations set forth in section 211 of this  
7 Act,

8 and information obtained in any investigation of an  
9 alleged violation of section 502 of this Act except for  
10 information required to be disclosed by section  
11 502(c)(2) or 507(b)(2) of this Act, shall be withheld  
12 from public disclosure and shall not be subject to  
13 disclosure under section 552 of title 5, United States  
14 Code, unless the release of such information is deter-  
15 mined by the Secretary to be in the national inter-  
16 est.

17 (b) INFORMATION TO CONGRESS AND GAO.—

18 (1) IN GENERAL.—Nothing in this title shall be  
19 construed as authorizing the withholding of informa-  
20 tion from Congress or from the General Accounting  
21 Office.

22 (2) AVAILABILITY TO THE CONGRESS—

23 (A) IN GENERAL.—Any information ob-  
24 tained at any time under this title or under any  
25 predecessor Act regarding the control of ex-

1 ports, including any report or license applica-  
2 tion required under this title, shall be made  
3 available to any committee or subcommittee of  
4 Congress of appropriate jurisdiction upon the  
5 request of the chairman or ranking minority  
6 member of such committee or subcommittee.

7 (B) PROHIBITION ON FURTHER DISCLO-  
8 SURE.—No committee, subcommittee, or Mem-  
9 ber of Congress shall disclose any information  
10 obtained under this Act or any predecessor Act  
11 regarding the control of exports which is sub-  
12 mitted on a confidential basis to the Congress  
13 under subparagraph (A) unless the full com-  
14 mittee to which the information is made avail-  
15 able determines that the withholding of the in-  
16 formation is contrary to the national interest.

17 (3) AVAILABILITY TO THE GAO.—

18 (A) IN GENERAL.—Notwithstanding sub-  
19 section (a), information described in paragraph  
20 (2) shall, consistent with the protection of intel-  
21 ligence, counterintelligence, and law enforce-  
22 ment sources, methods, and activities, as deter-  
23 mined by the agency that originally obtained  
24 the information, and consistent with the provi-  
25 sions of section 716 of title 31, United States

1 Code, be made available only by the agency,  
2 upon request, to the Comptroller General of the  
3 United States or to any officer or employee of  
4 the General Accounting Office authorized by  
5 the Comptroller General to have access to such  
6 information.

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

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

19 (d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL  
20 INFORMATION.—

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

1 (A) the officer or employee obtains in the  
2 course of his or her employment or official du-  
3 ties or by reason of any examination or inves-  
4 tigation made by, or report or record made to  
5 or filed with, such department or agency, or of-  
6 ficer or employee thereof; and

7 (B) is exempt from disclosure under this  
8 section.

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

15 (3) CIVIL PENALTIES; ADMINISTRATIVE SANC-  
16 TIONS.—The Secretary may impose a civil penalty of  
17 not more than \$5,000 for each violation of para-  
18 graph (1). Any officer or employee who commits  
19 such violation may also be removed from office or  
20 employment for the violation of paragraph (1). Sec-  
21 tions 503 (e), (g), (h), and (i) and 507 (a), (b), and  
22 (c) shall apply to violations described in this para-  
23 graph.

## **TITLE VII—MISCELLANEOUS PROVISIONS**

### **SEC. 701. ANNUAL REPORT.**

(a) ANNUAL REPORT.—Not later than February 1 of each year, the Secretary shall submit to Congress a report on the administration of this Act during the fiscal year ending September 30 of the preceding calendar year. All Federal agencies shall cooperate fully with the Secretary in providing information for each such report.

(b) REPORT ELEMENTS.—Each such report shall include in detail—

(1) a description of the implementation of the export control policies established by this Act, including any delegations of authority by the President and any other changes in the exercise of delegated authority;

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

(3) a description of the petitions filed and the determinations made with respect to foreign availability and mass-market status, the set-asides of foreign availability and mass-market status determinations, and negotiations to eliminate foreign availability;



1           (4) a description of any enhanced control im-  
2 posed on an item pursuant to section 201(d);

3           (5) a description of the regulations issued under  
4 this Act;

5           (6) a description of organizational and proce-  
6 dural changes undertaken in furtherance of this Act;

7           (7) a description of the enforcement activities,  
8 violations, and sanctions imposed under this Act;

9           (8) a statistical summary of all applications and  
10 notifications, including—

11               (A) the number of applications and notifi-  
12 cations pending review at the beginning of the  
13 fiscal year;

14               (B) the number of notifications returned  
15 and subject to full license procedure;

16               (C) the number of notifications with no ac-  
17 tion required;

18               (D) the number of applications that were  
19 approved, denied, or withdrawn, and the num-  
20 ber of applications where final action was  
21 taken; and

22               (E) the number of applications and notifi-  
23 cations pending review at the end of the fiscal  
24 year;

1           (9) summary of export license data by export  
2           identification code and dollar value by country;

3           (10) an identification of processing time by—

4                 (A) overall average, and

5                 (B) top 25 export identification codes;

6           (11) an assessment of the effectiveness of mul-  
7           tilateral regimes, and a description of negotiations  
8           regarding export controls;

9           (12) a description of the significant differences  
10          between the export control requirements of the  
11          United States and those of other multilateral control  
12          regime members, and the specific differences be-  
13          tween United States requirements and those of other  
14          significant supplier countries;

15          (13) an assessment of the costs of export con-  
16          trols;

17          (14) a description of the progress made toward  
18          achieving the goals established for the Department  
19          dealing with export controls under the Government  
20          Performance Results Act; and

21          (15) any other reports required by this Act to  
22          be submitted to the Committee on Banking, Hous-  
23          ing, and Urban Affairs of the Senate and the Com-  
24          mittee on International Relations of the House of  
25          Representatives.

1 (c) FEDERAL REGISTER PUBLICATION REQUIRE-  
 2 MENTS.—Whenever information under this Act is required  
 3 to be published in the Federal Register, such information  
 4 shall, in addition, be posted on the Department of Com-  
 5 merce or other appropriate government website.

6 **SEC. 702. ENHANCEMENT OF CONGRESSIONAL OVERSIGHT**  
 7 **OF NUCLEAR TRANSFERS TO NORTH KOREA.**

8 The North Korea Threat Reduction Act of 1999  
 9 (subtitle B of title VIII of division A of H.R. 3427, as  
 10 enacted into law by section 1000(a)(7) of Public Law 106–  
 11 113, and as contained in appendix G to such Public Law)  
 12 is amended in section 822(a)—

13 (1) by redesignating paragraphs (1) through  
 14 (7) as subparagraphs (A) through (G), respectively,  
 15 and by indenting each such subparagraph 2 ems to  
 16 the right;

17 (2) by striking “until the President” and insert-  
 18 ing “until—

19 “(1) the President”;

20 (3) at the end of subparagraph (G) (as redesign-  
 21 ated in paragraph (1)) by striking the period and  
 22 inserting “; and

23 “(2) a joint resolution of the two Houses of  
 24 Congress is enacted into law—

“(A) the matter after the resolving clause of which is as follows: ‘That the Congress hereby concurs in the determination and report of the President relating to compliance by North Korea with certain international obligations transmitted pursuant to section 822(a)(1) of the North Korea Threat Reduction Act of 1999.’;

“(B) which does not have a preamble; and

“(C) the title of which is as follows: ‘Joint Resolution relating to compliance by North Korea with certain international obligations pursuant to the North Korea Threat Reduction Act of 1999.’ ”; and

(4) by striking “such agreement,” both places it appears and inserting in both places “such agreement (or that are controlled under the Export Trigger List of the Nuclear Suppliers Group),”.

**SEC. 703. PROCEDURES FOR CONSIDERATION OF JOINT  
RESOLUTIONS**

The North Korea Threat Reduction Act of 1999 is amended—

(1) by redesignating section 823 as section 824;

and

1           (2) by inserting after section 822 the following  
2       new section:

3   **“SEC. 823. PROCEDURES FOR CONSIDERATION OF JOINT**  
4                   **RESOLUTION   DESCRIBED   IN   SECTION**  
5                   **822(a)(2).**

6       “(a) RULEMAKING.—The provisions of this section  
7   are enacted by the Congress—

8           “(1) as an exercise of the rulemaking power of  
9       the House of Representatives and the Senate, re-  
10      spectively, and, as such, shall be considered as part  
11      of the rules of either House and shall supersede  
12      other rules only to the extent they are inconsistent  
13      therewith; and

14          “(2) with full recognition of the constitutional  
15      right of either House to change the rules so far as  
16      they relate to the procedures of that House at any  
17      time, in the same manner, and to the same extent  
18      as in the case of any other rule of that House.

19      “(b) INTRODUCTION AND REFERRAL.—

20          “(1) INTRODUCTION.—A joint resolution de-  
21      scribed in section 822(a)(2)—

22              “(A) shall be introduced in the House of  
23              Representatives by the majority leader or mi-  
24              nority leader or by a Member of the House of

1           Representatives designated by the majority  
2           leader or minority leader; and

3           “(B) shall be introduced in the Senate by  
4           the majority leader or minority leader or a  
5           Member of the Senate designated by the major-  
6           ity leader or minority leader.

7           “(2) REFERRAL.—The joint resolution shall be  
8           referred to the Committee on International Relations  
9           of the House of Representatives and the Committee  
10          on Foreign Relations of the Senate.

11          “(c) DISCHARGE OF COMMITTEES.—If a committee  
12          to which a joint resolution described in section 822(a)(2)  
13          is referred has not reported such joint resolution by the  
14          end of 30 days beginning on the date of its introduction,  
15          such committee shall be discharged from further consider-  
16          ation of such joint resolution, and such joint resolution  
17          shall be placed on the appropriate calendar of the House  
18          involved.

19          “(d) FLOOR CONSIDERATION IN THE HOUSE OF  
20          REPRESENTATIVES.—

21                 “(1) IN GENERAL.—On or after the third cal-  
22          endar day (excluding Saturdays, Sundays, or legal  
23          holidays, except when the House of Representatives  
24          is in session on such a day) after the date on which  
25          the committee to which a joint resolution described

1 in section 822(a)(2) is referred has reported, or has  
2 been discharged from further consideration of, such  
3 a joint resolution, it shall be in order for any Mem-  
4 ber of the House to move to proceed to the consider-  
5 ation of the joint resolution. A Member of the House  
6 may make the motion only on the day after the cal-  
7 endar day on which the Member announces to the  
8 House the Member's intention to do so. Such motion  
9 is privileged and is not debatable. The motion is not  
10 subject to amendment or to a motion to postpone.  
11 A motion to reconsider the vote by which the motion  
12 is agreed to shall not be in order. If a motion to pro-  
13 ceed to the consideration of the joint resolution is  
14 agreed to, the House shall immediately proceed to  
15 consideration of the joint resolution which shall re-  
16 main the unfinished business until disposed of.

17 “(2) DEBATE.—Debate on a joint resolution de-  
18 scribed in section 822(a)(2), and on all debatable  
19 motions and appeals in connection therewith, shall  
20 be limited to not more than two hours, which shall  
21 be divided equally between those favoring and those  
22 opposing the joint resolution. An amendment to the  
23 joint resolution is not in order. A motion further to  
24 limit debate is in order and is not debatable. A mo-  
25 tion to table, a motion to postpone, or a motion to

1       recommit the joint resolution is not in order. A mo-  
2       tion to reconsider the vote by which the joint resolu-  
3       tion is agreed to or disagreed to is not in order.

4           “(3) APPEALS.—Appeals from the decisions of  
5       the Chair to the procedure relating to a joint resolu-  
6       tion described in section 822(a)(2) shall be decided  
7       without debate.

8           “(e) FLOOR CONSIDERATION IN THE SENATE.—Any  
9       joint resolution described in section 822(a)(2) shall be  
10      considered in the Senate in accordance with the provisions  
11      of section 601(b)(4) of the International Security Assist-  
12      ance and Arms Export Control Act of 1976.

13          “(f) CONSIDERATION BY THE OTHER HOUSE.—If,  
14      before the passage by one House of a joint resolution of  
15      that House described in section 822(a)(2), that House re-  
16      ceives from the other House a joint resolution described  
17      in section 822(a)(2), then the following procedures shall  
18      apply:

19           “(1) The joint resolution of the other House  
20      shall not be referred to a committee and may not be  
21      considered in the House receiving it except in the  
22      case of final passage as provided in paragraph  
23      (2)(B).



1           “(2) With respect to a joint resolution described  
2           in section 822(a)(2) of the House receiving the joint  
3           resolution—

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

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

9           “(3) Upon disposition of the joint resolution re-  
10          ceived from the other House, it shall no longer be  
11          in order to consider the joint resolution that origi-  
12          nated in the receiving House.

13          “(g) COMPUTATION OF DAYS.—In the computation  
14          of the period of 30 days referred to in subsection (c), there  
15          shall be excluded the days on which either House of Con-  
16          gress is not in session because of an adjournment of more  
17          than 3 days to a day certain or because of an adjournment  
18          of the Congress sine die.”.

19   **SEC. 704. TECHNICAL AND CONFORMING AMENDMENTS.**

20          (a) REPEAL.—The Export Administration Act of  
21          1979 (50 U.S.C. App. 2401 et seq.) is repealed.

22          (b) ENERGY POLICY AND CONSERVATION ACT.—

23                  (1) Section 103 of the Energy Policy and Con-  
24          servation Act (42 U.S.C. 6212) is repealed.

1           (2) Section 251(d) of the Energy Policy and  
2       Conservation Act (42 U.S.C. 6271(d)) is repealed.

3           (c) ALASKA NATURAL GAS TRANSPORTATION ACT.—  
4       Section 12 of the Alaska Natural Gas Transportation Act  
5       of 1976 (15 U.S.C. 719j) is repealed.

6           (d) MINERAL LEASING ACT.—Section 28(u) of the  
7       Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

8           (e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Sec-  
9       tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))  
10      is repealed.

11          (f) DISPOSITION OF CERTAIN NAVAL PETROLEUM  
12       RESERVE PRODUCTS.—Section 7430(e) of title 10, United  
13       States Code, is repealed.

14          (g) OUTER CONTINENTAL SHELF LANDS ACT.—Sec-  
15       tion 28 of the Outer Continental Shelf Lands Act (43  
16       U.S.C. 1354) is repealed.

17          (h) ARMS EXPORT CONTROL ACT.—

18               (1) Section 38 of the Arms Export Control Act  
19       (22 U.S.C. 2778) is amended—

20                       (A) in subsection (e)—

21                               (i) in the first sentence, by striking  
22                       “subsections (c)” and all that follows  
23                       through “12 of such Act,” and inserting  
24                       “subsections (b), (c), (d) and (e) of section  
25                       503 of the Export Administration Act of

1           2001, by subsections (a) and (b) of section  
2           506 of such Act, and by section 602 of  
3           such Act,”; and

4           (ii) in the third sentence, by striking  
5           “11(c) of the Export Administration Act of  
6           1979” and inserting “503(c) of the Export  
7           Administration Act of 2001”; and

8           (B) in subsection (g)(1)(A)(ii), by inserting  
9           “or section 503 of the Export Administration  
10          Act of 2001” after “1979”.

11          (2) Section 39A(c) of the Arms Export Control  
12          Act (22 U.S.C. 2779a(c)) is amended—

13               (A) by striking “subsections (c),” and all  
14               that follows through “12(a) of such Act” and  
15               inserting “subsections (c), (d), and (e) of sec-  
16               tion 503, section 507(c), and subsections (a)  
17               and (b) of section 506, of the Export Adminis-  
18               tration Act of 2001”; and

19               (B) by striking “11(c)” and inserting  
20               “503(c)”.

21          (3) Section 40(k) of the Arms Export Control  
22          Act (22 U.S.C. 2780(k)) is amended—

23               (A) by striking “11(c), 11(e), 11(g), and  
24               12(a) of the Export Administration Act of  
25               1979” and inserting “503(b), 503(c), 503(e),

1           506(a), and 506(b) of the Export Administra-  
2           tion Act of 2001”; and

3                   (B) by striking “11(c)” and inserting  
4           “503(c)”.

5       (i) OTHER PROVISIONS OF LAW.—

6           (1) Section 5(b)(4) of the Trading with the  
7       Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by  
8       striking “section 5 of the Export Administration Act  
9       of 1979, or under section 6 of that Act to the extent  
10      that such controls promote the nonproliferation or  
11      antiterrorism policies of the United States” and in-  
12      serting “titles II and III of the Export Administra-  
13      tion Act of 2001”.

14          (2) Section 502B(a)(2) of the Foreign Assist-  
15      ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-  
16      ed in the second sentence—

17                  (A) by striking “Export Administration  
18                  Act of 1979” the first place it appears and in-  
19                  serting “Export Administration Act of 2001”;  
20                  and

21                  (B) by striking “Act of 1979)” and insert-  
22                  ing “Act of 2001)”.

23          (3) Section 140(a) of the Foreign Relations Au-  
24      thorization Act, Fiscal Years 1988 and 1989 (22  
25      U.S.C. 2656f(a)) is amended—

1 (A) in paragraph (1)(B), by inserting “or  
2 section 310 of the Export Administration Act of  
3 2001” after “Act of 1979”; and

4 (B) in paragraph (2), by inserting “or 310  
5 of the Export Administration Act of 2001”  
6 after “6(j) of the Export Administration Act of  
7 1979”.

8 (4) Section 40(e)(1) of the State Department  
9 Basic Authorities Act of 1956 (22 U.S.C.  
10 2712(e)(1)) is amended by striking “section 6(j)(1)  
11 of the Export Administration Act of 1979” and in-  
12 serting “section 310 of the Export Administration  
13 Act of 2001”.

14 (5) Section 205(d)(4)(B) of the State Depart-  
15 ment Basic Authorities Act of 1956 (22 U.S.C.  
16 305(d)(4)(B)) is amended by striking “section 6(j)  
17 of the Export Administration Act of 1979” and in-  
18 serting “section 310 of the Export Administration  
19 Act of 2001”.

20 (6) Section 110 of the International Security  
21 and Development Cooperation Act of 1980 (22  
22 U.S.C. 2778a) is amended by striking “Act of  
23 1979” and inserting “Act of 2001”.

24 (7) Section 203(b)(3) of the International  
25 Emergency Economic Powers Act (50 U.S.C.

1       1702(b)(3)) is amended by striking “section 5 of the  
2       Export Administration Act of 1979, or under section  
3       6 of such Act to the extent that such controls pro-  
4       mote the nonproliferation or antiterrorism policies of  
5       the United States” and inserting “the Export Ad-  
6       ministration Act of 2001”.

7           (8) Section 1605(a)(7)(A) of title 28, United  
8       States Code, is amended by striking “section 6(j) of  
9       the Export Administration Act of 1979 (50 U.S.C.  
10      App. 2405(j))” and inserting “section 310 of the  
11      Export Administration Act of 2001”.

12          (9) Section 2332d(a) of title 18, United States  
13      Code, is amended by striking “section 6(j) of the  
14      Export Administration Act of 1979 (50 U.S.C. App.  
15      2405)” and inserting “section 310 of the Export Ad-  
16      ministration Act of 2001”.

17          (10) Section 620H(a)(1) of the Foreign Assist-  
18      ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-  
19      ed by striking “section 6(j) of the Export Adminis-  
20      tration Act of 1979 (50 U.S.C. App. 2405(j))” and  
21      inserting “section 310 of the Export Administration  
22      Act of 2001”.

23          (11) Section 1621(a) of the International Fi-  
24      nancial Institutions Act (22 U.S.C. 262p–4q(a)) is  
25      amended by striking “section 6(j) of the Export Ad-

1       ministration Act of 1979 (50 U.S.C. App. 2405(j))”  
2       and inserting “section 310 of the Export Adminis-  
3       tration Act of 2001”.

4               (12) Section 1956(e)(7)(D) of title 18, United  
5       States Code, is amended by striking “section 11 (re-  
6       lating to violations) of the Export Administration of  
7       1979” and inserting “section 503 (relating to pen-  
8       alties) of the Export Administration Act of 2001”.

9               (13) Subsection (f) of section 491 and section  
10       499 of the Forest Resources Conservation and  
11       Shortage Relief Act of 1990 (16 U.S.C. 620c(f) and  
12       620j) are repealed.

13              (14) Section 904(2)(B) of the Trade Sanctions  
14       Reform and Export Enhancement Act of 2000 is  
15       amended by striking “Export Administration Act of  
16       1979” and inserting “Export Administration Act of  
17       2001”.

18              (15) Section 983(i)(2) of title 18, United States  
19       Code (as added by Public Law 106–185), is  
20       amended—

21                      (A) by striking the “or” at the end of sub-  
22                      paragraph (D);

23                      (B) by striking the period at the end of  
24                      subparagraph (E) and inserting “; or”; and

1 (C) by inserting the following new subpara-  
2 graph:

3 “(F) the Export Administration Act of  
4 2001.”.

5 (j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding  
6 any other provision of law, any product that—

7 (1) is standard equipment, certified by the Fed-  
8 eral Aviation Administration, in civil aircraft, and

9 (2) is an integral part of such aircraft, shall be  
10 subject to export control only under this Act. Such  
11 product shall not be subject to controls under sec-  
12 tion 38(b)(2) of the Arms Export Control Act (22  
13 U.S.C. 2778(b)).

14 (k) REPEAL OF CERTAIN EXPORT CONTROLS.—Sub-  
15 title B of title XII of division A of the National Defense  
16 Authorization Act for Fiscal Year 1998 (50 U.S.C. App.  
17 2404 note) is repealed.

18 **SEC. 705. SAVINGS PROVISIONS.**

19 (a) IN GENERAL.—All delegations, rules, regulations,  
20 orders, determinations, licenses, or other forms of admin-  
21 istrative action which have been made, issued, conducted,  
22 or allowed to become effective under—

23 (1) the Export Control Act of 1949, the Export  
24 Administration Act of 1969, the Export Administra-  
25 tion Act of 1979, or the International Emergency



1 Economic Powers Act when invoked to maintain and  
2 continue the Export Administration regulations, or  
3 (2) those provisions of the Arms Export Control  
4 Act which are amended by section 702,  
5 and are in effect on the date of enactment of this Act,  
6 shall continue in effect according to their terms until  
7 modified, superseded, set aside, or revoked under this Act  
8 or the Arms Export Control Act.

9 (b) ADMINISTRATIVE AND JUDICIAL PRO-  
10 CEEDINGS.—

11 (1) EXPORT ADMINISTRATION ACT.—This Act  
12 shall not affect any administrative or judicial pro-  
13 ceedings commenced or any application for a license  
14 made, under the Export Administration Act of 1979  
15 or pursuant to Executive Order 12924, which is  
16 pending at the time this Act takes effect. Any such  
17 proceedings, and any action on such application,  
18 shall continue under the Export Administration Act  
19 of 1979 as if that Act had not been repealed.

20 (2) OTHER PROVISIONS OF LAW.—This Act  
21 shall not affect any administrative or judicial pro-  
22 ceeding commenced or any application for a license  
23 made, under those provisions of the Arms Export  
24 Control Act which are amended by section 702, if  
25 such proceeding or application is pending at the time

1       this Act takes effect. Any such proceeding, and any  
2       action on such application, shall continue under  
3       those provisions as if those provisions had not been  
4       amended by section 702.

5       (c) TREATMENT OF CERTAIN DETERMINATIONS.—

6       Any determination with respect to the government of a  
7       foreign country under section 6(j) of the Export Adminis-  
8       tration Act of 1979, or Executive Order 12924, that is  
9       in effect on the day before the date of enactment of this  
10      Act, shall, for purposes of this title or any other provision  
11      of law, be deemed to be made under section 310 of this  
12      Act until superseded by a determination under such sec-  
13      tion 310.

14      (d) LAWFUL INTELLIGENCE ACTIVITIES.—The pro-  
15      hibitions otherwise applicable under this Act do not apply  
16      with respect to any transaction subject to the reporting  
17      requirements of title V of the National Security Act of  
18      1947. Notwithstanding any other provision of this Act,  
19      nothing shall affect the responsibilities and authorities of  
20      the Director of Central Intelligence under section 103 of  
21      the National Security Act of 1947.

22      (e) IMPLEMENTATION.—The Secretary shall make  
23      any revisions to the Export Administration regulations re-

- 1 quired by this Act no later than 180 days after the date
- 2 of enactment of this Act.

