

112TH CONGRESS
1ST SESSION

H. R. 2004

To authorize the President to control the transfer of goods, services, technology, and software to protect the national security, and to promote the foreign policy, of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2011

Mr. BERMAN introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Oversight and Government Reform, 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

A BILL

To authorize the President to control the transfer of goods, services, technology, and software to protect the national security, and to promote the foreign policy, of the United States, 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 “Technology Security and Antiboycott Act”.

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—TECHNOLOGY SECURITY

- Sec. 101. Short title.
 Sec. 102. Statement of policy.
 Sec. 103. Authority of the President.
 Sec. 104. Additional authorities.
 Sec. 105. Transfer Policy Committee.
 Sec. 106. Control lists.
 Sec. 107. Licensing.
 Sec. 108. Compliance assistance.
 Sec. 109. Penalties.
 Sec. 110. Enforcement.
 Sec. 111. Administrative procedure.
 Sec. 112. Annual report to Congress.
 Sec. 113. Repeal.
 Sec. 114. Effect on other Acts.
 Sec. 115. Transition provisions.

TITLE II—ANTIBOYCOTT PROVISIONS

- Sec. 201. Short title.
 Sec. 202. Policy.
 Sec. 203. Enforcement.

TITLE III—SANCTIONS REGARDING MISSILE PROLIFERATION AND CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION

- Sec. 301. Missile proliferation control violations.
 Sec. 302. Chemical and biological weapons proliferation sanctions.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **CONTROLLED.**—Items are “controlled” if
 4 the transfer of the items is controlled under title I.

5 (2) **CRITICAL INFRASTRUCTURE.**—The term
 6 “critical infrastructure”—

7 (A) means systems and assets, whether
 8 physical or virtual, so vital to the United States
 9 that the incapacity or destruction of such sys-
 10 tems and assets would have a debilitating im-
 11 pact on national security, national economic se-

1 curity, national public health or safety, or any
2 combination of thereof;

3 (B) may be publicly or privately owned;
4 and

5 (C) includes gas and oil production, stor-
6 age, or delivery systems, water supply systems,
7 telecommunications networks, electrical power
8 generation or delivery systems, financing and
9 banking systems, emergency services (including
10 medical, police, fire, and rescue services), trans-
11 portation systems and services (including high-
12 ways, mass transit, airlines, and airports), and
13 food and agriculture delivery systems.

14 (3) DOMESTIC DEFENSE INDUSTRIAL BASE.—

15 The term “domestic defense industrial base” has the
16 meaning given that term in section 702 of the De-
17 fense Production Act of 1950 (50 U.S.C. App.
18 2152).

19 (4) DUAL-USE.—The term “dual-use” means
20 capable of being applied for both civilian uses and
21 uses that threaten the national security and foreign
22 policy of the United States through military action,
23 terrorist attack, or cyber attack.

24 (5) EXPORT ADMINISTRATION REGULATIONS.—

25 The term “Export Administration Regulations”

1 means the Export Administration Regulations as
2 promulgated, maintained, and amended under the
3 authority of the International Emergency Economic
4 Powers Act and codified, as of the date of the enact-
5 ment of this Act, in subchapter C of chapter VII of
6 title 15, Code of Federal Regulations.

7 (6) FOREIGN PERSON.—The term “foreign per-
8 son” means a person other than a United States
9 person.

10 (7) GOOD.—The term “good” means any arti-
11 cle, natural or manmade substance, material, supply,
12 or manufactured product.

13 (8) ITEM.—The term “item” means any goods,
14 technology, software, and services.

15 (9) PERSON.—The term “person” includes the
16 singular and the plural and any individual, partner-
17 ship, corporation, or other form of association, in-
18 cluding any government or agency thereof.

19 (10) TECHNOLOGY.—The term “technology”
20 means the information and knowhow (whether in
21 tangible form, such as models, prototypes, drawings,
22 sketches, diagrams, blueprints, or manuals, or in in-
23 tangible form, such as training or technical services)
24 that can be used to design, produce, manufacture,

1 utilize, or reconstruct goods, including computer
2 software and technical data.

3 (11) TRANSFER.—The term “transfer” in-
4 cludes—

5 (A) an export of an item from the United
6 States or a transshipment of an item through
7 the United States, the provision of services
8 from the United States, and the transmission of
9 technology from the United States;

10 (B) the transfer of an item to a person
11 within the United States with the knowledge or
12 intent that the item will be exported or trans-
13 mitted from the United States to an unauthor-
14 ized recipient under this title; and

15 (C) a reexport of an item of United States
16 origin, whether or not by a person subject to
17 the jurisdiction of the United States.

18 (12) UNITED STATES.—The term “United
19 States”—

20 (A) means the several States, the District
21 of Columbia, and any commonwealth, territory,
22 or possession of the United States; and

23 (B) includes the outer Continental Shelf,
24 as defined in section 2(a) of the Outer Conti-
25 nental Shelf Lands Act (43 U.S.C. 1331(a)).

1 (13) UNITED STATES PERSON.—The term
 2 “United States person” means—

3 (A) any individual who is a United States
 4 citizen or an alien lawfully admitted for perma-
 5 nent residence to the United States;

6 (B) any business or other entity operating
 7 in the United States or organized under the
 8 laws of the United States; and

9 (C) any business or other entity that is or-
 10 ganized under the laws of a foreign country but
 11 is controlled in fact by a business or entity de-
 12 scribed in subparagraph (B), as determined
 13 under regulations of the President.

14 (14) WEAPONS OF MASS DESTRUCTION.—The
 15 term “weapons of mass destruction” has the means
 16 nuclear, radiological, chemical, and biological weap-
 17 ons and delivery systems for such weapons.

18 **TITLE I—TECHNOLOGY** 19 **SECURITY**

20 **SEC. 101. SHORT TITLE.**

21 This title may be cited as the “Technology Security
 22 Act”.

23 **SEC. 102. STATEMENT OF POLICY.**

24 The following is the policy of the United States:

1 (1) The national security and foreign policy of
2 the United States require that the transfer of items
3 be controlled for the following purposes:

4 (A) To prevent the access to such items for
5 use in—

6 (i) the proliferation of weapons of
7 mass destruction or of advanced conven-
8 tional weapons;

9 (ii) the acquisition of destabilizing
10 numbers or types of conventional weapons;

11 (iii) acts of terrorism;

12 (iv) military programs that could pose
13 a threat to the security of the United
14 States or its allies; or

15 (v) activities undertaken specifically to
16 cause significant interference with or dis-
17 ruption of critical infrastructure.

18 (B) To preserve the qualitative military su-
19 periority of the United States.

20 (C) To maintain the ability of the United
21 States to collect information and intelligence in
22 order to protect the national security of the
23 United States.

24 (D) To sustain the domestic defense indus-
25 trial base.

1 (E) To protect the supply in the United
2 States of critical raw materials and manufac-
3 tured items.

4 (F) To carry out the foreign policy of the
5 United States, including the protection of
6 human rights and the promotion of democracy.

7 (G) To carry out obligations and commit-
8 ments under international agreements and ar-
9 rangements, including multilateral export con-
10 trol regimes.

11 (2) The national security of the United States
12 requires that the United States maintain its leader-
13 ship in the science, technology, and manufacturing
14 sectors. Such leadership requires that United States
15 persons are competitive in global markets. The im-
16 pact of the implementation of this title on such lead-
17 ership and competitiveness must be evaluated on an
18 ongoing basis and applied in imposing controls
19 under sections 103 and 104 to avoid negatively af-
20 fecting such leadership.

21 (3) The national security and foreign policy of
22 the United States require that the United States
23 participate in multilateral organizations and agree-
24 ments regarding export controls on items that are
25 consistent with the policy of the United States, and

1 take all the necessary steps to secure the adoption
2 and enforcement, by the governments of other coun-
3 tries, of export controls on items that are consistent
4 with such policy.

5 (4) The authority under this title may be exer-
6 cised only in furtherance of all the objectives set
7 forth in paragraphs (1), (2), and (3).

8 **SEC. 103. AUTHORITY OF THE PRESIDENT.**

9 (a) AUTHORITY.—

10 (1) IN GENERAL.—In order to carry out the
11 policy set forth in paragraphs (1), (2), and (3) of
12 section 102, the President shall control the transfer
13 of items by United States persons, wherever located,
14 and by foreign persons who are subject to the juris-
15 diction of the United States.

16 (2) POWERS.—In carrying out paragraph (1),
17 the President may investigate, regulate, direct and
18 compel, nullify, void, prevent, or prohibit any acqui-
19 sition, holding, withholding, use, transfer, with-
20 drawal, transportation, exportation, reexportation of,
21 or dealing in, or exercising any right, power, or
22 privilege with respect to, or transactions involving,
23 items in which any foreign country or a national
24 thereof has any interest by any person, or with re-

1 spect to any property, subject to the jurisdiction of
2 the United States.

3 (b) REQUIREMENTS.—In exercising authority under
4 this title, the President shall impose controls to achieve
5 the following objectives:

6 (1) To prevent the transfer of items subject to
7 the controls that would pose a risk to the national
8 security or foreign policy of the United States in any
9 manner described under section 102(1)(A).

10 (2) To secure the cooperation of other govern-
11 ments and multilateral organizations to impose con-
12 trol systems that are consistent, to the extent pos-
13 sible, with the controls imposed under subsection
14 (a).

15 (3) To maintain the leadership of the United
16 States in science, engineering, technology research
17 and development, and manufacturing.

18 (4) To sustain the viability of commercial firms,
19 academic institutions, and research establishments,
20 and maintain the skilled workforce of such firms, in-
21 stitutions, and establishments, that are necessary to
22 preserving the leadership of the United States de-
23 scribed in paragraph (3).

1 (5) To sustain the domestic defense industrial
2 base, both with respect to current and future de-
3 fense requirements.

4 (6) To enforce the controls through regulations,
5 requirements for compliance, lists of controlled
6 items, lists of foreign persons who threaten the na-
7 tional security or foreign policy of the United States,
8 and guidance in a form that facilitates compliance
9 by United States persons, in particular academic in-
10 stitutions, scientific and research establishments,
11 and small- and medium-sized businesses.

12 **SEC. 104. ADDITIONAL AUTHORITIES.**

13 (a) IN GENERAL.—In carrying out this title, the
14 President shall—

15 (1) establish and maintain lists of items that
16 are subject to controls under this title by reason of
17 the dual-use technology, capability, performance, or
18 characteristics of the items and that are controlled
19 under section 103(a);

20 (2) establish and maintain lists of foreign per-
21 sons and end-uses that are determined to be a threat
22 to the national security and foreign policy of the
23 United States pursuant to the policy set forth in sec-
24 tion 102(1)(A) and to whom transfers of items are
25 controlled;

1 (3) prohibit unauthorized transfers of controlled
2 items;

3 (4) prohibit transfers of any controlled items to
4 any foreign person or end-use listed under para-
5 graph (2);

6 (5) require licenses for transfers of controlled
7 items, including imposing conditions or restrictions
8 on United States persons and foreign persons with
9 respect to such licenses;

10 (6) require measures for compliance;

11 (7) require and obtain such information from
12 United States persons and foreign persons as is nec-
13 essary to carry out this title;

14 (8) require advance notice before an item is
15 transferred, as an alternative to requiring a license;

16 (9) require, to the extent feasible, identification
17 of items subject to controls under this title in order
18 to facilitate the enforcement of such controls;

19 (10) inspect, search, detain, or seize outgoing
20 items, in any form, that are subject to controls
21 under this title, or conveyances on which it is be-
22 lieved that there are items that have been, are being,
23 or are about to be exported in violation of this title;

24 (11) monitor shipments, or other means of
25 transfer;

1 (12) keep the public fully apprised of changes
2 in policy, regulations, and procedures established
3 under this title;

4 (13) appoint technical advisory committees in
5 accordance with the Federal Advisory Committee
6 Act; and

7 (14) undertake any other action as is necessary
8 to carry out this title and is not otherwise prohibited
9 by law.

10 (b) RELATIONSHIP TO IEEPA.—The authority under
11 this title may not be used to regulate or prohibit under
12 this title the transfer of any item that may not be regu-
13 lated or prohibited under paragraph (1), (2), or (4) of sec-
14 tion 203(b) of the International Emergency Economic
15 Powers Act (50 U.S.C. 1702(b) (1), (2), and (4)).

16 (c) COUNTRIES SUPPORTING INTERNATIONAL TER-
17 RORISM.—

18 (1) LICENSE REQUIREMENT.—A license shall be
19 required for the transfer of items to a country if the
20 President has made the following determinations:

21 (A) The government of such country has
22 repeatedly provided support for acts of inter-
23 national terrorism.

24 (B) The transfer of such items could make
25 a significant contribution to the military poten-

1 tial of such country, including its military logis-
2 tics capability, or could enhance the ability of
3 such country to support acts of international
4 terrorism.

5 (2) NOTIFICATION TO CONGRESS.—The Presi-
6 dent shall notify the Committee on Foreign Affairs
7 of the House of Representatives and the Committee
8 on Banking, Housing, and Urban Affairs and the
9 Committee on Foreign Relations of the Senate at
10 least 30 days before issuing any license required by
11 paragraph (1).

12 (3) PUBLICATION IN FEDERAL REGISTER.—
13 Each determination of the President under para-
14 graph (1)(A) shall be published in the Federal Reg-
15 ister.

16 (4) RESCISSION OF DETERMINATION.—A deter-
17 mination of the President under paragraph (1)(A)
18 may not be rescinded unless the President submits
19 to the Speaker of the House of Representatives and
20 the chairman of the Committee on Banking, Hous-
21 ing, and Urban Affairs and the chairman of the
22 Committee on Foreign Relations of the Senate—

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

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

4 (ii) that government is not supporting
5 acts of international terrorism; and

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

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

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

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

20 (5) USE OF TERRITORY AS SANCTUARY FOR
21 TERRORISTS.—

22 (A) IN GENERAL.—As used in paragraph
23 (1), the term “repeatedly provided support for
24 acts of international terrorism” shall include
25 the recurring use of any part of the territory of

1 the country as a sanctuary for terrorists or ter-
2 rorist organizations.

3 (B) DEFINITIONS.—In this paragraph—

4 (i) the term “territory of a country”
5 means the land, waters, and airspace of
6 the country; and

7 (ii) the term “sanctuary” means an
8 area in the territory of a country—

9 (I) that is used by a terrorist or
10 terrorist organization—

11 (aa) to carry out terrorist
12 activities, including training, fi-
13 nancing, and recruitment; or

14 (bb) as a transit point; and

15 (II) the government of which ex-
16 pressly consents to, or with knowl-
17 edge, allows, tolerates, or disregards
18 such use of its territory.

19 (6) CONTENTS OF NOTIFICATION OF LI-
20 CENSE.—The President shall include in the notifica-
21 tion required by paragraph (2)—

22 (A) a detailed description of the items to
23 be offered, including a brief description of the
24 capabilities of any article for which a license to
25 transfer the items is sought;

1 (B) the reasons why the foreign country or
2 international organization to which the transfer
3 is proposed to be made needs the items that are
4 the subject of such transfer, and a description
5 of the manner in which such country or organi-
6 zation intends to use such items;

7 (C) the reasons why the proposed transfer
8 is in the national interest of the United States;

9 (D) an analysis of the impact of the pro-
10 posed transfer on the military capabilities of the
11 foreign country or international organization to
12 which such transfer would be made;

13 (E) an analysis of the manner in which the
14 proposed transfer would affect the relative mili-
15 tary strengths of countries in the region to
16 which the items that are the subject of such
17 transfer would be delivered and whether other
18 countries in the region have comparable kinds
19 and amounts of items; and

20 (F) an analysis of the impact of the pro-
21 posed transfer on the relations of the United
22 States with the countries in the region to which
23 the items that are the subject of such transfer
24 would be delivered.

1 **SEC. 105. TRANSFER POLICY COMMITTEE.**

2 (a) ESTABLISHMENT.—The President may establish
3 a Transfer Policy Committee (in this section referred to
4 as the “Committee”), composed of senior officials of Fed-
5 eral departments, agencies, and offices to which the Presi-
6 dent delegates authority under this title, as the President
7 considers appropriate, to carry out the purposes set forth
8 in subsection (b).

9 (b) PURPOSES.—

10 (1) IN GENERAL.—The purposes of the Com-
11 mittee are—

12 (A) to advise the President with respect
13 to—

14 (i) identifying specific threats to the
15 national security and foreign policy that
16 the authority of this title may be used to
17 address; and

18 (ii) exercising the authority under this
19 title to implement policies, regulations,
20 procedures, and actions that are necessary
21 to effectively counteract those threats;

22 (B) pursuant to a delegation of authority
23 by the President, to review and approve—

24 (i) criteria for including items on, and
25 removing such an item from, a list of con-

1 trolled items, and information established
2 under this title;

3 (ii) an interagency procedure for com-
4 piling and amending any list described in
5 clause (i);

6 (iii) criteria for including a person on
7 a list of persons to whom transfers of
8 items are prohibited or restricted under
9 this title;

10 (iv) standards for compliance by per-
11 sons subject to this title; and

12 (v) policies and procedures for moni-
13 toring transfers of items controlled under
14 this title;

15 (C) to receive information and advice from
16 any United States Government official regard-
17 ing any matter with respect to which the Com-
18 mittee has responsibilities; and

19 (D) to obtain an independent evaluation on
20 a periodic basis of the effectiveness of the im-
21 plementation of this title in carrying out the
22 policy set forth in section 102.

23 (2) AUTHORITY TO SEEK INFORMATION.—The
24 Committee may, in carrying out its functions, seek

1 information and advice from experts who are not of-
2 ficers or employees of the Federal Government.

3 (3) TRANSMITTAL AND IMPLEMENTATION OF
4 EVALUATIONS.—The results of the independent eval-
5 uations conducted pursuant to paragraph (1)(D)
6 shall be transmitted to the President and the Con-
7 gress, in classified form if necessary. Subject to the
8 delegation of authority by the President, the Com-
9 mittee shall determine, direct, and ensure that im-
10 provements recommended in the evaluations are im-
11 plemented.

12 **SEC. 106. CONTROL LISTS.**

13 The President shall, through the Technology Trans-
14 fer Policy Committee, to the maximum extent possible, en-
15 sure that—

16 (1) a process is established for regular review of
17 each list established under section 104(a)(1) and
18 that such lists are updated periodically to ensure
19 that new items are adequately controlled, and that
20 the level of control of items on the lists are adjusted
21 as conditions change;

22 (2) information and expertise is obtained from
23 persons from relevant Federal departments, agen-
24 cies, and offices and persons outside the Government
25 who have technical expertise, with respect to the

1 characteristics of the items considered for each list
2 established under section 104(a)(1) and the effect of
3 controlling the items on addressing the policy set
4 forth in section 102;

5 (3) the control lists established under section
6 104(a)(1) identify each entry that has been included
7 by virtue of the participation of the United States in
8 a multilateral regime, organization, or group the
9 purpose of which is consistent with and supports the
10 policy of the United States under this title relating
11 to the control of transfers of items; and

12 (4) each such list is published in a form that
13 facilitates compliance with it, in particular by small
14 and medium-sized businesses and academic institu-
15 tions.

16 **SEC. 107. LICENSING.**

17 The President shall, through the Technology Trans-
18 fer Policy Committee, establish a procedure for licensing
19 the transfer of items controlled under this title in order
20 to carry out the policy set forth in section 102 and the
21 requirements set forth in section 103(b). The procedure
22 shall, to the maximum extent possible, ensure that—

23 (1) license applications are considered and deci-
24 sions made with the participation of departments,

1 agencies, and offices that have delegated functions
2 under this title; and

3 (2) licensing decisions are made in an expedi-
4 tious manner, with transparency to applicants on the
5 status of license processing and the reason for deny-
6 ing any license.

7 **SEC. 108. COMPLIANCE ASSISTANCE.**

8 (a) SYSTEM FOR SEEKING ASSISTANCE.—The Presi-
9 dent may establish a system to provide United States per-
10 sons with assistance in complying with this title, which
11 may include a mechanism for providing information, in
12 classified form as appropriate, on foreign persons who are
13 potential customers, suppliers, or business partners with
14 respect to items controlled under this title, in order to fur-
15 ther ensure the prevention of the transfer of items that
16 may pose a threat to the national security or foreign policy
17 of the United States.

18 (b) SECURITY CLEARANCES.—In order to carry out
19 subsection (a), the President may issue appropriate secu-
20 rity clearances to persons described in paragraph (1) who
21 are responsible for complying with this title.

22 **SEC. 109. PENALTIES.**

23 (a) UNLAWFUL ACTS.—It shall be unlawful for a per-
24 son to violate, attempt to violate, conspire to violate, or

1 cause a violation of this title or of any regulation, order,
2 or license issued under this title.

3 (b) CRIMINAL PENALTY.—A person who commits, at-
4 tempts to commit, or conspires to commit, or aids or abets
5 in the commission of, an unlawful act described in sub-
6 section (a), with knowledge or intent that the items that
7 are the subject of the violation would be transferred to
8 a person who is not authorized under this title to receive
9 the items, or would be applied for a use described in sec-
10 tion 102(1)(A), shall, upon conviction, be fined not more
11 than \$1,000,000, or, if a natural person, be imprisoned
12 for not more than 20 years, or both.

13 (c) CIVIL PENALTIES.—

14 (1) AUTHORITY.—The President may impose
15 the following civil penalties on a person for each vio-
16 lation by that person of this title or any regulation,
17 order, or license issued under this title, for each vio-
18 lation:

19 (A) A fine of not more than \$250,000 or
20 an amount that is twice the amount of the
21 transaction that is the basis of the violation
22 with respect to which the penalty is imposed,
23 whichever is greater.

24 (B) Revocation of a license issued under
25 this title to the person.

1 (C) A prohibition on the person's ability to
2 transfer outside the United States any items,
3 whether or not subject to controls under this
4 title.

5 (2) PROCEDURES.—Any civil penalty under this
6 subsection may be imposed only after notice and op-
7 portunity for an agency hearing on the record in ac-
8 cordance with sections 554 through 557 of title 5,
9 United States Code, and shall be subject to judicial
10 review in accordance with chapter 7 of such title.

11 (3) STANDARDS FOR LEVELS OF CIVIL PEN-
12 ALTY.—The President may by regulation provide
13 standards for establishing levels of civil penalty
14 under this subsection based upon the seriousness of
15 the violation, the culpability of the violator, and the
16 violator's record of cooperation with the Government
17 in disclosing the violation.

18 (d) CRIMINAL FORFEITURE OF PROPERTY INTEREST
19 AND PROCEEDS.—

20 (1) FORFEITURE.—Any person who is convicted
21 under subsection (b) of a violation of a control im-
22 posed under section 103 (or any regulation, order,
23 or license issued with respect to such control) shall,
24 in addition to any other penalty, forfeit to the
25 United States—

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

6 (B) any of that person's interest in,
7 security of, claim against, or property or
8 contractual rights of any kind in tangible
9 property that was used in the violation;
10 and

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

15 (2) PROCEDURES.—The procedures in any
16 forfeiture under this subsection, and the duties
17 and authority of the courts of the United States
18 and the Attorney General with respect to any
19 forfeiture action under this subsection or with
20 respect to any property that may be subject to
21 forfeiture under this subsection, shall be gov-
22 erned by the provisions of section 1963 of title
23 18, United States Code.

24 (e) PRIOR CONVICTIONS.—

25 (1) LICENSE BAR.—

1 (A) IN GENERAL.—The President may—

2 (i) deny the eligibility of any person
3 convicted of a criminal violation described
4 in subparagraph (B) to transfer outside
5 the United States any item, whether or not
6 subject to controls under this title, for a
7 period of up to 10 years beginning on the
8 date of the conviction; and

9 (ii) revoke any license to transfer
10 items that was issued under this title and
11 in which such person has an interest at the
12 time of the conviction.

13 (B) VIOLATIONS.—The violations referred
14 to in subparagraph (A) are any criminal viola-
15 tion of—

16 (i) this title (or any regulation, li-
17 cense, or order issued under this title);

18 (ii) any regulation, license, or order
19 issued under the International Emergency
20 Economic Powers Act;

21 (iii) section 793, 794, or 798 of title
22 18, United States Code;

23 (iv) section 4(b) of the Internal Secu-
24 rity Act of 1950 (50 U.S.C. 783(b)); or

1 (v) section 38 of the Arms Export
2 Control Act (22 U.S.C. 2778).

3 (2) APPLICATION TO OTHER PARTIES.—The
4 President may exercise the authority under para-
5 graph (1) with respect to any person related,
6 through affiliation, ownership, control, or position of
7 responsibility, to any person convicted of any viola-
8 tion of law set forth in paragraph (1), upon a show-
9 ing of such relationship with the convicted party,
10 and subject to the procedures set forth in subsection
11 (c)(2).

12 (f) OTHER AUTHORITIES.—Nothing in subsection
13 (c), (d), or (e) limits—

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

18 (2) the authority to compromise and settle ad-
19 ministrative proceedings brought with respect to vio-
20 lations of this title, or any regulation, order, or li-
21 cense issued under this title; or

22 (3) the authority to compromise, remit or miti-
23 gate seizures and forfeitures pursuant to section
24 1(b) of title VI of the Act of June 15, 1917 (22
25 U.S.C. 401(b)).

1 **SEC. 110. ENFORCEMENT.**

2 (a) AUTHORITIES.—In order to enforce this title, the
3 President may—

4 (1) issue regulations, orders, and guidelines;

5 (2) require, inspect, and obtain books, records,
6 and any other information from any person subject
7 to the provisions of this title;

8 (3) administer oaths or affirmations and by
9 subpoena require any person to appear and testify or
10 to appear and produce books, records, and other
11 writings, or both;

12 (4) conduct investigations (including under-
13 cover) in the United States and in other countries,
14 including intercepting any wire, oral, and electronic
15 communications, conducting electronic surveillance,
16 using pen registers and trap and trace devices, and
17 carrying out acquisitions, to the extent authorized
18 under chapters 119, 121, and 206 of title 18,
19 United States Code, and other applicable laws of the
20 United States;

21 (5) inspect, search, detain, or seize items, in
22 any form, that are subject to controls under this
23 title, or conveyances on which it is believed that
24 there are items that have been, are being, or are
25 about to be exported in violation of this title;

1 (6) conduct prelicense inspections and post-
2 shipment verifications; and

3 (7) execute warrants and make arrests.

4 (b) ENFORCEMENT OF SUBPOENAS.—In the case of
5 contumacy by, or refusal to obey a subpoena issued to,
6 any person under subsection (a)(3), a district court of the
7 United States, after notice to such person and a hearing,
8 shall have jurisdiction to issue an order requiring such
9 person to appear and give testimony or to appear and
10 produce books, records, and other writings, or both, that
11 are the subject of the subpoena. Any failure to obey such
12 order of the court may be punished by such court as a
13 contempt thereof.

14 (c) BEST PRACTICES GUIDELINES.—

15 (1) IN GENERAL.—The President, in consulta-
16 tion with the Interagency Transfer Policy Committee
17 established under section 105, should publish and
18 update “best practices” guidelines to assist persons
19 in developing and implementing, on a voluntary
20 basis, effective export control programs in compli-
21 ance with the regulations issued under this title.

22 (2) EXPORT COMPLIANCE PROGRAM.—The im-
23 plementation by a person of an effective export com-
24 pliance program and a high quality overall export
25 compliance effort by a person should ordinarily be

1 given weight as mitigating factors in a civil penalty
2 action against the person under this title.

3 (d) REFERENCE TO ENFORCEMENT.—For purposes
4 of this section, a reference to the enforcement of, or a vio-
5 lation of, this title includes a reference to the enforcement
6 or a violation of any order or license issued pursuant to
7 this title.

8 (e) IMMUNITY.—A person shall not be excused from
9 complying with any requirements under this section be-
10 cause of the person’s privilege against self-incrimination,
11 but the immunity provisions of section 6002 of title 18,
12 United States Code, shall apply with respect to any indi-
13 vidual who specifically claims such privilege.

14 (f) CONFIDENTIALITY OF INFORMATION.—

15 (1) EXEMPTIONS FROM DISCLOSURE.—

16 (A) IN GENERAL.—Information obtained
17 under this title may be withheld from disclosure
18 only to the extent permitted by statute, except
19 that information described in subparagraph (B)
20 shall be withheld from public disclosure and
21 shall not be subject to disclosure under section
22 552(b)(3) of title 5, United States Code, unless
23 the release of such information is determined by
24 the President to be in the national interest.

1 (B) INFORMATION DESCRIBED.—Informa-
2 tion described in this subparagraph is informa-
3 tion submitted or obtained in connection with
4 an application for a license to transfer items,
5 other transfer authorization (or recordkeeping
6 or reporting requirement), enforcement activity,
7 or other operations under this title, including—

8 (i) the license application, license or
9 other transfer authorization itself,

10 (ii) classification requests,

11 (iii) information or evidence obtained
12 in the course of any investigation, and

13 (iv) information obtained or furnished
14 in connection with any international agree-
15 ment, treaty, or other obligation.

16 (2) INFORMATION TO THE CONGRESS AND
17 GAO.—

18 (A) IN GENERAL.—Nothing in this section
19 shall be construed as authorizing the with-
20 holding of information from the Congress or
21 from the Government Accountability Office.

22 (B) AVAILABILITY TO THE CONGRESS.—

23 (i) IN GENERAL.—Any information
24 obtained at any time under any provision
25 of the Export Administration Act of 1979

(including such Act as continued in effect pursuant to the International Emergency Economic Powers Act), under previous Acts regarding the control of exports, under the Export Administration Regulations, or under this title, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—No such committee or subcommittee, or member thereof, may disclose any information obtained under the Export Administration Act of 1979 (including such Act as continued in effect pursuant to the International Emergency Economic Powers Act), under previous Acts regarding the control of exports, under the Export Administration Regulations, or under this title, that is submitted on a confidential basis unless the full com-

mittee determines that the withholding of that information is contrary to the national interest.

(C) AVAILABILITY TO GAO.—

(i) IN GENERAL.—Information described in clause (i) of subparagraph (B) shall be subject to the limitations contained in section 716 of title 31, United States Code.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—An officer or employee of the Government Accountability Office may not disclose, except to the Congress in accordance with this paragraph, any such information that is submitted on a confidential basis or from which any individual can be identified.

(3) INFORMATION SHARING.—

(A) IN GENERAL.—Any department, agency, or office that obtains information that is relevant to the enforcement of this title, including information pertaining to any investigation, shall furnish such information to each department, agency, or office with enforcement responsibilities under this section to the extent

1 consistent with the protection of intelligence,
2 counterintelligence, and law enforcement
3 sources, methods, and activities.

4 (B) EXCEPTIONS.—The provisions of this
5 paragraph shall not apply to information sub-
6 ject to the restrictions set forth in section 9 of
7 title 13, United States Code, and return infor-
8 mation, as defined in subsection (b) of section
9 6103 of the Internal Revenue Code of 1986 (26
10 U.S.C. 6103(b)), may be disclosed only as au-
11 thorized by that section.

12 (C) EXCHANGE OF INFORMATION.—The
13 President shall ensure that the heads of depart-
14 ments, agencies, and offices with enforcement
15 authorities under this title, consistent with pro-
16 tection of law enforcement and its sources and
17 methods—

18 (i) exchange any licensing and en-
19 forcement information with one another
20 that is necessary to facilitate enforcement
21 efforts under this section; and

22 (ii) consult on a continuing basis with
23 one another and with the head of other de-
24 partments, agencies, and offices that ob-
25 tain information subject to this paragraph,

1 in order to facilitate the exchange of such
2 information.

3 (D) INFORMATION SHARING WITH FED-
4 ERAL AGENCIES.—Licensing or enforcement in-
5 formation obtained under this title may be
6 shared with heads of departments, agencies,
7 and offices that do not have enforcement au-
8 thorities under this title on a case-by-case basis
9 at the discretion of the President. Such infor-
10 mation may be shared only when the President
11 makes a determination that the sharing of this
12 information is in the national interest.

13 (g) REPORTING REQUIREMENTS.—In the administra-
14 tion of this section, reporting requirements shall be so de-
15 signed as to reduce the cost of reporting, recordkeeping,
16 and export documentation required under this section, to
17 the extent feasible consistent with effective enforcement
18 and compilation of useful trade statistics. Reporting, rec-
19 ordkeeping, and export documentation requirements shall
20 be periodically reviewed and revised in the light of develop-
21 ments in the field of information technology.

22 (h) CIVIL FORFEITURE.—

23 (1) IN GENERAL.—Any tangible items seized
24 under subsection (a) by designated officers or em-
25 ployees shall be subject to forfeiture to the United

1 States in accordance with applicable law, except that
2 property seized shall be returned if the property
3 owner is not found guilty of a civil or criminal viola-
4 tion under section 109.

5 (2) PROCEDURES.—Any seizure or forfeiture
6 under this subsection shall be carried in accordance
7 with the procedures set forth in section 981 of title
8 18, United States Code.

9 **SEC. 111. ADMINISTRATIVE PROCEDURE.**

10 The functions exercised under this title shall be sub-
11 ject to sections 551, 553 through 559, and 701 through
12 706 of title 5, United States Code.

13 **SEC. 112. ANNUAL REPORT TO CONGRESS.**

14 (a) IN GENERAL.—The President shall submit to
15 Congress, by December 31 of each year, a report on the
16 implementation of this title during the preceding fiscal
17 year. The report shall also include an analysis of—

18 (1) the effect of controls imposed under this
19 title on transfers of items in addressing threats to
20 the national security or foreign policy of the United
21 States;

22 (2) the impact of such controls on the scientific
23 and technological leadership of the United States;
24 and

1 (3) the consistency with such controls of export
2 controls imposed by other countries.

3 (b) SUBMISSION IN CLASSIFIED.—The report under
4 subsection (a) may be submitted in classified form, in
5 whole or in part, if necessary.

6 **SEC. 113. REPEAL.**

7 The Export Administration Act of 1979 (50 U.S.C.
8 App. 2401 et seq.) is repealed.

9 **SEC. 114. EFFECT ON OTHER ACTS.**

10 (a) IN GENERAL.—Except as otherwise provided in
11 this title, nothing contained in this title shall be construed
12 to modify, repeal, supersede, or otherwise affect the provi-
13 sions of any other laws authorizing control over exports
14 of any commodity.

15 (b) COORDINATION OF CONTROLS.—The authority
16 granted to the President under this title shall be exercised
17 in such manner as to achieve effective coordination with
18 the authority exercised under section 38 of the Arms Ex-
19 port Control Act (22 U.S.C. 2778).

20 (c) CIVIL AIRCRAFT EQUIPMENT.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, any product described in paragraph

23 (2) shall be subject to export controls exclusively
24 under this title. Any such product shall not be sub-

1 ject to controls under section 38(b)(2) of the Arms
2 Export Control Act.

3 (2) PRODUCTS DESCRIBED.—A product de-
4 scribed in this paragraph is a product that—

5 (A) is standard equipment certified by the
6 Federal Aviation Administration, in civil air-
7 craft and is an integral part of such aircraft;
8 and

9 (B) is to be transferred to a country other
10 than a country to which transfers of items are
11 controlled under this title.

12 (d) NONPROLIFERATION CONTROLS.—Nothing in
13 this title shall be construed to supersede the procedures
14 published by the President pursuant to section 309(c) of
15 the Nuclear Non-Proliferation Act of 1978.

16 **SEC. 115. TRANSITION PROVISIONS.**

17 (a) IN GENERAL.—All delegations, rules, regulations,
18 orders, determinations, licenses, or other forms of admin-
19 istrative action which have been made, issued, conducted,
20 or allowed to become effective under the Export Adminis-
21 tration Act of 1979 and are in effect at the time this title
22 takes effect, shall continue in effect according to their
23 terms until modified, superseded, set aside, or revoked
24 under this title.

1 (b) ADMINISTRATIVE AND JUDICIAL PRO-
2 CEEDINGS.—This title shall not affect any administrative
3 or judicial proceedings commenced or any application for
4 a license made, under the Export Administration Act of
5 1979, that is pending at the time this title takes effect.
6 Any such proceedings, and any action on such application,
7 shall continue under the Export Administration Act of
8 1979 as if that Act had not been repealed.

9 (c) CERTAIN DETERMINATIONS AND REFERENCES.—

10 (1) STATE SPONSORS OF TERRORISM.—Any de-
11 termination that was made under section 6(j) of the
12 Export Administration Act of 1979, and is in effect
13 on the day before the effective date of this title, shall
14 continue in effect as if the determination had been
15 made under section 104(c) of this Act.

16 (2) REFERENCE.—Any reference in any other
17 provision of law to a country the government of
18 which the Secretary of State has determined, for
19 purposes of section 6(j) of the Export Administra-
20 tion Act of 1979, is a government that has repeat-
21 edly provided support for acts of international ter-
22 rorism shall be deemed to refer to a country the gov-
23 ernment of which the President has determined, for
24 purposes of section 104(c) of this Act, is a govern-

ment that has repeatedly provided support for acts of international terrorism.

TITLE II—ANTIBOYCOTT PROVISIONS

SEC. 201. SHORT TITLE.

This title may be cited as the “Antiboycott Act”.

SEC. 202. POLICY.

(a) IN GENERAL.—It is the policy of the United States—

(1) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(2) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

1 (3) to foster international cooperation and the
2 development of international rules and institutions
3 to assure reasonable access to world supplies.

4 (b) PROHIBITIONS AND EXCEPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) FOREIGN POLICY CONTROLS.—In addition to the
13 regulations issued pursuant to subsection (b), regulations
14 issued under title I to carry out the policy set forth in
15 section 102(3) shall implement the policies set forth in
16 section.

17 (d) REPORTS.—Regulations issued under this section
18 shall require that any United States person receiving a
19 request to furnish information, enter into or implement
20 an agreement, or take any other action referred to in sub-
21 section (a) shall report that request to the Secretary of
22 Commerce, together with any other information con-
23 cerning the request that the Secretary determines appro-
24 priate. The person shall also submit to the Secretary of
25 Commerce a statement regarding whether the person in-

1 tends to comply, and whether the person has complied,
2 with the request. Any report filed pursuant to this sub-
3 section shall be made available promptly for public inspec-
4 tion and copying, except that information regarding the
5 quantity, description, and value of any item to which such
6 report relates may be kept confidential if the Secretary
7 of Commerce determines that disclosure of that informa-
8 tion would place the United States person involved at a
9 competitive disadvantage. The Secretary of Commerce
10 shall periodically transmit summaries of the information
11 contained in the reports to the Secretary of State for such
12 action as the Secretary of State, in consultation with the
13 Secretary of Commerce, considers appropriate to carry out
14 the purposes set forth in subsection (a).

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

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

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

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

3 **SEC. 203. ENFORCEMENT.**

4 (a) CIVIL PENALTIES.—The President may impose
5 the following civil penalties on a person who violates sec-
6 tion 202 or any regulation issued under this section:

7 (1) A fine of not more than \$250,000 or an
8 amount that is twice the amount of the transaction
9 that is the basis of the violation with respect to
10 which the penalty is imposed.

11 (2) Revocation of a license issued under title I
12 to the person.

13 (3) A prohibition of the person's right and abil-
14 ity to export or otherwise transfer outside the
15 United States any good, service, or information,
16 whether or not subject to controls under this Act.

17 (b) PROCEDURES.—Any civil penalty under this sec-
18 tion may be imposed only after notice and opportunity for
19 an agency hearing on the record in accordance with sec-
20 tions 554 through 557 of title 5, United States Code, and
21 shall be subject to judicial review in accordance with chap-
22 ter 7 of such title.

23 (c) STANDARDS FOR LEVELS OF CIVIL PENALTY.—
24 The President may by regulation provide standards for es-
25 tablishing levels of civil penalty under this section based

1 upon the seriousness of the violation, the culpability of the
2 violator, and the violator's record of cooperation with the
3 Government in disclosing the violation.

4 **TITLE III—SANCTIONS REGARD-**
5 **ING MISSILE PROLIFERATION**
6 **AND CHEMICAL AND BIO-**
7 **LOGICAL WEAPONS PRO-**
8 **LIFERATION**

9 **SEC. 301. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

10 (a) VIOLATIONS BY UNITED STATES PERSONS.—

11 (1) SANCTIONS.—

12 (A) SANCTIONABLE ACTIVITY.—The Presi-
13 dent shall impose the applicable sanctions de-
14 scribed in subparagraph (B) if the President
15 determines that a United States person know-
16 ingly—

17 (i) exports, transfers, or otherwise en-
18 gages in the trade of any item on the
19 MTCR Annex, in violation of the provi-
20 sions of section 38 (22 U.S.C. 2778) or
21 chapter 7 of the Arms Export Control Act,
22 title I of this Act, or any regulations or or-
23 ders issued under any such provisions,

24 (ii) conspires to or attempts to engage
25 in such export, transfer, or trade, or

1 (iii) facilitates such export, transfer,
2 or trade by any other person.

3 (B) SANCTIONS.—The sanctions that apply
4 to a United States person under subparagraph
5 (A) are the following:

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

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

22 (2) DISCRETIONARY SANCTIONS.—In the case
23 of any determination referred to in paragraph (1),
24 the President may pursue any other appropriate
25 penalties under section 109 of this Act.

1 (3) WAIVER.—The President may waive the im-
2 position of sanctions under paragraph (1) on a per-
3 son with respect to a product or service if the Presi-
4 dent certifies to the Congress that—

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

7 (B) such person is a sole source supplier of
8 the product or service, the product or service is
9 not available from any alternative reliable sup-
10 plier, and the need for the product or service
11 cannot be met in a timely manner by improved
12 manufacturing processes or technological devel-
13 opments.

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

16 (1) SANCTIONS.—

17 (A) SANCTIONABLE ACTIVITY.—Subject to
18 paragraphs (3) through (7), the President shall
19 impose the applicable sanctions under subpara-
20 graph (B) on a foreign person if the Presi-
21 dent—

22 (i) determines that a foreign person
23 knowingly—

24 (I) exports, transfers, or other-
25 wise engages in the trade of any

1 MTCR equipment or technology that
2 contributes to the design, develop-
3 ment, or production of missiles in a
4 country that is not an MTCR adher-
5 ent and would be, if it were United
6 States-origin equipment or technology,
7 subject to the jurisdiction of the
8 United States under title I;

9 (II) conspires to or attempts to
10 engage in such export, transfer, or
11 trade; or

12 (III) facilitates such export,
13 transfer, or trade by any other person;
14 or

15 (ii) has made a determination with re-
16 spect to the foreign person under section
17 73(a) of the Arms Export Control Act.

18 (B) SANCTIONS.—The sanctions that apply
19 to a foreign person under subparagraph (A) are
20 the following:

21 (i) If the item involved in the export,
22 transfer, or trade is within category II of
23 the MTCR Annex, then the President shall
24 deny, for a period of 2 years, licenses for
25 the transfer to such foreign person of mis-

1 sile equipment or technology the transfer
2 of which is controlled under title I.

3 (ii) If the item involved in the export,
4 transfer, or trade is within category I of
5 the MTCR Annex, then the President shall
6 deny, for a period of not less than 2 years,
7 licenses for the transfer to such foreign
8 person of items the transfer of which is
9 controlled under title I.

10 (2) INAPPLICABILITY WITH RESPECT TO MTCR
11 ADHERENTS.—Paragraph (1) does not apply with
12 respect to—

13 (A) any export, transfer, or trading activ-
14 ity that is authorized by the laws of an MTCR
15 adherent, if such authorization is not obtained
16 by misrepresentation or fraud; or

17 (B) any export, transfer, or trade of an
18 item to an end user in a country that is an
19 MTCR adherent.

20 (3) EFFECT OF ENFORCEMENT ACTIONS BY
21 MTCR ADHERENTS.—Sanctions set forth in para-
22 graph (1) may not be imposed under this subsection
23 on a person with respect to acts described in such
24 paragraph or, if such sanctions are in effect against
25 a person on account of such acts, such sanctions

1 shall be terminated, if an MTCR adherent is taking
2 judicial or other enforcement action against that
3 person with respect to such acts, or that person has
4 been found by the government of an MTCR adher-
5 ent to be innocent of wrongdoing with respect to
6 such acts.

7 (4) ADVISORY OPINIONS.—The President may,
8 upon the request of any person, issue an advisory
9 opinion to that person as to whether a proposed ac-
10 tivity by that person would subject that person to
11 sanctions under this subsection. Any person who re-
12 lies in good faith on such an advisory opinion which
13 states that the proposed activity would not subject
14 a person to such sanctions, and any person who
15 thereafter engages in such activity, may not be made
16 subject to such sanctions on account of such activity.

17 (5) WAIVER AND REPORT TO CONGRESS.—

18 (A) WAIVER AUTHORITY.—In any case
19 other than one in which an advisory opinion has
20 been issued under paragraph (4) stating that a
21 proposed activity would not subject a person to
22 sanctions under this subsection, the President
23 may waive the application of paragraph (1) to
24 a foreign person if the President determines

1 that such waiver is essential to the national se-
2 curity of the United States.

3 (B) NOTIFICATION AND REPORT TO CON-
4 GRESS.—In the event that the President decides
5 to apply the waiver described in subparagraph
6 (A), the President shall so notify the Congress
7 not less than 20 working days before issuing
8 the waiver. Such notification shall include a re-
9 port fully articulating the rationale and cir-
10 cumstances which led the President to apply the
11 waiver.

12 (6) ADDITIONAL WAIVER.—The President may
13 waive the imposition of sanctions under paragraph
14 (1) on a person with respect to a product or service
15 if the President certifies to the Congress that—

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

18 (B) such person is a sole source supplier of
19 the product or service, the product or service is
20 not available from any alternative reliable sup-
21 plier, and the need for the product or service
22 cannot be met in a timely manner by improved
23 manufacturing processes or technological devel-
24 opments.

1 (7) EXCEPTIONS.—The President shall not
2 apply the sanction under this subsection prohibiting
3 the importation of the products of a foreign per-
4 son—

5 (A) in the case of procurement of defense
6 articles or defense services—

7 (i) under existing contracts or sub-
8 contracts, including the exercise of options
9 for production quantities to satisfy require-
10 ments essential to the national security of
11 the United States;

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

20 (iii) if the President determines that
21 such articles or services are essential to the
22 national security of the United States
23 under defense coproduction agreements or
24 NATO Programs of Cooperation;

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

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(c) DEFINITIONS.—In this section:

(1) DEFENSE ARTICLES; DEFENSE SERVICES.—

The terms “defense articles” and “defense services” mean those items on the United States Munitions List or are otherwise controlled under the Arms Export Control Act.

(2) MISSILE.—The term “missile” means a cat-

egory I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capa-

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

3 (3) 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 (4) 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 (5) 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 (6) 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 (7) FOREIGN PERSON.—The term “foreign per-
4 son” means any person other than a United States
5 person.

6 (8) PERSON.—The term “person” means a nat-
7 ural person, a corporation, business association,
8 partnership, society, or trust, any other nongovern-
9 mental entity, organization, or group, and any gov-
10 ernmental entity operating as a business enterprise,
11 and any successor of any such entity.

12 (9) OTHERWISE ENGAGED IN THE TRADE OF.—
13 The term “otherwise engaged in the trade of”
14 means, with respect to a particular export or trans-
15 fer, to be a freight forwarder or designated export-
16 ing agent, or a consignee or end user of the item to
17 be exported or transferred.

18 **SEC. 302. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
19 **LIFERATION SANCTIONS.**

20 (a) IMPOSITION OF SANCTIONS.—

21 (1) DETERMINATION BY THE PRESIDENT.—Ex-
22 cept as provided in subsection (b)(2), the President
23 shall impose the sanction described in subsection (c)
24 if the President determines that a foreign person has
25 knowingly and materially contributed—

1 (A) through the export from the United
2 States of any item that is subject to the juris-
3 diction of the United States under this title, or

4 (B) through the export from any other
5 country of any item that would be, if they were
6 United States goods or technology, subject to
7 the jurisdiction of the United States under this
8 title,

9 to the efforts by any foreign country, project, or en-
10 tity described in paragraph (2) to use, develop,
11 produce, stockpile, or otherwise acquire chemical or
12 biological weapons.

13 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
14 CEIVING ASSISTANCE.—Paragraph (1) applies in the
15 case of—

16 (A) any foreign country that the President
17 determines has, at any time after January 1,
18 1980—

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

21 (ii) used lethal chemical or biological
22 weapons against its own nationals; or

23 (iii) made substantial preparations to
24 engage in the activities described in clause

25 (i) or (ii);

1 (B) any foreign country whose government
2 is determined for purposes of section 104(c) of
3 this Act to be a government that has repeatedly
4 provided support for acts of international ter-
5 rorism; or

6 (C) any other foreign country, project, or
7 entity designated by the President for purposes
8 of this section.

9 (3) PERSONS AGAINST WHICH SANCTIONS ARE
10 TO BE IMPOSED.—A sanction shall be imposed pur-
11 suant to paragraph (1) on—

12 (A) the foreign person with respect to
13 which the President makes the determination
14 described in that paragraph;

15 (B) any successor entity to that foreign
16 person; and

17 (C) any foreign person that is a parent,
18 subsidiary, or affiliate of that foreign person if
19 that parent, subsidiary, or affiliate knowingly
20 assisted in the activities which were the basis of
21 that determination.

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

24 (1) CONSULTATIONS.—If the President makes
25 the determinations described in subsection (a)(1)

1 with respect to a foreign person, the Congress urges
2 the President to initiate consultations immediately
3 with the government with primary jurisdiction over
4 that foreign person with respect to the imposition of
5 a sanction pursuant to this section.

6 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
7 TION.—In order to pursue such consultations with
8 that government, the President may delay imposition
9 of a sanction pursuant to this section for a period
10 of up to 90 days. Following such consultations, the
11 President shall impose the sanction unless the Presi-
12 dent determines and certifies to the Congress that
13 that government has taken specific and effective ac-
14 tions, including appropriate penalties, to terminate
15 the involvement of the foreign person in the activi-
16 ties described in subsection (a)(1). The President
17 may delay imposition of the sanction for an addi-
18 tional period of up to 90 days if the President deter-
19 mines and certifies to the Congress that that govern-
20 ment is in the process of taking the actions de-
21 scribed in the preceding sentence.

22 (3) REPORT TO CONGRESS.—The President
23 shall report to the Congress, not later than 90 days
24 after making a determination under subsection
25 (a)(1), on the status of consultations with the appro-

1 appropriate government under this subsection, and the
2 basis for any determination under paragraph (2) of
3 this subsection that such government has taken spe-
4 cific corrective actions.

5 (c) SANCTION.—

6 (1) DESCRIPTION OF SANCTION.—The sanction
7 to be imposed pursuant to subsection (a)(1) is, ex-
8 cept as provided that the United States Government
9 shall not procure, or enter into any contract for the
10 procurement of, any goods or services from any per-
11 son described in subsection (a)(3).

12 (2) EXCEPTIONS.—The President shall not be
13 required to apply or maintain a sanction 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.—A sanction im-
2 posed pursuant to this section shall apply for a period of
3 at least 12 months following the imposition of one sanction
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 the Con-
18 gress that such waiver is important to the national
19 security 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) DEFINITIONS.—In this section:

4 (1) DEFENSE ARTICLES; DEFENSE SERVICES.—
5 The terms “defense articles” and “defense services”
6 mean those items on the United States Munitions
7 List or are otherwise controlled under the Arms Ex-
8 port Control Act.

9 (2) FOREIGN PERSON.—The term “foreign per-
10 son” means—

11 (A) an individual who is not a citizen of
12 the United States or an alien admitted for per-
13 manent residence to the United States; or

14 (B) a corporation, partnership, or other
15 entity which is created or organized under the
16 laws of a foreign country or which has its prin-
17 cipal place of business outside the United
18 States.

19 (3) PARENT, SUBSIDIARY, AFFILIATE.—An en-
20 tity is—

21 (A) a “parent” of a foreign person if that
22 entity owns or controls that foreign person;

23 (B) a “subsidiary” of a foreign person if
24 that entity is owned or controlled by that for-
25 eign person; and

1 (C) and “affiliate” of a foreign person if
2 the entity and the foreign person are under
3 common ownership or control by a third entity.

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