H.L.C.

107TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 107–

EXPORT ADMINISTRATION ACT OF 2001

NOVEMBER 16, 2001.—Ordered to be printed

Mr. HYDE, from the Committee on International Relations, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2581]

[Including cost estimates of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 2581) to provide authority to control exports, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Export Administration Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents of 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.
Sec. 312. Measures to protect the public health.
Sec. 313. Promotion of safe environments.

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—EXPORTS OF SATELLITES

Sec. 701. Applicability.
Sec. 702. Export controls on satellites and related items.
Sec. 703. Export license procedures.
Sec. 704. Mandatory State Department review.
Sec. 705. Definitions.
Sec. 706. Conforming amendments.
Sec. 707. Effective date.
Sec. 708. Effect on existing law.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Annual report.

Sec. 802. Relationship to the Arms Export Control Act.
Sec. 803. Enhancement of congressional oversight of nuclear transfers to North Korea.
Sec. 804. Procedures for consideration of joint resolutions.
Sec. 805. Recommendations of the Judicial Review Commission on Foreign Asset Control.
Sec. 806. Improvements to the automated export system.
Sec. 807. Technical and conforming amendments.
Sec. 808. Savings provisions.

SEC. 2. DEFINITIONS.

Except as otherwise expressly provided, in this Act:

(1) AFFILIATE.—The term "affiliate" includes both governmental entities and commercial entities that are controlled in fact by the government of a country.

(2) CONTROL OR CONTROLLED.—The terms "control" and "controlled" mean any requirement, condition, authorization, or prohibition on the export or reexport of an item.

(3) CONTROL LIST.—The term "Control List" means the Commerce Control List established under section 101.

(4) CONTROLLED COUNTRY.—The term "controlled country" means a country with respect to which exports are controlled under section 201 or 301.

(5) CONTROLLED ITEM.—The term "controlled item" means an item the export of which is controlled under this Act.

(6) COUNTRY.—The term "country" means a sovereign country or an autonomous customs territory.

(7) COUNTRY SUPPORTING INTERNATIONAL TERRORISM.—The term "country supporting international terrorism" means a country designated by the Secretary of State pursuant to section 310.

(8) DEPARTMENT.—The term "Department" means the Department of Commerce.

(9) EXPORT.—

(A) The term "export" means—

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

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

(iii) the release of technology to a foreign national within the United States; or

(iv) a transfer of an item in the United States to an embassy or affiliate of a country, which shall be considered an export to that country.

(B) The term includes a reexport.

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

(11) FOREIGN PERSON.—The term "foreign person" means—

(A) an individual who is not—

(i) a United States citizen;

(ii) an alien lawfully admitted for permanent residence to the United States; or

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

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

(C) any governmental entity of a foreign country.

(12) ITEM.—

(A) IN GENERAL.—The term "item" means any good, technology, or service.

(B) OTHER DEFINITIONS.—In this paragraph:

(i) GOOD.—The term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, including source code, and excluding technical data.

(ii) TECHNOLOGY.—The term "technology" means specific information that is necessary for the development, production, or use of an item, and takes the form of technical data or technical assistance.

(iii) SERVICE.—The term "service" means any act of assistance, help, or aid.

(13) MASS-MARKET STATUS.—The term "mass-market status" means the status described in section 211(d)(2).

(14) MULTILATERAL EXPORT CONTROL REGIME.—The term "multilateral export control regime" means an international agreement or arrangement among two or more countries, including the United States, a purpose of which is to coordinate national export control policies of its members regarding certain items. The term includes regimes such as the Australia Group, the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), and the Nuclear Suppliers' Group Dual Use Arrangement.

(15) NATIONAL SECURITY CONTROL LIST.—The term "National Security Control List" means the list established under section 202(a).

(16) PERSON.—The term "person" includes—

(A) any individual, or any partnership, corporation, business association, society, trust, organization, or any other group created or organized under the laws of a country; and

(B) any government, or any governmental entity, including any governmental entity operating as a business enterprise.

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

(18) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

(19) UNITED STATES.—The term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (42 U.S.C. 1331(a)).

(20) UNITED STATES PERSON.—The term "United States person" means—

(A) any United States citizen, resident, or national (other than an individual resident outside the United States who is employed by a person other than a United States person);

(B) any domestic concern (including any permanent domestic establishment of any foreign concern); and

(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations prescribed by the President.

TITLE I—GENERAL AUTHORITY

SEC. 101. COMMERCE CONTROL LIST.

(a) IN GENERAL.—Under such conditions as the Secretary may impose, consistent with the provisions of this Act, the Secretary—

(1) shall establish and maintain a Commerce Control List consisting of items the export of which are subject to licensing or other authorization or requirement; and

(2) may require any type of license, or other authorization, including recordkeeping and reporting, appropriate to the effective and efficient implementation of this Act with respect to the export of an item on the Control List or otherwise subject to control under title II or III of this Act.

(b) TYPES OF LICENSE OR OTHER AUTHORIZATION.—The types of license or other authorization referred to in subsection (a)(2) include the following:

(1) SPECIFIC EXPORTS.—A license that authorizes a specific export.

(2) MULTIPLE EXPORTS.—A license that authorizes multiple exports in lieu of a license for each export.

(3) NOTIFICATION IN LIEU OF LICENSE.— A notification in lieu of a license that authorizes a specific export or multiple exports subject to the condition that the exporter file with the Department advance notification of the intent to export in accordance with regulations prescribed by the Secretary.

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

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

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

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

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

SEC. 102. DELEGATION OF AUTHORITY.

(a) IN GENERAL.—Except as provided in subsection (b) and subject to the provisions of this Act, the President may delegate the power, authority, and discretion conferred upon the President by this Act to such departments, agencies, and officials of the Government as the President considers appropriate.

(b) EXCEPTIONS.—

(1) DELEGATION TO APPOINTEES CONFIRMED BY SENATE.—No authority delegated to the President under this Act may be delegated by the President to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate.

(2) OTHER LIMITATIONS.—The President may not delegate or transfer the President's power, authority, or discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State under this Act.

SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIREMENTS.

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

(b) CONSULTATION WITH PERSONS AFFECTED.—The Secretary shall consult regularly with representatives of a broad spectrum of enterprises, labor organizations, nonproliferation and national security experts, and citizens interested in or affected by export controls in order to obtain their views on United States export control policy and the foreign availability or mass-market status of controlled items.

SEC. 104. RIGHT OF EXPORT.

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

SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.

(a) APPOINTMENT.—Upon the Secretary's own initiative or upon the written request of representatives of a substantial segment of any industry which produces any items subject to export controls under this Act or being considered for such controls, the Secretary may appoint export control advisory committees with respect to any such items. Each such committee shall consist of representatives of United States industry and Government officials, including officials from the Departments of Commerce, Defense, and State, and other appropriate departments and agencies of the Government. The Secretary shall permit the widest possible participation by the business community on the export control advisory committees.

(b) FUNCTIONS.—

(1) IN GENERAL.—Export control advisory committees appointed under subsection (a) shall advise and assist the Secretary, and any other department, agency, or official of the Government carrying out functions under this Act, on actions (including all aspects of controls imposed or proposed) designed to carry out the provisions of this Act concerning the items with respect to which such export control advisory committees were appointed.

(2) OTHER CONSULTATIONS.—Nothing in paragraph (1) shall prevent the United States Government from consulting, at any time, with any person representing an industry or the general public, regardless of whether such person is a member of an export control advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present information to such committees.

(c) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export control advisory committee appointed under subsection (a), the Secretary may, if the Secretary determines it to be appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(d) CHAIRPERSON.—Each export control advisory committee appointed under subsection (a) shall elect a chairperson, and shall meet at least every 3 months at the call of the chairperson, unless the chairperson determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve

the purposes of this section. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years each. The Secretary shall consult with each such committee on such termination or extension of that committee.

(e) ACCESS TO INFORMATION.—To facilitate the work of the export control advisory committees appointed under subsection (a), the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security and intelligence sources and methods, pertaining to the reasons for the export controls which are in effect or contemplated for the items or policies for which that committee furnishes advice. Information provided by the export control advisory committees shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest.

SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.

The President may establish a President's Technology Export Council to advise the President on the implementation, operation, and effectiveness of this Act.

SEC. 107. PROHIBITION ON CHARGING FEES.

No fee may be charged in connection with the submission or processing of an application for an export license under this Act.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the purposes set forth in subsection (b), the President may, in accordance with the provisions of this Act, prohibit, curtail, or require a license, or other authorization for the export of any item subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The President may also require recordkeeping and reporting with respect to the export of such item.

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

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

(1) To restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States, its allies, or countries sharing common strategic objectives with the United States.

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

(A) leading international efforts to control the proliferation of chemical and biological weapons, nuclear explosive devices, missile delivery systems, key-enabling technologies, and other significant military capabilities;

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

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

(3) To deter acts of international terrorism.

(c) END USE AND END USER CONTROLS.—

(1) GENERAL AUTHORITY.—(A) Notwithstanding any other provision of this Act, controls may be imposed, based on the end use or end user, on the export

of any item, that could contribute to the proliferation of weapons of mass destruction or the means to deliver them.

(B) The President shall seek to strengthen multilateral cooperation to identify more effectively end users of concern.

(C) The Secretary shall establish and maintain a database listing end users of concern and develop a procedure by which exporters can utilize such database to screen prospective end users.

(2) PRESUMPTION OF DENIAL OF CERTAIN LICENSES.—Notwithstanding any other provision of this Act, there shall be a presumption of denial for the export of an item if the Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, determines that there is a significant risk that—

(A) the end user designated to receive such item is involved in a program or activity for the design, development, manufacture, stockpiling, testing, or other acquisition of a weapon of mass destruction or the means to deliver such a weapon and is in a country that is not an adherent to a multilateral export control regime controlling such weapon or means of delivery, unless the Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, and in consultation with the intelligence agencies and the head of any other department or agency of the United States that the Secretary considers appropriate, determines that such export would not make a material contribution to such program or activity; or

(B) the export of such item would otherwise contribute to the military capabilities of a country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally.

(3) DEFINITION.—For purposes of this subsection, an "adherent to a multilateral export control regime" is—

(A) a country that is a member of a multilateral export control regime;

(B) a country that, pursuant to an international understanding to which the United States is a party, controls exports in accordance with relevant criteria and standards of a multilateral export control regime; or

(C) a major non-NATO ally that, pursuant to its national legislation, controls exports in accordance with such criteria and standards.

(d) ENHANCED CONTROL.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the President may determine that applying the provisions of section 204 or 211 with respect to an item on the National Security Control List could constitute a threat to the national security of the United States and that such item requires enhanced control, including the requirement for a license for such item. If the President determines that enhanced control should apply to such item, the item may be excluded from the provisions of sections 204 or 211, or both, until such time as the President determines that enhanced control should no longer apply to such item.

(2) CONTROL OF ITEMS.—Notwithstanding any other provision of this Act, the President may identify items to be included on the National Security Control List, and any such item shall be included on that list.

(3) NONDELEGATION.—The President may not delegate the authority provided under paragraphs (1) and (2).

(4) REPORT TO CONGRESS.—The President shall promptly report any determination described in paragraph (1) or any items included on the National Security Control List under paragraph (2), along with the specific reasons for that determination or inclusion (as the case may be), to the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(e) PRESUMPTION OF DENIAL ON CERTAIN LICENSES.—

(1) PRESUMPTION.—Notwithstanding any other provision of law, when a license is required for export to any country of any item on the National Security Control List for any reason specified in subsection (b), there shall be a presumption of denial for the export of such item if there is a significant risk that—

(A) such item would contribute to the nuclear, chemical, or biological weapons capabilities of such country or the capabilities of such country to deliver such weapons;

(B) such item would otherwise contribute to the military capabilities of such country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally;

(C) such item would likely be used or diverted to a use or destination not authorized by the license or United States policy; or

(D) the export of such item would otherwise materially and adversely affect the national security interests of the United States.

(2) EXCEPTION.—Paragraph (1) shall not apply to the export of an item to a country that is an adherent to a multilateral export control regime controlling the export of such item.

(3) DEFINITION.—For purposes of this subsection, an "adherent to a multilateral export control regime" is—

(A) a country that is a member of a multilateral export control regime;

(B) a country that, pursuant to an international understanding to which the United States is a party, controls exports in accordance with relevant criteria and standards of a multilateral export control regime; or

(C) a major non-NATO ally that, pursuant to its national legislation, controls exports in accordance with such criteria and standards.

SEC. 202. NATIONAL SECURITY CONTROL LIST.

(a) ESTABLISHMENT OF LIST.—

(1) ESTABLISHMENT.—The Secretary shall establish and maintain a National Security Control List, as part of the Control List.

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

(3) IDENTIFICATION OF ITEMS FOR NATIONAL SECURITY CONTROL LIST.—The Secretary, with the concurrence of the Secretary of Defense and the Secretary of State and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, shall identify the items to be included on the National Security Control List, except that the National Security Control List shall, on the date of enactment of this Act, include all of the items on the Commerce Control List controlled on the day before the date of enactment of this Act to protect the national security of the United States, to prevent the proliferation of weapons of mass destruction and the means to deliver them, and to deter acts of international terrorism. The Secretary shall review on a continuing basis and, with the concurrence of the Secretary of Defense and the Secretary of State and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, adjust the National Security Control List to add items that require control under this section and to remove items that no longer warrant control under this section.

(b) RISK ASSESSMENT.—

(1) REQUIREMENT.—In establishing and maintaining the National Security Control List, the risk factors set forth in paragraph (2) shall be considered, weighing national security concerns and economic costs.

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

(A) The characteristics of the item.

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

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

(D) The threat to the national security interests of the United States if the item is not controlled.

(E) Any other appropriate risk factors.

(c) REPORT ON CONTROL LIST.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report to Congress which lists all items on the Commerce Control List controlled on the day before the date of enactment of this Act to protect the national security of the United States, to prevent the proliferation of weapons of mass destruction and the means to deliver them, and to deter acts of international terrorism, not included on the National Security Control List pursuant to the provisions of this Act.

SEC. 203. COUNTRY TIERS.

(a) IN GENERAL.—

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

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

(B) based on the assessments required under subsection (c), assign each country to an appropriate tier for each item or group of items the export of which is controlled for national security purposes under this title.

(2) CONSULTATION.—The establishment and assignment of country tiers under this section shall be made after consultation with the Secretary, the Secretary of Defense, the Secretary of State, the intelligence agencies, and the heads of such other departments and agencies as the President considers appropriate.

(3) REDETERMINATION AND REVIEW OF ASSIGNMENTS.—The President may redetermine the assignment of a country to a particular tier at any time and shall review and, as the President considers appropriate, reassign country tiers on an on-going basis. The Secretary shall provide notice of any such reassignment to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

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

(b) TIERS.—

(1) IN GENERAL.—The President shall establish a country tiering system consisting of not less than 3 tiers for purposes of this section.

(2) RANGE.—Countries that represent the lowest risk of diversion or misuse of an item on the National Security Control List shall be assigned to the lowest tier. Countries that represent the highest risk of diversion or misuse of an item on the National Security Control List shall be assigned to the highest tier.

(3) OTHER COUNTRIES.—Countries that fall between the lowest and highest risk to the national security interest of the United States with respect to the risk of diversion or misuse of an item on the National Security Control List shall be assigned to a tier other than the lowest or highest tier, based on the assessments required under subsection (c).

(c) ASSESSMENTS.—The President shall make an assessment of each country in assigning a country tier taking into consideration risk factors that include the following:

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

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

(3) The country's goals, capabilities, and intentions regarding chemical, biological, and nuclear weapons and the country's membership in or adherence to, and level of compliance with, relevant multilateral export control regimes.

(4) The country's capabilities regarding missile systems and the country's membership in or adherence to, and level of compliance with, relevant multilateral export control regimes.

(5) Whether the country, if a NATO or major non-NATO ally with whom the United States has entered into a free trade agreement as of January 1, 1986, controls exports in accordance with the criteria and standards of a multilateral export control regime.

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

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

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

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

(10) The designation of the country as a country supporting international terrorism under section 310.

(11) The extent to which the country, pursuant to its laws, regulations, and practices, controls items consistent with the criteria and standards of relevant multilateral export control regimes.

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

SEC. 204. INCORPORATED PARTS AND COMPONENTS.

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

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

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

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

unless the item itself, if exported, would by virtue of the functional characteristics of the item as a whole make a significant contribution to the military or proliferation potential of a controlled country or end user which would prove detrimental to the national security of the United States, or unless failure to control the item would be contrary to the provisions of section 201(c), section 201(d), or section 309 of this Act.

(b) REEXPORTS OF FOREIGN-MADE ITEMS INCORPORATING UNITED STATES CONTROLLED CONTENT.—

(1) IN GENERAL.—No authority or permission may be required under this title to reexport to a country an item that is produced in a country other than the United States and incorporates parts or components that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the item produced in such other country is 25 percent or less of the total value of the item; except that in the case of reexports of an item to a country designated as a country supporting international terrorism pursuant to section 310, controls may be maintained if the value of the controlled United States content is more than 10 percent of the total value of the item.

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

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

(B) are incorporated into the item; and

(C) would, at the time of the reexport, require a license under this title if exported from the United States to a country to which the item is to be reexported.

SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STATUS.

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

(b) EVALUATIONS AND DETERMINATIONS.—Evaluations and determinations with respect to a petition filed pursuant to this section shall be made in accordance with section 202.

Subtitle B—Foreign Availability and Mass-Market Status

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

(a) IN GENERAL.—The Secretary shall—

(1) on a continuing basis,

(2) upon a request from the Office of Technology Evaluation established pursuant to section 214, or

(3) upon receipt of a petition filed by an interested person,

review and determine the foreign availability and the mass-market status of any item the export of which is controlled under this title.

(b) PETITION AND CONSULTATION.—

(1) IN GENERAL.—The Secretary shall establish a process for an interested person to petition the Secretary for a determination that an item has a foreign availability or mass-market status. In evaluating and making a determination with respect to a petition filed under this section, the Secretary shall consult with the Secretary of Defense, the Secretary of State, and the heads of other appropriate Government agencies and with the Office of Technology Evaluation.

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

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

(1) a foreign availability status, or

(2) a mass-market status,

the Secretary shall notify the President (and other appropriate departments and agencies) and publish the notice of the determination in the Federal Register. The Secretary's determination shall become final 30 days after the date the notice is published, the item shall be removed from the National Security Control List, and

a license or other authorization shall not be required under this title with respect to the item, unless the President makes a determination described in section 212 or 213, or takes action under section 309, with respect to the item in that 30-day period.

(d) CRITERIA FOR DETERMINING FOREIGN AVAILABILITY AND MASS-MARKET STATUS.—

(1) FOREIGN AVAILABILITY STATUS.—The Secretary shall determine that an item has foreign availability status under this subtitle, if the item (or a substantially identical or directly competitive item)—

(A) is available to controlled countries from sources outside the United States, including countries that participate with the United States in multilateral export controls;

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

(C) is available in sufficient quantity so that the requirement of a license or other authorization with respect to the export of such item is or would be ineffective.

(2) MASS-MARKET STATUS.—

(A) IN GENERAL.—In determining whether an item has mass-market status under this subtitle, the Secretary shall consider the following criteria with respect to the item (or a substantially identical or directly competitive item):

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

(ii) The widespread distribution through normal commercial channels, such as retail stores, direct marketing catalogues, electronic commerce, and other channels.

(iii) The conduciveness to shipment and delivery by generally accepted commercial means of transport.

(iv) The use for the item's normal intended purpose without substantial and specialized service provided by the manufacturer, distributor, or other third party.

(B) DETERMINATION BY SECRETARY.—If the Secretary finds that the item (or a substantially identical or directly competitive item) meets the criteria set forth in subparagraph (A), the Secretary shall determine that the item has mass-market status.

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

(A) SUBSTANTIALLY IDENTICAL ITEM.—The determination of whether an item in relation to another item is a substantially identical item shall include a fair assessment of end uses, and the properties, nature, and quality of the item.

(B) DIRECTLY COMPETITIVE ITEM.—The determination of whether an item in relation to another item is a directly competitive item shall include a fair assessment of whether the item, although not substantially identical in its intrinsic or inherent characteristics, is substantially equivalent for commercial purposes and may be adapted for substantially the same uses.

(C) EXCEPTION.—An item is not a directly competitive item or a substantially identical item in relation to a controlled item if the item is not of comparable quality to the controlled item with respect to characteristics that resulted in the export of the item being controlled.

SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAILABILITY STATUS DETERMINATION.

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—

(A) IN GENERAL.—If the President determines that—

(i) decontrolling or failing to control an item constitutes a threat to the national security of the United States, and export controls on the item would advance the national security interests of the United States,

(ii) there is a high probability that the foreign availability of an item will be eliminated through international negotiations within a reasonable period of time taking into account the characteristics of the item, or

(iii) United States controls on the item have been imposed under section 309,

the President may set aside the Secretary's determination of foreign availability status with respect to the item.

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

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

(A) report any set-aside determination described in paragraph (1), along with the specific reasons for the determination, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives; and

(B) publish the determination in the Federal Register.

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

(1) IN GENERAL.—

(A) NEGOTIATIONS.—In any case in which export controls are maintained on an item because the President has made a determination under subsection (a), the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability.

(B) REPORT TO CONGRESS.—Not later than the date the President begins negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that the President has begun such negotiations and why the President believes it is important to the national security that export controls on the item involved be maintained.

(2) PERIODIC REVIEW OF DETERMINATION.—The President shall review a determination described in subsection (a) at least every 6 months. Promptly after each review is completed, the Secretary shall submit to the committees of Congress referred to in paragraph (1)(B) a report on the results of the review, together with the status of international negotiations to eliminate the foreign availability of the item.

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

(A) the date that is 6 months after the date on which the determination is made under subsection (a), if the President has not commenced international negotiations to eliminate the foreign availability of the item within that 6-month period;

(B) the date on which the negotiations described in paragraph (1) have terminated without achieving an agreement to eliminate foreign availability;

(C) the date on which the President determines that there is not a high probability of eliminating foreign availability of the item through negotiation; or

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

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

SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STATUS DETERMINATION.

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—If the President determines that—

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

(ii) export controls on the item would advance the national security interests of the United States, or

(B) United States controls on the item have been imposed under section 309,

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

(2) NONDELEGATION.—The President may not delegate the authority provided for in this subsection.

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

(1) IN GENERAL.—In any case in which export controls are maintained on an item because the President has made a determination under subsection (a), the President shall promptly report the determination, along with the specific reasons for the determination, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of

the House of Representatives, and shall publish notice of the determination in the Federal Register not later than 30 days after the Secretary publishes notice of the Secretary's determination that an item has mass-market status.

(2) PERIODIC REVIEW OF DETERMINATION.—The President shall review a determination made under subsection (a) at least every 6 months. Promptly after each review is completed, the Secretary shall submit a report on the results of the review to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF OFFICE.—The Secretary shall establish in the Department of Commerce an Office of Technology Evaluation (in this section referred to as the "Office"), which shall be under the direction of the Secretary. The Office shall be responsible for gathering, coordinating, and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability and mass-market status under this Act.

(2) STAFF.—

(A) IN GENERAL.—The Secretary shall ensure that the Office include persons to carry out the responsibilities set forth in subsection (b) of this section that have training, expertise, and experience in—

(i) economic analysis;

(ii) the defense industrial base;

(iii) technological developments; and

(iv) national security and foreign policy export controls.

(B) DETAILEES.—In addition to employees of the Department of Commerce, the Secretary may accept on nonreimbursable detail to the Office, employees of the Departments of Defense, State, and Energy and other departments and agencies as appropriate.

(b) RESPONSIBILITIES.—The Office shall be responsible for—

(1) conducting foreign availability assessments to determine whether a controlled item is available to controlled countries and whether requiring a license, or denial of a license for the export of such item, is or would be ineffective;

(2) conducting mass-market assessments to determine whether a controlled item is available to controlled countries because of the mass-market status of the item;

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

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

(5) conducting assessments of United States industrial sectors critical to the United States defense industrial base and how the sectors are affected by technological developments, technology transfers, and foreign competition; and

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

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

(B) the United States economy in general.

(c) REPORTS TO CONGRESS.—The Secretary shall make available to the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate as part of the Secretary's annual report required under section 701 information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability and mass-market status, during the fiscal year preceding the report, including information on the training of personnel, and the use of Commercial Service Officers of the United States and Foreign Commercial Service to assist in making determinations. The information shall also include a description of determinations made under this Act during the preceding fiscal year that foreign availability or mass-market status did or did not exist (as the case may be), together with an explanation of the determinations.

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

TITLE III—FOREIGN POLICY EXPORT CONTROLS

SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the purposes set forth in subsection (b), the President may, in accordance with the provisions of this Act, prohibit, curtail, or require a license, other authorization, recordkeeping, or reporting for, the export of any item subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States.

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

(b) PURPOSES.—The purposes of foreign policy export controls are the following:

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

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

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

(4) To control the export of test articles intended for clinical investigation involving human subjects so as to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(5) To control the export of goods and substances which are banned, severely restricted, highly regulated, or never regulated for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(c) FOREIGN PRODUCTS.—No authority or permission may be required under this title to reexport to a country an item that is produced in a country other than the United States and incorporates parts or components that are subject to the jurisdiction of the United States, except that in the case of reexports of an item to a country designated as a country supporting international terrorism pursuant to section 310, controls may be maintained if the value of the controlled United States content is more than 10 percent of the value of the item.

(d) CONTRACT SANCTITY.—

(1) IN GENERAL.—The President may not prohibit the export of any item under this title if that item is to be exported—

(A) in performance of a binding contract, agreement, or other contractual commitment entered into before the earlier of the date on which the President publishes in the Federal Register pursuant to section 302(a) a notice of intent to impose or implement an export control on that item or the date on which the President reports to Congress the President's intention to impose an export control on that item under this title; or

(B) under a license or other authorization issued under this Act before the earlier of the date on which the export control is imposed, the date on which the President publishes in the Federal Register pursuant to section 302(a) a notice of intent to impose or implement an export control on that item, or the date on which the President reports to Congress the President's intention to impose an export control on that item under this title.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply in any case in which the President determines and certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that—

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

(B) the prohibition of exports under each binding contract, agreement, commitment, license, or authorization will be instrumental in remedying the situation posing the serious threat; and

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

SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.

(a) NOTICE.—

(1) INTENT TO IMPOSE FOREIGN POLICY EXPORT CONTROL.—Except as provided in section 306, not later than 45 days before imposing or implementing an export control under this title, the President shall publish in the Federal Register—

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

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

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

(A) to provide an opportunity for the formulation of an effective export control policy under this title that advances United States economic and foreign policy interests; and

(B) to provide an opportunity for negotiations to achieve the purposes set forth in section 301(b).

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

(c) CONSULTATION.—

(1) REQUIREMENT.—The President shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives regarding any export control proposed under this title and the efforts to achieve or increase multilateral cooperation on the issues or problems underlying the proposed export control.

(2) CLASSIFIED CONSULTATION.—The consultations described in paragraph (1) may be conducted on a classified basis if the Secretary considers it necessary.

SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CONTROLS.

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

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

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

(3) include an assessment by the President that—

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

(B) the achievement of the objectives of the export control outweighs any potential costs of the export control to other United States economic, foreign policy, humanitarian, or national security interests;

(4) be targeted narrowly; and

(5) seek to minimize any adverse impact on the humanitarian activities of United States and foreign nongovernmental organizations in the country subject to the export control.

SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF CONTROL.

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

(b) CONTENT.—The report shall contain a description and assessment of each of the criteria described in section 303. In addition, the report shall contain a description and assessment of—

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

(2) unilateral export controls imposed, and other measures taken, by other countries to achieve the intended objective of the proposed export control;

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

(4) alternative measures to promote the same objectives and the likelihood of their potential success;

(5) any United States obligations under international trade agreements, treaties, or other international arrangements, with which the proposed export control may conflict;

(6) the likelihood that the proposed export control could lead to retaliation against United States interests;

(7) the likely economic impact of the proposed export control on the United States economy, United States international trade and investment, and United States agricultural interests, commercial interests, and employment; and

(8) whether the objectives of the proposed export control outweighs any likely costs to United States economic, foreign policy, humanitarian, or national security interests, including any potential harm to the United States agricultural and business firms and to the international reputation of the United States as a reliable supplier of goods, services, or technology.

SEC. 305. IMPOSITION OF CONTROLS.

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

SEC. 306. DEFERRAL AUTHORITY.

(a) AUTHORITY.—The President may defer compliance with any requirement contained in section 302(a), 304, or 305 in the case of a proposed export control if—

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

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

(b) TERMINATION OF CONTROL.—An export control with respect to which a deferral has been made under subsection (a) shall terminate 60 days after the date the export control is imposed unless all requirements have been satisfied before the expiration of that 60-day period.

SEC. 307. REVIEW, RENEWAL, AND TERMINATION.

(a) RENEWAL AND TERMINATION.—

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

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

(A) is required by law;

(B) is targeted against any country designated as a country supporting international terrorism pursuant to section 310; or

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

(b) REVIEW.—

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

(2) CONSULTATION.—

(A) REQUIREMENT.—Before completing a review under paragraph (1), the President shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representative regarding each export control that is being reviewed.

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

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

(c) REPORT TO CONGRESS.—

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

(2) FORM AND CONTENT OF REPORT.—The report may be provided on a classified basis if the Secretary considers it necessary. Each report shall contain the following:

(A) A clearly stated explanation of the specific United States foreign policy objective that the existing export control was intended to achieve.

(B) An assessment of—

(i) the extent to which the existing export control achieved its objectives before renewal based on the objective criteria established for evaluating the export control; and

(ii) the reasons why the existing export control has failed to fully achieve its objectives and, if renewed, how the export control will achieve that objective before the next renewal year.

(C) An updated description and assessment of—

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

(ii) each matter required to be reported under section 304(b) (1) through (8).

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

SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President—

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

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

(b) EXCEPTION.—Paragraphs (1) and (2) of subsection (a) do not apply to any export control imposed pursuant to section 310.

(c) EFFECTIVE DATE OF TERMINATION.—The termination of an export control pursuant to this section shall take effect 30 days after the President has consulted with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate on the foreign policy implications of such termination. Notice of the termination shall be published in the Federal Register.

SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGATIONS.

Notwithstanding any other provision of this Act setting forth limitations on authority to control exports and except as provided in section 304, the President may impose controls on exports to a particular country or countries—

(1) of items listed on the control list of a multilateral export control regime; or

(2) in order to fulfill obligations or commitments of the United States under resolutions of the United Nations and under treaties, or other international agreements and arrangements, to which the United States is a party.

SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

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

(1) the government of such country has repeatedly provided support for acts of international terrorism; and

(2) the export of the item could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(b) NOTIFICATION.—The Secretary and the Secretary of State shall notify the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any license required by subsection (a).

(c) DETERMINATIONS REGARDING REPEATED SUPPORT.—Each determination of the Secretary of State under subsection (a)(1), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

(d) LIMITATIONS ON RESCINDING DETERMINATION.—A determination made by the Secretary of State under subsection (a)(1) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Banking, Housing, and Urban Affairs and the Chairman of the Committee on Foreign Relations of the Senate—

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

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

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

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

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

(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(e) INFORMATION TO BE INCLUDED IN NOTIFICATION.—The Secretary and the Secretary of State shall include in the notification required by subsection (b)—

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

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

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

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

(5) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the item which is the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of the item; and

(6) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the item which is the subject of such export would be delivered.

SEC. 311. CRIME CONTROL INSTRUMENTS.

(a) IN GENERAL.—Crime control and detection instruments and equipment shall not be approved for export by the Secretary except pursuant to an individual export license.

(b) IMPLEMENTATION.—Notwithstanding any other provision of this Act—

(1) any determination by the Secretary of what goods or technology shall be included on the list established pursuant to this subsection as a result of the export restrictions imposed by this section shall be made with the concurrence of the Secretary of State; and

(2) any determination by the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 401 of this Act.

(c) LIMITATION.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary shall not approve the export to a country of crime control and detection instruments and equipment especially susceptible to abuse as implements of torture if the government of such country, or any group supported by or acting on behalf of such government, has repeatedly engaged in acts of torture unless the Secretary, with the concurrence of the Secretary of State, determines that the end user of the instruments or equipment proposed for export has not been engaged in acts of torture.

(2) LIST.—The Secretary shall establish and maintain a list of crime control and detection instruments and equipment especially susceptible to abuse as implements of torture for purposes of paragraph (1), and shall publish such list in the Federal Register.

(d) EXCEPTION.—Subsection (a) shall not apply to exports to countries that are NATO or are major non-NATO allies.

(e) PROHIBITION.—Notwithstanding any other provision of this section, including subsection (d), the export to any country of leg irons, saps, blackjacks, electroshock stun belts, thumb cuffs, and items specially designed as implements of torture, as determined by the Secretary, including components produced for incorporation into these items and the technology used for the development or production of these items, shall be prohibited.

(f) DEFINITION.—For purposes of this section, the term "acts of torture" means acts committed by a person acting under the color of law that are specifically intended to inflict severe physical or mental pain or suffering (other than pain or suf-

fering incidental to lawful sanctions) upon another person within the custody or physical control of the person performing the acts.

SEC. 312. MEASURES TO PROTECT THE PUBLIC HEALTH.

(a) IN GENERAL.—In order to carry out the policy set forth in paragraph (4) of section 301(b), test articles intended for clinical investigations shall be approved for export by the President only pursuant to an export license.

(b) CRITERIA FOR EXPORT LICENSE.—In addition to the criteria set forth in paragraph (4) of section 401(a), the President shall require, as a prerequisite for approval of an export license for a test article required by subsection (a) of this section, that an applicant for such license—

(1) identify each clinical investigation for which the test article is intended; and

(2) submit proof that each of the protocols for every clinical investigation identified under paragraph (1) has been reviewed by an institutional review board and met the same standards for the protection of the rights and welfare of human subjects as would be required for IRB approval of the protocol if the protocol were for a clinical investigation of such test article pursuant to the Federal Food, Drug, and Cosmetic Act.

(c) REPORTING REQUIREMENT.—Not later than one year after the date of enactment of this Act, and annually thereafter, the President shall prepare and submit to the appropriate congressional committees a report regarding the approval of export licenses as required by subsection (a). Such report shall include—

(1) the names of the applicants for such export licenses;

(2) the names of approved applicants for such export licenses; and

(3) the destination country or countries for each application for such export licenses.

(d) EXCEPTION.—The provisions of this section shall not apply if the destination country is a full member of the Europen Union, a full member of the European Free Trade Association, Canada, Japan, Australia, Israel, or New Zealand.

(e) DEFINITIONS.—In this section:

(1) APPLICATION FOR RESEARCH OR MARKETING PERMIT.—The term "application for research or marketing permit" has the meaning given that term in section 56.102(b) of title 21, Code of Federal Regulations, or successor regulations.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) CLINICAL INVESTIGATION.—The term "clinical investigation" means any experiment that involves a test article and one or more human subjects, and that either must meet the requirements for prior submission to the Food and Drug Administration under section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i), 357(d), or 360j(g)), or need not meet the requirements for prior submission to the Food and Drug Administration under those sections, but the results of which are intended to be later submitted to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that must meet the provisions of part 58 of title 21, Code of Federal Regulations, or successor regulations, regarding nonclinical laboratory studies.

(4) DESTINATION COUNTRY.—The term "destination country" means the country into which test articles are being exported.

(5) HUMAN SUBJECT.—The term "human subject" means an individual who is or becomes a participant in research, either as a recipient of the test article or as a control. A subject may be either a healthy individual or a patient.

(6) INSTITUTION.—The term "institution" means any public or private entity or agency (including Federal, State, and other agencies), either in the United States or other country.

(7) INSTITUTIONAL REVIEW BOARD; IRB.—The terms "institutional review board" and "IRB" mean any board, committee, or other group formally designated by an institution to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving human subjects. The primary purpose of such review is to assure the protection of the rights and welfare of the human subjects.

(8) IRB APPROVAL.—The term "IRB approval" means the determination of an IRB made pursuant to part 56 of title 21, Code of Federal Regulations, or successor regulations, that a clinical investigation has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements.

(9) TEST ARTICLE.—The term "test article" means any drug for human use, biological product for human use, medical device for human use, human food additive, color additive, electronic product, or any other article that would be subject to regulation under the Federal Food, Drug, and Cosmetic Act if introduced into interstate commerce.

SEC. 313. PROMOTION OF SAFE ENVIRONMENTS.

(a) IN GENERAL.—In order to carry out the policy set forth in paragraph (5) of section 301(b), the President may prohibit the exportation of pesticides or chemicals that the President deems to be a risk to the public health, safety, or environment of the United States or any other country.

(b) REPORT ON EXPORTS.—

(1) REPORT.—The President shall, by not later than 6 months after the date of enactment of this Act—

(A) identify all United States persons who export any hazardous pesticide or chemical that is—

(i) included in the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, or the Convention on Persistent Organic Pollutants; or

(ii) either banned, severely restricted, highly regulated, or never regulated for use in the United States;

(B) determine the quantities of each hazardous pesticide and chemical described in subparagraph (A) that each United States person has exported in the 2-year period preceding the date of enactment of this Act; and

(C) submit to the Committee on International Relations of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate a comprehensive report on the information described in subparagraphs (A) and (B).

(2) REGULATORY AND ADMINISTRATIVE FRAMEWORKS.—The President shall include in the report under paragraph (1) a detailed description, done in consultation with appropriate departments and agencies, of the regulatory and administrative frameworks in the United States for measuring, monitoring, and controlling the export of the pesticides and chemicals described in paragraph (1), and any recommendations the President has on how such frameworks could be improved as methods for controlling the export of those substances.

(c) GAO REPORT.—The Comptroller General of the United States, in consultation with the National Academy of Sciences and such other departments and agencies as the Comptroller General considers appropriate, shall, by not later than 1 year after the date of the enactment of this Act—

(1) examine the regulatory and administrative frameworks in the United States for measuring, monitoring, and controlling the exportation of the pesticides and chemicals described in subsection (b), and determine the efficiency and effectiveness of those frameworks;

(2) compare the United States regulatory and administrative frameworks under paragraph (1) with those of the other member countries of the Organization for Economic Cooperation and Development, and provide recommendations concerning any elements of the frameworks of those countries that might be applied to the United States frameworks to help improve their efficiency and effectiveness;

(3) compare the quantities of each of the substances described in paragraph (1) which have been exported by the United States and all other member countries of the Organization for Economic Cooperation and Development during the 2-year period preceding the date of enactment of this Act;

(4) evaluate the adequacy of current statutory and regulatory authority, as well as appropriations, for measuring, monitoring, and controlling the export of those substances and suggest improvements for ensuring better measuring, monitoring, and control of those exports; and

(5) submit to the Committee on International Relations of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate a report on the findings under paragraphs (1) through (4).

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

SEC. 401. EXPORT LICENSE PROCEDURES.

(a) RESPONSIBILITY OF THE SECRETARY.—

(1) IN GENERAL.—All applications for a license or other authorization to export a controlled item shall be filed in such manner and include such information as the Secretary may, by regulation, prescribe.

(2) PROCEDURES.—In guidance and regulations that implement this section, the Secretary shall describe the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies in reviewing applications, the rights of the applicant, and other relevant matters affecting the review of license applications.

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

(4) CRITERIA FOR EVALUATING APPLICATIONS.—In determining whether to grant an application to export a controlled item under this Act, the following criteria shall be considered:

(A) The characteristics of the controlled item.

(B) The threat to—

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

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

(C) The country tier designation of the country to which a controlled item is to be exported pursuant to section 203.

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

(i) the exporter;

(ii) the method of export;

(iii) the end user;

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

(v) the end use.

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

(i) changing the characteristics of the controlled item;

(ii) after-market monitoring by the exporter; and

(iii) post-shipment verification.

(b) INITIAL SCREENING.—

(1) UPON RECEIPT OF APPLICATION.—Upon receipt of an export license application, the Secretary shall enter and maintain in the records of the Department information regarding the receipt and status of the application.

(2) INITIAL PROCEDURES.—

(A) IN GENERAL.—Not later than 9 days after receiving any license application, the Secretary shall—

(i) contact the applicant if the application is improperly completed or if additional information is required, and hold the application for a reasonable time while the applicant provides the necessary corrections or information, and such time shall not be included in calculating the time periods prescribed in this title; and

(ii) upon receipt of a completed application—

(I) ensure that the classification state on the application for the export items is correct, and, if so, refer the application, through the use of a common data base or other means, and all information submitted by the applicant, and all necessary recommendations and analyses by the Secretary, to the Secretary of Defense, the Secretary of State, and the heads of and other departments and agencies the Secretary considers appropriate; or

(II) return the application if a license is not required.

(B) REFERRAL NOT REQUIRED.—In the event that the head of a department or agency determines that certain types of applications need not be referred to the department or agency, such department or agency head shall notify the Secretary of the specific types of such applications that the department or agency does not wish to review.

(3) WITHDRAWAL OF APPLICATION.—An applicant may, by written notice to the Secretary, withdraw an application at any time before final action.

(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

(1) REFERRAL TO OTHER AGENCIES.—The Secretary shall promptly refer a license application to the departments and agencies under subsection (b) to make recommendations and provide information to the Secretary.

(2) RESPONSIBILITY OF REFERRAL DEPARTMENTS AND AGENCIES.—The Secretary of Defense, the Secretary of State, and the heads of other reviewing departments and agencies shall take all necessary actions on an application in a prompt and responsible manner. Each department or agency reviewing an application under this section shall establish and maintain records properly identifying and monitoring the status of the matter referred to the department or agency.

(3) ADDITIONAL INFORMATION REQUESTS.—Each department or agency to which a license application is referred shall specify to the Secretary any information that is not in the application that would be required for the department or agency to make a determination with respect to the application, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by that department or agency and the date the information is received by that department or agency shall not be included in calculating the time periods prescribed in this title.

(4) TIME PERIOD FOR ACTION BY REFERRAL DEPARTMENTS AND AGENCIES.—Within 30 days after the Secretary refers an application under this section, each department or agency to which an application has been referred shall provide the Secretary with a recommendation either to approve the license or to deny the license. A recommendation that the Secretary deny a license shall include a statement of reasons for the recommendation that are consistent with the provisions of this title, and shall cite both the specific statutory and regulatory basis for the recommendation. A department or agency that fails to provide a recommendation in accordance with this paragraph within that 30-day period shall be deemed to have no objection to the decision of the Secretary on the application.

(d) ACTION BY THE SECRETARY.—Not later than 30 days after the date the application is referred, the Secretary shall—

(1) if there is agreement among the departments and agencies to which the application has been referredunder subsection (c) to issue or deny the license—

(A) issue the license and ensure 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 license; or

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

(e) CONSEQUENCES OF APPLICATION DENIAL.—

(1) IN GENERAL.—If a determination is made to deny a license, the Secretary shall inform the applicant in writing, consistent with the protection of intelligence information sources and methods, of—

(A) the determination;

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

(C) what, if any, modifications to, or restrictions on, the items for which the license was sought would allow such export to be compatible with export controls imposed under this Act, and which officer or employee of the Department would be in a position to discuss modifications or restrictions with the applicant and the specific statutory and regulatory bases for imposing such modifications or restrictions;

(D) to the extent consistent with the national security and foreign policy interests of the United States, the specific considerations that led to the determination to deny the application; and

(E) the availability of appeal procedures.

(2) PERIOD FOR APPLICANT TO RESPOND.—The applicant shall have 20 days from the date of the notice of intent to deny the application to respond in a manner that addresses and corrects the reasons for the denial. If the applicant does not adequately address or correct the reasons for denial or does not respond, the license shall be denied. If the applicant does address or correct the reasons for denial, the application shall be considered in a timely manner.

(f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

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

(2) ENFORCEMENT OF TIME LIMITS.—

(A) IN GENERAL.—In any case in which an action prescribed in this section is not taken on an application within the time period established by this section (except in the case of a time period extended under subsection (g) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(B) BRINGING COURT ACTION.—If, within 20 days after a petition is filed under subparagraph (A), the processing of the application has not been brought into conformity with the requirements of this section, or the processing of the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for an order requiring compliance with the time periods required by this section.

(g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—The following actions related to processing an application shall not be included in calculating the time periods prescribed in this section:

(1) AGREEMENT OF THE APPLICANT; COMPLEXITY OF ANALYSIS; NATIONAL SECURITY IMPACT.—

(A) AGREEMENT OF THE APPLICANT.—Delays upon which the Secretary and the applicant mutually agree.

(B) COMPLEXITY OF ANALYSIS.—A reviewing department or agency requires more time due to the complexity of the analysis, if the additional time is not more than 60 days.

(C) NATIONAL SECURITY IMPACT.—A reviewing department or agency requires additional time because of the potential impact on the national security or foreign policy interests of the United States, if the additional time is not more than 60 days.

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

(A) the need for the prelicense check is determined by the Secretary or by another department or agency in any case in which the request for the prelicense check is made by such department or agency;

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

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

(3) REQUESTS FOR GOVERNMENT-TO-GOVERNMENT ASSURANCES.—Any request by the Secretary or another department or agency for government-to-government assurances of suitable end uses of items approved for export, when failure to obtain such assurances would result in rejection of the application, if—

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

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

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

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

(5) MULTILATERAL REVIEW.—Multilateral review of a license application to the extent that such multilateral review is required by a relevant multilateral regime.

(6) CONGRESSIONAL NOTIFICATION.—Such time as is required for mandatory congressional notifications under this Act.

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

(8) INTELLIGENCE AGENCIES.—Delays necessary to obtain information or assessments from intelligence agencies.

(h) CLASSIFICATION REQUESTS AND OTHER INQUIRIES.—

(1) CLASSIFICATION REQUEST.—

(A) NOTIFICATION OF OTHER AGENCIES.—In any case in which the Secretary receives a written request asking for the proper classification of an item on the Control List or the applicability of licensing requirements under this title, the Secretary shall promptly notify the Secretary of Defense, the Secretary of State, and the head of any other department or agency of the United States that the Secretary considers appropriate, of the request.

(B) DETERMINATION; RESOLUTION OF DISPUTES.—The Secretary shall make the determination regarding proper classification within 14 days after receiving the request and inform the person making the request of such determination. If an objection is raised by the Secretary of State or the Secretary of Defense regarding the Secretary's determination within that time period, the disagreement shall be resolved through the interagency resolution process described in section 402, except that any such disagreement shall be resolved within 60 days.

(2) OTHER INQUIRIES.—In any case in which the Secretary receives a written request for information under this Act, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.

SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.

(a) IN GENERAL.—All license applications on which agreement cannot be reached shall be referred to the interagency dispute resolution process for decision.

(b) INTERAGENCY DISPUTE RESOLUTION PROCESS.—

(1) INITIAL RESOLUTION.—The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications described in subsection (a) with respect to which the Secretary and any of the referral departments and agencies are not in agreement. The chairperson shall consider the positions of all the referral departments and agencies (which shall be included in the minutes described in subsection (c)(2)) and make a decision on the license application, including appropriate revisions or conditions thereto.

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

(3) FURTHER RESOLUTION.—The President shall establish additional levels for review or appeal of any matter that cannot be resolved pursuant to the process described in paragraph (1). Each such review shall ensure that matters are resolved or referred to the President not later than 90 days after 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 process shall keep reasonably detailed minutes of all meetings. On each matter before the interagency committee or before any other level of the interagency dispute resolution process in which members disagree, each member shall clearly state the reasons for the member's position and the reasons shall be entered in the minutes.

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

SEC. 501. INTERNATIONAL ARRANGEMENTS.

(a) MULTILATERAL EXPORT CONTROL REGIMES.—

(1) POLICY.—It is the policy of the United States to seek multilateral arrangements that support the national security objectives of the United States (as described in title II) and that establish fairer and more predictable competitive opportunities for United States exporters.

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

(3) PARTICIPATION IN NEW REGIMES.—It is the policy of the United States to participate in additional multilateral export control regimes if such participation would serve the national security interests of the United States.

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

(c) STANDARDS FOR MULTILATERAL EXPORT CONTROL REGIMES.—The President shall take steps to establish the following features in any multilateral export control regime in which the United States is participating or may participate:

(1) FULL MEMBERSHIP.—All supplier countries are members of the regime, and the policies and activities of the members are consistent with the objectives and membership criteria of the multilateral export control regime.

(2) EFFECTIVE ENFORCEMENT AND COMPLIANCE.—The regime promotes enforcement and compliance with the regime's rules and guidelines.

(3) PUBLIC UNDERSTANDING.—The regime makes an effort to enhance public understanding of the purpose and procedures of the multilateral export control regime.

(4) EFFECTIVE IMPLEMENTATION PROCEDURES.—The multilateral export control regime has procedures for the uniform and consistent interpretation and implementation of its rules and guidelines.

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

(A) cooperate with governments outside the regime to restrict the export of items controlled by such regime; and

(B) establish an ongoing mechanism in the regime to coordinate planning and implementation of export control measures related to such cooperation.

(6) PERIODIC HIGH-LEVEL MEETINGS.—There are regular periodic meetings of high-level representatives of the governments of members of the multilateral export control regime for the purpose of coordinating export control policies and issuing policy guidance to members of the regime.

(7) COMMON LIST OF CONTROLLED ITEMS.—There is agreement on a common list of items controlled by the multilateral export control regime.

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

(9) TREATMENT OF CERTAIN COUNTRIES.—There is agreement to prevent the export or diversion of the most sensitive items to countries whose activities are threatening to the national security of the United States or its allies.

(10) HARMONIZATION OF LICENSE APPROVAL PROCEDURES.—There is harmonization among the members of the regime of their national export license approval procedures, practices, and standards.

(11) UNDERCUTTING.—There is a limit with respect to when members of a multilateral export control regime—

(A) grant export licenses for any item that is substantially identical to or directly competitive with an item controlled pursuant to the regime, where the United States has denied an export license for such item, or

(B) approve exports to a particular end user to which the United States has denied export license for a similar item.

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

(1) EXPORT CONTROL LAW.—Enforcement authority, civil and criminal penalties, and statutes of limitations are sufficient to deter potential violations and punish violators under the member's export control law.

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

(3) ENFORCEMENT.—The enforcement mechanism provides authority for trained enforcement officers to investigate and prevent illegal exports.

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

(5) INFORMATION.—There are procedures for the coordination and exchange of information concerning licensing, end users, and enforcement with other members of the multilateral export control regime.

(6) RESOURCES.—The member has devoted adequate resources to administer effectively the authorities, systems, mechanisms, and procedures described in paragraphs (1) through (5).

(e) OBJECTIVES REGARDING MULTILATERAL EXPORT CONTROL REGIMES.—The President shall seek to achieve the following objectives with regard to multilateral export control regimes:

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

(A) by creating a requirement to share information about export license applications among members before a member approves an export license; and

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

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

(A) national security concerns;

(B) the controllability of items; and

(C) the costs and benefits of controls.

(3) ENCOURAGE COMPLIANCE BY NONMEMBERS.—Encourage nonmembers of the multilateral export control regime—

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

(B) to adhere to the appropriate multilateral export control regime; and

(C) not to undermine an existing multilateral export control regime by exporting controlled items in a manner inconsistent with the guidelines of the regime.

(f) TRANSPARENCY OF MULTILATERAL EXPORT CONTROL REGIMES.—

(1) PUBLICATION OF INFORMATION ON EACH EXISTING REGIME.—Not later than 120 days after the date of enactment of this Act, the Secretary shall, for each multilateral export control regime, to the extent that it is not inconsistent with the arrangements of that regime (in the judgment of the Secretary of State) or with the national interest, publish in the Federal Register and post on the Department of Commerce website the following information with respect to the regime:

(A) The purposes of the regime.

(B) The members of the regime.

(C) The export licensing policy of the regime.

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

(E) Any countries, end uses, or end users that are subject to the export controls of the regime.

(F) Rules of interpretation.

(G) Major policy actions.

(H) The rules and procedures of the regime for establishing and modifying any matter described in subparagraphs (A) through (G) and for reviewing export license applications.

(2) NEW REGIMES.—Not later than 60 days after the United States joins or organizes a new multilateral export control regime, the Secretary shall, to the extent that it is not inconsistent with arrangements under the regime (in the judgment of the Secretary of State) or with the national interest, publish in the Federal Register and post on the Department of Commerce website the information described in subparagraphs (A) through (H) of paragraph (1) with respect to the regime.

(3) PUBLICATION OF CHANGES.—Not later than 60 days after a multilateral export control regime adopts any change in the information published under this subsection, the Secretary shall, to the extent not inconsistent with the arrangements under the regime or the national interest, publish such changes in

the Federal Register and post such changes on the Department of Commerce website.

(g) SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL SYSTEMS.—The Secretary is encouraged to continue to—

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

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

SEC. 502. FOREIGN BOYCOTTS.

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

(1) To counteract 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 items 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.

(b) PROHIBITIONS AND EXCEPTIONS.—

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

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, or requirement of, or a request from or on behalf of the boycotting country (subject to the condition that the intent required to be associated with such an act in order to constitute a violation of the prohibition is not indicated solely by the mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person).

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminate against any United States person on the basis of the race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

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

(D) Furnishing information (other than furnishing normal business information in a commercial context, as defined by the Secretary) about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person that is known or believed to be restricted from having any business relationship with or in the boycotting country.

(E) Furnishing information about whether any person is a member of, has made a contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement the compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

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

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

(i) prohibiting the import of items from the boycotted country or items produced or provided, by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

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

(B) compliance, or agreement to comply, with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment, or the name of the provider of other services, except that, for purposes of applying any exception under this subparagraph, no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) compliance, or agreement to comply, in the normal course of business with the unilateral and specific selection by a boycotting country, or a national or resident thereof, or carriers, insurers, suppliers of services to be performed within the boycotting country, or specific items which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) compliance, or agreement to comply, with export requirements of the boycotting country relating to shipment or transshipment of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual, or agreement by an individual to comply, with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country, or agreement by such a person to comply, with the laws of the country with respect to the person's activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of the foreign country governing imports into such country of trademarked, trade-named, or similarly specifically identifiable products, or components of products for such person's own use, including the performance of contractual services within that country.

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

(4) ANTITRUST AND CIVIL RIGHTS LAWS NOT AFFECTED.—Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) EVASION.—This section applies to any transaction or activity undertaken by or through a United States person or any other person with intent to evade the provisions of this section or the regulations issued pursuant to this subsection. The regulations issued pursuant to this section shall expressly provide that the exceptions set forth in paragraph (2) do not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) that are otherwise prohibited, pursuant to the intent of such exceptions.

(c) ADDITIONAL REGULATIONS AND REPORTS.—

(1) REGULATIONS.—In addition to the regulations issued pursuant to subsection (b), regulations issued pursuant to title III shall implement the purposes set forth in subsection (a).

(2) REPORTS BY UNITED STATES PERSONS.—The regulations shall require that any United States person receiving a request to furnish information, enter into or implement an agreement, or take any other action referred to in subsection (a) shall report that request to the Secretary, together with any other information concerning the request that the Secretary determines appropriate. The person shall also submit to the Secretary a statement regarding whether

the person intends to comply, and whether the person has complied, with the request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any item to which such report relates may be treated as confidential if the Secretary determines that disclosure of that information would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate to carry out the purposes set forth in subsection (a).

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

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

(2) pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

SEC. 503. PENALTIES.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Any individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports involved or $1,000,000, whichever is greater, imprisoned for not more than 10 years, or both, for each violation.

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

(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

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

(A) any of that person's security or other interest in, claim against, or property or contractual rights of any kind in the tangible items that were the subject of the violation;

(B) any of that person's security or other interest in, claim against, or property or contractual rights of any kind in the tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection, or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of chapter 46 of title 18, United States Code (relating to criminal forfeiture), to the same extent as property subject to forfeiture under that chapter.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—

(1) CIVIL PENALTIES.—The Secretary may impose a civil penalty of up to $500,000 for each violation of a provision of this Act or any regulation, license, or order issued under this Act. A civil penalty under this paragraph may be in addition to, or in lieu of, any other liability or penalty which may be imposed for such a violation.

(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person, including the suspension or revocation of the authority of such person to export or receive United States-origin items subject to this Act, for a violation of a provision of this Act or any regulation, license, or order issued under this Act.

(3) EXCLUSION FROM PRACTICE.—The Secretary may exclude any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity from participating before the Department with respect to a license application or any other matter under this Act.

(d) PAYMENT OF CIVIL PENALTIES.—

(1) PAYMENT AS CONDITION OF FURTHER EXPORT PRIVILEGES.—The payment of a civil penalty imposed under subsection (c) may be made a condition for the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. The period for which the payment of a penalty may be made such a condition may not exceed 1 year after the date on which the payment is due.

(2) DEFERRAL OR SUSPENSION.—

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

(B) NO BAR TO COLLECTION OF PENALTY.—A deferral or suspension under subparagraph (A) shall not operate as a bar to the collection of the penalty concerned in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

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

(e) REFUNDS.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, refund any civil penalty imposed under subsection (c) on the ground of a material error of fact or law in imposition of the penalty.

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

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

(f) EFFECT OF OTHER CONVICTIONS.—

(1) DENIAL OF EXPORT PRIVILEGES.—Any person convicted of a violation of—

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

(B) a provision of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.),

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

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

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

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

(G) any regulation, license, or order issued under any provision of law listed in subparagraph (A), (B), (C), (D), (E), or (F),

(H) section 371 or 1001 of title 18, United States Code, if in connection with the export of controlled items under this Act or any regulation, license, or order issued under the International Emergency Economic Powers Act, or the export of items controlled under the Arms Export Control Act,

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

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

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

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

may, at the discretion of the Secretary, be denied export privileges under this Act for a period not to exceed 10 years from the date of the conviction. The Secretary may also revoke any export license under this Act in which such person had an interest at the time of the conviction.

(2) RELATED PERSONS.—The Secretary may exercise the authority under paragraph (1) with respect to any person related through affiliation, ownership, control, or position of responsibility to a person convicted of any violation of a law set forth in paragraph (1) upon a showing of such relationship with the convicted person. The Secretary shall make such showing only after providing notice and opportunity for a hearing.

(g) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a proceeding in which a civil penalty or other administrative sanction (other than a temporary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) EXCEPTION.—

(A) TOLLING.—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative

sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

(B) DURATION.—The tolling of the limitation with respect to a defendant under subparagraph (A) as a result of a criminal indictment shall continue for a period of 6 months from the date on which the conviction of the defendant becomes final, the indictment against the defendant is dismissed, or the criminal action has concluded.

(h) VIOLATIONS DEFINED BY REGULATION.—Nothing in this section shall limit the authority of the Secretary to define by regulation violations under this Act.

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

(1) the availability of other administrative or judicial remedies with respect to a violation of a provision of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to any such violation; or

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

SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.

(a) VIOLATIONS BY UNITED STATES PERSONS.—

(1) SANCTIONS.—

(A) IN GENERAL.—If the President determines that a United States person knowingly—

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, title II or III of this Act, or any regulations or orders issued under any such provisions,

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

(iii) facilitates such export, transfer, or trade by any other person, then the President shall impose the applicable sanctions described in subparagraph (B).

(B) SANCTIONS DESCRIBED.—The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

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

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 503.

(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person 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, subject to the jurisdiction of the United States under this Act,

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

(iii) facilitates such export, transfer, or trade by any other person, or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) SANCTIONS DESCRIBED.—The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

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

(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

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

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

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

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

(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(5) WAIVER AND REPORT TO CONGRESS.—

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

(B) REPORT TO CONGRESS.—In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

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

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

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

(7) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

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

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or 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) MISSILE.—The term "missile" means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems.

(2) MISSILE TECHNOLOGY CONTROL REGIME; MTCR.—The term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(3) MTCR ADHERENT.—The term "MTCR adherent" means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR.

(4) MTCR ANNEX.—The term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(5) MISSILE EQUIPMENT OR TECHNOLOGY; MTCR EQUIPMENT OR TECHNOLOGY.—The terms "missile equipment or technology" and "MTCR equipment or technology" mean those items listed in category I or category II of the MTCR Annex.

(6) FOREIGN PERSON.—The term "foreign person" means any person other than a United States person.

(7) PERSON.—

(A) IN GENERAL.—The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.

(B) IDENTIFICATION IN CERTAIN CASES.—In the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term "person" means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

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

(8) OTHERWISE ENGAGED IN THE TRADE OF.—The term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection

(c) if the President determines that a foreign person, on or after the date of enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any item that is subject to the jurisdiction of the United States under this Act, or

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

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

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

(i) used chemical or biological weapons in violation of international law;

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

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

(B) any foreign country whose government is determined for purposes of section 310 to be a government that has repeatedly provided support for acts of international terrorism; or

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

(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

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

(B) any successor entity to that foreign person;

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

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

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

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following the consultations, the President shall impose sanctions unless the President determines and certifies to Congress that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to Congress that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

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

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

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

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

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

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

(C) to—

(i) spare parts,

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

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

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

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

(e) WAIVER.—

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

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

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

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

SEC. 506. ENFORCEMENT.

(a) GENERAL AUTHORITY AND DESIGNATION.—

(1) POLICY GUIDANCE ON ENFORCEMENT.—The Secretary, in consultation with the Secretary of the Treasury and the heads of other departments and agencies that the Secretary considers appropriate, shall be responsible for providing policy guidance on the enforcement of this Act.

(2) GENERAL AUTHORITIES.—

(A) EXERCISE OF AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act, officers and employees of the Department designated by the Secretary, officers and employees of the United States Customs Service designated by the Commissioner of Customs, and officers and employees of any other department or agency designated by the head of a

department or agency exercising functions under this Act, may exercise the enforcement authority under paragraph (3).

(B) CUSTOMS SERVICE.—In carrying out enforcement authority under paragraph (3), the Commissioner of Customs and employees of the United States Customs Service designated by the Commissioner may make investigations within or outside the United States and at ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to carry out law enforcement responsibilities. Subject to paragraph (3), the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize items at the ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to conduct searches, detentions, and seizures, and at the places outside the United States where the United States Customs Service, pursuant to agreement or other arrangement with other countries, is authorized to perform enforcement activities.

(C) OTHER EMPLOYEES.—In carrying out enforcement authority under paragraph (3), the Secretary and officers and employees of the Department designated by the Secretary may make investigations within the United States, and may conduct, outside the United States, pre-license and post-shipment verifications of controlled items and investigations in the enforcement of section 502. The Secretary and officers and employees of the Department designated by the Secretary are authorized to search, detain (after search), and seize items at places within the United States other than ports referred to in subparagraph (B). The search, detention (after search), or seizure of items at the ports and places referred to in subparagraph (B) may be conducted by officers and employees of the Department only with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(D) AGREEMENTS AND ARRANGEMENTS.—The Secretary and the Commissioner of Customs may enter into agreements and arrangements for the enforcement of this Act, including foreign investigations and information exchange.

(3) SPECIFIC AUTHORITIES.—

(A) ACTIONS BY ANY DESIGNATED PERSONNEL.—Any officer or employee designated under paragraph (2), in carrying out the enforcement authority under this Act, may do the following:

(i) Make investigations of, obtain information from, make inspection of any books, records, or reports (including any writings required to be kept by the Secretary), premises, or property of, and take the sworn testimony of, any person.

(ii) Administer oaths or affirmations, and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both. In the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, on request of the Attorney General and after notice to any such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both. Any failure to obey such order of the court may be punished by such court as a contempt thereof. The attendance of witnesses and the production of documents provided for in this clause may be required from any State, the District of Columbia, or in any territory of the United States at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage allowance as paid witnesses in the district courts of the United States.

(B) ACTIONS BY OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—

(i) OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—Any officer or employee of the Office of Export Enforcement of the Department of Commerce (in this Act referred to as "OEE") who is designated by the Secretary under paragraph (2), and any officer or employee of the United States Customs Service who is designated by the Commissioner of Customs under paragraph (2), may do the following in carrying out the enforcement authority under this Act:

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

(II) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed, is committing, or is about to commit such a violation.

(III) Carry firearms.

(ii) OEE PERSONNEL.—Any officer or employee of the OEE designated by the Secretary under paragraph (2) shall exercise the authority set forth in clause (i) pursuant to guidelines approved by the Attorney General.

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

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom the officer or employee has reasonable cause to suspect there is any item that has been, is being, or is about to be exported from or transited through the United States in violation of this Act.

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

(iii) Detain (after search) or seize any item, for purposes of securing for trial or forfeiture to the United States, on or about such vehicle, vessel, aircraft, or person or in such package or container, if the officer or employee has probable cause to believe the item has been, is being, or is about to be exported from or transited through the United States in violation of this Act.

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

(b) FORFEITURE.—

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

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

(A) the seizure, summary and judicial forfeiture, and condemnation of property for violations of the customs laws;

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

(C) the remission or mitigation of such forfeitures; and

(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subsection, insofar as applicable and not inconsistent with this Act.

(3) FORFEITURES UNDER CUSTOMS LAWS.—Duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures of property under this subsection by the Secretary or any officer or employee of the Department that may be authorized or designated for that purpose by the Secretary (or by the Commissioner of Customs or any officer or employee of the United States Customs Service designated by the Commissioner), or, upon the request of the Secretary, by any other agency that has authority to manage and dispose of seized property.

(c) REFERRAL OF CASES.—All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 503 or to the Attorney General for criminal action in accordance with this Act or to both the Secretary and the Attorney General.

(d) UNDERCOVER INVESTIGATION OPERATIONS.—

(1) USE OF FUNDS.—With respect to any undercover investigative operation conducted by the OEE that is necessary for the detection and prosecution of violations of this Act—

(A) funds made available for export enforcement under this Act may be used to purchase property, buildings, and other facilities, and to lease equipment, conveyances, and space within the United States, without regard to sections 1341 and 3324 of title 31, United States Code, the third undesignated paragraph under the heading of "miscellaneous" of the Act of March 3, 1877, (40 U.S.C. 34), sections 3732(a) and 3741 of the Revised

Statutes of the United States (41 U.S.C. 11(a) and 22), subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a) and (c)), and section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);

(B) funds made available for export enforcement under this Act may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 1341, 3324, and 9102 of title 31, United States Code;

(C) funds made available for export enforcement under this Act and the proceeds from undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

(D) the proceeds from undercover operations may be used to offset necessary and reasonable expenses incurred in such operations without regard to the provisions of section 3302 of title 31, United States Code,

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

(2) DISPOSITION OF BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation has a net value of more than $250,000 and is to be liquidated, sold, or otherwise disposed of, the Director of OEE shall report the circumstances to the Secretary and the Comptroller General of the United States as much in advance of such disposition as the Director of the OEE (or the Director's designee) determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations incurred by the corporation or business enterprise are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

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

(4) AUDIT AND REPORT.—

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

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

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

(ii) The number of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted.

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

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

(A) the term "closed", with respect to an undercover investigative operation, refers to the earliest point in time at which all criminal proceedings (other than appeals) pursuant to the investigative operation are concluded, or covert activities pursuant to such operation are concluded, whichever occurs later; and

(B) the terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation conducted by the OEE—

(i) in which the gross receipts (excluding interest earned) exceed $25,000, or expenditures (other than expenditures for salaries of employees) exceed $75,000, and

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

(e) WIRETAPS.—

(1) AUTHORITY.—Interceptions of communications in accordance with section 2516 of title 18, United States Code, are authorized to further the enforcement of this Act.

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

"(q) any violation of, or conspiracy to violate, the Export Administration Act of 2001 or the Export Administration Act of 1979.".

(f) POST-SHIPMENT VERIFICATIONS.—

(1) FOR CERTAIN EXPORTS AND COUNTRIES.—The Secretary shall target post-shipment verifications—

(A) to exports involving the greatest risk to national security; and

(B) to those countries identified by the Director of Central Intelligence in the most recent report that was submitted to Congress under section 721 of the Intelligence Authorization Act for Fiscal Year 1997 on the acquisition and supply by foreign countries of dual-use items and other technology useful for the development or production of weapons of mass destruction.

(2) CONDUCT OF VERIFICATIONS.—The Secretary may, with the concurrence of the Secretary of State—

(A) utilize embassy personnel to conduct post-shipment verifications; and

(B) establish guidelines and regulations allowing United States persons to conduct those verifications.

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

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

(2) RELATED PERSONS.—The Secretary may exercise the authority under paragraph (1) with respect to any person related through affiliation, ownership, control, or position of responsibility, to any end user refusing to allow post-shipment verification of a controlled item.

(3) REFUSAL BY COUNTRY.—(A) If a country with which the United States has entered into an agreement providing for post-shipment verifications repeatedly obstructs or otherwise denies the post-shipment verification of controlled items, the Secretary shall deny a license for the export of those items or any substantially identical or directly competitive items or class of items to all end users in that country until such post-shipment verification is allowed.

(B) If the country in which an end user is located refuses to allow post-shipment verification of a controlled item, whether or not the United States has an agreement with that country providing for post-shipment verifications, the Secretary may deny a license for the export of that item or any substantially identical or directly competitive item or class of items to all end users in that country until such post-shipment verification is allowed.

(h) FREIGHT FORWARDERS BEST PRACTICES PROGRAM AUTHORIZATION.—There is authorized to be appropriated for the Department of Commerce $3,500,000 and such sums as may be necessary to hire 20 additional employees to assist United States freight forwarders and other interested parties in developing and implementing, on a voluntary basis, a "best practices" program to ensure that exports of controlled items are undertaken in compliance with this Act.

(i) END USE VERIFICATION AUTHORIZATION.—

(1) IN GENERAL.—There is authorized to be appropriated for the Department of Commerce $4,500,000 and such sums as may be necessary to hire 10 additional overseas investigators to be posted in the People's Republic of China, the Russian Federation, the Hong Kong Special Administrative Region, the Republic of India, Singapore, Egypt, and Taiwan, or any other place the Secretary deems appropriate, for the purpose of verifying the end use of high-risk, dual-use technology.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Department shall, in its annual report to Congress on export controls, include a report on the effectiveness of the end use verification activities authorized under subsection (a). The report shall include the following information:

(A) The activities of the overseas investigators of the Department.

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

(C) The ability of the Department's investigators to detect the illegal transfer of high risk, dual-use goods and technologies.

(3) ENHANCEMENTS.—In addition to the authorization provided in paragraph (1), there is authorized to be appropriated for the Department of Commerce $5,000,000 to enhance its program for verifying the end use of items subject to controls under this Act.

(j) ENHANCED COOPERATION WITH UNITED STATES CUSTOMS SERVICE.—Consistent with the purposes of this Act, the Secretary is authorized to undertake, in cooperation with the United States Customs Service, such measures as may be necessary or required to enhance the ability of the United States to detect unlawful exports and to enforce violations of this Act.

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

(l) AUTHORIZATION FOR EXPORT LICENSING AND ENFORCEMENT COMPUTER SYSTEM.—There is authorized to be appropriated for the Department $5,000,000 and such other sums as may be necessary for planning, design, and procurement of a computer system to replace the Department's primary export licensing and computer enforcement system.

(m) AUTHORIZATION FOR BUREAU OF EXPORT ADMINISTRATION.—The Secretary may authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement in accordance with section 9703 of title 31, United States Code (as added by Public Law 102–393). The Secretary may also authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement from the Department of Justice Assets Forfeiture Fund in accordance with section 524 of title 28, United States Code. Such funds shall be deposited in an account and shall remain available until expended.

(n) AMENDMENTS TO TITLE 31.—

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

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

(A) by striking "or" at the end of subclause (I);

(B) by inserting "or" at the end of subclause (II); and

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

"(III) a violation of the Export Administration Act of 1979, the Export Administration Act of 2001, or any regulation, license, or order issued under those Acts;".

(3) Section 9703(p)(1) of title 31, United States Code (as added by Public Law 102–393) is amended by adding at the end the following: "In addition, for purposes of this section, the Bureau of Export Administration of the Department of Commerce shall be considered to be a Department of the Treasury law enforcement organization.".

(o) AUTHORIZATION FOR LICENSE REVIEW OFFICERS.—

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

(2) TRAINING.—There is authorized to be appropriated to the Department of Commerce $2,000,000 to conduct professional training of license review officers, auditors, and investigators conducting post-shipment verification checks. These funds shall be used to—

(A) train and certify, through a formal program, new employees entering these positions for the first time; and

(B) the ongoing professional training of experienced employees on an as needed basis.

(p) AUTHORIZATION.—

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

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

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

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

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

(E) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

(2) TERMINATION.—The authority granted by this Act shall terminate on December 31, 2005.

SEC. 507. ADMINISTRATIVE PROCEDURE.

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

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

(1) ADMINISTRATIVE PROCEDURES.—Any administrative sanction imposed under section 503 may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code. The imposition of any such administrative sanction shall be subject to judicial review in accordance with sections 701 through 706 of title 5, United States Code, except that the review shall be initiated in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the review.

(2) AVAILABILITY OF CHARGING LETTER.—Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued under section 502 shall be made available for public inspection and copying.

(c) COLLECTION.—If any person fails to pay a civil penalty imposed under section 503, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

(1) GROUNDS FOR IMPOSITION.—In any case in which there is reasonable cause to believe that a person is engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this Act, or any regulation, order, or license issued under this Act, including any diversion of goods or technology from an authorized end use or end user, and in any case in which a criminal indictment has been returned against a person alleging a violation of this Act or any of the statutes listed in section 503, the Secretary may, without a hearing, issue an order temporarily denying that person's United States export privileges (hereafter in this subsection referred to as a "temporary denial order"). A temporary denial order shall be effective for such period (not in excess of 180 days) as the Secretary specifies in the order, but may be renewed by the Secretary, following notice and an opportunity for a hearing, for additional periods of not more than 180 days each.

(2) ADMINISTRATIVE APPEALS.—The person or persons subject to the issuance or renewal of a temporary denial order may appeal the issuance or renewal of the temporary denial order, supported by briefs and other material, to an administrative law judge who shall, within 15 working days after the appeal is filed, issue a decision affirming, modifying, or vacating the temporary denial order. The temporary denial order shall be affirmed if it is shown that—

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

(B) a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or any of the statutes listed in section 503.

The decision of the administrative law judge shall be final unless, within 10 working days after the date of the administrative law judge's decision, an appeal is filed with the Secretary. On appeal, the Secretary shall either affirm, modify, reverse, or vacate the decision of the administrative law judge by written order within 10 working days after receiving the appeal. The written order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3). The materials submitted to the administrative law

judge and the Secretary shall constitute the administrative record for purposes of review by the court.

(3) COURT APPEALS.—An order of the Secretary affirming, in whole or in part, the issuance or renewal of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the issuance of the temporary denial order was based on reasonable cause to believe that the person subject to the order was engaged in or was about to engage in any act or practice that constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this Act, or whether a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or of any of the statutes listed in section 503. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) LIMITATIONS ON REVIEW OF CLASSIFIED INFORMATION.—Any classified information that is included in the administrative record that is subject to review pursuant to subsection (b)(1) or (d)(3) may be reviewed by the court only on an ex parte basis and in camera.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

SEC. 601. EXPORT CONTROL AUTHORITY AND REGULATIONS.

(a) EXPORT CONTROL AUTHORITY.—

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

(2) DELEGATION OF FUNCTIONS OF THE SECRETARY.—The Secretary may delegate any function under this Act, unless otherwise provided, to the Under Secretary of Commerce for Export Administration or to any other officer of the Department.

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

(1) UNDER SECRETARY OF COMMERCE.—There shall be within the Department an Under Secretary of Commerce for Export Administration (in this section referred to as the "Under Secretary") who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall carry out all functions of the Secretary under this Act and other provisions of law relating to national security, as the Secretary may delegate.

(2) ADDITIONAL ASSISTANT SECRETARIES.—In addition to the number of Assistant Secretaries otherwise authorized for the Department of Commerce, there shall be within the Department of Commerce the following Assistant Secretaries of Commerce:

(A) An Assistant Secretary for Export Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall assist the Secretary and the Under Secretary in carrying out functions relating to export listing and licensing.

(B) An Assistant Secretary for Export Enforcement who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall assist the Secretary and the Under Secretary in carrying out functions relating to export enforcement.

(c) ISSUANCE OF REGULATIONS.—

(1) IN GENERAL.—The President and the Secretary may issue such regulations as are necessary to carry out this Act. Any such regulations the purpose of which is to carry out title II or title III may be issued only after the regulations are submitted for review to such departments or agencies as the President considers appropriate. The Secretary shall consult with the appropriate export control advisory committee appointed under section 105(a) in formulating regulations under this title. The second sentence of this subsection does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(2) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on

International Relations of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to the United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the appropriate export control advisory committees appointed under section 105(a) in amending regulations issued under this Act.

(3) REGULATIONS ON EXPORTS TO FOREIGN NATIONALS.—The Secretary, with the concurrence of the Secretary of State and the Secretary of Defense, shall issue regulations to govern the release of technology to a foreign national within the United States and to establish appropriate procedures and entities to ensure compliance with those regulations.

SEC. 602. CONFIDENTIALITY OF INFORMATION.

(a) EXEMPTIONS FROM DISCLOSURE.—

(1) INFORMATION OBTAINED ON OR BEFORE JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under the Export Administration Act of 1979, or any predecessor statute, on or before June 30, 1980, which is deemed confidential, including Shipper's Export Declarations, or with respect to which a request for confidential treatment is made by the person furnishing such information, shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed, unless the Secretary determines that the withholding thereof is contrary to the national interest.

(2) INFORMATION OBTAINED AFTER JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under this Act, under the Export Administration Act of 1979 after June 30, 1980, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), may be withheld from disclosure only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with an application for an export license or other export authorization (or recordkeeping or reporting requirement) under the Export Administration Act of 1979, under this Act, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), including—

(A) the export license or other export authorization itself,

(B) classification requests described in section 401(h),

(C) information or evidence obtained in the course of any investigation by an officer or employee of the Department of Commerce,

(D) information obtained or furnished under title V in connection with any international agreement, treaty, or other obligation, and

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

and information obtained in any investigation of an alleged violation of section 502 of this Act except for information required to be disclosed by section 502(c)(2) or 507(b)(2) of this Act, shall be withheld from public disclosure and shall not be subject to disclosure under section 552 of title 5, United States Code, unless the release of such information is determined by the Secretary to be in the national interest.

(b) INFORMATION TO CONGRESS AND GAO.—

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

(2) AVAILABILITY TO THE CONGRESS—

(A) IN GENERAL.—Any information obtained at any time under this title or under any predecessor Act regarding the control of exports, including any report or license application required under this title, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon the request of the chairman or ranking minority member of such committee or subcommittee.

(B) PROHIBITION ON FURTHER DISCLOSURE.—No committee, subcommittee, or Member of Congress shall disclose any information obtained under this Act or any predecessor Act regarding the control of exports which is submitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

(3) AVAILABILITY TO THE GAO.—

(A) IN GENERAL.—Notwithstanding subsection (a), information described in paragraph (2) shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

(B) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(c) INFORMATION EXCHANGE.—Notwithstanding subsection (a), the Secretary and the Commissioner of Customs shall exchange licensing and enforcement information with each other as necessary to facilitate enforcement efforts and effective license decisions.

(d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—

(1) DISCLOSURE PROHIBITED.—No officer or employee of the United States, or any department or agency thereof, may publish, divulge, disclose, or make known in any manner or to any extent not authorized by law any information that—

(A) the officer or employee obtains in the course of his or her employment or official duties or by reason of any examination or investigation made by, or report or record made to or filed with, such department or agency, or officer or employee thereof; and

(B) is exempt from disclosure under this section.

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

(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The Secretary may impose a civil penalty of not more than $5,000 for each violation of paragraph (1), except that no civil penalty may be imposed on an officer or employee of the United States, or any department or agency thereof, without the concurrence of the department or agency employing such officer or employee. Subsections 503(e), (g), (h), and (i) and 507(a), (b), and (c) shall apply to actions to impose civil penalties under this paragraph. At the request of the Secretary, a department or agency employing an officer or employee determined to have violated paragraph (1) shall deny that officer or employee access to information exempt from disclosure under this section. Any officer or employee who commits a violation of paragraph (1) may also be removed from office or employment by the employing agency. Any officer or employee who commits such violation may also be removed from office or employment for the violation of paragraph (1). Sections 503 (e), (g), (h), and (i) and 507 (a), (b), and (c) shall apply to violations described in this paragraph.

TITLE VII—EXPORTS OF SATELLITES

SEC. 701. APPLICABILITY.

This title applies with respect to exports, and all applications for licenses to export, satellites and related items, notwithstanding any other provision of this or any other Act.

SEC. 702. EXPORT CONTROLS ON SATELLITES AND RELATED ITEMS.

All satellites and related items that were on the Commerce Control List of dual-use items in the Export Administration Regulations (15 C.F.R. part 730 et seq.) on October 16, 1998, shall, subject to sections 703 and 704, be controlled under this Act.

SEC. 703. EXPORT LICENSE PROCEDURES.

(a) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—The Secretary shall refer to the Secretary of Defense, the Secretary of State, and the heads of other departments and agencies that the Secretary considers appropriate, all applications for licenses to export satellites and related items.

(b) REQUIRED CONSULTATIONS WITH INTELLIGENCE COMMUNITY.—The Secretary, the Secretary of Defense, and the Secretary of State, as appropriate, shall consult

with the Director of Central Intelligence during the review of any application for a license involving the overseas launch of a commercial satellite of United States origin.

(c) TIME PERIOD FOR REFERRALS.—Within 30 days after the Secretary refers an export license application under this section, each department or agency to which an export license application has been referred shall provide the Secretary with a recommendation to either approve or deny the license application. A department or agency that fails to provide a recommendation within that 30-day period shall be deemed to have no objection to the decision of the Secretary on the license application.

(d) INTERAGENCY DISPUTE RESOLUTION PROCESS.—If there is no agreement among the Secretary, the Secretary of Defense, and the Secretary of State to issue or deny a license to which this section applies, then the Secretary shall refer the license application to an interagency dispute resolution process established by the President. The dispute resolution process shall be completed within a period of 60 days. A license pursuant to the application shall not be issued or denied until the Secretary, the Secretary of Defense, and the Secretary of State agree to issue or deny the license, or until the President makes a determination to issue or deny the license.

SEC. 704. MANDATORY STATE DEPARTMENT REVIEW.

(a) CERTAIN DEFENSE SERVICES.—The provision of defense services by United States persons, including services or assistance provided during technical interchange meetings, in connection with the launch of a satellite from, or by nationals of, the People's Republic of China, are subject to section 38 of the Arms Export Control Act.

(b) NOTIFICATION TO CONGRESS.—At least 30 days before any export license or any technical assistance agreement is approved under subsection (a), the President shall transmit a certification with respect to such export license or technical assistance agreement pursuant to section 36(c) of the Arms Export Control Act, without regard to the value limitation thereunder.

SEC. 705. DEFINITIONS.

In this title:

(1) DEFENSE SERVICE.—The term "defense service" shall have the meaning set forth in section 47 of the Arms Export Control Act or regulations issued thereunder.

(2) RELATED ITEMS.—The term "related items" means the satellite fuel, ground support equipment, test equipment, payload adapter or interface hardware, replacement parts, and nonembedded solid propellant orbit transfer engines described in the report submitted to Congress by the Department of State on February 6, 1998, pursuant to section 38(f) of the Arms Export Control Act (22 U.S.C. 2778(f)), as well as systems, components, parts, accessories, and associated equipment for satellites, including ground control equipment.

(3) SATELLITE.—The term "satellite" means any commercial communications satellite.

SEC. 706. CONFORMING AMENDMENTS.

(a) 1999 NDAA.—(1) Section 1513(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2778 note) is repealed.

(2) Section 1513(c) of that Act is amended by striking "(1) Subsection (a)" and all that follows through "(2)".

(3) Section 1514(a)(6) of that Act is amended by striking "Secretary of State" and inserting "Secretary of Commerce and the Secretary of State".

(b) 2000 NDAA.—(1) Section 1404 of the National Defense Authorization Act for Fiscal Year 2000 (22 U.S.C. 2778 note) is amended in the matter preceding paragraph (1), by striking "Secretary of State" and inserting "Secretary of Commerce or the Secretary of State, as the case may be,".

(2) Section 1410 of that Act, and the item relating to that section in the table of contents of that Act, are repealed.

(3) Section 1411(a) of that Act is amended in the first sentence by striking "involving the overseas launch of a commercial satellite of United States origin" and inserting "to provide defense services referred to in section 704 of the Export Administration Act of 2001, in connection with the launch of a satellite".

(4) Section 1412(d) of that Act is amended by striking "Secretary of State and" and inserting "Secretary of Commerce, the Secretary of State, and".

(c) ADDITIONAL CONFORMING AMENDMENTS.—(1) Section 1309 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal

Years 2000 and 2001 (as enacted by Public Law 106–113; 113 Stat. 1501A–460) is amended—

(A) by amending the section heading to read as follows:

"SEC. 1309. OFFICE OF DEFENSE TRADE CONTROLS.";

(B) by striking subsections (a) and (c); and

(C) in subsection (b), by striking "(b) FINANCIAL AND PERSONNEL RESOURCES.—".

(2) The table of contents of that Act is amended by striking the item relating to section 1309 and inserting the following:

"Sec. 1309. Office of Defense Trade Controls.".

SEC. 707. EFFECTIVE DATE.

(a) IN GENERAL.—This title and the amendments made by this Act shall take effect on the date of the enactment of this Act, and shall apply to any export license application made under the Arms Export Control Act before such date of enactment which is pending on such date, and to any export license application made on or after such date.

(b) TRANSFER OF PENDING APPLICATIONS.—Any export license application made under the Arms Export Control Act before the date of the enactment of this Act, to which section 702 of this Act applies and which is pending on such date of enactment, shall be transferred to the Department of Commerce upon the enactment of this Act.

SEC. 708. EFFECT ON EXISTING LAW.

Nothing in this title shall affect the continued application of section 36 or 38 of the Arms Export Control Act, or any other provision of that Act, to the export or other provision of defense services related to items in Category 4 of the United States Munitions List.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. 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;

(4) a description of any enhanced control imposed on an item pursuant to section 201(d);

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

(6) a description of organizational and procedural changes undertaken in furtherance of this Act;

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

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

(A) the number of applications and notifications pending review at the beginning of the fiscal year;

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

(C) the number of notifications with no action required;

(D) the number of applications that were approved, denied, or withdrawn, and the number of applications where final action was taken; and

(E) the number of applications and notifications pending review at the end of the fiscal year;

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

(10) an identification of processing time by—

(A) overall average, and

(B) top 25 export identification codes;

(11) an assessment of the effectiveness of multilateral regimes, and a description of negotiations regarding export controls;

(12) a description of the significant differences between the export control requirements of the United States and those of other multilateral control regime members, and the specific differences between United States requirements and those of other significant supplier countries;

(13) an assessment of the costs of export controls;

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

(15) an analysis and risk assessment of dual-use United States-origin items useful for the development or production of weapons of mass destruction acquired by countries identified by the Director of the Central Intelligence in the most recent report submitted to Congress under section 721 of the Intelligence Authorization Act for Fiscal Year 1997; and

(16) any other reports required by this Act to be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

(c) FEDERAL REGISTER PUBLICATION REQUIREMENTS.—Whenever information under this Act is required to be published in the Federal Register, such information shall, in addition, be posted on the Department of Commerce or other appropriate government website.

SEC. 802. RELATIONSHIP TO THE ARMS EXPORT CONTROL ACT.

Nothing in this Act shall be construed to alter or affect—

(1) any provision of the Arms Export Control Act; or

(2) any authority delegated by the President to the Secretary of State under the Arms Export Control Act.

SEC. 803. ENHANCEMENT OF CONGRESSIONAL OVERSIGHT OF NUCLEAR TRANSFERS TO NORTH KOREA.

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

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

(2) by striking "until the President" and inserting "until—

"(1) the President";

(3) at the end of subparagraph (G) (as redesignated in paragraph (1)) by striking the period and inserting "; and

"(2) a joint resolution of the two Houses of 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. 804. PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.

The North Korea Threat Reduction Act of 1999 is amended—

(1) by redesignating section 823, and the item relating to that section in the table of contents, as section 824;

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

"SEC. 823. PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTION DESCRIBED IN SECTION 822(A)(2).

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

"(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and, as such, shall be considered as part of the

rules of either House and shall supersede other rules only to the extent they are inconsistent therewith; and

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

"(b) INTRODUCTION AND REFERRAL.—

"(1) INTRODUCTION.—A joint resolution described in section 822(a)(2)—

"(A) shall be introduced in the House of Representatives by the majority leader or minority leader or by a Member of the House of Representatives designated by the majority leader or minority leader; and

"(B) shall be introduced in the Senate by the majority leader or minority leader or a Member of the Senate designated by the majority leader or minority leader.

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

"(c) DISCHARGE OF COMMITTEES.—If a committee to which a joint resolution described in section 822(a)(2) is referred has not reported such joint resolution by the end of 30 days beginning on the date of its introduction, such committee shall be discharged from further consideration of such joint resolution, and such joint resolution shall be placed on the appropriate calendar of the House involved.

"(d) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

"(1) IN GENERAL.—On or after the third calendar day (excluding Saturdays, Sundays, or legal holidays, except when the House of Representatives is in session on such a day) after the date on which the committee to which a joint resolution described in section 822(a)(2) is referred has reported, or has been discharged from further consideration of, such a joint resolution, it shall be in order for any Member of the House to move to proceed to the consideration of the joint resolution. A Member of the House may make the motion only on the day after the calendar day on which the Member announces to the House the Member's intention to do so. Such motion is privileged and is not debatable. The motion is not subject to amendment or to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the House shall immediately proceed to consideration of the joint resolution which shall remain the unfinished business until disposed of.

"(2) DEBATE.—Debate on a joint resolution described in section 822(a)(2), and on all debatable motions and appeals in connection therewith, shall be limited to not more than two hours, which shall be divided equally between those favoring and those opposing the joint resolution. An amendment to the joint resolution is not in order. A motion further to limit debate is in order and is not debatable. A motion to table, a motion to postpone, or a motion to recommit the joint resolution is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order.

"(3) APPEALS.—Appeals from the decisions of the Chair to the procedure relating to a joint resolution described in section 822(a)(2) shall be decided without debate.

"(e) FLOOR CONSIDERATION IN THE SENATE.—Any joint resolution described in section 822(a)(2) shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

"(f) CONSIDERATION BY THE OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House described in section 822(a)(2), that House receives from the other House a joint resolution described in section 822(a)(2), then the following procedures shall apply:

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

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

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

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

"(3) Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution that originated in the receiving House.

"(g) COMPUTATION OF DAYS.—In the computation of the period of 30 days referred to in subsection (c), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die."; and

(3) by inserting after the item relating to section 822 in the table of contents the following new item:

"Sec. 823. Procedures for consideration of joint resolution described in section 822(a)(2).".

SEC. 805. RECOMMENDATIONS OF THE JUDICIAL REVIEW COMMISSION ON FOREIGN ASSET CONTROL.

In accordance with the findings of the Judicial Review Commission on Foreign Asset Control contained in the report of the Commission submitted to Congress in January 2001 under section 810(g) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1908(g)), the President shall direct the Office of Foreign Assets Control of the Department of the Treasury to—

(1) publish proposed regulations on sanctions in order to provide public notice of, and invite public comment on, the proposed regulations, unless exigent circumstances are present;

(2) provide interpretations and guidelines to accompany the issuance of regulations; and

(3) take steps to expand and enhance the transparency of its operations and decisionmaking standards by publishing its licensing and civil penalty decisions in unclassified form and by providing answers to "frequently asked questions" on its website.

SEC. 806. IMPROVEMENTS TO THE AUTOMATED EXPORT SYSTEM.

(a) MANDATORY FILING.—The Secretary, with the concurrence of the Secretary of State and the Secretary of the Treasury, shall publish regulations in the Federal Register to require, upon the effective date of those regulations, the mandatory filing through the Automated Export System for the remainder of exports that were not covered by regulations issued pursuant to section 1252(b) of the Security Assistance Act of 1999 (113 Stat. 1501A–506), as enacted into law by section 1000(a)(7) of Public Law 106–113.

(b) REQUIREMENT FOR INFORMATION SHARING.—The Secretary of State shall conclude an information sharing arrangement with the heads of United States Customs Service and the Census Bureau to adjust the Automated Export System to parallel information currently collected by the Department of State.

(c) SECRETARY OF TREASURY FUNCTIONS.—Section 303 of title 13, United States Code, is amended by striking ", other than by mail,".

(d) FILING EXPORT INFORMATION, DELAYED FILINGS, PENALTIES FOR FAILURE TO FILE.—Section 304 of title 13, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking "the penal sum of $1,000" and inserting "a penal sum of $10,000"; and

(B) in the third sentence, by striking "a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000, shall be exacted" and inserting "the Secretary of Commerce (and officers and employees of the Department of Commerce designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation";

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following:

"(b) Any person, other than a person described in subsection (a), required to submit export information, shall file such information in accordance with any rule, regulation, or order issued pursuant to this chapter. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers and employees of the Department of Commerce designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.".

(e) ADDITIONAL PENALTIES.—

(1) IN GENERAL.—Section 305 of title 13, United States Code, is amended to read as follows:

"§ 305. Penalties for unlawful export information activities

"(a) CRIMINAL PENALTIES.—(1) Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) (or any successor document) or the Automated Export System

(AES) shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

"(2) Any person who knowingly reports any information on or uses the SED or the AES to further any illegal activity shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

"(3) Any person who is convicted under this subsection shall, in addition to any other penalty, forfeit to the United States—

"(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

"(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

"(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

"(b) CIVIL PENALTIES.—The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

"(c) CIVIL PENALTY PROCEDURE.—(1) When a civil penalty is sought for a violation of this section or of section 304, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5.

"(2) If any person fails to pay a civil penalty imposed under this chapter, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(3) The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in his or her opinion—

"(A) the penalties were incurred without willful negligence or fraud; or

"(B) other circumstances exist that justify a remission or mitigation.

"(4) If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

"(5) Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

"(d) ENFORCEMENT.—(1) The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

"(2) The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

"(e) REGULATIONS.—The Secretary of Commerce shall promulgate regulations for the implementation and enforcement of this section.

"(f) EXEMPTION.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 9 of title 13, United States Code, is amended by striking the item relating to section 305 and inserting the following:

"305. Penalties for unlawful export information activities.".

SEC. 807. TECHNICAL AND CONFORMING AMENDMENTS.

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

(b) ENERGY POLICY AND CONSERVATION ACT.—

(1) Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212), and the item relating to that section in the table of contents for that Act, are repealed.

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

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

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

(e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Section 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s)) is repealed.

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

(g) OUTER CONTINENTAL SHELF LANDS ACT.—Section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354) is repealed.

(h) ARMS EXPORT CONTROL ACT.—The Arms Export Control Act is amended as follows:

(1) Section 36(g) (22 U.S.C. 2776(g)) is amended by striking "12(c) of the Export Administration Act of 1979" and inserting "602(c) of the Export Administration Act of 2001".

(2) Section 38 (22 U.S.C. 2778) is amended—

(A) in subsection (e)—

(i) in the first sentence, by striking "subsections (c)" and all that follows through "12 of such Act," and inserting "subsections (b), (c), (d), and (e) of section 503 of the Export Administration Act of 2001, by subsections (a) and (b) of section 506 of that Act, and by section 602 of that Act,";

(ii) in the first sentence, by striking "11(c)(2)(B)" and inserting "507(b)(1)"; and

(iii) in the third sentence, by striking "11(c) of the Export Administration Act of 1979" and inserting "503(c) of the Export Administration Act of 2001";

(B) in subsection (f)(1), by striking "1979" and inserting "2001"; and

(C) in subsection (g)(1)(A)(ii), by inserting "or section 503 of the Export Administration Act of 2001" after "1979".

(3) Section 39A(c) (22 U.S.C. 2779a(c)) is amended—

(A) by striking "subsections (c)," and all that follows through "12(a) of such Act" and inserting "subsections (c), (d), and (e) of section 503, section 507(c), and subsections (a) and (b) of section 506, of the Export Administration Act of 2001";

(B) by striking "11(c)(2)(B) of such Act" and inserting "507(b)(1) of that Act"; and

(C) by striking "11(c)" and inserting "503(c)".

(4) Section 40(k) (22 U.S.C. 2780(k)) is amended—

(A) by striking "11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979" and inserting "503(b), 503(c), 503(e), 506(a), and 506(b) of the Export Administration Act of 2001";

(B) by striking "11(c)(2)(B)" and inserting "507(b)(1)"; and

(C) by striking "11(c)" and inserting "503(c)".

(5) Section 71(a) (22 U.S.C. 2797(a)) is amended by striking "section 6(l) of the Export Administration Act of 1979" and inserting "title II or III of the Export Administration Act of 2001".

(6) Section 72 (22 U.S.C. 2797a) is amended—

(A) in subsection (a)(1)(A), by striking "section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405)" and inserting "title II or III of the Export Administration Act of 2001"; and

(B) in subsection (c), by striking "6(j)(1)(A) of the Export Administration Act of 1979" and inserting "310(a)(1) of the Export Administration Act of 2001".

(7) Section 73 (22 U.S.C. 2797b) is amended—

(A) in subsection (a)(1), by striking "11B(b)(1) of the Export Administration Act of 1979" and inserting "504(b)(1) of the Export Administration Act of 2001"; and

(B) in subsection (f), by striking "6(j)(1)(A) of the Export Administration Act of 1979" and inserting "section 310(a)(1) of the Export Administration Act of 2001".

(8) Section 74(a)(6) (22 U.S.C. 2797c(a)(6)) is amended by striking "16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2))" and inserting "2(20) of the Export Administration Act of 2001".

(9) Section 81(a) (22 U.S.C. 2798(a)) is amended—

(A) in paragraph (1)(C), by striking "1979" and inserting "2001"; and

(B) in paragraph (2)(B), by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(10) Section 102(b)(2)(G) (22 U.S.C. 2799aa–1(b)(2)(G)) is amended by striking "section 6 of the Export Administration Act of 1979" and inserting "title III of the Export Administration Act of 2001".

(i) OTHER PROVISIONS OF LAW.—

(1) Section 5(b)(4) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by striking "section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States" and inserting "titles II and III of the Export Administration Act of 2001".

(2)(A) Section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the second sentence—

(i) by striking "Export Administration Act of 1979" the first place it appears and inserting "Export Administration Act of 2001"; and

(ii) by striking "Act of 1979)" and inserting "Act of 2001)".

(B) Section 620E(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2375(h)) is amended by striking "11B of the Export Administration Act of 1979" and inserting "504 of the Export Administration Act of 2001".

(C) Section 620H(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(3) Section 565 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (22 U.S.C. 2679c) is amended—

(A) in subsection (a)—

(i) in paragraph (2)—

(I) in subparagraph (A), by striking "8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))" and inserting "502(b) of the Export Administration Act of 2001";

(II) in subparagraph (A), by striking "8(a)(1) of such Act" and inserting "502(b)(1) of that Act"; and

(III) in subparagraph (B), by striking "16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415)" and inserting "2(20) of the Export Administration Act of 2001"; and

(ii) in paragraph (3), by striking "8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))" and inserting "502(b) of the Export Administration Act of 2001"; and

(B) in subsection (c)—

(i) in paragraph (1), in subsection (b)(1) of the quoted material, by striking "8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))" and inserting "502(b) of the Export Administration Act of 2001"; and

(ii) in paragraph (3), by striking "8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))" and inserting "502(b) of the Export Administration Act of 2001".

(4) Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)) is amended—

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

(B) in paragraph (2), by inserting "or section 310 of the Export Administration Act of 2001" after "6(j) of the Export Administration Act of 1979".

(5)(A) Section 36(j)(1)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(j)(1)(B)) is amended by striking "section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))" and inserting "section 310(a)(1) of the Export Administration Act of 2001".

(B) Section 40(e)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1)) is amended by striking "section 6(j)(1) of the Export Administration Act of 1979" and inserting "section 310 of the Export Administration Act of 2001".

(C) Section 205(d)(4)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 305(d)(4)(B)) is amended by striking "section 6(j) of the Export

Administration Act of 1979" and inserting "section 310 of the Export Administration Act of 2001".

(6) Section 528(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Public Law 103–87) is amended by striking "6(j) of the Export Administration Act of 1979" and inserting "310 of the Export Administration Act of 2001".

(7) Section 589(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208) is amended by striking "6(j) of the Export Administration Act of 1979" and inserting "310 of the Export Administration Act of 2001".

(8) Section 110 of the International Security and Development Cooperation Act of 1980 (22 U.S.C. 2778a) is amended by striking "Act of 1979" and inserting "Act of 2001".

(9) Section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)) is amended by striking "section 5 of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States" and inserting "the Export Administration Act of 2001".

(10)(A) Section 405(a)(13)(A) of the International Religious Freedom Act of 1998 (22 U.S.C. 6445(a)(13)(A)) is amended by striking "1979" and inserting "2001".

(B) Section 423(a) of that Act (22 U.S.C. 6461(a)) is amended by striking "6(n) of the Export Administration Act of 1979 (22 U.S.C. App. 2405(n))" and inserting "311 of the Export Administration Act of 2001".

(11)(A) Section 103(e)(2)(B)(ii) of the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6713(e)(2)(B)(ii)) is amended to read as follows:

"(ii) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 2001.—The authorities of title III of the Export Administration Act of 2001 shall be used to prohibit the export to a person described in subparagraph (A) of any items on the National Security Control List established under section 202(a) of that Act.".

(B) Section 103(e)(3)(B)(iv) of the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6713(e)(3)(B)(iv)) is amended to read as follows:

"(iv) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 2001.—The authorities of title III of the Export Administration Act of 2001 shall be used to prohibit the export to a country described in subparagraph (A) of any items on the National Security Control List established under section 202(a) of that Act.".

(12) Section 1423(b)(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2332(b)(1)) is amended by striking "11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410)" and inserting "503 of the Export Administration Act of 2001".

(13) Section 586G of the Iraq Sanctions Act of 1990 (50 U.S.C. 1701 note) is amended—

(A) by amending subsection (a)(3) to read as follows:

"(3) EXPORTS OF CERTAIN COMMODITIES AND TECHNOLOGY.—The authorities of titles II and III of the Export Administration Act of 2001 shall be used to prohibit the export to Iraq of any commodities or technology on the Commerce Control List established under that Act."; and

(B) in subsection (b) by striking "the date described in subsection (m)(1)" and all that follows through "shall be deemed" and inserting "the dates described in section 301(d)(1) of the Export Administration Act of 2001 shall be deemed".

(14) Section 601(a) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)) is amended—

(A) in paragraph (6)—

(i) in subparagraph (A)—

(I) in clause (iii), by striking "1979" and inserting "2001"; and

(II) in clause (iv), by adding "and" after the semicolon; and

(ii) in subparagraph (C)—

(I) by redesignating such subparagraph as paragraph (7) and aligning the text with the text of paragraph (6) that precedes subparagraph (A); and

(II) by inserting "a description of" before "the progress"; and

(B) in the matter that appears following paragraph (7), as so redesignated—

(i) by striking "paragraph (6)" and inserting "paragraphs (6) and (7)"; and

(ii) by striking "12(c)(1) of the Export Administration Act of 1979" and inserting "602(a) of the Export Administration Act of 2001".

(15) Section 304(a)(2) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5603(a)(2)) is amended by striking "1979" and inserting "2001".

(16) Section 307 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5605) is amended—

(A) by amending paragraph (5) of subsection (a) to read as follows:

"(5) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY.—The authorities of title III of the Export Administration Act of 2001 shall be used to prohibit the export to that country of any goods or technology on the National Security Control List established under section 202 of that Act.";

(B) in subsection (b)(2)(C) by striking "section 6 of the Export Administration Act of 1979" and inserting "title III of the Export Administration Act of 2001"; and

(C) in subsection (e)(1)(B)—

(i) in the first sentence, by striking "subsection (p) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as that subsection is so redesignated by section 304(b) of this title, which are applicable to exports prohibited under section 6 of that Act" and inserting "section 301(d) of the Export Administration Act of 2001, which are applicable to exports prohibited under title III of that Act"; and

(ii) in the last sentence, by striking "a breach of the peace that poses a serious and direct threat to the strategic interest of the United States, within the meaning of subparagraph (A) of section 6(p) of that Act" and inserting "a serious threat to a foreign policy interest of the United States, within the meaning of section 301(d)(2)(A) of the Export Administration Act of 2001".

(17) Section 1705(c)(1) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(c)(1)) is amended by striking "5(m) of the Export Administration Act of 1979" and inserting "204(a) of the Export Administration Act of 2001".

(18)(A) Section 6(2)(i) of the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note) is amended by striking "1979" and inserting "2001".

(B) Section 8(a)(2) of the Iran and Libya Sanctions Act of 1996 is amended by striking "6(j) of the Export Administration Act of 1979" and inserting "310 of the Export Administration Act of 2001".

(C) Section 14 of the Iran and Libya Sanctions Act of 1996 is amended—

(i) in paragraph (3), by striking "(50 U.S.C. App. 2410a(e)(1))" and inserting "(as in effect on August 20, 2001)";

(ii) in paragraph (6), by striking "(50 U.S.C. App. 2410a(e)(2))" and inserting "(as in effect on August 20, 2001)"; and

(iii) in paragraph (8), by striking "(50 U.S.C. App. 2415)" and inserting "(as in effect on August 20, 2001)".

(19) Section 1133(a)(3) of the Food Security Act of 1985 (7 U.S.C. 1736y(3)) is amended by striking "Export Administration Act" and inserting "International Emergency Economic Powers Act or in time of war under the Trading with the Enemy Act".

(20) Section 208(a) of the Agricultural Trade Suspension Adjustment Act of 1980 (7 U.S.C. 4001(a)) is amended by striking "for reasons of national security or foreign policy under the Export Administration Act of 1979" and inserting "under title II or III of the Export Administration Act of 2001".

(21) Section 411(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5671(a)(1)) is amended by striking "for reasons of national security or foreign policy under the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.)" and inserting "under title II or III of the Export Administration Act of 2001".

(22) Section 302(e) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1(e)) is amended—

(A) by striking "shall not be—

"(1) considered"

and inserting "shall not be considered"; and

(B) by striking "; and

"(2) subject"

and all that follows through the end and inserting a period.

(23)(A) Section 951(e)(2)(B) of title 18, United States Code, is amended by striking "or under section 11 of the Export Administration Act of 1979" and in-

serting ", under section 11 of the Export Administration Act of 1979 (prior to its repeal by the Export Administration Act of 2001), or under section 503 of the Export Administration Act of 2001".

(B) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 11 (relating to violations) of the Export Administration Act of 1979" and inserting "section 503 (relating to penalties) of the Export Administration Act of 2001".

(C) Section 2332d(a) of title 18, United States Code, is amended by striking "section 6(j) of the Export Administration Act (50 U.S.C. App. 2405)" and inserting "section 310 of the Export Administration Act of 2001".

(24)(A) Section 130(a) of title 10, United States Code, is amended by striking "1979 (50 U.S.C. App. 2401–2420)" and inserting "2001".

(B) Section 2249a(a)(1) of title 10, United States Code, is amended by striking "6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))" and inserting "310(a)(1)(A) of the Export Administration Act of 2001".

(C) Section 2327(b)(2) of title 10, United States Code, is amended by striking "6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))" and inserting "310(a)(1)(A) of the Export Administration Act of 2001".

(D) Section 2410i(a) of title 10, United States Code, is amended by striking "3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A))" and inserting "502(a) of the Export Administration Act of 2001".

(25) Section 233 of the Trade Expansion Act of 1962 (19 U.S.C. 1864) is amended—

(A) by striking "(50 U.S.C. App. 2404)," and inserting "(as in effect prior to its repeal by the Export Administration Act of 2001), any export control imposed under title II of the Export Administration Act of 2001,"; and

(B) by striking "that section" and inserting "either such section".

(26) Section 502(b)(2)(F) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)(F)) is amended by striking "6(j)(1)(A) of the Export Administration Act of 1979" and inserting "310(a)(1) of the Export Administration Act of 2001".

(27) Section 133 of the Uruguay Round Agreements Act (19 U.S.C. 3553) is amended by striking "section 8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a)) (as in effect on August 20, 1994)" and inserting "section 502 of the Export Administration Act of 2001".

(28) Section 901(j)(2)(A)(iv) of the Internal Revenue Code of 1986 (26 U.S.C. 901(j)(2)(A)(iv)) is amended by striking "6(j) of the Export Administration Act of 1979, as amended" and inserting "310 of the Export Administration Act of 2001".

(29) Section 927(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 927(a)(2)) is amended—

(A) in subparagraph (C), by adding "or" after the comma;

(B) by striking subparagraph (D);

(C) by redesignating subparagraph (E) as subparagraph (D); and

(D) by striking "subparagraph (E)" and inserting "subparagraph (D)".

(30) Section 943(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 943(a)(3)) is amended—

(A) in suparagraph (C), by adding "or" after the comma;

(B) by striking subparagraph (D);

(C) by redesignating subparagraph (E) as subparagraph (D); and

(D) by striking "subparagraph (E)" and inserting "subparagraph (D)".

(31) Section 993(c)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 993(c)(2)) is amended—

(A) in subparagraph (C), by adding "or" after the comma;

(B) by striking subparagraph (D);

(C) by redesignating subparagraph (E) as subparagraph (D); and

(D) by striking "subparagraph (E)" and inserting "subparagraph (D)".

(32) Section 254(e)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6274(e)(3)) is amended by striking "12 of the Export Administration Act of 1979" and inserting "602 of the Export Administration Act of 2001".

(33) Section 721(f)(4)(A) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(f)(4)(A)) is amended—

(A) in clause (i), by striking "6(j) of the Export Administration Act of 1979" and inserting "310 of the Export Administration Act of 2001";

(B) in clause (ii), by striking "section 6(l) of the Export Administration Act of 1979" and inserting "the Export Administration Act of 2001"; and

(C) in clause (iii), by striking "section 6(m) of the Export Administration Act of 1979" and inserting "the Export Administration Act of 2001".

(34) Section 275 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (15 U.S.C. 4605) is amended by striking "1979 (50 U.S.C. App. 2401 et seq.)" and inserting "2001".

(35) Section 1605(a)(7)(A) of title 28, United States Code, is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(36) Section 1621(a) of the International Financial Institutions Act (22 U.S.C. 262p–4q(a)) is amended by striking "section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))" and inserting "section 310 of the Export Administration Act of 2001".

(37) Subsection (f) of section 491 and section 499 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620c(f) and 620j) are repealed.

(38) Section 904(2)(B) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7203) is amended by striking "Export Administration Act of 1979" and inserting "Export Administration Act of 2001".

(39) Section 983(i)(2) of title 18, United States Code (as added by Public Law 106–185), is amended—

(A) by striking the "or" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting "; or"; and

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) the Export Administration Act of 2001.".

(j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product that—

(1) is standard equipment, certified by the Federal Aviation Administration, in civil aircraft, and

(2) is an integral part of such aircraft, shall be subject to export control only under this Act. Such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act (22 U.S.C. 2778(b)).

(k) REPEAL OF CERTAIN EXPORT CONTROLS.—Subtitle B of title XII of division A of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note) is repealed.

SEC. 808. SAVINGS PROVISIONS.

(a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under—

(1) the Export Control Act of 1949, the Export Administration Act of 1969, the Export Administration Act of 1979, or the International Emergency Economic Powers Act when invoked to maintain and continue the Export Administration regulations, or

(2) those provisions of the Arms Export Control Act which are amended by section 702,

and are in effect on the date of enactment of this Act, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act or the Arms Export Control Act.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—

(1) EXPORT ADMINISTRATION ACT.—This Act shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979 or pursuant to Executive Order 12924, which is pending at the time this Act takes effect. Any such proceedings, and any action on such application, shall continue under the Export Administration Act of 1979 as if that Act had not been repealed.

(2) OTHER PROVISIONS OF LAW.—This Act shall not affect any administrative or judicial proceeding commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 702, if such proceeding or application is pending at the time this Act takes effect. Any such proceeding, and any action on such application, shall continue under those provisions as if those provisions had not been amended by section 702.

(c) TREATMENT OF CERTAIN DETERMINATIONS.—Any determination with respect to the government of a foreign country under section 6(j) of the Export Administration Act of 1979, or Executive Order 12924, that is in effect on the day before the date of enactment of this Act, shall, for purposes of this title or any other provision of law, be deemed to be made under section 310 of this Act until superseded by a determination under such section 310.

(d) LAWFUL INTELLIGENCE ACTIVITIES.—The prohibitions otherwise applicable under this Act do not apply with respect to any transaction subject to the reporting requirements of title V of the National Security Act of 1947. Notwithstanding any other provision of this Act, nothing shall affect the responsibilities and authorities of the Director of Central Intelligence under section 103 of the National Security Act of 1947.

(e) IMPLEMENTATION.—The Secretary shall make any revisions to the Export Administration regulations required by this Act no later than 180 days after the date of enactment of this Act.

BACKGROUND AND PURPOSE

The bill, H.R. 2581, the "Export Administration Act of 2001" provides a modern, comprehensive framework for the control of United States exports of goods and services with both civilian and military applications. It replaces the expired Export Administration Act of 1979, designed decades ago to limit the military capabilities of the now defunct Soviet Union and its Warsaw Pact allies in cooperation with the Coordinating Committee on Multilateral Export Controls (CoCom). In 1994, CoCom, a system under which the United States or any other country could exercise a unilateral veto over dual-use exports, expired. A replacement regime, the Wassenaar Arrangement, was formed 2 years later, but it permits only post-export notifications of sales of controlled items by its member countries.

Since the U.S. is no longer the sole supplier of many, if not most, dual-use technologies, the need for a common approach among supplier countries is, in the Committee's view, all the more essential for their effective monitoring and control. The Committee strongly endorses Administration efforts to strengthen existing multilateral regimes and to promote more timely information-sharing, including the creation of new mechanisms in the Waasenaar Arrangement providing for a "no undercut" policy, a common standard for enforcement, and greater attention to end users connected with terrorist activities and those countries which are determined to be harboring or otherwise assisting terrorists.

The reform legislation, H.R. 2581, incorporates a number of these multilateral export control objectives. It seeks to balance competing U.S. national security and economic interests by ensuring that appropriate controls are placed on the export of dual-use goods, services, and technologies to limit the military potential of countries threatening the U.S. or its allies, deter international terrorism and impede the proliferation of weapons of mass destruction. The legislation seeks to ensure global U.S. economic leadership and to establish principles for the use of effective U.S. economic sanctions. As is the case with current law, H.R. 2581 is also designed to promote U.S. foreign policy interests in promoting peace stability and respect for human rights.

The bill consists of seven titles as follows: general authority; national security export controls; foreign policy export controls; procedures for export licenses and interagency dispute resolution; international arrangements; foreign boycotts; sanctions and enforcement; export control authority and regulations; and miscellaneous provisions.

Since the Export Administration Act expired on August 20, 1994, the President has continued export controls pursuant to his author-

ity under the International Emergency Economic Powers Act (IEPPA). However, in light of the fact that IEPPA is not a satisfactory framework for indefinitely maintaining export controls in place of the Export Administration Act, the Congress passed a 1-year extension of this Act through August 20, 2001.

As introduced, H.R. 2581 is virtually identical to S. 149, a measure which passed the Senate on September 6 by a vote of 85 to 14. Unlike the Senate version, however, this bill does include two sections amending the North Korean Threat Reduction Act of 1999 which passed the House by a vote of 374 to 6 in the 106th Congress. These provisions are intended to ensure that Congress will be fully involved in the decision our nation may have to make in several years whether to transfer to North Korea of key components for the two light water reactors that are being built in North Korea pursuant to the 1994 Agreed Framework with that country.

Mindful of the need to discharge its responsibilities and move ahead with the consideration of a bill reforming the export control system, the Committee agreed to use H.R. 2581 as base text, not as any blanket endorsement of all of its provisions, but as the most expedient vehicle to which a number of comprehensive amendments could be offered.

Nonetheless, the Committee recognizes that the current political and economic environment facing the U.S. demands new approaches to export controls. The increasingly integrated global economy presents competitive challenges to many U.S. comapnies, including even high-technology firms. Many items of comparable quality and price are often manufactured by rival firms in foreign countries that do not control their exports as strictly as does the United States.

In the course of Committee hearings on export control issues, the argument was frequently advanced that if an item or technology cannot be controlled multilaterally it is self-defeating for the U.S. to impose unilateral controls that will not prevent countries of concern from obtaining these items.

When the item or product is of comparable quality and the Executive Branch has been unable to convince the foreign country to control the item, then full consideration should be given to removing the item from the control list through a "foreign availability" exemption. Industry advocates argue that, in administering any export control regime, the Secretary of Commerce should apply foreign availability determinations broadly to exempt items from licensing and should also seek to exempt those items available in "mass market" quantities and distribution channels.

While H.R. 2581 fully reflects these concerns, the Committee believes that the President ought to have as much flexibility as possible to maintain export controls on an item even if it is determined to be available from a foreign supplier. The Committee believes, moreover, that faster and more efficient processing of export license applications and the maintenance of strict time limits for their review are more productive ways to level the playing field for American high-technology exporters than the decontrol of broad categories of of dual use items or products.

In general, the amendments offered at the Committee were intended to increase the President's flexibility to impose export con-

trols, designate certain types of goods and services as requiring heightened scrutiny, and increasing the involvement of the Secretary of State, the Secretary of Defense and the intelligence agencies in making certain decisions required by the Act. In addition, certain controls related to U.S. foreign policy and potentially dangerous goods and practices were also offered and adopted.

Review of the detail of some these amendments is instructive. One of the amendments adopted by the Committee provides the President with additional flexibility to place items of concern on the national security control list and to control their export notwithstanding other decontrol mandates in the bill. In the view of the Committee, this amendment is important to our heightened efforts to combat terrorist and proliferation-related threats facing the U.S., such as bio-terrorism.

Another amendment adopted by the Committee strengthens multilateral cooperation to stem the proliferation of weapons of mass destruction. It provides the statutory basis for the administration to keep in place the Enhanced Proliferation Control Initiative, EPCI, against the export of any item for a program or activity of an end use or end user that is directly involved in the development of weapons of mass destruction or the means to deliver them.

The amendment also ensures the harmonization of standards and policies for other similar nonproliferation regimes put in place by our trading partners; increases the transparency of the EPCI process; and under certain circumstances provides for the presumption of denial for items to end users seeking to produce weapons of mass destruction or the means to deliver them. A separate amendment adopted by the Committee established a presumption of denial regarding the export of items that would either undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally or major non-NATO ally.

Another en bloc amendment adopted by the Committee places additional safeguards on the export of specific torture products as well as the export of experimental medicine and other test articles for human experimentation. Section 6(n) of the Export Administration Act of 1979 and existing export regulations require licenses for the export of crime control equipment generally, with the exception for equipment that is sold to NATO members, Japan, Australia, New Zealand or other countries designated by the President. The new section of the bill created by this amendment would continue this requirement and general exception from licensing. However, it would also ensure that crime control equipment that is "especially susceptible to abuse" would not go to countries that repeatedly engage in torture, unless the Secretary, with the concurrence of the Secretary of State, determines that the end user of the equipment proposed for export has not been found to be engaged in torture.

The same en bloc amendment also included several other provisions addressing the problem of under-regulated clinical trials of experimental drugs and other test articles on human participants in foreign countries. Specifically, the amendment would prohibit the unlicenced export of test articles which are intended for clinical investigations and establishes criteria under which the President may grant licenses for these exports.

In December 2000, *The Washington Post* published a six-part series of investigative articles which described the abuses of United States-based pharmaceutical companies in the testing of experimental drugs. Four months later, the National Bioethics Advisory Commission ("NBAC") presented to the President a report, entitled "Ethical and Policy Issues in International Research: Clinical Trials in Developing Countries," which discussed the ethical issues generated by research on human participants in developing countries and recommended ways to ensure their health and safety.

Thus, the section helps guarantee that researchers of test articles who conduct trials on human participants outside the United States abide by the same standards of voluntary informed consent and ethically sound research protocols which apply for similar investigations inside the United States.

Another amendment, adding a new section (Section 313), addresses the difficult issue of the uncontrolled international export of large quantities of pesticides and related chemicals. As a unique class of man-made compounds designed to be harmful to life, pesticides pose a potentially serious risk to human health and environmental safety. Moreover, the United States has yet to adopt stringent controls over pesticide exports.

The Committee, therefore, adopted an amendment providing the President with the authority he needs to prohibit the export of certain pesticides and chemicals should he deem them a threat to human health, public safety or the environment. The amendment also requires a number of studies from the President and the GAO concerning current exports of chemicals and pesticides, the existing regulatory system for monitoring, managing and controlling the export of these substances and recommendations for how to improve the United States regulatory framework.

H.R. 2581, as amended, would also give the President more flexibility in identifying items to be included on the National Security Control List and in setting aside Department of Commerce decisions to decontrol an item. It is the view of the Committee that the Congress should not, on the one hand, delegate its constitutional authority to regulate commerce and control exports and, on the other, proscribe the President from identifying and controlling items of concern on a key control list in the face of unforseen threats, including acts of terrorism, from outside or inside the U.S.

As amended, H.R. 2581 also restores jurisdiction to the Commerce Department over the licensing of commercial communications satellites with certain conditions; ensures that the Departments of State and Defense play a role in the consideration of classification requests for items on the control list; and further strengthens the post shipment verification provisions in the bill ensuring better monitoring of the actual use of items licenses by the Bureau of Export Administration.

RESPONDING TO TERRORIST THREATS

Controls of dual use exports, including transfers to foreign nationals within the United States, have taken on a much greater importance since the events of September 11, 2001. Foreign terrorist organizations have targeted U.S. civilians and bioterrorists have

attacked the Majority Leader of the Senate, a number of influential media outlets, and the facilities of the U.S. Postal Service.

Press reports suggest that certain chemical additives and sophisticated, yet perhaps widely available, machinery was used to produce the particularly dangerous anthrax delivered to the offices of Senator Daschle. Even if the Al-Qaeda terrorist network is not directly implicated in the effort to send anthrax-laden letters through the U.S. postal service, the Committee believes that greater scrutiny must be directed to controlling items of interest to terrorists, terrorist organizations, and the countries that sponsor them.

As detailed below, the Committee's amendment makes a number of improvements to H.R. 2581, as introduced, to address these concerns. For example, H.R. 2581, as inroduced, does not provide any specific authority to control exports to terrorists or terrorist organizations that are not related to weapons of mass destruction or the means to deliver them if such terrorists or terrorist organizations are not located in countries that are designated as state sponsors of terrorism. As we have learned, foreign terrorist organizations have front organizations or cells in a large number of countries, not just countries whose governments have been designated as state sponsors of terrorism.

The Committee's amendment addresses these problems in several ways. First, it establishes a presumption of denial on any item if the Secretaries of Commerce, State and Defense agree that there is a significant risk that the export of such item would prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally. Presumptions of denial are also established, for example, (1) if there is a significant risk that the end user is involved in a program or activity for the design, development, manufacture, stockpiling, testing or other acquisition of WMD and the means to deliver them and is not in an adherent to a multilateral export control regime controlling such weapon, unless the item would not make a material contribution to such program; or (2) if such item would likely be used or diverted to a use or destination not authorized by the license or United States policy. The President is also provided authority to place items on the National Security Control List, irrespective of what disagreements may exist over such items among the relevant agencies.

HEARINGS

The Committee would note that H.R. 2581 was ordered reported prior to the events of September 11, 2001, and that additional modifications might well be necessary to this bill to ensure that U.S. export laws are adequate to combat the threat to our national security posed by terrorists. The Committee will seek to ensure those modifications are made as the bill moves forward in the legislation process.

On May 23, June 12, and July 11, 2001, the Committee held hearings on "The Export Administration Act: The Case for Its Renewal." On May 23, the Committee heard testimony from the Undersecretary of Commerce for Export Administration, Kenneth I. Juster. On June 12, the Committee took testimony from Senators Phil Gramm (R-Texas) and Fred Thompson (R-Tennessee); Rep-

resentative Chris Cox (R-California); Richard T. Cupitt, the Associate Director for the Center for International Trade and Security at the University of Georgia; Paul Freedenberg, the Director of Government Relations for the Association of Manufacturing Technology; and Dan Hoydish, the Washington Director for UNISYS representing the Computer Coalition for Responsible Exports. On July 11, the Committee heard from Senator Mike Enzi (R-Wyoming); the Honorable John R. Bolton, the Under Secretary for Arms Control and International Security at the U.S. Department of State; Mr. David Tarbell, the Deputy Under Secretary for Technology Security Policy at the Department of Defense; Mr. Stephen Bryen, the Managing Partner for Aurora Marketing and Business Development; and Larry Christensen, the Vice President of Vastera, Inc.

COMMITTEE CONSIDERATION

H.R. 2581 was introduced by Representative Gilman on July 20, 2001, and was referred, having primary jurisdiction, to the House Committee on International Relations. It was also referred to the Committee on Rules.

On August 1, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 2581, with an amendment, by a record vote of 26 ayes to 7 noes, a quorum being present.

The Committee adopted six amendments. The first was offered by Chairman Hyde. This amendment provides additional flexibility and discretion to the President by enhancing his authority with regard to controlling items on and the composition of the National Security Control List. This amendment was agreed to by a record vote of 29 ayes to 5 noes. The second amendment, an en bloc amendment offered by Mr. Lantos, expands purposes of foreign policy controls to govern the export of test articles intended for clinical investigation involving human subjects and requires a license for such exports, which must include proof that the clinical investigation abroad must meet the same standards as an investigation that took place in the United States. The en bloc amendment also amends section 311 (on export control policy regarding crime control and detection instruments and equipment) to restrict export of such devices to countries that engage in torture. This amendment was agreed to by a record vote of 25 ayes to 8 noes.

Chairman Hyde offered the third amendment, an amendment which codifies the Enhanced Proliferation Control Initiative (EPCI) standard and requires presumption of denial for exports that meet EPCI-type standard as well as those exports that would undermine regional stability or are detrimental to the U.S. and its allies. This amendment was agreed to by a record vote of 30 ayes to 7 noes.

The fourth amendment adopted was offered by Mr. Berman. This amendment added a title to the bill, "Exports of Satellites." This amendment was agreed to by voice vote. The next amendment adopted was offered by Chairman Hyde and was agreed to by voice vote. This amendment enhances the role of the Secretary of Defense in the commodity classification process, and provides additional flexibility to the Executive branch in prescribing the interagency dispute resolution process for license applications. The final

amendment adopted was an amendment en bloc offered by Chairman Hyde. This amendment was agreed to by voice vote.

The motion to favorably report H.R. 2581 to the House, as amended, was agreed to by a record vote of 26 ayes to 7 noes.

VOTES OF THE COMMITTEE

Clause (3)(b) of rule XIII of the Rules of the House of Representatives requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for or against, be printed in the committee report.

Vote #1: Chairman Hyde amendment providing additional flexibility and discretion to the President by enhancing his authority with regard to controlling items on and the composition of the National Security Control List. The amendment was agreed to by a record vote of 29 ayes to 5 noes.

Voting yes: Hyde, Gilman, Leach, Bereuter, Smith (NJ), Burton, Ballenger, Rohrabacher, Royce, Chabot, Houghton, McHugh, Smith (MI), Pitts, Issa, Cantor, Kerns, Davis (VA), Lantos, Berman, Hilliard, Sherman, Meeks, Lee, Crowley, Berkley, Napolitano, Schiff, and Watson.

Voting no: Paul, Flake, Payne, Menendez, Blumenauer.

Vote #2: The Lantos en bloc amendment expanding purposes of foreign policy controls to govern the export of test articles intended for clinical investigation involving human subjects and requires a license for such exports, which must include proof that the clinical investigation abroad must meet the standards as an investigation that took place in the United States. It also amends section 311 (on export control policy regarding crime control and detection instruments and equipment) to restrict export of such devices to countries that engage in torture. This amendment was agreed to by a record vote of 25 ayes to 8 noes.

Voting yes: Hyde, Gilman, Leach, Bereuter, Smith (NJ), Burton, Ballenger, Rohrabacher, Royce, Chabot, Tancredo, Pitts, Davis (VA), Lantos, Ackerman, Payne, Hilliard, Engel, Meeks, Lee, Hoeffel, Berkley, Napolitano, Schiff, and Watson.

Voting no: Houghton, Cooksey, Paul, Smith (MI), Issa, Cantor, Flake, and Kerns.

Vote #3: Chairman Hyde amendment which codifies the Enhanced Proliferation Control Initiative (EPCI) standard and requires presumption of denial for exports that meet EPCI-type standard as well as those exports that would undermine regional stability or are detrimental to the U.S. and its allies. This amendment was agreed to by a record vote of 30 ayes to 7 noes.

Voting yes: Hyde, Gilman, Leach, Bereuter, Smith (NJ), Burton, Gallegly, Ballenger, Rohrabacher, Royce, Chabot, Burr, Tancredo, Pitts, Kerns, Davis (VA), Lantos, Berman, Ackerman, Brown, Hilliard, Engel, Meeks, Lee, Crowley, Hoeffel, Berkley, Napolitano, Schiff, and Watson.

Voting no: Houghton, Paul, Smith (MI), Flake, Payne, Menendez, and Blumenauer.

Vote #4: Motion to favorably report to the House H.R. 2581, as amended. Agreed to by a vote of 26 ayes to 7 noes.

Voting yes: Hyde, Gilman, Leach, Bereuter, Smith (NJ), Gallegly, Ros-Lehtinen, Rohrabacher, Royce, Chabot, McHugh, Cantor,

Kerns, Davis (VA), Lantos, Ackerman, Brown, Hilliard, Sherman, Davis (FL), Lee, Crowley, Hoeffel, Berkley, Napolitano, and Watson.

Voting no: Houghton, Burr, Cooksey, Paul, Issa, Flake, and Menendez.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 21, 2001.

Hon. HENRY J. HYDE, *Chairman,*
Committee on International Relations,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2581, the Export Administration Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), who can be reached at 226–2860, and Theresa Gullo (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure:

cc: Honorable Tom Lantos
Ranking Democratic Member

H.R. 2581—Export Administration Act of 2001.

SUMMARY

H.R. 2581 would replace the expired Export Administration Act of 1979 (EAA) and would update the system for applying export controls and penalties on American business for national security or foreign policy purposes. Since the expiration of the EAA in August, the President has extended export controls pursuant to his authority under the International Emergency Economic Powers Act. The Bureau of Export Administration (BXA) in the Department of Commerce administers export controls. This bill would authorize such activities through 2005.

CBO estimates that implementing H.R. 2581 would cost about $370 million over the 2002–2006 period, assuming appropriation of the necessary funds. Because the bill would increase criminal and civil penalties for violations of export controls, CBO estimates governmental receipts would increase by $11 million over the 2002–2006 period. CBO estimates that the increase in criminal penalties would cause direct spending from the Crime Victims Fund to rise by about $4 million during that period. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 2581 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. CBO's estimate of the bill's impact on the private sector will be provided later in a separate statement.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit), 050 (national defense), and 150 (international affairs).

By fiscal year, in millions of dollars

	2002	2003	2004	2005	2006
CHANGES IN REVENUES AND DIRECT SPENDING					
Estimated Revenues	0	1	2	4	4
Estimated Budget Authority	0	0	1	1	2
Estimated Outlays	0	0	1	1	2
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
EAA Spending by the Bureau of Export Administration					
Estimated Authorization Level	94	87	90	95	0
Estimated Outlays	80	83	90	94	14
EAA Spending by the Departments of State and Defense					
Estimated Authorization Level	2	2	2	2	0
Estimated Outlays	2	2	2	2	0
Total Proposed Changes					
Estimated Authorization Level	96	89	92	97	0
Estimated Outlays	82	85	92	96	14

BASIS OF ESTIMATE

H.R. 2581 would authorize the BXA to control the export of certain items from the United States for national security or foreign policy purposes. Generally, export controls would not apply to products that are mass-market items or available from foreign sources at a comparable price and quality. When fully phased in, CBO estimates that provisions of the Export Administration Act of 2001 would increase revenues by about $4 million a year beginning in fiscal year 2005 and direct spending by about $2 million a year beginning in 2006. In addition, we estimate that implementing the bill would cost $369 million over the 2002–2006 period, assuming appropriation of the necessary amounts.

Revenues

Since the expiration of the Export Administration Act of 1979 in August, criminal and civil penalties for violating export control laws have been collected under the International Economic Emergency Powers Act. H.R. 2581 would significantly raise the maximum criminal fines that could be imposed for violations of export controls. The bill would set the maximum criminal fines at 10 times the value of the exports involved, or $5 million for corporations and $1 million for individuals, whichever is greater. Under the bill, civil penalties of up to $500,000 could also be imposed for violations of the law. On average, about three years elapse between the initial investigation of violations of export control law and the collection of a penalty. Because the amount of a fine is based on the law in force at the start of an investigation, CBO does not expect penalties under the new law to be collected until fiscal year 2003. Based on information from the Department of Commerce, CBO estimates that enacting the bill would increase receipts from civil penalties by $2 million a year and receipts from criminal penalties by another $2 million a year beginning in 2005.

Direct Spending

Collections of criminal fines are recorded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. When fully phased in, the additional direct spending resulting from the increase in criminal penalties would be about $2 million a year beginning in 2006, because spending from the Crime Victims Fund lags behind the collection of criminal fines by about a year.

Spending Subject to Appropriation

BXA is responsible for implementing the EAA. Based on information from the Department of Commerce, CBO estimates that, with current funding, the BXA will spend about $52 million in 2001 on this effort. H.R. 2581 would authorize the appropriation of between $72 million and $76 million a year for the Department of Commerce to implement the provisions of the bill during the 2002–2005 period. Also, the bill would authorize additional appropriations of at least $3.5 million annually to hire 20 employees to establish a best practices program for exporters, at least $4.5 million annually to hire 10 overseas investigators, $5 million to enhance the BXA's program to verify the end use of controlled exports, at least $5 million to procure a computer system for export licensing and enforcement, and $4 million annually to hire and train additional license review officers.

Based on information from the BXA, CBO estimates that implementing a best practices program for exporters would cost about $4 million a year, stationing overseas investigators would cost about $5 million a year, hiring and training license review officers would cost $4 million a year, and procuring the computer system would cost about $4 million in 2002 and $1 million in 2003. Any such spending would be subject to appropriation of the necessary amounts. Based on BXA's historical spending patterns, CBO estimates that implementing the bill would cost the agency about $361 million over the 2002–2006 period. This estimate assumes that

funds are appropriated for the BXA through 2005, as provided in section 506 of the bill.

H.R. 2581 also would require the Departments of State and Defense to review the classification of exports under the new rules established by the bill, and make recommendations to the Department of Commerce. Based on information from the Departments of State and Defense, CBO assumes that those two agencies would need to hire additional staff to conduct these reviews. CBO estimates that implementing these provisions would cost about $2 million a year during the 2002–2005 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act establishes pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

By fiscal year, in millions of dollars

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	0	0	0	1	1	2	2	2	2	2	2
Changes in receipts	0	0	1	2	4	4	4	4	4	4	4

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 2581 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

CBO's estimate of the bill's impact on the private sector will be provided later in a separate statement.

PREVIOUS CBO ESTIMATE

On April 2, 2001, CBO transmitted an estimate of S. 149, the Export Administration Act of 2001, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 22, 2001. Based on information from the Bureau of Export Administration, CBO estimated that enacting S. 149 would increase penalty collections by $8 million a year when fully phased in. Since that time, CBO has obtained new information from BXA, and now estimates that enacting either bill would increase penalty collections by $4 million a year when fully phased in.

CBO also estimated that implementing S. 149 would cost BXA about $377 million over the 2001–2006 period, assuming the appropriation of the necessary amounts. For that estimate, CBO assumed that Congress would enact the bill by July 1, 2001, and that some of the ongoing costs of the bill would begin in 2001. For CBO's estimate of H.R. 2581, we assume that the bill would have no budgetary effect until 2002. This decrease in the estimated costs, however, is partially offset by CBO's estimate of the added

costs for the Departments of State and Defense to implement the bill.

ESTIMATE PREPARED BY:

Federal Costs: Ken Johnson (226–2860)
Federal Receipts: Erin Whitaker (226–2720)
Impact on State, Local, and Tribal Governments: Theresa Gullo (225–3220)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

G. Thomas Woodward
Assistant Director for Tax Analysis

November 9, 2001

H.R. 2581—Export Administration Act of 2001.

SUMMARY

H.R. 2581 would impose private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA) on certain exporters. CBO estimates that the total direct cost of those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($113 million in 2001, adjusted annually for inflation).

PRIVATE-SECTOR MANDATES CONTAINED IN THE BILL

H.R. 2581 would replace the expired Export Administration Act of 1979 (EAA) and would update the system for applying export controls and penalties on American business for national security or foreign policy purposes.

The bill would require pharmaceutical companies that apply for licenses to export certain test articles, including drugs, medical devices, biological products, and additives, to undertake new procedures. Such firms would have to identify each clinical investigation concerning those articles involving human subjects and submit proof that the protocols for each investigation have been examined by an institutional review board. Based on information from the Pharmaceutical Research and Manufacturers of America and the Federal Drug Administration, the cost to identify and submit proof of review would be small and further, few test articles would be subject to the new procedures.

The bill would prohibit implements of torture from being exported to certain countries. According to the Bureau of Export Administration, the number of prohibited instruments and equipment would be minimal.

H.R. 2581 also would require exporters not currently filing their applications through the Automated Export System (AES) to do so. Based on information from the Bureau of Export Administration, the number of additional exporters that would now be required to file through the AES would be minimal.

PREVIOUS CBO ESTIMATE

On April 2, 2001, CBO transmitted an estimate of S. 149, the Export Administration Act of 2001, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 22, 2001. CBO determined that S. 149 contained no private-sector mandates as defined by UMRA.

ESTIMATE PREPARED BY:

Paige Piper/Bach

ESTIMATE APPROVED BY:

Roger Hitchner
Assistant Director for Microeconomic and Financial Studies Division

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of this bill are consistent with the Government Performance and Results Act performance plan submitted by the Department of Commerce. Because the bill's objectives are consistent with the performance plan submitted by the Department of Commerce new or additional performace goals and objectives are not required.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 provides that the bill may be cited as the "Export Administration Act of 2001," and provides a table of contents.

Section 2. Definitions

Section 2 defines the terms used in the Act.

Section 101. Commerce control list

Section 101(a) directs the Secretary of Commerce to establish and maintain a Commerce Control List consisting of items that require a license or other authorization prior to export and grants authority to require any type of license or other authorization to implement export controls under this Act. Section 101(b) specifies the types of licenses or other authorization that can be required for single or multiple exports, notification in lieu of a license, or an exception from licensing. Section 101(c) provides that no license or other authorization is required to provide after-market service or replacement parts, to replace on a one-for-one basis parts that were in an item lawfully exported from the United States, unless the Secretary determines that a license is required or the after-market service or replacement parts would materially enhance the capability of the item. Section 101(d) provides that a license or other

authorization to export an item includes authorization to export incidental technology related to the item, so long as such technology does not go beyond that which would be necessary to install, repair, maintain, inspect, operate, or use the licensed item.

Section 102. Delegation of authority

Section 102 allows the President to delegate the authority granted to him under this Act to such departments and officials as he deems appropriate, except as provided in section 102(b) and subject to other provisions of this Act. Section 102(b)(1) limits this delegation to officials that are appointed by the President with the advice and consent of the Senate. Section 102(b)(2) states that the President may not delegate or transfer his authority to overrule or modify recommendations or decisions made by the Secretaries of Commerce, Defense, or State.

Section 103. Public information; consultation requirements

Section 103 requires the Secretary of Commerce to keep the public fully informed of changes in export control policies and procedures and to consult regularly with representatives from a broad spectrum of enterprises, labor organizations, non-proliferation and national security experts, and interested citizens.

Section 104. Right of export

Section 104 affirms that no license or authorization may be required except to carry out the provisions of this Act.

Section 105. Export control advisory committees

Section 105 authorizes the Secretary of Commerce to appoint export advisory committees, made up of industry representatives and government officials (including officials from the Departments of Commerce, Defense, and State, and other appropriate departments or agencies), to provide technical advice and assistance to the Secretary and other appropriate officials or departments regarding actions designed to carry out the Act. Section 105 also provides the administrative arrangements that such committees must follow.

Section 106. President's Technology Export Council

Section 106 authorizes the President to establish a President's Technology Export Council to advise the President on the implementation, operation, and effectiveness of the Act.

Section 107. Prohibition on charging fees

Section 107 provides that no fee may be charged to process an export license application under the Act.

Section 201. Authority for national security export controls

Section 201 authorizes the President to control exports for national security purposes to stem contributions to the military capability of countries whose activities prove detrimental to the national security of the United States, its allies, or countries that share common strategic objectives with the United States.

Section 201(c)(1)(A) authorizes export controls on items that, based on the end-use or end-user and without regard to any other

requirement, exception or procedure mandated elsewhere in the Act, could contribute to the proliferation of weapons of mass destruction or the means to deliver them. Section 201(c)(1)(B) directs the President to seek to strengthen multilateral cooperation to identify more effectively end users of concern. Section 201(c)(1)(C) directs the Secretary to establish and maintain a database listing end users of concern and to develop a procedure by which exporters can utilize such database to screen prospective end users.

Section 201(c)(2) states that there shall be a presumption of denial for the export of an item if the Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, determines that there is a significant risk that (A) the end user designated to receive such item is involved in a program or activity for the design, development, manufacture, stockpiling, testing, or other acquisition of a weapon of mass destruction or the means to deliver such a weapon and is in a country that is not an adherent to a multilateral export control regime controlling such weapon or means of delivery, unless the Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, and in consultation with the intelligence agencies and the head of any other department or agency of the United States that the Secretary considers appropriate, determines that such export would not make a material contribution to such program or activity or (B) the export of such item would otherwise contribute to the military capabilities of a country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally.

The Committee believes that the decision to export an item to an end-user that is involved in WMD programs—especially end-users in countries that do not adhere to the relevant multilateral control regimes—should have to meet the highest standards of protection of U.S. security interests, and this subsection provides that there shall be a presumption of denial unless the item in question would make no material contribution to such a program. These are among the highest risk purchasers of U.S. dual-use goods and technology, in countries which choose not to cooperate with global efforts to halt the spread of nuclear, chemical, or biological weapons, or the spread of ballistic missile capabilities that could carry such weapons. These purchasers and states have chosen to remain outside the legitimate standards of international civilized behavior, and indeed to place international peace and security at risk; as such, neither of these purchasers or states should have any right or expectation to benefit from the legitimate trade in high-technology dual-use items.

While this provision does not constitute a statutory prohibition on such exports, the Committee believes that it is desirable to give the Executive Branch clear guidance. This is intended as a "fail-safe" provision; if the Secretaries of Commerce, Defense and State first agree that there is a "significant risk" that the proposed purchaser is involved in WMD or missile programs, and the Secretaries fail to agree that said export would not make a material contribution to a WMD program or activity, then the Committee intends that export should not be approved. Each Secretary is responsible for different facets of the proliferation control problem,

and each must be satisfied that a specific export in these circumstances would not undermine U.S. security interests.

Section 201(d)(1) authorizes the President to impose enhanced controls on National Security Control List items, notwithstanding their status as incorporated parts or as mass-market or foreign-available items, if removing controls could constitute a threat to U.S. national security. Section 201(d)(2) gives the President the necessary authority to, without regard to any other provision of the Act, to place items on the National Security Control List as he deems necessary. This does not replace the system for creating a National Security Control List in section 202, but is a separate authority for the President to add items to the list directly without going through the process in section 202 and other provisions in the Act. The Committee believes that there could be occasions, especially since the events of September 11, that require making certain items immediately subject to EAA national security controls, without regard to a potentially time-consuming and possibly contentious interagency review process. Section 201(d)(3) states that the President may not delegate his authority under the previous two subsections. Section 201(d)(4) requires the President to report any enhanced control determination, along with the specific reason for the determination, to the committees of jurisdiction.

Section 201(e)(1) states that when a license is required for export to any country of any item on the National Security Control List for any reasons specified in subsection (b), there shall be a presumption of denial for the export of such item if (1) there is a significant risk that such item would contribute to the nuclear, chemical, or biological weapons capability of such country or the capabilities of such country to deliver such weapons; (2) such item would otherwise contribute to the military capabilities of such country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally; (3) such item would likely be used or diverted to a use or destination not authorized by the license or United States policy; or (4) the export of such item would otherwise materially and adversely affect the national security interests of the United States. Section 201(e)(2) states the paragraph (1) shall not apply to the export of an item to a country that is an adherent to a multilateral export control regime controlling the export of such item.

The Committee believes that certain National Security Control List items pose a higher risk of being used in WMD or missile programs, or of undermining regional security. These items should be subject to closer scrutiny during the export licensing process, particularly if they are or can be easily diverted to a use or destination not approved as part of the original license application. If it is determined that there is a significant risk that the export of such items could be used or diverted for use for such purposes, or could undermine U.S. national security interests, then there should be a presumption of denial for export. As in 201(c)(2), this is not intended as a statutory prohibition, but as clear guidance for the Executive Branch in its consideration of licenses for these types of exports. The Committee also believes that the Secretaries of State and Defense, in consultation with the intelligence agencies and any

other department or agency the Secretary of Commerce deems appropriate, must be consulted with regard to decisions pertaining to the export of these items. The Committee decided to except countries that are adherents to multilateral control regimes that control such items, since those countries are obligated or otherwise committed to strictly control the use and security of such items.

Section 202. National security control list

Section 202 requires the Secretary of Commerce to establish and maintain a National Security Control List, composed of items controlled for national security purposes, as part of the Commerce Control List. Section 202(a)(3) directs the Secretary, with the concurrence of the Secretary of Defense, and the Secretary of State, and in consultation with other appropriate departments or agencies, to identify items for inclusion on the List, provided that the List shall include all of the items on the Commerce Control List on the day before the date of enactment of this Act. Section 202(a)(3) further requires the Secretary to review the List on a continuing basis, and, with the concurrence of the Secretary of Defense, and the Secretary of State, and in consultation with other appropriate departments or agencies, make adjustments to the List. Section 202(b)(1) requires the Secretary to consider certain risk factors, weighing national security concerns and economic costs, in establishing and maintaining the List. Section 202(b)(2) specifies the risk factors for the Secretary's consideration.

The Committee believes that the Secretaries and State and Defense must have equal status with the Secretary of Commerce in determining which items are to be controlled on the National Security Control List. Both have unique responsibilities for safeguarding the national security interests of the United State; the Secretary of Defense for anticipating and defending against military threats to the U.S. and it allies, the Secretary of State as the leader in U.S. WMD nonproliferation efforts and security-related international treaty implementation and enforcement. The Department of State is also the lead agency in controlling the export of lethal military equipment generally.

Section 203. Country tiers

Section 203 directs the President to establish a country tiering system of not less than 3 tiers, and assign each country to an appropriate tier for each controlled item or group of items. Section 203(b) requires that countries representing the lowest risk of diversion or misuse of an item be assigned to the lowest tier, while those representing the highest risk of diversion or misuse be assigned to the highest tier. Section 203(c) provides a number of risk factors to be used by the President in making assessments of countries for tier assignment purposes. The Committee believes that it is critically important to take into consideration factors other than a country's current capabilities regarding WMD; the country's goals and intentions must be considered, as well. In addition, while participation in multilateral export control regimes is important, the extent to which the country actually implements export controls, according to its own laws, regulations and practices, should be a key consideration when making country tier assignments.

Section 204. Incorporated parts and components

Section 204(a) provides that controls may not be imposed on an item solely because the item incorporates parts or components that are controlled if the part or component is essential to the functioning of the item, is customarily included in sales of the item, and is valued at 25 percent or less of the total value of the item, unless the item itself would make a significant contribution to the military or proliferation potential of a country or end-user which would prove detrimental to U.S. national security, or unless failure to control the item would be contrary to controls imposed under section 201(c) or section 309. Section 204(b) provides that no authority may be required for the re-export of foreign-made items incorporating U.S.-controlled parts if the value of the U.S.-controlled parts is 25 percent or less of the total value of the item, except that controls may be imposed on reexports of items to countries designated as countries supporting international terrorism if the controlled U.S. content is greater than 10 percent of the total value of the item.

Section 205. Petition process for modifying export status

Section 205 directs the Secretary of Commerce to establish a process for interested persons to petition the Secretary to change the status of an item on the List.

Section 211. Determination of foreign availability and mass-market status

Section 211(a) directs the Secretary of Commerce to review and determine the foreign availability and mass-market status of an item on a continuing basis, upon a request from the Office of Technology Evaluation, or in response to a petition. Section 211(b) requires the Secretary to establish a process for interested parties to petition for a foreign availability or mass-market determination for an item. Section 211(c) provides that in any case in which the Secretary determines that an item has foreign availability or mass-market status, no license or other authorization shall be required for the export of such item, unless the President makes a set-aside determination under section 212 or 213. Section 211(d) establishes criteria for determining foreign availability and mass-market status, including by providing, consistent with current law that in order to be a directly competitive item or a substantially identical item for the purpose of making such a determination, an item must be of comparable quality to the controlled item.

Section 212. Presidential set-aside of foreign availability status determination

Section 212(a)(1) provides the President with non-delegable authority to set aside a foreign availability status determination if failing to control the item constitutes a threat to U.S. national security, if there is a high probability that the foreign availability will be eliminated through international negotiations, or if U.S. controls on the item have been imposed under section 309. Section 212(a)(2) requires the President to report any set-aside determination, along with the specific reason for the determination, to the

committees of jurisdiction, and to publish the determination in the Federal Register.

Section 212(b)(1) requires the President, if he has made a set-aside determination under section 212(a), to actively pursue negotiations with the governments of appropriate countries for the purposes of eliminating the foreign availability, and to notify the committees of jurisdiction of these negotiations. Section 212(b)(2) directs the President to review a set-aside determination under section 212(a) every six months. Section 212(b)(3) provides that except for a set-aside determination made under section 309, a set-aside determination shall cease to apply within 6 months if negotiations are never commenced, on the date that negotiations end without success, on the date the President determines there is not a high probability of eliminating foreign availability through negotiation, or within 18 months if the President has been unable to achieve agreement to eliminate foreign availability.

Section 213. Presidential set-aside of mass-market status determination

Section 213(a) provides the President with non-delegable authority to set aside a mass-market status determination if failing to control the item constitutes a serious threat to U.S. national security and controlling the item would advance U.S. national security interest, or if U.S. controls on the item have been imposed under section 309. Section 213(b)(1) requires the President to report any set-aside determination, along with the specific reason for the determination, to the committees of jurisdiction, and to publish the determination in the Federal Register. Section 213(b)(2) directs the President to review a set-aside determination under section 212(a) every six months.

Section 214. Office of technology evaluation

Section 214(a)(1) establishes within the Department of Commerce an Office of Technology Evaluation to gather, coordinate, and analyze all information necessary for the Secretary of Commerce to make foreign availability and mass-market status determinations under the Act. Section 214(a)(2) directs the Secretary to ensure that the Office includes persons with the training, expertise and experience in economic analysis, the defense industrial base, technological developments, national security, and foreign policy export controls to carry out the Office's responsibilities. Section 214(b) directs the Office to conduct a number of assessments, evaluations, and monitoring functions. Section 214(c) requires the Secretary to make available to the committees of jurisdiction information on the Office's operations and improvements in ability to assess foreign availability and mass-market status. Section 214(d) directs departments and agencies and their contractors to furnish to the Office information about foreign availability and mass-market status of items.

Section 301. Authority for foreign policy export controls

Section 301 authorizes the President to control exports for the purposes of promoting foreign policy objectives; promoting peace, stability and respect for human rights; deterring and punishing

acts of international terrorism; controlling the export of test articles intended for clinical investigation involving human subjects to foster public health and safety; and controlling the export of goods and substances which are banned, severely restricted, highly regulated or never regulated for use in the United States to foster public health and safety Section 301(c) prohibits controlling for foreign policy reasons the export from a foreign country of an item containing parts or components produced in the United States, unless the export is to a country designated as a country supporting international terrorism if the value of the controlled U.S. parts or components is greater than 10 percent of the total value of the item. Section 301(d) prohibits controlling the export of an item for foreign policy purposes if the export of such item is in performance of a binding contract or is under an already issued license, unless the export of such item would constitute a serious threat to a foreign policy interest of the United States and controls on that item will be instrumental in remedying the situation posing the threat. The Committee modified section 301(d)(1)(a) to make it clear that contracts for export of items upon which the President subsequently decides to impose controls would not be affected, provided they were concluded before the notice in the Federal Register or the President's report to Congress imposing the new controls, whichever occurs first. The Committee was concerned that the bill's existing language could have created a gap between an Administration's declaration to impose controls and the formal report to Congress, and such a gap would permit the hasty conclusion of a new contract that would then have to be honored.

Section 302. Procedures for imposing controls

Section 302 outlines procedures for the imposition of foreign policy export controls. Section 302(a) requires the President, not later than 45 days before imposing a foreign policy export control, to publish notice of intent to do so in the Federal Register and provide for a 30-day period for public comment. Section 302(b) authorizes the President to negotiate with the government of the foreign country against which the export control is imposed during the 45-day notice period. Section 302(c) directs the President to consult with the committees of jurisdiction regarding a proposed foreign policy control and efforts to achieve multilateral cooperation on the issues underlying the proposed control.

Section 303. Criteria for foreign policy export controls

Section 303 requires foreign policy export controls to have clearly stated and specific foreign policy objectives, to have objective standards for evaluation, to include certain assessments by the President, to be targeted narrowly, and to seek to minimize any adverse impact on humanitarian activities.

Section 304. Presidential report before imposition of controls

Section 304(a) directs the President to submit a report to the committees of jurisdiction prior to imposing a foreign policy export control. Section 304(b) details the contents of such report.

Section 305. Imposition of controls

Section 305 authorizes the President to impose a foreign policy export control after the submission of the report required under section 304 and notice of the imposition of the control is published in the Federal Register.

Section 306. Deferral authority

Section 306 authorizes the President to defer compliance with the requirements of sections 302(a), 304, or 305 if he determines that deferral is in the U.S. national interest and compliance occurs not later than 60 days after the foreign policy export control is imposed.

Section 307. Review, renewal, and termination

Section 307(a)(1) provides that foreign policy export controls shall terminate on March 31 of each renewal year, defined as 2003 and every two years thereafter, unless specifically renewed by the President. Section 307(a)(2) provides an exception for a foreign policy export control that is required by law, is targeted against a country designated as supporting international terrorism, or has been in effect for less than one year as of February 1 of a renewal year. Section 307(b) requires the President to review all foreign policy export controls in effect and, during the review period, consult with the committees of jurisdiction and provide for a period of public comment on the renewal of each export control. Section 307(c) requires the President to submit to the committees of jurisdiction a report on each export control he wishes to renew.

Section 308. Termination of controls under this title

Section 308(a) requires the President to terminate any foreign policy export control that has substantially achieved the objective for which it was imposed, and authorizes him to terminate at any time any foreign policy export control that is not required by law 30 days after consulting with the International Relations Committee of the House of Representatives and the Foreign Relations Committee of the Senate. Section 308(b) provides an exception for foreign policy export controls imposed against countries designated as supporting international terrorism.

Section 309. Compliance with international obligations

Section 309 authorizes the President to control exports of items listed on the control list of a multilateral export regime, or in order to comply with resolutions of the United Nations, treaties, or other international agreements and arrangements.

Section 310. Designation of countries supporting international terrorism

Section 310(a) requires a license for the export of an item to a country if the Secretary of State has determined that the government of the country has repeatedly provided support for international terrorism, and the export of the item could make a significant contribution to the military potential of the country or its ability to support international terrorism. Section 310(b) requires the Secretaries of Commerce and State to notify the committees of ju-

risdiction at least 30 days before issuing a license under section 310(a). Section 310(c) requires the Secretary of State to publish each determination made under section 310(a) in the Federal Register. Section 310(d) provides that a designation made under section 310(a) shall not be rescinded unless the President submits to the Speaker of the House of Representatives, and the Chairmen of the Committees on Banking, Housing, and Urban Affairs and on Foreign Relations of the Senate a report making certain certifications about the government of the designated country.

Section 311. Crime control instruments

Section 311 continues and expands existing export control law and regulations governing the export of crime control and detection equipment by ensuring that any such equipment that is "especially susceptible to abuse as implements of torture" would not go to countries that repeatedly engage in torture. Subsection (a) restates existing law that all crime control and detection equipment shall be subject to an individual export license. Subsection (b) mandates that determinations made by the Secretary of Commerce in composing the list of crime control and detection equipment subject to controls, and the approval or denial for export of such equipment, will require the concurrence of the Secretary of State. Subsection (c) prohibits the export of such equipment that is especially susceptible to abuse for torture to countries or groups that have repeatedly engaged in acts of torture, unless the Secretaries of Commerce and State agree that the purchaser of the equipment has not been engaged in torture. Subsection (c) also requires the Secretary of Commerce to publish a list of crime control equipment designated as "especially susceptible" to abuse for the information of exporters. Subsection (d) excepts NATO and major non-NATO allies from the general licensing requirement of subsection (a); however, subsection (e) imposes a blanket prohibition on the export to any destination (including NATO and major non-NATO allies) of leg irons, saps, blackjacks, electroshock stun belts, thumbcuffs and items specifically designed as implements of torture, and components produced for incorporation into these items and the technology used for the development or production of these items. Finally, subsection (f) defines "act of torture."

Amnesty International reports that governments that repeatedly engage in torture against detained persons frequently use crime control equipment from the U.S. and other Western suppliers as ready-made implements of torture. Most of this equipment, including electroshock discharge weapons, can be purchased domestically by private U.S. citizens for "self-defense" purposes. However, private U.S. citizens—as well as U.S. law enforcement officials—are subject to prosecution under Federal law for any abuse of these implements as torture tools. Exports of these same items, however, should be regulated to countries that use torture as part of official or condoned practice and may have unreliable or nonexistent systems of judicial accountability for torture abuse.

It is the Committee's expectation that this category of items identified by the Secretary of Commerce as "especially susceptible to abuse" not be so broad as to include any crime control item that could be put to incidental use for torture. Finally, with regard to

section 311's prohibition of the export of certain equipment to any destination, including components produced for incorporation into these items and the technology used for the development or production of these items, it is the Committee's intent that this section should not be understood as applying to equipment of general use, such as machine tools or other equipment that could be used for manufacture of implements of terror but are not used specifically for that purpose.

Section 312. Measures to Protect the Public Health

Section 312 begins to address in a meaningful way the problem of under-regulated clinical trials of experimental drugs and other test articles on human participants in other countries. Subsection 312(a) prohibits the unlicensed export of test articles which are intended for clinical investigations. Section 312(b) establishes the criteria by which the President may grant export licenses to applicants. Notably, section 312(b) requires applicants to identify each clinical investigation for which the export of a test article is intended and submit proof to the President that the protocols for such clinical investigations have been approved by an institutional review board as meeting the requirements of the Federal Food, Drug, and Cosmetic Act, and its accompanying regulations, for protecting the rights and welfare of human subjects. Section 312(c) requires the President to report annually to the committees of jurisdiction the names of applicants and approved applicants for export licenses as well as the countries importing the test articles which are intended for clinical investigation. Section 312(d) exempts certain countries with regulatory schemes which are substantially equivalent to the Federal Food, Drug, and Cosmetic Act framework from the provisions of this section. Section 312(e) defines the terms which are used in this section.

Section 313. Promotion of Safe Environments

Section 313 addresses the problem of the uncontrolled international export of potentially hazardous pesticides and related chemicals. Current United States law does not prohibit the export of pesticides or chemicals that the Environmental Protection Agency (EPA) has either deemed too dangerous for domestic use or has never formally evaluated. Section 313 is intended to promote the development of a comprehensive United States administrative and regulatory framework for measuring, monitoring and controlling pesticide exports and to determine the extent to which these potentially hazardous substances are being exported from the United States. The Committee wishes to emphasize, however, that this legislation is not intended to supplant or dilute the ongoing process to develop domestic implementing legislation in connection with various related international instruments.

The potential scale of the problem is reason for concern. A study by the California-based Foundation for Advancements in Science and Education (FASE) conservatively estimates that the United States exported 3.2 billion pounds of pesticides from 1997–2000—an average of 2.2 million pounds per day or 45 tons per hour. Many millions of pounds of these pesticide and chemical exports are ei-

ther banned, severely restricted, never registered or restricted for use within U.S. borders.

The bulk of United States pesticide exports are bound for the developing world. In many cases the prevailing conditions in these countries—insufficient protective equipment, unsafe storage practices and inadequate training of pesticide applicators—further compound the dangers to man and environment that these substances pose. Many countries also lack adequate technical expertise and knowledge sufficient to assess the relative safety of given pesticides or shipments. As a result, the Committee believes that the U.S. should seek to ensure that U.S. pesticide exports do not pose an undue hazard to human or environmental safety in either the recipient countries or the U.S. through the return of pesticide-tainted foods.

Subsection 313(a) authorizes the President to prohibit pesticide exports that he deems a potential hazard to human health or the environment either in the US or a foreign country. Subsection 313(b) requires the President to provide Congress with two reports, both of which are to be submitted within 6 months (180 days) of the Act's enactment. The first report is expected to identify all US-based companies or individuals that export the chemicals and pesticides subject to regulation by certain international conventions or that are banned, severely restricted, highly regulated, or never regulated for use in the United States. The President is also requested to report the quantities of these pesticides and chemicals that have been exported by these persons during the previous two years. The President's second report is to describe the current US systems for measuring, monitoring and controlling pesticide exports and include recommendations on how they might be improved. Subsection 313(c) requires that the GAO, in consultation with the National Academy of Sciences and other government departments and agencies, provide a report to Congress not later than 1 year after the date of the Act's enactment. This report is shall, among other matters, examine the US regulatory and administrative frameworks governing pesticide exports, provide an assessment of their effectiveness and efficiency and of the adequacy of current US statutory and regulatory authority, compare the US frameworks to those of the other members of the OECD and provide recommendations concerning any elements that might be adopted to improve the US system. In this section, the terms "highly regulated" and "never regulated" are meant to include but extend beyond the common terms "restricted" and "never registered" in order to ensure that information is gathered on the broadest possible range of pesticides. These terms are not intended to provide strict regulatory definitions. The Committee anticipates that this information will assist in designing any future policy and/or legislative initiatives.

Section 401. Export license procedures

Section 401 outlines the process by which export license applications are considered by the Secretary of Commerce and other departments and agencies. Section 401(a) describes the responsibilities of the Secretary with regard to export license procedures, and outlines the criteria for evaluating applications. Section 401(b) requires the Secretary, within 9 days, to review an application to en-

sure it is complete, verify that a license is required for the item, and refer it to the appropriate departments and agencies. Section 401(c) directs referral departments and agencies to respond with a recommendation on a referred application within 30 days of referral. Section 401(d) provides that within 30 days of referral, if the referral departments and agencies are in agreement, the Secretary must issue the license or notify the applicant of the intent to deny the license; if the referral departments and agencies are not in agreement, the Secretary must notify the applicant that the application is subject to interagency dispute resolution. Section 401(e) requires the Secretary to inform an applicant of a denial, the statutory and regulatory basis for the denial, the modifications (if any) that would permit approval, the considerations that led to the denial, and the availability of appeal procedures, with applicants permitted 20 days to cure the application's deficiencies. Section 401(f) directs the Secretary to establish an appeals process for application denials; and authorizes the filing of a petition with the Secretary or the filing of an action in United States District Court to enforce the time limits prescribed in this section. Section 401(g) details certain actions that are not to be included in the time periods prescribed in the section. The Committee believes that agencies should be granted additional extensions of the time limits for review if a particular license application is unusually complex or presents especially complicated national security or foreign policy concerns. The Committee adopted an amendment adding such extensions to such limits for no more than 60 additional days for these purposes.

Section 401(h) requires the Secretary to notify the Secretary of Defense, the Secretary of State, and other appropriate departments or agencies of classification requests, and to respond within 14 days to the person making the request. If an objection is raised by the Secretary of Defense or Secretary of State regarding the Secretary's determination within that time period, the disagreement shall be resolved through the interagency resolution process described in section 402, except that any disagreement shall be resolved within 60 days. The Committee assumes that "classification" of commodities will usually be a routine, taxonomic exercise, in which items are assessed as to which existing category on the CCL they belong. However, the Committee also notes that there may be occasions when this assessment may actually become a determination as to whether a particular item or technology ought or ought not to be on the Control List at all. This situation could effectively constitute an independent decision by the Secretary of Commerce as to what items should be part of the National Security Control List, and as such would conflict with Section 202(a)(3), under which the identification of which items to place on the National Security Control List are made with the concurrence of the Secretaries of State and Defense. As such, the Committee believes that the Secretaries of State and Defense should have the opportunity to object to proposed classification determinations by the Secretary of Commerce, so long as objections can be resolved within 60 days. The Committee expects that this authority will rarely be needed; however, it will be in those rare cases where there is serious doubt that this authority to object will ensure that U.S. security and foreign policy interests will be protected.

Section 402. Interagency dispute resolution process

Section 402(a) provides that all license applications on which agreement cannot be reached shall be referred to the interagency dispute resolution process for decision. Section 402(b)(1) directs the Secretary of Commerce to establish an interagency committee for review of license applications on which there is disagreement, and authorizes the chair of that committee to consider the positions of the referral departments and agencies and make decisions on applications. Section 402(b)(2) states that the analytic product of the intelligence community should be fully considered with regard to proposed licenses. Section 402(b) further directs the President to establish additional levels for review or appeal of any matter that cannot be resolved pursuant to the process described in paragraph (1). Each such review shall ensure that matters are resolved or referred to the President not later than 90 days after the completed license application is referred by the Secretary. Section 402(c) directs the Secretary, once a final decision is made, to promptly issue the license and ensure all appropriate Department personnel are notified, or notify the applicant of the intent to deny the application. The Committee modified the original bill's specific directives as to how the interagency dispute resolution process should work, including such minutiae of what would be the voting structure. The Committee believes that this is too restrictive of the President's authority to organize interagency decision-making processes. The Committee was also concerned that the original bill's voting process could isolate one or more national security agencies during the process. Currently, the interagency resolution process operates on consensus; requiring by statute a majority rules voting structure could encourage a less-cooperative resolution process than currently exists. The Committee believes that the President and the agencies involved need to be able to determine the most effective process for resolving interagency disputes.

Section 501. International arrangements

Section 501(a) states the policy of the United States with regard to multilateral arrangements, and encourages the President to participate in multilateral export control regimes. Section 501(b) requires the President to submit to the committees of jurisdiction an annual report evaluating the effectiveness of each multilateral export control regime and detailing efforts to strengthen and harmonize the controls of such regimes. Section 501(c) directs the President to establish certain features in any multilateral export control regimes in which the United States is participating. Section 501(d) directs the President to seek the cooperation of regime members in establishing certain features in the members' national export control systems. Section 501(e) directs the President to seek to achieve certain objectives with regard to multilateral export control regimes. Section 501(f) requires the Secretary of Commerce, within 120 days of the date of enactment of the Act, to publish in the Federal Register and post on the Department of Commerce website information on multilateral export control regimes. Section 501(g) encourages the Secretary to participate in the training of foreign officials regarding implementation of effective export controls.

Section 502. Foreign boycotts

Section 502 directs the President to issue regulations prohibiting the participation of U.S. persons in boycotts imposed by a foreign country against a country that is friendly to the United States.

Section 503. Penalties

Section 503(a)(1) provides that an individual who willfully violates the Act shall, for each violation, be fined up to 10 times the value of the exports involved or $1 million, whichever is greater; imprisoned for up to 10 years; or both. Section 503(a)(2) provides that an entity that willfully violates the Act shall, for each violation, be fined up to 10 times the value of the exports involved or $5 million, whichever is greater. Section 503(b) provides that those convicted of a willful violation of the Act also shall forfeit any property that was the subject of the violation or that was derived from the violation. Section 503(c) authorizes the Secretary of Commerce to impose civil penalties of up to $500,000 per violation, and to deny the export privileges of persons who violate the Act or its regulations. Section 503(f) provides that persons convicted of violations of certain laws may, at the discretion of the Secretary, be denied export privileges for up to 10 years.

Section 504. Missile proliferation control violations

Section 504 requires the President to impose sanctions on U.S. or foreign persons who knowingly export or trade in items on the Missile Technology Control Regime (MTCR) Annex, and provides waiver authority in limited circumstances.

Section 505. Chemical and biological weapons proliferation sanctions

Section 505 requires the President to impose sanctions on persons who have knowingly and materially contributed to efforts by certain countries to use, develop, or acquire chemical or biological weapons, and provides waiver authority in limited circumstances.

Section 506. Enforcement

Section 506(a) provides general enforcement authorities for enforcement of the Act. Section 506(b) authorizes forfeiture of items seized in enforcement of the Act. Section 506(c) provides that cases involving violations under this Act shall be referred to the Secretary of Commerce for civil action, or the Attorney General for criminal action, or to both. Section 506(d) authorizes the use of funds for undercover investigative operations. Section 506(e) authorizes the use of wiretaps for enforcement of the Act. Section 506(f) directs the Secretary to target post-shipment verifications to those exports involving the greatest risk to national security and to those countries identified by the Director Central Intelligence in the most recent report that was submitted to Congress under section 721 of the Intelligence Authorization Act for Fiscal Year 1997 on the acquisition and supply by foreign countries of dual-use items and other technology useful for the development or production of weapons of mass destruction. The Committee believes that it is necessary that all countries identified by the Director of Central Intelligence to be involved in proliferation activities should be the

focus of special enforcement attention through increased post-shipment verifications. The Committee remains concerned that not enough inspections have been conducted over the years, and will continue to monitor the performance of the relevant agencies to ensure that U.S. dual-use equipment and technology are not being diverted to forbidden uses. Section 506(g) requires the Secretary to deny licenses to end-users who refuse to allow post-shipment verification of a controlled item. Section 506(g) further requires that if a country with which the United States has entered into an agreement providing for post-shipment verifications repeatedly obstructs or otherwise denies the post-shipment verification of controlled items, the Secretary shall deny a license for the export of those items or any substantially identical or directly competitive items or class of items to all end users in that country until such post-shipment verification is allowed. Section 506(h) authorizes $3.5 million to hire 20 additional employees to assist freight forwarders in developing a voluntary "best practices" program. Section 506(i) authorizes $4.5 million to hire 10 additional overseas investigators for post-shipment verification. Section 506(j) authorizes the Secretary, in cooperation with the U.S. Customs Service, to undertake necessary measures to detect unlawful exports and enforce violations of the Act. Section 506(l) authorizes $5 million for an export licensing and enforcement computer system. Section 506(o) authorizes $2 million to hire additional license review officers, and $2 million to conduct training for new license review officers, auditors, and post-shipment verification investigators. Section 506(p)(1) authorizes funding in the amount of $72 million for fiscal year 2002, $73 million for fiscal year 2003, $74 million for fiscal year 2004, and $76 million for fiscal year 2005, for the Department of Commerce to carry out the Act. Section 506(p)(2) terminates the authority granted by the Act on December 31, 2005.

Section 507. Administrative procedures

Section 507 describes the administrative provisions for the execution of authorities under the Act.

Section 601. Export control authority and regulations

Section 601(a) authorizes the exercise of any function under the Act not otherwise reserved to the President or another department to the Secretary of Commerce, and authorizes the delegation of any function under the Act from the Secretary to the Under Secretary of Commerce for Export Administration or other Commerce official. Section 601(b) establishes within the Department of Commerce an Under Secretary for Export Administration, an Assistant Secretary for Export Administration, and an Assistant Secretary for Export Enforcement, to carry out functions under the Act. Section 601(c) authorizes the President and the Secretary to issue such regulations as are necessary to carry out the Act, and direct the Secretary to report to the committees of jurisdiction on proposed amendments to the regulations including regulations on the exports to foreign nationals. The Committee continues to be concerned over the control of technology that may be communicated to foreign nationals verbally, visually, electronically or other immaterial means. These transfers of technology are colloquially known as "deemed exports,"

because they are as much an export of technology as are transfers of hardware. As such, they are "deemed" to be exports subject to controls. It is often difficult for companies to know when such information cannot be communicated to foreign citizens who may nevertheless be employees, contractors, or business partners of U.S. companies and subsidiaries. Consequently, the Committee believes that the Executive Branch must issue clear regulations that govern the handling of such sensitive technology.

Section 602. Confidentiality of information

Section 602(a) exempts from disclosure proprietary information associated with the processing of license applications. Section 602(b) authorizes Congress and the General Accounting Office to obtain information from appropriate departments and agencies regarding activities conducted in the furtherance of the Act. Section 602(c) requires the Secretary of Commerce and the Commissioner of Customs to exchange licensing and enforcement information to facilitate enforcement efforts. Section 602(d) provides that any officer or employee who knowingly discloses exempt information shall, for each violation, be fined up to $50,000 in criminal penalties, imprisoned for up to 1 year, or both; or shall, for each violation, be fined up to $5,000 in civil penalties; or may be removed from office or employment, except that no civil penalty may be imposed on an officer or employee of the United States, or any department or agency thereof, without the concurrence of the department or agency employing such officer or employee.

Section 701. Applicability

Section 701 states that Title VII applies with respect to exports, and all applications fo rlicenses to export satellites and related items, notwithstanding any other provision of this or any other act.

Section 702. Export Controls on Satellites and Related Items

Section 702 requires that all satellites and related items that were on the Commerce Control List of dual-use items on October 16, 1998, shall be controlled under this Act subject to sections 703 and 704.

Section 703. Export License Procedures

Section 703(a) requires the Secretary to refer to the Secretary of Defense, the Secretary of State, and the heads of other departments and agencies that the Secretary considers appropriate, all applications for licenses to export satellites and related items. Section 703(b) requires the Secretary, the Secretary of Defense and the Secretary of State, as appropriate, to consult with the Director of the Central Intelligence during the review of any application for a license involving the overseas launch of a commercial satellite of United State origin. Section 703(c) sets a deadline of 30 days for departments or agencies to recommend approval or denial of a export license application under this section. Section 703(d) outlines the interagency dispute resolution process for resolving any disagreement between Secretaries on export license applications under this section.

Section 704. Mandatory State Department Review

Section 704(a) requires that the provision of defense services by U.S. persons, including services or assistance provided during technical interchange meetings, in connection with the launch of a satellite from, or by nationals of, the People's Republic of China, are subject to section 38 of the Arms Export Control Act. Section 704(b) requires the President to notify the Congress pursuant to section 36(c) of the Arms Export Control Act without regard to the value limitation thereunder at least 30 days before any export license or technical assistance agreement is approved

Section 705. Definitions

Section 705 defines the terms used in this title.

Section 706. Conforming Amendments

Section 706 makes necessary technical and conforming amendments.

Section 707. Effective Date

Section 707 states that this title and the amendments made by this act shall take effect on the date of enactment of this act and shall apply to any export license application made before such date of enactment which is pending on such date.

Section 708. Effect of Existing Law

Section 708 states that nothing in this title shall affect the continued application of section 36 or 38 of the Arms Export Control Act, or any other provision of that act, to the export or other provision of defense services related to items in Category 4 of the U.S. munitions list.

Section 801. Annual report

Section 801(a) directs the Secretary of Commerce to submit to Congress, prior to February 1 of each year, a report on the administration of the Act. Section 801(b) details the specific items that are to be included in the report. Section 801(c) provides that whenever information under the Act is required to be published in the Federal Register, such information also shall be made available on the Department of Commerce or other appropriate government website.

Section 802. Relationship to the Arms Export Control Act

Section 802 states that nothing in this act shall be construed to alter or affect any provision of the Arms Export Control Act or any authority delegated by the President to the Secretary of State under the Arms Export Control Act.

Section 803. Enhancement of Congressional Oversight of Nuclear Transfers to North Korea

Section 803 amends the North Korea Threat Reduction Act of 1999 to add an additional requirement that must be satisfied before an agreement for cooperation (as defined in sec. 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014 b.)) between the United States and North Korea may become effective, and before any li-

cense or other approval may be issued for the export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement.

Currently under the North Korea Threat Reduction Act, the President must determine and report to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that seven criteria have been satisfied before an agreement for cooperation between the United States and North Korea may become effective, and before any license or other approval may be issued for the export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement. Among these criteria are that North Korea has come into full compliance with its safeguards agreement with the International Atomic Energy Agency (IAEA), that North Korea has permitted the IAEA full access to all additional sites and all information (including historical records) deemed necessary by the IAEA to verify the accuracy and completeness of North Korea's initial report of May 4, 1992, to the IAEA on all nuclear sites and material in North Korea, and that North Korea is in full compliance with its obligations under the Agreed Framework between the United States and North Korea of October 21, 1994.

Section 803 adds as an additional requirement that Congress enact a joint resolution concurring in the President's determination and report under the North Korea Threat Reduction Act before an agreement for cooperation between the United States and North Korea may become effective, and before any license or other approval may be issued for the export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement. The purpose of this additional requirement is to ensure that not only the President, but also Congress is persuaded that the evidence supports the conclusion North Korea is in full compliance with its non-proliferation obligations before it may receive certain key nuclear reactor components pursuant to the Agreed Framework. The Committee believes it appropriate for Congress to insist on the right to consider and pass judgment on such evidence, given North Korea's record of defying its obligations as a party to the Treaty on the Non-proliferation of Nuclear Weapons, and its history of tense relations with the IAEA.

Section 804. Procedures for Consideration of Joint Resolutions

Section 804 provides expedited procedures in both the House of Representatives and the Senate to govern consideration of a joint resolution concurring in a determination and report submitted by the President pursuant to the North Korea Threat Reduction Act. The purpose of these procedures is to ensure to the degree possible that procedural obstacles do not prevent Congress from considering and either approving or disapproving such a joint resolution in the event that the President submits a determination and report pursuant to the North Korea Threat Reduction Act.

The procedures provided in this section are identical to those developed by the Committee on Rules during its consideration during

the 106th Congress of H.R. 4251, the "Congressional Oversight of Nuclear Transfers to North Korea Act of 2000." As modified at the request of the Committee on Rules, that legislation was approved by the House of Representatives on May 15, 2000, by a vote of 374–6, but was not taken up by the Senate.

Section 805. Recommendations of the Judicial Review Commission on Foreign Asset Control

Section 805 directs the Office of Foreign Assets Control of the Department of Treasury to publish proposed regulation on sanctions, provide interpretations and guidelines to accompany the issuance of regulations, and take steps to expand and enhance the transparency of its operations and decision-making standards.

Section 806. Improvements to the Automated Export System

Section 806 requires the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of the Treasury, to publish Federal regulations in the Federal Register which requires mandatory filing through the Automated Export System (AES) the remainder of the exports that were not covered by regulations issued pursuant to section 1252(b) of the Security Assistance Act of 1999 (as enacted into law by section 1000(a)(7) of Public Law 106–113). Section 806 also requires the Secretary of State to conclude an information sharing arrangement with the United States Customs Service and the Census Bureau to adjust the AES to parallel information currently collected by the Department of State. Finally this section amends the appropriate sections of U.S. Code to provide for civil and criminal penalties for failure to file export information.

Section 807. Technical and conforming amendments

Section 807 contains technical and conforming amendments, including repeal of the provisions relating to performance levels of computers in the National Defense Authorization Act for fiscal year 1998.

Section 808. Savings provisions

Section 808(a) provides that all delegations, rules, regulations, or other forms of administrative action effective under certain previous or other statutes and in effect on the date of enactment of this Act shall continue in effect unless superseded. Section 808(b) provides that the Act does not affect administrative or judicial proceedings commenced under the Export Administration Act of 1979 or Executive Order 12924. Section 808(c) ensures that determinations regarding support of international terrorism made under the Export Administration Act of 1979 or Executive Order 12924 shall be deemed to be made under section 310 of this Act. Section 808(d) provides that the prohibitions of the Act do not apply to transactions subject to the requirements of the National Security Act of 1947, and that nothing shall affect the responsibilities and authorities of the Director of Central Intelligence under Section 103 of the National Security Act of 1947. Section 808(e) requires the Secretary of Commerce to make any revisions to current regulations required

under the Act no later than 180 days after the date of enactment of this Act.

NEW ADVISORY COMMITTEES

Under H.R. 2581, § 105, the Secretary may appoint export control advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2581 does not apply to the legislative branch.

FEDERAL MANDATES

H.R. 2581 provides no Federal mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 45—FOREIGN RELATIONS

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§ 951. Agents of foreign governments

(a) * * *

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(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

(1) * * *

(2) such person—

(A) * * *

(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title [or under section 11 of the Export Administration Act of 1979], *under section 11 of the Export Administration Act of 1979 (prior to its repeal by the Export Administration Act of 2001), or under section 503 of the Export Administration Act of 2001*, except that the provisions of this subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or

the date of entry of the plea of nolo contendere, as the case may be.

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CHAPTER 46—FORFEITURE

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§ 983. General rules for civil forfeiture proceedings

(a) * * *

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(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term "civil forfeiture statute"—

(1) * * *

(2) does not include—

(A) * * *

* * * * * * *

(D) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); **[**or**]**

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401)**[**.**]***; or*

(F) the Export Administration Act of 2001.

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CHAPTER 95—RACKETEERING

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§ 1956. Laundering of monetary instruments

(a) * * *

* * * * * * *

(c) As used in this section—

(1) * * *

* * * * * * *

(7) the term "specified unlawful activity" means—

(A) * * *

* * * * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods

from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), or section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services),, section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, [section 11 (relating to violations) of the Export Administration Act of 1979] *section 503 (relating to penalties) of the Export Administration Act of 2001*, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of

the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), or any felony violation of the Foreign Corrupt Practices Act; or

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CHAPTER 113B—TERRORISM

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§ 2332d. Financial transactions

(a) OFFENSE.—Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under [section 6(j) of the Export Administration Act (50 U.S.C. App. 2405)] *section 310 of the Export Administration Act of 2001* as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

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CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * * * *

(q) any violation of, or conspiracy to violate, the Export Administration Act of 2001 or the Export Administration Act of 1979.

* * * * * * *

SECTION 9703 OF TITLE 31, UNITED STATES CODE

§ 9703. Department of the Treasury Forfeiture Fund

(a) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the "Department of the Treasury Forfeiture Fund" (referred to in this section as the "Fund"). The Fund shall be available to the Secretary, without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury [or the United States Coast Guard], *the United States Coast Guard, or the Bureau of Export Administration of the Department of Commerce* for the following law enforcement purposes:

(1) * * *

(2) At the discretion of the Secretary—

(A) * * *

(B) purchases of evidence or information by—

(i) a Department of the Treasury law enforcement organization with respect to—

(I) a violation of section 1956 or 1957 of title 18 (relating to money laundering); [or]

(II) a law, the violation of which may subject property to forfeiture under section 981 or 982 of title 18; *or*

(III) a violation of the Export Administration Act of 1979, the Export Administration Act of 2001, or any regulation, license, or order issued under those Acts;

* * * * * * *

(p) DEFINITIONS.—For purposes of this section—

(1) DEPARTMENT OF THE TREASURY LAW ENFORCEMENT ORGANIZATION.—The term "Department of the Treasury law enforcement organization" means the United States Customs Service, the United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the Federal Law Enforcement Training Center, the Financial Crimes Enforcement Network, and any other law enforcement component of the Department of the Treasury so designated by the Secretary. *In addition, for purposes of this section, the Bureau of Export Administration of the Department of Commerce shall be considered to be a Department of the Treasury law enforcement organization.*

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STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

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TITLE XV—MATTERS RELATING TO ARMS CONTROL, EXPORT CONTROLS, AND COUNTER-PROLIFERATION

* * * * * * *

Subtitle B—Satellite Export Controls

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SEC. 1513. SATELLITE CONTROLS UNDER THE UNITED STATES MUNITIONS LIST.

[(a) CONTROL OF SATELLITES ON THE UNITED STATES MUNITIONS LIST.—Notwithstanding any other provision of law, all satellites and related items that are on the Commerce Control List of dual-use items in the Export Administration Regulations (15 CFR part 730 et seq.) on the date of the enactment of this Act shall be transferred to the United States Munitions List and controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).]

* * * * * * *

(c) EFFECTIVE DATE.—[(1) Subsection (a) shall take effect on March 15, 1999, and shall not apply to any export license issued before such effective date or to any export license application made under the Export Administration Regulations before such effective date.]

[(2)] The amendments made by subsection (b) shall be effective as of October 1, 1998.

* * * * * * *

SEC. 1514. NATIONAL SECURITY CONTROLS ON SATELLITE EXPORT LICENSING.

(a) ACTIONS BY THE PRESIDENT.—Notwithstanding any other provision of law, the President shall take such actions as are necessary to implement the following requirements for improving national security controls in the export licensing of satellites and related items:

(1) * * *

* * * * * * *

(6) MANDATORY SHARING OF APPROVED LICENSES AND AGREEMENTS.—The [Secretary of State] *Secretary of Commerce and the Secretary of State* shall provide copies of all approved export licenses and technical assistance agreements associated with launches in foreign countries of satellites to the Secretaries of Defense and Energy, the Director of Central Intelligence, and the Director of the Arms Control and Disarmament Agency.

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000

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TITLE XIV—PROLIFERATION AND EXPORT CONTROLS

Sec. 1401. Adherence of People's Republic of China to Missile Technology Control Regime.

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[Sec. 1410. Timely notification of licensing decisions by the Department of State.]

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SEC. 1404. SECURITY IN CONNECTION WITH SATELLITE EXPORT LICENSING.

As a condition of the export license for any satellite to be launched in a country subject to section 1514 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2778 note), the [Secretary of State] *Secretary of Commerce or the Secretary of State, as the case may be,* shall require the following:

(1) * * *

* * * * * * *

[SEC. 1410. TIMELY NOTIFICATION OF LICENSING DECISIONS BY THE DEPARTMENT OF STATE.

[Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall prescribe regulations to provide timely notice to the manufacturer of a commercial satellite of United States origin of the final determination of the decision on the application for a license involving the overseas launch of such satellite.]

SEC. 1411. ENHANCED INTELLIGENCE CONSULTATION ON SATELLITE LICENSE APPLICATIONS.

(a) CONSULTATION DURING REVIEW OF APPLICATIONS.—The Secretary of State and Secretary of Defense, as appropriate, shall consult with the Director of Central Intelligence during the review of any application for a license [involving the overseas launch of a commercial satellite of United States origin] *to provide defense services referred to in section 704 of the Export Administration Act of 2001, in connection with the launch of a satellite*. The purpose of the consultation is to assure that the launch of the satellite, if the license is approved, will meet the requirements necessary to protect the national security interests of the United States.

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SEC. 1412. INVESTIGATIONS OF VIOLATIONS OF EXPORT CONTROLS BY UNITED STATES SATELLITE MANUFACTURERS.

(a) * * *

* * * * * * *

(d) IDENTIFICATION OF PERSONS SUBJECT TO INVESTIGATION.—The [Secretary of State and] *Secretary of Commerce, the Secretary of State, and* the Attorney General shall develop appropriate mechanisms to identify, for the purposes of processing export licenses for

commercial satellites, persons who are the subject of an investigation described in subsection (a).

* * * * * * *

TITLE XIII OF THE ADMIRAL JAMES W. NANCE AND MEG DONOVAN FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 2000 AND 2001

DIVISION A—DEPARTMENT OF STATE PROVISIONS

* * * * * * *

TITLE XIII—MISCELLANEOUS PROVISIONS

Sec. 1301. Publication of arms sales certifications.

* * * * * * *

[Sec. 1309. Effective regulation of satellite export activities.]
Sec. 1309. Office of Defense Trade Controls.

* * * * * * *

TITLE XIII—MISCELLANEOUS PROVISIONS

* * * * * * *

[SEC. 1309. EFFECTIVE REGULATION OF SATELLITE EXPORT ACTIVITIES.

[(a) LICENSING REGIME.—

[(1) ESTABLISHMENT.—The Secretary of State shall establish a regulatory regime for the licensing for export of commercial satellites, satellite technologies, their components, and systems which shall include expedited approval, as appropriate, of the licensing for export by United States companies of commercial satellites, satellite technologies, their components, and systems, to NATO allies and major non-NATO allies (as used within the meaning of section 644(q) of the Foreign Assistance Act of 1961).

[(2) REQUIREMENTS.—For proposed exports to those nations which meet the requirements of paragraph (1), the regime should include expedited processing of requests for export authorizations that—

[(A) are time-critical, including a transfer or exchange of information relating to a satellite failure or anomaly in-flight or on-orbit;

[(B) are required to submit bids to procurements offered by foreign persons;

[(C) relate to the re-export of unimproved materials, products, or data; or

[(D) are required to obtain launch and on-orbit insurance.

[(3) ADDITIONAL REQUIREMENTS.—In establishing the regulatory regime under paragraph (1), the Secretary of State shall ensure that—

[(A) United States national security considerations and United States obligations under the Missile Technology Control Regime are given priority in the evaluation of any license; and

[(B) such time is afforded as is necessary for the Department of Defense, the Department of State, and the United States intelligence community to conduct a review of any license.]

SEC. 1309. OFFICE OF DEFENSE TRADE CONTROLS.

[(b) FINANCIAL AND PERSONNEL RESOURCES.—]Of the funds authorized to be appropriated in section 101(1)(A), $9,000,000 is authorized to be appropriated for the Office of Defense Trade Controls of the Department of State for each of the fiscal years 2000 and 2001, to enable that office to carry out its responsibilities.

[(c) IMPROVEMENT AND ASSESSMENT.—The Secretary of State should, not later than 6 months after the date of the enactment of this Act, submit to the Congress a plan for—

[(1) continuously gathering industry and public suggestions for potential improvements in the Department of State's export control regime for commercial satellites; and

[(2) arranging for the conduct and submission to Congress, not later than 15 months after the date of the enactment of this Act, of an independent review of the export control regime for commercial satellites as to its effectiveness at promoting national security and economic competitiveness.]

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NORTH KOREA THREAT REDUCTION ACT OF 1999

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TITLE VIII—MISCELLANEOUS PROVISIONS

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Subtitle B—North Korea Threat Reduction

Sec. 821. Short title.

* * * * * * *

Sec. 823. Procedures for consideration of joint resolution described in section 822(a)(2).

Sec. [823.] *824.* Definitions.

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TITLE VIII—MISCELLANEOUS PROVISIONS

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Subtitle B—North Korea Threat Reduction

SEC. 821. SHORT TITLE.

This subtitle may be cited as the "North Korea Threat Reduction Act of 1999".

SEC. 822. RESTRICTIONS ON NUCLEAR COOPERATION WITH NORTH KOREA.

(a) IN GENERAL.—Notwithstanding any other provision of law or any international agreement, no agreement for cooperation (as defined in sec. 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014 b.)) between the United States and North Korea may become effective, no license may be issued for export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to [such agreement,] *such agreement (or that are controlled under the Export Trigger List of the Nuclear Suppliers Group),* and no approval may be given for the transfer or retransfer directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to [such agreement, until the President] *such agreement (or that are controlled under the Export Trigger List of the Nuclear Suppliers Group), until—*

(1) the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that—

[(1)] *(A)* North Korea has come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), and has taken all steps that have been deemed necessary by the IAEA in this regard;

[(2)] *(B)* North Korea has permitted the IAEA full access to all additional sites and all information (including historical records) deemed necessary by the IAEA to verify the accuracy and completeness of North Korea's initial report of May 4, 1992, to the IAEA on all nuclear sites and material in North Korea;

[(3)] *(C)* North Korea is in full compliance with its obligations under the Agreed Framework;

[(4)] *(D)* North Korea has consistently taken steps to implement the Joint Declaration on Denuclearization, and is in full compliance with its obligations under numbered paragraphs 1, 2, and 3 of the Joint Declaration on Denuclearization (excluding in the case of numbered paragraph 3 facilities frozen pursuant to the Agreed Framework);

[(5)] *(E)* North Korea does not have uranium enrichment or nuclear reprocessing facilities (excluding facilities frozen pursuant to the Agreed Framework), and is making no significant progress toward acquiring or developing such facilities;

[(6)] *(F)* North Korea does not have nuclear weapons and is making no significant effort to acquire, develop, test, produce, or deploy such weapons; and

[(7)] *(G)* the transfer to North Korea of key nuclear components, under the proposed agreement for cooperation with North Korea and in accordance with the Agreed Framework, is in the national interest of the United States[.]*; and*

(2) a joint resolution of the two Houses of 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.".

* * * * * * *

SEC. 823. PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTION DESCRIBED IN SECTION 822(a)(2).

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

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and, as such, shall be considered as part of the rules of either House and shall supersede other rules only to the extent they are inconsistent therewith; and

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

(b) INTRODUCTION AND REFERRAL.—

(1) INTRODUCTION.—A joint resolution described in section 822(a)(2)—

(A) shall be introduced in the House of Representatives by the majority leader or minority leader or by a Member of the House of Representatives designated by the majority leader or minority leader; and

(B) shall be introduced in the Senate by the majority leader or minority leader or a Member of the Senate designated by the majority leader or minority leader.

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

(c) DISCHARGE OF COMMITTEES.—If a committee to which a joint resolution described in section 822(a)(2) is referred has not reported such joint resolution by the end of 30 days beginning on the date of its introduction, such committee shall be discharged from further consideration of such joint resolution, and such joint resolution shall be placed on the appropriate calendar of the House involved.

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

(1) IN GENERAL.—On or after the third calendar day (excluding Saturdays, Sundays, or legal holidays, except when the House of Representatives is in session on such a day) after the date on which the committee to which a joint resolution described in section 822(a)(2) is referred has reported, or has been

discharged from further consideration of, such a joint resolution, it shall be in order for any Member of the House to move to proceed to the consideration of the joint resolution. A Member of the House may make the motion only on the day after the calendar day on which the Member announces to the House the Member's intention to do so. Such motion is privileged and is not debatable. The motion is not subject to amendment or to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the House shall immediately proceed to consideration of the joint resolution which shall remain the unfinished business until disposed of.

(2) DEBATE.—Debate on a joint resolution described in section 822(a)(2), and on all debatable motions and appeals in connection therewith, shall be limited to not more than two hours, which shall be divided equally between those favoring and those opposing the joint resolution. An amendment to the joint resolution is not in order. A motion further to limit debate is in order and is not debatable. A motion to table, a motion to postpone, or a motion to recommit the joint resolution is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order.

(3) APPEALS.—Appeals from the decisions of the Chair to the procedure relating to a joint resolution described in section 822(a)(2) shall be decided without debate.

(e) FLOOR CONSIDERATION IN THE SENATE.—Any joint resolution described in section 822(a)(2) shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(f) CONSIDERATION BY THE OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House described in section 822(a)(2), that House receives from the other House a joint resolution described in section 822(a)(2), then the following procedures shall apply:

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

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

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

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

(3) Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution that originated in the receiving House.

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

SEC. [823.] *824.* DEFINITIONS.

In this subtitle:

(1) * * *

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TITLE 13, UNITED STATES CODE

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CHAPTER 9—COLLECTION AND PUBLICATION OF FOREIGN COMMERCE AND TRADE STATISTICS

Sec.
301. Collection and publication.

* * * * * * *

[305. Violations, penalties.]
305. Penalties for unlawful export information activities.

* * * * * * *

§ 303. Secretary of Treasury functions

To assist the Secretary to carry out the provisions of this chapter, the Secretary of the Treasury shall collect information in the form and manner prescribed by the regulations issued pursuant to this chapter from persons engaged in foreign commerce or trade[, other than by mail,] and from the owners or operators of carriers.

§ 304. Filing export information, delayed filings, penalties for failure to file

(a) The information or reports in connection with the exportation or transportation of cargo required to be filed by carriers with the Secretary of the Treasury under any rule, regulation, or order issued pursuant to this chapter may be filed after the departure of such carrier from the port or place of exportation or transportation, whether such departing carrier is destined directly to a foreign port or place or to a noncontiguous area, or proceeds by way of other ports or places of the United States, provided that a bond in an approved form in [the penal sum of $1,000] *a penal sum of $10,000* is filed with the Secretary of the Treasury. The Secretary of Commerce may, by a rule, regulation, or order issued in conformity herewith, prescribe a maximum period after such departure during which the required information or reports may be filed. In the event any such information or report is not filed within such prescribed period, [a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000, shall be exacted] *the Secretary of Commerce (and officers and employees of the Department of Commerce designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation*. Civil suit may be instituted in the name of the United States against the principal and surety for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.

(b) Any person, other than a person described in subsection (a), required to submit export information, shall file such information in

accordance with any rule, regulation, or order issued pursuant to this chapter. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers and employees of the Department of Commerce designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.

[(b)**]** *(c)* The Secretary may remit or mitigate any penalty incurred for violations of this section and regulations issued pursuant thereto if, in his opinion, they were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

[§ 305. Violations, penalties

[Any person, including the owners or operators of carriers, violating the provisions of this chapter, or any rule, regulation, or order issued thereunder, except as provided in section 304 above, shall be liable to a penalty not to exceed $1,000 in addition to any other penalty imposed by law. The amount of any such penalty shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.**]**

§ 305. Penalties for unlawful export information activities

(a) CRIMINAL PENALTIES.—(1) Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) (or any successor document) or the Automated Export System (AES) shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(2) Any person who knowingly reports any information on or uses the SED or the AES to further any illegal activity shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(3) Any person who is convicted under this subsection shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(b) CIVIL PENALTIES.—The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

(c) CIVIL PENALTY PROCEDURE.—(1) When a civil penalty is sought for a violation of this section or of section 304, the charged

party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5.

(2) If any person fails to pay a civil penalty imposed under this chapter, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(3) The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in his or her opinion—

(A) the penalties were incurred without willful negligence or fraud; or

(B) other circumstances exist that justify a remission or mitigation.

(4) If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

(5) Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

(d) ENFORCEMENT.—(1) The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

(e) REGULATIONS.—The Secretary of Commerce shall promulgate regulations for the implementation and enforcement of this section.

(f) EXEMPTION.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18.

* * * * * * *

EXPORT ADMINISTRATION ACT OF 1979

[AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SHORT TITLE

[SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

[FINDINGS

[SEC. 2. The Congress makes the following findings:

[(1) The ability of the United States citizens to engage in international commerce is a fundamental concern of United States policy.

[(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

[(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

[(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

[(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

[(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

[(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

[(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

[(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Fed-

eral expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

[(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

[(11) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

[(12) Excessive dependence of the United States, its allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

[DECLARATION OF POLICY

[SEC. 3. The Congress makes the following declarations:

[(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

[(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

[(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

[(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

[(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

[(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

[(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

[(5) It is the policy of the United States—

[(A) 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;

[(B) 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

[(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

[(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

[(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

[(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

[(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments, or common strategic objectives, and to encourage other friendly countries

to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

[(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

[(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

[(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

[(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

[(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critial resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

[GENERAL PROVISIONS

[SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

[(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

[(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

[(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall

have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

[(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

[(C) A project license, authorizing exports of goods or technology for a specified activity.

[(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

[(3) A general license, authorizing exports, without application by the exporter.

[(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

[(b) CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

[(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United Staes of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States, so as to render the controls ineffective in

achieving their purposes unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

[(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

[(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

[(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

[(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.

[NATIONAL SECURITY CONTROLS

[SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term "affiliates" includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

[(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

[(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take the effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

[(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

[(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

[(i) supercomputers;

[(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);

[(iii) devices for surreptitious interception of wire or oral communications; and

[(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

[(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

[(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or

[(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the "controlled United States content" of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

[(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

[(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term "supercomputer" for purposes of those paragraphs.

[(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

[(A) the extent to which the country's policies are adverse to the national security interests of the United States;

[(B) the country's Communist or non-Communist status;

[(C) the present and potential relationship of the country with the United States;

[(D) the present and potential relationship of the country with countries friendly or hostile to the United States;

[(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

[(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

[(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

[(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

[(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

[(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

[(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

[(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

[(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

[(iv) a system of export control documentation to verify the movement of goods and technology; and

[(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

[(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

[(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.

[(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

[(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Sec-

retary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

[(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

[(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

[(5)(A) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

[(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

[(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

[(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.".

[(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that—

[(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

[(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

[(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

[(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

[(A) shall determine the truth of the allegation;

[(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

[(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

[(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms

through which such goods and technologies may be effectively transferred.

[(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

[(A) arrays of design and manufacturing know-how,

[(B) keystone manufacturing, inspection, and test equipment,

[(C) goods accompanied by sophisticated operation, application, or maintenance know-how; and

[(D) keystone equipment with would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

[(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

[(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology, is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

[(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secrtary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection.

If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

[(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

[(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

[(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volumne of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses.

[(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

[(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

[(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

[(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

[(3) The Secretary, subject to the provisions of subsection (l) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

[(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

[(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

[(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

[(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

[(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

[(f) FOREIGN AVAILABILITY.—

[(1) FOREIGN AVAILABILITY TO CONTROLLED COUNTRIES.—(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

[(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which

participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

[(2) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

[(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under

subparagraph (A) with respect to such goods or technology is warranted.

[(3) PROCEDURES FOR MAKING DETERMINATIONS.—(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

[(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

[(i) the foreign availability does exist and—

[(I) the requirement of a validated license has been removed,

[(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

[(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

[(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sen-

tence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

[(4) NEGOTIATIONS TO ELIMINATE FOREIGN AVAILABILITY.—(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

[(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

[(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

[(5) EXPEDITED LICENSES FOR ITEMS AVAILABLE TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

[(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

[(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

[(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

[(6) OFFICE OF FOREIGN AVAILABILITY.—The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

[(7) SHARING OF INFORMATION.—Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the pro-

tection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

[(8) REMOVAL OF CONTROLS ON LESS SOPHISTICATED GOODS OR TECHNOLOGY.—In any case in which Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

[(9) NOTICE OF ALL FOREIGN AVAILABILITY ASSESSMENTS.—Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the Federal Register.

[(10) AVAILABILITY DEFINED.—For purposes of this subsection and subsections (f) and (h), the term "available in fact to controlled countries" includes production or availability of any goods or technology in any country—

[(A) from which the goods or technology is not restricted for export to any controlled country; or

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

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

[(g) INDEXING.—(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Sec-

retary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

[(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

[(i) which are eligible for export under a distribution license,

[(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

[(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

[(B) In any case in which the Secretary receives a request which—

[(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

[(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

[(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any

such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

[(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

[(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

[(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

[(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

[(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee

shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

[(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

[(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

[(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

[(i) MULTILATERAL EXPORT CONTROLS.—Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

[(1) Enhanced public understanding of the Committee's purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

[(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

[(3) Strengthened legal basis for each government's export control system, including, as appropriate, increased penalties and statutes of limitations.

[(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

[(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

[(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

[(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

[(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

[(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

[(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

[(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.

For purposes of reviews of the International Control List, the President may include as advisors of the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

[(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

[(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

[(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to

multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act.

[(l) DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

[(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

[(B) may take such additional actions under this Act with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

[(2) As used in this subsection, the term "unauthorized use" means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

[(m) GOODS CONTAINING CONTROLLED PARTS AND COMPONENTS.—Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

[(1) are essential to the functioning of the good,

[(2) are customarily included in sales of the good in countries other than controlled countries, and

[(3) comprise 25 percent or less of the total value of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

[(n) SECURITY MEASURES.—The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to

develop security systems to prevent violations or evasions of those export controls.

[(o) RECORDKEEPING.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

[(p) NATIONAL SECURITY CONTROL OFFICE.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

[(q) EXCLUSION FOR AGRICULTURAL COMMODITIES.—This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

[FOREIGN POLICY CONTROLS

[SEC. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

[(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

[(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than a year.

[(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export

to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

[(5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

[(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

[(b) CRITERIA.—(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

[(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

[(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

[(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

[(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

[(E) the United States has the ability to enforce the proposed controls effectively.

[(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this sec-

tion, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

[(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

[(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

[(e) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

[(f) CONSULTATION WITH THE CONGRESS.—(1) The president may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

[(A) specifying the purpose of the controls;

[(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

[(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

[(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

[(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

[(3) To the extent necessary to further the effectiveness of the export controls portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.

[(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

[(5) In addition to any written report required, under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committe on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

[(g) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Administrator of the Agency for International Development in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Administrator with respect to developing countries, shall determine whether the proposed export control on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interest of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Administrator of the Agency for International Development, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. The subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations,

which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the proceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.

[(h) FOREIGN AVAILABILITY.—(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consigness to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

[(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

[(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

[(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.

[(i) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

[(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

[(A) The government of such country has repeatedly provided support for acts of international terrorism.

[(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

[(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

[(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

[(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

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

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

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

[(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

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

[(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

[(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

[(5) The Secretary and the Secretary of State shall include in the notification required by paragraph (2)—

[(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

[(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

[(C) the reasons why the proposed export or transfer is in the national interest of the United States;

[(D) an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

[(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

[(F) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.

[(k) NEGOTIATIONS WITH OTHER COUNTRIES.—

[(1) COUNTRIES PARTICIPATING IN CERTAIN AGREEMENTS.—The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out—

[(A) the policy set forth in section 3(2)(B) of this Act, and

[(B) United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (l).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreed export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act.

[(2) OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreements on export restrictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act, the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agree-

ments in the same manner as exports are treated to countries that are MTCR adherents.

[(3) REVIEW OF DETERMINATIONS.—The Secretary shall annually review any determination under paragraph (2) with respect to a country. For each such country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5(a)(4)(D), the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

[(l) MISSILE TECHNOLOGY.—

[(1) DETERMINATION OF CONTROLLED ITEMS.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies—

[(A) shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

[(B) may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

[(2) REQUIREMENT OF INDIVIDUAL VALIDATED LICENSES.—The Secretary shall require an individual validated license for—

[(A) any export of goods or technology on the list established under paragraph (1) to any country; and

[(B) any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

[(3) POLICY OF DENIAL OF LICENSES.—(A) Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

[(B) Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) to have repeatedly provided support for acts of international terrorism.

[(4) CONSULTATION WITH OTHER DEPARTMENTS.—(A) A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

[(B) Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

[(C) The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

[(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

[(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

[(5) INFORMATION SHARING.—The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

[(m) CHEMICAL AND BIOLOGICAL WEAPONS.—

[(1) ESTABLISHMENT OF LIST.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

[(2) REQUIREMENT FOR VALIDATED LICENSES.—The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

[(3) COUNTRIES OF CONCERN.—For purposes of paragraph (2), the term "country of concern" means any country other than—

[(A) a country with whose government the United States has entered into a bilateral or multilateral arrange-

ment for the control of goods or technology on the list established under paragraph (1); and

[(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

[(n) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

[(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

[(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

[(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

[(o) CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

[(p) EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

[(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

[(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

[(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

[(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

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

[(q) EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

[(r) EXPANDED AUTHORITY TO IMPOSE CONTROLS.—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

[(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination and report inserted in the blank.

[(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of

more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(s) SPARE PARTS.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

[(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

[SHORT SUPPLY CONTROLS

[SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

[(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

[(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

[(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

[(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

[(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

[(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

[(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

[(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

[(A) include the name of the material that is the subject of the petition,

[(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

[(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

[(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

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

[(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

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

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

[(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

[(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

[(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

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

[(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

[(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions which involve the same or related materials.

[(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

[(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

[(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material

but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

[(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

[(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

[(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3) (A) and (B) of this subsection.

[(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

[(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

[(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

[(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

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

[(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

[(iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;

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

[(v) are in accordance with the provisions of this Act; and

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

[(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

[(e) REFINED PETROLEUM PRODUCTS.—(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

[(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

[(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

[(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

[(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

[(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

[(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Sec-

retary may issue such regulations as may be necessary to implement this paragraph.

[(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

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

[(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

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

[(4)(A) For purposes of this paragraph, the term joint resolution means only a joint resolution the matter after the resolving clause of which is as follows: "That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on .", with the blank space being filled with the appropriate date.

[(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

[(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

[(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged

from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

[(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

[(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

[(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

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

[(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

[(2) the Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consulation with the appropriate department or agency of the United States, that—

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

[(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

[(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

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

[(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, with-

out monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

[(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

[(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quanitiative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

[(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

[(B) Not more than fifteen million board feet scribner of such logsmay be exported during the second year of such period.

[(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harvested from State or Federal lands may be exported from the United States.

[(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of ths Act in lieu of validated licenses for exports under this subsection.

[(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

[(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

[(5) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

[(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

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

[(C) veneer and plywood;

[(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

[(E) shakes and shingles.

[(j) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural com-

modity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

[(k) OIL EXPORTS FOR USE BY UNITED STATES MILITARY FACILITIES.—For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

[FOREIGN BOYCOTTS

[SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

[(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

[(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

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

[(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country,

or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

[(E) Furnishing information about whether any person is a member of, has made contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

[(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

[(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

[(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

[(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

[(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

[(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

[(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for infor-

mation regarding requirements of employment of such individual within the boycotting country; and

[(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

[(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

[(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust, or civil rights laws of the United States.

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

[(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

[(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

[(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or

any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

[PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

[SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

[(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

[(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

[(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

[(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

[(B) potential serious financial loss to the applicant if not granted an exception;

[(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

[(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

[(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

[(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

[(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

[PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

[SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

[(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

[(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign polices and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

[(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

[(1) sent the applicant an acknowledgment of the receipt of the application and the date of the receipt;

[(2) submit to this applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agenices with respect to the application and the rights of the applicant;

[(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case of such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

[(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

[(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a part and, if so inform the applicant of this requirement.

[(c) ACTION ON CERTAIN APPLICATIONS.—Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall

be formally issued or denied within 60 days after a properly completed application has been submited pursuant to this section.

[(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

[(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

[(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

[(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

[(2)(A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

[(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional

time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

[(f) ACTION BY THE SECRETARY.—(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application in made, the applicant shall be entitled—

[(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

[(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

[(A) the determination,

[(B) the statutory basis for the proposed denial,

[(C) the policies set forth in section 3 of this Act which would be furthered by the proposed denial,

[(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

[(E) which officers and employees of the Department of Commerce who are familar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

[(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

[(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

[(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

[(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

[(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

[(A) recommend to the President and the Secretary that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

[(B) notify the Secretary that he would recommend approval subject to specified conditions; or

[(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, with 20 days after receiving a rec-

ommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

[(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

[(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

[(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

[(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

[(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

[(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

[(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

[(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

[(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

[(m) SMALL BUSINESS ASSISTANCE.—Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988, report to the Congress on steps taken to implement the plan developed

under this subsection to assist small businesses in the export licensing application process.

[(n) REPORTS ON LICENSE APPLICATIONS.—(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

[(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

[(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

[(2) With regard to each application, each listing shall identify—

[(A) the application case number;

[(B) the value of the goods or technology to which the application relates;

[(C) the country of destination of the goods or technology;

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

[(E) the date on which the Secretary approved or denied the application;

[(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

[(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

[(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

[(A) the departments or agencies to which the application was referred;

[(B) the date or dates of such referral; and

[(C) the date or dates on which recommendations were received from those departments or agencies.

[(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

[(A) the office responsible for processing the application and the position of the officer responsible for the office; and

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

[(5) Each report shall also provide an introduction which contains—

[(A) summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

[(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

[(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

[(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in applications, on which action was not completed within 60 days.

[(o) EXPORTS TO MEMBERS OF COORDINATING COMMITTEE.—(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

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

[(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

[(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

[(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

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

[(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

[(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

[(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

[(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

[VIOLATIONS

[SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

[(b) WILLFUL VIOLATIONS.—(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

[(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

[(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

[(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use of the Secretary of Defense—

[(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

[(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

[(3) Any person who possesses any goods or technology—

[(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control, or

[(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 (or any regulation, order, or

license issued with respect to such control), be subject to the penalties set forth in subsection (a).

[(4) Any person who takes any action with the intent to evade the provisions of this act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

[(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

[(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

[(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

[(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

[(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

[(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

[(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

[(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the per-

son upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

[(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forefeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

[(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c) a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liabilty shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

[(g) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

[(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

[(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

[(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

[(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

[(h) PRIOR CONVICTIONS.—(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act, section 793, 794, or 798

of title 18, United States Code, section 4(b) on the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

[(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

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

[(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

[(2) the authority to compromise and settle, administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

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

[MULTILATERAL EXPORT CONTROL VIOLATIONS

[SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

[(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

[(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

[(b) SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

[(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any de-

partment, agency, or instrumentality of the United States Government, and

[(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

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

[(1) in the case of procurement of defense articles or defense services—

[(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

[(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

[(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

[(2) to—

[(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

[(B) spare parts;

[(C) component parts, but not finished products, essential to United States products or production;

[(D) routine servicing and maintenance of products; or

[(E) information and technology.

[(d) EXCLUSION.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

[(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

[(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

[(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

[(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

[(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

[(D) a system of export control documentation to verify the movement of goods and technology; and

[(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

[(e) DEFINITIONS.—For purposes of this section—

[(1) the term "component part" means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

[(2) the term "finished product" means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

[(3) the term "sanctioned person" means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

[(f) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

[(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

[(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

[(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

[(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

[(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

[(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation

issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

[(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

[(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

[(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) or (h), the President shall—

[(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

[(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

[(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

[(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

[(3) The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

[(l) DEFINITION.—For purposes of this section, the term "foreign person" means any person other than a United States person.

[MISSILE PROLIFERATION CONTROL VIOLATIONS

[SEC. 11B. (a) VIOLATIONS BY UNITED STATES PERSONS.—

[(1) SANCTIONS.—(A) If the President determines that a United States person knowingly—

[(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, section 5 or 6 of this Act, or any regulations or orders issued under any such provisions,

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

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

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

[(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

[(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

[(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

[(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 11 of this Act.

[(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

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

[(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service 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) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of the enactment of this section, knowingly—

[(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contrib-

utes 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, subject to the jurisdiction of the United States under this Act,

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

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

or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

[(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

[(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

[(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.

[(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

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

[(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

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

[(3) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

[(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person

would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

[(5) WAIVER AND REPORT TO CONGRESS.—(A) In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

[(B) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

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

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

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

[(7) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

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

[(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

[(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

[(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or 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.—For purposes of this section and subsection (k) and (l) of section 6—

[(1) the term "missile" means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

[(2) the term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

[(3) the term "MTCR adherent" means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

[(4) the term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

[(5) the terms "missile equipment or technology" and "MTCR equipment or technology" mean those items listed in category I or category II of the MTCR Annex;

[(6) the term "foreign person" means any person other than a United States person;

[(7)(A) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

[(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term "person" means—

[(i) all activities of that government relating to the development or production of any missile equipment or technology; and

[(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

[(8) the term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

[CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

[SEC. 11C. (a) IMPOSITION OF SANCTIONS.—

[(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

[(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

[(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

[(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

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

[(i) used chemical or biological weapons in violation of international law;

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

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

[(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

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

[(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

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

[(B) any successor entity to that foreign person;

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

[(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

[(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

[(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a for-

eign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

[(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

[(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

[(c) SANCTIONS.—

[(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

[(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

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

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

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

[(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

[(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

[(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

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

[(C) to—

[(i) spare parts,

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

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

[(D) to information and technology essential to United States products or production; or

[(E) to medical or other humanitarian items.

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

[(e) WAIVER.—

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

[(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

[(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

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

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

[ENFORCEMENT

[SEC. 12. (a) GENERAL AUTHORITY.—(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency

specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department of agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may be subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

[(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

[(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

[(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

[(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

[(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

[(iv) Make arrests without warrant for any violation of this Act committed in his or her presence or view or if the offi-

cer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

[(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

[(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

[(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

[(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

[(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

[(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

[(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

[(6) Nothwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than $12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986.

[(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

[(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.

[(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

[(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

[(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of

this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

[(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

[(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

[(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

[ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

[SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2) and subsection (c) of this section, the functions exercised

under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

[(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

[(c) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8) is sought under section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decison. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

[(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

[(3) The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

[(4) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a hearing commissioner of the Department of Commerce shall be in-

cluded among these considered as qualified for selection and appointment to such position.

[(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") to a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

[(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act. All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.

[(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

[(e) APPEALS FROM LICENSE DENIALS.—A determination of the Secretary, under section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision

shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

[ANNUAL REPORT

[SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

[(1) the implementation of the policies set forth in section 3;

[(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

[(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

[(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

[(5) actions taken to carry our section 5(d);

[(6) changes in categories of items under export control referred to in section 5(e);

[(7) determinations of foreign availability made under section 5(f), the citeria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

[(8) actions taken in compliance with section 5(f)(6);

[(9) the operation of the indexing system under section 5(g);

[(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

[(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

[(12) export controls and monitoring under section 7;

[(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

[(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

[(B) the worldwide supply of such commodities; and

[(C) actions being taken by other countries in response to such shortages or increased prices;

[(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

[(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

[(16) delegations of authority by the President as provided in section 4(e) of this Act;

[(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

[(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

[(19) violations under section 11 and enforcement activities under section 12; and

[(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

[(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

[(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

[(d) REPORT ON EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act.

[(e) REPORT ON DOMESTIC ECONOMIC IMPACT OF EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

[(f) ANNUAL REPORT OF THE PRESIDENT.—The President shall submit an annual report to the Congress estimating the additional

defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

[ADMINISTRATIVE AND REGULATORY AUTHORITY

[SEC. 15. (a) UNDER SECRETARY OF COMMERCE.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985, and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

[(b) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or (8)(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section 4(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

[(c) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

[DEFINITIONS

[SEC. 16. As used in this Act—

[(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

[(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

[(3) the term "good" means any article, natural or man-made substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

[(4) the term "technology" means the information and knowhow (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

[(5) the term "export" means—

[(A) an actual shipment, transfer, or tramsmission of goods or technology out of the United States;

[(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

[(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

[(6) the term "controlled country" means a controlled country under section 5(b)(1) of this Act;

[(7) the term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

[(8) the term "Secretary" means the Secretary of Commerce.

[EFFECT ON OTHER ACTS

[SEC. 17. (a) IN GENERAL.—Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

[(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as

to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

[(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.

[(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

[(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

[(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

[(f) AGRICULTURAL ACT OF 1970.—Nothing in this Act shall affect the provisions of the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c–3).

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provisions of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

[(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

[(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

[(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

[(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

[(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

[(1) $42,813,000 for the fiscal year 1993;

[(2) such sums as may be necessary for the fiscal year 1994; and

[(3) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

[EFFECTIVE DATE

[SEC. 19. (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.

[(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

[(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

[TERMINATION DATE

[SEC. 20. The authority granted by this Act terminates on August 20, 2001.

[SAVINGS PROVISIONS

[SEC. 21. (a) IN GENERAL.—All, delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

[(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

[TECHNICAL AMENDMENTS

[SEC. 22. (a) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969" and inserting in lieu thereof "subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act".

[(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended—

[(A) by striking out "1969" and inserting in lieu thereof "1979"; and

[(B) by striking out "(A)" and inserting in lieu thereof "(C)".

[(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out "section 7 of the Export Administration

Act of 1969" and inserting in lieu thereof "section 12 of the Export Administration Act of 1979".

[(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 993(c)(2)(D)) is amended—

[(1) by striking out "4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))" and inserting in lieu thereof "7(a) of the Export Administration Act of 1979"; and

[(2) by striking out "(A)" and inserting in lieu thereof "(C)".

[INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

[SEC. 23. (a) Section 9 of the International Investment Survey Act of 1976 (22 U.S.C. 3108) is amended to read as follows:

["AUTHORIZATIONS

["SEC. 9. To carry out this Act, there are authorized to be appropriated $4,400,000 for the fiscal year ending September 30, 1980, and $4,500,000 for the fiscal year ending September 30, 1981.".

[(b) The amendment made by subsection (a) shall take effect on October 1, 1979.

[MISCELLANEOUS

[SEC. 24. Section 402 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting "or beer" in the second sentence immediately after "wine".]

ENERGY POLICY AND CONSERVATION ACT

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* * * * * * *

TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

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* * * * * * *

[Sec. 103. Domestic use of energy supplies and related materials and equipment.]

* * * * * * *

TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

* * * * * * *

[DOMESTIC USE OF ENERGY SUPPLIES AND RELATED MATERIALS AND EQUIPMENT

[SEC. 103. (a) The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this Act, restrict exports of—

[(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

[(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

[(b)(1) The President shall exercise the authority provided for in subsection (a) to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of this Act.

[(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this Act.

[(c) In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2)(C) of such Act), impose such restrictions as specified in any rule under subsection (a) on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

[(d) Any finding by the President pursuant to subsection (a) or (b) and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

[(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,

[(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

[(3) the historical trading relations of the United States with Canada and Mexico.

[(e)(1) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

[(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

[(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c), the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this Act, to any violation of such restrictions.

[(f) The President shall submit quarterly reports to the Congress concerning the administration of this section and any findings made pursuant to subsection (a) or (b).]

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TITLE II—STANDBY ENERGY AUTHORITIES

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

INTERNATIONAL OIL ALLOCATION

SEC. 251. (a) * * *

* * * * * * *

[(d) Neither section 103 of this Act nor section 28(u) of the Mineral Leasing Act of 1920 shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.]

* * * * * * *

EXCHANGE OF INFORMATION

SEC. 254. (a) * * *

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(e) The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) * * *

* * * * * * *

(3) section [12 of the Export Administration Act of 1979] *602 of the Export Administration Act of 2001*;

* * * * * * *

SECTION 12 OF THE ALASKA NATURAL GAS TRANPORTATION ACT OF 1976

[EXPORT LIMITATIONS

[SEC. 12. Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act, except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity

or quality nor increase the total price of energy available to the United States.]

SECTION 28 OF THE MINERAL LEASING ACT

GRANT OF AUTHORITY

SEC. 28. (a) * * *

* * * * * * *

[EXPORTS OF ALASKAN NORTH SLOPE OIL

[(s)(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

[(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

[(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

[(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

[(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

[(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency

Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76) to prohibit exports.

[(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

[(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

[(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.]

* * * * * * *

[LIMITATIONS ON EXPORT

[(u) Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided,* That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the na-

tional interest, further exports made pursuant to the aforementioned Presidential findings shall cease.]

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TITLE 10, UNITED STATES CODE

* * * * * * *

Subtitle A—General Military Law

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

* * * * * * *

CHAPTER 3—GENERAL POWERS AND FUNCTIONS

* * * * * * *

§ 130. Authority to withhold from public disclosure certain technical data

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of [1979 (50 U.S.C. App. 2401–2420)] *2001* or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

§ 2249a. Prohibition on providing financial assistance to terrorist countries

(a) PROHIBITION.—Funds available to the Department of Defense may not be obligated or expended to provide financial assistance to—

(1) any country with respect to which the Secretary of State has made a determination under section [6(j)(1)(A) of the

Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))] *310(a)(1)(A) of the Export Administration Act of 2001*;

* * * * * * *

CHAPTER 137—PROCUREMENT GENERALLY

* * * * * * *

§ 2327. Contracts: consideration of national security objectives

(a) * * *

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section [6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))] *310(a)(1)(A) of the Export Administration Act of 2001* has repeatedly provided support for acts of international terrorism.

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CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

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§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section [3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A))] *502(a) of the Export Administration Act of 2001*, it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

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Subtitle C—Navy and Marine Corps

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PART IV—GENERAL ADMINISTRATION

* * * * * * *

§ 7430. Disposition of products

(a) * * *

* * * * * * *

[(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency or transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.]

* * * * * * *

SECTION 28 OF THE OUTER CONTINENTAL SHELF LANDS ACT

[SEC. 28. LIMITATION ON EXPORT.—(a) Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

[(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

[(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

[(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is

exchanged or exported pursuant to an existing international agreement.]

ARMS EXPORT CONTROL ACT

* * * * * * *

Chapter 3.—MILITARY EXPORT CONTROLS

* * * * * * *

SEC. 36. REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) * * *

* * * * * * *

(g) Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with section [12(c) of the Export Administration Act of 1979] *602(c) of the Export Administration Act of 2001* (50 U.S.C. App. 2411(c)).

* * * * * * *

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) * * *

* * * * * * *

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by [subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act,] *subsections (b), (c), (d), and (e) of section 503 of the Export Administration Act of 2001, by subsections (a) and (b) of section 506 of that Act, and by section 602 of that Act,* subject to the same terms and conditions as are applicable to such powers under such Act, except that section [11(c)(2)(B)] *507(b)(1)* of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section [11(c) of the Export Administration Act of 1979] *503(c) of the Export Administration Act of 2001*, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.

(f)(1) The President shall periodically review the items on the United States Munitions List to determine what items, if any, no longer warrant export controls under this section. The results of such reviews shall be reported to the Speaker of the House of Rep-

resentatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such a report shall be submitted at least 30 days before any item is removed from the Munitions List and shall describe the nature of any controls to be imposed on that item under the Export Administration Act of [1979] *2001*.

* * * * * * *

(g)(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

(ii) section 11 of the Export Administration Act of 1979 *or section 503 of the Export Administration Act of 2001* (50 U.S.C. App. 2410),

* * * * * * *

SEC. 39A. PROHIBITION ON INCENTIVE PAYMENTS.

(a) * * *

* * * * * * *

(c) In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by [subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 and section 12(a) of such Act] *subsections (c), (d), and (e) of section 503, section 507(c), and subsections (a) and (b) of section 506, of the Export Administration Act of 2001*, subject to the same terms and conditions as are applicable to such powers under that Act, except that section [11(c)(2)(B) of such Act] *507(b)(1) of that Act* shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that notwithstanding section [11(c)] *503(c)* of that Act, the civil penalty for each violation of this section may not exceed $500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

* * * * * * *

SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) * * *

* * * * * * *

(k) CIVIL PENALTIES; ENFORCEMENT.—In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections [11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979] *503(b), 503(c), 503(e), 506(a), and 506(b) of the Export Administration Act of 2001* (subject to the same terms and conditions as are applicable to such powers under that Act), except that section [11(c)(2)(B)]

507(b)(1) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section [11(c)] *503(c)* of that Act, the civil penalty for each violation of this section may not exceed $500,000.

* * * * * * *

CHAPTER 7—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY

SEC. 71. LICENSING

(a) ESTABLISHMENT OF LIST OF CONTROLLED ITEMS.—The Secretary of State, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under [section 6(l) of the Export Administration Act of 1979] *title II or III of the Export Administration Act of 2001*.

* * * * * * *

SEC. 72. DENIAL OF THE TRANSFER OF MISSILE EQUIPMENT OR TECHNOLOGY BY UNITED STATES PERSONS

(a) SANCTIONS.—(1) If the President determines that a United States person knowingly—

(A) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 of this Act, [section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405)] *title II or III of the Export Administration Act of 2001*, or any regulations or orders issued under any such provisions,

* * * * * * *

(c) PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a United States person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of [6(j)(1)(A) of the Export Administration Act of 1979] *310(a)(1) of the Export Administration Act of 2001*, has repeatedly provided support for acts of international terrorism.

SEC. 73. TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS

(a) SANCTIONS.—(1) Subject to subsections (c) through (g), if the President determines that a foreign person, after the date of the enactment of this chapter, knowingly—

(A) * * *

* * * * * * *

or if the President has made a determination with respect to a foreign person under section [11B(b)(1) of the Export Administration Act of 1979] *504(b)(1) of the Export Administration Act of 2001*,

then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(f) PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a foreign person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of [6(j)(1)(A) of the Export Administration Act of 1979] *section 310(a)(1) of the Export Administration Act of 2001*, has repeatedly provided support for acts of international terrorism.

* * * * * * *

SEC. 74. DEFINITIONS

(a) IN GENERAL.—For purposes of this chapter—

(1) * * *

* * * * * * *

(6) the term "United States person" has the meaning given that term in section [16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2))] *2(20) of the Export Administration Act of 2001*;

CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

SEC. 81. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

(A) * * *

* * * * * * *

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of [1979] *2001*,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) * * *

(B) any foreign country whose government is determined for purposes of [section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j))] *section 310 of the Export Administration Act of 2001* to be a government that has repeatedly provided support for acts of international terrorism; or

CHAPTER 10—NUCLEAR NONPROLIFERATION CONTROLS

* * * * * * *

SEC. 102. NUCLEAR REPROCESSING TRANSFERS, ILLEGAL EXPORTS FOR NUCLEAR EXPLOSIVE DEVICES, TRANSFERS OF NUCLEAR EXPLOSIVE DEVICES, AND NUCLEAR DETONATIONS.

(a) * * *

(b) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OR USE OF NUCLEAR EXPLOSIVE DEVICES; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) * * *

(2) The sanctions referred to in paragraph (1) are as follows:

(A) * * *

* * * * * * *

(G) The authorities of [section 6 of the Export Administration Act of 1979] *title III of the Export Administration Act of 2001* shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agricultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities).

* * * * * * *

SECTION 5 OF THE TRADING WITH THE ENEMY ACT

SEC. 5. (a) * * *

(b) The Attorney General shall cover into the Treasury, to the credit of miscellaneous receipts, all sums from property vested in or transferred to the Attorney General under this Act—

(1) * * *

* * * * * * *

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under [section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States] *titles II and III of the Export Administration Act of 2001*, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code.

* * * * * * *

FOREIGN ASSISTANCE ACT OF 1961

* * * * * * *

PART II

CHAPTER 1—POLICY

* * * * * * *

SEC. 502B. HUMAN RIGHTS.—(a)(1) * * *

(2) Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the [Export Administration Act of 1979] *Export Administration Act of 2001* for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration [Act of 1979)] *Act of 2001)*, that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses. Assistance may not be provided under chapter 5 of this part to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.

* * * * * * *

PART III

CHAPTER 1—GENERAL PROVISIONS

SEC. 620E. ASSISTANCE TO PAKISTAN.—(a) * * *

* * * * * * *

(h) BALLISTIC MISSILE SANCTIONS NOT AFFECTED.—Nothing contained herein shall affect sanctions for transfers of missile equipment or technology required under section [11B of the Export Administration Act of 1979] *504 of the Export Administration Act of 2001* or section 73 of the Arms Export Control Act.

* * * * * * *

SEC. 620H. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

(a) PROHIBITION.—

(1) IN GENERAL.—The President shall withhold assistance under this Act to the government of any country that provides lethal military equipment to a country the government of

which the Secretary of State has determined is a terrorist government for the purposes of [section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))] *section 310 of the Export Administration Act of 2001*, or 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

* * * * * * *

SECTION 565 OF THE FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1994 AND 1995

SEC. 565. PROHIBITION ON DISCRIMINATORY CONTRACTS.

(a) PROHIBITION.—

(1) * * *

(2) For purposes of this section—

(A) a foreign person complies with the boycott of Israel by Arab League countries when that foreign person takes or knowingly agrees to take any action, with respect to the boycott of Israel by Arab League countries, which section [8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))] *502(b) of the Export Administration Act of 2001* prohibits a United States person from taking, except that for purposes of this paragraph, the term "United States person" as used in subparagraphs (B) and (C) of section [8(a)(1) of such Act] *502(b)(1) of that Act* shall be deemed to mean "person"; and

(B) the term "foreign person" means any person other than a United States person as defined in section [16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415)] *2(20) of the Export Administration Act of 2001*.

(3) For purposes of paragraph (1), a foreign person shall be deemed not to comply with the boycott of Israel by Arab League countries if that person, or the Secretary of State or his designee on the basis of available information, certifies that the person violates or otherwise does not comply with the boycott of Israel by Arab League countries by taking any actions prohibited by section [8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))] *502(b) of the Export Administration Act of 2001*. Certification by the Secretary of State or his designee may occur only 30 days after notice has been given to the Congress that this certification procedure will be utilized at a specific overseas mission.

* * * * * * *

(c) RESPONSES TO CONTRACT SOLICITATIONS.—(1) Except as provided in paragraph (2) of this subsection, the Secretary of State shall ensure that any response to a solicitation for a bid or a request for a proposal, with respect to a contract covered by subsection (a), includes the following clause, in substantially the following form:

"ARAB LEAGUE BOYCOTT OF ISRAEL

"(a) * * *

"(b) CERTIFICATION.—By submitting this offer, the Offeror certifies that it is not—

"(1) taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which section [8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))] *502(b) of the Export Administration Act of 2001* prohibits a United States person from taking; or

* * * * * * *

(3) The Secretary of State shall ensure that all State Department contract solicitations include a detailed explanation of the requirements of section [8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a))] *502(b) of the Export Administration Act of 2001*.

* * * * * * *

SECTION 140 OF FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989

SEC. 140. ANNUAL COUNTRY REPORTS ON TERRORISM.

(a) REQUIREMENT OF ANNUAL COUNTRY REPORTS ON TERRORISM.—The Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by April 30 of each year, a full and complete report providing—

(1) detailed assessments with respect to each foreign country—

(A) * * *

(B) about which the Congress was notified during the preceding five years pursuant to section 6(j) of the Export Administration Act of 1979 *or section 310 of the Export Administration Act of 2001*;

* * * * * * *

(2) all relevant information about the activities during the preceding year of any terrorist group, and any umbrella group under which such terrorist group falls, known to be responsible for the kidnapping or death of an American citizen during the preceding five years, any terrorist group known to be financed by countries about which Congress was notified during the preceding year pursuant to section 6(j) of the Export Administration Act of 1979 *or section 310 of the Export Administration Act of 2001*, and any other known international terrorist group which the Secretary determines should be the subject of such report;

* * * * * * *

STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

TITLE I—BASIC AUTHORITIES GENERALLY

* * * * * * *

SEC. 36. DEPARTMENT OF STATE REWARDS PROGRAM.

(a) * * *

* * * * * * *

(j) DEFINITIONS.—As used in this section:

(1) ACT OF INTERNATIONAL TERRORISM.—The term "act of international terrorism" includes—

(A) * * *

(B) any act, as determined by the Secretary, which materially supports the conduct of international terrorism, including the counterfeiting of United States currency or the illegal use of other monetary instruments by an individual, group, or country supporting international terrorism as determined for purposes of [section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A))] *section 310(a)(1) of the Export Administration Act of 2001*.

* * * * * * *

AUTHORITY TO CONTROL CERTAIN TERRORISM-RELATED SERVICES

SEC. 40. (a) * * *

* * * * * * *

(e) DEFINITIONS.—

(1) DESIGNATED FOREIGN GOVERNMENT.—As used in this section, the term "designated foreign government" means a foreign government that the Secretary of State has determined, for purposes of [section 6(j)(1) of the Export Administration Act of 1979] *section 310 of the Export Administration Act of 2001*, has repeatedly provided support for acts of international terrorism.

* * * * * * *

TITLE II—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

* * * * * * *

PROPERTY OF FOREIGN MISSIONS

SEC. 205. (a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(4) For the purposes of this subsection, the term "foreign country" means—

(A) any country listed as a Communist country in section 620(f) of the Foreign Assistance Act of 1961;

(B) any country determined by the Secretary of State, for purposes of [section 6(j) of the Export Administration Act of 1979] *section 310 of the Export Administration Act of 2001*, to be a country which has repeatedly provided support for acts of international terrorism; and

* * * * * * *

SECTION 528 OF THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATION ACT, 1994

OPPOSITION TO ASSISTANCE TO TERRORIST COUNTRIES BY INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 528. (a) INSTRUCTIONS FOR UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall instruct the United States Executive Director of each international financial institution designated in subsection (b), and the Administrator of the Agency for International Development shall instruct the United States Executive Director of the International Fund for Agriculture Development, to use the voice and vote of the United States to oppose any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section [6(j) of the Export Administration Act of 1979] *310 of the Export Administration Act of 2001*.

* * * * * * *

SECTION 589 OF THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATION ACT, 1997

CIVIL LIABILITY FOR ACTS OF STATE SPONSORED TERRORISM

SEC. 589. (a) an official, employee, or agent of a foreign state designated as a state sponsor of terrorism designated under section [6(j) of the Export Administration Act of 1979] *310 of the Export Administration Act of 2001* while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national's legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code, for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

* * * * * * *

SECTION 110 OF THE INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1980

EXPORTATION OF URANIUM DEPLETED IN THE ISOTOPE 235

SEC. 110. Upon a finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 and of the Nuclear Non-Proliferation Act of 1978 when such exports are subject to the controls established under the Arms Export Control Act of the Export Administration [Act of 1979] *Act of 2001*.

SECTION 203 OF THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

GRANT OF AUTHORITIES

SEC. 203. (a) * * *

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) * * *

* * * * * * *

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under [section 5 of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States] *the Export Administration Act of 2001*, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code; or

* * * * * * *

INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

* * * * * * *

TITLE IV—PRESIDENTIAL ACTIONS

Subtitle I—Targeted Responses to Violations of Religious Freedom Abroad

* * * * * * *

SEC. 405. DESCRIPTION OF PRESIDENTIAL ACTIONS.

(a) DESCRIPTION OF PRESIDENTIAL ACTIONS.—Except as provided in subsection (d), the Presidential actions referred to in this subsection are the following:

(1) * * *

* * * * * * *

(13) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402, under—

(A) the Export Administration Act of [1979] *2001*;

* * * * * * *

Subtitle II—Strengthening Existing Law

* * * * * * *

SEC. 423. EXPORTS OF CERTAIN ITEMS USED IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

(a) MANDATORY LICENSING.—Notwithstanding any other provision of law, the Secretary of Commerce, with the concurrence of the Secretary of State, shall include on the list of crime control and detection instruments or equipment controlled for export and reexport under section [6(n) of the Export Administration Act of 1979 (22 U.S.C. App. 2405(n))] *311 of the Export Administration Act of 2001*, or under any other provision of law, items being exported or reexported to countries of particular concern for religious freedom that the Secretary of Commerce, with the concurrence of the Secretary of State, and in consultation with appropriate officials including the Assistant Secretary of State for Democracy, Human Rights and Labor and the Ambassador at Large, determines are being used or are intended for use directly and in significant measure to carry out particularly severe violations of religious freedom.

* * * * * * *

SECTION 103 OF THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998

SEC. 103. CIVIL LIABILITY OF THE UNITED STATES.

(a) * * *

* * * * * * *

(e) RECOUPMENT.—

(1) * * *

(2) SANCTIONS ON FOREIGN COMPANIES.—

(A) * * *

(B) SANCTIONS.—

(i) * * *

[(ii) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 1979.—The authorities under section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act to a person described in subparagraph (A).]

(ii) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 2001.—The authorities of title III of the Export Administration Act of 2001 shall be used to prohibit the export to a person described in subparagraph (A) of any items on the National Security Control List established under section 202(a) of that Act.

* * * * * * *

(3) SANCTIONS ON FOREIGN GOVERNMENTS.—

(A) * * *

(B) SANCTIONS.—

(i) * * *

* * * * * * *

[(iv) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 1979.—The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act to a country described in subparagraph (A).]

(iv) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 2001.—The authorities of title III of the Export Administration Act of 2001 shall be used to prohibit the export to a country described in subparagraph (A) of any items on the National Security Control List established under section 202(a) of that Act.

* * * * * * *

SECTION 1423 OF THE DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION ACT OF 1996

SEC. 1423. SENSE OF CONGRESS CONCERNING CRIMINAL PENALTIES.

(a) * * *

(b) URGING OF REVISON TO GUIDELINES.—Congress urges the United States Sentencing Commission to revise the relevant sentencing guidelines to provide for increased penalties for offenses relating to importation, attempted importation, exportation, and attempted exportation of nuclear, biological, or chemical weapons or related materials or technologies under the following provisions of law:

(1) Section [11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410)] *503 of the Export Administration Act of 2001.*

* * * * * * *

SECTION 586G OF THE IRAQ SANCTIONS ACT OF 1990

SEC. 586G. SANCTIONS AGAINST IRAQ.

(a) IMPOSITION.—Except as provided in section 586H, the following sanctions shall apply with respect to Iraq:

(1) * * *

* * * * * * *

[(3) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY.—The authorities of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be used to prohibit the export to Iraq of any goods or technology listed pursuant to that section or section 5(c)(1) of that Act (50 U.S.C. App. 2404(c)(1)) on the control list provided for in section 4(b) of that Act (50 U.S.C. App. 2403(b)).]

(3) EXPORTS OF CERTAIN COMMODITIES AND TECHNOLOGY.—The authorities of titles II and III of the Export Administration Act of 2001 shall be used to prohibit the export to Iraq of any commodities or technology on the Commerce Control List established under that Act.

* * * * * * *

(b) CONTRACT SANCTITY.—For purposes of the export controls imposed pursuant to subsection (a)(3), [the date described in subsection (m)(1) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be deemed] *the dates described in section 301(d)(1) of the Export Administration Act of 2001 shall be deemed* to be August 1, 1990.

SECTION 601 OF THE NUCLEAR NON-PROLIFERATION ACT OF 1978

REPORTS OF THE PRESIDENT

SEC. 601. (a) The President shall review all activities of Government departments and agencies relating to preventing proliferation and shall make a report to Congress in January of 1979 and annually in January of each year thereafter on the Government's efforts to prevent proliferation. This report shall include but not be limited to-

(1) * * *

* * * * * * *

(6) a description of the implementation of nuclear and nuclear-related dual-use export controls in the preceding calendar year, including a summary by type of commodity and destination of—

(A) all transactions for which—

(i) * * *

* * * * * * *

(iii) approvals were issued under the Export Administration Act of [1979] *2001*, or section 109 b.(3) of the 1954 Act, for the retransfer of any item, technical data, component, or substance; or

(iv) authorizations were made as required by section 57 b.(2) of the 1954 Act to engage, directly or indirectly, in the production of special nuclear material; *and*

* * * * * * *

[(C)] *(7) a description of* the progress of those independent states of the former Soviet Union that are non-nuclear-weapon states and of the Baltic states towards achieving the objective of applying full scope safeguards to all their peaceful nuclear activities.

Portions of the information required by [paragraph (6)] *paragraphs (6) and (7)* may be submitted in classified form, as necessary. Any such information that may not be published or disclosed under section [12(c)(1) of the Export Administration Act of 1979] *602(a) of the Export Administration Act of 2001* shall be submitted as confidential.

* * * * * * *

CHEMICAL AND BIOLOGICAL WEAPONS CONTROL AND WARFARE ELIMINATION ACT OF 1991

* * * * * * *

TITLE III—CONTROL AND ELIMINATION OF CHEMICAL AND BIOLOGICAL WEAPONS

* * * * * * *

SEC. 304. UNITED STATES EXPORT CONTROLS.

(a) IN GENERAL.—The President shall—

(1) * * *

(2) use the authorities of the Export Administration Act of [1979] *2001* to control the export of those goods and technology,

that the President determines would assist the government of any foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons.

* * * * * * *

SEC. 307. SANCTIONS AGAINST USE OF CHEMICAL OR BIOLOGICAL WEAPONS.

(a) INITIAL SANCTIONS.—If, at any time, the President makes a determination pursuant to section 306(a)(1) with respect to the government of a foreign country, the President shall forthwith impose the following sanctions:

(1) * * *

* * * * * * *

[(5) EXPORTS OF NATIONAL SECURITY-SENSITIVE GOODS AND TECHNOLOGY.—The authorities of section 6 of the Export Administration Act of 1979 (50 U.S.C. 2405) shall be used to prohibit the export to that country of any goods or technology on that part of the control list established under section 5(c)(1) of that Act (22 U.S.C. 2404(c)(1)).]

(5) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY.—The authorities of title III of the Export Administration Act of 2001 shall be used to prohibit the export to that country of any goods or technology on the National Security Control List established under section 202 of that Act.

(b) ADDITIONAL SANCTIONS IF CERTAIN CONDITIONS NOT MET.—

(1) * * *

(2) SANCTIONS.—The sanctions referred to in paragraph (1) are the following:

(A) * * *

* * * * * * *

(C) FURTHER EXPORT RESTRICTIONS.—The authorities of [section 6 of the Export Administration Act of 1979] *title III of the Export Administration Act of 2001* shall be used to prohibit exports to that country of all other goods and technology (excluding food and other agricultural commodities and products).

* * * * * * *

(e) CONTRACT SANCTITY.—

(1) SANCTIONS NOT APPLIED TO EXISTING CONTRACTS.—(A) * * *

(B) The same restrictions of [subsection (p) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as that subsection is so redesignated by section 304(b) of this title, which are applicable to exports prohibited under section 6 of that Act] *section 301(d) of the Export Administration Act of 2001, which are applicable to exports prohibited under title III of that Act* shall apply to exports prohibited under subsection (a)(5) or (b)(2)(C) of this section. For purposes of this subparagraph, any contract or agreement the performance of which (as determined by the President) would have the effect of assisting a foreign government in using chemical or biological weapons in violation of international law or in using lethal chemical or biological weapons against its own nationals shall

be treated as constituting [a breach of the peace that poses a serious and direct threat to the strategic interest of the United States, within the meaning of subparagraph (A) of section 6(p) of that Act] *a serious threat to a foreign policy interest of the United States, within the meaning of section 301(d)(2)(A) of the Export Administration Act of 2001*.

* * * * * * *

SECTION 1705 OF THE CUBAN DEMOCRACY ACT OF 1992

SEC. 1705. SUPPORT FOR THE CUBAN PEOPLE.

(a) * * *

* * * * * * *

(c) EXPORTS OF MEDICINES AND MEDICAL SUPPLIES.—Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted—

(1) except to the extent such restrictions would be permitted under section [5(m) of the Export Administration Act of 1979] *204(a) of the Export Administration Act of 2001* or section 203(b)(2) of the International Emergency Economic Powers Act;

* * * * * * *

IRAN AND LIBYA SANCTIONS ACT OF 1996

SEC. 6. DESCRIPTION OF SANCTIONS.

The sanctions to be imposed on a sanctioned person under section 5 are as follows:

(1) * * *

(2) EXPORT SANCTION.—The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under—

(i) the Export Administration Act of [1979] *2001*;

(ii) the Arms Export Control Act;

* * * * * * *

SEC. 8. TERMINATION OF SANCTIONS.

(a) IRAN.—The requirement under section 5(a) to impose sanctions shall no longer have force or effect with respect to Iran if the President determines and certifies to the appropriate congressional committees that Iran—

(1) * * *

(2) has been removed from the list of countries the governments of which have been determined, for purposes of section [6(j) of the Export Administration Act of 1979] *310 of the Export Administration Act of 2001*, to have repeatedly provided support for acts of international terrorism.

* * * * * * *

SEC. 14. DEFINITIONS.

As used in this Act:

(1) * * *

* * * * * * *

(3) COMPONENT PART.—The term "component part" has the meaning given that term in section 11A(e)(1) of the Export Administration Act of 1979 ⟦(50 U.S.C. App. 2410a(e)(1))⟧ *(as in effect on August 20, 2001)*.

* * * * * * *

(6) FINISHED PRODUCT.—The term "finished product" has the meaning given that term in section 11A(e)(2) of the Export Administration Act of 1979 ⟦(50 U.S.C. App. 2410a(e)(2))⟧ *(as in effect on August 20, 2001)*.

* * * * * * *

(8) GOODS AND TECHNOLOGY.—The terms "goods" and "technology" have the meanings given those terms in section 16 of the Export Administration Act of 1979 ⟦(50 U.S.C. App. 2415)⟧ *(as in effect on August 20, 2001)*.

* * * * * * *

SECTION 1133 OF THE FOOD SECURITY ACT OF 1985

CONTRACT SANCTITY AND PRODUCER EMBARGO PROTECTION

SEC. 1133. (a) It is hereby declared to be the policy of the United States—

(1) * * *

* * * * * * *

(3) that any prohibition or limitation on the export of such commodities or porducts should be imposed only in time of a national emergency declared by the President under the ⟦Export Administration Act⟧ *International Emergency Economic Powers Act or in time of war under the Trading with the Enemy Act*; and

* * * * * * *

SECTION 208 OF THE AGRICULTURAL TRADE SUSPENSION ADJUSTMENT ACT OF 1980

TRADE SUSPENSION RESERVES

SEC. 208. Notwithstanding any other provision of law—

(a) Whenever the President or other member of the executive branch of Government causes the export of any agricultural commodity to any country or area of the world to be suspended or restricted ⟦for reasons of national security or foreign policy under the Export Administration Act of 1979⟧ *under title II or III of the Export Administration Act of 2001* or any other provision of law and the Secretary of Agriculture determines that such suspension or re-

striction will result in a surplus supply of such commodity that will adversely affect prices producers receive for the commodity, the Secretary may establish a gasohol feedstock reserve or a food security reserve, or both, of the commodity, as provided in subsection (c) and (d) of this section, if the commodity is suitable for stockpiling in a reserve.

* * * * * * *

SECTION 411 OF THE AGRICULTURAL TRADE ACT OF 1978

SEC. 411. AGRICULTURAL EMBARGO PROTECTION.

(a) PREREQUISITES; SCOPE OF COMPENSATION.—Notwithstanding any other provision of law, if—

(1) the President or other member of the executive branch of the Federal Government causes the export of any agricultural commodity to any country or area of the world to be suspended or restricted **[**for reasons of national security or foreign policy under the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.)**]** *under title II or III of the Export Administration Act of 2001* or under any other provision of law;

* * * * * * *

SECTION 302 OF THE BILL EMERSON HUMANITARIAN TRUST ACT

SEC. 302. ESTABLISHMENT OF COMMODITY TRUST.

(a) * * *

* * * * * * *

(e) TREATMENT OF TRUST UNDER OTHER LAW.—Eligible commodities in the trust established under this section **[**shall not be—

[(1) considered**]** *shall not be considered* a part of the total domestic supply (including carryover) for the purpose of subsection (c) or for the purpose of administering the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.)**[**; and**]**

[(2) subject to any quantitative limitation on exports that may be imposed under section 7 of the Export Administration Act of 1979 (50 U.S.C. App. 2406)**]**.

* * * * * * *

SECTION 233 OF THE TRADE EXPANSION ACT OF 1962

SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.

Any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979 **[**(50 U.S.C. App. 2404),**]***(as in effect prior to its repeal by the Export*

Administration Act of 2001), any export control imposed under title II of the Export Administration Act of 2001, or any regulation, order, or license issued under [that section] *either such section*, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe.

SECTION 502 OF THE TRADE ACT OF 1974

SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.

(a) * * *

(b) COUNTRIES INELIGIBLE FOR DESIGNATION.—

(1) * * *

(2) OTHER BASES FOR INELIGIBILITY.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

(A) * * *

* * * * * * *

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section [6(j)(1)(A) of the Export Administration Act of 1979] *310(a)(1) of the Export Administration Act of 2001*.

* * * * * * *

SECTION 133 OF THE URUGUAY ROUND AGREEMENTS ACT

SEC. 133. MEMBERSHIP IN WTO OF BOYCOTTING COUNTRIES.

It is the sense of the Congress that the Trade Representative should vigorously oppose the admission into the World Trade Organization of any country which, through its laws, regulations, official policies, or governmental practices, fosters, imposes, complies with, furthers, or supports any boycott described in [section 8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a)) (as in effect on August 20, 1994)] *section 502 of the Export Administration Act of 2001*, including requiring or encouraging entities within that country to refuse to do business with persons who do not comply with requests to take any action prohibited under that section.

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter N—Tax Based on Income from Sources Within or Without the United States

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * * * *

Subpart A—Foreign tax credit

* * * * * * *

SEC. 901. TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES.

(a) * * *

* * * * * * *

(j) DENIAL OF FOREIGN TAX CREDIT, ETC., WITH RESPECT TO CERTAIN FOREIGN COUNTRIES.—

(1) * * *

(2) COUNTRIES TO WHICH SUBSECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any foreign country—

(i) * * *

* * * * * * *

(iv) which the Secretary of State has, pursuant to section [6(j) of the Export Administration Act of 1979, as amended] *310 of the Export Administration Act of 2001*, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

* * * * * * *

Subpart C—Taxation of Foreign Sales Corporations

* * * * * * *

SEC. 927. OTHER DEFINITIONS AND SPECIAL RULES.

(a) EXPORT PROPERTY.—For purposes of this subpart—

(1) * * *

(2) EXCLUDED PROPERTY.—The term "export property" shall not include—

(A) * * *

* * * * * * *

(C) oil or gas (or any primary product thereof), *or*

[(D) products the export of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979 (relating to the protection of the domestic economy), or]

[(E)] *(D)* any unprocessed timber which is a softwood.

For purposes of subparagraph [(E)] *(D)*, the term "unprocessed timber" means any log, cant, or similar form of timber.

* * * * * * *

Subpart E—Qualifying Foreign Trade Income

* * * * * * *

SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.

(a) QUALIFYING FOREIGN TRADE PROPERTY.—For purposes of this subpart—

(1) * * *

* * * * * * *

(3) EXCLUDED PROPERTY.—The term "qualifying foreign trade property" shall not include—

(A) * * *

* * * * * * *

(C) oil or gas (or any primary product thereof), *or*

[(D) products the transfer of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of Public Law 96-72, or]

[(E)] *(D)* any unprocessed timber which is a softwood. For purposes of subparagraph [(E)] *(D)*, the term "unprocessed timber" means any log, cant, or similar form of timber.

* * * * * * *

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

* * * * * * *

Subpart A—Treatment of Qualifying Corporations

* * * * * * *

SEC. 993. DEFINITIONS.

(a) * * *

* * * * * * *

(c) EXPORT PROPERTY.—

(1) * * *

(2) EXCLUDED PROPERTY.—For purposes of this part, the term "export property" does not include—

(A) * * *

* * * * * * *

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A, *or*

[(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy), or]

[(E)] *(D)* any unprocessed timber which is a softwood.

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term "processing" does not include extracting or handling, packing, packaging, grading, storing, or transporting. For purposes of subparagraph [(E)] *(D)*, the term "unprocessed timber" means any log, cant, or similar form of timber.

* * * * * * *

SECTION 721 OF THE DEFENSE PRODUCTION ACT OF 1950

AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

SEC. 721. (a) * * *

* * * * * * *

(f) FACTORS TO BE CONSIDERED.—For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

(1) * * *

* * * * * * *

(4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

(A) identified by the Secretary of State—

(i) under section [6(j) of the Export Administration Act of 1979] *310 of the Export Administration Act of 2001*, as a country that supports terrorism;

(ii) under [section 6(l) of the Export Administration Act of 1979] *the Export Administration Act of 2001*, as a country of concern regarding missile proliferation; or

(iii) under [section 6(m) of the Export Administration Act of 1979] *the Export Administration Act of 2001*, as a country of concern regarding the proliferation of chemical and biological weapons; or

* * * * * * *

SECTION 275 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

SEC. 275. EXPORT OF SEMICONDUCTOR MANUFACTURING

Any export of materials, equipment, and technology developed by Sematech in whole or in part with financial assistance provided under section 272(a) shall be subject to the Export Administration

Act of [1979 (50 U.S.C. App. 2401 et seq.)] *2001* and shall not be subject to the Arms Export Control Act.

SECTION 1605 OF TITLE 28, UNITED STATES CODE

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) * * *

* * * * * * *

(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph—

(A) if the foreign state was not designated as a state sponsor of terrorism under [section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))] *section 310 of the Export Administration Act of 2001* or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act; and

* * * * * * *

SECTION 1621 OF THE INTERNATIONAL FINANCIAL INSTITUTIONS ACT

SEC. 1621. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under [section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))] *section 310 of the Export Administration Act of 2001* or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

* * * * * * *

FOREST RESOURCES CONSERVATION AND SHORTAGE RELIEF ACT OF 1990

TITLE IV—EXPORTS OF UNPROCESSED TIMBER

* * * * * * *

SEC. 487. SHORT TITLE.

This title may be cited as the "Forest Resources Conservation and Shortage Relief Act of 1990".

* * * * * * *

SEC. 491. RESTRICTION ON EXPORTS OF UNPROCESSED TIMBER FROM STATE AND OTHER PUBLIC LANDS.

(a) * * *

* * * * * * *

[(f) WESTERN RED CEDAR.—Nothing in this section shall be construed to supersede section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).]

* * * * * * *

[SEC. 499. AUTHORITY OF EXPORT ADMINISTRATION ACT OF 1979.

[Nothing in this title shall be construed to—

[(1) prejudice the outcome of pending or prospective petitions filed under, or

[(2) warrant the exercise of the authority contained in, section 7 of the Export Administration Act of 1979 with respect to the export of unprocessed timber.]

* * * * * * *

SECTION 904 OF THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000

SEC. 904. EXCEPTIONS.

Section 903 shall not affect any authority or requirement to impose (or continue to impose) a sanction referred to in section 903—

(1) * * *

(2) to the extent that the sanction would prohibit, restrict, or condition the provision or use of any agricultural commodity, medicine, or medical device that is—

(A) * * *

(B) controlled on any control list established under the [Export Administration Act of 1979] *Export Administration Act of 2001* or any successor statute (50 U.S.C. App. 2401 et seq.); or

* * * * * * *

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998

* * * * * * *

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

* * * * * * *

TITLE XII—MATTERS RELATING TO OTHER NATIONS

* * * * * * *

[Subtitle B—Export Controls on High Performance Computers

[SEC. 1211. EXPORT APPROVALS FOR HIGH PERFORMANCE COMPUTERS.

[(a) PRIOR APPROVAL OF EXPORTS AND REEXPORTS.—The President shall require that no digital computer with a composite theoretical performance level of more than 2,000 millions of theoretical operations per second (MTOPS) or with such other composite theoretical performance level as may be established subsequently by the President under subsection (d), may be exported or reexported without a license to a country specified in subsection (b) if the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, or the Director of the Arms Control and Disarmament Agency objects, in writing, to such export or reexport. Any person proposing to export or reexport such a digital computer shall so notify the Secretary of Commerce, who, within 24 hours after receiving the notification, shall transmit the notification to the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency.

[(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under subsection (e).

[(c) TIME LIMIT.—Written objections under subsection (a) to an export or reexport shall be raised within 10 days after the notification is received under subsection (a). If such a written objection to the export or reexport of a computer is raised, the computer may be exported or reexported only pursuant to a license issued by the Secretary of Commerce under the Export Administration Regulations of the Department of Commerce, without regard to the licensing exceptions otherwise authorized under section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997. If no objection is raised within the 10-day period, the export or reexport is authorized.

[(d) ADJUSTMENT OF COMPOSITE THEORETICAL PERFORMANCE.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disar-

mament Agency, may establish a new composite theoretical performance level for purposes of subsection (a). Such new level shall not take effect until 60 days after the President submits to the congressional committees designated in section 1215 a report setting forth the new composite theoretical performance level and the justification for such new level. Each report shall, at a minimum—

[(1) address the extent to which high performance computers of a composite theoretical level between the level established in subsection (a) or such level as has been previously adjusted pursuant to this section and the new level, are available from other countries;

[(2) address all potential uses of military significance to which high performance computers at the new level could be applied; and

[(3) assess the impact of such uses on the national security interests of the United States.

[(e) ADJUSTMENT OF COVERED COUNTRIES.—

[(1) IN GENERAL.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may add a country to or remove a country from the list of covered countries in subsection (b), except that a country may be removed from the list only in accordance with paragraph (2).

[(2) DELETIONS FROM LIST OF COVERED COUNTRIES.—The removal of a country from the list of covered countries under subsection (b) shall not take effect until 120 days after the President submits to the congressional committees designated in section 1215 a report setting forth the justification for the deletion.

[(3) EXCLUDED COUNTRIES.—A country may not be removed from the list of covered countries under subsection (b) if—

[(A) the country is a "nuclear-weapon state" (as defined by Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons) and the country is not a member of the North Atlantic Treaty Organization; or

[(B) the country is not a signatory of the Treaty on the Non-Proliferation of Nuclear Weapons and the country is listed on Annex 2 to the Comprehensive Nuclear Test-Ban Treaty.

[(f) CLASSIFICATION.—Each report under subsections (d) and (e) shall be submitted in an unclassified form and may, if necessary, have a classified supplement.

[(g) DELEGATION OF OBJECTION AUTHORITY WITHIN THE DEPARTMENT OF DEFENSE.—For the purposes of the Department of Defense, the authority to issue an objection referred to in subsection (a) shall be executed for the Secretary of Defense by an official at the Assistant Secretary level within the office of the Under Secretary of Defense for Policy. In implementing subsection (a), the Secretary of Defense shall ensure that Department of Defense procedures maximize the ability of the Department of Defense to be able to issue an objection within the 10-day period specified in subsection (c).

[(h) CALCULATION OF 60-DAY PERIOD.—The 60-day period referred to in subsection (d) shall be calculated by excluding the days on which either House of Congress is not in session because of an adjournment of the Congress sine die.

[SEC. 1212. REPORT ON EXPORTS OF HIGH PERFORMANCE COMPUTERS.

[(a) REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall provide to the congressional committees specified in section 1215 a report identifying all exports of digital computers with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) to all countries since January 25, 1996. For each export, the report shall identify—

[(1) whether an export license was applied for and whether one was granted;

[(2) the date of the transfer of the computer;

[(3) the United States manufacturer and exporter of the computer;

[(4) the MTOPS level of the computer; and

[(5) the recipient country and end user.

[(b) ADDITIONAL INFORMATION ON EXPORTS TO CERTAIN COUNTRIES.—In the case of exports to countries specified in subsection (c), the report under subsection (a) shall identify the intended end use for the exported computer and the assessment by the executive branch of whether the end user is a military end user or an end user involved in activities relating to nuclear, chemical, or biological weapons or missile technology. Information provided under this subsection may be submitted in classified form if necessary.

[(c) COVERED COUNTRIES.—For purposes of subsection (b), the countries specified in this subsection are—

[(1) the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997; and

[(2) the countries listed in section 740.7(e) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

[SEC. 1213. POST-SHIPMENT VERIFICATION OF EXPORT OF HIGH PERFORMANCE COMPUTERS.

[(a) REQUIRED POST-SHIPMENT VERIFICATION.—The Secretary of Commerce shall conduct post-shipment verification of each digital computer with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) that is exported from the United States, on or after the date of the enactment of this Act, to a country specified in subsection (b).

[(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under section 1211(e).

[(c) ANNUAL REPORT.—The Secretary of Commerce shall submit to the congressional committees specified in section 1215 an annual report on the results of post-shipment verifications conducted under this section during the preceding year. Each such report shall include a list of all such items exported from the United

States to such countries during the previous year and, with respect to each such export, the following:

[(1) The destination country.

[(2) The date of export.

[(3) The intended end use and intended end user.

[(4) The results of the post-shipment verification.

[(d) EXPLANATION WHEN VERIFICATION NOT CONDUCTED.—If a post-shipment verification has not been conducted in accordance with subsection (a) with respect to any such export during the period covered by a report, the Secretary shall include in the report for that period a detailed explanation of the reasons why such a post-shipment verification was not conducted.

[(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d), that level shall apply for purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).

[SEC. 1214. GAO STUDY ON CERTAIN COMPUTERS; END USER INFORMATION ASSISTANCE.

[(a) IN GENERAL.—The Comptroller General of the United States shall submit to the congressional committees specified in section 1215 a study of the national security risks relating to the sale of computers with a composite theoretical performance of between 2,000 and 7,000 millions of theoretical operations per second (MTOPS) to end users in countries specified in subsection (c). The study shall also analyze any foreign availability of computers described in the preceding sentence and the impact of such sales on United States exporters.

[(b) END USER INFORMATION ASSISTANCE TO EXPORTERS.—The Secretary of Commerce shall establish a procedure by which exporters may seek information on questionable end users in countries specified in subsection (c) who are seeking to obtain computers described in subsection (a).

[(c) COVERED COUNTRIES.—For purposes of subsections (a) and (b), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

[SEC. 1215. CONGRESSIONAL COMMITTEES.

[For purposes of sections 1211(d), 1212(a), 1213(c), and 1214(a) the congressional committees specified in those sections are the following:

[(1) The Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

[(2) The Committee on International Relations and the Committee on Armed Services of the House of Representatives.]

* * * * * * *

DISSENTING VIEWS

In the wake of the horrific attacks against America on September 11, 2001, it is more important than ever that this Committee produce legislation that protects U.S. national security while maintaining U.S. competitiveness. We are very concerned that the bill reported by the House International Relations Committee does neither. Instead, it undoes the carefully crafted framework of the Export Administration Act of 2001, which together we introduced as H.R. 2557 and which the Senate passed by a vote of 85–14. The Committee-passed bill creates a cumbersome system that will result in nothing less than gridlock in our export control system at the worst possible time.

During markup, the Committee included nearly three dozen amendments, many of them passed *en bloc* as "technical." But virtually all of these amendments will substantively hinder the President's flexibility to impose export controls, overwhelm export control procedures, and create uncertainty and unpredictability for exporters—all without enhancing national security.

Ironically, despite the best intentions of the amendments' distinguished sponsors, the bill as passed in Committee would only serve to diminish US global military dominance because it would stifle the competitiveness of the very US industries that America's military depends upon to maintain its technological edge. Specifically, the bill as reported by the Committee:

- Limits the President's flexibility by mandating a presumption of denial for an open-ended range of exported items, harming the President's discretion to make critical decisions and forcing exporters to prove innocence before engaging in trade—which among other things, runs counter to American judicial philosophy.
- Lowers the threshold for controlling items, greatly diminishing discipline on, and accountability of, imposition of controls without adding any national security benefit.
- Adds unnecessary complexity and delay to an already excessively slow system by requiring that all mass-market and foreign availability determinations go through another extensive interagency process, and establishes departmental quotas, rather than expertise, for technical evaluation personnel.
- Confuses the technical exercise of commodity classification with policy decision-making, and invites chaos by applying a totally inappropriate interagency dispute resolution process to the commodity classification process—all of which is unnecessary in light of the Administration's announced plans to revise current classification guidelines.

- Decreases the disciplines for foreign policy controls, reducing accountability and transparency in the process of setting and maintaining such controls.
- Adds an unnecessary layer of bureaucracy to the licensing process by requiring the involvement of agencies that traditionally have not been involved in all licensing processes.
- Undermines efforts to maintain accountability and streamline bureaucracy by increasing the ability of agencies to indefinitely delay license applications—an amendment overwhelmingly rejected (74–19) by the Senate.

It is no accident that the Administration has refused to endorse the Committee legislation. Instead, the Administration's national security and economic team has reiterated its support for the Export Administration Act of 2001. On September 3, Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, and Secretary of Commerce Donald Evans stated that the Export Administration Act of 2001 "will provide the President with the authority and flexibility he needs to administer a stronger, updated export control system . . ."

National security and defense experts have warned Congress that "feel good" controls just don't work:

- Dr. Donald A. Hicks, Reagan Administration Under Secretary of Defense for Research & Engineering and Chairman of the Defense Science Board Task Force on Globalization and Security stated in February 2001 testimony: "The Cold War's end . . . points to the utter futility of the U.S. attempting to control unilaterally technologies, products and services that even its closest allies are releasing onto the world market."
- Dr. John J. Hamre, former Deputy Secretary of Defense and currently President and Chief Executive Officer of the Center for Strategic & International Studies testified in February 2001 that "America needs effective export controls to protect its national security. Our current system of export controls fails that test—fails badly . . . In demanding to put a stamp on every export transaction, then ultimately approving 99.4% of the requests, we are not really protecting our security. In fact, we're diverting resources from protecting the most important technology and products."
- Frank C. Carlucci, former Secretary of Defense, former National Security Advisor, and Chairman of Nortel Networks stated in June 1999: "We need to staunch the flow of technology to those who would harm us. But we should do only that which has an effect, not that which simply makes us feel good. Many technologies are uncontrollable given the access of the Internet; others can and will be supplied by our competitors . . . [Congress'] job . . . is to strike the right balance—don't help our enemies but at the same time allow innovation and research to flourish."
- Rep. Chris Cox, Chairman of the Cox Committee, formally known as the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Repub-

lic of China, said in June 1999 testimony that "We ought not to have export controls to pretend to make ourselves safe as a country. We ought to have export controls that work. And you have to assume that if the Ministry of State Security in the People's Republic of China can gain access to the computers at Los Alamos, they can probably gain access to a Radio Shack in Europe."

In fact, defense experts have testified that maintaining controls on widely available items could seriously damage the U.S. military and harm national security. The Defense Science Board Task Force on Globalization and Security, which Dr. Hicks chaired, concluded in 1999 that:

- "DOD is relying increasingly on the U.S. commercial advanced technology sector to push the technological envelope and enable the Department to "run faster" than its competitors. DOD is not a large enough customer, however, to keep the U.S. high-tech sector vibrant. Exports are now the key to growth and good health . . . If U.S. high-tech exports are restricted in any significant manner, it could well have a stifling effect on the U.S. military's rate of technological advancement."
- "[S]hutting U.S. companies out of markets served instead by foreign firms could inhibit the competitiveness of the U.S. commercial advanced technology and defense sectors upon which U.S. economic security and military-technical advantage depend."
- "If the United States responds to what some parochially and inaccurately view as preventable hemorrhaging of U.S. advanced technology . . . by unilaterally tightening controls on high-tech exports to states such as China, new competitors in Taiwan, Korea, Japan, and Europe can be expected to move quickly to fill the market void . . . [T]he losers will be U.S. industry, whose technological and market leadership will face new challenges, and DOD, whose access to the world's most advanced technologies will be at the very least complicated, and perhaps compromised, by virtue of their being developed and produced by non-US firms."
- "Protection of capabilities and technologies readily available on the world market is, at best, unhelpful to the maintenance of military dominance and, at worst, counterproductive (e.g., by undermining the industry upon which U.S. military-technological supremacy depends) . . . DOD must put up higher walls around a much smaller group of capabilities and technologies."

Unfortunately, the Committee-passed bill flies in the face of these recommendations. In sum, the Committee mark does nothing to promote U.S. national security, while actively threatening U.S. competitiveness—at the worst possible time.

PROTECTING AMERICANS & ENHANCING U.S. PROSPERITY AND COMPETITIVENESS

In sharp contrast to the Committee-passed bill, H.R. 2557, the Export Administration Act of 2001, will achieve these important goals. This bipartisan, carefully crafted legislation replaces the old Cold War export control regime with a modern, effective framework that promotes both U.S. national security and U.S. competitiveness by building a higher fence around a smaller number of truly sensitive items. The bill will ensure that during the war on terrorism, the President will have full flexibility to react swiftly and with full authority, while at the same time providing important economic stimulus to keep the U.S. economy moving forward. Like its Senate companion, which was approved overwhelmingly (85–14) by the Senate on September 6, H.R. 2557 meets the dual challenges of protecting Americans and stimulating the economy.

H.R. 2557, the Export Administration Act of 2001, is designed to protect Americans while enhancing U.S. prosperity and competitiveness. First, the legislation protects Americans. Endorsed by our commander-in-chief and his national security team, the Export Administration Act provides unprecedented authority to the President to control exports for national security or foreign policy purposes. National Security Advisor Condoleezza Rice, Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, and Secretary of Commerce Donald Evans unanimously agree that the bill will provide the President with the authority and flexibility he needs to administer a stronger, updated export control system.

Second, the legislation ensures U.S. prosperity and competitiveness and provides an important stimulus to the U.S. economy during this difficult economic time. By removing ineffective controls on widely available items, the bill allows key U.S. industries to maintain their competitiveness (and their ability to provide critical technologies to the U.S. military). For example:

- The Computer Coalition For Responsible Exports (CCRE) noted that the Export Administration Act of 2001 was "developed in cooperation with the Bush Administration and its national security team, is designed to modernize the export control system to effectively balance U.S. economic and national security interests."
- AeA (formerly the American Electronics Association) stated that "it is of the utmost importance to the nation's high-tech trade economy that [Congress] passes a new EAA . . . [B]oth the government and high-tech industries face harsh consequences if nothing is done to update export legislation. In addition to potential legal challenges to the reinstatement of IEEPA, there would be lost export opportunities and lost jobs for U.S. industry, and a failure to advance foreign policy goals for the U.S. government . . . The president and the people understand the importance of technology trade in modern society; now it is time for Congress to come forward and recognize the new world."
- The Electronic Industry Association (EIA) noted that the current regime "is more harmful than helpful to U.S. national security interests and is slow, cumbersome, and generally

disadvantageous to the U.S. high-tech community vis-a-vis our competitors abroad. A renewed and revised Export Administration Act (EAA) offers an opportunity to bring the export control regime into greater alignment with global and technological realities. A promising approach to EAA renewal—one that strikes an acceptable balance between national security and global commerce—is . . . the Export Administration Act of 2001.

FIGHTING TERRORISM

Export control authority represents one of the critical Presidential sanctions authorities designed to respond to terrorism. The export control framework established by H.R. 2557 would allow the President maximum flexibility to impose critical national security or foreign policy export controls to respond quickly and effectively to threats to U.S. interests as he sees fit. Moreover, the bill contains critical provisions designed specifically to address terrorism. For example:

- Section 201 authorizes the President to impose export controls for national security purposes—including and especially to "deter acts of international terrorism."
- Section 301 authorizes the imposition of export controls for foreign policy purposes—specifically to "deter and punish acts of international terrorism and to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism."
- Section 310 explicitly provides the President with the ability to control items, notwithstanding any other provision of the bill, to address governments that are determined to be supporters of international terrorism (specifically, to prevent exports of items that "could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism").
- Section 503 significantly enhances criminal and civil penalties for export control violations above current levels, with criminal fine of up to $1 million or 10 times the value of the exports for individual violations, and up to $5 million or 10 times the value of the exports for corporate violations.
- Sections 504 and 505 reauthorize both the current missile proliferation control and chemical and biological weapons control sanctions.

The terrible events of September 11 make it all too clear that the President must have the tools he needs to fight terrorism. Because export controls are specifically designed to address terrorism, and will play a key role in any Presidential anti-terrorism initiative, immediate enactment of the Export Administration Act of 2001 would assure the President's ability to use export controls swiftly and with full statutory authority to address U.S. national security

and foreign policy needs during the war against terrorism over the coming months and years.

URGENCY

Enactment of H.R. 2557 is all the more critical given that the old Cold War export control statute—the Export Administration Act of 1979—expired on August 20, 2001. Without a new statutory regime in place, the President was forced to rely on executive authority to maintain our dual-use export control system. On August 17, President Bush therefore issued Executive Order 13222 (Continuation of Export Control Regulations). Stating that "the unrestricted access of foreign parties to U.S. goods and technology and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979 . . . constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States," the President declared a national emergency and invoked the International Emergency Economic Powers Act (IEEPA) to maintain the provisions of the 1979 Act and the regulations issued thereunder.

Maintaining the export control system via IEEPA presents legal and substantive risks, particularly during this critical time. First, the continuation of export controls pursuant to IEEPA has been subject to a number of court challenges that, although unsuccessful to date, have raised questions about the viability of IEEPA as a long-term basis for the export control system. Second, an IEEPA-based export control regime impedes strong Executive enforcement of export controls, as it provides only minor penalties and limited authorization for arrests and search warrants.

Passage of H.R. 2557 is essential if the President is to operate export controls on a sound footing. Congress must act swiftly to provide the President full statutory authority in this critical area. As National Security Advisor Condoleezza Rice noted on August 2, "a new EAA will provide use the strongest authority to administer dual-use export controls, particularly as related to enforcement, penalties for export control violations, and the protection of business proprietary information." She then endorsed swift enactment of the Export Administration Act of 2001 (H.R. 2557/S. 149).

STRONG ADMINISTRATION ENDORSEMENT

The President and his national security team repeatedly have endorsed the Export Administration Act of 2001 (H.R. 2557/S. 149) and urged its swift passage.

- On March 28, the President told an audience that "the Export Administration Act—a good bill—passed the Banking Committee 19–1 . . . And I urge the Senate to pass it quickly."
- On May 8, the President said "I'm pleased to report, the Senate Banking Committee passed a revised EAA, which my administration strongly supports. It's now time to pass it for the House, so I can sign it into law."
- On August 2, National Security Advisor Rice expressed appreciation for scheduling the Export Administration Act of

2001 for consideration, and noted that the bill "has the Administration's strong support."

- On September 3, Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, and Secretary of Commerce Donald Evans stated that the Export Administration Act of 2001 "will provide the President with the authority and flexibility he needs to administer a stronger, updated export control system . . . President Bush strongly supports the bill as passed by the Senate Banking Committee and wants to move forward in this important area."

SUMMARY

As noted, H.R. 2557 establishes an effective, modern framework for dual-use export controls. It protects Americans and enhances U.S. prosperity and competitiveness by building a higher fence around a smaller number of truly sensitive items. Specifically, the bill contains the following provisions:

- Title I provides general authorities for the conduct of U.S. export control policies. Under this title, the Secretary of Commerce is authorized to identify items subject to export controls, and to establish and maintain a Commerce Control List consisting of items that, if exported to certain end-users or for certain end-uses, could jeopardize U.S. national security.
- Title II authorizes the President to impose export controls for national security purposes. The authority is vested in the President and exercised by the Secretary of Commerce, in consultation with the Secretary of Defense, the intelligence agencies, and other appropriate departments and agencies. Section 201 retains the purpose set forth in the 1979 Act: to restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States. However, Section 201 expands this purpose in two important areas. First, it authorizes national security export controls to stem the proliferation of weapons of mass destruction and the means to deliver them. Second, it explicitly authorizes national security export controls to "deter acts of international terrorism."
- Section 201 also provides the President with two additional control authorities not previously codified in statute: authority to impose export controls based on the end-use or end-user of an item if that item could contribute to the proliferation of weapons of mass destruction or the means to deliver them; and authority to impose enhanced controls on items notwithstanding their status as incorporated components or as foreign-available or mass-market, if the President determines that removing controls would constitute a significant threat to U.S. national security.
- Title III authorizes the imposition of export controls for foreign policy purposes. This authority is vested in the President. Section 301 outlines the purposes for foreign policy controls: namely, to promote the foreign policy objectives of the United States; to promote international peace, stability,

and respect for fundamental human rights; and to use export controls to deter and punish acts of international terrorism and to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism.

- Sections 309 and 310 provide the President with the ability to control items, notwithstanding any other provision of the bill, for two critical reasons: to comply with international obligations and multilateral export control regime commitments, and to address governments that are determined to be supporters of international terrorism (specifically, to prevent exports of items that "could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism").
- Title IV outlines procedures for review of export license applications. Section 401 provides for the receipt and timely review of export license applications by the Department of Commerce and other appropriate agencies. Section 402 establishes an interagency dispute resolution process for disputed applications that provides for consideration of the views of all participating agencies, with an appeal process that ultimately may be escalated to the President for final determination.
- Title V sets forth provisions on multilateral export regimes, foreign boycotts, multilateral sanctions, and domestic enforcement. Section 501 of the bill encourages U.S. participation in multilateral export control regimes that support U.S. objectives. Section 502 recodifies the foreign boycott provisions of the 1979 Act.
- Section 503 significantly enhances criminal and civil penalties for export control violations above the levels set forth in the 1979 Act or in IEEPA. It subjects individuals to a criminal fine of up to $1 million or 10 times the value of the exports for each violation, whichever is greater, for willfully violating or willfully conspiring to violate the provisions of the bill or any regulation issued thereunder. In addition, individuals may be imprisoned for a period of up to 10 years. Persons other than individuals (such as companies) may be fined up to $5 million or 10 times the value of the export, whichever is greater, for each violation. In addition, the Secretary of Commerce may impose on a violator a maximum civil fine of $500,000 for each export control violation.
- Sections 504 and 505 reauthorize both the current missile proliferation control and chemical and biological weapons control sanctions. These sanctions serve as strong deterrents to U.S. or foreign persons who may knowingly transfer missile technology or lethal chemical or biological weapons to persons in violation of the Missile Technology Control regime guidelines, or to persons that the President has determined

has directly engaged in the illegal use, transfer or preparation of chemical and biological weapons.

- Section 506 strengthens the enforcement tools of the Office of Export Enforcement of the Bureau of Export Administration, and provides additional authorizations for funding for the Bureau of Export Administration. Section 506 also terminates the authority granted under S. 149 on September 30, 2004, unless the President provides to Congress a detailed report on the operation of the Export Administration Act of 2001 and of U.S. export controls in general, and either submits to Congress legislative reform proposals in connection with that report or certifies to Congress that reforms in connection with that report are not necessary.
- Title VI provides for the implementation of the authorities granted under the bill. Section 601 provides for the delegation of authority to the Secretary of Commerce and Under Secretary of Commerce for Export Administration, and authorizes the President and Secretary of Commerce to issue regulations to carry out the bill.
- Title VII contains miscellaneous provisions. Section 701 requires the Secretary to report annually to Congress regarding export controls. Section 702 makes technical and conforming amendments. Among these amendments is a provision repealing certain sections of the fiscal year 1998 National Defense Authorization Act (NDAA) to allow the President full flexibility to establish the most effective measurement standard for the control of computer technologies.

In closing, this Committee has a duty to the American people to report legislation that protects U.S. national security while maintaining U.S. competitiveness. The World Trade Center and Pentagon attacks made clear that such legislation is even more important today, as the President and Congress work together to fight terrorism. Strong and effective export control authority is a critical tool in the President's arsenal in this effort, and H.R. 2557 will give him the authority and flexibility he needs to enhance American security as well as the American economy. Unfortunately, the Committee-reported legislation does not fulfill these objectives. For this reason, we cannot give it our support.

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JEFF FLAKE.

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