

105TH CONGRESS
1ST SESSION

S. 495

To provide criminal and civil penalties for the unlawful acquisition, transfer, or use of any chemical weapon or biological weapon, and to reduce the threat of acts of terrorism or armed aggression involving the use of any such weapon against the United States, its citizens, or Armed Forces, or those of any allied country, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. KYL (for himself, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. COVERDELL, Mr. HELMS, Mr. SHELBY, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide criminal and civil penalties for the unlawful acquisition, transfer, or use of any chemical weapon or biological weapon, and to reduce the threat of acts of terrorism or armed aggression involving the use of any such weapon against the United States, its citizens, or Armed Forces, or those of any allied country, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Chemical and Biological Weapons Threat Reduction Act
 4 of 1997”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Policy.
- Sec. 4. Definitions.

TITLE I—PENALTIES FOR UNLAWFUL ACTIVITIES WITHIN THE
 UNITED STATES OR BY UNITED STATES NATIONALS ABROAD

Subtitle A—Criminal Penalties

- Sec. 101. Criminal provisions.

Subtitle B—Civil Penalties

- Sec. 111. Designation of lead agency.
- Sec. 112. Prohibitions on chemical and biological weapons-related activities.
- Sec. 113. Civil penalties.
- Sec. 114. Regulatory authority; application of other laws.

Subtitle C—Other Penalties

- Sec. 121. Revocations of export privileges.
- Sec. 122. Suspension of patent rights.

TITLE II—FOREIGN RELATIONS AND DEFENSE-RELATED
 PROVISIONS

- Sec. 201. Sanctions for use of chemical or biological weapons.
- Sec. 202. Continuation and enhancement of multilateral control regimes.
- Sec. 203. Criteria for United States assistance to Russia.
- Sec. 204. Report on the state of chemical and biological weapons proliferation.
- Sec. 205. International conference to strengthen the 1925 Geneva Protocol.
- Sec. 206. Restriction on use of funds for the Organization for the Prohibition
 of Chemical Weapons.
- Sec. 207. Enhancements to robust chemical and biological defenses.
- Sec. 208. Negative security assurances.
- Sec. 209. Riot control agents.

7 **SEC. 2. FINDINGS.**

8 The Congress finds that—

1 (1) the United States eliminated its stockpile of
2 biological weapons pursuant to the 1972 Biological
3 Weapons Convention and has pledged to destroy its
4 entire inventory of chemical weapons by 2004, inde-
5 pendent of the Chemical Weapons Convention enter-
6 ing into force;

7 (2) the use of chemical or biological weapons in
8 contravention of international law is abhorrent and
9 should trigger immediate and effective sanctions;

10 (3) United Nations Security Council Resolution
11 620, adopted on August 26, 1988, states the inten-
12 tion of the Security Council to consider immediately
13 “appropriate and effective” sanctions against any
14 nation using chemical and biological weapons in vio-
15 lation of international law;

16 (4) the General Agreement on Tariffs and
17 Trade recognizes that national security concerns
18 may serve as legitimate grounds for limiting trade;
19 title XXI of the General Agreement on Tariffs and
20 Trade states that “nothing in this Agreement shall
21 be construed . . . to prevent any contracting party
22 from taking any action which it considers necessary
23 for the protection of its essential security inter-
24 ests. . .”;

1 (5) on September 30, 1993, the President de-
2 clared by Executive Order No. 12868 a national
3 emergency to deal with “the unusual and extraor-
4 dinary threat to the national security, foreign policy,
5 and economy of the United States” posed by the
6 proliferation of nuclear, biological and chemical
7 weapons, and of the means for delivering such weap-
8 ons;

9 (6) Russia has not implemented the 1990 Unit-
10 ed States-Russian Bilateral Agreement on Destruc-
11 tion and Non-Production of Chemical Weapons and
12 on Measures to Facilitate the Multilateral Conven-
13 tion on Banning Chemical Weapons, known as the
14 “BDA”, nor has the United States and Russia re-
15 solved, to the satisfaction of the United States, the
16 outstanding compliance issues under the Memoran-
17 dum of Understanding Between the United States of
18 America and the Government of the Union of Soviet
19 Socialist Republics Regarding a Bilateral Verifica-
20 tion Experiment and Data Exchange Related To
21 Prohibition on Chemical Weapons, known as the
22 “1989 Wyoming MOU”;

23 (7) the Intelligence Community has stated that
24 a number of countries, among them China, Egypt,
25 Iran, Iraq, Libya, North Korea, Syria, and Russia,

1 possess chemical and biological weapons and the
2 means to deliver them;

3 (8) four countries in the Middle East—Iran,
4 Iraq, Libya, and Syria—have, as a national policy,
5 supported international terrorism;

6 (9) chemical and biological weapons have been
7 used by states in the past for intimidation and mili-
8 tary aggression, most recently during the Iran-Iraq
9 war and by Iraq against its Kurdish minority;

10 (10) the grave new threat of chemical and bio-
11 logical terrorism has been demonstrated by the 1995
12 nerve gas attack on the Tokyo subway by the Japa-
13 nese cult Aum Shinrikyo;

14 (11) the urgent need to improve domestic pre-
15 paredness to protect against chemical and biological
16 threats was underscored by enactment of the 1997
17 Defense Against Weapons of Mass Destruction Act;

18 (12) the Department of Defense, in light of
19 growing chemical and biological threats in regions of
20 key concern, including Northeast Asia, and the Mid-
21 dle East, has stated that United States forces must
22 be properly trained and equipped for all missions, in-
23 cluding those in which opponents might threaten use
24 of chemical or biological weapons; and

1 (13) Australia Group controls on the exports of
2 chemical and biological agents, and related equip-
3 ment, and the Missile Technology Control Regime,
4 together provide an indispensable foundation for
5 international and national efforts to curb the spread
6 of chemical and biological weapons, and their deliv-
7 ery means.

8 **SEC. 3. POLICY.**

9 It should be the policy of the United States to take
10 all appropriate measures to—

11 (1) prevent and deter the threat or use of
12 chemical and biological weapons against the citizens,
13 Armed Forces, and territory of the United States
14 and its allies, and to protect against, and manage
15 the consequences of, such use should it occur;

16 (2) discourage the proliferation of chemical and
17 biological weapons, their means of delivery, and re-
18 lated equipment, material, and technology;

19 (3) prohibit within the United States the devel-
20 opment, production, acquisition, stockpiling, and
21 transfer to third parties of chemical or biological
22 weapons, their precursors and related technology;
23 and

24 (4) impose unilateral sanctions, and seek imme-
25 diately international sanctions, against any nation

1 using chemical and biological weapons in violation of
2 international law.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

5 (1) AUSTRALIA GROUP.—The term “Australia
6 Group” refers to the informal forum of countries,
7 formed in 1984 and chaired by Australia, whose goal
8 is to discourage and impede chemical and biological
9 weapons proliferation by harmonizing national ex-
10 port controls on precursor chemicals for chemical
11 weapons, biological weapons pathogens, and dual-use
12 equipment, sharing information on target countries,
13 and seeking other ways to curb the use of chemical
14 weapons and biological weapons.

15 (2) BIOLOGICAL WEAPON.—The term “biologi-
16 cal weapon” means the following, together or sepa-
17 rately:

18 (A) Any micro-organism (including bac-
19 teria, viruses, fungi, rickettsiae or protozoa),
20 pathogen, or infectious substance, or any natu-
21 rally occurring, bio-engineered or synthesized
22 component of any such micro-organism, patho-
23 gen, or infectious substance, whatever its origin
24 or method of production, capable of causing—

1 (i) death, disease, or other biological
2 malfunction in a human, an animal, a
3 plant, or another living organism;

4 (ii) deterioration of food, water, equip-
5 ment, supplies, or materials of any kind; or

6 (iii) deleterious alteration of the envi-
7 ronment.

8 (B) Any munition or device specifically de-
9 signed to cause death or other harm through
10 the toxic properties of those biological weapons
11 specified in subparagraph (A), which would be
12 released as a result of the employment of such
13 munition or device.

14 (C) Any equipment specifically designed
15 for use directly in connection with the employ-
16 ment of munitions or devices specified in this
17 section.

18 (D) Any living organism specifically de-
19 signed to carry a biological weapon specified in
20 subparagraph (A) to a host.

21 (3) CHEMICAL WEAPON.—The term “chemical
22 weapon” means the following, together or separately:

23 (A) Any of the following chemical agents:
24 tabun, Sarin, Soman, GF, VX, sulfur mustard,
25 nitrogen mustard, phosgene oxime, lewisite,

1 phenyldichloroarsine, ethyldichloroarsine,
2 methyldichloroarsine, phosgene, diphosgene, hy-
3 drogen cyanide, cyanogen chloride, and arsine.

4 (B) Any of the 54 chemicals other than a
5 riot control agent that is controlled by the Aus-
6 tralia Group as of the date of the enactment of
7 this Act.

8 (C) Any munition or device specifically de-
9 signed to cause death or other harm through
10 the toxic properties of a chemical weapon speci-
11 fied in subparagraph (A) or (B), which would
12 be released as a result of the employment of
13 such munition or device.

14 (D) Any equipment specifically designed
15 for use directly in connection with the employ-
16 ment of munitions or devices specified in this
17 section.

18 (4) KNOWINGLY.—The term “knowingly” is
19 used within the meaning of “knows” as that term is
20 defined in section 104 of the Foreign Corrupt Prac-
21 tices Act of 1977 (15 U.S.C. 78dd–2) and includes
22 situations in which a person has reason to know.

23 (5) NATIONAL OF THE UNITED STATES.—The
24 term “national of the United States” has the same
25 meaning given such term in section 101(a)(22) of

1 the Immigration and Nationality Act (8 U.S.C.
2 1101(a)(22)).

3 (6) PERSON.—The term “person” means any
4 individual, corporation, partnership, firm, associa-
5 tion, or other legal entity.

6 (7) PURPOSE NOT PROHIBITED UNDER THIS
7 ACT.—The term “purpose not prohibited under this
8 Act” means—

9 (A) any industrial, agricultural, research,
10 medical, pharmaceutical, or other peaceful pur-
11 pose;

12 (B) any protective purpose, namely any
13 purpose directly related to protection against a
14 chemical or biological weapon;

15 (C) any military purpose that is not con-
16 nected with the use of a chemical or biological
17 weapon or that is not dependent on the use of
18 the toxic properties of the chemical or biological
19 weapon to cause death or other harm; or

20 (D) any law enforcement purpose, includ-
21 ing any domestic riot control purpose.

22 (8) RIOT CONTROL AGENT.—The term “riot
23 control agent” means any substance, including
24 diphenylchloroarsine, diphenylcyanoarsine, adamsite,
25 chloroacetophenone, chloropicrin, bromobenzyl cya-

1 nide, 0-chlorobenzylidene malononitrile, or 3-
2 Quinuclidinyl benzilate, that is designed or used to
3 produce rapidly in humans any nonlethal sensory ir-
4 ritation or disabling physical effect that disappears
5 within a short time following termination of expo-
6 sure.

7 (9) UNITED STATES.—The term “United
8 States” means the several States of the United
9 States, the District of Columbia, and the common-
10 wealths, territories, and possessions of the United
11 States and includes all places under the jurisdiction
12 or control of the United States, including—

13 (A) any of the places within the provisions
14 of section 101(41) of the Federal Aviation Act
15 of 1958, as amended (49 U.S.C. App. sec.
16 1301(41));

17 (B) any public aircraft or civil aircraft of
18 the United States, as such terms are defined in
19 sections 101 (36) and (18) of the Federal Avia-
20 tion Act of 1958, as amended (49 U.S.C. App.
21 secs. 1301(36) and 1301(18)); and

22 (C) any vessel of the United States, as
23 such term is defined in section 3(b) of the Mar-
24 itime Drug Enforcement Act, as amended (46
25 U.S.C., App. sec. 1903(b)).

1 **TITLE I—PENALTIES FOR UN-**
 2 **LAWFUL ACTIVITIES WITHIN**
 3 **THE UNITED STATES OR BY**
 4 **UNITED STATES NATIONALS**
 5 **ABROAD**

6 **Subtitle A—Criminal Penalties**

7 **SEC. 101. CRIMINAL PROVISIONS.**

8 (a) IN GENERAL.—Part I of title 18, United States
 9 Code, is amended by inserting after chapter 11A the fol-
 10 lowing new chapter:

11 **“CHAPTER 11B—CHEMICAL AND**
 12 **BIOLOGICAL WEAPONS**

“Sec.

“229. Penalties and prohibitions with respect to chemical and biological weap-
 ons.

“229A. Seizure, forfeiture, and destruction.

“229B. Other prohibitions.

“229C. Injunctions.

“229D. Requests for military assistance to enforce prohibition in certain emer-
 gencies.

“229E. Definitions.

13 **“§ 229. Penalties and prohibitions with respect to**
 14 **chemical and biological weapons**

15 “(a) IN GENERAL.—Except as provided in subsection
 16 (c), whoever knowingly develops, produces, otherwise ac-
 17 quires, receives from any person located outside the terri-
 18 tory of the United States, stockpiles, retains, directly or
 19 indirectly transfers, uses, owns, or possesses any chemical
 20 weapon or any biological weapon, or knowingly assists, en-
 21 courages or induces, in any way, any person to do so, or

1 attempt or conspire to do so, shall be fined under this title
2 or imprisoned for life or any term of years or both, un-
3 less—

4 “(1) the chemical weapon or biological weapon
5 is intended for a purpose not prohibited under this
6 Act;

7 “(2) the types and quantities of chemical weap-
8 ons or biological weapons are strictly limited to those
9 that can be justified for such purposes; and

10 “(3) the amount of such chemical weapons or
11 biological weapons per person at any given time does
12 not exceed a quantity that under the circumstances
13 is inconsistent with the purposes not prohibited
14 under this Act.

15 “(b) DEATH PENALTY.—Any person who knowingly
16 uses chemical or biological weapons in violation of sub-
17 section (a) and by whose action the death of another per-
18 son is the result shall be punished by death or imprisoned
19 for life.

20 “(c) EXCLUSION.—

21 “(1) IN GENERAL.—Subsection (a) does not
22 apply to the retention, ownership, or possession of a
23 chemical weapon or a biological weapon by an agen-
24 cy of the United States or a person described in
25 paragraph (2) pending destruction of the weapon.

1 “(2) COVERED PERSONS.—A person referred to
2 in paragraph (1) is a member of the Armed Forces
3 of the United States or any other person if the per-
4 son is authorized by the head of an agency of the
5 United States to retain, own, or possess the chemical
6 or biological weapon.

7 “(d) JURISDICTION.—Conduct prohibited by sub-
8 section (a) is within the jurisdiction of the United States
9 if the prohibited conduct—

10 “(1) takes place in the United States; or

11 “(2) takes place outside of the United States
12 and is committed by a national of the United States.

13 “(e) REIMBURSEMENT OF COSTS.—The court shall
14 order any person convicted of an offense under this section
15 to reimburse the United States for any expenses incurred
16 by the United States incident to the seizure, storage, han-
17 dling, transportation, and destruction or other disposition
18 of any property that was seized in connection with an in-
19 vestigation of the commission of the offense by that per-
20 son. A person ordered to reimburse the United States for
21 expenses under this subsection shall be jointly and sever-
22 ally liable for such expenses with each other person, if any,
23 who is ordered under this subsection to reimburse the
24 United States for the same expenses.

1 **“§ 229A. Seizure, forfeiture, and destruction**

2 “(a) SEIZURE.—

3 “(1) SEIZURES ON WARRANTS.—The Attorney
4 General may request the issuance, in the same man-
5 ner as provided for a search warrant, of a warrant
6 authorizing the seizure of any chemical weapon or
7 any biological weapon that is of a type or quantity
8 that, under the circumstances, is inconsistent with
9 the purposes not prohibited under this Act.

10 “(2) WARRANTLESS SEIZURES.—In exigent cir-
11 cumstances, seizure and destruction of any such
12 chemical weapon or biological weapon described in
13 paragraph (1) may be made by the Attorney General
14 upon probable cause without the necessity for a war-
15 rant.

16 “(b) PROCEDURE FOR FORFEITURE AND DESTRUC-
17 TION.—

18 “(1) IN GENERAL.—Except as provided in sub-
19 section (a)(2), property seized pursuant to sub-
20 section (a) shall be forfeited to the United States
21 after notice to potential claimants and an oppor-
22 tunity for a hearing.

23 “(2) BURDEN OF PERSUASION.—At such a
24 hearing, the United States shall bear the burden of
25 persuasion by a preponderance of the evidence.

1 “(3) PROCEDURES.—The provisions of chapter
2 46 of this title relating to civil forfeitures shall apply
3 to a seizure or forfeiture under this section except
4 to the extent (if any) that such provisions are incon-
5 sistent with this section.

6 “(4) DESTRUCTION OR OTHER DISPOSITION.—
7 The Attorney General shall provide for the destruc-
8 tion or other appropriate disposition of any chemical
9 or biological weapon seized and forfeited pursuant to
10 this section.

11 “(c) OTHER SEIZURE, FORFEITURE, AND DESTRUC-
12 TION.—

13 “(1) SEIZURES ON WARRANT.—The Attorney
14 General may request the issuance, in the same man-
15 ner as provided for a search warrant, of a warrant
16 authorizing the seizure of any chemical weapon or
17 biological weapon that exists by reason of conduct
18 prohibited under section 229 of this title.

19 “(2) WARRANTLESS SEIZURES.—In exigent cir-
20 cumstances, seizure and destruction of any such
21 chemical weapon or biological weapon described in
22 paragraph (1) may be made by the Attorney General
23 upon probable cause without the necessity for a war-
24 rant.

1 “(3) FORFEITURE AND DESTRUCTION.—Prop-
2 erty seized pursuant to this subsection shall be sum-
3 marily forfeited (within the meaning of section
4 609(b) of the Tariff Act of 1930) to the United
5 States and destroyed.

6 “(d) ASSISTANCE.—The Attorney General may re-
7 quest the head of any agency of the United States to assist
8 in the handling, storage, transportation, or destruction of
9 property seized under this section.

10 “(e) OWNER OR POSSESSOR LIABILITY.—The owner
11 or possessor of any property seized under this section shall
12 be jointly and severally liable to the United States in an
13 action for money damages for any expenses incurred by
14 the United States incident to the seizure, including any
15 expenses relating to the handling, storage, transportation,
16 destruction or other disposition of the seized property.

17 **“§ 229B. Other prohibitions**

18 “(a) IN GENERAL.—Whoever knowingly uses riot
19 control agents as an act of terrorism, or knowingly assists
20 any person to do so, shall be fined under this title or im-
21 prisoned for a term of not more than 10 years, or both.

22 “(b) JURISDICTION.—Conduct prohibited by this sec-
23 tion is within the jurisdiction of the United States if the
24 prohibited conduct—

25 “(1) takes place in the United States; or

1 weapons proliferation by harmonizing national ex-
2 port controls on precursor chemicals for chemical
3 weapons, biological weapons pathogens, and dual-use
4 equipment, sharing information on target countries,
5 and seeking other ways to curb the use of chemical
6 and biological weapons.

7 “(2) BIOLOGICAL WEAPON.—The term ‘biologi-
8 cal weapon’ means the following, together or sepa-
9 rately:

10 “(A) Any micro-organism (including bac-
11 teria, viruses, fungi, rickettsiae or protozoa),
12 pathogen, or infectious substance, or any natu-
13 rally occurring, bio-engineered or synthesized
14 component of any such micro-organism, patho-
15 gen, or infectious substance, whatever its origin
16 or method of production, capable of causing—

17 “(i) death, disease, or other biological
18 malfunction in a human, an animal, a
19 plant, or another living organism;

20 “(ii) deterioration of food, water,
21 equipment, supplies, or materials of any
22 kind; or

23 “(iii) deleterious alteration of the en-
24 vironment.

1 “(B) Any munition or device specifically
2 designed to cause death or other harm through
3 the toxic properties of those biological weapons
4 specified in subparagraph (A), which would be
5 released as a result of the employment of such
6 munition or device.

7 “(C) Any equipment specifically designed
8 for use directly in connection with the employ-
9 ment of munitions or devices specified in this
10 section.

11 “(D) Any living organism specifically de-
12 signed to carry a biological weapon specified in
13 subparagraph (A) to a host.

14 “(3) CHEMICAL WEAPON.—The term ‘chemical
15 weapon’ means the following, together or separately:

16 “(A) Any of the following chemical agents:
17 tabun, Sarin, Soman, GF, VX, sulfur mustard,
18 nitrogen mustard, phosgene oxime, lewisite,
19 phenyldichloroarsine, ethyldichloroarsine,
20 methyldichloroarsine, phosgene, diphosgene, hy-
21 drogen cyanide, cyanogen chloride, and arsine.

22 “(B) Any of the 54 chemicals, other than
23 a riot control agent, controlled by the Australia
24 Group as of the date of the enactment of this
25 Act.

1 “(C) Any munition or device specifically
2 designed to cause death or other harm through
3 the toxic properties of a chemical weapon speci-
4 fied in subparagraph (A) or (B), which would
5 be released as a result of the employment of
6 such munition or device.

7 “(D) Any equipment specifically designed
8 for use directly in connection with the employ-
9 ment of munitions or devices specified in this
10 section.

11 “(4) KNOWINGLY.—The term ‘knowingly’ is
12 used within the meaning of ‘knows’ as that term is
13 defined in section 104 of the Foreign Corrupt Prac-
14 tices Act of 1977 (15 U.S.C. 78dd–2) and includes
15 situations in which a person has reason to know.

16 “(5) NATIONAL OF THE UNITED STATES.—The
17 term ‘national of the United States’ has the same
18 meaning given such term in section 101(a)(22) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1101(a)(22)).

21 “(6) PERSON.—The term ‘person’ means any
22 individual, corporation, partnership, firm, associa-
23 tion, or other legal entity.

1 “(7) PURPOSE NOT PROHIBITED UNDER THE
2 ACT.—The term ‘purpose not prohibited under this
3 Act’ means—

4 “(A) any industrial, agricultural, research,
5 medical, pharmaceutical, or other peaceful pur-
6 pose;

7 “(B) any protective purpose, namely any
8 purpose directly related to protection against a
9 chemical or biological weapon;

10 “(C) any military purpose that is not con-
11 nected with the use of a chemical or biological
12 weapon or that is not dependent on the use of
13 the toxic properties of the chemical or biological
14 weapon to cause death or other harm; or

15 “(D) any law enforcement purpose, includ-
16 ing any domestic riot control purpose.

17 “(8) RIOT CONTROL AGENT.—The term ‘riot
18 control agent’ means any substance, including
19 diphenylchloroarsine, diphenylcyanoarsine, adamsite,
20 chloroacetophenone, chloropicrin, bromobenzyl cya-
21 nide, 0-chlorobenzylidene malonitrile, or 3-
22 Quinuclidinyl benzilate that is designed or used to
23 produce rapidly in humans any nonlethal sensory ir-
24 ritation or disabling physical effect that disappears

1 within a short time following termination of expo-
2 sure.

3 “(9) **TERRORISM.**—The term ‘terrorism’ means
4 activities that—

5 “(A) involve violent acts or acts dangerous
6 to human life that are a violation of the crimi-
7 nal laws of the United States or of any State,
8 or that would be a criminal violation if commit-
9 ted within the jurisdiction of the United States
10 or of any State; and

11 “(B) appear to be intended—

12 “(i) to intimidate or coerce a civilian
13 population;

14 “(ii) to influence the policy of a gov-
15 ernment by intimidation or coercion; or

16 “(iii) to affect the conduct of a gov-
17 ernment by assassination or kidnapping.

18 “(10) **UNITED STATES.**—The term ‘United
19 States’ means the several States of the United
20 States, the District of Columbia, and the common-
21 wealths, territories, and possessions of the United
22 States and includes all places under the jurisdiction
23 or control of the United States, including—

1 “(A) any of the places within the provi-
2 sions of section 40102(41) of title 49, United
3 States Code;

4 “(B) any civil aircraft or public aircraft of
5 the United States, as such terms are defined in
6 paragraphs (16) and (37), respectively, of sec-
7 tion 40102 of title 49, United States Code; and

8 “(C) any vessel of the United States, as
9 such term is defined in section 3(b) of the Mar-
10 itime Drug Law Enforcement Act (46 U.S.C.
11 App. 1903(b)).”.

12 (b) CONFORMING AMENDMENT.—The table of chap-
13 ters for part I of title 18, United States Code, is amend-
14 ed—

15 (1) by striking the item relating to chapter 10;

16 and

17 (2) by inserting after the item for chapter 11A

18 the following new item:

“11B. Chemical and Biological Weapons 229”.

19 (c) REPEALS.—The following provisions of law are
20 repealed:

21 (1) Chapter 10 of title 18, United States Code,
22 relating to biological weapons.

23 (2) Section 2332c of title 18, United States
24 Code, relating to chemical weapons.

1 (3) In the table of sections for chapter 113B of
2 title 18, United States Code, the item relating to
3 section 2332c.

4 **Subtitle B—Civil Penalties**

5 **SEC. 111. DESIGNATION OF LEAD AGENCY.**

6 The President shall designate the Federal Bureau of
7 Investigation as the agency primarily responsible for im-
8 plementing the provisions of this subtitle (in this subtitle
9 referred to as the “Lead Agency”).

10 **SEC. 112. PROHIBITIONS ON CHEMICAL AND BIOLOGICAL** 11 **WEAPONS-RELATED ACTIVITIES.**

12 (a) CHEMICAL AND BIOLOGICAL WEAPONS ACTIVI-
13 TIES.—Except as provided in subsection (b), it shall be
14 unlawful for any person located in the United States, or
15 any national of the United States located outside the Unit-
16 ed States, to develop, produce, otherwise acquire, receive
17 from any person located outside the territory of the United
18 States, stockpile, retain, directly or indirectly transfer,
19 use, own, or possess any chemical weapon or any biological
20 weapon, or to assist, encourage or induce, in any way, any
21 person to do so, or attempt or conspire to do so, unless—

22 (1) the chemical weapon or biological weapon is
23 intended for a purpose not prohibited under this
24 Act;

1 (2) the types and quantities of the chemical
2 weapon or biological weapon are strictly limited to
3 those that can be justified for such purpose; and

4 (3) the amount of the chemical weapon or bio-
5 logical weapon per person at any given time does not
6 exceed a quantity that under the circumstances is
7 inconsistent with the purposes not prohibited under
8 this Act.

9 (b) EXCLUSION.—

10 (1) IN GENERAL.—Subsection (a) does not
11 apply to the retention, ownership, or possession of a
12 chemical weapon or a biological weapon by an agen-
13 cy of the United States or a person described in
14 paragraph (2) pending destruction of the weapon.

15 (2) COVERED PERSONS.—A person referred to
16 in paragraph (1) is a member of the Armed Forces
17 of the United States or any other person if the per-
18 son is authorized by the head of an agency of the
19 United States to retain, own, or possess the chemical
20 weapon.

21 (c) JURISDICTION.—Conduct prohibited by sub-
22 section (a) is within the jurisdiction of the United States
23 if the prohibited conduct—

24 (1) takes place in the United States; or

1 (2) takes place outside of the United States and
2 is committed by a national of the United States.

3 **SEC. 113. CIVIL PENALTIES.**

4 (a) **PENALTY AMOUNT.**—Any person that is deter-
5 mined, in accordance with subsection (b), to have violated
6 section 112(a) of this Act shall be required by order to
7 pay a civil penalty in an amount not to exceed \$100,000
8 for each such violation.

9 (b) **HEARING.**—

10 (1) **IN GENERAL.**—Before imposing an order
11 described in subsection (a) against a person under
12 this subsection for a violation of section 112(a), the
13 head of the Lead Agency shall provide the person or
14 entity with notice and, upon request made within 15
15 days of the date of the notice, a hearing respecting
16 the violation.

17 (2) **CONDUCT OF HEARING.**—Any hearing so
18 requested shall be conducted before an administra-
19 tive law judge. The hearing shall be conducted in ac-
20 cordance with the requirements of section 554 of
21 title 5, United States Code. If no hearing is so re-
22 quested, the Attorney General's imposition of the
23 order shall constitute a final and unappealable order.

24 (3) **ISSUANCE OF ORDERS.**—If the administra-
25 tive law judge determines, upon the preponderance

1 of the evidence received, that a person named in the
2 complaint has violated section 102, the administra-
3 tive law judge shall state his findings of fact and
4 issue and cause to be served on such person an
5 order described in subsection (a).

6 (4) FACTORS FOR DETERMINATION OF PEN-
7 ALTY AMOUNTS.—In determining the amount of any
8 civil penalty, the administrative law judge shall take
9 into account the nature, circumstances, extent, and
10 gravity of the violation or violations and, with re-
11 spect to the violator, the ability to pay, effect on
12 ability to continue to do business, any history of
13 prior such violations, the degree of culpability, the
14 existence of an internal compliance program, and
15 such other matters as justice may require.

16 (c) ADMINISTRATIVE APPELLATE REVIEW.—The de-
17 cision and order of an administrative law judge shall be-
18 come the final agency decision and order of the head of
19 the Lead Agency unless, within 30 days, the head of the
20 Lead Agency modifies or vacates the decision and order,
21 with or without conditions, in which case the decision and
22 order of the head of the Lead Agency shall become a final
23 order under this subsection. The head of the Lead Agency
24 may not delegate his authority under this paragraph.

1 (d) OFFSETS.—The amount of the civil penalty under
2 a final order of the Lead Agency may be deducted from
3 any sums owed by the United States to the person.

4 (e) JUDICIAL REVIEW.—A person adversely affected
5 by a final order respecting an assessment may, within 30
6 days after the date the final order is issued, file a petition
7 in the Court of Appeals for the appropriate circuit for re-
8 view of the order.

9 (f) ENFORCEMENT OF ORDERS.—If a person fails to
10 comply with a final order issued under this subsection
11 against the person and if the person does not file a peti-
12 tion for judicial review under subsection (e), the Attorney
13 General shall file a suit to seek compliance with the order
14 in any appropriate district court of the United States, plus
15 interest at currently prevailing rates calculated from the
16 date of expiration of the 30-day period referred to in sub-
17 section (e) or the date of such final judgment, as the case
18 may be. In any such suit, the validity and appropriateness
19 of the final order shall not be subject to review.

20 **SEC. 114. REGULATORY AUTHORITY; APPLICATION OF**
21 **OTHER LAWS.**

22 (a) REGULATIONS.—The Lead Agency may issue
23 such regulations as are necessary to implement and en-
24 force this subtitle and to amend or revise such regulations
25 as necessary if such Executive orders, directives, or regu-

1 lations do not require any person to submit information
2 or data on any plant site, plant, chemical weapon, or bio-
3 logical weapon that such person produces, processes, or
4 consumes for purposes not prohibited by this Act.

5 (b) ENFORCEMENT.—The Lead Agency may des-
6 ignate its officers or employees to conduct investigations
7 pursuant to this Act. In conducting such investigations,
8 those officers or employees may, to the extent necessary
9 or appropriate for the enforcement of this subtitle, or for
10 the imposition of any penalty or liability arising under this
11 subtitle, exercise such authorities as are conferred upon
12 them by other laws of the United States.

13 **Subtitle C—Other Penalties**

14 **SEC. 121. REVOCATIONS OF EXPORT PRIVILEGES.**

15 (a) IN GENERAL.—If the President determines, after
16 notice and an opportunity for a hearing in accordance with
17 section 554 of title 5, United States Code, that any person
18 within the United States, or any national of the United
19 States located outside the United States, has committed
20 any violation of section 112, the President may issue an
21 order for the suspension or revocation of the authority of
22 the person to export from the United States any goods
23 or technology (as such terms are defined in section 16 of
24 the Export Administration Act of 1979 (50 U.S.C. app.
25 2415)).

1 (b) REPEAL.—Section 11C of the Export Administra-
2 tion Act of 1979 (50 U.S.C. app. 2410c), relating to chem-
3 ical and biological weapons proliferation sanctions, is re-
4 pealed.

5 **SEC. 122. SUSPENSION OF PATENT RIGHTS.**

6 (a) SUSPENSION.—The term of any patent granted
7 pursuant to title 35, United States Code, held by any per-
8 son, including any subsidiary of such person, who know-
9 ingly violates any provision of section 112 of this Act shall
10 be suspended for a period of three years.

11 (b) EFFECT ON PATENT RIGHTS.—

12 (1) PROHIBITION.—No rights under title 35,
13 United States Code, shall be derived from any pat-
14 ent described in subsection (a) during the period of
15 any such suspension.

16 (2) NO EXTENSION OF PATENT TERM.—Any
17 suspension of patent rights imposed pursuant to the
18 provisions of this section shall not extend the term
19 of any such patent.

20 (c) PROCEDURES.—

21 (1) DETERMINATION BY THE COMMISSIONER.—
22 Within 30 days after the date of enactment of this
23 Act, the Commissioner of Patents, after a deter-
24 mination has been made regarding which person or
25 persons have violated section 112 of this Act, shall

1 recommend the suspension of the appropriate pat-
2 ents.

3 (2) NOTICES OF VIOLATIONS.—The Commis-
4 sioner shall notify the holder of such patent within
5 30 days after the date of such determination and
6 shall publish in the Federal Register a notice of such
7 determination, together with the factual and legal
8 basis for such determination.

9 (3) HEARINGS.—Any interested person may re-
10 quest, within the 60-day period beginning on the
11 date of publication of a determination, that the
12 Commissioner making the determination hold a
13 hearing on such determination. Such a hearing shall
14 be an informal hearing which is not subject to sec-
15 tion 554, 556, or 557 of title 5, United States Code.
16 If such a request is made within such period, the
17 Commissioner shall hold such hearing not later than
18 30 days after the date of the request, or at the re-
19 quest of the person making the request, not later
20 than 60 days after such date. The Commissioner
21 who is holding the hearing shall provide notice of the
22 hearing to the person involved and to any interested
23 person and provide the owner of record of the patent
24 and any interested person an opportunity to partici-
25 pate in the hearing.

1 (4) FINAL DETERMINATIONS.—Within 30 days
2 after the completion of the hearing, the Commis-
3 sioner shall affirm or revise the determination that
4 was the subject of the hearing and shall publish such
5 affirmation or revision in the Federal Register.

6 (d) FEES.—The Commissioner may establish such
7 fees as are appropriate to cover the costs of carrying out
8 his duties and functions under this section.

9 (e) CERTIFICATE OF SUSPENSION.—The Commis-
10 sioner shall make the determination that a patent is sus-
11 pended and that the requirements of subsection (c) have
12 been complied with. If the Commissioner determines that
13 the patent is suspended, the Commissioner shall issue to
14 the owner of record of the patent a certificate of suspen-
15 sion, under seal, stating the length of the suspension, and
16 identifying the product and the statute under which regu-
17 latory review occurred. Such certificate shall be recorded
18 in the official file of the patent and shall be considered
19 as part of the original patent. The Commissioner shall
20 publish in the Official Gazette of the Patent and Trade-
21 mark Office a notice of such suspension.

1 **TITLE II—FOREIGN RELATIONS**
2 **AND DEFENSE-RELATED PRO-**
3 **VISIONS**

4 **SEC. 201. SANCTIONS FOR USE OF CHEMICAL OR BIOLOGI-**
5 **CAL WEAPONS.**

6 (a) IN GENERAL.—The Arms Export Control Act (22
7 U.S.C. 2751 et seq.) is amended by striking chapter 8 and
8 inserting the following:

9 **“CHAPTER 8—SANCTIONS AGAINST USE**
10 **OF CHEMICAL OR BIOLOGICAL WEAPONS**

11 **“SEC. 81. PURPOSE.**

12 “The purpose of this chapter is—

13 “(1) to provide for the imposition of sanctions
14 against any foreign government—

15 “(A) that uses chemical or biological weap-
16 ons in violation of international law; or

17 “(B) that has used chemical or biological
18 weapons against its own nationals; and

19 “(2) to ensure that the victims of the use of
20 chemical or biological weapons shall be compensated
21 and awarded punitive damages, as may be deter-
22 mined by courts in the United States.

23 **“SEC. 82. PRESIDENTIAL DETERMINATION.**

24 “(a) BILATERAL SANCTIONS.—Except as provided in
25 subsections (c) and (d), the President shall, after the con-

1 sultation with Congress, impose the sanctions described in
2 subsections (a) and (b) of section 83 if the President de-
3 termines that any foreign government—

4 “(1) has used a chemical weapon or biological
5 weapon in violation of international law; or

6 “(2) has used a chemical weapon or biological
7 weapon against its own nationals.

8 “(b) MULTILATERAL SANCTIONS.—The sanctions
9 imposed pursuant to subsection (a) are in addition to any
10 multilateral sanction or measure that may be otherwise
11 agreed.

12 “(c) PRESIDENTIAL WAIVER.—The President may
13 waive the application of any of the sanctions imposed pur-
14 suant to subsection (a) if the President determines and
15 certifies in writing to the Speaker of the House of Rep-
16 resentatives and the Committee on Foreign Relations of
17 the Senate that implementing such measures would have
18 a substantial negative impact upon the supreme national
19 interests of the United States.

20 “(d) SANCTIONS NOT APPLIED TO CERTAIN EXIST-
21 ING CONTRACTS.—A sanction described in section 83 shall
22 not apply to any activity pursuant to a contract or inter-
23 national agreement entered into before the date of the
24 Presidential determination under subsection (a) if the
25 President determines that performance of the activity

1 would reduce the potential for the use of a chemical weap-
2 on or biological weapon by the sanctioned country.

3 **“SEC. 83. MANDATORY SANCTIONS.**

4 “(a) **MINIMUM NUMBER OF SANCTIONS.**—After con-
5 sultation with Congress and making a determination
6 under section 82 with respect to the actions of a foreign
7 government, the President shall impose not less than 5
8 of the following sanctions against that government for a
9 period of three years:

10 “(1) **FOREIGN ASSISTANCE.**—The United
11 States Government shall terminate assistance under
12 the Foreign Assistance Act of 1961, except for ur-
13 gent humanitarian assistance and food or other agri-
14 cultural commodities or products.

15 “(2) **ARMS SALES.**—The United States Govern-
16 ment shall not sell any item on the United States
17 Munitions List and shall terminate sales to that
18 country under this Act of any defense articles, de-
19 fense services, or design and construction services.
20 Licenses shall not be issued for the export to the
21 sanctioned country of any item on the United States
22 Munitions List, or for commercial satellites.

23 “(3) **ARMS SALE FINANCING.**—The United
24 States Government shall terminate all foreign mili-
25 tary financing under this Act.

1 “(4) DENIAL OF UNITED STATES GOVERNMENT
2 CREDIT OR OTHER FINANCIAL ASSISTANCE.—The
3 United States Government shall deny any credit,
4 credit guarantees, or other financial assistance by
5 any department, agency, or instrumentality of the
6 United States Government, including the Export-Im-
7 port Bank of the United States.

8 “(5) EXPORT CONTROLS.—The authorities of
9 section 6 of the Export Administration Act of 1979
10 shall be used to prohibit the export of any goods or
11 technology on that part of the control list established
12 under section 5(c)(1) of that Act, and all other
13 goods and technology under this Act (excluding food
14 and other agricultural commodities and products) as
15 the President may determine to be appropriate.

16 “(6) IMPORT RESTRICTIONS.—The President
17 shall issue an order imposing restrictions on the im-
18 portation into the United States of any service,
19 good, or commodity that is the growth, product, or
20 manufacture of that country.

21 “(7) MULTILATERAL BANK ASSISTANCE.—The
22 United States shall oppose, in accordance with sec-
23 tion 701 of the International Financial Institutions
24 Act, the extension of any loan or financial or tech-

1 nical assistance by international financial institu-
2 tions.

3 “(8) BANK LOANS.—The United States Govern-
4 ment shall prohibit any United States bank from
5 making any loan or providing any credit, including
6 to any agency or instrumentality of the government,
7 except for loans or credits for the purpose of pur-
8 chasing food or other agricultural commodities or
9 products.

10 “(9) AVIATION RIGHTS.—

11 “(A) IN GENERAL.—

12 “(i) NOTIFICATION.—The President is
13 authorized to notify the government of a
14 country with respect to which the Presi-
15 dent has made a determination pursuant
16 to section 82(a) of his intention to suspend
17 the authority of foreign air carriers owned
18 or controlled by the government of that
19 country to engage in foreign air transpor-
20 tation to or from the United States.

21 “(ii) SUSPENSION OF AVIATION
22 RIGHTS.—Within 10 days after the date of
23 notification of a government under sub-
24 clause (I), the Secretary of Transportation
25 shall take all steps necessary to suspend at

1 the earliest possible date the authority of
2 any foreign air carrier owned or controlled,
3 directly or indirectly, by that government
4 to engage in foreign air transportation to
5 or from the United States, notwithstanding
6 any agreement relating to air services.

7 “(B) TERMINATION OF AIR SERVICE
8 AGREEMENTS.—

9 “(i) IN GENERAL.—The President
10 may direct the Secretary of State to termi-
11 nate any air service agreement between the
12 United States and a country with respect
13 to which the President has made a deter-
14 mination pursuant to section 82(a), in ac-
15 cordance with the provisions of that agree-
16 ment.

17 “(ii) TERMINATION OF AVIATION
18 RIGHTS.—Upon termination of an agree-
19 ment under this clause, the Secretary of
20 Transportation shall take such steps as
21 may be necessary to revoke at the earliest
22 possible date the right of any foreign air
23 carrier owned, or controlled, directly or in-
24 directly, by the government of that country

1 to engage in foreign air transportation to
2 or from the United States.

3 “(C) EXCEPTION.—The Secretary of
4 Transportation may provide for such exceptions
5 from the sanction contained in subparagraph
6 (A) as the Secretary considers necessary to pro-
7 vide for emergencies in which the safety of an
8 aircraft or its crew or passengers is threatened.

9 “(D) DEFINITIONS.—For purposes of this
10 paragraph, the terms ‘aircraft’, ‘air transpor-
11 tation’, and ‘foreign air carrier’ have the mean-
12 ings given those terms in section 40102 of title
13 49, United States Code.

14 “(10) DIPLOMATIC RELATIONS.—The President
15 shall use his constitutional authorities to downgrade
16 or suspend diplomatic privileges between the United
17 States and that country.

18 “(b) BLOCKING OF ASSETS.—Upon making a deter-
19 mination under section 82, the President shall take all
20 steps necessary to block any transactions in any property
21 subject to the jurisdiction of the United States in which
22 the foreign country or any national thereof has any inter-
23 est whatsoever, for the purpose of compensating the vic-
24 tims of the chemical or biological weapons use and for pu-
25 nitive damages as may be assessed.

1 “(c) STATUTORY CONSTRUCTION.—Nothing in this
2 section limits the authority of the President to impose a
3 sanction that is not specified in this section.

4 **“SEC. 84. REMOVAL OF SANCTIONS.**

5 “(a) CERTIFICATION REQUIREMENT.—The President
6 shall remove the sanctions imposed with respect to a for-
7 eign government pursuant to this section if the President
8 determines and so certifies to the Congress, after the end
9 of the three-year period beginning on the date on which
10 sanctions were initially imposed on that country pursuant
11 to section 82, that—

12 “(1) the government of that country has pro-
13 vided reliable assurances that it will not use any
14 chemical weapon or biological weapon in violation of
15 international law and will not use any chemical
16 weapon or biological weapon against its own nation-
17 als;

18 “(2) the government of the country is willing to
19 accept onsite inspections or other reliable measures
20 to verify that the government is not making prepara-
21 tions to use any chemical weapon or biological weap-
22 on in violation of international law or to use any
23 chemical weapon or biological weapon against its
24 own nationals; and

1 of the suspected use of chemical or biological weap-
2 ons, including any determination by the President
3 made under section 82 with respect to a foreign gov-
4 ernment; and

5 “(2) a description of the actions the President
6 intends to take pursuant to the assessment, includ-
7 ing the imposition of any sanctions or other meas-
8 ures pursuant to section 82.

9 “(c) PROGRESS REPORT.—Not later than 60 days
10 after submission of a report under subsection (b), the
11 President shall submit a progress report to Congress de-
12 scribing actions undertaken by the President under this
13 chapter, including the imposition of unilateral and multi-
14 lateral sanctions and other punitive measures, in response
15 to the use of any chemical weapon or biological weapon
16 described in the report.

17 “(d) RECIPIENTS OF NOTIFICATIONS AND RE-
18 PORTS.—Any notification or report required by this sec-
19 tion shall be submitted to the following:

20 “(1) The Majority Leader of the Senate and
21 the Speaker of the House of Representatives.

22 “(2) The Committee on Foreign Relations and
23 the Select Committee on Intelligence of the Senate.

1 “(3) The Committee on International Relations
2 and the Permanent Select Committee on Intelligence
3 of the House of Representatives.

4 **“SEC. 86. DEFINITIONS.**

5 “In this chapter:

6 “(1) BIOLOGICAL WEAPON.—The term ‘biologi-
7 cal weapon’ means the following, together or sepa-
8 rately:

9 “(A) Any micro-organism (including bac-
10 teria, viruses, fungi, rickettsiae or protozoa),
11 pathogen, or infectious substance, or any natu-
12 rally occurring, bio-engineered or synthesized
13 component of any such micro-organism, patho-
14 gen, or infectious substance, whatever its origin
15 or method of production, capable of causing—

16 “(i) death, disease, or other biological
17 malfunction in a human, an animal, a
18 plant, or another living organism;

19 “(ii) deterioration of food, water,
20 equipment, supplies, or materials of any
21 kind; or

22 “(iii) deleterious alteration of the en-
23 vironment.

24 “(B) Any munition or device specifically
25 designed to cause death or other harm through

1 the toxic properties of those biological weapons
2 specified in subparagraph (A), which would be
3 released as a result of the employment of such
4 munition or device.

5 “(C) Any equipment specifically designed
6 for use directly in connection with the employ-
7 ment of munitions or devices specified in this
8 section.

9 “(D) Any living organism specifically de-
10 signed to carry a biological weapon specified in
11 subparagraph (A) to a host.

12 “(2) CHEMICAL WEAPON.—The term ‘chemical
13 weapon’ means the following, together or separately:

14 “(A) Any of the following chemical agents:
15 tabun, Sarin, Soman, GF, VX, sulfur mustard,
16 nitrogen mustard, phosgene oxime, lewisite,
17 phenyldichloroarsine, ethyldichloroarsine,
18 methyldichloroarsine, phosgene, diphosgene, hy-
19 drogen cyanide, cyanogen chloride, and arsine.

20 “(B) Any of the 54 chemicals, other than
21 a riot control agent, controlled by the Australia
22 Group as of the date of the enactment of this
23 Act.

24 “(C) Any munition or device specifically
25 designed to cause death or other harm through

1 the toxic properties of a chemical weapon speci-
2 fied in subparagraph (A) or (B), which would
3 be released as a result of the employment of
4 such munition or device.

5 “(D) Any equipment specifically designed
6 for use directly in connection with the employ-
7 ment of munitions or devices specified in this
8 section.

9 “(3) PERSON.—The term ‘person’ means any
10 individual, corporation, partnership, firm, associa-
11 tion, or other legal entity.”.

12 (b) REPEAL.—Sections 306 through 308 of the Act
13 of December 4, 1991 (Public Law 102–182) are repealed.

14 **SEC. 202. CONTINUATION AND ENHANCEMENT OF MULTI-**
15 **LATERAL CONTROL REGIMES.**

16 (a) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that any collapse of the informal forum of states
18 known as the “Australia Group”, either through changes
19 in membership or lack of compliance with common export
20 controls, or any substantial weakening of common Aus-
21 tralia Group export controls and nonproliferation meas-
22 ures in force as of the date of enactment of this Act, would
23 seriously undermine international and national efforts to
24 curb the spread of chemical and biological weapons and
25 related equipment.

1 (b) POLICY.—It shall be the policy of the United
2 States—

3 (1) to continue close cooperation with other
4 countries in the Australia Group in support of its
5 current efforts and in devising additional means to
6 monitor and control the supply of chemicals and bio-
7 logical agents applicable to weapons production;

8 (2) to maintain an equivalent or more com-
9 prehensive level of control over the export of toxic
10 chemicals and their precursors, dual-use processing
11 equipment, human, animal and plant pathogens and
12 toxins with potential biological weapons application,
13 and dual-use biological equipment, as that afforded
14 by the Australia Group as of the date of enactment
15 of this Act;

16 (3) to block any effort by any Australia Group
17 member to achieve Australia Group consensus on
18 any action that would substantially weaken existing
19 common Australia Group export controls and non-
20 proliferation measures or otherwise undermine the
21 effectiveness of the Australia Group; and

22 (4) to work closely with other countries also ca-
23 pable of supplying equipment, materials, and tech-
24 nology with particular applicability to the production
25 of chemical or biological weapons in order to devise

1 and harmonize the most effective national controls
2 possible on the transfer of such materials, equip-
3 ment, and technology.

4 (c) CERTIFICATION.—Not later than 180 days after
5 the date of the enactment of this Act, and annually there-
6 after, the President shall determine and certify to Con-
7 gress whether—

8 (1) the Australia Group continues to maintain
9 an equivalent or more comprehensive level of control
10 over the export of toxic chemicals and their precur-
11 sors, dual-use processing equipment, human, animal,
12 and plant pathogens and toxins with potential bio-
13 logical weapons application, and dual-use biological
14 equipment, as that afforded by the Australia Group
15 as of the date of the last certification under this
16 subsection, or, in the case of the first certification,
17 the level of control maintained as of the date of en-
18 actment of this Act; and

19 (2) the Australia Group remains a viable mech-
20 anism for curtailing the spread of chemical and bio-
21 logical weapons-related materials and technology,
22 and whether the effectiveness of the Australia Group
23 has been undermined by changes in membership,
24 lack of compliance with common export controls, or
25 any weakening of common controls and measures

1 that are in effect as of the date of enactment of this
2 Act.

3 (d) CONSULTATIONS.—

4 (1) IN GENERAL.—The President shall consult
5 periodically, but not less frequently than twice a
6 year, with the Committee on Foreign Relations of
7 the Senate and the Committee on International Re-
8 lations of the House of Representatives, on Australia
9 Group export controls and nonproliferation meas-
10 ures.

11 (2) RESULTING FROM PRESIDENTIAL CERTIFI-
12 CATION.—If the President certifies that either of the
13 conditions in subsection (c) are not met, the Presi-
14 dent shall consult within 60 days of such certifi-
15 cation with the Committee on Foreign Relations of
16 the Senate and the Committee on International Re-
17 lations of the House of Representatives on steps the
18 United States should take to maintain effective
19 international controls on chemical and biological
20 weapons-related materials and technology.

21 **SEC. 203. CRITERIA FOR UNITED STATES ASSISTANCE TO**
22 **RUSSIA.**

23 (a) IN GENERAL.—Notwithstanding any other provi-
24 sion of law, United States assistance described in sub-
25 section (b) may not be provided to Russia unless the Presi-

1 dent determines and certifies to Congress not later than
2 180 days after the date of the enactment of this Act, and
3 on an annual basis thereafter, that—

4 (1) Russia is making reasonable progress in the
5 implementation of the Bilateral Destruction Agree-
6 ment;

7 (2) the United States and Russia have resolved,
8 to the satisfaction of the United States, outstanding
9 compliance issues under the Wyoming Memorandum
10 of Understanding and the Bilateral Destruction
11 Agreement;

12 (3) Russia has fully and accurately declared all
13 information regarding its unitary and binary chemi-
14 cal weapons, chemical weapons production facilities,
15 other facilities associated with the development of
16 chemical weapons, and riot control agents; and

17 (4) Russia is in compliance with its obligations
18 under the Biological Weapons Convention.

19 (b) UNITED STATES ASSISTANCE COVERED.—United
20 States assistance described in this subsection is United
21 States assistance provided only for the purposes of—

22 (1) facilitating the transport, storage, safe-
23 guarding, and elimination of any chemical weapon or
24 biological weapon or its delivery vehicle;

1 (2) preventing the proliferation of any chemical
2 weapon or biological weapon, any component or tech-
3 nology of such a weapon, or any technology or exper-
4 tise related to such a weapon;

5 (3) planning, designing, or construction of any
6 destruction facility for a chemical weapon or biologi-
7 cal weapon; or

8 (4) supporting any international science and
9 technology center.

10 (c) DEFINITIONS.—

11 (1) BILATERAL DESTRUCTION AGREEMENT.—

12 The term “Bilateral Destruction Agreement” means
13 Agreement Between the United States of America
14 and the Union of Soviet Socialist Republics on De-
15 struction and Nonproduction of Chemical Weapons
16 and on Measures to Facilitate the Multilateral Con-
17 vention on Banning Chemical Weapons, signed on
18 June 1, 1990.

19 (2) BIOLOGICAL WEAPONS CONVENTION.—The

20 term “Biological Weapons Convention” means the
21 Convention on the Prohibition of the Development,
22 Production and Stockpiling of Bacteriological (Bio-
23 logical) and Toxin Weapons and on Their Destruc-
24 tion, done at Washington, London, and Moscow on
25 April 10, 1972.

1 (3) WYOMING MEMORANDUM OF UNDERSTAND-
2 ING.—The term “Wyoming Memorandum of Under-
3 standing” means the Memorandum of Understand-
4 ing Between the Government of the United States of
5 America and the Government of the Union of Soviet
6 Socialist Republics Regarding a Bilateral Verifica-
7 tion Experiment and Data Exchange Related to Pro-
8 hibition on Chemical Weapons, signed at Jackson
9 Hole, Wyoming, on September 23, 1989.

10 (4) UNITED STATES ASSISTANCE.—The term
11 “United States assistance” has the meaning given
12 the term in section 481(e)(4) of the Foreign Assist-
13 ance Act of 1961 (22 U.S.C. 2291(e)(4)).

14 **SEC. 204. REPORT ON THE STATE OF CHEMICAL AND BIO-**
15 **LOGICAL WEAPONS PROLIFERATION.**

16 Not later than 180 days after the date of enactment
17 of this Act, and every year thereafter, the President shall
18 submit to the Speaker of the House of Representatives
19 and the Committee on Foreign Relations and the Select
20 Committee on Intelligence of the Senate a report contain-
21 ing the following:

22 (1) PROLIFERATION BY FOREIGN COUNTRIES.—
23 A description of any efforts by China, Egypt, India,
24 Iran, Iraq, Libya, North Korea, Pakistan, Russia,
25 and Syria, and any country that has, during the five

1 years prior to submission of the report, used any
2 chemical weapon or biological weapon or attempted
3 to acquire the material and technology to produce
4 and deliver chemical or biological agents, together
5 with an assessment of the present and future capa-
6 bility of the country to produce and deliver such
7 agents.

8 (2) FOREIGN PERSONS ASSISTING IN PRO-
9 LIFERATION.—An identification of—

10 (A) those persons that in the past have as-
11 sisted the government of any country described
12 in paragraph (1) in that effort; and

13 (B) those persons that continue to assist
14 the government of the country described in
15 paragraph (1) in that effort as of the date of
16 the report.

17 (3) THIRD COUNTRY ASSISTANCE IN PRO-
18 LIFERATION.—An assessment of whether and to
19 what degree other countries have assisted any gov-
20 ernment or country described in paragraph (1) in its
21 effort to acquire the material and technology de-
22 scribed in that paragraph.

23 (4) INTELLIGENCE INFORMATION ON THIRD
24 COUNTRY ASSISTANCE.—A description of any con-
25 firmed or credible intelligence or other information

1 that any country has assisted the government of any
2 country described in paragraph (1) in that effort, ei-
3 ther directly or by facilitating the activities of the
4 persons identified in subparagraph (A) or (B) of
5 paragraph (3) or had knowledge of the activities of
6 the persons identified in subparagraph (A) or (B) of
7 paragraph (3), but took no action to halt or discour-
8 age such activities.

9 (5) INTELLIGENCE INFORMATION ON SUB-
10 NATIONAL GROUPS.—A description of any confirmed
11 or credible intelligence or other information of the
12 development, production, stockpiling, or use, of any
13 chemical weapon or biological weapon by subnational
14 groups, including any terrorist or paramilitary orga-
15 nization.

16 (6) FUNDING PRIORITIES FOR DETECTION AND
17 MONITORING CAPABILITIES.—An identification of
18 the priorities of the executive branch of Government
19 for the development of new resources relating to de-
20 tection and monitoring capabilities with respect to
21 chemical weapons and biological weapons.

22 **SEC. 205. INTERNATIONAL CONFERENCE TO STRENGTHEN**
23 **THE 1925 GENEVA PROTOCOL.**

24 (a) DEFINITION.—In this section, the term “1925
25 Geneva Protocol” means the Protocol for the Prohibition

1 of the Use in War of Asphyxiating, Poisonous or Other
2 Gases, and of Bacteriological Methods of Warfare, done
3 at Geneva June 17, 1925 (26 UST 71; TIAS 8061).

4 (b) POLICY.—It shall be the policy of the United
5 States—

6 (1) to work to obtain multilateral agreement to
7 effective, international enforcement mechanisms to
8 existing international agreements that prohibit the
9 use of chemical and biological weapons, to which the
10 United States is a state party; and

11 (2) pursuant to paragraph (1), to work to ob-
12 tain multilateral agreement regarding the collective
13 imposition of sanctions and other measures de-
14 scribed in chapter 8 of the Arms Export Control
15 Act, as amended by this Act.

16 (c) RESPONSIBILITY.—The Secretary of State shall,
17 as a priority matter, take steps necessary to achieve Unit-
18 ed States objectives, as set forth in this section.

19 (d) SENSE OF THE SENATE.—The Senate urges and
20 directs the Secretary of State to work to convene an inter-
21 national negotiating forum for the purpose of concluding
22 an international agreement on enforcement of the 1925
23 Geneva Protocol.

24 (e) ALLOCATION OF FUNDS.—Of the amount author-
25 ized to be appropriated to the Department of State for

1 fiscal year 1998 under the appropriations account entitled
2 “International Conferences and Contingencies”,
3 \$5,000,000 shall be available only for payment of salaries
4 and expenses in connection with efforts of the Secretary
5 of State to conclude an international agreement described
6 in subsection (d).

7 **SEC. 206. RESTRICTION ON USE OF FUNDS FOR THE ORGA-**
8 **NIZATION FOR THE PROHIBITION OF CHEMI-**
9 **CAL WEAPONS.**

10 None of the funds appropriated pursuant to any pro-
11 vision of law, including previously appropriated funds,
12 may be available to make any voluntary or assessed con-
13 tribution to the Organization for the Prohibition of Chemi-
14 cal Weapons, or to reimburse any account for the transfer
15 of in-kind items to the Organization, unless or until the
16 Convention on the Prohibition of Development, Produc-
17 tion, Stockpiling and Use of Chemical Weapons and on
18 Their Destruction, opened for signature at Paris January
19 13, 1993, enters into force for the United States.

20 **SEC. 207. ENHANCEMENTS TO ROBUST CHEMICAL AND BIO-**
21 **LOGICAL DEFENSES.**

22 (a) SENSE OF CONGRESS.—It is the sense of Con-
23 gress that—

24 (1) the threats posed by chemical and biological
25 weapons to United States Armed Forces deployed in

1 regions of concern will continue to grow and will un-
2 dermine United States strategies for the projection
3 of United States military power and the forward de-
4 ployment of United States Armed Forces;

5 (2) the use of chemical or biological weapons
6 will be a likely condition of future conflicts in re-
7 gions of concern;

8 (3) it is essential for the United States and key
9 regional allies of the United States to preserve and
10 further develop robust chemical and biological de-
11 fenses;

12 (4) the United States Armed Forces, both ac-
13 tive and nonactive duty, are inadequately equipped,
14 organized, trained, and exercised for operations in
15 chemically and biologically contaminated environ-
16 ments;

17 (5) the lack of readiness stems from a deem-
18 phasis by the executive branch of Government and
19 the United States Armed Forces on chemical and bi-
20 ological defense;

21 (6) the armed forces of key regional allies and
22 likely coalition partners, as well as civilians nec-
23 essary to support United States military operations,
24 are inadequately prepared and equipped to carry out

1 essential missions in chemically and biologically con-
2 taminated environments;

3 (7) congressional direction contained in the
4 1997 Defense Against Weapons of Mass Destruction
5 Act is intended to lead to enhanced domestic pre-
6 paredness to protect against the use of chemical and
7 biological weapons; and

8 (8) the United States Armed Forces should
9 place increased emphasis on potential threats to de-
10 ployed United States Armed Forces and, in particu-
11 lar, should make countering the use of chemical and
12 biological weapons an organizing principle for Unit-
13 ed States defense strategy and for the development
14 of force structure, doctrine, planning, training, and
15 exercising policies of the United States Armed
16 Forces.

17 (b) DEFENSE READINESS TRAINING.—The Secretary
18 of Defense shall take those actions that are necessary to
19 ensure that the United States Armed Forces are capable
20 of carrying out required military missions in United States
21 regional contingency plans despite the threat or use of
22 chemical or biological weapons. In particular, the Sec-
23 retary of Defense shall ensure that the United States
24 Armed Forces are effectively equipped, organized, trained,
25 and exercised (including at the large unit and theater

1 level) to conduct operations in chemically and biologically
2 contaminated environments that are critical to the success
3 of United States military plans in regional conflicts, in-
4 cluding—

5 (1) deployment, logistics, and reinforcement op-
6 erations at key ports and airfields;

7 (2) sustained combat aircraft sortie generation
8 at critical regional airbases; and

9 (3) ground force maneuvers of large units and
10 divisions.

11 (c) DISCUSSIONS WITH ALLIED COUNTRIES ON
12 READINESS.—

13 (1) HIGH-PRIORITY JOINT RESPONSIBILITY OF
14 SECRETARIES OF DEFENSE AND STATE.—The Sec-
15 retary of Defense and the Secretary of State shall
16 give a high priority to discussions with key regional
17 allies and likely regional coalition partners, including
18 those countries where the United States currently
19 deploys forces, where United States forces would
20 likely operate during regional conflicts, or which
21 would provide civilians necessary to support United
22 States military operations, to determine what steps
23 are necessary to ensure that allied and coalition
24 forces and other critical civilians are adequately

1 equipped and prepared to operate in chemically and
2 biologically contaminated environments.

3 (2) REPORT.—Not later than one year after the
4 date of the enactment of this Act, the Secretary of
5 Defense and the Secretary of State shall jointly sub-
6 mit to the Committee on Foreign Relations and the
7 Committee on Armed Services of the Senate and to
8 the Speaker of the House of Representatives a re-
9 port describing—

10 (A) the results of the discussions held
11 under paragraph (1) and plans for future dis-
12 cussions;

13 (B) the measures agreed to improve the
14 preparedness of foreign armed forces and civil-
15 ians; and

16 (C) any proposals for increased military
17 assistance, including assistance provided
18 through—

19 (i) the sale of defense articles and de-
20 fense services under the Arms Export Con-
21 trol Act;

22 (ii) the Foreign Military Financing
23 program under section 23 of that Act; and

24 (iii) chapter 5 of part II of the For-
25 eign Assistance Act of 1961 (relating to

1 international military education and train-
2 ing).

3 (d) UNITED STATES ARMY CHEMICAL SCHOOL.—

4 (1) COMMAND OF SCHOOL.—The Secretary of
5 Defense shall take those actions that are necessary
6 to ensure that the United States Army Chemical
7 School remains under the oversight of a general offi-
8 cer of the United States Army.

9 (2) SENSE OF CONGRESS.—It is the sense of
10 Congress that—

11 (A) the transfer, consolidation, and reorga-
12 nization of the United States Army Chemical
13 School should not disrupt or diminish the train-
14 ing and readiness of the United States Armed
15 Forces to fight in a chemical-biological warfare
16 environment; and

17 (B) the Army should continue to operate
18 the Chemical Defense Training Facility at Fort
19 McClellan until such time as the replacement
20 facility at Fort Leonard Wood is functional.

21 (e) REPORT.—

22 (1) IN GENERAL.—Not later than 180 days
23 after the date of enactment of this Act, and on Jan-
24 uary 1 every year thereafter, the President shall
25 submit a report to the Committee on Foreign Rela-

1 tions, the Committee on Armed Services, and the
2 Committee on Appropriations of the Senate and the
3 Committee on International Relations, the Commit-
4 tee on National Security, and the Committee on Ap-
5 propriations of the House of Representatives, and
6 the Speaker of the House of Representatives on pre-
7 vious, current, and planned chemical and biological
8 weapons defense activities of the United States
9 Armed Forces.

10 (2) CONTENT OF REPORT.—Each report re-
11 quired by paragraph (1) shall include the following
12 information for the previous fiscal year and for the
13 next three fiscal years:

14 (A) ENHANCEMENT OF DEFENSE AND
15 READINESS.—Proposed solutions to each of the
16 deficiencies in chemical and biological warfare
17 defenses identified in the March 1996 General
18 Accounting Office Report, titled “Chemical and
19 Biological Defense: Emphasis Remains Insuffi-
20 cient to Resolve Continuing Problems”, and
21 steps being taken pursuant to subsection (b) to
22 ensure that the United States Armed Forces
23 are capable of conducting required military op-
24 erations to ensure the success of United States

1 regional contingency plans despite the threat or
2 use of chemical or biological weapons.

3 (B) PRIORITIES.—An identification of pri-
4 orities of the executive branch of Government in
5 the development of both active and passive de-
6 fenses against the use of chemical and biologi-
7 cal weapons.

8 (C) RDT&E AND PROCUREMENT OF DE-
9 FENSES.—A detailed summary of all budget ac-
10 tivities associated with the research, develop-
11 ment, testing, and evaluation, and procurement
12 of chemical and biological defenses, set forth by
13 fiscal year, program, department, and agency.

14 (D) VACCINE PRODUCTION AND STOCKS.—
15 A detailed assessment of current and projected
16 vaccine production capabilities and vaccine
17 stocks, including progress in researching and
18 developing a multivalent vaccine.

19 (E) DECONTAMINATION OF INFRASTRUC-
20 TURE AND INSTALLATIONS.—A detailed assess-
21 ment of procedures and capabilities necessary
22 to protect and decontaminate infrastructure
23 and installations that support the ability of the
24 United States to project power through the use
25 of its Armed Forces, including progress in de-

1 veloping a nonaqueous chemical decontamina-
2 tion capability.

3 (F) PROTECTIVE GEAR.—A description of
4 the progress made in procuring lightweight per-
5 sonal protective gear and steps being taken to
6 ensure that programmed procurement quan-
7 tities are sufficient to replace expiring
8 battledress overgarments and chemical protec-
9 tive overgarments to maintain required wartime
10 inventory levels.

11 (G) DETECTION AND IDENTIFICATION CA-
12 PABILITIES.—A description of the progress
13 made in developing long-range standoff detec-
14 tion and identification capabilities and other
15 battlefield surveillance capabilities for biological
16 and chemical weapons, including progress on
17 developing a multichemical agent detector, un-
18 manned aerial vehicles, and unmanned ground
19 sensors.

20 (H) THEATER MISSILE DEFENSES.—A de-
21 scription of the progress made in developing
22 and deploying layered theater missile defenses
23 for deployed United States Armed Forces which
24 will provide greater geographic coverage against
25 current and expected ballistic missile threats

1 and will assist the mitigation of chemical and
2 biological contamination through higher altitude
3 intercepts and boost-phase intercepts.

4 (I) TRAINING AND READINESS.—An as-
5 sessment of the training and readiness of the
6 United States Armed Forces to operate in
7 chemically and biologically contaminated envi-
8 ronments and actions taken to sustain training
9 and readiness, including at national combat
10 training centers.

11 (J) MILITARY EXERCISES.—A description
12 of the progress made in incorporating consider-
13 ation about the threat or use of chemical and
14 biological weapons into service and joint exer-
15 cises as well as simulations, models, and
16 wargames, together with the conclusions drawn
17 from these efforts about the United States ca-
18 pability to carry out required missions, includ-
19 ing with coalition partners, in military contin-
20 gencies.

21 (K) MILITARY DOCTRINE.—A description
22 of the progress made in developing and imple-
23 menting service and joint doctrine for combat
24 and noncombat operations involving adversaries
25 armed with chemical or biological weapons, in-

1 including efforts to update the range of service
2 and joint doctrine to better address the wide
3 range of military activities, including deploy-
4 ment, reinforcement, and logistics operations in
5 support of combat operations, and for the con-
6 duct of such operations in concert with coalition
7 forces.

8 (L) DEFENSE OF CIVILIAN POPULATION.—

9 A description of the progress made in resolving
10 issues relating to the protection of United
11 States population centers from chemical and bi-
12 ological attack and from the consequences of
13 such an attack, including plans for inoculation
14 of populations, consequence management, and
15 progress made in developing and deploying ef-
16 fective cruise missile defenses and a national
17 ballistic missile defense.

18 **SEC. 208. NEGATIVE SECURITY ASSURANCES.**

19 (a) SENSE OF CONGRESS.—It is the sense of Con-
20 gress that in order to achieve an effective deterrence
21 against attacks of the United States and United States
22 Armed Forces by chemical weapons, the President should
23 reevaluate the extension of negative security assurances
24 by the United States to nonnuclear-weapon states in the

1 context of the Treaty on the Non-Proliferation of Nuclear
2 Weapons.

3 (b) REPORT.—Not later than 180 days after the date
4 of the enactment of this Act, the President shall submit
5 to the Committee on Armed Services and the Committee
6 on Foreign Relations of the Senate and to the Speaker
7 of the House of Representatives a report, both in classified
8 and unclassified forms, setting forth—

9 (1) the findings of a detailed review of United
10 States policy on negative security assurances as a
11 deterrence strategy; and

12 (2) a determination by the President of the ap-
13 propriate range of nuclear and conventional re-
14 sponses to the use of chemical or biological weapons
15 against the United States Armed Forces, United
16 States citizens, allies, and third parties.

17 (c) DEFINITIONS.—In this section:

18 (1) NEGATIVE SECURITY ASSURANCES.—The
19 term “negative security assurances” means the as-
20 surances provided by the United States to non-
21 nuclear-weapon states in the context of the Treaty
22 on the Non-Proliferation of Nuclear Weapons (21
23 UST 483) that the United States will forswear the
24 use of certain weapons unless the United States is

1 attacked by that nonnuclear-weapon state in alliance
2 with a nuclear-weapon state.

3 (2) NONNUCLEAR-WEAPON STATES.—The term
4 “nonnuclear-weapon states” means states that are
5 not nuclear-weapon states (as defined in Article
6 IX(3) of the Treaty on the Non-Proliferation of Nu-
7 clear Weapons, done at Washington, London, and
8 Moscow July 1, 1968 (21 UST 483).

9 **SEC. 209. RIOT CONTROL AGENTS.**

10 (a) PROHIBITION.—The President shall not issue any
11 order or directive that diminishes, abridges, or alters the
12 right of the United States to use riot control agents—

13 (1) in any circumstance not involving inter-
14 national armed conflict; or

15 (2) in a defensive military mode to save lives in
16 an international armed conflict, as provided for in
17 Executive Order No. 11850 of April 9, 1975.

18 (b) CIRCUMSTANCES NOT INVOLVING INTER-
19 NATIONAL ARMED CONFLICT.—The use of riot control
20 agents under subsection (a)(1) includes the use of such
21 agents in—

22 (1) peacekeeping or peace support operations;

23 (2) humanitarian or disaster relief operations;

24 (3) noncombatant evacuation operations;

1 (4) counterterrorist operations and the rescue
2 of hostages; and

3 (5) law enforcement operations and other inter-
4 nal conflicts.

5 (c) DEFENSIVE MILITARY MODE.—The use of riot
6 control agents under subsection (a)(2) may include the use
7 of such agents—

8 (1) in areas under direct and distinct United
9 States military control, including the use of such
10 agents for the purposes of controlling rioting or es-
11 caping enemy prisoners of war;

12 (2) to protect personnel or material from civil
13 disturbances, terrorists, and paramilitary organiza-
14 tions;

15 (3) to minimize casualties during rescue mis-
16 sions of downed air crews and passengers, prisoners
17 of war, or hostages;

18 (4) in situations where combatants and non-
19 combatants are intermingled; and

20 (5) in support of base defense, rear area oper-
21 ations, noncombatant evacuation operations, and op-
22 erations to protect or recover nuclear weapons.

23 (d) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that international law permits the United States to
25 use herbicides, under regulations applicable to their do-

1 mestic use, for control of vegetation within United States
2 bases and installations or around their immediate defen-
3 sive perimeters.

4 (e) AUTHORITY OF THE PRESIDENT.—The President
5 shall take all necessary measures, and prescribe such rules
6 and regulations as may be necessary, to ensure that the
7 policy contained in this section is observed by the Armed
8 Forces of the United States.

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