Congressional Record—Senate September 6, 2001

With the law enforcement system in Mexico plagued with inherent corruption and institutional and financial deterioration, President Fox will face numerous challenges.

It is in our interest to help Mr. Fox in his quest, if needed, whether it be through financial or technical assistance. It is in our own interest in the United States that Mexico succeed in this reform because our country cannot reverse effectively the flow of drugs across our common border without the full cooperation and support of our Mexican law enforcement friends. The relationship between our law enforcement—our DEA, FBI, Border Patrol, and their counterparts in Mexico—is so very important. I have watched this over the years, and that relationship has been problematic. But I will say this: I believe it is improving. I believe clearly the time is right and the President—Mr. Vicente Fox—has made this a top priority of his administration. It will not be easy, but we can help.

The issues that impact the United States and Mexico are numerous. It is not going to be easy to resolve these problems. All are important, and each is, in a sense, interrelated with the other. Together they present an enormous task for the Presidents of both countries. Perhaps most important, they are evidence of the enormous importance of Mexico to the future prosperity and security of our country, as well as our entire hemisphere.

I commend President Bush and President Fox for the many advancements they have achieved so far. I encourage them to continue this cooperation and this effort. Together, our nations can, in this historic time, redefine the United States-Mexican relationship and protect and promote prosperity throughout our shared hemisphere.

In conclusion, President Fox mentioned a topic which has been debated on this floor many times and which we have taken up and looked at, and we have thought a lot about it; that is, the drug certification process that we go through as a country every year, where we basically say how well other countries are doing in their antidrug effort and whether they are cooperating with us. I think the time is right and the President—Mr. Vicente Fox—has made this a top priority of his administration. It will not be easy, but we can help.

The President Fox, throughout his speech, talked about trust. I think that is the right word. We have to have trust between our two countries. That does not mean we are not going to have disputes. It doesn’t mean we are not going to have problems. It doesn’t mean these problems are going to be easy to resolve. We know they are not—the immigration problem and the drug problem, just to name a few. We know they are not easy.

I think the right tone was set in today’s speech by President Fox.

Mr. President, I yield the floor and I suggest that the Committee be in recess.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

Export Administration Act of 2001—Continued

Mr. ENZI. Mr. President, we are entering the period where we make a few last minute comments before the 4 o’clock vote regarding the Export Administration Act of 2001, which we have been working on for 3 years, a law that expired in 1994, and we have had 12 attempts at change since that time. The last time the law was revised, people were wearing bell bottoms and polyester suits and Jimmy Carter was in office.

It has been time for a change and recognition of that. I ask unanimous consent a letter from the National Association of Manufacturers endorsing the bill and recognizing the need for this bill to be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:


Hon. THOMAS A. DASCHLE, Majority Leader, U.S. Senate, Washington, DC.

Dear Senator Daschle: I am writing on behalf of the 14,000 member companies of the National Association of Manufacturers (NAM) to seek your active support for the Export Administration Act of 2001, without inappropriate amendments that would upset the careful balance in the legislation.

NAM member companies are some of the leading exporters of high-technology products, including computers, telecommunications equipment semiconductors, chemicals and aerospace equipment. The Export Administration Act, which establishes broad-ranging exports controls on dual-use products and technologies, will have a direct impact on their business activities in countries around the world.

Our companies take seriously their obligation to protect national security. They devote substantial resources to maintaining internal compliance programs and keeping up to date on the latest export control regulations. In an increasingly competitive global economy, however, Congress should not require excessively burdensome controls that hurt U.S. industry but do little, if anything, to enhance national security.

The NAM supports S. 149, as reported by the Banking Committee, because it provides a good balance between U.S. national security and global trade interests. The bill has strong bipartisan support, having been approved by the Banking Committee on a vote of 19 to 1. President Bush has endorsed S. 149, as reported by the Banking Committee.

I strongly urge you to play a leadership role in supporting passage of S. 149 and opposing inappropriate amendments.

Sincerely,
JERRY JASPERSON,
President.

N. Michael B. Enzi, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator: As the Senate begins debate on S. 149, the Export Administration Act of 2001, we strongly urge you to support the bill as it was reported out 19–1 by the Senate Banking Committee and to oppose all restrictive amendments during its floor consideration. Passage of S. 149 will represent an important step forward in the development of an export control system that more effectively accounts for modern developments in technology and international market conditions, while protecting national security.

S. 149 enjoys broad bipartisan support in Congress. It is the joint effort of President Bush and his national security team, which opposes amendments that would upset the careful balance achieved in the Banking Committee bill.

Among S. 149’s many provisions is one of critical importance to the U.S. computer industry. Section 702(k) would eliminate those provisions in the National Defense Authorization Act for 1998 that locked the President into using a specific metric, known as MTOPS (millions of theoretical operations per second), to establish export controls on computers for 5 years. Section 702(k) would not eliminate current restrictions on computer exports, but would give the President the authority and needed to review the MTOPS control system and develop a more modern, effective framework for computer exports. The need for Presidential flexibility in this area is especially clear in light of recent reports by the Center...
for Strategic and International Studies, the Department of Defense, the Henry Stimson Center, Senate Accounting Office, and the Defense Science Board, which have all concluded that the MTOPS-based approach is obsolete and fails to advance U.S. national security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge any amendments that would delay the implementation of the 21st century. As a result, we urge

port control policies that take into account security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge

port control policies that take into account security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge

port control policies that take into account security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge

port control policies that take into account security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge

port control policies that take into account security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge

port control policies that take into account security.

The U.S. computer industry needs new export control policies that take into account the global, technological and economic realities of the 21st century. As a result, we urge

port control policies that take into account security.
Tuesday, March 7, 5:45 p.m.: Senator Lott brings up EAA by unanimous consent. Senator Thompson raises concerns on floor but does not object.

Wednesday, March 8, 11 a.m.: Senators Gramm and Enzi meet with Senators Warner, Helms, Shelby, Kyl, and Thompson at those senators’ request. Members agree to suspend floor consideration of EAA until details agreed; Gramm/Enzi provide revised 4-page Managers’ Amdt document and ask for comments by the end of the day [1 hour].

Wednesday, March 8, 12:30 p.m.: Senator Gramm takes EAA off floor via special UC agreement among Senator Lott, Daschle, Thompson, Reid, and others.

Wednesday, March 8, 4 p.m.: Gramm and Enzi staff provide other senators’ staff with revised Managers’ Amdt CR90-262.

Thursday, March 9, 3 p.m.: Senator Warner gives Senators Gramm and Enzi mislabeled letter with attachment of proposed amendment to Managers’ Amendment.

Thursday, March 9: Senators Warner, Helms, Shelby, Kyl, and Thompson send another letter of support to Senator Lott expressing “continuing support” for S. 1712 and objecting to moving to its consideration.

Friday, March 10, 12 p.m.: Senator Gramm meets with Senator Warner (other senators represented by staff); gives him Gramm/Enzi final response document; asks for final decision from senators.

Week of March 13-17: Gramm/Enzi staff wait for response re S 1712.

Thursday, March 16: Senator Gramm schedules members’ meeting for 10 a.m. Friday 17th to get response to S 1712; postpones following week after being told that Kyl/Heims/Shelby not in town and Warner and his staff both “unable to attend”.

Monday, March 20: Senator Gramm schedules members’ meeting for 2 p.m. Wednesday 21st to get response to S 1712; postpones to later same week after being told that Shelby not back until Tuesday night and that the senators first need to meet to confer.

Week of March 20-23: Gramm/Enzi staff continue to wait for response re S 1712.

Tuesday, March 21: Senator Warner announces sudden SASC hearing for Thursday 23rd; cites “considerable differences” remaining between Banking and other senators.

Wednesday, March 22, 1 p.m.: House International Relations Subcommittee on Economic Policy reluctantly removes Senators Gramm and Enzi from their witness list, and instead holds hearing solely with industry witnesses; hints at marking up narrow EAA bills.

Wednesday, March 22: [Other senators apparently hold meeting to confer].

Thursday, March 23, 10 a.m.: Senator Warner holds second SASC hearing, at which he presses GAO witness to say S. 1712 “must” be strengthened, and states that “the four chairmen have not received some legislative language which we feel is essential to making our decisions on this”.

Thursday, March 23: Senator Reid gives floor statement urging Senate passage of S. 1712, members “tried to move a bill … but frankly, the majority is unable to join with us to allow us to move this bill forward”.

Friday, March 24: Two weeks from the date on which they gave the other senators their final offer, Senators Gramm and Enzi receive a letter dated March 23 from Senators Warner, Helms, Shelby, Kyl, and Thompson. The letter stated:

“As you know, on March 6 [sic], 2000, we provided you with a package describing the changes we were to make in order to reach an agreement on the proposed reauthorization of S. 1712 [sic], the Export Administration Act. We were disappointed that you were unable to agree at most four of the eighteen issues we identified, and were unable to agree to some issues on which we believed we had previously reached agreement. We can agree at this time to return the bill to the Senate floor under the terms of the unanimous consent agreement field on March 8.

There are important issues remaining to be resolved, and we feel that negotiations should continue in order for there being hope for achieving an Export Administration Act that successfully balances the needs of industry and national security.”

Week of March 27-31: Gramm/Enzi staff do not hear from other senators’ staff.

Week of April 3: Gramm/Enzi staff do not hear from other senators’ staff.

Tuesday, April 4: Senator McCain holds hearing on S. 1712, at which he expresses concern that the bill does not adequately protect national security; Senators Thompson and Enzi testify.

Tuesday, April 11: Gramm staff call the staff of other senators to alert them that Senator Lott planned to make a pro forma effort to bring up S. 1712 by UC on Wednesday, at which point Senator Gramm would object pursuant to the gentleman’s agreement made with the other senators on March 8; and that Senators Lott and Gramm then would file cloture on a motion to proceed to S. 1712.

Wednesday, April 12: At Senator Lott’s request, Senators Gramm and Enzi give Senator Lott two cloture petitions on a motion to proceed to S. 1712, and one on S. 1712; both were signed by 16 Republicans representing a broad diversity of states and of Senate Committees (including SASC, SFRC, AGC, and SCFR).

Wednesday, April 12: Senator Thompson holds SGAC hearing on multilateral export controls.

April, May: Gramm/Enzi staff do not hear from other senators’ staff.

Thursday, May 25: Senators Thompson and Enzi chair meeting on S. 2648. According to press reports, Senator Thompson said that in his opinion, legislation to reauthorize the Export Administration Act is probably dead as a stand-alone measure in 2000; when asked whether he was partly responsible, he replied “Let’s just say that truth and justice were served.”

Friday, May 26: Senator Thompson holds SGAC hearing on mass market/foreign availability; no Administration witnesses are invited.

Mr. ENZI. I make a few remarks after the vote particularly to thank Senator SARBANES for his understanding of the bill.

I yield the floor to Senator SARBANES.

Mr. SARBANES. How much time remains?

The PRESIDING OFFICER. One minute for the proponent and 4 minutes for the opponent.

Mr. SARBANES. I will take the 1 minute at this point. I urge my colleagues to support this bill. It has been hard work. We think it is good, balanced legislation. I join with Senator ENZI in thanking the staff:
At a time when we know that some of those to whom we will be sending more high-tech sensitive exports have in times past used them for military purposes, committee members such as the Cox committee have reported to us that part of their increased capabilities have come about due to our lax export laws, this is the environment in which we pass a bill that gives the Department of Commerce substantial powers to make decisions concerning national security. The Department of Commerce is rightfully engaged in the considerations of trade and commerce. They should not be given the responsibility of national security.

We are going to pass a bill that will have broad categories of subjects that are deemed to be mass marketed or have foreign availability status. If someone over in the bowels of the Department of Commerce decides these items belong in those categories, then they are taken out of the regulatory process altogether, and you don’t even have to have a license.

I do not think it is too much to ask for a few days of a license process with officials of the U.S. Government who are concerned about matters of proliferation of weapons of mass destruction and matters of national security, it is not too much to ask that they be given a few days to make sure, as in times past, that we are not exporting something we should not be exporting. We give the President some override authority, but it is almost as if to say, “Catch me if you can.” We are greatly liberalizing things on this end and giving the President some power—which cannot be delegated, incidentally—giving the President some power to catch something here and there and stop it if he deems it necessary.

At a time that we are trying to persuade the world we need a missile defense system, which I believe we need because of the dangers posed by the proliferation of weapons of mass destruction, we are liberalizing export rules which I fear will contribute toward the ability of the countries with which we are trading, and in turn these rogue nations with which they are trading, to increase their weapons of mass destruction capabilities.

It is not that we want to hamper trade. It is not that we want to be obstructionist—because our friends on the other side of this issue are very well-meaning and make very good points. It is not those factors at all that motivate the few of us who remain on this side. It is that we can afford to be wrong. If our concerns are too great, it will mean that a few companies are held up a few extra days before they can export goods. But if our friends on the other side of this issue are wrong, I fear it could cause serious harm.

We are doing this in an environment where, even though the law has required us in times past to do a national security assessment of the decontrol of these laws, we have never done so. That is the basis of our concern. That is why, although we have had a wonderful, respectful, senatorial debate and discussion and vote, both on the floor and off, and think it has produced a better bill than we had originally, I must respectfully oppose it.

I yield the floor. The PRESIDING OFFICER. The question is, Shall the bill pass?

Mr. SARBANES. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

The PRESIDING OFFICER. (Mr. JOHNSON.) Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 275 Leg.]

YEAS—85

AKAKA Domenici Lincoln
Allard Dorgan Lott
Allen Durbin Lugar
Baucus Edwards McCain
Baucus Enzi Mikulski
Bell Bennett Miller
Biden Feinstein Murray
Bingaman Fitzgerald Nelson (FL)
Bond Frist Nelson (NE)
Boxer Graham Nickles
Breaux Gramm Reed
Brownback Grassley Reid
Bunning Gregg Roberts
Burns Hagel Rockefeller
Campbell Harkin Rockefeller
Cantwell Hatch Santorum
Carnahan Hollings Sargent
Carper Hutchinson Schumer
Chafee Hutchinson Smith (OH)
Chilewicz Inouye Snowe
Clinton Jeffords Stabenow
Collins Johnson Stevens
Conrad Kennedy Thomas
Corzine Kerry Torricelli
Craig Kohl Voinovich
Crapo Landrieu Warner
Daschle Leahy Wellstone
Dayton Levin Wyden
Dodd Lieberman

NAYS—14

Byrd Inhofe Smith (NH)
Cochran Kyl Specter
DeWine McConnell Thompson
Feingold Sessions Thurmond
Helms Shelby

NOT VOTING—1

Markoowski

The bill (S. 149) was passed, as follows:

S. 149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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. 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.

TITLE III—FOREIGN POLICY EXPORT CONTROLS

Sec. 301. Authority for foreign policy export controls.
Sec. 302. Procedures for imposing controls.
Sec. 303. Criteria for foreign policy export controls.
Sec. 304. Presidential report before imposition of control.
Sec. 305. Imposition of controls.
Sec. 306. Deferral authority.
Sec. 307. Review, renewal, and termination.
Sec. 308. Termination of controls under this title.
Sec. 309. Compliance with international obligations.
Sec. 310. Designation of countries supporting international terrorism.
Sec. 311. Crime control instruments.

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

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

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

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

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 601. Export control authority and regulations.
Sec. 602. Confidentiality of information.
Sec. 603. Agricultural commodities, medicine, medical devices.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.
Sec. 702. Technical and conforming amendments.
SEC. 2. DEFINITIONS.

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 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; or

(iii) 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) any individual, or partnership, corporation, business association, society, trust, organization, or any other entity, including any governmental entity operating as a business enterprise;

(B) any government, or any governmental body of an autonomous country.

(12) ITEM.—A license that authorizes multiple exports in lieu of a license for each export.

(13) MASS-MARKET STATUS.—The term ‘‘mass-market status’’ means the status described in section 201.

(14) MULTILATERAL EXPORT CONTROL REGIME.—The term ‘‘multilateral export control regime’’ means an international agreement that is in force 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 partnership, corporation, business association, society, trust, organization, or any other group created or organized under the laws of a country; and

(B) 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, unless—

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

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

(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 governmental entity operating as a business enterprise); and

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

TITLe 1—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 (in this Act referred to as the ‘‘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 requirements, that the President determines is necessary or appropriate to carry out this Act and the provisions of this Act, the President may delegate 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.

(b) EXCEPTIONS.—The President may delegate or transfer the President’s power, authority, or discretion to override 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 exporters, importers, 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 and 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 a license, or other authorization for the export of any item subject to the jurisdiction of the United States, 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 agency, department, 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 with respect to any such items. 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 as a member of such committee. Such reimbursement of expenses shall be at rates not in excess of the rates prescribed by law for official travel by individuals employed in the Federal Government.

(d) Chairperson.—Each export control advisory committee appointed under subsection (a) shall elect a chairperson, and shall meet 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 concerns and the need for such information, on the reasons for the export controls which are in effect or contemplated for the items or policies for which that committee furnishes advice. Provided by the Secretary, 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. PRESIDENTS TECHNOLOGY EXPORT COUNCIL.

The President shall establish a President’s Technology Export Council to advise the President on the implementation, operation, and effectiveness of the National Security Export Control List. The President shall consult with the heads of other departments and agencies of the Government in conjunction with such Council.

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 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 intelligence agencies, and such other departments and agencies as the Secretary considers appropriate.

(b) Purposes.—The purposes of national security export controls shall be—

(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 biological, chemical, and nuclear weapons, missile delivery systems, key-enabling technologies, and other significant military capabilities;

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

(3) To deter acts of international terrorism.

(c) Use and End Use Controls.—Notwithstanding any other provision of this title, controls may be imposed, based on the end use or end user, on the export of any item on the National Security Export Control List. The President may, in consultation with the Department of State 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

(d) 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.

(2) To deter acts of international terrorism.

(3) 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.

(4) 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 biological, chemical, and nuclear weapons, missile delivery systems, key-enabling technologies, and other significant military capabilities;

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

(3) To deter acts of international terrorism.

(2) 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.

(3) 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 biological, chemical, and nuclear weapons, missile delivery systems, key-enabling technologies, and other significant military capabilities;

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

(3) To deter acts of international terrorism.

(2) 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.
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. 202. 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) Other Considerations.—An assignment of country tiers under this section shall be made after consultation with the Secretary, the Secretary of Defense, the Secretary of State, the Attorney General, the Director of National Intelligence, the Administrator of the Commerce or the Federal Aviation Administration, and such other departments and agencies as the President considers appropriate.

(b) Determination and Review of Assessments Required.—The President may reestablish 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 a non-recurring 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.

(c) 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.

(d)Tiering.

(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 a tier other than the lowest or highest tier, based on the assessments required under subsection (c).

(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).

(4) Assessments.—The President shall make an assessment of each country in accordance with procedures and criteria which the President considers appropriate.

(5) Whether the country, if a NATO or major non-NATO ally with whom the United States has an international agreement to which the United States is a party, (b) the other military capabilities and the potential threat posed by the country to the United States or its allies.

(6) The effectiveness of the country’s export control system.

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

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

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

(d) 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.—

(1) In General.—No authority or permission may be granted to reexport to a country an item that is produced in a country other than the United States and incorporates parts or components that—

(A) are essential to the functioning of the item;

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

(C) comprise 25 percent or less of the total value of the item.

(2) Commodities.—The President shall by regulation establish, by tier, the criteria for determining foreign availability status.

(b) Exports of Foreign-Made Items Incorporating United States Controlled Parts and Components.

(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 proliferating country under 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 “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.

(3) Exports of Foreign-Made Items Incorporating United States Controlled Parts and Components.

(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—

(A) are essential to the functioning of the item;

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

(C) comprise 25 percent or less of the total value of the item.

(2) Commodities.—The President shall by regulation establish, by tier, the criteria for determining foreign availability status.

(b) Exports of Foreign-Made Items Incorporating United States Controlled Parts and Components.

(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 proliferating country under 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 “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 302.

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, and

(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 the petition, the Secretary shall consult with the Secretary of Defense, Secretary of State, and other appropriate Government agencies and with the Office of Technology Evaluation.

(2) Time for Making Determination.—The Secretary, within 6 months after receipt of 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 makes a determination under this section, the Secretary shall by regulation establish, 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.

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

(2) Mass-Market Status.—The Secretary shall determine that an item is mass-market by determining that (a) the price of the item to the United States is a party.

(3) Other Factors.—The Secretary shall consider all other factors that the Secretary determines relevant to the determination.
(A) report any set-aside determination described in paragraph (1), along with the specific information 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.

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

(1) IN GENERAL.—If the President determines that an item has mass-market status,

(a) 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 of the determination and the reasons for the determination, and

(b) the President shall publish notice of the determination in the Federal Register and the Congressional Record.

(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 President and the appropriate committees of Congress a report on the results of the review.

(3) EXPIRATION OF PRESIDENTIAL SET-ASIDE.—A determination by the President described in subsection (a) expires at 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; or

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

(C) the date on which the determination described in subsection (a) is made under subsection (a), if the President has not completed international negotiations to eliminate the foreign availability of the item.

(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 FOREIGN AVAILABILITY STATUS DETERMINATION.

(a) ESTABLISHMENT OF OFFICE.—There shall be established 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.

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

(i) economic analysis;

(ii) the defense industrial base;

(iii) technological developments; and

(iv) national security and foreign policy export controls.

(c) STAFF.—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.

(d) DETAILERS.—The Office shall be responsible for—

(i) 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;

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

(iii) 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 procurement policies and practices that affect the national security interests of the United States;
(5) conducting assessments of United States industrial sectors critical to United States defense industrial base and how the sectors are affected by technological developments, technology transfers, and foreign commercial activities, including imports of manufac-tured goods; 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) Requests to Consult.—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 that advance ability to assess foreign availability and mass-market status, during the fiscal year preceding the report, including information on the training of personnel, the 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) 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 set forth in 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 sanc-
tuary to those persons involved in directing, supporting, or participating in acts of terrorism;
(c) Foreign Products.—No authority or permission may be required under this title to reexport to a country an item that is produced, located, or owned or controlled in the United States and incorporates parts or components that are subject to the jurisdiction of the United States, except that in the case of reexport 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 Sanctuary.—
(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 date on which the President reports to Congress the President’s intention to impose controls 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 control is initially imposed or the date on which the President reports to Congress the President’s intention to impose controls 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 economic sanctions 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 a 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) Purpose of notice.—The purposes of the notice are—
(A) to provide an opportunity for the formulation of an effective export control policy 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 efforts to achieve or increase multilateral cooperation on the issues or problems underlying the proposed export control.
(2) Classified consultation.—The consultation 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; and
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;
(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 United States as a reliable supplier of goods, services, or technology.

September 6, 2001
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. 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 the 60-day period.

SEC. 307. REVIEW, RENEWAL, AND TERMINATION.

(a) RENEWAL AND TERMINATION.—

(1) In general.—An 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 the same date of the prior renewal period.

(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 316; 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 Representatives 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.

(c) PUBLIC COMMENT.—

The President shall provide a period of no 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.

(d) 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 and an individual certification 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 has achieved the objective for which it was imposed, 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 not terminate an export control imposed under this title if the President determines that the control has substantially achieved the objective for which it was imposed and, if renewed, that the control will substantially achieve that objective before the next renewal year.

(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 on the date notice of the termination is 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 301, the President may impose controls on exports to a particular country or countries if—

(1) of items listed on the control list of a multilateral export control regime, as defined in section 302(a); 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 determines 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 military potential of such country to support acts of international terrorism.

(b) NOTIFICATION.—The Secretary of State shall notify the Committee on Foreign Relations of the Congress of the Secretary's action under this section.

(c) 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 under this title.

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

(A) the government concerned has not provided 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.

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

(1) a detailed description of the item to be exported, 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 country 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.—In order to promote respect for fundamental human rights, crime control instruments and equipment shall be approved for export by the Secretary only pursuant to an individual export license. Notwithstanding any other provision of law, the Secretary shall approve for export by the Secretary only pursuant to an individual export license.

(b) NOTIFICATION.—The Secretary and the Secretary of State shall notify the Committee on Foreign Relations of the Congress of the Secretary's action under this section.

(c) 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 under this title.
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.

The provisions of this section shall not apply except that, if the Secretary does not agree with the decision of the Department of State with respect to any determination under paragraph (1) or (2), the matter shall be referred to the President for resolution.

(b) Exception.—Except as herein provided, the provisions of this section shall not apply with respect to exports to countries that 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 section and section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304). The provisions of subsection (a) shall apply with respect to exports of any of the items identified in subsection (c).

(c) Report.—Notwithstanding the provisions of section 602 or any other confidenciality requirements, the Secretary shall include in the annual report submitted to Congress pursuant to section 701 a report describing the aggregate number of licenses approved during the preceding calendar year for the export of any items listed in the following paragraphs identified by country and control list number:

(1) Serrated thumbcuffs, leg irons, thumbcreeks, and electro-shock stun belts.
(2) Leg cuffs, thumbcuffs, shackle boards, restraint chairs, Straitjackets, and plastic handcuffs.
(3) Stun guns, shock batons, electric cattle prod, immobilization guns and projectiles, other than equipment used exclusively to treat or tranquilize animals and arms designed solely for signal, flare, or saluting use.
(4) Technology exclusively for the development or implementation of electro-shock devices.
(5) Pepper gas weapons and saps.
(6) Any other item or technology the Secretary determines is a specially designed instrument and all necessary recommendations and analyses by the Secretary to the Secretary of Defense, the Secretary of State, and the heads of any other departments and agencies the Secretary considers appropriate; or
(III) return the application if a license is not required.

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, the 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.

C. What, if any, modifications to, or restrictions on, the items for which the license was approved are required to be compatible with export controls imposed under this Act, and which officer or employee of the Department would be in a position to make such export controls imposed under this Act, and which officer or employee of the Department would be in a position to make such determinations or restrictions with the applicant and the specific statutory and regulatory bases for imposing such modifications or restrictions.

(D) CONSEQUENCES OF APPLICATION DENIAL.—

(1) In general.—If a determination is made to deny a license, the applicant shall be given a full opportunity to present the information cited in the notification of 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 approved are required to be compatible with export controls imposed under this Act, and which officer or employee of the Department would be in a position to make such determinations or restrictions with the applicant and the specific statutory and regulatory bases for imposing such modifications or restrictions.
of the United States, the specific considerations that led to the determination to deny the application; and

(5) the availability of appeal procedures.

(b) Period for Applicant to Respond.—The applicant shall have 20 days from the date of 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.

(1) Appeals and Other Actions by Applicant.—

(a) 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 foreclose 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).

(b) Enforcement of Time Limits.—

(A) In General.—In any case in which an action prescribed in this section is not taken on an application, or 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 action to mitigate 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 petition 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.

(2) Exceptions From Required Time Periods.—

Requests related to processing an application shall not be included in calculating the time periods prescribed in this section:

(1) Initial Resolution of the Clerk.—Delays upon which the Secretary and the applicant mutually agree.

(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, in cases where a 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;

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

(f) Appeals and Other Actions by Applicant.—

(a) In General.—All license applications on which agreement cannot be reached shall be referred to the process described in paragraph (5) for decision.

(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 an item on the Control List or the applicant to the pertinent provisions under this Act. The chairperson shall notify the applicant of the intention to conduct an initial review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating departments and agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of a final applicant appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating departments and agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of a final applicant appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of a final applicant appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of a final applicant appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of a final applicant appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.

(b) Interagency Dispute Resolution Process.—

(1) Initial Resolution.—The Secretary 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—

(A) provide for decision-making based on the majority vote of the participating agencies.

(B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases of its position, shall be deemed to have no objection to the pending decision.

(C) provide that any decision of an interagency committee established under paragraph (3) of the interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of a final applicant appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 30 days after the date the completed license application is referred by the Secretary.
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 policy of the member countries is 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:
   - cooperate with governments outside the regime to restrict the export of items controlled by such regime; and
   - establish an ongoing mechanism in the regime to coordinate planning and implementation of export control measures related to such cooperation.

6. **REGULAR 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 coordination and exchange of information about export license applications among members before a member approves an export license; and

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 national security or that are subject to the export controls 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. **UNDECREETING.**—There is a limit with respect to when members of a multilateral export control regime—
   - 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
   - approve exports to a particular end user to which the United States has denied export license for a similar item.

12. **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:

13. **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.

14. **LICENSE APPROVAL PROCESS.**—The system for evaluating export license applications is designed to—
   - allow for the submission and verification with respect to controlled items.
   - ensure the reliability of end users.

15. **ENFORCEMENT.**—The enforcement mechanism of the regime includes trained enforcement officers to investigate and prevent illegal exports.

16. **DOCUMENTATION.**—There is a system of controls to ensure the technical expertise to assess the licensing status of exports and ensure the reliability of end users.

17. **PERIODIC HIGH-LEVEL MEETINGS.**—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.

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

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

20. **STRENGTHEN EXISTING REGIMES.**—Strengthen existing multilateral export control regimes—
   - by imposing a requirement to share information about export license applications among members before a member approves an export license; and
   - harmonize national export license approval procedures and practices, including the elimination of undercutting.

21. **REVIEW AND UPDATE.**—Review and update the existing multilateral regime export control lists with other members, taking into account—
   - national security concerns;
   - the controllability of items; and
   - the costs and benefits of controls.

22. **ENCOURAGE COMPLIANCE BY NONMEMBERS.**—Encourage nonmembers of the multilateral export control regime to—
   - cooperate in strengthening their national export control regimes and improve enforcement;
   - adhere to the equivalent multilateral export control regime; and
   - not to export controlled items in a manner inconsistent with the guidelines of the regime.

23. **SUPPORT OF OTHER COUNTRIES’ EXPORT CONTROL SYSTEMS.**—The Secretary is encouraged to—

24. **PARTICIPATION IN TRAINING.**—(a) Purposes. The purposes of this section are as follows:
   - 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.
   - 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, that 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.

25. **PROHIBITIONS AND RESTRICTIONS.**—(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 friendly to the United States and is not itself the object of any form of boycott pursuant to United States law or regulation:
   - 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 boycotted country (subject to a finding 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 nature of a 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 discrimi-
nate 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) Cooperation 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) Cooperation in furnishing normal business information in a commercial context, as defined by the Secretary, about whether any person has, has had, or proposed to have any business relation-
ship (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 con-
cern organized under the laws of the boycotting country, except that, for purposes of appre-
dent of the boycotted country, or with any other person that is known or believed to be restricted from having any business relation-
ship with a boycotting country.

(E) Furnishing information about whether any person is a member of, has made a con-
tribution to, or is otherwise associated with or involved in, any charitable or fraternal organization which sup-
ports the boycotted country.

(F) Paying, honoring, confirming, or other-
wise implementing a letter of credit which contains any condition or requirement the appli-
cance of 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 oblig-
ated to pay or otherwise honor or imple-
ment any 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 pro-
vided by, any business concern organized under the laws of the boycotted country or by na-
tionals or residents of the boycotted country;

(ii) prohibiting the shipment of items to the boycotting country on a carrier of the boycotting country or by a route other than that prescribed by the boycotting country or the rec-
ognized route under that chapter.

(B) compliance, or agreement to comply, with import and shipping document require-
ments with respect to the country of origin, the nation of the carrier's route of ship-
ment, the name of the supplier of the ship-
ment, or the name of the provider of other services that would be furnished on the ship-
ment, or any other requirement or condition that is otherwise prohibited, pursuant to the intent of such exceptions.

(C) ADDITIONAL REGULATIONS AND RE-
PORTS.—

(1) REGULATIONS.—In addition to the regu-
lations issued pursuant to subsection (b), regulations issued pursuant to title III shall implement the purposes set forth in sub-
section (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 re-
ferred to in subsection (a) shall report that request to the Secretary, together with any information that the Secretary determines appropriate.

The person shall also submit to the Sec-
retary 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 in-
formation and copying, except that informa-
tion regarding the quantity, description, and value of any item to which such report re-
lates may be treated as confidential if the Secretary determines that disclosure of that information would place the United States person involved at a competitive disadvan-
tage. The Secretary shall periodically trans-
mit reports, or summaries of such reports, con-
tained in the reports to the Secretary of State for such action as the Secretary of State, in con-

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

(1) is a law, rule, or regulation of any of the several States or the District of Colum-
bia, or of the territories or possession 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 prac-
tices or boycotts fostered or imposed by for-
eign countries against other countries.

(SRC 563, PENALTIES.)

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Any in-
dividual 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 $1,000,000, whichever is greater, or impris-
ioned 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 indi-
vidual 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 $5,000,000, whichever is greater, for

each violation.

(b) FORFEITURE OF PROPERTY INTEREST AND PROCE-
DURES.—

(1) PROCEEDURE.—Any person who is con-
icted under paragraph (1) or (2) of subsec-
tion (a) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's property or other interest in, claim against, or property or con-
tractual rights of any kind in any of the tan-
gible items that were the subject of the vio-
lation;

(B) any of that person's security or other interest in, claim against, or property or con-
tractual rights of any kind in any of the tan-
gible property that was subject to restriction or attempt to export that was the subject of the violation; and

(C) any of that person's property constitu-
ted or derived from, any property ob-
tained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any for-
feiture under this section, and the du-

ties and authority of the courts of the United States and the Attorney General with re-
spect to any forfeiture action under this sub-
section, or with respect to any property that may be subject to forfeiture under this sub-
section, 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.

(3) GENERAL PENALTIES: ADMINISTRATIVE SANCT-
IONS.—

(1) CIVIL PENALTIES.—The Secretary may im-
pose 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 para-
graph may be in addition to, or in lieu of, any other liability or penalty which may be impose-
d for such a violation.

(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person 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.
(3) Exclusion from practice.—The Secretary may exclude any person acting as an attorney, agent, 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 penalty is imposed.

(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 civil penalty imposed under subsection (c) or to the imposition of any other civil penalty or administrative sanction described in subparagraph (B).

(3) Treatment of payments.—Any amount paid in satisfaction of a civil penalty imposed under subsection (c) may be refunded under subparagraph (A) later in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) Refunds.—

(1) Authorization.—

(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 imposed under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall be brought in any court.

(f) Effect of Other Convictions.—

(1) Denial of export privileges.—Any person convicted of a violation of this Act or any regulation, license, or order issued under this Act shall deny to such United States person the following:

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


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

(2) Authorization.—

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

(B) A provision of the Atomic Energy Code, title 18, United States Code, or

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

which—

(1) may be made a condition of the Secretary, be denied export privileges under this Act for a period not to exceed 10 years from the date of the conviction.

(ii) The Secretary may also revoke the authority under this Act in which such person had an interest at the time of the conviction.

(3) Waiver.—The President may waive the imposition of sanctions 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.

(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 proceeding 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 limitations with respect to such a proceeding under subsection (a) as a result of a criminal indictment shall continue for a period of 6 months from the date on which the indictment 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) Authority to compromise or settle administrative proceedings.—

(A) In general.—Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of enactment of this Act, 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 Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under paragraph (B).

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

(iii) facilitates such export, transfer, or trade, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

(2) Exception.—

(A) In general.—Subject to paragraphs (3) through (7), if the President certifies to Congress that—

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

(ii) the United States is the only source 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 Act, 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 Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under paragraph (B).

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

(iii) facilitates such export, transfer, or trade, 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 referral determined to be based in part or in whole upon some other matter under this Act.
President shall prohibit, for a period of no less than 2 years, the importation into the United States of any item that is a sole source supplier of the defense articles or 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

(ii) If the President determines that a foreign person, on or after engaging in such activity, may not be subject to such sanctions on account of such activity by that person would subject that person to sanctions under this subsection, the President may waive the imposition of sanctions under this subsection if the President determines that such waiver is essential to the national security of the United States.

(a) Impostion of Sanctions.—(1) In General.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(b) Prohibits Sanctions on Certain Persons.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

SECTION 505. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) Imposition of Sanctions.—In any case other than one in which an advisory opinion has been issued under paragraph (3) or (4), the term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(b) Prohibits Sanctions on Certain Persons.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(c) MTCR Adherents.—The term “MTCR adherents” means a country that participates in the Missile Technology Control Regime, 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.

(d) Foreign Person.—The term “foreign person” means any person other than a United States person.

(e) Exception.—The term “foreign person” means any person other than a United States person.

(f) Waiver by President.—The President may waive the imposition of sanctions under this subsection, but such waiver shall be limited to the extent that alternative sources are not readily or reasonably available, or that the President determines that such waiver is essential to the national security of the United States.

(g) Consultations with Congress.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(h) Prohibits Sanctions on Certain Persons.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(i) Exception.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(j) Consultations with Congress.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(k) Prohibits Sanctions on Certain Persons.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.

(l) Exception.—The term “otherwise engaged in the trade of” means the trade of, with respect to any 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.
impose sanctions unless the President determines and certifies to Congress that government, project, or entity in its efforts
(a)(1) has ceased to aid or abet any foreign
foreign person with respect to which the de-
tentions imposed pursuant to this section shall
described in subsection (a)(3).
(a)(2) makes agreements; (a)(3) enters into any contract for the procurement
States Government shall not procure, or
cessations, including appropriate penalties, to ter-
many residence to the United States; or
the purposes of this section, the term "for-
the laws of a foreign country or which has its
terms of subsection (a)(1) are, except as provided in paragraph (2)
shall be prohibited.
(3) EXCEPTIONS.—The President shall not be requested to acquire chemical or biological weapons
capability as described in that subsection.
(c) SANCTIONS.—(1) DESCRIPTION OF SANCTIONS.—The sanc-
tions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2)
of this subsection, and the basis for any deter-
mation under paragraph (2) of this sub-
section that such government has taken spe-
cific corrective actions.
(e) WAIVER.—The President may waive the application of any sanction
imposed on any person pursuant to this sec-
tion after the 12-month period begin-
ing on the date on which that sanction
imposed on that person, if the President
determines and certifies to Congress that such
waiver is important to the national se-
curity interests of the United States.
(f) DEFINITION OF FOREIGN PERSON.—For the
purposes of this section, the term "for-
ign person'' means—
(a) an individual who is not a citizen of the
United States or an alien admitted for per-
manent residence to the United States; or
(b) a corporation, partnership, or other en-
tity 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 DESIGNA-
TION.—(1) POLICY GUIDANCE ON ENFORCE-MENT.—The Secretary, in consultation with the Sec-
retary 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 enforce-
ment 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 De-
partment of Commerce (in
vestigations, or property of, and take the sworn testi-
mony of, any person.
(d) to—
(i) Make investigations of, obtain informa-
tion from, make inspection of any books,
records, or reports (including any writings
required to be kept by the Secretary), pre-
mises or property of, and take the sworn testi-
mony of, any person.
(ii) Administer oaths or affirmations, and by
subpoena require any person to appear and
produce books, records, or 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 ju-
risdiction to issue an order requiring such
person to appear and give testimony or to
produce books, records, or 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 Co-
lumbia, or in any territory of the United States,
and any designated officer or employee of
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 ENFOR-
CIMENT AND CUSTOMS SERVICE PERSONNEL.—(i) OFFICE OF EXPORT ENFORCE-
MENT AND CUSTOMS SERVICE PERSONNEL.—Any officer or
employee of the Office of Export Enforce-
ment and Customs Service (in this Act referred to as "OEE") who is des-
ignated by the President is authorized, in
search, de-
tain (after search), and seize items at the
ports and places referred to in subparagraph
(b), and any officer or employee of the United States
Customs Service who is designated by the
Commissioner of Customs under para-
graph (2), may do the following in carrying
out the enforcement authority under this Act:
(i) Issue a warrant or other process
executed by a court of competent ju-
risdiction 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 em-
ployee has probable cause to believe that
the person to be arrested has committed, is
committing, or is about to commit such a viola-
(III) Carry firearms.
(ii) OEE PERSONNEL.—Any officer or employee of the OEE designated by the Secretary or the Attorney General, or any other person authorized by the Secretary, may carry out the enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom a 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 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.

(d) FORFEITURE.—

(1) BY WHICH.—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 violation of any criminal law; and

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

(C) the remission or mitigation of such forfeiture.

(3) DETERMINATION.—If 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’s, or, upon the request of the Secretary, by any other agency that has authority to manage and dispose of seized property.

(4) REPORT 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 585 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 on or about any vehicle, vessel, aircraft, or person or in any property, buildings, and other facilities, and to lease equipment, conveyances, and space within the United States in violation of this Act.

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

(A) the compromise of claims,

(B) 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 deposited in the Treasury of the United States as miscellaneous receipts.

(4) PROCEEDS FROM UNDERCOVER INVESTIGATIVE OPERATIONS.—

(A) 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 investigative operation and to purchase property, buildings, and other facilities, and to lease equipment, conveyances, and space within the United States. Such funds may be used as an undercover investigative operation, and to operate such corporation or business entity established or to acquire proprietary corporations or business entities on a commercial basis, without regard to sections 3141, 3321, and 9102 of title 31, United States Code.

(B) 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 sections 648 of title 18, United States Code, and 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 and is 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 Attorney General 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. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

(3) DISPOSE 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, 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 required 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, and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect to such operation.

(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 such operation.

(iv) DEFINITIONS.—For purposes of paragraph (4):

(A) the term ‘‘closed’’, with respect to an undercover investigative operation, means the earliest time in which all criminal proceedings (other than appeals) pursuant to the investigative 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 taxes and costs) exceed $25,000, or expenditures (other than expenditures for salaries of employees) exceed $75,000, and

(ii) in which the gross receipts exceed $50,000, and the Secretary determines is of greater sensitivity than the controlled item, or

(iii) in which the gross receipts exceed $50,000, and the Secretary may deny a license to such end-user until such post-shipment verification occurs.

(5) POST-SHIPMENT VERIFICATION.—The Secretary shall target post-shipment verifications to exports involving the greatest risk to national security.

(6) 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.—If the country in which the end-user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a license for the export of such item, any substantially identical or directly competitive item or class of items, any item that the Secretary determines to be of equal or greater sensitivity than the controlled item, or
any controlled item for which a determination has not been made pursuant to section 31 to or from that country or place, such post-shipment verification is allowed.

(b) FREIGHT FORWARDERS BEST PRACTICES PROGRAM AUTHORIZATION.—There is authorized to be appropriated, for the purpose of verifying the end use of controlled items 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 during the report year;

(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 be available until expended, to enhance its program for verifying the end use of items subject to control under this Act.

(4) ENHANCED COOPERATION WITH UNITED STATES CUSTOMS SERVICE.—Consistent with the purposes of this Act, the Secretary is authorized, in cooperation with the United States Customs Service, 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, to be available until expended, for planning, design, and procurement of a computer system to replace the Department's primary export licensing and control system.

(m) AUTHORIZATION FOR BUREAU OF EXPORT ADMINISTRATION.—The Secretary may authorize, without fiscal year limitation, the expenditure of funds transferred, paid to, or received by, or made available to the Bureau of Export Administration as a reimbursement in accordance with section 9703(a) of title 31, United States Code (as added by Public Law 102–393) of $2,000,000, to be available until expended, to hire 10 additional overseas investigators to assist United States Forwarders and other interested persons 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 be available until expended, 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.

(ii) 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 during the report year;

(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 $2,000,000, to be available until expended, to hire additional license review officers.

(2) TRAINING.—There is authorized to be appropriated, for the Department of Commerce $3,000,000, to be available until expended, to conduct professional training of license review officers, auditors, and investigators conducting post-shipment verification activities (which include the following activities):

(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 is authorized to be appropriated to the Department of Commerce $2,000,000, to be available until expended, to hire additional license review officers.

(2) TRAINING.—There is authorized to be appropriated, for the Department of Commerce $3,000,000, to be available until expended, to conduct professional training of license review officers, auditors, and investigators conducting post-shipment verification activities (which include the following activities):

(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.

(i) THE IMPLEMENTATION AND OPERATION OF THIS ACT; AND

(ii) A DESCRIPTION OF FUTURE PROPOSALS FOR THE MODERNIZATION OF UNITED STATES EXPORT CONTROL SYSTEMS IN GENERAL.

(2) 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 554 through 557 of title 5, United States Code. The imposition of any such administrative sanctions 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.

(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 a 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 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 current prevailing rates from the date of the order imposing such penalty to the date of the amount imposed (plus interest at current prevailing rates from the date of the order imposing such penalty to the date of entry of judgment thereon) and to collect the penalty imposed under section 503.

(d) IMPOSITION OF TEMPORARY DENIAL OR SUSPENSION OF UNITED STATES EXPORT PRIVILEGES.—

(1) GROUNDS FOR IMPOSITION.—In any case in which there is reasonable cause to believe that a person has 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 regulations, orders, or licenses issued under this Act, 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 may designate, and the Secretary, following notice and an opportunity for a hearing, for additional periods of not more than 180 days for each successive violation.

(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, support a 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 sub-
mitting the information obtained under this Act, or under the Export Administration Act of 1979, the
International Emergency Economic Powers Act (50 U.S.C. 1706), may be withheld from disclosure only to the extent permitted by any predecessor Act regarding the control of exports, including any report or license appli-
cation required under title V in connection with any international agreement, treaty, or other obliga-
tion, and
(b) Information obtained in making the determinations set forth in section 211 of this Act, and
information obtained in any investiga-
tion in which a citizen of the United States is alleged to have violated the provisions of this Act, except for information required to be disclosed by section 502(c)(2) or 507(b)(2) of this Act, shall be made available to the Comptroller General of the 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 ob-
tained at any time under this title or under any predecessor Act regarding the control of exports, including any report or license appli-
cation required under title V in connection with any international agreement, treaty, or other obliga-
tion, shall be made available to any committee or sub-
committee of Congress of appropriate juris-
diction upon the request of the chairman or ranking minority member of such committee or sub-
committee.
(b) PROHIBITION ON FURTHER DISCLOSURE.—
No committee, subcommittee, or Member of
Congress shall disclose any information ob-
tained under this Act or any predecessor Act regarding the control of exports which is
submitted, on a confidential basis to the Con-
gress under subparagraph (A) unless the full com-
mittee 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 sub-
section (b), any information obtained under this Act or any predecessor Act regarding the control of
exports which is submitted, on a confidential basis 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.
CONGRESSIONAL RECORD—SENATE

September 6, 2001

16576

(B) Prohibition on Further Disclosures.—
No officer or employee of the General Ac-
counts or of the Department of Commerce, or any of its au-
cracy shall disclose, export, or disclose 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 such information with each other as necessary to facilitate enforce-
ment efforts and effective license decisions.

(d) Confidentiality of Disclosure of Confidential Information.—

(1) Disclosure Prohibited.—No officer or employee of the United States, or any depart-
ment or agency thereof, may publish, dis-
close, or make known in any man-
ner 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 in-
vestigation made by, or report or record made to, such department or agency, or officer or employee thereof; and

(B) is exempt from disclosure under this section.

(2) Criminal Penalties.—An officer or employee who knowingly violates para-
graph (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 of-
fer 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 vi-
olation of paragraph (1), except that no civil penalty may be imposed on an officer or em-
ployee of the General Accounting Office, or any depart-
ment or agency thereof, without the concur-
rence of the department or agency employ-

ing such employee. Section 503(c), (d), and 567 (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 employ-

ing an officer or employee found 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 par-
agraph (1) may also be removed from office or employment by the employing agency.

SEC. 603. AGRICULTURAL COMMODITIES, MED-
ICINE, AND COSMETIC ACT.

(a) Applicability of Trade Sanctions Re-
form and Export Enhancement Act of 2000.—Nothing in this Act authorizes the ex-
ercise of authority contrary to the provi-
sions of the Trade Sanctions Reform and Ex-
port Enhancement Act of 2000 (Public Law 106-387; 114 Stat. 1549, 549A–45) applicable to
exports of agricultural commodities, medi-
cine, or medical devices.

(b) Title IV.—Title II does not authorize export controls on food.

(c) Title III Limitation.—Except as set forth in section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, title III does not authorize export controls on agricultural commodities, medicine, or medical devices.

(d) Definition.—In this section, the term ‘‘food’’ means that food products which is defined in title IV of the Food, Drug, and Cosmetic Act (21 U.S.C. 321(f).

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. ANNUAL REPORT.—Not later than Feb-
uary 1 of each year, the Secretary shall sub-
mit to Congress a report on the administra-
tion of this Act during the fiscal year ending Octo-
ber 1 of such year. All Federal agencies shall cooperate fully with the Secretary in providing information for each such report.

(b) Reports.—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 au-
thority by the President and any other changes in the exercise of delegated author-
ity;

(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 for-
eign availability and mass-market status, the set-asides of foreign availability and mass-market status determinations, and ne-
gotiations 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 pro-
cedural changes undertaken in furtherance of this Act;

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

(8) a statistical summary of all applica-
tions and notifications, including—

(A) the number of applications and notifi-
cations 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 had not been taken;

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

and

(f) the number of export license data by ex-
port identification code and dollar value by coun-
try;

(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 dif-
ficulties between the export control require-
ments of the United States and those of other multilateral control regime members, and the specific differences between United States requirements and those of other sig-
nificant multilateral control regime members;

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

(14) a description of the progress made to-
ward achieving the goals established for the Department dealing with export controls under the Government Performance Results
Act.

(15) a description of the assessment made pursuant to section 214, including any rec-
ommendations to ensure that the defense in-
dustry base (including manufacturing) is suf-
ficient to guarantee the availability of such
controls;

(16) any other reports required by this Act to be submitted to the Committee on Bank-
ing, Housing, and Urban Affairs of the Sen-
ate and the Committee on International Re-
lations of the House of Representatives.

(c) Federal Register Publication Re-
quirements.—Whenever information under this Act is published in the Federal Register, such information shall, in addition, be posted on the Department of Commerce or other appropriate government website.

SEC. 702. TECHNICAL AND CONFORMING AMEND-
MENTS.

(a) Repeal.—The Export Administration Act of 1979 (50 U.S.C. App. 2001 et seq.) is re-
pealed.

(b) Energy Policy and Conservation Ac-
t.
(A) by striking "Export Administration Act of 1979" the first place it appears and inserting "Export Administration Act of 2001"; and

(B) by striking "Act of 1979" and inserting "Act of 2001".

(3) Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2566f(a)) is amended—

(A) in paragraph (1)(a), 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 "section 4 of the Export Administration Act of 1979."

(4) Section 40(e)(1) of the State Department Basic Authorities Act of 1996 (22 U.S.C. 2712(e)(1)) is amended by striking "section 6(j) of the Export Administration Act of 1979" and inserting "section 6(j) of the Export Administration Act of 2001.".

(5) Section 205(d)(B) of the State Department Basic Authorities Act of 1996 (22 U.S.C. 305(d)(4)(B)) is amended by striking "section 6(j) of the Export Administration Act of 1979 and section 40 of the Export Administration Act of 2001.".


(7) Section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)) is amended by striking "section 6(j) of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation of the nuclear weapons capabilities of the United States" and inserting "the Export Administration Act of 2001.".

(8) 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.".

(9) Section 2332(a)(a) of title 18, United States Code, is amended by striking "section 6(j) of the Export Administration Act of 1979 and section 40 of the Export Administration Act of 2001.".


(11) Section 1612(a) of the International Financial Institutions Act (22 U.S.C. 262p-4(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.".

ube 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 11 (relating to violations) of the Export Administration of 1979 and Inserting "section 563 (relating to penalties) of the Export Administration Act of 2001.".


(14) Section 993(v)(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 the following new subparagraph:

(3) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product that is standard equipment, certified by the Federal Aviation Administration, in civil aircraft, and is an integral part of such aircraft, shall be subject to export control only under this Act. Any 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) CIVIL AIRCRAFT SAFETY.—Notwithstanding any other provision of law, the Secretary may authorize, on a case-by-case basis, exports and reexports of civil aircraft, equipment and technology that are necessary for compliance with flight safety requirements for commercial passenger aircraft. Flight safety requirements are defined as airworthiness directives issued by the Federal Aviation Administration (FAA) or equipment manufacturers’ maintenance instructions or bulletins approved or accepted by the FAA for the continued airworthiness of the manufacturers’ products.

(1) REPEAL OF CERTAIN EXPORT CONTROLS.—


SEC. 706. 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 which 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 proceeding, 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 title 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.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. SARBANES. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business with Senators permitted to speak therein for not to exceed 15 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

EXPORT ADMINISTRATION ACT

Mr. ENZI. Mr. President, what I would like to do is take some time, because I did not have an opportunity just before the vote, to thank all the people who worked on and participated in this bill that we have just completed, and that includes the people who are both for the bill and against the bill. Everybody made a contribution on this one.

As I mentioned before, all 100 Senators are interested in national security—deeply interested, deathly interested in national security. That has been demonstrated by the work that has been put in on this bill. They are interested in national security, they are interested in the economy of the country advance. We just passed a bill that will allow both of those things to happen, and happen safely.

We have been without the kind of a bill we have needed for a period of time. We just passed one that is considerably better than what we had in place, and is even better than the