

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5040
OFFERED BY MR. ROYCE OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Export Control Reform Act of 2018”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—AUTHORITY AND ADMINISTRATION OF CONTROLS

Sec. 101. Short title.

Sec. 102. Statement of policy.

Sec. 103. Authority of the President.

Sec. 104. Additional authorities.

Sec. 105. Administration of export controls.

Sec. 106. Control lists.

Sec. 107. Licensing.

Sec. 108. Compliance assistance.

Sec. 109. Requirements to identify and control emerging critical technologies in
export control regulations.

Sec. 110. Penalties.

Sec. 111. Enforcement.

Sec. 112. Administrative procedure.

Sec. 113. Annual report to Congress.

Sec. 114. Repeal.

Sec. 115. Effect on other Acts.

Sec. 116. Transition provisions.

TITLE II—ANTI-BOYCOTT ACT OF 2018

Sec. 201. Short title.

Sec. 202. Statement of policy.

Sec. 203. Foreign boycotts.

Sec. 204. Enforcement.

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

Sec. 301. Missile proliferation control violations.

Sec. 302. Chemical and biological weapons proliferation sanctions.

TITLE IV—ADMINISTRATIVE AUTHORITIES

Sec. 401. Under Secretary of Commerce for Industry and Security.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) CONTROLLED.—The term “controlled”
4 means the export, reexport, or transfer of an item
5 subject to the jurisdiction of the United States
6 under title I.

7 (2) DUAL-USE.—The term “dual-use”, with re-
8 spect to an item, means the item has civilian appli-
9 cations and military, terrorism, weapons of mass de-
10 struction, or law-enforcement-related applications.

11 (3) EXPORT.—The term “export”, with respect
12 to an item subject to controls under title I, in-
13 cludes—

14 (A) the shipment or transmission of the
15 item out of the United States, including the
16 sending or taking of the item out of the United
17 States, in any manner; and

18 (B) the release or transfer of technology or
19 source code relating to the item to a foreign
20 person in the United States.

1 (4) EXPORT ADMINISTRATION REGULATIONS.—
2 The term “Export Administration Regulations”
3 means—

4 (A) the Export Administration Regulations
5 as promulgated, maintained, and amended
6 under the authority of the International Emer-
7 gency Economic Powers Act and codified, as of
8 the date of the enactment of this Act, in sub-
9 chapter C of chapter VII of title 15, Code of
10 Federal Regulations; or

11 (B) regulations that are promulgated,
12 maintained, and amended under the authority
13 of title I on or after the date of the enactment
14 of this Act.

15 (5) FOREIGN PERSON.—The term “foreign per-
16 son” means a person that is not a United States
17 person.

18 (6) ITEM.—The term “item” means a com-
19 modity, software, or technology.

20 (7) PERSON.—The term “person” means—

21 (A) a natural person;

22 (B) a corporation, business association,
23 partnership, society, trust, financial institution,
24 insurer, underwriter, guarantor, and any other
25 business organization, any other nongovern-

1 mental entity, organization, or group, or any
2 government or agency thereof; and

3 (C) any successor to any entity described
4 in subparagraph (B).

5 (8) REEXPORT.—The term “reexport”, with re-
6 spect to an item subject to controls under title I, in-
7 cludes—

8 (A) the shipment or transmission of the
9 item from a foreign country to another foreign
10 country, including the sending or taking of the
11 item from the foreign country to the other for-
12 eign country, in any manner; and

13 (B) the release or transfer of technology or
14 source code relating to the item to a foreign
15 person outside the United States.

16 (9) SECRETARY.—Except as otherwise provided,
17 the term “Secretary” means the Secretary of Com-
18 merce.

19 (10) TECHNOLOGY.—The term “technology”
20 includes foundational information and information
21 and know-how necessary for the development (at all
22 stages prior to serial production), production, use,
23 operation, installation, maintenance, repair, overhaul
24 or refurbishing of an item.

1 (11) TRANSFER.—The term “transfer”, with
2 respect to an item subject to controls under title I,
3 means a change in the end-use or end user of the
4 item within the same foreign country.

5 (12) UNITED STATES.—The term “United
6 States” means the several States, the District of Co-
7 lumbia, the Commonwealth of Puerto Rico, the Com-
8 monwealth of the Northern Mariana Islands, Amer-
9 ican Samoa, Guam, the United States Virgin Is-
10 lands, and any other territory or possession of the
11 United States.

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

14 (A) for purposes of titles I and III—

15 (i) any individual who is a citizen or
16 national of the United States or who is an
17 individual described in subparagraph (B)
18 of section 274B(a)(3) of the Immigration
19 and Nationality Act (8 U.S.C.
20 1324b(a)(3));

21 (ii) a corporation or other legal entity
22 which is organized under the laws of the
23 United States, any State or territory there-
24 of, or the District of Columbia; and

1 (iii) any person in the United States;

2 and

3 (B) for purposes of title II, any United
4 States resident or national (other than an indi-
5 vidual resident outside the United States and
6 employed by other than a United States per-
7 son), any domestic concern (including any per-
8 manent domestic establishment of any foreign
9 concern) and any foreign subsidiary or affiliate
10 (including any permanent foreign establish-
11 ment) of any domestic concern which is con-
12 trolled in fact by such domestic concern, as de-
13 termined under regulations by the Secretary.

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

18 **TITLE I—AUTHORITY AND**
19 **ADMINISTRATION OF CONTROLS**

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

21 This title may be cited as the “Export Controls Act
22 of 2018”.

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

24 The following is the policy of the United States:

1 (1) The national security and foreign policy of
2 the United States require that the export, reexport,
3 and transfer of items, and specific activities of
4 United States persons, wherever located, be con-
5 trolled for the following purposes:

6 (A) To control the release of items for use
7 in—

8 (i) the proliferation of weapons of
9 mass destruction or of conventional weap-
10 ons;

11 (ii) the acquisition of destabilizing
12 numbers or types of conventional weapons;

13 (iii) acts of terrorism;

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

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

20 (B) To preserve the qualitative military su-
21 periority of the United States.

22 (C) To strengthen the United States in-
23 dustrial base.

1 (D) To carry out the foreign policy of the
2 United States, including the protection of
3 human rights and the promotion of democracy.

4 (E) To carry out obligations and commit-
5 ments under international agreements and ar-
6 rangements, including multilateral export con-
7 trol regimes.

8 (F) To facilitate military interoperability
9 between the United States and its North Atlan-
10 tic Treaty Organization (NATO) and other
11 close allies.

12 (G) To ensure national security controls
13 are tailored to focus on those core technologies
14 and other items that are capable of being used
15 to pose a serious national security threat to the
16 United States.

17 (2) The national security of the United States
18 requires that the United States maintain its leader-
19 ship in the science, technology, engineering, and
20 manufacturing sectors, including foundational tech-
21 nology that is essential to innovation. Such leader-
22 ship requires that United States persons are com-
23 petitive in global markets. The impact of the imple-
24 mentation of this title on such leadership and com-
25 petitiveness must be evaluated on an ongoing basis

1 and applied in imposing controls under sections 103
2 and 104 to avoid negatively affecting such leader-
3 ship.

4 (3) The national security and foreign policy of
5 the United States require that the United States
6 participate in multilateral organizations and agree-
7 ments regarding export controls on items that are
8 consistent with the policy of the United States, and
9 take all the necessary steps to secure the adoption
10 and consistent enforcement, by the governments of
11 such countries, of export controls on items that are
12 consistent with such policy.

13 (4) Export controls should be fully coordinated
14 with the multilateral export control regimes. Export
15 controls that are multilateral are most effective, and
16 should be tailored to focus on those core technologies
17 and other items that are capable of being used to
18 pose a serious national security threat to the United
19 States and its allies.

20 (5) Export controls applied unilaterally to items
21 widely available from foreign sources generally are
22 less effective in preventing end-users from acquiring
23 those items.

24 (6) The effective administration of export con-
25 trols requires a clear understanding both inside and

1 outside the United States Government of which tech-
2 nologies and other items are controlled and an effi-
3 cient process should be created to update the con-
4 trols, such as by removing and adding technologies
5 and other items.

6 (7) The export control system must ensure that
7 it is transparent, predictable, and timely, has the
8 flexibility to be adapted to address new threats in
9 the future, and allows seamless access to and shar-
10 ing of export control information among all relevant
11 United States national security and foreign policy
12 agencies.

13 (8) Implementation and enforcement of United
14 States export controls require robust capabilities in
15 monitoring, intelligence, and investigation, appro-
16 priate penalties for violations, and the ability to
17 swiftly interdict unapproved transfers.

18 (9) Export controls should be balanced with
19 United States counterterrorism, information secu-
20 rity, and cyber-security policies to ensure the ability
21 to export, reexport, and transfer technology and
22 other items in support of counterterrorism, critical
23 infrastructure, and other homeland security prior-
24 ities, while effectively preventing malicious cyber ter-
25 rorists from obtaining items that threaten the

1 United States and its interests, including the protec-
2 tion of and safety of United States citizens abroad.

3 (10) Export controls complement and are a
4 critical element of the national security policies un-
5 derlying the laws and regulations governing foreign
6 direct investment in the United States, including
7 controlling the transfer of critical technologies to
8 certain foreign persons. Thus, the President, in close
9 coordination with the Department of Commerce, the
10 Department of Defense, the Department of State,
11 the Department of Energy, and other agencies re-
12 sponsible for export controls, should have a regular
13 and robust process to identify the emerging and
14 other types of critical technologies of concern and
15 regulate their release to foreign persons as war-
16 ranted regardless of the nature of the underlying
17 transaction. Such identification efforts should draw
18 upon the resources and expertise of all relevant
19 parts of the United States Government, industry,
20 and academia. These efforts should be in addition to
21 traditional efforts to modernize and update the lists
22 of controlled items under the multilateral export con-
23 trol regimes.

1 (11) The authority under this title may be exer-
2 cised only in furtherance of all of the objectives set
3 forth in paragraphs (1) through (10).

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

5 (a) **AUTHORITY.**—In order to carry out the policy set
6 forth in paragraphs (1) through (10) of section 102, the
7 President shall control—

8 (1) the export, reexport, and transfer of items
9 subject to the jurisdiction of the United States,
10 whether by United States persons or by foreign per-
11 sons; and

12 (2) the activities of United States persons,
13 wherever located, relating to specific—

14 (A) nuclear explosive devices;

15 (B) missiles;

16 (C) chemical or biological weapons;

17 (D) whole plants for chemical weapons pre-
18 cursors;

19 (E) foreign maritime nuclear projects; and

20 (F) foreign military intelligence services.

21 (b) **REQUIREMENTS.**—In exercising authority under
22 this title, the President shall impose controls to achieve
23 the following objectives:

1 (1) To regulate the export, reexport, and trans-
2 fer of items described in subsection (a)(1) of United
3 States persons or foreign persons.

4 (2) To regulate the activities described in sub-
5 section (a)(2) of United States persons, wherever lo-
6 cated.

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

12 (4) To maintain the leadership of the United
13 States in science, engineering, technology research
14 and development, manufacturing, and foundational
15 technology that is essential to innovation.

16 (5) To protect United States technological ad-
17 vances by prohibiting unauthorized technology trans-
18 fers to foreign persons in the United States or out-
19 side the United States, particularly with respect to
20 countries that may pose a significant threat to the
21 national security of the United States.

22 (6) To enhance the viability of commercial
23 firms, academic institutions, and research establish-
24 ments, and maintain the skilled workforce of such
25 firms, institutions, and establishments, that are nec-

1 essary to preserving the leadership of the United
2 States described in paragraph (4).

3 (7) To strengthen the United States industrial
4 base, both with respect to current and future de-
5 fense requirements.

6 (8) To enforce the controls through means such
7 as regulations, requirements for compliance, lists of
8 controlled items, lists of foreign persons who threat-
9 en the national security or foreign policy of the
10 United States, and guidance in a form that facili-
11 tates compliance by United States persons and for-
12 eign persons, in particular academic institutions, sci-
13 entific and research establishments, and small- and
14 medium-sized businesses.

15 (c) APPLICATION OF CONTROLS.—The President
16 shall impose controls over the export, reexport, or transfer
17 of items for purposes of the objectives described in sub-
18 sections (b)(1) or (b)(2) without regard to the nature of
19 the underlying transaction or any circumstances per-
20 taining to the activity, including whether such export, re-
21 export, or transfer occurs pursuant to a purchase order
22 or other contract requirement, voluntary decision, inter-
23 company arrangement, marketing effort, or during a joint
24 venture, joint development agreement, or similar collabo-
25 rative agreement.

1 **SEC. 104. ADDITIONAL AUTHORITIES.**

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

4 (1) establish and maintain lists published by
5 the Secretary of items that are controlled under this
6 title;

7 (2) establish and maintain lists published by
8 the Secretary of foreign persons and end-uses that
9 are determined to be a threat to the national secu-
10 rity and foreign policy of the United States pursuant
11 to the policy set forth in section 102(1)(A);

12 (3) prohibit unauthorized exports, reexports,
13 and transfers of controlled items, including to for-
14 eign persons in the United States or outside the
15 United States;

16 (4) restrict exports, reexports, and transfers of
17 any controlled items to any foreign person or end-
18 use listed under paragraph (2);

19 (5) require licenses or other authorizations, as
20 appropriate, for exports, reexports, and transfers of
21 controlled items, including imposing conditions or re-
22 strictions on United States persons and foreign per-
23 sons with respect to such licenses or other authoriza-
24 tions;

25 (6) establish a process by which a license appli-
26 cant may request an assessment to determine wheth-

1 er a foreign item is comparable in quality to an item
2 controlled under this title, and is available in suffi-
3 cient quantities to render the United States export
4 control of that item or the denial of a license ineffec-
5 tive, including a mechanism to address that dis-
6 parity;

7 (7) require measures for compliance with the
8 export controls established under this title;

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

12 (9) require, as appropriate, advance notice be-
13 fore an item is exported, reexported, or transferred,
14 as an alternative to requiring a license;

15 (10) require, to the extent feasible, identifica-
16 tion of items subject to controls under this title in
17 order to facilitate the enforcement of such controls;

18 (11) inspect, search, detain, seize, or impose
19 temporary denial orders with respect to items, in
20 any form, that are subject to controls under this
21 title, or conveyances on which it is believed that
22 there are items that have been, are being, or are
23 about to be exported, reexported, or transferred in
24 violation of this title;

1 (12) monitor shipments, or other means of
2 transfer;

3 (13) keep the public fully apprised of changes
4 in policy, regulations, and procedures established
5 under this title;

6 (14) appoint technical advisory committees in
7 accordance with the Federal Advisory Committee
8 Act;

9 (15) create, as warranted, exceptions to licens-
10 ing requirements in order to further the objectives of
11 this title;

12 (16) establish and maintain processes to inform
13 persons, either individually by specific notice or
14 through amendment to any regulation or order
15 issued under this title, that a license from the Bu-
16 reau of Industry and Security of the Department of
17 Commerce is required to export; and

18 (17) undertake any other action as is necessary
19 to carry out this title that is not otherwise prohib-
20 ited by law.

21 (b) RELATIONSHIP TO IEEPA.—The authority under
22 this title may not be used to regulate or prohibit under
23 this title the export, reexport, or transfer of any item that
24 may not be regulated or prohibited under section 203(b)
25 of the International Emergency Economic Powers Act (50

1 U.S.C. 1702(b)), except to the extent the President has
2 made a determination necessary to impose controls under
3 subparagraph (A), (B), or (C) of paragraph (2) of such
4 section.

5 (c) COUNTRIES SUPPORTING INTERNATIONAL TER-
6 RORISM.—

7 (1) LICENSE REQUIREMENT.—

8 (A) IN GENERAL.—A license shall be re-
9 quired for the export, reexport, or transfer of
10 items to a country if the Secretary of State has
11 made the following determinations:

12 (i) The government of such country
13 has repeatedly provided support for acts of
14 international terrorism.

15 (ii) The export, reexport, or transfer
16 of such items could make a significant con-
17 tribution to the military potential of such
18 country, including its military logistics ca-
19 pability, or could enhance the ability of
20 such country to support acts of inter-
21 national terrorism.

22 (B) DETERMINATION UNDER OTHER PRO-
23 VISIONS OF LAW.—A determination of the Sec-
24 retary of State under section 620A of the For-
25 eign Assistance Act of 1961 (22 U.S.C. 2371),

1 section 40 of the Arms Export Control Act (22
2 U.S.C. 2780), or any other provision of law
3 that the government of a country described in
4 subparagraph (A) has repeatedly provided sup-
5 port for acts of international terrorism shall be
6 deemed to be a determination with respect to
7 such government for purposes of clause (i) of
8 subparagraph (A).

9 (2) NOTIFICATION TO CONGRESS.—The Sec-
10 retary of State or the Secretary of Commerce shall
11 notify the Committee on Foreign Affairs of the
12 House of Representatives and the Committee on
13 Banking, Housing, and Urban Affairs and the Com-
14 mittee on Foreign Relations of the Senate at least
15 30 days before issuing any license required by para-
16 graph (1).

17 (3) PUBLICATION IN FEDERAL REGISTER.—
18 Each determination of the Secretary of State under
19 paragraph (1)(A) shall be published in the Federal
20 Register, except that the Secretary of State may ex-
21 clude confidential information and trade secrets con-
22 tained in such determination.

23 (4) RESCISSION OF DETERMINATION.—A deter-
24 mination of the Secretary of State under paragraph
25 (1)(A) may not be rescinded unless the President

1 submits to the Speaker of the House of Representa-
2 tives, the chairman of the Committee on Foreign Af-
3 fairs, and the chairman of the Committee on Bank-
4 ing, Housing, and Urban Affairs and the chairman
5 of the Committee on Foreign Relations of the Sen-
6 ate—

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

9 (i) there has been a fundamental
10 change in the leadership and policies of the
11 government of the country concerned;

12 (ii) that government is not supporting
13 acts of international terrorism; and

14 (iii) that government has provided as-
15 surances that it will not support acts of
16 international terrorism in the future; or

17 (B) at least 90 days before the proposed
18 rescission would take effect, a report justifying
19 the rescission and certifying that—

20 (i) the government concerned has not
21 provided any support for acts international
22 terrorism during the preceding 24-month
23 period; and

24 (ii) the government concerned has
25 provided assurances that it will not sup-

1 port acts of international terrorism in the
2 future.

3 (5) DISAPPROVAL OF RESCISSION.—No rescis-
4 sion under paragraph (4)(B) of a determination
5 under paragraph (1)(A) with respect to the govern-
6 ment of a country may be made if Congress, within
7 90 days after receipt of a report under paragraph
8 (4)(B), enacts a joint resolution described in sub-
9 section (f)(2) of section 40 of the Arms Export Con-
10 trol Act with respect to a rescission under subsection
11 (f)(1) of such section with respect to the government
12 of such country.

13 (6) NOTIFICATION AND BRIEFING.—Not later
14 than—

15 (A) ten days after initiating a review of the
16 activities of the government of the country con-
17 cerned within the 24-month period referred to
18 in paragraph (4)(B)(i), the Secretary of State
19 shall notify the Committee on Foreign Affairs
20 of the House of Representatives and the Com-
21 mittee on Foreign Relations of the Senate of
22 such initiation; and

23 (B) 20 days after the notification described
24 in paragraph (1), the Secretary of State shall

1 brief the congressional committees described in
2 paragraph (1) on the status of such review.

3 (7) CONTENTS OF NOTIFICATION OF LI-
4 CENSE.—The Secretary of State shall include in the
5 notification required by paragraph (2)—

6 (A) a detailed description of the items to
7 be offered, including a brief description of the
8 capabilities of any item for which a license to
9 export, reexport, or transfer the items is
10 sought;

11 (B) the reasons why the foreign country,
12 person, or entity to which the export, reexport,
13 or transfer is proposed to be made has re-
14 quested the items under the export, reexport, or
15 transfer, and a description of the manner in
16 which such country, person, or entity intends to
17 use such items;

18 (C) the reasons why the proposed export,
19 reexport, or transfer is in the national interest
20 of the United States;

21 (D) an analysis of the impact of the pro-
22 posed export, reexport, or transfer on the mili-
23 tary capabilities of the foreign country, person,
24 or entity to which such transfer would be made;

1 (E) an analysis of the manner in which the
2 proposed export, reexport, or transfer would af-
3 fect the relative military strengths of countries
4 in the region to which the items that are the
5 subject of such export, reexport, or transfer
6 would be delivered and whether other countries
7 in the region have comparable kinds and
8 amounts of items; and

9 (F) an analysis of the impact of the pro-
10 posed export, reexport, or transfer on the rela-
11 tions of the United States with the countries in
12 the region to which the items that are the sub-
13 ject of such export, reexport, or transfer would
14 be delivered.

15 (d) ENHANCED CONTROLS.—

16 (1) IN GENERAL.—In furtherance of section
17 103(a) of this title, the President shall, except to the
18 extent authorized by a statute or regulation adminis-
19 tered by a Federal department or agency other than
20 the Department of Commerce, require a United
21 States person, wherever located, to apply for and re-
22 ceive a license from the Department of Commerce
23 for—

24 (A) the export, reexport, or transfer of
25 items described in paragraph (2), including

1 items that are not subject to control under this
2 title; and

3 (B) other activities that may support the
4 design, development, production, use, operation,
5 installation, maintenance, repair, overhaul, or
6 refurbishing of, or for the performance of serv-
7 ices relating to, any such items.

8 (2) ITEMS DESCRIBED.—The items described in
9 this paragraph include—

10 (A) nuclear explosive devices;

11 (B) missiles;

12 (C) chemical or biological weapons;

13 (D) whole plants for chemical weapons pre-
14 cursors; and

15 (E) foreign maritime nuclear projects that
16 would pose a risk to the national security or
17 foreign policy of the United States.

18 (e) ADDITIONAL PROHIBITIONS.—The Secretary may
19 inform United States persons, either individually by spe-
20 cific notice or through amendment to any regulation or
21 order issued under this title, that a license from the Bu-
22 reau of Industry and Security of the Department of Com-
23 merce is required to engage in any activity if the activity
24 involves the types of movement, service, or support de-
25 scribed in subsection (d). The absence of any such notifi-

1 cation does not excuse the United States person from com-
2 pliance with the license requirements of subsection (d), or
3 any regulation or order issued under this title.

4 (f) LICENSE REVIEW STANDARDS.—The Secretary
5 shall deny an application to engage in any activity de-
6 scribed in subsection (d) if the activity would make a ma-
7 terial contribution to any of the items described in sub-
8 section (d)(2).

9 **SEC. 105. ADMINISTRATION OF EXPORT CONTROLS.**

10 (a) IN GENERAL.—The President shall delegate to
11 the Secretary of Commerce, the Secretary of Defense, the
12 Secretary of State, the Secretary of Energy, and, as ap-
13 propriate, the Director of National Intelligence and the
14 heads of other appropriate Federal departments and agen-
15 cies, the authority to carry out the purposes set forth in
16 subsection (b).

17 (b) PURPOSES.—

18 (1) IN GENERAL.—The purpose of the delega-
19 tions of authority pursuant to subsection (a) are—

20 (A) to advise the President with respect
21 to—

22 (i) identifying specific threats to the
23 national security and foreign policy that
24 the authority of this title may be used to
25 address; and

1 (ii) exercising the authority under this
2 title to implement policies, regulations,
3 procedures, and actions that are necessary
4 to effectively counteract those threats;

5 (B) to review and approve—

6 (i) criteria for including items on, and
7 removing such an item from, a list of con-
8 trolled items established under this title;

9 (ii) an interagency procedure for com-
10 piling and amending any list described in
11 clause (i);

12 (iii) criteria for including a person on
13 a list of persons to whom exports, reex-
14 ports, and transfers of items are prohibited
15 or restricted under this title;

16 (iv) standards for compliance by per-
17 sons subject to controls under this title;
18 and

19 (v) policies and procedures for the
20 end-use monitoring of exports, reexports,
21 and transfers of items controlled under
22 this title;

23 (C) to obtain independent evaluations, in-
24 cluding from Inspectors General of the relevant
25 departments or agencies, on a periodic basis on

1 the effectiveness of the implementation of this
2 title in carrying out the policy set forth in sec-
3 tion 102; and

4 (D) to benefit from the inherent equities,
5 experience, and capabilities of the Federal offi-
6 cials described in subsection (a), including—

7 (i) the views of the Department of De-
8 fense with respect to the national security
9 implications of a particular control or deci-
10 sion;

11 (ii) the views of the Department of
12 State with respect to the foreign policy im-
13 plications of a particular control or deci-
14 sion;

15 (iii) the views of the Department of
16 Energy with respect to the implications for
17 nuclear proliferation of a particular control
18 or decision; and

19 (iv) the views of the Department of
20 Commerce with respect to the administra-
21 tion of an efficient, coherent, reliable, en-
22 forceable, and predictable export control
23 system, and the resolution of competing
24 views or policy objectives described in sec-
25 tion 102.

1 (2) **AUTHORITY TO SEEK INFORMATION.**—The
2 Federal officials described in subsection (a) may, in
3 carrying out the purposes set forth in paragraph (1),
4 seek information and advice from experts who are
5 not officers or employees of the Federal Govern-
6 ment.

7 (3) **TRANSMITTAL AND IMPLEMENTATION OF**
8 **EVALUATIONS.**—The results of the independent eval-
9 uations conducted pursuant to paragraph (1)(D)
10 shall be transmitted to the President and the Con-
11 gress, in classified form if necessary. Subject to the
12 delegation of authority by the President, the Federal
13 officials described in subsection (a) shall determine,
14 direct, and ensure that improvements recommended
15 in the evaluations are implemented.

16 (c) **SENSE OF CONGRESS.**—It is the sense of Con-
17 gress that the administration of export controls under this
18 title should be consistent with the procedures relating to
19 export license applications described in Executive Order
20 12981 (1995).

21 **SEC. 106. CONTROL LISTS.**

22 The President shall, pursuant to the delegation of au-
23 thority in section 105, ensure that—

24 (1) a process is established for regular inter-
25 agency review of each list established under section

1 104(a)(1), that pursuant to such review the Sec-
2 retary regularly updates such lists to ensure that
3 new items (including emerging critical technologies)
4 are appropriately controlled, and that the level of
5 control of items on the lists are adjusted as condi-
6 tions change;

7 (2) information and expertise are obtained from
8 officers and employees from relevant Federal depart-
9 ments, agencies, and offices and persons outside the
10 Federal Government who have technical expertise,
11 with respect to the characteristics of the items con-
12 sidered for each list established under section
13 104(a)(1) and the effect of controlling the items on
14 addressing the policy set forth in section 102;

15 (3) each list established under section 104(a)(1)
16 appropriately identifies each entry that has been in-
17 cluded by virtue of the participation of the United
18 States in a multilateral regime, organization, or
19 group the purpose of which is consistent with and
20 supports the policy of the United States under this
21 title relating to the control of exports, reexports, and
22 transfers of items; and

23 (4) each list established under section 104(a)(1)
24 is published by the Secretary in a form that facili-
25 tates compliance with it and related requirements,

1 particularly by small- and medium-sized businesses,
2 and academic institutions.

3 **SEC. 107. LICENSING.**

4 (a) IN GENERAL.—The President shall, pursuant to
5 the delegation of authority in section 105, establish a pro-
6 cedure for the Department of Commerce to license or oth-
7 erwise authorize the export, reexport, and transfer of
8 items controlled under this title in order to carry out the
9 policy set forth in section 102 and the requirements set
10 forth in section 103(b). The procedure shall ensure that—

11 (1) license applications, other requests for au-
12 thorization, and related dispute resolution proce-
13 dures are considered and decisions made with the
14 participation of appropriate departments, agencies,
15 and offices that have delegated functions under this
16 title; and

17 (2) licensing decisions are made in an expedi-
18 tious manner, with transparency to applicants on the
19 status of license and other authorization processing
20 and the reason for denying any license or request for
21 authorization.

22 (b) SENSE OF CONGRESS.—It is the sense of Con-
23 gress that the President should make best efforts to en-
24 sure that an accurate, consistent, and timely evaluation
25 and processing of licenses or other requests for authoriza-

1 tion to export, reexport, or transfer items controlled under
2 this title is accomplished within 30 days from the date
3 of such license request.

4 (c) FEES.—No fee may be charged in connection with
5 the submission, processing, or consideration of any appli-
6 cation for a license or other authorization or other request
7 made in connection with any regulation in effect under
8 the authority of this title.

9 **SEC. 108. COMPLIANCE ASSISTANCE.**

10 (a) SYSTEM FOR SEEKING ASSISTANCE.—The Presi-
11 dent may authorize the Secretary to establish a system
12 to provide United States persons with assistance in com-
13 plying with this title, which may include a mechanism for
14 providing information, in classified form as appropriate,
15 who are potential customers, suppliers, or business part-
16 ners with respect to items controlled under this title, in
17 order to further ensure the prevention of the export, reex-
18 port, or transfer of items that may pose a threat to the
19 national security or foreign policy of the United States.

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

24 (c) ASSISTANCE FOR CERTAIN BUSINESSES.—

1 (1) IN GENERAL.—Not later than 120 days
2 after the date of the enactment of this Act, the
3 President shall develop and submit to Congress a
4 plan to assist small- and medium-sized United
5 States in export licensing and other processes under
6 this title.

7 (2) CONTENTS.—The plan shall include, among
8 other things, arrangements for the Department of
9 Commerce to provide counseling to businesses de-
10 scribed in paragraph (1) on filing applications and
11 identifying items controlled under this title, as well
12 as proposals for seminars and conferences to educate
13 such businesses on export controls, licensing proce-
14 dures, and related obligations.

15 **SEC. 109. REQUIREMENTS TO IDENTIFY AND CONTROL**
16 **EMERGING CRITICAL TECHNOLOGIES IN EX-**
17 **PORT CONTROL REGULATIONS.**

18 (a) IN GENERAL.—The President shall, pursuant to
19 the delegation of authority in section 105, establish and,
20 in coordination with the Department of Commerce, the
21 Department of Defense, the Department of State, the De-
22 partment of Energy, and other departments determined
23 to be necessary, lead a regular, ongoing interagency pro-
24 cess to identify the following:

1 (1) Emerging critical technologies that are not
2 identified in any list of items controlled for export
3 under United States law or regulations, but that
4 nonetheless could be essential for maintaining or in-
5 creasing the technological advantage of the United
6 States over countries that pose a significant threat
7 to the national security of the United States with re-
8 spect to national defense, intelligence, or other areas
9 of national security, or gaining such an advantage
10 over such countries in areas where such an advan-
11 tage may not currently exist.

12 (2) Any other technologies that are not identi-
13 fied in any list of items controlled for export under
14 United States law or regulations, but that—

15 (A) have been identified, publicly or other-
16 wise, by countries posing such significant threat
17 as necessary to acquire from the United States
18 to advance their national defense, intelligence,
19 or other areas of national security; and

20 (B) would, if so acquired, be to the det-
21 riment of the national security of the United
22 States.

23 (b) REQUIREMENTS.—The interagency process re-
24 quired under subsection (a) shall—

1 (1) draw upon the expertise, resources, and eq-
2 uities of all relevant United States Government
3 agencies, industries, and academic institutions to
4 identify and describe such emerging critical tech-
5 nologies;

6 (2) require the relevant export control authority
7 to publish proposed regulations for public comment
8 that would control heretofore unlisted emerging crit-
9 ical technologies identified pursuant to subsection
10 (a) and control the release of each such technology
11 to destinations, end uses, or end users as determined
12 by the President;

13 (3) require the Secretary of Commerce, the Sec-
14 retary of State, and the Secretary of Defense to pro-
15 pose to the relevant multilateral export control re-
16 gimes in the following year that such emerging crit-
17 ical technologies be added to the list of technologies
18 controlled by such regimes;

19 (4) determine whether national security con-
20 cerns warrant continued unilateral export controls
21 over technologies identified pursuant to subsection
22 (a) if the relevant multilateral export control regime
23 does not agree to list such technologies on its control
24 list within three years; and

1 (5) require the agencies responsible for admin-
2 istering the export controls identified in subsection
3 (a) to remove or revise, as appropriate, existing con-
4 trols determined to warrant removal or revision as a
5 result of insight or information obtained during ef-
6 forts undertaken to comply with the requirements of
7 this section.

8 **SEC. 110. PENALTIES.**

9 (a) UNLAWFUL ACTS.—

10 (1) IN GENERAL.—It shall be unlawful for a
11 person to violate, attempt to violate, conspire to vio-
12 late, or cause a violation of this title or of any regu-
13 lation, order, license, or other authorization issued
14 under this title, including any of the unlawful acts
15 described in paragraph (2).

16 (2) SPECIFIC UNLAWFUL ACTS.—The unlawful
17 acts described in this paragraph are the following:

18 (A) No person may engage in any conduct
19 prohibited by or contrary to, or refrain from en-
20 gaging in any conduct required by this title, the
21 Export Administration Regulations, or any
22 order, license or authorization issued there-
23 under.

24 (B) No person may cause or aid, abet,
25 counsel, command, induce, procure, permit, or

1 approve the doing of any act prohibited, or the
2 omission of any act required by this title, the
3 Export Administration Regulations, or any
4 order, license or authorization issued there-
5 under.

6 (C) No person may solicit or attempt a vio-
7 lation of this Act, the Export Administration
8 Regulations, or any order, license or authoriza-
9 tion issued thereunder.

10 (D) No person may conspire or act in con-
11 cert with one or more other persons in any
12 manner or for any purpose to bring about or to
13 do any act that constitutes a violation of this
14 title, the Export Administration Regulations, or
15 any order, license or authorization issued there-
16 under.

17 (E) No person may order, buy, remove,
18 conceal, store, use, sell, loan, dispose of, trans-
19 fer, transport, finance, forward, or otherwise
20 service, in whole or in part, or conduct negotia-
21 tions to facilitate such activities for, any item
22 exported or to be exported from the United
23 States, or that is otherwise subject to the Ex-
24 port Administration Regulations, with knowl-
25 edge that a violation of this title, the Export

1 Administration Regulations, or any order, li-
2 cense or authorization issued thereunder, has
3 occurred, is about to occur, or is intended to
4 occur in connection with the item unless valid
5 authorization is obtained therefor.

6 (F) No person may make any false or mis-
7 leading representation, statement, or certifi-
8 cation, or falsify or conceal any material fact,
9 either directly to the Department of Commerce,
10 or an official of any other United States agen-
11 cy, or indirectly through any other person—

12 (i) in the course of an investigation or
13 other action subject to the Export Admin-
14 istration Regulations;

15 (ii) in connection with the prepara-
16 tion, submission, issuance, use, or mainte-
17 nance of any export control document or
18 any report filed or required to be filed pur-
19 suant to the Export Administration Regu-
20 lations; or

21 (iii) for the purpose of or in connec-
22 tion with effecting any export, reexport, or
23 transfer of an item subject to the Export
24 Administration Regulations or a service or

1 other activity of a United States person de-
2 scribed in section 104.

3 (G) No person may engage in any trans-
4 action or take any other action with intent to
5 evade the provisions of this title, the Export
6 Administration Regulations, or any order, li-
7 cense, or authorization issued thereunder.

8 (H) No person may fail or refuse to com-
9 ply with any reporting or recordkeeping require-
10 ments of the Export Administration Regula-
11 tions or of any order, license, or authorization
12 issued thereunder.

13 (I) Except as specifically authorized in the
14 Export Administration Regulations or in writ-
15 ing by the Department of Commerce, no person
16 may alter any license, authorization, export con-
17 trol document, or order issued under the Export
18 Administration Regulations.

19 (J) No person may take any action that is
20 prohibited by a denial order issued by the De-
21 partment of Commerce to prevent imminent
22 violations of this title, the Export Administra-
23 tion Regulations, or any order, license or au-
24 thorization issued thereunder.

1 (3) ADDITIONAL REQUIREMENTS.—For pur-
2 poses of subparagraph (G), any representation,
3 statement, or certification made by any person shall
4 be deemed to be continuing in effect. Each person
5 who has made a representation, statement, or certifi-
6 cation to the Department of Commerce relating to
7 any order, license, or other authorization issued
8 under this title shall notify the Department of Com-
9 merce, in writing, of any change of any material fact
10 or intention from that previously represented, stated,
11 or certified, immediately upon receipt of any infor-
12 mation that would lead a reasonably prudent person
13 to know that a change of material fact or intention
14 had occurred or may occur in the future.

15 (b) CRIMINAL PENALTY.—A person who willfully
16 commits, willfully attempts to commit, or willfully con-
17 spires to commit, or aids and abets in the commission of,
18 an unlawful act described in subsection (a)—

19 (1) shall be fined not more than \$1,000,000;
20 and

21 (2) in the case of the individual, shall be im-
22 prisoned for not more than 20 years, or both.

23 (c) CIVIL PENALTIES.—

24 (1) AUTHORITY.—The President may impose
25 the following civil penalties on a person for each vio-

1 lation by that person of this title or any regulation,
2 order, or license issued under this title, for each vio-
3 lation:

4 (A) A fine of not more than \$300,000 or
5 an amount that is twice the value of the trans-
6 action that is the basis of the violation with re-
7 spect to which the penalty is imposed, which-
8 ever is greater.

9 (B) Revocation of a license issued under
10 this title to the person.

11 (C) A prohibition on the person's ability to
12 export, reexport, or transfer any items, whether
13 or not subject to controls under this title.

14 (2) PROCEDURES.—Any civil penalty under this
15 subsection may be imposed only after notice and op-
16 portunity for an agency hearing on the record in ac-
17 cordance with sections 554 through 557 of title 5,
18 United States Code.

19 (3) STANDARDS FOR LEVELS OF CIVIL PEN-
20 ALTY.—The Secretary may by regulation provide
21 standards for establishing levels of civil penalty
22 under this subsection based upon factors such as the
23 seriousness of the violation, the culpability of the vi-
24 olator, and such mitigating factors as the violator's

1 record of cooperation with the Government in dis-
2 closing the violation.

3 (d) CRIMINAL FORFEITURE OF PROPERTY INTEREST
4 AND PROCEEDS.—

5 (1) FORFEITURE.—Any person who is convicted
6 under subsection (b) of a violation of a control im-
7 posed under section 103 (or any regulation, order,
8 or license issued with respect to such control) shall,
9 in addition to any other penalty, forfeit to the
10 United States—

11 (A) any of that person's interest in, secu-
12 rity of, claim against, or property or contractual
13 rights of any kind in the tangible items that
14 were the subject of the violation;

15 (B) any of that person's interest in, secu-
16 rity of, claim against, or property or contractual
17 rights of any kind in tangible property that was
18 used in the violation; and

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

22 (2) PROCEDURES.—The procedures in any for-
23 feiture under this subsection, and the duties and au-
24 thority of the courts of the United States and the
25 Attorney General with respect to any forfeiture ac-

1 tion under this subsection or with respect to any
2 property that may be subject to forfeiture under this
3 subsection, shall be governed by the provisions of
4 section 1963 of title 18, United States Code.

5 (e) PRIOR CONVICTIONS.—

6 (1) LICENSE BAR.—

7 (A) IN GENERAL.—The Secretary may—

8 (i) deny the eligibility of any person
9 convicted of a criminal violation described
10 in subparagraph (B) to export, reexport, or
11 transfer outside the United States any
12 item, whether or not subject to controls
13 under this title, for a period of up to 10
14 years beginning on the date of the convic-
15 tion; and

16 (ii) revoke any license or other author-
17 ization to export, reexport, or transfer
18 items that was issued under this title and
19 in which such person has an interest at the
20 time of the conviction.

21 (B) VIOLATIONS.—The violations referred
22 to in subparagraph (A) are any criminal viola-
23 tions of, or criminal attempt or conspiracy to
24 violate—

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

3 (ii) any regulation, license, or order
4 issued under the International Emergency
5 Economic Powers Act;

6 (iii) section 371, 554, 793, 794, or
7 798 of title 18, United States Code;

8 (iv) section 1001 of title 18, United
9 States Code;

10 (v) section 4(b) of the Internal Secu-
11 rity Act of 1950 (50 U.S.C. 783(b)); or

12 (vi) section 38 of the Arms Export
13 Control Act (22 U.S.C. 2778).

14 (2) APPLICATION TO OTHER PARTIES.—The
15 Secretary may exercise the authority under para-
16 graph (1) with respect to any person related,
17 through affiliation, ownership, control, position of
18 responsibility, or other connection in the conduct of
19 trade or business, to any person convicted of any
20 violation of law set forth in paragraph (1), upon a
21 showing of such relationship with the convicted
22 party, and subject to the procedures set forth in
23 subsection (c)(2).

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

1 (1) the availability of other administrative or
2 judicial remedies with respect to violations of this
3 title, or any regulation, order, license or other au-
4 thorization issued under this title;

5 (2) the authority to compromise and settle ad-
6 ministrative proceedings brought with respect to vio-
7 lations of this title, or any regulation, order, license,
8 or other authorization issued under this title; or

9 (3) the authority to compromise, remit or miti-
10 gate seizures and forfeitures pursuant to section
11 1(b) of title VI of the Act of June 15, 1917 (22
12 U.S.C. 401(b)).

13 **SEC. 111. ENFORCEMENT.**

14 (a) **AUTHORITIES.**—In order to enforce this title, the
15 President shall delegate to the heads of other appropriate
16 Federal departments and agencies the authority to—

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

18 (2) require, inspect, and obtain books, records,
19 and any other information from any person subject
20 to the provisions of this title;

21 (3) administer oaths or affirmations and by
22 subpoena require any person to appear and testify or
23 to appear and produce books, records, and other
24 writings, or both;

1 (4) conduct investigations (including under-
2 cover) in the United States and in other countries
3 using all applicable laws of the United States, in-
4 cluding intercepting any wire, oral, and electronic
5 communications, conducting electronic surveillance,
6 using pen registers and trap and trace devices, and
7 carrying out acquisitions, to the extent authorized
8 under chapters 119, 121, and 206 of title 18,
9 United States Code;

10 (5) inspect, search, detain, seize, or issue tem-
11 porary denial orders with respect to items, in any
12 form, that are subject to controls under this title, or
13 conveyances on which it is believed that there are
14 items that have been, are being, or are about to be
15 exported, reexported, or transferred in violation of
16 this title, or any regulations, order, license, or other
17 authorization issued thereunder;

18 (6) carry firearms;

19 (7) conduct prelicense inspections and post-
20 shipment verifications; and

21 (8) execute warrants and make arrests.

22 (b) ENFORCEMENT OF SUBPOENAS.—In the case of
23 contumacy by, or refusal to obey a subpoena issued to,
24 any person under subsection (a)(3), a district court of the
25 United States, after notice to such person and a hearing,

1 shall have jurisdiction to issue an order requiring such
2 person to appear and give testimony or to appear and
3 produce books, records, and other writings, regardless of
4 format, that are the subject of the subpoena. Any failure
5 to obey such order of the court may be punished by such
6 court as a contempt thereof.

7 (c) BEST PRACTICE GUIDELINES.—

8 (1) IN GENERAL.—The Secretary, in consulta-
9 tion with the heads of other appropriate Federal
10 agencies, should publish and update “best practices”
11 guidelines to assist persons in developing and imple-
12 menting, on a voluntary basis, effective export con-
13 trol programs in compliance with the regulations
14 issued under this title.

15 (2) EXPORT COMPLIANCE PROGRAM.—The im-
16 plementation by a person of an effective export com-
17 pliance program and a high quality overall export
18 compliance effort by a person should ordinarily be
19 given weight as mitigating factors in a civil penalty
20 action against the person under this title.

21 (d) REFERENCE TO ENFORCEMENT.—For purposes
22 of this section, a reference to the enforcement of, or a vio-
23 lation of, this title includes a reference to the enforcement
24 or a violation of any regulation, order, license or other au-
25 thorization issued pursuant to this title.

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

7 (f) CONFIDENTIALITY OF INFORMATION.—

8 (1) EXEMPTIONS FROM DISCLOSURE.—

9 (A) IN GENERAL.—Information obtained
10 under this title may be withheld from disclosure
11 only to the extent permitted by statute, except
12 that information described in subparagraph (B)
13 shall be withheld from public disclosure and
14 shall not be subject to disclosure under section
15 552(b)(3) of title 5, United States Code, unless
16 the release of such information is determined by
17 the Secretary to be in the national interest.

18 (B) INFORMATION DESCRIBED.—Informa-
19 tion described in this subparagraph is informa-
20 tion submitted or obtained in connection with
21 an application for a license or other authoriza-
22 tion to export, reexport, or transfer items, en-
23 gage in other activities, a recordkeeping or re-
24 porting requirement, enforcement activity, or
25 other operations under this title, including—

- 1 (i) the license application, license, or
2 other authorization itself;
- 3 (ii) classification or advisory opinion
4 requests, and the response thereto;
- 5 (iii) license determinations, and infor-
6 mation pertaining thereto;
- 7 (iv) information or evidence obtained
8 in the course of any investigation; and
- 9 (v) information obtained or furnished
10 in connection with any international agree-
11 ment, treaty, or other obligation.

12 (2) INFORMATION TO THE CONGRESS AND
13 GAO.—

14 (A) IN GENERAL.—Nothing in this section
15 shall be construed as authorizing the with-
16 holding of information from the Congress or
17 from the Government Accountability Office.

18 (B) AVAILABILITY TO THE CONGRESS.—

19 (i) IN GENERAL.—Any information
20 obtained at any time under any provision
21 of the Export Administration Act of 1979
22 (as in effect on the day before the date of
23 the enactment of this Act and as continued
24 in effect pursuant to the International
25 Emergency Economic Powers Act), under

1 the Export Administration Regulations, or
2 under this title, including any report or li-
3 cense application required under any such
4 provision, shall be made available to a
5 committee or subcommittee of Congress of
6 appropriate jurisdiction, upon the request
7 of the chairman or ranking minority mem-
8 ber of such committee or subcommittee.

9 (ii) PROHIBITION ON FURTHER DIS-
10 CLOSURE.—No such committee or sub-
11 committee, or member thereof, may dis-
12 close any information made available under
13 clause (i), that is submitted on a confiden-
14 tial basis unless the full committee deter-
15 mines that the withholding of that infor-
16 mation is contrary to the national interest.

17 (C) AVAILABILITY TO GAO.—

18 (i) IN GENERAL.—Information de-
19 scribed in clause (i) of subparagraph (B)
20 shall be subject to the limitations con-
21 tained in section 716 of title 31, United
22 States Code.

23 (ii) PROHIBITION ON FURTHER DIS-
24 CLOSURE.—An officer or employee of the
25 Government Accountability Office may not

1 disclose, except to the Congress in accord-
2 ance with this paragraph, any such infor-
3 mation that is submitted on a confidential
4 basis or from which any individual can be
5 identified.

6 (3) INFORMATION SHARING.—

7 (A) IN GENERAL.—Any Federal official de-
8 scribed in section 105(a) who obtains informa-
9 tion that is relevant to the enforcement of this
10 title, including information pertaining to any in-
11 vestigation, shall furnish such information to
12 each appropriate department, agency, or office
13 with enforcement responsibilities under this sec-
14 tion to the extent consistent with the protection
15 of intelligence, counterintelligence, and law en-
16 forcement sources, methods, and activities.

17 (B) EXCEPTIONS.—The provisions of this
18 paragraph shall not apply to information sub-
19 ject to the restrictions set forth in section 9 of
20 title 13, United States Code, and return infor-
21 mation, as defined in subsection (b) of section
22 6103 of the Internal Revenue Code of 1986 (26
23 U.S.C. 6103(b)), may be disclosed only as au-
24 thorized by that section.

1 (C) EXCHANGE OF INFORMATION.—The
2 President shall ensure that the heads of depart-
3 ments, agencies, and offices with enforcement
4 authorities under this title, consistent with pro-
5 tection of law enforcement and its sources and
6 methods—

7 (i) exchange any licensing and en-
8 forcement information with one another
9 that is necessary to facilitate enforcement
10 efforts under this section; and

11 (ii) consult on a regular basis with
12 one another and with the head of other de-
13 partments, agencies, and offices that ob-
14 tain information subject to this paragraph,
15 in order to facilitate the exchange of such
16 information.

17 (D) INFORMATION SHARING WITH FED-
18 ERAL AGENCIES.—Licensing or enforcement in-
19 formation obtained under this title may be
20 shared with heads of departments, agencies,
21 and offices that do not have enforcement au-
22 thorities under this title on a case-by-case basis
23 at the discretion of the President. Such infor-
24 mation may be shared only when the President

1 makes a determination that the sharing of this
2 information is in the national interest.

3 (g) REPORTING REQUIREMENTS.—In the administra-
4 tion of this section, reporting requirements shall be de-
5 signed to reduce the cost of reporting, recordkeeping, and
6 documentation to the extent consistent with effective en-
7 forcement and compilation of useful trade statistics. Re-
8 porting, recordkeeping, and documentation requirements
9 shall be periodically reviewed and revised in the light of
10 developments in the field of information technology.

11 (h) CIVIL FORFEITURE.—

12 (1) IN GENERAL.—Any tangible items seized
13 under subsection (a) by designated officers or em-
14 ployees shall be subject to forfeiture to the United
15 States in accordance with applicable law, except that
16 property seized shall be returned if the property
17 owner is not found guilty of a civil or criminal viola-
18 tion under section 109.

19 (2) PROCEDURES.—Any seizure or forfeiture
20 under this subsection shall be carried out in accord-
21 ance with the procedures set forth in section 981 of
22 title 18, United States Code.

1 **SEC. 112. ADMINISTRATIVE PROCEDURE.**

2 (a) IN GENERAL.—The functions exercised under
3 this title shall not be subject to sections 551, 553 through
4 559, and 701 through 706 of title 5, United States Code.

5 (b) ADMINISTRATIVE LAW JUDGES.—The Secretary
6 is authorized to appoint an administrative law judge, and
7 may designate administrative law judges from other Fed-
8 eral agencies who are provided pursuant to a legally au-
9 thorized interagency agreement with the Department of
10 Commerce, and consistent with the provisions of section
11 3105 of title 5, United States Code.

12 (c) AMENDMENTS TO REGULATIONS.—The President
13 shall notify in advance the Committee on Banking, Hous-
14 ing, and Urban Affairs of the Senate and the Committee
15 on Foreign Affairs of the House of Representatives of any
16 proposed amendments to the Export Administration Regu-
17 lations with an explanation of the intent and rationale of
18 such amendments.

19 **SEC. 113. ANNUAL REPORT TO CONGRESS.**

20 (a) IN GENERAL.—The President shall submit to
21 Congress, by December 31 of each year, a report on the
22 implementation of this title during the preceding fiscal
23 year. The report shall include a review of—

24 (1) the effect of controls imposed under this
25 title on exports, reexports, and transfers of items in
26 addressing threats to the national security or foreign

1 policy of the United States, including a description
2 of licensing processing times;

3 (2) the impact of such controls on the scientific
4 and technological leadership of the United States;

5 (3) the consistency with such controls of export
6 controls imposed by other countries;

7 (4) efforts to provide exporters with compliance
8 assistance, including specific actions to assist small-
9 and medium-sized businesses;

10 (5) a summary of regulatory changes from the
11 prior fiscal year;

12 (6) a summary of export enforcement actions,
13 including of actions taken to implement end-use
14 monitoring of dual-use, military, and other items
15 subject to the Export Administration Regulations;

16 (7) a summary of approved license applications
17 to proscribed persons;

18 (8) efforts undertaken within the previous year
19 to comply with the requirements of section 109, in-
20 cluding any “critical technologies” identified under
21 such section and how or whether such critical tech-
22 nologies were controlled for export; and

23 (9) a summary of industrial base assessments
24 conducted during the previous year by the Depart-
25 ment of Commerce, including with respect to coun-

1 terfeit electronics, foundational technologies, and
2 other research and analysis of critical technologies
3 and industrial capabilities of key defense-related sec-
4 tors.

5 (b) FORM.—The report required under subsection (a)
6 shall be submitted in unclassified form, but may contain
7 a classified annex.

8 **SEC. 114. REPEAL.**

9 (a) IN GENERAL.—The Export Administration Act of
10 1979 (50 U.S.C. App. 2401 et seq.) (as continued in effect
11 pursuant to the International Emergency Economic Pow-
12 ers Act) is repealed.

13 (b) IMPLEMENTATION.—The President shall imple-
14 ment the amendment made by subsection (a) by exercising
15 the authorities of the President under the International
16 Emergency Economic Powers Act (50 U.S.C. 1701 et
17 seq.).

18 **SEC. 115. EFFECT ON OTHER ACTS.**

19 (a) IN GENERAL.—Except as otherwise provided in
20 this title, nothing contained in this title shall be construed
21 to modify, repeal, supersede, or otherwise affect the provi-
22 sions of any other laws authorizing control over exports,
23 reexports, or transfers of any item, or activities of United
24 States persons subject to the Export Administration Reg-
25 ulations.

1 (b) COORDINATION OF CONTROLS.—

2 (1) IN GENERAL.—The authority granted to the
3 President under this title shall be exercised in such
4 manner so as to achieve effective coordination with
5 all export control and sanctions authorities exercised
6 by Federal departments and agencies delegated with
7 authority under this title, particularly the Depart-
8 ment of State, the Department of the Treasury, and
9 the Department of Energy.

10 (2) SENSE OF CONGRESS.—It is the sense of
11 Congress that in order to achieve effective coordina-
12 tion described in paragraph (1), such Federal de-
13 partments and agencies—

14 (A) should continuously work to create en-
15 forceable regulations with respect to the export,
16 reexport, and transfer by United States and
17 foreign persons of commodities, software, tech-
18 nology, and services to various end uses and
19 end users for foreign policy and national secu-
20 rity reasons;

21 (B) should regularly work to reduce com-
22 plexity in the system, including complexity
23 caused merely by the existence of structural,
24 definitional, and other non-policy based dif-

1 ferences between and among different export
2 control and sanctions systems; and

3 (C) should coordinate controls on items ex-
4 ported, reexported, or transferred in connection
5 with a foreign military sale under chapter 2 of
6 the Arms Export Control Act or a commercial
7 sale under section 38 of the Arms Export Con-
8 trol Act to reduce as much unnecessary admin-
9 istrative burden as possible that is a result of
10 differences between the exercise of those two
11 authorities.

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

16 **SEC. 116. TRANSITION PROVISIONS.**

17 (a) IN GENERAL.—All delegations, rules, regulations,
18 orders, determinations, licenses, or other forms of admin-
19 istrative action that have been made, issued, conducted,
20 or allowed to become effective under the Export Adminis-
21 tration Act of 1979 (as in effect on the day before the
22 date of the enactment of this Act and as continued in ef-
23 fect pursuant to the International Emergency Economic
24 Powers Act), or the Export Administration Regulations,
25 and are in effect as of the date of the enactment of this

1 Act, shall continue in effect according to their terms until
2 modified, superseded, set aside, or revoked under the au-
3 thority of this title.

4 (b) ADMINISTRATIVE AND JUDICIAL PRO-
5 CEEDINGS.—This title shall not affect any administrative
6 or judicial proceedings commenced, or any applications for
7 licenses made, under the Export Administration Act of
8 1979 (as in effect on the day before the date of the enact-
9 ment of this Act and as continued in effect pursuant to
10 the International Emergency Economic Powers Act), or
11 the Export Administration Regulations.

12 (c) CERTAIN DETERMINATIONS AND REFERENCES.—

13 (1) STATE SPONSORS OF TERRORISM.—Any de-
14 termination that was made under section 6(j) of the
15 Export Administration Act of 1979 (as in effect on
16 the day before the date of the enactment of this Act
17 and as continued in effect pursuant to the Inter-
18 national Emergency Economic Powers Act) shall
19 continue in effect as if the determination had been
20 made under section 104(c) of this Act.

21 (2) REFERENCE.—Any reference in any other
22 provision of law to a country the government of
23 which the Secretary of State has determined, for
24 purposes of section 6(j) of the Export Administra-
25 tion Act of 1979 (as in effect on the day before the

1 date of the enactment of this Act and as continued
2 in effect pursuant to the International Emergency
3 Economic Powers Act), is a government that has re-
4 peatedly provided support for acts of international
5 terrorism shall be deemed to refer to a country the
6 government of which the Secretary of State has de-
7 termined, for purposes of section 104(c) of this Act,
8 is a government that has repeatedly provided sup-
9 port for acts of international terrorism.

10 **TITLE II—ANTI-BOYCOTT ACT OF** 11 **2018**

12 **SEC. 201. SHORT TITLE.**

13 This Act may be cited as the “Anti-Boycott Act of
14 2018”.

15 **SEC. 202. STATEMENT OF POLICY.**

16 Congress declares it is the policy of the United
17 States—

18 (1) to oppose restrictive trade practices or boy-
19 cotts fostered or imposed by any foreign country
20 against other countries friendly to the United States
21 or against any United States person;

22 (2) to encourage and, in specified cases, require
23 United States persons engaged in the export of
24 goods or technology or other information to refuse to
25 take actions, including furnishing information or en-

1 tering into or implementing agreements, which have
2 the effect of furthering or supporting the restrictive
3 trade practices or boycotts fostered or imposed by
4 any foreign country against any United States per-
5 son; and

6 (3) to foster international cooperation and the
7 development of international rules and institutions
8 to assure reasonable access to world supplies.

9 **SEC. 203. FOREIGN BOYCOTTS.**

10 (a) PROHIBITIONS AND EXCEPTIONS.—

11 (1) PROHIBITIONS.—For the purpose of imple-
12 menting the policies set forth in section 202, the
13 President shall issue regulations prohibiting any
14 United States person, with respect to that person's
15 activities in the interstate or foreign commerce of
16 the United States, from taking or knowingly agree-
17 ing to take any of the following actions with intent
18 to comply with, further, or support any boycott fos-
19 tered or imposed by any foreign country, against a
20 country which is friendly to the United States and
21 which is not itself the object of any form of boycott
22 pursuant to United States law or regulation:

23 (A) Refusing, or requiring any other per-
24 son to refuse, to do business with or in the boy-
25 cotted country, with any business concern orga-

1 nized under the laws of the boycotted country,
2 with any national or resident of the boycotted
3 country, or with any other person, pursuant to
4 an agreement with, a requirement of, or a re-
5 quest from or on behalf of the boycotting coun-
6 try. The mere absence of a business relationship
7 with or in the boycotted country with any busi-
8 ness concern organized under the laws of the
9 boycotted country, with any national or resident
10 of the boycotted country, or with any other per-
11 son, does not indicate the existence of the in-
12 tent required to establish a violation of regula-
13 tions issued to carry out this subparagraph.

14 (B) Refusing, or requiring any other per-
15 son to refuse, to employ or otherwise discrimi-
16 nating against any United States person on the
17 basis of race, religion, sex, or national origin of
18 that person or of any owner, officer, director, or
19 employee of such person.

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

24 (D) Furnishing information, or requesting
25 the furnishing of information, about whether

1 any person has, has had, or proposes to have
2 any business relationship (including a relation-
3 ship by way of sale, purchase, legal or commer-
4 cial representation, shipping or other transport,
5 insurance, investment, or supply) with or in the
6 boycotted country, with any business concern
7 organized under the laws of the boycotted coun-
8 try, with any national or resident of the boy-
9 cotted country, or with any other person which
10 is known or believed to be restricted from hav-
11 ing any business relationship with or in the boy-
12 coting country. Nothing in this subparagraph
13 shall prohibit the furnishing of normal business
14 information in a commercial context as defined
15 by the Secretary.

16 (E) Furnishing information about whether
17 any person is a member of, has made contribu-
18 tions to, or is otherwise associated with or in-
19 volved in the activities of any charitable or fra-
20 ternal organization which supports the boy-
21 cotted country.

22 (F) Paying, honoring, confirming, or other-
23 wise implementing a letter of credit which con-
24 tains any condition or requirement compliance
25 with which is prohibited by regulations issued

1 pursuant to this paragraph, and no United
2 States person shall, as a result of the applica-
3 tion of this paragraph, be obligated to pay or
4 otherwise honor or implement such letter of
5 credit.

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

8 (A) complying or agreeing to comply with
9 requirements—

10 (i) prohibiting the import of goods or
11 services from the boycotted country or
12 goods produced or services provided by any
13 business concern organized under the laws
14 of the boycotted country or by nationals or
15 residents of the boycotted country; or

16 (ii) prohibiting the shipment of goods
17 to the boycotting country on a carrier of
18 the boycotted country, or by a route other
19 than that prescribed by the boycotting
20 country or the recipient of the shipment;

21 (B) complying or agreeing to comply with
22 import and shipping document requirements
23 with respect to the country of origin, the name
24 of the carrier and route of shipment, the name
25 of the supplier of the shipment or the name of

1 the provider of other services, except that no in-
2 formation knowingly furnished or conveyed in
3 response to such requirements may be stated in
4 negative, blacklisting, or similar exclusionary
5 terms, other than with respect to carriers or
6 route of shipment as may be permitted by such
7 regulations in order to comply with pre-
8 cautionary requirements protecting against war
9 risks and confiscation;

10 (C) complying or agreeing to comply in the
11 normal course of business with the unilateral
12 and specific selection by a boycotting country,
13 or national or resident thereof, of carriers, in-
14 surers, suppliers of services to be performed
15 within the boycotting country or specific goods
16 which, in the normal course of business, are
17 identifiable by source when imported into the
18 boycotting country;

19 (D) complying or agreeing to comply with
20 export requirements of the boycotting country
21 relating to shipments or transshipments of ex-
22 ports to the boycotted country, to any business
23 concern of or organized under the laws of the
24 boycotted country, or to any national or resi-
25 dent of the boycotted country;

1 (E) compliance by an individual or agree-
2 ment by an individual to comply with the immi-
3 gration or passport requirements of any country
4 with respect to such individual or any member
5 of such individual's family or with requests for
6 information regarding requirements of employ-
7 ment of such individual within the boycotting
8 country; and

9 (F) compliance by a United States person
10 resident in a foreign country or agreement by
11 such person to comply with the laws of that
12 country with respect to his activities exclusively
13 therein, and such regulations may contain ex-
14 ceptions for such resident complying with the
15 laws or regulations of that foreign country gov-
16 erning imports into such country of
17 trademarked, trade named, or similarly specifi-
18 cally identifiable products, or components of
19 products for his own use, including the per-
20 formance of contractual services within that
21 country, as may be defined by such regulations.

22 (3) SPECIAL RULES.—Regulations issued pur-
23 suant to paragraphs (2)(C) and (2)(F) shall not pro-
24 vide exceptions from paragraphs (1)(B) and (1)(C).

1 (4) RULE OF CONSTRUCTION.—Nothing in this
2 subsection may be construed to supersede or limit
3 the operation of the antitrust or civil rights laws of
4 the United States.

5 (5) APPLICATION.—This section shall apply to
6 any transaction or activity undertaken, by or
7 through a United States person or any other person,
8 with intent to evade the provisions of this section as
9 implemented by the regulations issued pursuant to
10 this subsection, and such regulations shall expressly
11 provide that the exceptions set forth in paragraph
12 (2) shall not permit activities or agreements (ex-
13 pressed or implied by a course of conduct, including
14 a pattern of responses) otherwise prohibited, which
15 are not within the intent of such exceptions.

16 (b) FOREIGN POLICY CONTROLS.—

17 (1) IN GENERAL.—In addition to the regula-
18 tions issued pursuant to subsection (a), regulations
19 issued under title I of this Act to carry out the poli-
20 cies set forth in section 102(1)(D) shall implement
21 the policies set forth in this section.

22 (2) REQUIREMENTS.—Such regulations shall
23 require that any United States person receiving a re-
24 quest for the furnishing of information, the entering
25 into or implementing of agreements, or the taking of

1 any other action referred to in subsection (a) shall
2 report that fact to the Secretary, together with such
3 other information concerning such request as the
4 Secretary may require for such action as the Sec-
5 retary considers appropriate for carrying out the
6 policies of that section. Such person shall also report
7 to the Secretary whether such person intends to
8 comply and whether such person has complied with
9 such request. Any report filed pursuant to this para-
10 graph shall be made available promptly for public in-
11 spection and copying, except that information re-
12 garding the quantity, description, and value of any
13 goods or technology to which such report relates
14 may be kept confidential if the Secretary determines
15 that disclosure thereof would place the United States
16 person involved at a competitive disadvantage. The
17 Secretary shall periodically transmit summaries of
18 the information contained in such reports to the Sec-
19 retary of State for such action as the Secretary of
20 State, in consultation with the Secretary, considers
21 appropriate for carrying out the policies set forth in
22 section 202.

23 (c) PREEMPTION.—The provisions of this section and
24 the regulations issued pursuant thereto shall preempt any
25 law, rule, or regulation of any of the several States or the

1 District of Columbia, or any of the territories or posses-
2 sions of the United States, or of any governmental subdivi-
3 sion thereof, which law, rule, or regulation pertains to par-
4 ticipation in, compliance with, implementation of, or the
5 furnishing of information regarding restrictive trade prac-
6 tices or boycotts fostered or imposed by foreign countries
7 against other countries friendly to the United States.

8 **SEC. 204. ENFORCEMENT.**

9 (a) **CRIMINAL PENALTY.**—A person who willfully
10 commits, willfully attempts to commit, or willfully con-
11 spires to commit, or aids or abets in the commission of,
12 an unlawful act section 203—

13 (1) shall, upon conviction, be fined not more
14 than \$1,000,000; or

15 (2) if a natural person, may be imprisoned for
16 not more than 20 years, or both.

17 (b) **CIVIL PENALTIES.**—The President may impose
18 the following civil penalties on a person who violates sec-
19 tion 203 or any regulation issued under this title:

20 (1) A fine of not more than \$300,000 or an
21 amount that is twice the value of the transaction
22 that is the basis of the violation with respect to
23 which the penalty is imposed, whichever is greater.

24 (2) Revocation of a license issued under title I
25 to the person.

1 (3) A prohibition on the person's ability to ex-
2 port, reexport, or transfer any items controlled
3 under title I.

4 (c) PROCEDURES.—Any civil penalty or administra-
5 tive sanction (including any suspension or revocation of
6 authority to export) under this section may be imposed
7 only after notice and opportunity for an agency hearing
8 on the record in accordance with sections 554 through 557
9 of title 5, United States Code, and shall be subject to judi-
10 cial review in accordance with chapter 7 of such title.

11 (d) STANDARDS FOR LEVELS OF CIVIL PENALTY.—
12 The President may by regulation provide standards for es-
13 tablishing levels of civil penalty under this section based
14 upon factors such as the seriousness of the violation, the
15 culpability of the violator, and the violator's record of co-
16 operation with the Government in disclosing the violation.

17 **TITLE III—SANCTIONS REGARD-**
18 **ING MISSILE PROLIFERATION**
19 **AND CHEMICAL AND BIO-**
20 **LOGICAL WEAPONS PRO-**
21 **LIFERATION**

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

23 (a) VIOLATIONS BY UNITED STATES PERSONS.—

24 (1) SANCTIONS.—

1 (A) SANCTIONABLE ACTIVITY.—The Presi-
2 dent shall impose the applicable sanctions de-
3 scribed in subparagraph (B) if the President
4 determines that a United States person know-
5 ingly—

6 (i) exports, reexports, or transfers of
7 any item on the MTCR Annex, in violation
8 of the provisions of section 38 (22 U.S.C.
9 2778) or chapter 7 of the Arms Export
10 Control Act, title I of this Act, or any reg-
11 ulations or orders issued under any such
12 provisions; or

13 (ii) conspires to or attempts to engage
14 in such export, reexport, or transfer.

15 (B) SANCTIONS.—The sanctions that apply
16 to a United States person under subparagraph
17 (A) are the following:

18 (i) If the item on the MTCR Annex
19 involved in the export, reexport, or transfer
20 is missile equipment or technology within
21 category II of the MTCR Annex, then the
22 President shall deny to such United States
23 person, for a period of 2 years, licenses for
24 the transfer of missile equipment or tech-
25 nology controlled under title I.

1 (ii) If the item on the MTCR Annex
2 involved in the export, reexport, or transfer
3 is missile equipment or technology within
4 category I of the MTCR Annex, then the
5 President shall deny to such United States
6 person, for a period of not less than 2
7 years, all licenses for items the transfer of
8 which is controlled under title I.

9 (2) DISCRETIONARY SANCTIONS.—In the case
10 of any determination referred to in paragraph (1),
11 the President may pursue any other appropriate
12 penalties under section 110 of this Act.

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

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

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

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

3 (1) SANCTIONS.—

4 (A) SANCTIONABLE ACTIVITY.—Subject to
5 paragraphs (3) through (7), the President shall
6 impose the applicable sanctions under subpara-
7 graph (B) on a foreign person if the Presi-
8 dent—

9 (i) determines that a foreign person
10 knowingly—

11 (I) exports, reexports, or trans-
12 fers any MTCR equipment or tech-
13 nology that contributes to the design,
14 development, or production of missiles
15 in a country that is not an MTCR ad-
16 herent and would be, if it were United
17 States-origin equipment or technology,
18 subject to the jurisdiction of the
19 United States under title I;

20 (II) conspires to or attempts to
21 engage in such export, reexport, or
22 transfer; or

23 (III) facilitates such export, reex-
24 port, or transfer by any other person;
25 or

1 (ii) has made a determination with re-
2 spect to the foreign person under section
3 73(a) of the Arms Export Control Act.

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

7 (i) If the item involved in the export,
8 reexport, or transfer is within category II
9 of the MTCR Annex, then the President
10 shall deny, for a period of 2 years, licenses
11 for the transfer to such foreign person of
12 missile equipment or technology the trans-
13 fer of which is controlled under title I.

14 (ii) If the item involved in the export,
15 reexport, or transfer is within category I of
16 the MTCR Annex, then the President shall
17 deny, for a period of not less than 2 years,
18 licenses for the transfer to such foreign
19 person of items the transfer of which is
20 controlled under title I.

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

24 (A) any export, reexport, or transfer that
25 is authorized by the laws of an MTCR adher-

1 ent, if such authorization is not obtained by
2 misrepresentation or fraud; or

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

6 (3) EFFECT OF ENFORCEMENT ACTIONS BY
7 MTCR ADHERENTS.—Sanctions set forth in para-
8 graph (1) may not be imposed under this subsection
9 on a person with respect to acts described in such
10 paragraph or, if such sanctions are in effect against
11 a person on account of such acts, such sanctions
12 shall be terminated, if an MTCR adherent is taking
13 judicial or other enforcement action against that
14 person with respect to such acts, or that person has
15 been found by the government of an MTCR adher-
16 ent to be innocent of wrongdoing with respect to
17 such acts.

18 (4) WAIVER AND REPORT TO CONGRESS.—

19 (A) WAIVER AUTHORITY.—The President
20 may waive the application of paragraph (1) to
21 a foreign person if the President determines
22 that such waiver is essential to the national se-
23 curity of the United States.

24 (B) NOTIFICATION AND REPORT TO CON-
25 GRESS.—In the event that the President decides

1 to apply the waiver described in subparagraph
2 (A), the President shall so notify the appro-
3 priate congressional committees not less than
4 20 working days before issuing the waiver.
5 Such notification shall include a report fully ar-
6 ticulating the rationale and circumstances
7 which led the President to apply the waiver.

8 (5) **ADDITIONAL WAIVER.**—The President may
9 waive the imposition of sanctions under paragraph
10 (1) on a person with respect to a product or service
11 if the President certifies to the appropriate congres-
12 sional committees that—

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

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

22 (6) **EXCEPTIONS.**—The President shall not
23 apply the sanction under this subsection prohibiting
24 the importation of the products of a foreign per-
25 son—

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

3 (i) under existing contracts or sub-
4 contracts, including the exercise of options
5 for production quantities to satisfy require-
6 ments essential to the national security of
7 the United States;

8 (ii) if the President determines that
9 the person to which the sanctions would be
10 applied is a sole source supplier of the de-
11 fense articles or defense services, that the
12 defense articles or defense services are es-
13 sential to the national security of the
14 United States, and that alternative sources
15 are not readily or reasonably available; or

16 (iii) if the President determines that
17 such articles or services are essential to the
18 national security of the United States
19 under defense coproduction agreements or
20 NATO Programs of Cooperation;

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

25 (C) to—

- 1 (i) spare parts;
- 2 (ii) component parts, but not finished
- 3 products, essential to United States prod-
- 4 ucts or production;
- 5 (iii) routine services and maintenance
- 6 of products, to the extent that alternative
- 7 sources are not readily or reasonably avail-
- 8 able; or
- 9 (iv) information and technology essen-
- 10 tial to United States products or produc-
- 11 tion.

12 (c) DEFINITIONS.—In this section:

13 (1) APPROPRIATE CONGRESSIONAL COMMIT-

14 TEES.—The term “appropriate congressional com-

15 mittees” means—

16 (A) the Committee on Foreign Affairs of

17 the House of Representatives; and

18 (B) the Committee on Foreign Relations

19 and the Committee on Banking, Housing, and

20 Urban Affairs of the Senate.

21 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—

22 The terms “defense articles” and “defense services”

23 mean those items on the United States Munitions

24 List as defined in section 47(7) of the Arms Export

25 Control Act (22 U.S.C. 2794 note).

1 (3) MISSILE.—The term “missile” means a cat-
2 egory I system as defined in the MTCR Annex.

3 (4) MISSILE TECHNOLOGY CONTROL REGIME;
4 MTCR.—The term “Missile Technology Control Re-
5 gime” or “MTCR” means the policy statement, be-
6 tween the United States, the United Kingdom, the
7 Federal Republic of Germany, France, Italy, Can-
8 ada, and Japan, announced on April 16, 1987, to re-
9 strict sensitive missile-relevant transfers based on
10 the MTCR Annex, and any amendments thereto.

11 (5) MTCR ADHERENT.—The term “MTCR ad-
12 herent” means a country that participates in the
13 MTCR or that, pursuant to an international under-
14 standing to which the United States is a party, con-
15 trols MTCR equipment or technology in accordance
16 with the criteria and standards set forth in the
17 MTCR.

18 (6) MTCR ANNEX.—The term “MTCR Annex”
19 means the Guidelines and Equipment and Tech-
20 nology Annex of the MTCR, and any amendments
21 thereto.

22 (7) MISSILE EQUIPMENT OR TECHNOLOGY;
23 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
24 “missile equipment or technology” and “MTCR

1 equipment or technology” mean those items listed in
2 category I or category II of the MTCR Annex.

3 **SEC. 302. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
4 **LIFERATION SANCTIONS.**

5 (a) IMPOSITION OF SANCTIONS.—

6 (1) DETERMINATION BY THE PRESIDENT.—EX-
7 cept as provided in subsection (b)(2), the President
8 shall impose the sanction described in subsection (c)
9 if the President determines that a foreign person has
10 knowingly and materially contributed—

11 (A) through the export from the United
12 States of any item that is subject to the juris-
13 diction of the United States under this title; or

14 (B) through the export from any other
15 country of any item that would be, if they were
16 United States goods or technology, subject to
17 the jurisdiction of the United States under this
18 title,

19 to the efforts by any foreign country, project, or en-
20 tity described in paragraph (2) to use, develop,
21 produce, stockpile, or otherwise acquire chemical or
22 biological weapons.

23 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
24 CEIVING ASSISTANCE.—Paragraph (1) applies in the
25 case of—

1 (A) any foreign country that the President
2 determines has, at any time after January 1,
3 1980—

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

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

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

11 (B) any foreign country whose government
12 is determined for purposes of section 104(c) of
13 this Act to be a government that has repeatedly
14 provided support for acts of international ter-
15 rorism; or

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

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

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

1 (B) any successor entity to that foreign
2 person; and

3 (C) any foreign person that is a parent,
4 subsidiary, or affiliate of that foreign person if
5 that parent, subsidiary, or affiliate knowingly
6 assisted in the activities which were the basis of
7 that determination.

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

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

17 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
18 TION.—In order to pursue such consultations with
19 that government, the President may delay imposition
20 of a sanction pursuant to this section for a period
21 of up to 90 days. Following such consultations, the
22 President shall impose the sanction unless the Presi-
23 dent determines and certifies to the appropriate con-
24 gressional committees that the Government has
25 taken specific and effective actions, including appro-

1 appropriate penalties, to terminate the involvement of the
2 foreign person in the activities described in sub-
3 section (a)(1). The President may delay imposition
4 of the sanction for an additional period of up to 90
5 days if the President determines and certifies to the
6 Congress that the government is in the process of
7 taking the actions described in the preceding sen-
8 tence.

9 (3) REPORT TO CONGRESS.—The President
10 shall report to the appropriate congressional commit-
11 tees, not later than 90 days after making a deter-
12 mination under subsection (a)(1), on the status of
13 consultations with the appropriate government under
14 this subsection, and the basis for any determination
15 under paragraph (2) of this subsection that such
16 government has taken specific corrective actions.

17 (c) SANCTION.—

18 (1) DESCRIPTION OF SANCTION.—The sanction
19 to be imposed pursuant to subsection (a)(1) is, ex-
20 cept as provided that the United States Government
21 shall not procure, or enter into any contract for the
22 procurement of, any goods or services from any per-
23 son described in subsection (a)(3).

1 (2) EXCEPTIONS.—The President shall not be
2 required to apply or maintain a sanction under this
3 section—

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

6 (i) under existing contracts or sub-
7 contracts, including the exercise of options
8 for production quantities to satisfy United
9 States operational military requirements;

10 (ii) if the President determines that
11 the person or other entity to which the
12 sanctions would otherwise be applied is a
13 sole source supplier of the defense articles
14 or defense services, that the defense arti-
15 cles or defense services are essential, and
16 that alternative sources are not readily or
17 reasonably available; or

18 (iii) if the President determines that
19 such articles or services are essential to the
20 national security under defense coproduc-
21 tion agreements;

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

1 (C) to—

2 (i) spare parts;

3 (ii) component parts, but not finished
4 products, essential to United States prod-
5 ucts or production; or

6 (iii) routine servicing and mainte-
7 nance of products, to the extent that alter-
8 native sources are not readily or reason-
9 ably available;

10 (D) to information and technology essen-
11 tial to United States products or production; or

12 (E) to medical or other humanitarian
13 items.

14 (d) TERMINATION OF SANCTIONS.—A sanction im-
15 posed pursuant to this section shall apply for a period of
16 at least 12 months following the imposition of one sanction
17 and shall cease to apply thereafter only if the President
18 determines and certifies to the appropriate congressional
19 committees that reliable information indicates that the
20 foreign person with respect to which the determination
21 was made under subsection (a)(1) has ceased to aid or
22 abet any foreign government, project, or entity in its ef-
23 forts to acquire chemical or biological weapons capability
24 as described in that subsection.

25 (e) WAIVER.—

1 (1) CRITERION FOR WAIVER.—The President
2 may waive the application of any sanction imposed
3 on any person pursuant to this section, after the end
4 of the 12-month period beginning on the date on
5 which that sanction was imposed on that person, if
6 the President determines and certifies to the appro-
7 priate congressional committees that such waiver is
8 important to the national security interests of the
9 United States.

10 (2) NOTIFICATION OF AND REPORT TO CON-
11 GRESS.—If the President decides to exercise the
12 waiver authority provided in paragraph (1), the
13 President shall so notify the appropriate congress-
14 sional committees not less than 20 days before the
15 waiver takes effect. Such notification shall include a
16 report fully articulating the rationale and cir-
17 cumstances which led the President to exercise the
18 waiver authority.

19 (f) DEFINITIONS.—In this section:

20 (1) APPROPRIATE CONGRESSIONAL COMMIT-
21 TEES.—The term “appropriate congressional com-
22 mittees” means—

23 (A) the Committee on Foreign Affairs of
24 the House of Representatives; and

1 (B) the Committee on Foreign Relations
2 and the Committee on Banking, Housing, and
3 Urban Affairs of the Senate.

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

9 **TITLE IV—ADMINISTRATIVE**
10 **AUTHORITIES**

11 **SEC. 401. UNDER SECRETARY OF COMMERCE FOR INDUS-**
12 **TRY AND SECURITY.**

13 (a) APPOINTMENT.—

14 (1) IN GENERAL.—The President shall appoint,
15 by and with the advice and consent of the Senate,
16 an Under Secretary of Commerce for Industry and
17 Security who shall carry out all the functions of the
18 Secretary under this Act and such other provisions
19 of law that relate to the implementation of the dual-
20 use export system.

21 (2) ASSISTANT SECRETARIES OF COMMERCE.—
22 The President shall appoint, by and with the advice
23 and consent of the Senate, two Assistant Secretaries
24 of Commerce to assist the Under Secretary in car-
25 rying out the functions described in paragraph (1).

1 (b) DELEGATION.—

2 (1) TO SECRETARY.—The President shall con-
3 tinue the delegation of functions to the Secretary to
4 administer and enforce the export control system au-
5 thorized by this Act that were delegated to the Sec-
6 retary as of the day before the date of the enact-
7 ment of this Act.

8 (2) TO BUREAU OF INDUSTRY AND SECUR-
9 RITY.—The Secretary shall further delegate imple-
10 mentation of the authorities set forth in this Act to
11 the Bureau of Industry and Security within the De-
12 partment of Commerce.

