

Calendar No. 492

115TH CONGRESS
2D SESSION

H. R. 5841

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2018

Received; read twice and placed on the calendar

AN ACT

To modernize and strengthen the Committee on Foreign Investment in the United States to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign Investment Risk Review Modernization Act of
6 2018”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FINDINGS AND SENSE OF CONGRESS

Sec. 101. Findings and sense of Congress.

TITLE II—DEFINITIONS

Sec. 201. Definitions.

TITLE III—IMPROVEMENTS TO THE OPERATIONS OF THE
COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

- Sec. 301. Inclusion of partnership and side agreements in notice.
- Sec. 302. Declarations relating to certain covered transactions.
- Sec. 303. Timing for reviews and investigations.
- Sec. 304. Submission of certifications to Congress.
- Sec. 305. Analysis by Director of National Intelligence.
- Sec. 306. Information sharing.
- Sec. 307. Action by the President.
- Sec. 308. Factors to be considered.
- Sec. 309. Mitigation and other actions by the Committee to address national security risks.
- Sec. 310. Certification of notices and information.
- Sec. 311. Additional regulations.

TITLE IV—MODIFICATION OF ANNUAL REPORT

- Sec. 401. Modification of annual report.
- Sec. 402. Report on transactions with censorship implications.
- Sec. 403. Notice to Congress by the Committee.

TITLE V—RESOURCES, SPECIAL HIRING AUTHORITY, AND
OUTREACH

- Sec. 501. Centralization of certain Committee functions.
- Sec. 502. CFIUS resource needs.
- Sec. 503. Funding.

TITLE VI—MISCELLANEOUS FIRMA PROVISIONS

- Sec. 601. Conforming amendment.
- Sec. 602. Regulatory certainty for United States businesses.
- Sec. 603. Cooperation with United States allies and partners.

TITLE VII—COMMON SENSE CREDIT UNION CAPITAL RELIEF

- Sec. 701. Delay in effective date.

TITLE VIII—EXPORT CONTROL REFORM

- Sec. 801. Short title.
- Sec. 802. Definitions.

Subtitle A—Authority and Administration of Controls

- Sec. 811. Short title.
- Sec. 812. Statement of policy.
- Sec. 813. Authority of the President.
- Sec. 814. Additional authorities.
- Sec. 815. Administration of export controls.

- Sec. 816. Licensing.
- Sec. 817. Compliance assistance.
- Sec. 818. Requirements to identify and control emerging, foundational, and other critical technologies in export control regulations.
- Sec. 819. Review relating to countries subject to comprehensive United States arms embargo.
- Sec. 820. Penalties.
- Sec. 821. Enforcement.
- Sec. 822. Administrative procedure.
- Sec. 823. Review of interagency dispute resolution process.
- Sec. 824. Coordination with other agencies on commodity classification and removal of export controls.
- Sec. 825. Annual report to Congress.
- Sec. 826. Repeal.
- Sec. 827. Effect on other Acts.
- Sec. 828. Transition provisions.

Subtitle B—Anti-Boycott Act of 2018

- Sec. 831. Short title.
- Sec. 832. Statement of policy.
- Sec. 833. Foreign boycotts.
- Sec. 834. Enforcement.

Subtitle C—Sanctions Regarding Missile Proliferation and Chemical and Biological Weapons Proliferation

- Sec. 841. Missile proliferation control violations.
- Sec. 842. Chemical and biological weapons proliferation sanctions.

Subtitle D—Administrative Authorities

- Sec. 851. Under Secretary of Commerce for Industry and Security.

1 **TITLE I—FINDINGS AND SENSE** 2 **OF CONGRESS**

3 **SEC. 101. FINDINGS AND SENSE OF CONGRESS.**

4 (a) FINDINGS.—The Congress finds the following:

5 (1) According to a February 2016 report by the
6 Department of Commerce’s International Trade Ad-
7 ministration, 12 million United States workers,
8 equivalent to 8.5 percent of the labor force, have
9 jobs resulting from foreign investment, including 3.5
10 million jobs in the manufacturing sector alone.

1 (2) In 2016, new foreign direct investment in
2 U.S. manufacturing totaled \$129.4 billion.

3 (3) The Department of Commerce’s Bureau of
4 Economic Analysis concluded that in 2015, foreign-
5 owned affiliates in the United States—

6 (A) Contributed \$894.5 billion in value
7 added to the U.S. economy;

8 (B) exported goods valued at \$352.8 bil-
9 lion, accounting for nearly a quarter of total
10 U.S. goods exports;

11 (C) undertook \$56.7 billion in research
12 and development; and

13 (D) the seven largest investing countries,
14 all of which are United States allies – the
15 United Kingdom, Japan, Germany, France,
16 Canada, Switzerland, and the Netherlands – ac-
17 counted for 72.1 percent of U.S. affiliate value
18 added and over 80 percent of affiliates’ R&D
19 expenditures.

20 (4) According to the Government Accountability
21 Office (GAO), from 2011 to 2016, the number of
22 transactions reviewed by the Committee on Foreign
23 Investment in the United States (CFIUS) grew by
24 55 percent, while agency staff assigned to the re-
25 views increased by 11 percent.

1 (5) According to a February 2018 report
2 (GAO-18-249), GAO noted: “Officials from Treas-
3 ury and other member agencies are aware of pres-
4 sures on their CFIUS staff given the current work-
5 load and have expressed concerns about possible
6 workload increases.”. GAO concluded: “Without at-
7 taining an understanding of the staffing levels need-
8 ed to address the current and future CFIUS work-
9 load, particularly if legislative changes to CFIUS’s
10 authorities further expand its workload, CFIUS may
11 be limited in its ability to fulfill its objectives and
12 address threats to the national security of the
13 United States.”.

14 (6) On March 30, 1954, Dwight David Eisen-
15 hower – five-star general, Supreme Allied Com-
16 mander, and 34th President of the United States –
17 in his “Special Message to the Congress on Foreign
18 Economic Policy”, counseled: “Great mutual advan-
19 tages to buyer and seller, to producer and consumer,
20 to investor and to the community where investment
21 is made, accrue from high levels of trade and invest-
22 ment.”. He continued: “The internal strength of the
23 American economy has evolved from such a system
24 of mutual advantage. In the press of other problems
25 and in the haste to meet emergencies, this nation –

1 and many other nations of the free world – have all
2 too often lost sight of this central fact.”. President
3 Eisenhower concluded: “If we fail in our trade pol-
4 icy, we may fail in all. Our domestic employment,
5 our standard of living, our security, and the soli-
6 darity of the free world – all are involved.”.

7 (b) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that—

9 (1) foreign investment provides substantial ben-
10 efits to the United States, including the promotion
11 of economic growth, productivity, innovation, com-
12 petitiveness, and job creation, thereby enhancing
13 U.S. national security;

14 (2) maintaining the commitment of the United
15 States to an open investment policy encourages
16 other countries to act similarly and helps expand
17 foreign markets for U.S. businesses;

18 (3) at the same time, national security risks re-
19 lated to foreign investment, particularly those ema-
20 nating from countries such as China and Russia,
21 warrant an appropriate modernization of the proc-
22 esses and authorities of the Committee on Foreign
23 Investment in the United States;

24 (4) the Committee on Foreign Investment in
25 the United States, as a complement to domestic and

1 multilateral export control regimes, plays a critical
2 role in protecting the national security of the United
3 States;

4 (5) in order to maintain the Committee's effec-
5 tiveness and guard against mission creep, CFIUS
6 should remain narrowly focused on confronting risks
7 related to national security;

8 (6) it is essential that the member agencies of
9 the Committee are adequately resourced and able to
10 hire appropriately qualified individuals in a timely
11 manner so that CFIUS may promptly complete
12 transaction reviews, identify and respond to evolving
13 national security risks, and enforce mitigation agree-
14 ments effectively;

15 (7) the President should carry out international
16 outreach to promote the benefits of foreign invest-
17 ment for global economic growth, while also assisting
18 United States partners to address national security
19 risks; and

20 (8) it is the policy of the United States to en-
21 thusiastically welcome and support foreign invest-
22 ment, consistent with national security consider-
23 ations.

TITLE II—DEFINITIONS

SEC. 201. DEFINITIONS.

Section 721(a) of the Defense Production Act of 1950 (50 U.S.C. 4565(a)) is amended—

(1) by striking paragraphs (2), (3), and (4) and inserting the following:

“(2) CONTROL.—The term ‘control’ means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Committee.

“(3) COVERED TRANSACTION.—

“(A) IN GENERAL.—The term ‘covered transaction’ means any transaction described in subparagraph (B) or (C) that is proposed, pending, or completed on or after the date of the enactment of the Foreign Investment Risk Review Modernization Act of 2018.

“(B) TRANSACTIONS DESCRIBED.—A transaction described in this subparagraph is any of the following:

“(i) Any merger, acquisition, takeover, or joint venture that is proposed or pending after August 23, 1988, by or with any

1 foreign person that could result in foreign
2 control of any United States business.

3 “(ii) The purchase or lease by, or con-
4 cession to, a foreign person of private or
5 public real estate that—

6 “(I) is located in the United
7 States and—

8 “(aa) is, or is in close prox-
9 imity to, a United States military
10 installation or another facility or
11 property of the United States
12 Government that is sensitive for
13 reasons relating to national secu-
14 rity and—

15 “(AA) could reasonably
16 provide the foreign person
17 the ability to collect intel-
18 ligence on activities being
19 conducted at such an instal-
20 lation, facility, or property;
21 or

22 “(BB) could otherwise
23 expose national security ac-
24 tivities at such an installa-
25 tion, facility, or property to

1 the risk of foreign surveil-
2 lance; or

3 “(bb) is itself, or is located
4 at and could function as part of,
5 an air or sea port;

6 “(II) is not a single housing unit,
7 as defined by the Bureau of the Cen-
8 sus;

9 “(III) is not in an urbanized
10 area, as set forth by the Bureau of
11 the Census in its most recent census,
12 except as otherwise prescribed by the
13 Committee in regulations in consulta-
14 tion with the Secretary of Defense;
15 and

16 “(IV) meets such other criteria
17 as the Committee prescribes by regu-
18 lation, except that such criteria may
19 not expand the categories of real es-
20 tate to which this clause applies be-
21 yond the categories described in this
22 clause.

23 “(iii) Any change in the rights that a
24 foreign person has with respect to a United
25 States business in which the foreign person

1 has an investment, if that change could re-
2 sult in—

3 “(I) foreign control of the United
4 States business; or

5 “(II) an investment described in
6 subparagraph (C).

7 “(iv) Any transaction or other device
8 entered into or employed for the purpose of
9 evading this section, subject to regulations
10 prescribed by the Committee.

11 “(C) SENSITIVE TRANSACTIONS INVOLVING
12 COUNTRIES OF SPECIAL CONCERN.—

13 “(i) IN GENERAL.—A transaction de-
14 scribed in this subparagraph is any invest-
15 ment in an unaffiliated United States busi-
16 ness by a foreign person that—

17 “(I) is—

18 “(aa) a national or a govern-
19 ment of, or a foreign entity orga-
20 nized under the laws of, a coun-
21 try of special concern; or

22 “(bb) a foreign entity—

23 “(AA) over which con-
24 trol is exercised or exer-
25 cisable by a national or a

1 government of, or by a for-
2 eign entity organized under
3 the laws of, a country of
4 special concern; or

5 “(BB) in which the
6 government of a country of
7 special concern has a sub-
8 stantial interest; and

9 “(II) as a result of the trans-
10 action, could obtain—

11 “(aa) sensitive personal
12 data, as defined by regulations
13 prescribed by the Committee, of
14 United States citizens, if such
15 data may be exploited in a man-
16 ner that threatens national secu-
17 rity;

18 “(bb) involvement, other
19 than through voting of shares, in
20 substantive decisionmaking of the
21 United States business regard-
22 ing—

23 “(AA) the use, develop-
24 ment, acquisition, or release
25 of sensitive personal data of

1 United States citizens (as
2 described in item (aa));

3 “(BB) the use, develop-
4 ment, acquisition, or release
5 of critical technologies; or

6 “(CC) the management
7 or operations of United
8 States critical infrastruc-
9 ture, as specified in regula-
10 tions prescribed by the Com-
11 mittee; or

12 “(cc) material nonpublic
13 technical information in the pos-
14 session of the United States busi-
15 ness.

16 “(ii) COUNTRY OF SPECIAL CON-
17 CERN.—For the purposes of this subpara-
18 graph, the term ‘country of special con-
19 cern’ means—

20 “(I) any foreign country that is
21 subject to export restrictions pursuant
22 to section 744.21 of title 15, Code of
23 Federal Regulations;

1 “(II) any country determined by
2 the Secretary of State to be a state
3 sponsor of terrorism; and

4 “(III) any country that—

5 “(aa) is subject to a United
6 States arms embargo, as speci-
7 fied in list D:5 of Country Group
8 D in Supplement No. 1 to part
9 740 of title 15, Code of Federal
10 Regulations; and

11 “(bb) is specified in regula-
12 tions prescribed by the Com-
13 mittee.

14 “(iii) INVESTMENT DEFINED.—For
15 the purposes of this subparagraph, the
16 term ‘investment’ means the acquisition of
17 an equity interest, including contingent eq-
18 uity interest, as further defined in regula-
19 tions prescribed by the Committee.

20 “(iv) MATERIAL NONPUBLIC TECH-
21 NICAL INFORMATION DEFINED.—

22 “(I) IN GENERAL.—For the pur-
23 poses of this subparagraph, and sub-
24 ject to regulations prescribed by the
25 Committee, the term ‘material non-

1 public technical information’ means
2 information that—

3 “(aa) could create or reveal
4 significant vulnerabilities in
5 United States critical infrastruc-
6 ture, as specified in regulations
7 prescribed by the Committee; or

8 “(bb) could be essential to
9 design, develop, test, produce, or
10 manufacture critical technologies,
11 as specified in regulations pre-
12 scribed by the Committee.

13 “(II) EXEMPTION FOR FINAN-
14 CIAL INFORMATION.—Notwith-
15 standing subclause (I), for the pur-
16 poses of this subparagraph, the term
17 ‘material nonpublic technical informa-
18 tion’ does not include financial infor-
19 mation regarding the performance of
20 a United States business.

21 “(v) REGULATIONS WITH RESPECT TO
22 CRITICAL INFRASTRUCTURE.—For pur-
23 poses of this subparagraph, regulations
24 prescribed by the Committee regarding
25 United States critical infrastructure shall

1 include criteria to limit application to crit-
2 ical infrastructure that is likely to be of
3 importance to the national security of the
4 United States.

5 “(vi) UNAFFILIATED UNITED STATES
6 BUSINESS DEFINED.—For the purposes of
7 this subparagraph, with respect to an in-
8 vestment described under clause (i), and as
9 further defined in regulations prescribed by
10 the Committee, the term ‘unaffiliated
11 United States business’ means a United
12 States business that is not subject to the
13 same ultimate ownership of the foreign
14 person undertaking the investment.

15 “(vii) EXEMPTION.—The President
16 may exempt a country from the definition
17 of a country of special concern under
18 clause (ii), for up to one year at a time,
19 upon reporting to the Committees on Fi-
20 nancial Services and Foreign Affairs of the
21 House of Representatives and the Commit-
22 tees on Banking, Housing, and Urban Af-
23 fairs and Foreign Relations of the Senate
24 that the exemption is important to the na-
25 tional interest of the United States, with a

1 detailed explanation of the reasons there-
2 for.

3 “(D) EXCEPTION FOR AIR CARRIERS.—
4 Subparagraph (B)(iii) shall not apply to a
5 change in the rights of a person with respect to
6 an investment involving an air carrier, as de-
7 fined in section 40102(a)(2) of title 49, United
8 States Code, that holds a certificate issued
9 under section 41102 of that title.

10 “(E) TRANSFERS OF CERTAIN ASSETS
11 PURSUANT TO BANKRUPTCY PROCEEDINGS OR
12 OTHER DEFAULTS.—The Committee shall pre-
13 scribe regulations to clarify that the term ‘cov-
14 ered transaction’ includes any transaction de-
15 scribed in subparagraph (B) or (C) that arises
16 pursuant to a bankruptcy proceeding or other
17 form of default on debt.

18 “(F) DEFINITION OF CLOSE PROXIMITY.—
19 In prescribing regulations with respect to sub-
20 paragraph (B)(ii)(I)(aa), the Committee shall
21 ensure that the term ‘close proximity’ only ap-
22 plies to a distance or distances within which the
23 purchase, lease, or concession of real estate
24 could pose a national security risk in connection
25 with a United States military installation or an-

1 other facility or property of the United States
2 Government.

3 “(4) FOREIGN GOVERNMENT-CONTROLLED
4 TRANSACTION.—The term ‘foreign government-con-
5 trolled transaction’ means any covered transaction
6 that could result in control of a United States busi-
7 ness by—

8 “(A) a foreign government;

9 “(B) a person controlled by or acting on
10 behalf of a foreign government; or

11 “(C) a foreign company or entity of a
12 country of special concern (as defined under
13 paragraph (3)(C)(ii)) domiciled or having its
14 principal place of business in a country of special
15 concern that is a non-market economy, except
16 to the extent the Committee promulgates regu-
17 lations exempting any such company, entity, or
18 country from this presumption.”;

19 (2) by amending paragraph (7) to read as fol-
20 lows:

21 “(7) CRITICAL TECHNOLOGIES.—The term
22 ‘critical technologies’ means—

23 “(A) defense articles or defense services
24 covered by the United States Munitions List
25 (USML), which is set forth in the International

1 Traffic in Arms Regulations (ITAR) (22 CFR
2 parts 120–130);

3 “(B) those items specified on the Com-
4 merce Control List (CCL) set forth in Supple-
5 ment No. 1 to part 774 of the Export Adminis-
6 tration Regulations (EAR) (15 CFR parts 730–
7 774) that are controlled pursuant to multilat-
8 eral regimes (i.e. for reasons of national secu-
9 rity, chemical and biological weapons prolifera-
10 tion, nuclear nonproliferation, or missile tech-
11 nology), as well as those that are controlled for
12 reasons of regional stability or surreptitious lis-
13 tening;

14 “(C) specially designed and prepared nu-
15 clear equipment, parts and components, mate-
16 rials, software, and technology specified in the
17 Assistance to Foreign Atomic Energy Activities
18 regulations (10 CFR part 810), and nuclear fa-
19 cilities, equipment, and material specified in the
20 Export and Import of Nuclear Equipment and
21 Material regulations (10 CFR part 110);

22 “(D) select agents and toxins specified in
23 the Select Agents and Toxins regulations (7
24 CFR part 331, 9 CFR part 121, and 42 CFR
25 part 73); and

1 “(E) emerging, foundational, or other crit-
2 ical technologies that are controlled pursuant to
3 section 818 of the Foreign Investment Risk Re-
4 view Modernization Act of 2018.”; and
5 (3) by adding at the end the following:

6 “(9) FOREIGN PERSON.—The term ‘foreign per-
7 son’ means—

8 “(A) any foreign national, foreign govern-
9 ment, or foreign entity; or

10 “(B) any entity over which control is exer-
11 cised or exercisable by a foreign national, for-
12 eign government, or foreign entity.

13 “(10) SUBSTANTIAL INTEREST.—The term
14 ‘substantial interest’ has the meaning given to such
15 term in regulations prescribed by the Committee,
16 but does not include a voting interest of less than
17 ten percent or ownership interests held or acquired
18 solely for the purpose of passive investment.

19 “(11) UNITED STATES BUSINESS.—The term
20 ‘United States business’ means any entity, irrespec-
21 tive of the nationality of the persons that control it,
22 engaged in interstate commerce in the United
23 States, but only to the extent of its activities in
24 interstate commerce.”.

1 **TITLE III—IMPROVEMENTS TO**
2 **THE OPERATIONS OF THE**
3 **COMMITTEE ON FOREIGN IN-**
4 **VESTMENT IN THE UNITED**
5 **STATES**

6 **SEC. 301. INCLUSION OF PARTNERSHIP AND SIDE AGREE-**
7 **MENTS IN NOTICE.**

8 Section 721(b)(1)(C) of the Defense Production Act
9 of 1950 (50 U.S.C. 4565(b)(1)(C)) is amended by adding
10 at the end the following:

11 “(iv) INCLUSION OF PARTNERSHIP
12 AND SIDE AGREEMENTS.—Subject to regu-
13 lations prescribed by the Committee, the
14 Committee may require a written notice
15 submitted under clause (i) by a party to a
16 covered transaction to include a copy of
17 any partnership agreements, integration
18 agreements, or other side agreements relat-
19 ing to the transaction.”.

20 **SEC. 302. DECLARATIONS RELATING TO CERTAIN COVERED**
21 **TRANSACTIONS.**

22 (a) IN GENERAL.—Section 721(b)(1)(C) of the De-
23 fense Production Act of 1950 (50 U.S.C. 4565(b)(1)(C)),
24 as amended by section 301, is further amended by adding
25 at the end the following:

1 “(v) DECLARATIONS WITH RESPECT
2 TO CERTAIN COVERED TRANSACTIONS.—

3 “(I) VOLUNTARY DECLARA-
4 TIONS.—For the purpose of exped-
5 iting the review of certain covered
6 transactions that the Committee de-
7 termines are likely to pose limited
8 risk, the Committee may prescribe
9 regulations to permit parties to the
10 transaction to submit a declaration
11 with basic information regarding the
12 transaction, unless the parties submit
13 a written notice under clause (i).

14 “(II) MANDATORY DECLARA-
15 TIONS.—

16 “(aa) IN GENERAL.—The
17 Committee shall prescribe regula-
18 tions to require the parties to a
19 covered transaction to submit a
20 declaration described in sub-
21 clause (I) with respect to the
22 transaction if the transaction in-
23 volves an investment that results
24 in the release of critical tech-
25 nologies by an unaffiliated

1 United States business (as de-
2 fined under subsection
3 (a)(3)(C)(vi)) to a foreign person
4 in which a foreign government
5 has, directly or indirectly, a sub-
6 stantial interest.

7 “(bb) SUBMISSION OF WRIT-
8 TEN NOTICE AS AN ALTER-
9 NATIVE.—Parties to a covered
10 transaction for which a declara-
11 tion is required under this clause
12 may instead elect to submit a
13 written notice under clause (i).

14 “(cc) TIMING OF SUBMIS-
15 SION.—With respect to the regu-
16 lations described under subclause
17 (I), the Committee may not re-
18 quire a declaration to be sub-
19 mitted more than 45 days in ad-
20 vance of the completion of the
21 transaction.

22 “(III) PENALTIES.—The Com-
23 mittee may impose a penalty pursuant
24 to subsection (h)(3)(A) with respect to

1 a party that fails to comply with this
2 clause.

3 “(IV) COMMITTEE RESPONSE TO
4 DECLARATION.—

5 “(aa) IN GENERAL.—Upon
6 receiving a declaration under this
7 clause with respect to a trans-
8 action, the Committee may, at its
9 discretion—

10 “(AA) request that the
11 parties to the transaction
12 file a written notice under
13 clause (i), provided that the
14 Committee includes an ex-
15 planation of the reasons for
16 the request;

17 “(BB) inform the par-
18 ties to the transaction that
19 the Committee is not able to
20 complete action under this
21 section with respect to the
22 transaction on the basis of
23 the declaration and that the
24 parties may file a written
25 notice under clause (i) to

1 seek written notification
2 from the Committee that the
3 Committee has completed all
4 action under this section
5 with respect to the trans-
6 action;

7 “(CC) initiate a unilat-
8 eral review of the trans-
9 action under subparagraph
10 (D); or

11 “(DD) notify the par-
12 ties in writing that the Com-
13 mittee has completed all ac-
14 tion under this section with
15 respect to the transaction.

16 “(bb) TIMING.—The Com-
17 mittee shall take action under
18 item (aa) within 30 days of re-
19 ceiving a declaration under this
20 clause.

21 “(cc) REFILING OF DEC-
22 LARATION.—The Committee may
23 not request or recommend that a
24 declaration be withdrawn and
25 refiled, except to permit parties

1 to a transaction to correct mate-
2 rial errors or omissions.

3 “(V) REGULATIONS.—In pre-
4 scribing regulations establishing re-
5 quirements for declarations submitted
6 under this clause, the Committee shall
7 ensure that such declarations are sub-
8 mitted as abbreviated notifications
9 that do not generally exceed 5 pages
10 in length.

11 “(VI) INVESTMENT DEFINED.—
12 For the purposes of this clause, the
13 term ‘investment’ means the acquisi-
14 tion of an equity interest, including
15 contingent equity interest, as further
16 defined in regulations prescribed by
17 the Committee.”.

18 (b) STIPULATIONS REGARDING TRANSACTIONS.—
19 Section 721(b)(1)(C) of the Defense Production Act of
20 1950 (50 U.S.C. 4565(b)(1)(C)), as amended by this sec-
21 tion, is further amended by adding at the end the fol-
22 lowing:

23 “(vi) STIPULATIONS REGARDING
24 TRANSACTIONS.—

1 “(I) IN GENERAL.—In a written
 2 notice submitted under clause (i) or a
 3 declaration submitted under clause (v)
 4 with respect to a transaction, a party
 5 to the transaction may—

6 “(aa) stipulate that the
 7 transaction is a covered trans-
 8 action; and

9 “(bb) if the party stipulates
 10 that the transaction is a covered
 11 transaction under item (aa), stip-
 12 ulate that the transaction is a
 13 foreign government-controlled
 14 transaction.

15 “(II) BASIS FOR STIPULATION.—
 16 A written notice submitted under
 17 clause (i) or a declaration submitted
 18 under clause (v) that includes a stipu-
 19 lation under subclause (I) shall in-
 20 clude a description of the basis for the
 21 stipulation.”.

22 **SEC. 303. TIMING FOR REVIEWS AND INVESTIGATIONS.**

23 Section 721(b) of the Defense Production Act of
 24 1950 (50 U.S.C. 4565(b)) is amended—

1 (1) in paragraph (1)(E), by striking “30-day”
2 and inserting “45-day”;

3 (2) in paragraph (2), by striking subparagraph
4 (C) and inserting the following:

5 “(C) TIMING.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), any investigation under
8 subparagraph (A) shall be completed be-
9 fore the end of the 45-day period begin-
10 ning on the date on which the investigation
11 commenced.

12 “(ii) EXTENSION FOR EXTRAOR-
13 DINARY CIRCUMSTANCES.—

14 “(I) IN GENERAL.—In extraor-
15 dinary circumstances (as defined by
16 the Committee in regulations), the
17 chairperson may, at the request of the
18 head of the lead agency, extend an in-
19 vestigation under subparagraph (A)
20 for not more than one 15-day period.

21 “(II) NONDELEGATION.—The
22 authority of the chairperson and the
23 head of the lead agency referred to in
24 subclause (I) may not be delegated to
25 any person other than the Deputy

1 Secretary of the Treasury or the dep-
2 uty head (or equivalent thereof) of the
3 lead agency, as the case may be.

4 “(III) NOTIFICATION TO PAR-
5 TIES.—If the Committee extends the
6 deadline under subclause (I) with re-
7 spect to a covered transaction, the
8 Committee shall notify the parties to
9 the transaction of the extension.”; and

10 (3) by adding at the end the following:

11 “(8) TOLLING OF DEADLINES DURING LAPSE IN
12 APPROPRIATIONS.—Any deadline or time limitation
13 under this subsection shall be tolled during a lapse
14 in appropriations.”.

15 **SEC. 304. SUBMISSION OF CERTIFICATIONS TO CONGRESS.**

16 Section 721(b)(3)(C) of the Defense Production Act
17 of 1950 (50 U.S.C. 4565(b)(3)(C)) is amended—

18 (1) in clause (i), by amending subclause (II) to
19 read as follows:

20 “(II) a certification that all rel-
21 evant national security factors, includ-
22 ing factors enumerated in subsection
23 (f), have received full consideration.”;
24 and

25 (2) by adding at the end the following:

“(v) AUTHORITY TO CONSOLIDATE DOCUMENTS.—Instead of transmitting a separate certified notice or certified report under subparagraph (A) or (B) with respect to each covered transaction, the Committee may, on a monthly basis, transmit such notices and reports in a consolidated document to the Members of Congress specified in clause (iii).”.

SEC. 305. ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.

Section 721(b)(4) of the Defense Production Act of 1950 (50 U.S.C. 4565(b)(4)) is amended—

(1) by striking subparagraph (A) and inserting the following:

“(A) ANALYSIS REQUIRED.—

“(i) IN GENERAL.—The Director of National Intelligence shall expeditiously carry out a thorough analysis of any threat to the national security of the United States posed by any covered transaction, which shall include the identification of any recognized gaps in the collection of intelligence relevant to the analysis.

1 “(ii) VIEWS OF INTELLIGENCE AGEN-
2 CIES.—The Director shall seek and incor-
3 porate into the analysis required by clause
4 (i) the views of all affected or appropriate
5 intelligence agencies with respect to the
6 transaction.

7 “(iii) UPDATES.—At the request of
8 the lead agency, the Director shall update
9 the analysis conducted under clause (i)
10 with respect to a covered transaction with
11 respect to which an agreement was entered
12 into under subsection (1)(3)(A).

13 “(iv) INDEPENDENCE AND OBJEC-
14 TIVITY.—The Committee shall ensure that
15 its processes under this section preserve
16 the ability of the Director to conduct an
17 analysis under clause (i) that is inde-
18 pendent, objective, and consistent with all
19 applicable directives, policies, and analytic
20 tradecraft standards of the intelligence
21 community.”.

22 (2) by redesignating subparagraphs (B), (C),
23 and (D) as subparagraphs (C), (D), and (E), respec-
24 tively;

1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) BASIC THREAT INFORMATION.—

4 “(i) IN GENERAL.—The Director of
5 National Intelligence may provide the
6 Committee with basic information regard-
7 ing any threat to the national security of
8 the United States posed by a covered
9 transaction described in clause (ii) instead
10 of conducting the analysis required by sub-
11 paragraph (A).

12 “(ii) COVERED TRANSACTION DE-
13 SCRIBED.—A covered transaction is de-
14 scribed in this clause if—

15 “(I) the transaction is described
16 in subsection (a)(3)(B)(ii);

17 “(II) the Director of National In-
18 telligence has completed an analysis
19 pursuant to subparagraph (A) involv-
20 ing each foreign person that is a party
21 to the transaction during the 12
22 months preceding the review or inves-
23 tigation of the transaction under this
24 section; or

1 “(III) the transaction otherwise
2 meets criteria agreed upon by the
3 Committee and the Director of Na-
4 tional Intelligence for purposes of this
5 subparagraph.”;

6 (4) in subparagraph (C), as so redesignated, by
7 striking “20 days” and inserting “30 days”; and

8 (5) by adding at the end the following:

9 “(F) ASSESSMENT OF OPERATIONAL IM-
10 PACT.—The Director may provide to the Com-
11 mittee an assessment, separate from the anal-
12 yses under subparagraphs (A) and (B), of any
13 operational impact of a covered transaction on
14 the intelligence community and a description of
15 any actions that have been or will be taken to
16 mitigate any such impact.

17 “(G) SUBMISSION TO CONGRESS.—The
18 Committee shall include the analysis required
19 by subparagraph (A) with respect to a covered
20 transaction in the report required under sub-
21 section (m)(1), subject to the requirements of
22 subsection (m)(5).”.

23 **SEC. 306. INFORMATION SHARING.**

24 Section 721(c) of the Defense Production Act of 1950
25 (50 U.S.C. 4565(c)) is amended—

1 (1) by striking “Any information” and inserting
2 the following:

3 “(1) IN GENERAL.—Any information”; and

4 (2) by adding at the end the following:

5 “(2) EXCEPTION.—Paragraph (1) shall not pro-
6 hibit the disclosure of information or documentary
7 material that the party filing such information or
8 material consented to be disclosed to third parties.”.

9 **SEC. 307. ACTION BY THE PRESIDENT.**

10 (a) IN GENERAL.—Section 721(d)(2) of the Defense
11 Production Act of 1950 (50 U.S.C. 4565(d)(2)) is amend-
12 ed by striking “not later than 15 days” and all that fol-
13 lows and inserting the following: “with respect to a cov-
14 ered transaction not later than 15 days after the earlier
15 of—

16 “(A) the date on which the investigation of
17 the transaction under subsection (b) is com-
18 pleted; or

19 “(B) the date on which the Committee oth-
20 erwise refers the transaction to the President
21 under subsection (l)(4).”.

22 (b) CIVIL PENALTIES.—Section 721(h)(3)(A) of the
23 Defense Production Act of 1950 (50 U.S.C.
24 4565(h)(3)(A)) is amended by striking “including any
25 mitigation” and all that follows through “subsection (l)”

1 and inserting “including any mitigation agreement entered
2 into, conditions imposed, or order issued pursuant to this
3 section”.

4 **SEC. 308. FACTORS TO BE CONSIDERED.**

5 Section 721(f) of the Defense Production Act of 1950
6 (50 U.S.C. 4565(f)) is amended—

7 (1) in paragraph (3), by striking the comma at
8 the end and inserting the following: “, including the
9 availability of human resources, products, tech-
10 nology, materials, and other supplies and services;”;

11 (2) in paragraph (4), by striking “proposed or
12 pending”;

13 (3) by striking paragraph (5);

14 (4) by redesignating paragraphs (6), (7), (8),
15 (9), (10), and (11) as paragraphs (5), (6), (7), (8),
16 (9), and (16), respectively;

17 (5) in paragraph (9), as so redesignated, by
18 striking “and” at the end;

19 (6) by inserting after paragraph (9), as so re-
20 designated, the following:

21 “(10) the degree to which the covered trans-
22 action is likely to threaten the ability of the United
23 States Government to acquire or maintain the equip-
24 ment and systems that are necessary for defense, in-
25 telligence, or other national security functions;

1 “(11) the potential national security-related ef-
2 fects of the cumulative control of any one type of
3 critical infrastructure, energy asset, material, or
4 critical technology by a foreign person;

5 “(12) whether any foreign person that would
6 acquire control of a United States business as a re-
7 sult of the covered transaction has a history of—

8 “(A) complying with United States laws
9 and regulations and prior adherence, if applica-
10 ble, to any agreement or condition, as described
11 under (l)(1)(A); and

12 “(B) adhering to contracts or other agree-
13 ments with entities of the United States Gov-
14 ernment;

15 “(13) the extent to which the covered trans-
16 action is likely to release, either directly or indi-
17 rectly, sensitive personal data of United States citi-
18 zens to a foreign person that may exploit that infor-
19 mation in a manner that threatens national security;

20 “(14) whether the covered transaction is likely
21 to exacerbate cybersecurity vulnerabilities or is likely
22 to result in a foreign government gaining a signifi-
23 cant new capability to engage in malicious cyber-en-
24 abled activities against the United States, including

1 such activities designed to affect the outcome of any
2 election for Federal office;

3 “(15) whether the covered transaction is likely
4 to expose any information regarding sensitive na-
5 tional security matters or sensitive procedures or op-
6 erations of a Federal law enforcement agency with
7 national security responsibilities to a foreign person
8 not authorized to receive that information; and”;
9 and

10 (7) by adding at the end the following flush-left
11 text:

12 “For purposes of this subsection, the phrase ‘the avail-
13 ability of human resources’ shall be construed to consider
14 potential losses of such availability resulting from reduc-
15 tions in the employment of United States persons whose
16 knowledge or skills are critical to national security, includ-
17 ing the continued production in the United States of items
18 that are likely to be acquired by the Department of De-
19 fense or other Federal departments or agencies for the ad-
20 vancement of the national security of the United States.”.

21 **SEC. 309. MITIGATION AND OTHER ACTIONS BY THE COM-**
22 **MITTEE TO ADDRESS NATIONAL SECURITY**
23 **RISKS.**

24 Section 721(l) of the Defense Production Act of 1950
25 (50 U.S.C. 4565(l)) is amended—

1 (1) in paragraph (1)—

2 (A) in subparagraph (A)—

3 (i) in the heading, by striking “IN
4 GENERAL” and inserting “AGREEMENTS
5 AND CONDITIONS”;

6 (ii) by striking “The Committee” and
7 inserting the following:

8 “(i) IN GENERAL.—The Committee”;

9 (iii) by adding at the end the fol-
10 lowing:

11 “(ii) ABANDONMENT OF TRANS-
12 ACTIONS.—If a party to a covered trans-
13 action has voluntarily chosen to abandon
14 the transaction, the Committee or lead
15 agency, as the case may be, may negotiate,
16 enter into or impose, and enforce any
17 agreement or condition with any party to
18 the covered transaction for purposes of ef-
19 fectuating such abandonment and miti-
20 gating any threat to the national security
21 of the United States that arises as a result
22 of the covered transaction.

23 “(iii) AGREEMENTS AND CONDITIONS
24 RELATING TO COMPLETED TRANS-
25 ACTIONS.—The Committee or lead agency,

1 as the case may be, may negotiate, enter
2 into or impose, and enforce any agreement
3 or condition with any party to a completed
4 covered transaction in order to mitigate
5 any interim threat to the national security
6 of the United States that may arise as a
7 result of the covered transaction until such
8 time that the Committee has completed ac-
9 tion pursuant to subsection (b) or the
10 President has taken action pursuant to
11 subsection (d) with respect to the trans-
12 action.”;

13 (B) by amending subparagraph (B) to read
14 as follows:

15 “(B) TREATMENT OF OUTDATED AGREE-
16 MENTS OR CONDITIONS.—The chairperson and
17 the head of any applicable lead agency shall pe-
18 riodically review the appropriateness of an
19 agreement or condition described under sub-
20 paragraph (A) and terminate, phase out, or
21 otherwise amend any agreement or condition if
22 a threat no longer requires mitigation through
23 the agreement or condition.”; and

24 (C) by adding at the end the following:

1 “(C) LIMITATIONS.—An agreement may
2 not be entered into or condition imposed under
3 subparagraph (A) with respect to a covered
4 transaction unless the Committee determines
5 that the agreement or condition resolves the na-
6 tional security concerns posed by the trans-
7 action, taking into consideration whether the
8 agreement or condition is reasonably calculated
9 to—

10 “(i) be effective;

11 “(ii) allow for compliance with the
12 terms of the agreement or condition in an
13 appropriately verifiable way; and

14 “(iii) enable effective monitoring of
15 compliance with and enforcement of the
16 terms of the agreement or condition.

17 “(D) JURISDICTION.—The provisions of
18 section 706(b) shall apply to any mitigation
19 agreement entered into or condition imposed
20 under subparagraph (A).”; and

21 (2) by adding at the end the following:

22 “(4) REFERRAL TO PRESIDENT.—The Com-
23 mittee may, at any time during the review or inves-
24 tigation of a covered transaction under subsection
25 (b), complete the action of the Committee with re-

1 spect to the transaction and refer the transaction to
2 the President for action pursuant to subsection (d).

3 “(5) RISK-BASED ANALYSIS REQUIRED.—

4 “(A) IN GENERAL.—Any determination of
5 the Committee to refer a covered transaction to
6 the President under paragraph (4), to suspend
7 a covered transaction under paragraph (6), or
8 to negotiate, enter into, impose, or enforce any
9 agreement or condition under paragraph (1)(A)
10 with respect to a covered transaction, shall be
11 based on a risk-based analysis, conducted by
12 the Committee, of the effects on the national
13 security of the United States of the covered
14 transaction, which shall include—

15 “(i) an assessment of the threat,
16 vulnerabilities, and consequences to na-
17 tional security resulting from the trans-
18 action, as these terms are defined or clari-
19 fied in guidance and regulations issued by
20 the Committee; and

21 “(ii) an identification of each relevant
22 factor described in subsection (f) that the
23 transaction may substantially implicate.

24 “(B) COMPLIANCE PLANS.—

1 “(i) IN GENERAL.—In the case of a
2 covered transaction with respect to which
3 an agreement or condition is entered into
4 under paragraph (1)(A), the Committee or
5 lead agency, as the case may be, shall for-
6 mulate, adhere to, and keep updated a
7 plan for monitoring compliance with the
8 agreement or condition.

9 “(ii) ELEMENTS.—Each plan required
10 by clause (i) with respect to an agreement
11 or condition entered into under paragraph
12 (1)(A) shall include an explanation of—

13 “(I) which member of the Com-
14 mittee will have primary responsibility
15 for monitoring compliance with the
16 agreement or condition;

17 “(II) how compliance with the
18 agreement or condition will be mon-
19 itored;

20 “(III) how frequently compliance
21 reviews will be conducted;

22 “(IV) whether an independent
23 entity will be utilized under subpara-
24 graph (D) to conduct compliance re-
25 views; and

1 “(V) what actions will be taken if
2 the parties fail to cooperate regarding
3 monitoring compliance with the agree-
4 ment or condition.

5 “(C) EFFECT OF LACK OF COMPLIANCE.—
6 If, at any time after a mitigation agreement or
7 condition is entered into or imposed under
8 paragraph (1)(A), the Committee or lead agen-
9 cy, as the case may be, determines that a party
10 or parties to the agreement or condition are not
11 in compliance with the terms of the agreement
12 or condition, the Committee or lead agency
13 may, in addition to the authority of the Com-
14 mittee to impose penalties pursuant to sub-
15 section (h)(3)(A) and to unilaterally initiate a
16 review of any covered transaction under sub-
17 section (b)(1)(D)(iii)(I)—

18 “(i) negotiate a plan of action for the
19 party or parties to remediate the lack of
20 compliance, with failure to abide by the
21 plan or otherwise remediate the lack of
22 compliance serving as the basis for the
23 Committee to find a material breach of the
24 agreement or condition;

1 “(ii) require that the party or parties
2 submit any covered transaction initiated
3 after the date of the determination of non-
4 compliance and before the date that is 5
5 years after the date of the determination
6 to the Committee for review under sub-
7 section (b); or

8 “(iii) seek injunctive relief.

9 “(D) USE OF INDEPENDENT ENTITIES TO
10 MONITOR COMPLIANCE.—If the parties to an
11 agreement or condition entered into under para-
12 graph (1)(A) enter into a contract with an inde-
13 pendent entity from outside the United States
14 Government for the purpose of monitoring com-
15 pliance with the agreement or condition, the
16 Committee shall take such action as is nec-
17 essary to prevent any significant conflict of in-
18 terest from arising with respect to the entity
19 and the parties to the transaction.

20 “(E) SUCCESSORS AND ASSIGNS.—Any
21 agreement or condition entered or imposed
22 under paragraph (1)(A) shall be considered
23 binding on all successors and assigns, unless
24 and until the agreement or condition terminates
25 on its own terms or is otherwise terminated by

1 the Committee in the Committee's sole discre-
2 tion.

3 “(F) ADDITIONAL COMPLIANCE MEAS-
4 URES.—Subject to subparagraphs (A) through
5 (D), the Committee shall develop and agree
6 upon methods for evaluating compliance with
7 any agreement entered into or condition im-
8 posed with respect to a covered transaction that
9 will allow the Committee to adequately ensure
10 compliance without unnecessarily diverting
11 Committee resources from assessing any new
12 covered transaction for which a written notice
13 under clause (i) of subsection (b)(1)(C) has
14 been filed or for which a declaration has been
15 submitted under clause (v) of subsection
16 (b)(1)(C), and if necessary, reaching a mitiga-
17 tion agreement with or imposing a condition on
18 a party to such covered transaction or any cov-
19 ered transaction for which a review has been re-
20 opened for any reason.

21 “(6) SUSPENSION OF TRANSACTIONS.—The
22 Committee, acting through the chairperson, may
23 suspend a proposed or pending covered transaction
24 that may pose a risk to the national security of the
25 United States for such time as the covered trans-

1 action is under review or investigation under sub-
2 section (b).”.

3 **SEC. 310. CERTIFICATION OF NOTICES AND INFORMATION.**

4 Section 721(n) of the Defense Production Act of
5 1950 (50 U.S.C. 4565(n)) is amended—

6 (1) by redesignating paragraphs (1) and (2) as
7 subparagraphs (A) and (B), respectively, and by
8 moving such subparagraphs, as so redesignated, 2
9 ems to the right;

10 (2) by striking “Each notice” and inserting the
11 following:

12 “(1) IN GENERAL.—Each notice”; and

13 (3) by adding at the end the following:

14 “(2) EFFECT OF FAILURE TO SUBMIT.—The
15 Committee may not complete a review under this
16 section of a covered transaction and may recommend
17 to the President that the President suspend or pro-
18 hibit the transaction or require divestment under
19 subsection (d) if the Committee determines that a
20 party to the transaction has—

21 “(A) failed to submit a statement required
22 by paragraph (1); or

23 “(B) included false or misleading informa-
24 tion in a notice or information described in

1 paragraph (1) or omitted material information
2 from such notice or information.

3 “(3) APPLICABILITY OF LAW ON FRAUD AND
4 FALSE STATEMENTS.—The Committee shall pre-
5 scribe regulations expressly providing for the appli-
6 cation of section 1001 of title 18, United States
7 Code, to all information provided to the Committee
8 under this section by any party to a covered trans-
9 action.”.

10 **SEC. 311. ADDITIONAL REGULATIONS.**

11 Section 721(h)(3) of the Defense Production Act of
12 1950 (50 U.S.C. 4565(h)(3)) is amended—

13 (1) in subparagraph (B)(ii), by striking “and”
14 at the end;

15 (2) in subparagraph (C), by striking the period
16 at the end and inserting “; and”; and

17 (3) by adding at the end the following:

18 “(D) provide that in connection with any
19 national security review or investigation of a
20 covered transaction conducted by the Com-
21 mittee, the Committee should—

22 “(i) consider the factors described in
23 paragraphs (2) and (3) of subsection (f);
24 and

1 “(ii) as appropriate, require parties to
2 provide the information necessary to con-
3 sider such factors.”.

4 **TITLE IV—MODIFICATION OF**
5 **ANNUAL REPORT**

6 **SEC. 401. MODIFICATION OF ANNUAL REPORT.**

7 Section 721(m) of the Defense Production Act of
8 1950 (50 U.S.C. 4565(m)) is amended—

9 (1) in paragraph (2), by amending subpara-
10 graph (A) to read as follows:

11 “(A) A list of all notices filed and all re-
12 views or investigations of covered transactions
13 completed during the period, with—

14 “(i) a description of the outcome of
15 each review or investigation, including
16 whether an agreement was entered into or
17 condition was imposed under subsection
18 (l)(3)(A) with respect to the transaction
19 being reviewed or investigated, and wheth-
20 er the President took any action under this
21 section with respect to that transaction;

22 “(ii) the nature of the business activi-
23 ties or products of the United States busi-
24 ness with which the transaction was en-
25 tered into or intended to be entered into;

1 “(iii) information about any with-
2 drawal from the process; and

3 “(iv) the mean and median number of
4 days required to complete reviews and in-
5 vestigations during the period.”;

6 (2) in paragraph (3)—

7 (A) by striking “CRITICAL TECHNOLOGIES”
8 and all that follows through “In order to as-
9 sist” and inserting “CRITICAL TECH-
10 NOLOGIES.—In order to assist”;

11 (B) by striking subparagraph (B); and

12 (C) by redesignating clauses (i) and (ii) as
13 subparagraphs (A) and (B), respectively, and
14 by moving such subparagraphs, as so redesign-
15 nated, 2 ems to the left; and

16 (3) by adding at the end the following:

17 “(4) ADDITIONAL CONTENTS OF REPORT.—

18 Each annual report required under paragraph (1)
19 shall contain the following additional information:

20 “(A) Statistics on compliance reviews con-
21 ducted and actions taken by the Committee
22 under subsection (l)(6), including subparagraph
23 (D) of that subsection (l)(6), during that period
24 and a description of any actions taken by the
25 Committee to impose penalties or initiate a uni-

lateral review pursuant to subsection (b)(1)(D)(iii)(I).

“(B) Cumulative and trend information on the number of declarations filed under subsection (b)(1)(C)(v), the actions taken by the Committee in response to declarations, the business sectors involved in the declarations which have been made, the countries involved in such declarations, and the mean and median number of days required to respond to such declarations, as described in subsection (b)(1)(C)(v)(IV), during that period .

“(C) The number of new hires made since the preceding report through the authorities described under subsection (q), along with summary statistics, position titles, and associated pay grades for such hires and a summary of such hires’ responsibilities in administering this section.

“(5) CLASSIFICATION; AVAILABILITY OF REPORT.—

“(A) CLASSIFICATION.—All appropriate portions of the annual report required by paragraph (1) may be classified.

1 “(B) PUBLIC AVAILABILITY OF UNCLASSI-
2 FIED VERSION.—An unclassified version of the
3 report required by paragraph (1), as appro-
4 priate and consistent with safeguarding na-
5 tional security and privacy, shall be made avail-
6 able to the public. Information regarding trade
7 secrets or business confidential information may
8 be included in the classified version and may
9 not be made available to the public in the un-
10 classified version.

11 “(C) EXCEPTIONS TO FREEDOM OF INFOR-
12 MATION ACT.—The exceptions to subsection (a)
13 of section 552 of title 5, United States Code,
14 provided for under subsection (b) of that sec-
15 tion shall apply with respect to the report re-
16 quired by paragraph (1).”.

17 **SEC. 402. REPORT ON TRANSACTIONS WITH CENSORSHIP**
18 **IMPLICATIONS.**

19 Not later than one year from the date of enactment
20 of this Act, the Committee on Foreign Investment in the
21 United States shall issue a report to the Congress, appro-
22 priate portions of which may be classified, on investments
23 by foreign persons into the entertainment and information
24 sectors of the United States, which shall include analysis
25 of the extent to which such investments have resulted in

1 or could result in direct or indirect censorship, including
2 self-censorship, within the United States.

3 **SEC. 403. NOTICE TO CONGRESS BY THE COMMITTEE.**

4 Section 721 of the Defense Production Act of 1950
5 (50 U.S.C. 4565), as amended by section 503, is further
6 amended by adding at the end the following:

7 “(v) NOTICE TO CONGRESS BY THE COMMITTEE.—
8 If the Committee recommends that the President suspend
9 or prohibit a covered transaction because such transaction
10 threatens to impair the national security of the United
11 States, the Committee shall, in the classified version of
12 the annual report described under subsection (m), notify
13 Congress of each such recommendation and, upon request,
14 provide a classified briefing on the recommendation.”.

15 **TITLE V—RESOURCES, SPECIAL**
16 **HIRING AUTHORITY, AND**
17 **OUTREACH**

18 **SEC. 501. CENTRALIZATION OF CERTAIN COMMITTEE**
19 **FUNCTIONS.**

20 Section 721 of the Defense Production Act of 1950
21 (50 U.S.C. 4565) is amended by adding at the end the
22 following:

23 “(o) CENTRALIZATION OF CERTAIN COMMITTEE
24 FUNCTIONS.—

1 “(1) IN GENERAL.—The chairperson, in con-
2 sultation with the Committee, may centralize certain
3 functions of the Committee within the Department
4 of the Treasury for the purpose of enhancing inter-
5 agency coordination and collaboration in carrying
6 out the functions of the Committee under this sec-
7 tion.

8 “(2) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall be construed as limiting the au-
10 thority of any department or agency represented on
11 the Committee to represent its own interests before
12 the Committee.”.

13 **SEC. 502. CFIUS RESOURCE NEEDS.**

14 (a) UNIFIED BUDGET REQUEST.—Section 721 of the
15 Defense Production Act of 1950 (50 U.S.C. 4565), as
16 amended by section 501, is further amended by adding
17 at the end the following:

18 “(p) UNIFIED BUDGET REQUEST; ANNUAL SPEND-
19 ING PLAN.—

20 “(1) UNIFIED BUDGET REQUEST.—

21 “(A) IN GENERAL.—The President may in-
22 clude, in the budget of the Department of the
23 Treasury for a fiscal year (as submitted to Con-
24 gress with the budget of the President under
25 section 1105(a) of title 31, United States

1 Code), a unified request for funding of all oper-
2 ations under this section conducted by all of the
3 departments and agencies represented on the
4 Committee.

5 “(B) FORM OF BUDGET REQUEST.—A uni-
6 fied request under subparagraph (A) shall be
7 detailed and include the amounts and staffing
8 levels requested for each department or agency
9 represented on the Committee to carry out the
10 functions of that department or agency under
11 this section.

12 “(2) ANNUAL SPENDING PLAN.—Not later than
13 90 days following the date of enactment of this sub-
14 section, and annually thereafter, the chairperson of
15 the Committee shall transmit to the Committees on
16 Appropriations and Financial Services of the House
17 of Representatives and the Committees on Appro-
18 priations and Banking, Housing, and Urban Affairs
19 of the Senate a detailed spending plan to expedi-
20 tiously meet the requirements of subsections (b), (l),
21 and (m), including estimated expenditures and staff-
22 ing levels required by operations of the Committee
23 for not less than the following fiscal year at each of
24 the Committee’s member agencies.

1 “(3) WAIVER.—The chairperson may waive the
2 reporting requirement under paragraph (2) with re-
3 spect to a fiscal year for which a unified budget re-
4 quest described under paragraph (1) has been sub-
5 mitted.”.

6 (b) SPECIAL HIRING AUTHORITY.—Section 721 of
7 the Defense Production Act of 1950 (50 U.S.C. 4565),
8 as amended by subsection (a), is further amended by add-
9 ing at the end the following:

10 “(q) SPECIAL HIRING AUTHORITY.—The heads of
11 the departments and agencies represented on the Com-
12 mittee may appoint, without regard to the provisions of
13 sections 3309 through 3318 of title 5, United States Code,
14 candidates directly to positions in the competitive service
15 (as defined in section 2102 of that title) in their respective
16 departments and agencies to administer this section.”.

17 (c) TESTIMONY REQUIRED.—Section 721 of the De-
18 fense Production Act of 1950 (50 U.S.C. 4565), as
19 amended by subsection (d), is further amended by adding
20 at the end the following:

21 “(r) TESTIMONY.—

22 “(1) IN GENERAL.—After submitting the uni-
23 fied budget request described under subsection
24 (p)(1), or the spending plan described under sub-
25 section (p)(2), as the case may be, but not later

1 than March 31 of each year, the chairperson, or the
2 chairperson’s designee, shall appear before the Com-
3 mittee on Financial Services of the House of Rep-
4 resentatives and present testimony on—

5 “(A) anticipated resources necessary for
6 operations of the Committee in the following
7 fiscal year at each of the Committee’s member
8 agencies;

9 “(B) the adequacy of appropriations for
10 the Committee in the current and the previous
11 fiscal year to—

12 “(i) ensure that thorough reviews and
13 investigations are completed as expedi-
14 tiously as possible;

15 “(ii) monitor and enforce mitigation
16 agreements; and

17 “(iii) identify covered transactions for
18 which a notice under clause (i) of sub-
19 section (b)(1)(C) or a declaration under
20 clause (v) of subsection (b)(1)(C) was not
21 submitted to the Committee;

22 “(C) management efforts to strengthen the
23 ability of the Committee to meet the require-
24 ments of this section; and

1 “(D) activities of the Committee under-
2 taken in order to—

3 “(i) educate the business community,
4 with a particular focus on the technology
5 sector and other sectors of importance to
6 national security, on the goals and oper-
7 ations of the Committee;

8 “(ii) disseminate to the governments
9 of United States allies best practices of the
10 Committee that—

11 “(I) strengthen national security
12 reviews of relevant investment trans-
13 actions; and

14 “(II) expedite such reviews when
15 appropriate; and

16 “(iii) promote openness to foreign in-
17 vestment, consistent with national security
18 considerations.

19 “(2) SUNSET.—This subsection shall have no
20 force or effect on the date that is 7 years following
21 the date of enactment of the Foreign Investment
22 Risk Review Modernization Act of 2018.”.

1 **SEC. 503. FUNDING.**

2 Section 721 of the Defense Production Act of 1950
3 (50 U.S.C. 4565), as amended by section 603, is further
4 amended by adding at the end the following:

5 “(u) FUNDING.—

6 “(1) ESTABLISHMENT OF FUND.—There is es-
7 tablished in the Treasury of the United States a
8 fund, to be known as the ‘Committee on Foreign In-
9 vestment in the United States Fund’ (in this sub-
10 section referred to as the ‘Fund’), to be adminis-
11 tered by the chairperson.

12 “(2) AUTHORIZATION OF APPROPRIATIONS FOR
13 THE COMMITTEE.—There are authorized to be ap-
14 propriated to the Fund for each of fiscal years 2019
15 through 2023 \$20,000,000 to perform the functions
16 of the Committee.

17 “(3) FILING FEES.—

18 “(A) IN GENERAL.—The Committee may
19 assess and collect a fee in an amount deter-
20 mined by the Committee in regulations, without
21 regard to section 9701 of title 31, United
22 States Code, and subject to subparagraph (B),
23 with respect to each covered transaction for
24 which a written notice is submitted to the Com-
25 mittee under subsection (b)(1)(C)(i) or a dec-

1 lation is submitted to the Committee under
 2 subsection (b)(1)(C)(v).

3 “(B) DETERMINATION OF AMOUNT OF
 4 FEE.—

5 “(i) IN GENERAL.—The amount of
 6 the fee to be assessed under subparagraph
 7 (A) with respect to a covered transaction—

8 “(I) may not exceed an amount
 9 equal to the lesser of—

10 “(aa) 1 percent of the value
 11 of the transaction; or

12 “(bb) \$300,000, as such
 13 amount is adjusted annually for
 14 inflation pursuant to regulations
 15 prescribed by the Committee; and

16 “(II) shall be determined by the
 17 Committee after taking into consider-
 18 ation—

19 “(aa) the effect of the fee on
 20 small business concerns (as de-
 21 fined in section 3 of the Small
 22 Business Act (15 U.S.C. 632));

23 “(bb) the expenses of the
 24 Committee associated with con-

1 ducting activities under this sec-
2 tion;

3 “(cc) the effect of the fee on
4 foreign investment;

5 “(dd) the unified budget re-
6 quest or annual spending plan, as
7 appropriate, described in section
8 502 of the Foreign Investment
9 Risk Review Modernization Act
10 of 2018; and

11 “(ee) such other matters as
12 the Committee considers appro-
13 priate.

14 “(ii) UPDATES.—The Committee shall
15 periodically reconsider and adjust the
16 amount of the fee to be assessed under
17 subparagraph (A) with respect to a covered
18 transaction to ensure that the amount of
19 the fee remains appropriate.

20 “(C) DEPOSIT AND AVAILABILITY OF
21 FEES.—Notwithstanding section 3302 of title
22 31, United States Code, fees collected under
23 subparagraph (A) shall—

1 “(i) be deposited into the Fund for
2 use in carrying out activities under this
3 section;

4 “(ii) to the extent and in the amounts
5 provided in advance in appropriations Acts,
6 be available to the chairperson;

7 “(iii) remain available until expended;
8 and

9 “(iv) be in addition to any appropria-
10 tions made available to the members of the
11 Committee.

12 “(4) TRANSFER OF FUNDS.—To the extent pro-
13 vided in advance in appropriations Acts, the chair-
14 person may transfer any amounts in the Fund to
15 any other department or agency represented on the
16 Committee for the purpose of addressing emerging
17 needs in carrying out activities under this section.
18 Amounts so transferred shall be in addition to any
19 other amounts available to that department or agen-
20 cy for that purpose.”.

21 **TITLE VI—MISCELLANEOUS**
22 **FIRMA PROVISIONS**

23 **SEC. 601. CONFORMING AMENDMENT.**

24 Section 721(d)(4)(A) of the Defense Production Act
25 of 1950 (50 U.S.C. 4565(d)(4)(A)) is amended by striking

1 “the foreign interest exercising control” and inserting “a
2 foreign person that would acquire an interest in a United
3 States business or its assets as a result of the covered
4 transaction”.

5 **SEC. 602. REGULATORY CERTAINTY FOR UNITED STATES**
6 **BUSINESSES.**

7 Section 721 of the Defense Production Act of 1950
8 (50 U.S.C. 4565), as amended by section 502, is further
9 amended by adding at the end the following:

10 “(s) REGULATORY CERTAINTY FOR UNITED STATES
11 BUSINESSES.—

12 “(1) IN GENERAL.—With respect to mitigating
13 a national security risk that results from a foreign
14 person’s investment in, or joint venture with, a
15 United States business, a member agency of the
16 Committee may not prescribe or implement regula-
17 tions to require divestment by, or of, the United
18 States business, unless—

19 “(A) the regulations are prescribed under
20 this section or pursuant to authorities of the
21 President under the International Emergency
22 Economic Powers Act; or

23 “(B) the President reports to Congress in
24 writing that the regulations—

1 “(i) are, wherever applicable, con-
2 sistent with regulations prescribed under
3 this section, including any such regulations
4 pertaining to—

5 “(I) foreign control or influence
6 over a United States business;

7 “(II) the identification of emerg-
8 ing, foundational, or other critical
9 technologies; and

10 “(III) confidentiality require-
11 ments with respect to information and
12 documentary material regarding
13 United States businesses; and

14 “(ii) in the case of regulations pre-
15 scribed or finalized following the effective
16 date of this subsection, were prescribed in
17 consultation with the chairperson of the
18 Committee and with the head of any mem-
19 ber agency determined by the President to
20 be affected by the regulations.

21 “(2) EXCEPTION FOR PROCUREMENT AUTHOR-
22 ITY.—Paragraph (1) shall not apply to an action by
23 a member agency if the head of the member agency
24 determines that such action is necessary for procure-

1 ment purposes of the agency or for matters related
2 to the management of the agency’s supply chain.”.

3 **SEC. 603. COOPERATION WITH UNITED STATES ALLIES AND**
4 **PARTNERS.**

5 Section 721 of the Defense Production Act of 1950
6 (50 U.S.C. 4565), as amended by section 602, is further
7 amended by adding at the end the following:

8 “(t) COOPERATION WITH UNITED STATES ALLIES
9 AND PARTNERS.—

10 “(1) IN GENERAL.—The chairperson, in con-
11 sultation with other members of the Committee, is
12 authorized to lead a formal process for the regular
13 exchange of information with governments of coun-
14 tries that are allies or partners of the United States,
15 in the discretion of the chairperson, to protect the
16 national security of the United States and those
17 countries.

18 “(2) REQUIREMENTS.—The process described
19 under paragraph (1) shall, in the discretion of the
20 chairperson—

21 “(A) be designed to facilitate the harmoni-
22 zation of action with respect to trends in invest-
23 ment and technology that could pose risks to
24 the national security of the United States and

1 countries that are allies or partners of the
 2 United States;

3 “(B) provide for the sharing of information
 4 with respect to specific technologies and entities
 5 acquiring such technologies as appropriate to
 6 ensure national security; and

7 “(C) include consultations and meetings
 8 with representatives of the governments of such
 9 countries on a recurring basis.”.

10 **TITLE VII—COMMON SENSE** 11 **CREDIT UNION CAPITAL RELIEF**

12 **SEC. 701. DELAY IN EFFECTIVE DATE.**

13 Notwithstanding any effective date set forth in the
 14 rule issued by the National Credit Union Administration
 15 titled “Risk-Based Capital” (published at 80 Fed. Reg.
 16 66626 (October 29, 2015)), such final rule shall take ef-
 17 fect on January 1, 2021.

18 **TITLE VIII—EXPORT CONTROL** 19 **REFORM**

20 **SEC. 801. SHORT TITLE.**

21 This title may be cited as the “Export Control Re-
 22 form Act of 2018”.

23 **SEC. 802. DEFINITIONS.**

24 In this title:

1 (1) CONTROLLED.—The term “controlled” re-
2 fers to an item subject to the jurisdiction of the
3 United States under subtitle A.

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

8 (3) EXPORT.—The term “export”, with respect
9 to an item subject to controls under subtitle A, in-
10 cludes—

11 (A) the shipment or transmission of the
12 item out of the United States, including the
13 sending or taking of the item out of the United
14 States, in any manner; and

15 (B) the release or transfer of technology or
16 source code relating to the item to a foreign
17 person in the United States.

18 (4) EXPORT ADMINISTRATION REGULATIONS.—
19 The term “Export Administration Regulations”
20 means—

21 (A) the Export Administration Regulations
22 as promulgated, maintained, and amended
23 under the authority of the International Emer-
24 gency Economic Powers Act and codified, as of
25 the date of the enactment of this Act, in sub-

chapter C of chapter VII of title 15, Code of Federal Regulations; or

(B) regulations that are promulgated, maintained, and amended under the authority of subtitle A on or after the date of the enactment of this Act.

(5) FOREIGN PERSON.—The term “foreign person” means—

(A) any natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in section 274B(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)));

(B) any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated in the United States or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of a foreign government (e.g., diplomatic mission).

(6) ITEM.—The term “item” means a commodity, software, or technology.

(7) PERSON.—The term “person” means—

1 (A) a natural person;

2 (B) a corporation, business association,
3 partnership, society, trust, financial institution,
4 insurer, underwriter, guarantor, and any other
5 business organization, any other nongovern-
6 mental entity, organization, or group, or any
7 government or agency thereof; and

8 (C) any successor to any entity described
9 in subparagraph (B).

10 (8) REEXPORT.—The term “reexport”, with re-
11 spect to an item subject to controls under subtitle A,
12 includes—

13 (A) the shipment or transmission of the
14 item from a foreign country to another foreign
15 country, including the sending or taking of the
16 item from the foreign country to the other for-
17 eign country, 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 outside the United States.

21 (9) SECRETARY.—Except as otherwise provided,
22 the term “Secretary” means the Secretary of Com-
23 merce.

24 (10) TECHNOLOGY.—The term “technology”
25 includes foundational information and information

1 and know-how necessary for the development (at all
2 stages prior to serial production), production, use,
3 operation, installation, maintenance, repair, overhaul
4 or refurbishing of an item.

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

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

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

18 (A) for purposes of subtitles A and C—

19 (i) any individual who is a citizen or
20 national of the United States or who is an
21 individual described in subparagraph (B)
22 of section 274B(a)(3) of the Immigration
23 and Nationality Act (8 U.S.C.
24 1324b(a)(3));

1 (ii) a corporation or other legal entity
2 which is organized under the laws of the
3 United States, any State or territory there-
4 of, or the District of Columbia; and

5 (iii) any person in the United States;
6 and

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

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

Subtitle A—Authority and Administration of Controls

SEC. 811. SHORT TITLE.

This subtitle may be cited as the “Export Controls Act of 2018”.

SEC. 812. STATEMENT OF POLICY.

The following is the policy of the United States:

(1) To use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the exports of items which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States; and

(B) to restrict the export of items if necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.

(2) The national security and foreign policy of the United States require that the export, reexport, and transfer of items, and specific activities of United States persons, wherever located, be controlled for the following purposes:

1 (A) To control the release of items for use
2 in—

3 (i) the proliferation of weapons of
4 mass destruction or of conventional weap-
5 ons;

6 (ii) the acquisition of destabilizing
7 numbers or types of conventional weapons;

8 (iii) acts of terrorism;

9 (iv) military programs that could pose
10 a threat to the security of the United
11 States or its allies; or

12 (v) activities undertaken specifically to
13 cause significant interference with or dis-
14 ruption of critical infrastructure.

15 (B) To preserve the qualitative military su-
16 periority of the United States.

17 (C) To strengthen the United States in-
18 dustrial base.

19 (D) To carry out the foreign policy of the
20 United States, including the protection of
21 human rights and the promotion of democracy.

22 (E) To carry out obligations and commit-
23 ments under international agreements and ar-
24 rangements, including multilateral export con-
25 trol regimes.

1 (F) To facilitate military interoperability
2 between the United States and its North Atlan-
3 tic Treaty Organization (NATO) and other
4 close allies.

5 (G) To ensure national security controls
6 are tailored to focus on those core technologies
7 and other items that are capable of being used
8 to pose a serious national security threat to the
9 United States.

10 (3) The national security of the United States
11 requires that the United States maintain its leader-
12 ship in the science, technology, engineering, and
13 manufacturing sectors, including foundational tech-
14 nology that is essential to innovation. Such leader-
15 ship requires that United States persons are com-
16 petitive in global markets. The impact of the imple-
17 mentation of this subtitle on such leadership and
18 competitiveness must be evaluated on an ongoing
19 basis and applied in imposing controls under sec-
20 tions 813 and 814 to avoid negatively affecting such
21 leadership.

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

1 consistent with the policy of the United States, and
2 take all the necessary steps to secure the adoption
3 and consistent enforcement, by the governments of
4 such countries, of export controls on items that are
5 consistent with such policy.

6 (5) Export controls should be coordinated with
7 the multilateral export control regimes. Export con-
8 trols that are multilateral are most effective, and
9 should be tailored to focus on those core technologies
10 and other items that are capable of being used to
11 pose a serious national security threat to the United
12 States and its allies.

13 (6) Export controls applied unilaterally to items
14 widely available from foreign sources generally are
15 less effective in preventing end-users from acquiring
16 those items. Application of unilateral export controls
17 should be limited for purposes of protecting specific
18 United States national security and foreign policy
19 interests.

20 (7) The effective administration of export con-
21 trols requires a clear understanding both inside and
22 outside the United States Government of which
23 items are controlled and an efficient process should
24 be created to update the controls, such as by adding
25 or removing such items.

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

8 (9) Implementation and enforcement of United
9 States export controls require robust capabilities in
10 monitoring, intelligence, and investigation, appro-
11 priate penalties for violations, and the ability to
12 swiftly interdict unapproved transfers.

13 (10) Export controls complement and are a
14 critical element of the national security policies un-
15 derlying the laws and regulations governing foreign
16 direct investment in the United States, including
17 controlling the transfer of critical technologies to
18 certain foreign persons. Thus, the President, in co-
19 ordination with the Secretary, the Secretary of De-
20 fense, the Secretary of State, the Secretary of En-
21 ergy, and the heads of other Federal agencies, as ap-
22 propriate, should have a regular and robust process
23 to identify the emerging and other types of critical
24 technologies of concern and regulate their release to
25 foreign persons as warranted regardless of the na-

1 ture of the underlying transaction. Such identifica-
2 tion efforts should draw upon the resources and ex-
3 pertise of all relevant parts of the United States
4 Government, industry, and academia. These efforts
5 should be in addition to traditional efforts to mod-
6 ernize and update the lists of controlled items under
7 the multilateral export control regimes.

8 (11) The authority under this subtitle may be
9 exercised only in furtherance of all of the objectives
10 set forth in paragraphs (1) through (10).

11 **SEC. 813. AUTHORITY OF THE PRESIDENT.**

12 (a) **AUTHORITY.**—In order to carry out the policy set
13 forth in paragraphs (1) through (10) of section 812, the
14 President shall control—

15 (1) the export, reexport, and transfer of items
16 subject to the jurisdiction of the United States,
17 whether by United States persons or by foreign per-
18 sons; and

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

21 (A) nuclear explosive devices;

22 (B) missiles;

23 (C) chemical or biological weapons;

24 (D) whole plants for chemical weapons pre-
25 cursors;

- 1 (E) foreign maritime nuclear projects; and
- 2 (F) foreign military intelligence services.

3 (b) REQUIREMENTS.—In exercising authority under
4 this subtitle to carry out the policy set forth in paragraphs
5 (1) through (10) of section 812, the President shall—

6 (1) regulate the export, reexport, and transfer
7 of items described in subsection (a)(1) of United
8 States persons or foreign persons;

9 (2) regulate the activities described in sub-
10 section (a)(2) of United States persons, wherever lo-
11 cated;

12 (3) secure the cooperation of other governments
13 and multilateral organizations to impose control sys-
14 tems that are consistent, to the extent possible, with
15 the controls imposed under subsection (a);

16 (4) maintain the leadership of the United
17 States in science, engineering, technology research
18 and development, manufacturing, and foundational
19 technology that is essential to innovation;

20 (5) protect United States technological ad-
21 vances by prohibiting unauthorized technology trans-
22 fers to foreign persons in the United States or out-
23 side the United States, particularly with respect to
24 countries that may pose a significant threat to the
25 national security of the United States;

1 (6) strengthen the United States industrial
2 base, both with respect to current and future de-
3 fense requirements; and

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

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

1 **SEC. 814. ADDITIONAL AUTHORITIES.**

2 (a) IN GENERAL.—In carrying out this subtitle on
3 behalf of the President, the Secretary, in consultation with
4 the Secretary of State, the Secretary of Defense, the Sec-
5 retary of Energy, and the heads of other Federal agencies
6 as appropriate, shall—

7 (1) establish and maintain a list of items that
8 are controlled under this subtitle;

9 (2) establish and maintain a list of foreign per-
10 sons and end-uses that are determined to be a threat
11 to the national security and foreign policy of the
12 United States pursuant to the policy set forth in sec-
13 tion 812(2)(A);

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

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

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

1 (6) establish a process for an assessment to de-
2 termine whether a foreign item is comparable in
3 quality to an item controlled under this subtitle, and
4 is available in sufficient quantities to render the
5 United States export control of that item or the de-
6 nial of a license ineffective, including a mechanism
7 to address that disparity;

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

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

13 (9) require, to the extent feasible, identification
14 of items subject to controls under this subtitle in
15 order to facilitate the enforcement of such controls;

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

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

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

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

7 (14) create, as warranted, exceptions to licens-
8 ing requirements in order to further the objectives of
9 this subtitle;

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

16 (16) undertake any other action as is necessary
17 to carry out this subtitle that is not otherwise pro-
18 hibited by law.

19 (b) RELATIONSHIP TO IEEPA.—The authority under
20 this subtitle may not be used to regulate or prohibit under
21 this subtitle the export, reexport, or transfer of any item
22 that may not be regulated or prohibited under section
23 203(b) of the International Emergency Economic Powers
24 Act (50 U.S.C. 1702(b)), except to the extent the Presi-
25 dent has made a determination necessary to impose con-

1 trols under subparagraph (A), (B), or (C) of paragraph
2 (2) of such section.

3 (c) COUNTRIES SUPPORTING INTERNATIONAL TER-
4 RORISM.—

5 (1) COMMERCE LICENSE REQUIREMENT.—

6 (A) IN GENERAL.—A license shall be re-
7 quired for the export, reexport, or transfer of
8 items, the control of which is implemented pur-
9 suant to subsection (a) by the Secretary, to a
10 country if the Secretary of State has made the
11 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.—

10 (A) IN GENERAL.—The Secretary of State
11 and the Secretary shall notify the Committee on
12 Foreign Affairs of the House of Representatives
13 and the Committee on Banking, Housing, and
14 Urban Affairs and the Committee on Foreign
15 Relations of the Senate at least 30 days before
16 any license is issued as required by paragraph
17 (1).

18 (B) CONTENTS.—The Secretary of State
19 shall include in the notification required under
20 subparagraph (A)—

21 (i) a detailed description of the items
22 to be offered, including a brief description
23 of the capabilities of any item for which a
24 license to export, reexport, or transfer the
25 items is sought;

1 (ii) the reasons why the foreign coun-
2 try, person, or entity to which the export,
3 reexport, or transfer is proposed to be
4 made has requested the items under the
5 export, reexport, or transfer, and a de-
6 scription of the manner in which such
7 country, person, or entity intends to use
8 such items;

9 (iii) the reasons why the proposed ex-
10 port, reexport, or transfer is in the na-
11 tional interest of the United States;

12 (iv) an analysis of the impact of the
13 proposed export, reexport, or transfer on
14 the military capabilities of the foreign
15 country, person, or entity to which such
16 transfer would be made;

17 (v) an analysis of the manner in
18 which the proposed export, reexport, or
19 transfer would affect the relative military
20 strengths of countries in the region to
21 which the items that are the subject of
22 such export, reexport, or transfer would be
23 delivered and whether other countries in
24 the region have comparable kinds and
25 amounts of items; and

1 (vi) an analysis of the impact of the
2 proposed export, reexport, or transfer on
3 the relations of the United States with the
4 countries in the region to which the items
5 that are the subject of such export, reex-
6 port, or transfer would be delivered.

7 (3) PUBLICATION IN FEDERAL REGISTER.—
8 Each determination of the Secretary of State under
9 paragraph (1)(A)(i) shall be published in the Fed-
10 eral Register, except that the Secretary of State may
11 exclude confidential information and trade secrets
12 contained in such determination.

13 (4) RESCISSION OF DETERMINATION.—A deter-
14 mination of the Secretary of State under paragraph
15 (1)(A)(i) may not be rescinded unless the President
16 submits to the Speaker of the House of Representa-
17 tives, the chairman of the Committee on Foreign Af-
18 fairs, and the chairman of the Committee on Bank-
19 ing, Housing, and Urban Affairs and the chairman
20 of the Committee on Foreign Relations of the Sen-
21 ate—

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

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

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

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

9 (B) at least 90 days before the proposed
10 rescission would take effect, a report justifying
11 the rescission and certifying that—

12 (i) the government concerned has not
13 provided any support for acts international
14 terrorism during the preceding 24-month
15 period; and

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

20 (5) DISAPPROVAL OF RESCISSION.—No rescis-
21 sion under paragraph (4)(B) of a determination
22 under paragraph (1)(A) with respect to the govern-
23 ment of a country may be made if Congress, within
24 90 days after receipt of a report under paragraph
25 (4)(B), enacts a joint resolution described in sub-

1 section (f)(2) of section 40 of the Arms Export Con-
2 trol Act with respect to a rescission under subsection
3 (f)(1) of such section with respect to the government
4 of such country.

5 (6) NOTIFICATION AND BRIEFING.—Not later
6 than—

7 (A) ten days after initiating a review of the
8 activities of the government of the country con-
9 cerned within the 24-month period referred to
10 in paragraph (4)(B)(i), the Secretary of State
11 shall notify the Committee on Foreign Affairs
12 of the House of Representatives and the Com-
13 mittee on Foreign Relations of the Senate of
14 such initiation; and

15 (B) 20 days after the notification described
16 in paragraph (1), the Secretary of State shall
17 brief the congressional committees described in
18 paragraph (1) on the status of such review.

19 (7) WAIVER.—The President may waive the re-
20 quirement under paragraph (1) that a license shall
21 be required for the export, reexport, or transfer of
22 items, the control of which is implemented pursuant
23 to subsection (a) by the Secretary, to a country if
24 the President—

1 (A) determines that to do so is essential to
2 the national security interests of the United
3 States; and

4 (B) consults with the Committee on For-
5 eign Affairs of the House of Representatives
6 and the Committee on Banking, Housing, and
7 Urban Affairs and the Committee on Foreign
8 Relations of the Senate not less than 15 days
9 prior to the waiver taking effect.

10 (d) ENHANCED CONTROLS.—

11 (1) IN GENERAL.—In furtherance of section
12 813(a), the President shall, except to the extent au-
13 thorized by a statute or regulation administered by
14 a Federal department or agency other than the De-
15 partment of Commerce, require a United States per-
16 son, wherever located, to apply for and receive a li-
17 cense from the Department of Commerce for—

18 (A) the export, reexport, or transfer of
19 items described in paragraph (2), including
20 items that are not subject to control under this
21 subtitle; and

22 (B) other activities that may support the
23 design, development, production, use, operation,
24 installation, maintenance, repair, overhaul, or

1 refurbishing of, or for the performance of serv-
2 ices relating to, any such items.

3 (2) ITEMS DESCRIBED.—The items described in
4 this paragraph include—

5 (A) nuclear explosive devices;

6 (B) missiles;

7 (C) chemical or biological weapons;

8 (D) whole plants for chemical weapons pre-
9 cursors; and

10 (E) foreign maritime nuclear projects that
11 would pose a risk to the national security or
12 foreign policy of the United States.

13 (e) ADDITIONAL PROHIBITIONS.—The Secretary may
14 inform United States persons, either individually by spe-
15 cific notice or through amendment to any regulation or
16 order issued under this subtitle, that a license from the
17 Bureau of Industry and Security of the Department of
18 Commerce is required to engage in any activity if the ac-
19 tivity involves the types of movement, service, or support
20 described in subsection (d). The absence of any such noti-
21 fication does not excuse the United States person from
22 compliance with the license requirements of subsection (d),
23 or any regulation or order issued under this subtitle.

24 (f) LICENSE REVIEW STANDARDS.—The Secretary
25 shall deny an application to engage in any activity de-

1 scribed in subsection (d) if the activity would make a ma-
2 terial contribution to any of the items described in sub-
3 section (d)(2).

4 **SEC. 815. ADMINISTRATION OF EXPORT CONTROLS.**

5 (a) IN GENERAL.—The President shall rely on, in-
6 cluding through delegations, as appropriate, to the Sec-
7 retary, the Secretary of Defense, the Secretary of State,
8 the Secretary of Energy, the Director of National Intel-
9 ligence, and the heads of other Federal agencies as appro-
10 priate, to exercise the authority to carry out the purposes
11 set forth in subsection (b).

12 (b) PURPOSES.—

13 (1) IN GENERAL.—The purposes of this section
14 include to—

15 (A) advise the President with respect to—

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

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

24 (B) review and approve—

1 (i) criteria for including items on, and
2 removing such an item from, a list of con-
3 trolled items established under this sub-
4 title;

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

8 (iii) criteria for including a person on
9 a list of persons to whom exports, reex-
10 ports, and transfers of items are prohibited
11 or restricted under this subtitle;

12 (iv) standards for compliance by per-
13 sons subject to controls under this subtitle;
14 and

15 (v) policies and procedures for the
16 end-use monitoring of exports, reexports,
17 and transfers of items controlled under
18 this subtitle;

19 (C) obtain independent evaluations, includ-
20 ing from Inspectors General of the relevant de-
21 partments or agencies, on a periodic basis on
22 the effectiveness of the implementation of this
23 subtitle in carrying out the policy set forth in
24 section 812; and

1 (D) benefit from the inherent equities, ex-
2 perience, and capabilities of the Federal offi-
3 cials described in subsection (a), including—

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

8 (ii) the views of the Department of
9 State with respect to foreign policy impli-
10 cations of a particular control or decision,
11 including views relating to national secu-
12 rity;

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

17 (iv) the views of the Department of
18 Commerce with respect to the administra-
19 tion of an efficient, coherent, reliable, en-
20 forceable, and predictable export control
21 system, including views relating to national
22 security, and the resolution of competing
23 views or policy objectives described in sec-
24 tion 812; and

1 (v) the views of other Federal agen-
2 cies, including the Department of Home-
3 land Security and the Department of Jus-
4 tice, with respect to enforceability of a par-
5 ticular control or decision.

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

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

20 **SEC. 816. LICENSING.**

21 (a) IN GENERAL.—The President shall, as set forth
22 in section 815(a), establish a procedure for the Depart-
23 ment of Commerce to license or otherwise authorize the
24 export, reexport, and transfer of items controlled under
25 this subtitle in order to carry out the policy set forth in

1 section 812 and the requirements set forth in section
2 813(b). The procedure shall ensure that—

3 (1) license applications and other requests for
4 authorization are considered and decisions made
5 with the participation of appropriate Federal agen-
6 cies, as appropriate; and

7 (2) licensing decisions are made in an expedi-
8 tious manner, with transparency to applicants on the
9 status of license and other authorization processing
10 and the reason for denying any license or request for
11 authorization.

12 (b) SENSE OF CONGRESS.—It is the sense of Con-
13 gress that the President should make best efforts to en-
14 sure that an accurate, consistent, and timely evaluation
15 and processing of licenses or other requests for authoriza-
16 tion to export, reexport, or transfer items controlled under
17 this subtitle is generally accomplished within 30 days from
18 the date of such license request.

19 (c) FEES.—No fee may be charged in connection with
20 the submission, processing, or consideration of any appli-
21 cation for a license or other authorization or other request
22 made in connection with any regulation in effect under
23 the authority of this subtitle.

24 (d) ADDITIONAL PROCEDURAL REQUIREMENTS.—

1 (1) IN GENERAL.—The procedure required
2 under subsection (a) shall provide for the assessment
3 of the impact of a proposed export of an item on the
4 United States defense industrial base and the denial
5 of an application for a license or a request for an
6 authorization of any export that would have a sig-
7 nificant negative impact on such defense industrial
8 base, as described in paragraph (3).

9 (2) INFORMATION FROM APPLICANT.—The pro-
10 cedure required under subsection (a) shall also re-
11 quire an applicant for a license to provide the infor-
12 mation necessary to make the assessment provided
13 under paragraph (1), including whether the purpose
14 or effect of the export is to allow for the significant
15 production of items relevant for the defense indus-
16 trial base outside the United States.

17 (3) SIGNIFICANTLY NEGATIVE IMPACT DE-
18 FINED.—A significant negative impact on the United
19 States defense industrial base is the following:

20 (A) A reduction in the availability of an
21 item produced in the United States that is like-
22 ly to be acquired by the Department of Defense
23 or other Federal department or agency for the
24 advancement of the national security of the
25 United States, or for the production of an item

1 in the United States for the Department of De-
2 fense or other agency for the advancement of
3 the national security of the United States.

4 (B) A reduction in the production in the
5 United States of an item that is the result of
6 research and development carried out, or fund-
7 ed by, the Department of Defense or other Fed-
8 eral department or agency to advance the na-
9 tional security of the United States, or a feder-
10 ally funded research and development center.

11 (C) A reduction in the employment of
12 United States persons whose knowledge and
13 skills are necessary for the continued produc-
14 tion in the United States of an item that is
15 likely to be acquired by the Department of De-
16 fense or other Federal department or agency
17 for the advancement of the national security of
18 the United States.

19 **SEC. 817. COMPLIANCE ASSISTANCE.**

20 (a) **SYSTEM FOR SEEKING ASSISTANCE.**—The Presi-
21 dent may authorize the Secretary to establish a system
22 to provide United States persons with assistance in com-
23 plying with this subtitle, which may include a mechanism
24 for providing information, in classified form as appro-
25 priate, who are potential customers, suppliers, or business

1 partners with respect to items controlled under this sub-
2 title, in order to further ensure the prevention of the ex-
3 port, reexport, or transfer of items that may pose a threat
4 to the national security or foreign policy of the United
5 States.

6 (b) SECURITY CLEARANCES.—In order to carry out
7 subsection (a), the President may issue appropriate secu-
8 rity clearances to persons described in that subsection who
9 are responsible for complying with this subtitle.

10 (c) ASSISTANCE FOR CERTAIN BUSINESSES.—

11 (1) IN GENERAL.—Not later than 120 days
12 after the date of the enactment of this Act, the
13 President shall develop and submit to Congress a
14 plan to assist small- and medium-sized United
15 States in export licensing and other processes under
16 this subtitle.

17 (2) CONTENTS.—The plan shall include, among
18 other things, arrangements for the Department of
19 Commerce to provide counseling to businesses de-
20 scribed in paragraph (1) on filing applications and
21 identifying items controlled under this subtitle, as
22 well as proposals for seminars and conferences to
23 educate such businesses on export controls, licensing
24 procedures, and related obligations.

1 **SEC. 818. REQUIREMENTS TO IDENTIFY AND CONTROL**
2 **EMERGING, FOUNDATIONAL, AND OTHER**
3 **CRITICAL TECHNOLOGIES IN EXPORT CON-**
4 **TROL REGULATIONS.**

5 (a) IDENTIFICATION OF TECHNOLOGIES.—

6 (1) IN GENERAL.—The President shall establish
7 and, in coordination with the Secretary, the Sec-
8 retary of Defense, the Secretary of Energy, the Sec-
9 retary of State, and the heads of other Federal
10 agencies as appropriate, lead a regular, ongoing
11 interagency process to identify emerging and
12 foundational technologies that—

13 (A) are essential to the national security of
14 the United States; and

15 (B) are not critical technologies described
16 in subparagraphs (A) through (D) of section
17 721(a)(7) of the Defense Production Act of
18 1950 (50 U.S.C. 4565(a)(7)).

19 (2) INTERAGENCY PROCESS.—The interagency
20 process required under paragraph (1) shall—

21 (A) be informed by multiple sources of in-
22 formation, including—

23 (i) publicly available information;

24 (ii) classified information, including
25 relevant information provided by the Direc-
26 tor of National Intelligence;

1 (iii) information relating to reviews
2 and investigations of transactions by the
3 Committee on Foreign Investment in the
4 United States under section 721 of the De-
5 fense Production Act of 1950 (50 U.S.C.
6 4565); and

7 (iv) information provided by the advi-
8 sory committees established by the Sec-
9 retary to advise the Under Secretary of
10 Commerce for Industry and Security on
11 controls under the Export Administration
12 Regulations, including the Emerging Tech-
13 nology and Research Advisory Committee.

14 (B) take into account—

15 (i) the development of emerging and
16 foundational technologies in other coun-
17 tries;

18 (ii) the effect export controls imposed
19 pursuant to this section may have on the
20 development of the technologies in the
21 United States; and

22 (iii) the effectiveness of export con-
23 trols imposed pursuant to this section on
24 limiting the proliferation of emerging and

1 foundational technologies to foreign coun-
2 tries;

3 (C) provide for the nomination of an
4 emerging or foundational technology to be iden-
5 tified under subsection (a) by the Secretary, the
6 Secretary of Defense, the Secretary of State,
7 the Secretary of Energy, or the heads of other
8 Federal agencies as appropriate;

9 (D) ensure that, not later than 60 days
10 after the nomination of an emerging or
11 foundational technology under subparagraph
12 (C), the Secretary makes a determination, in
13 coordination with the Secretary of Defense, the
14 Secretary of State, the Secretary of Energy,
15 and the heads of other Federal agencies as ap-
16 propriate, regarding whether additional or
17 modified controls on the technology under this
18 section are warranted, including through in-
19 forming a person that a license is required to
20 export the technology, or that more time and
21 input from the sources described in this para-
22 graph is needed before a final determination is
23 made to issue a rule to impose controls over
24 such technology; and

25 (E) include a notice and comment period.

1 (b) COMMERCE CONTROLS.—

2 (1) IN GENERAL.—The Secretary shall, except
3 to the extent inconsistent with the authorities de-
4 scribed in subsection (a)(1)(B), establish appropriate
5 controls on the export, reexport, or transfer of tech-
6 nology identified pursuant to subsection (a) and sub-
7 ject to the Export Administration Regulations, in-
8 cluding by publishing additional regulations.

9 (2) LEVELS OF CONTROL.—

10 (A) IN GENERAL.—The Secretary may, in
11 coordination with the Secretary of Defense, the
12 Secretary of Energy, the Secretary of State,
13 and the heads of other Federal agencies as ap-
14 propriate, specify the level of control to apply
15 under paragraph (1) with respect to the export
16 of technology described in that paragraph, in-
17 cluding a requirement for a license or other au-
18 thorization, to export, reexport, or transfer of
19 that technology.

20 (B) CONSIDERATIONS.—In determining
21 under subparagraph (A) the level of control
22 that is appropriate for technology described in
23 paragraph (1), the Secretary shall take into ac-
24 count—

- 1 (i) lists of countries to which exports
2 from the United States are restricted; and
3 (ii) the potential end uses and end
4 users of the technology.

5 (C) MINIMUM REQUIREMENTS.—The Sec-
6 retary shall, at a minimum and except as re-
7 quired by paragraph (4), require a license to ex-
8 port, reexport, or transfer technology described
9 in paragraph (1) to or in a country subject to
10 an embargo, including an arms embargo, im-
11 posed by the United States.

12 (3) REVIEW OF LICENSE APPLICATIONS.—

13 (A) PROCEDURES.—The procedures set
14 forth in Executive Order 12981 (50 U.S.C.
15 4603 note; relating to the administration of ex-
16 port controls) or any successor order, shall
17 apply to the review of an application for a li-
18 cense for the export, reexport, or transfer of
19 technology described in paragraph (1).

20 (B) CONSIDERATION OF INFORMATION RE-
21 LATING TO NATIONAL SECURITY.—In reviewing
22 an application for a license or other authoriza-
23 tion for the export, reexport, or transfer of
24 technology described in paragraph (1), the Sec-
25 retary shall take into account information pro-

1 vided by the Director of National Intelligence
2 regarding any threat to the national security of
3 the United States posed by the proposed export,
4 reexport, or transfer. The Director of National
5 Intelligence shall provide such information on
6 the request of the Secretary.

7 (C) DISCLOSURE RELATING TO COLLABO-
8 RATIVE ARRANGEMENTS.—In the case of an ap-
9 plication for a license or other authorization for
10 the export, reexport, or transfer of technology
11 described in paragraph (1) submitted by or on
12 behalf of a joint venture, joint development
13 agreement, or similar collaborative arrange-
14 ment, the Secretary may require the applicant
15 to identify, in addition to any foreign person
16 participating in the arrangement, any foreign
17 person with significant ownership interest in a
18 foreign person participating in the arrange-
19 ment.

20 (4) EXCEPTIONS.—

21 (A) MANDATORY EXCEPTION.—The Sec-
22 retary may not control under this subsection
23 the export of any technology described in para-
24 graph (1) if the regulation of that technology is
25 prohibited under any other provision of law.

1 (B) REGULATORY EXEMPTIONS.—In pre-
2 scribing regulations under paragraph (1), the
3 Secretary may include appropriate regulatory
4 exemptions to the requirements of that para-
5 graph for the export, reexport, or transfer of
6 technology described in paragraph (1).

7 (c) MULTILATERAL CONTROLS.—

8 (1) IN GENERAL.—The Secretary of State, in
9 coordination with the Secretary, the Secretary of
10 Defense, the Secretary of Energy, and heads of
11 other Federal agencies as appropriate, shall propose
12 to the relevant multilateral export control regimes in
13 the following year that a technology identified
14 through the interagency process required under sub-
15 section (a) be added to the list of technology con-
16 trolled by such regimes.

17 (2) REVIEW OF CONTINUED UNILATERAL EX-
18 PORT CONTROLS.—The Secretary, with respect to
19 those items on the Commerce Control List main-
20 tained under part 774 of title 15, Code of Federal
21 Regulations, and in coordination with the Secretary
22 of Defense, the Secretary of Energy, and the Sec-
23 retary of State, and the Secretary of State, with re-
24 spect to those items on the United States Munitions
25 List and in coordination with the Secretary of De-

1 fense and the heads of other Federal agencies as ap-
2 propriate, shall determine whether national security
3 concerns warrant continued unilateral export con-
4 trols over a technology proposed for multilateral con-
5 trol under paragraph (1) if the relevant multilateral
6 export control regime does not agree to list such
7 technology on its control list within three years of a
8 proposal by the United States.

9 (d) REPORT.—Not later than 180 days after the date
10 of the enactment of this Act, and not less frequently than
11 every 180 days thereafter, the Secretary, in coordination
12 with the Secretary of Defense, the Secretary of State, the
13 Secretary of Energy, and the heads of other Federal agen-
14 cies as appropriate, shall submit to the Committee on For-
15 eign Investment in the United States on a semiannual
16 basis a report on updates of any key actions taken pursu-
17 ant to this section.

18 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to alter or limit—

20 (1) the authority of the President and the Sec-
21 retary of State to designate those items that are
22 considered to be defense articles or defense services
23 for purposes of the Arms Export Control Act (22
24 U.S.C. 2751 et seq.) or to otherwise regulate such
25 items; or

1 (2) the authority of the President under the
2 Atomic Energy Act of 1954 (42 U.S.C. 2011 et
3 seq.), the Nuclear Non-Proliferation Act of 1978 (22
4 U.S.C. 3201 et seq.), the Energy Reorganization Act
5 of 1974 (42 U.S.C. 5801 et seq.), this title, or any
6 other provision of law relating to the control of ex-
7 ports.

8 (f) SENSE OF CONGRESS.—It is the sense of the Con-
9 gress that the President should request in the annual
10 budget of the President submitted under section 1105(a)
11 of title 31, United States Code, sufficient resources to en-
12 able the relevant departments and agencies to effectively
13 implement this section.

14 **SEC. 819. REVIEW RELATING TO COUNTRIES SUBJECT TO**
15 **COMPREHENSIVE UNITED STATES ARMS EM-**
16 **BARGO.**

17 (a) IN GENERAL.—The Secretary, the Secretary of
18 Defense, the Secretary of Energy, the Secretary of State,
19 and the heads of other Federal agencies as appropriate,
20 shall conduct a review of—

21 (1) section 744.21 of title 15, Code of Federal
22 Regulations, including to assess whether the current
23 and anticipated risks of direct or indirect diversion,
24 such as from policies and practices that effectively
25 obscure distinctions between civil and military end-

1 users and end-uses, require that the scope of control
2 under such section should be expanded to apply to
3 exports, reexports, or transfers for military end uses
4 and military end users in countries that are subject
5 to a comprehensive United States arms embargo and
6 countries that are subject to a United Nations arms
7 embargo;

8 (2) entries on the Commerce Control List main-
9 tained under part 774 of title 15, Code of Federal
10 Regulations, that do not impose license requirements
11 for exports, reexports, or transfers of items to coun-
12 tries subject to a comprehensive United States arms
13 embargo;

14 (3) whether there should be a presumption of
15 denial for an application for a license to export, re-
16 export, or transfer an item on the Commerce Con-
17 trol List subject to national security controls or re-
18 gional stability controls under part 742 of the Ex-
19 port Administration Regulations if that item is rea-
20 sonably likely to contribute, directly or indirectly, to
21 the military or intelligence capabilities of any coun-
22 try with respect to which the United States has in
23 place an arms embargo, sanctions, or comparable re-
24 strictions, including to or within any country listed

1 in Country Group D:5 in Supplement No. 1 to part
2 740 of the Export Administration Regulations;

3 (4) whether there should be a presumption of
4 denial for an application for a license to export, re-
5 export, or transfer an emerging or foundational
6 technology identified in section 818(a) to or within
7 a country identified in section 744.21 of title 15,
8 Code of Federal Regulations or Country Group E in
9 Supplement No. 1 to part 740 of the Export Admin-
10 istration Regulations; and

11 (5) without limiting the effect of paragraphs (3)
12 and (4), whether there should be a presumption of
13 approval for an application for a license to export,
14 reexport, or transfer an item on the Commerce Con-
15 trol List if that item is for a civil end use.

16 (b) IMPLEMENTATION OF RESULTS OF REVIEW.—

17 Not later than 270 days after the date of the enactment
18 of this Act, the Secretary shall implement the results of
19 the review conducted under subsection (a).

20 **SEC. 820. PENALTIES.**

21 (a) UNLAWFUL ACTS.—

22 (1) IN GENERAL.—It shall be unlawful for a
23 person to violate, attempt to violate, conspire to vio-
24 late, or cause a violation of this subtitle or of any
25 regulation, order, license, or other authorization

1 issued under this subtitle, including any of the un-
2 lawful acts described in paragraph (2).

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

5 (A) No person may engage in any conduct
6 prohibited by or contrary to, or refrain from en-
7 gaging in any conduct required by this subtitle,
8 the Export Administration Regulations, or any
9 order, license or authorization issued there-
10 under.

11 (B) No person may cause or aid, abet,
12 counsel, command, induce, procure, permit, or
13 approve the doing of any act prohibited, or the
14 omission of any act required by this subtitle,
15 the Export Administration Regulations, or any
16 order, license or authorization issued there-
17 under.

18 (C) No person may solicit or attempt a vio-
19 lation of this subtitle, the Export Administra-
20 tion Regulations, or any order, license or au-
21 thorization issued thereunder.

22 (D) No person may conspire or act in con-
23 cert with one or more other persons in any
24 manner or for any purpose to bring about or to
25 do any act that constitutes a violation of this

1 subtitle, the Export Administration Regula-
2 tions, or any order, license or authorization
3 issued thereunder.

4 (E) No person may order, buy, remove,
5 conceal, store, use, sell, loan, dispose of, trans-
6 fer, transport, finance, forward, or otherwise
7 service, in whole or in part, or conduct negotia-
8 tions to facilitate such activities for, any item
9 exported or to be exported from the United
10 States, or that is otherwise subject to the Ex-
11 port Administration Regulations, with knowl-
12 edge that a violation of this subtitle, the Export
13 Administration Regulations, or any order, li-
14 cense or authorization issued thereunder, has
15 occurred, is about to occur, or is intended to
16 occur in connection with the item unless valid
17 authorization is obtained therefor.

18 (F) No person may make any false or mis-
19 leading representation, statement, or certifi-
20 cation, or falsify or conceal any material fact,
21 either directly to the Department of Commerce,
22 or an official of any other United States agen-
23 cy, including the Department of Homeland Se-
24 curity and the Department of Justice, or indi-
25 rectly through any other person—

1 (i) in the course of an investigation or
2 other action subject to the Export Admin-
3 istration Regulations;

4 (ii) in connection with the prepara-
5 tion, submission, issuance, use, or mainte-
6 nance of any export control document or
7 any report filed or required to be filed pur-
8 suant to the Export Administration Regu-
9 lations; or

10 (iii) for the purpose of or in connec-
11 tion with effecting any export, reexport, or
12 transfer of an item subject to the Export
13 Administration Regulations or a service or
14 other activity of a United States person de-
15 scribed in section 814.

16 (G) No person may engage in any trans-
17 action or take any other action with intent to
18 evade the provisions of this subtitle, the Export
19 Administration Regulations, or any order, li-
20 cense, or authorization issued thereunder.

21 (H) No person may fail or refuse to com-
22 ply with any reporting or recordkeeping require-
23 ments of the Export Administration Regula-
24 tions or of any order, license, or authorization
25 issued thereunder.

1 (I) Except as specifically authorized in the
2 Export Administration Regulations or in writ-
3 ing by the Department of Commerce, no person
4 may alter any license, authorization, export con-
5 trol document, or order issued under the Export
6 Administration Regulations.

7 (J) No person may take any action that is
8 prohibited by a denial order issued by the De-
9 partment of Commerce to prevent imminent
10 violations of this subtitle, the Export Adminis-
11 tration Regulations, or any order, license or au-
12 thorization issued thereunder.

13 (3) ADDITIONAL REQUIREMENTS.—For pur-
14 poses of subparagraph (G), any representation,
15 statement, or certification made by any person shall
16 be deemed to be continuing in effect. Each person
17 who has made a representation, statement, or certifi-
18 cation to the Department of Commerce relating to
19 any order, license, or other authorization issued
20 under this subtitle shall notify the Department of
21 Commerce, in writing, of any change of any material
22 fact or intention from that previously represented,
23 stated, or certified, immediately upon receipt of any
24 information that would lead a reasonably prudent

1 person to know that a change of material fact or in-
2 tention had occurred or may occur in the future.

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

7 (1) shall be fined not more than \$1,000,000;
8 and

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

11 (c) CIVIL PENALTIES.—

12 (1) AUTHORITY.—The President may impose
13 the following civil penalties on a person for each vio-
14 lation by that person of this subtitle or any regula-
15 tion, order, or license issued under this subtitle, for
16 each violation:

17 (A) A fine of not more than \$300,000 or
18 an amount that is twice the value of the trans-
19 action that is the basis of the violation with re-
20 spect to which the penalty is imposed, which-
21 ever is greater.

22 (B) Revocation of a license issued under
23 this subtitle to the person.

1 (C) A prohibition on the person's ability to
2 export, reexport, or transfer any items, whether
3 or not subject to controls under this subtitle.

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

9 (3) STANDARDS FOR LEVELS OF CIVIL PEN-
10 ALTY.—The Secretary may by regulation provide
11 standards for establishing levels of civil penalty
12 under this subsection based upon factors such as the
13 seriousness of the violation, the culpability of the vi-
14 olator, and such mitigating factors as the violator's
15 record of cooperation with the Government in dis-
16 closing the violation.

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

19 (1) FORFEITURE.—Any person who is convicted
20 under subsection (b) of a violation of a control im-
21 posed under section 813 (or any regulation, order,
22 or license issued with respect to such control) shall,
23 in addition to any other penalty, forfeit to the
24 United States—

1 (A) any of that person's interest in, secu-
2 rity of, claim against, or property or contractual
3 rights of any kind in the tangible items that
4 were the subject of the violation;

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

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

12 (2) PROCEDURES.—The procedures in any for-
13 feiture under this subsection, and the duties and au-
14 thority of the courts of the United States and the
15 Attorney General with respect to any forfeiture ac-
16 tion under this subsection or with respect to any
17 property that may be subject to forfeiture under this
18 subsection, shall be governed by the provisions of
19 section 1963 of title 18, United States Code.

20 (e) PRIOR CONVICTIONS.—

21 (1) LICENSE BAR.—

22 (A) IN GENERAL.—The Secretary may—

23 (i) deny the eligibility of any person
24 convicted of a criminal violation described
25 in subparagraph (B) to export, reexport, or

1 transfer outside the United States any
2 item, whether or not subject to controls
3 under this subtitle, for a period of up to 10
4 years beginning on the date of the conviction; and

5
6 (ii) revoke any license or other authorization to export, reexport, or transfer
7 items that was issued under this subtitle
8 and in which such person has an interest
9 at the time of the conviction.

10
11 (B) VIOLATIONS.—The violations referred
12 to in subparagraph (A) are any criminal violations of, or criminal attempt or conspiracy to
13 violate—
14

15 (i) this subtitle (or any regulation, license, or order issued under this subtitle);

16
17 (ii) any regulation, license, or order
18 issued under the International Emergency
19 Economic Powers Act;

20 (iii) section 371, 554, 793, 794, or
21 798 of title 18, United States Code;

22 (iv) section 1001 of title 18, United
23 States Code;

24 (v) section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or
25

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

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

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

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

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

24 (3) the authority to compromise, remit or miti-
25 gate seizures and forfeitures pursuant to section

1 1(b) of title VI of the Act of June 15, 1917 (22
2 U.S.C. 401(b)).

3 **SEC. 821. ENFORCEMENT.**

4 (a) AUTHORITIES.—In order to enforce this subtitle,
5 the Secretary, on behalf of the President shall exercise,
6 in addition to relevant enforcement authorities of other
7 Federal agencies, the authority to—

8 (1) issue orders and guidelines;

9 (2) require, inspect, and obtain books, records,
10 and any other information from any person subject
11 to the provisions of this subtitle;

12 (3) administer oaths or affirmations and by
13 subpoena require any person to appear and testify or
14 to appear and produce books, records, and other
15 writings, or both;

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

1 (5) inspect, search, detain, seize, or issue tem-
2 porary denial orders with respect to items, in any
3 form, that are subject to controls under this subtitle,
4 or conveyances on which it is believed that there are
5 items that have been, are being, or are about to be
6 exported, reexported, or transferred in violation of
7 this subtitle, or any regulations, order, license, or
8 other authorization issued thereunder;

9 (6) carry firearms;

10 (7) conduct prelicense inspections and post-
11 shipment verifications; and

12 (8) execute warrants and make arrests.

13 (b) ENFORCEMENT OF SUBPOENAS.—In the case of
14 contumacy by, or refusal to obey a subpoena issued to,
15 any person under subsection (a)(3), a district court of the
16 United States, after notice to such person and a hearing,
17 shall have jurisdiction to issue an order requiring such
18 person to appear and give testimony or to appear and
19 produce books, records, and other writings, regardless of
20 format, that are the subject of the subpoena. Any failure
21 to obey such order of the court may be punished by such
22 court as a contempt thereof.

23 (c) BEST PRACTICE GUIDELINES.—

24 (1) IN GENERAL.—The Secretary, in consulta-
25 tion with the heads of other appropriate Federal

1 agencies, should publish and update “best practices”
2 guidelines to assist persons in developing and imple-
3 menting, on a voluntary basis, effective export con-
4 trol programs in compliance with the regulations
5 issued under this subtitle.

6 (2) EXPORT COMPLIANCE PROGRAM.—The im-
7 plementation by a person of an effective export com-
8 pliance program and a high quality overall export
9 compliance effort by a person should ordinarily be
10 given weight as mitigating factors in a civil penalty
11 action against the person under this subtitle.

12 (d) REFERENCE TO ENFORCEMENT.—For purposes
13 of this section, a reference to the enforcement of, or a vio-
14 lation of, this subtitle includes a reference to the enforce-
15 ment or a violation of any regulation, order, license or
16 other authorization issued pursuant to this subtitle.

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

23 (f) CONFIDENTIALITY OF INFORMATION.—

24 (1) EXEMPTIONS FROM DISCLOSURE.—

1 (A) IN GENERAL.—Information obtained
2 under this subtitle may be withheld from disclo-
3 sure only to the extent permitted by statute, ex-
4 cept that information described in subpara-
5 graph (B) shall be withheld from public disclo-
6 sure and shall not be subject to disclosure
7 under section 552(b)(3) of title 5, United
8 States Code, unless the release of such informa-
9 tion is determined by the Secretary to be in the
10 national interest.

11 (B) INFORMATION DESCRIBED.—Informa-
12 tion described in this subparagraph is informa-
13 tion submitted or obtained in connection with
14 an application for a license or other authoriza-
15 tion to export, reexport, or transfer items, en-
16 gage in other activities, a recordkeeping or re-
17 porting requirement, enforcement activity, or
18 other operations under this subtitle, including—

19 (i) the license application, license, or
20 other authorization itself;

21 (ii) classification or advisory opinion
22 requests, and the response thereto;

23 (iii) license determinations, and infor-
24 mation pertaining thereto;

1 (iv) information or evidence obtained
2 in the course of any investigation; and

3 (v) information obtained or furnished
4 in connection with any international agree-
5 ment, treaty, or other obligation.

6 (2) INFORMATION TO THE CONGRESS AND
7 GAO.—

8 (A) IN GENERAL.—Nothing in this section
9 shall be construed as authorizing the with-
10 holding of information from the Congress or
11 from the Government Accountability Office.

12 (B) AVAILABILITY TO THE CONGRESS.—

13 (i) IN GENERAL.—Any information
14 obtained at any time under any provision
15 of the Export Administration Act of 1979
16 (as in effect on the day before the date of
17 the enactment of this Act and as continued
18 in effect pursuant to the International
19 Emergency Economic Powers Act), under
20 the Export Administration Regulations, or
21 under this subtitle, including any report or
22 license application required under any such
23 provision, shall be made available to a
24 committee or subcommittee of Congress of
25 appropriate jurisdiction, upon the request

1 of the chairman or ranking minority mem-
2 ber of such committee or subcommittee.

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

11 (C) AVAILABILITY TO GAO.—

12 (i) IN GENERAL.—Information de-
13 scribed in clause (i) of subparagraph (B)
14 shall be subject to the limitations con-
15 tained in section 716 of title 31, United
16 States Code.

17 (ii) PROHIBITION ON FURTHER DIS-
18 CLOSURE.—An officer or employee of the
19 Government Accountability Office may not
20 disclose, except to the Congress in accord-
21 ance with this paragraph, any such infor-
22 mation that is submitted on a confidential
23 basis or from which any individual can be
24 identified.

25 (3) INFORMATION SHARING.—

1 (A) IN GENERAL.—Any Federal official de-
2 scribed in section 815(a) who obtains informa-
3 tion that is relevant to the enforcement of this
4 subtitle, including information pertaining to any
5 investigation, shall furnish such information to
6 each appropriate department, agency, or office
7 with enforcement responsibilities under this sec-
8 tion to the extent consistent with the protection
9 of intelligence, counterintelligence, and law en-
10 forcement sources, methods, and activities.

11 (B) EXCEPTIONS.—The provisions of this
12 paragraph shall not apply to information sub-
13 ject to the restrictions set forth in section 9 of
14 title 13, United States Code, and return infor-
15 mation, as defined in subsection (b) of section
16 6103 of the Internal Revenue Code of 1986 (26
17 U.S.C. 6103(b)), may be disclosed only as au-
18 thorized by that section.

19 (C) EXCHANGE OF INFORMATION.—The
20 President shall ensure that the heads of depart-
21 ments, agencies, and offices with enforcement
22 authorities under this subtitle, consistent with
23 protection of law enforcement and its sources
24 and methods—

1 (i) exchange any licensing and en-
2 forcement information with one another
3 that is necessary to facilitate enforcement
4 efforts under this section; and

5 (ii) consult on a regular basis with
6 one another and with the head of other de-
7 partments, agencies, and offices that ob-
8 tain information subject to this paragraph,
9 in order to facilitate the exchange of such
10 information.

11 (D) INFORMATION SHARING WITH FED-
12 ERAL AGENCIES.—Licensing or enforcement in-
13 formation obtained under this subtitle may be
14 shared with departments, agencies, and offices
15 that do not have enforcement authorities under
16 this subtitle on a case-by-case basis.

17 (g) REPORTING REQUIREMENTS.—In the administra-
18 tion of this section, reporting requirements shall be de-
19 signed to reduce the cost of reporting, recordkeeping, and
20 documentation to the extent consistent with effective en-
21 forcement and compilation of useful trade statistics. Re-
22 porting, recordkeeping, and documentation requirements
23 shall be periodically reviewed and revised in the light of
24 developments in the field of information technology.

25 (h) CIVIL FORFEITURE.—

1 (1) IN GENERAL.—Any tangible items seized
2 under subsection (a) by designated officers or em-
3 ployees shall be subject to forfeiture to the United
4 States in accordance with applicable law, except that
5 property seized shall be returned if the property
6 owner is not found guilty of a civil or criminal viola-
7 tion under section 819.

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

12 (i) RULE OF CONSTRUCTION.—Nothing in this Act
13 shall be construed to limit or otherwise affect the enforce-
14 ment authorities of the Department of Homeland Security
15 which may also complement those set forth herein.

16 **SEC. 822. ADMINISTRATIVE PROCEDURE.**

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

21 (b) ADMINISTRATIVE LAW JUDGES.—The Secretary
22 is authorized to appoint an administrative law judge, and
23 may designate administrative law judges from other Fed-
24 eral agencies who are provided pursuant to a legally au-
25 thorized interagency agreement with the Department of

1 Commerce, and consistent with the provisions of section
2 3105 of title 5, United States Code.

3 (c) AMENDMENTS TO REGULATIONS.—The President
4 shall notify in advance the Committee on Banking, Hous-
5 ing, and Urban Affairs of the Senate and the Committee
6 on Foreign Affairs of the House of Representatives of any
7 proposed amendments to the Export Administration Regu-
8 lations with an explanation of the intent and rationale of
9 such amendments.

10 **SEC. 823. REVIEW OF INTERAGENCY DISPUTE RESOLUTION**
11 **PROCESS.**

12 (a) IN GENERAL.—The President shall review and
13 evaluate the interagency export license referral, review,
14 and escalation processes for dual-use items and munitions
15 under the licensing jurisdiction of the Department of Com-
16 merce or any other Federal agency, as appropriate, to de-
17 termine whether current practices and procedures are con-
18 sistent with established national security and foreign pol-
19 icy objectives.

20 (b) REPORT.—Not later than 180 days after the date
21 of the enactment of this Act, the President shall submit
22 to the appropriate congressional committees a report that
23 contains the results of the review carried out under sub-
24 section (a).

1 (c) OPERATING COMMITTEE FOR EXPORT POLICY.—

2 In any case in which the Operating Committee for Export
3 Policy established by Executive Order 12981 (December
4 5, 1991; relating to Administration of Export Controls)
5 is meeting to conduct an interagency dispute resolution
6 relating to applications for export licenses under the Ex-
7 port Administration Regulations, matters relating to jet
8 engine hot section technology, commercial communication
9 satellites, and emerging or foundational technology shall
10 be decided by majority vote.

11 (d) APPROPRIATE CONGRESSIONAL COMMITTEES
12 DEFINED.—In this section, the term “appropriate con-
13 gressional committees” means—

14 (1) the Committee on Armed Services and the
15 Committee on Foreign Affairs of the House of Rep-
16 resentatives; and

17 (2) the Committee on Armed Services and the
18 Committee on Banking, Housing, and Urban Affairs
19 of the Senate.

20 **SEC. 824. COORDINATION WITH OTHER AGENCIES ON COM-**
21 **MODITY CLASSIFICATION AND REMOVAL OF**
22 **EXPORT CONTROLS.**

23 (a) IN GENERAL.—Notwithstanding any other provi-
24 sion of law, the Secretary shall coordinate with the Sec-
25 retary of Defense, the Secretary of State, and the Sec-

1 retary of Energy before taking any of the actions de-
2 scribed in subsection (b).

3 (b) ACTIONS DESCRIBED.—The actions described in
4 this subsection are the following:

5 (1) Amending the Commerce Control List set
6 forth in Supplement No. 1 to part 774 of the Export
7 Administration Regulations to remove an item from
8 the list.

9 (2) Providing a commodity classification deter-
10 mination under section 748.3 of the Export Admin-
11 istration Regulations, including with respect to—

12 (A) “600 series” items;

13 (B) commercial communication satellites
14 (ECCN 9x515);

15 (C) emerging and foundational tech-
16 nologies identified under section 818(a);

17 (D) “specially designed” items under part
18 774 of title 15, Code of Federal Regulations; or

19 (E) any other items that the Secretary, in
20 coordination with the Secretary of Defense, the
21 Secretary of State, and the Secretary of En-
22 ergy, identifies and mutually determines is ma-
23 terially significant enough to warrant inter-
24 agency consultation before the Secretary deter-
25 mines to add the item to the Commerce Control

1 List and provide the item with a Export Con-
2 trol Classification Number (ECCN).

3 (3) Amending the Commerce Control List to re-
4 move any control imposed pursuant to subsection (b)
5 of section 818 on the export, reexport, or transfer of
6 an emerging or foundational technology identified
7 under subsection (a) of that section.

8 (4) Amending the Export Administration Regu-
9 lations to expand the scope or application of a li-
10 cense exception authorized by section 740 of the Ex-
11 port Administration Regulations.

12 **SEC. 825. ANNUAL REPORT TO CONGRESS.**

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

17 (1) the effect of controls imposed under this
18 subtitle on exports, reexports, and transfers of items
19 in addressing threats to the national security or for-
20 eign policy of the United States, including a descrip-
21 tion of licensing processing times;

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

24 (3) the consistency with such controls of export
25 controls imposed by other countries;

1 (4) efforts to provide exporters with compliance
2 assistance, including specific actions to assist small-
3 and medium-sized businesses;

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

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

10 (7) a summary of approved license applications
11 to proscribed persons;

12 (8) efforts undertaken within the previous year
13 to comply with the requirements of section 819, in-
14 cluding any critical technologies identified under
15 such section and how or whether such critical tech-
16 nologies were controlled for export; and

17 (9) a summary of industrial base assessments
18 conducted during the previous year by the Depart-
19 ment of Commerce, including with respect to coun-
20 terfeit electronics, foundational technologies, and
21 other research and analysis of critical technologies
22 and industrial capabilities of key defense-related sec-
23 tors.

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

4 **SEC. 826. REPEAL.**

5 (a) IN GENERAL.—The Export Administration Act of
6 1979 (50 U.S.C. App. 2401 et seq.) (as continued in effect
7 pursuant to the International Emergency Economic Pow-
8 ers Act) is repealed.

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

14 **SEC. 827. EFFECT ON OTHER ACTS.**

15 (a) IN GENERAL.—Except as otherwise provided in
16 this subtitle, nothing contained in this subtitle shall be
17 construed to modify, repeal, supersede, or otherwise affect
18 the provisions of any other laws authorizing control over
19 exports, reexports, or transfers of any item, or activities
20 of United States persons subject to the Export Adminis-
21 tration Regulations.

22 (b) COORDINATION OF CONTROLS.—

23 (1) IN GENERAL.—The authority granted to the
24 President under this subtitle shall be exercised in
25 such manner so as to achieve effective coordination

1 with all export control and sanctions authorities ex-
2 ercised by Federal departments and agencies dele-
3 gated with authority under this subtitle, particularly
4 the Department of State, the Department of the
5 Treasury, and the Department of Energy.

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

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

17 (B) should regularly work to reduce com-
18 plexity in the system, including complexity
19 caused merely by the existence of structural,
20 definitional, and other non-policy based dif-
21 ferences between and among different export
22 control and sanctions systems; and

23 (C) should coordinate controls on items ex-
24 ported, reexported, or transferred in connection
25 with a foreign military sale under chapter 2 of

1 the Arms Export Control Act or a commercial
2 sale under section 38 of the Arms Export Con-
3 trol Act to reduce as much unnecessary admin-
4 istrative burden as possible that is a result of
5 differences between the exercise of those two
6 authorities.

7 (c) NONPROLIFERATION CONTROLS.—Nothing in
8 this subtitle shall be construed to supersede the proce-
9 dures published by the President pursuant to section
10 309(c) of the Nuclear Non-Proliferation Act of 1978.

11 **SEC. 828. TRANSITION PROVISIONS.**

12 (a) IN GENERAL.—All delegations, rules, regulations,
13 orders, determinations, licenses, or other forms of admin-
14 istrative action that have been made, issued, conducted,
15 or allowed to become effective under the Export Adminis-
16 tration Act of 1979 (as in effect on the day before the
17 date of the enactment of this Act and as continued in ef-
18 fect pursuant to the International Emergency Economic
19 Powers Act), or the Export Administration Regulations,
20 and are in effect as of the date of the enactment of this
21 Act, shall continue in effect according to their terms until
22 modified, superseded, set aside, or revoked under the au-
23 thority of this subtitle.

24 (b) ADMINISTRATIVE AND JUDICIAL PRO-
25 CEEDINGS.—This subtitle shall not affect any administra-

1 tive or judicial proceedings commenced, or any applica-
2 tions for licenses made, under the Export Administration
3 Act of 1979 (as in effect on the day before the date of
4 the enactment of this Act and as continued in effect pur-
5 suant to the International Emergency Economic Powers
6 Act), or the Export Administration Regulations.

7 (c) CERTAIN DETERMINATIONS AND REFERENCES.—

8 (1) STATE SPONSORS OF TERRORISM.—Any de-
9 termination that was made under section 6(j) of the
10 Export Administration Act of 1979 (as in effect on
11 the day before the date of the enactment of this Act
12 and as continued in effect pursuant to the Inter-
13 national Emergency Economic Powers Act) shall
14 continue in effect as if the determination had been
15 made under section 814(c) of this Act.

16 (2) REFERENCE.—Any reference in any other
17 provision of law to a country the government of
18 which the Secretary of State has determined, for
19 purposes of section 6(j) of the Export Administra-
20 tion Act of 1979 (as in effect on the day before the
21 date of the enactment of this Act and as continued
22 in effect pursuant to the International Emergency
23 Economic Powers Act), is a government that has re-
24 peatedly provided support for acts of international
25 terrorism shall be deemed to refer to a country the

1 government of which the Secretary of State has de-
2 termined, for purposes of section 814(c), is a gov-
3 ernment that has repeatedly provided support for
4 acts of international terrorism.

5 **Subtitle B—Anti-Boycott Act of**
6 **2018**

7 **SEC. 831. SHORT TITLE.**

8 This subtitle may be cited as the “Anti-Boycott Act
9 of 2018”.

10 **SEC. 832. STATEMENT OF POLICY.**

11 Congress declares it is the policy of the United
12 States—

13 (1) to oppose restrictive trade practices or boy-
14 cotts fostered or imposed by any foreign country
15 against other countries friendly to the United States
16 or against any United States person;

17 (2) to encourage and, in specified cases, require
18 United States persons engaged in the export of
19 goods or technology or other information to refuse to
20 take actions, including furnishing information or en-
21 tering into or implementing agreements, which have
22 the effect of furthering or supporting the restrictive
23 trade practices or boycotts fostered or imposed by
24 any foreign country against a country friendly to the
25 United States or any United States person; and

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

4 **SEC. 833. FOREIGN BOYCOTTS.**

5 (a) PROHIBITIONS AND EXCEPTIONS.—

6 (1) PROHIBITIONS.—For the purpose of imple-
7 menting the policies set forth in section 832, the
8 President shall issue regulations prohibiting any
9 United States person, with respect to that person's
10 activities in the interstate or foreign commerce of
11 the United States, from taking or knowingly agree-
12 ing to take any of the following actions with intent
13 to comply with, further, or support any boycott fos-
14 tered or imposed by any foreign country, against a
15 country which is friendly to the United States and
16 which is not itself the object of any form of boycott
17 pursuant to United States law or regulation:

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

1 try. The mere absence of a business relationship
2 with or in the boycotted country with any busi-
3 ness concern organized under the laws of the
4 boycotted country, with any national or resident
5 of the boycotted country, or with any other per-
6 son, does not indicate the existence of the in-
7 tent required to establish a violation of regula-
8 tions issued to carry out this subparagraph.

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

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

19 (D) Furnishing information about whether
20 any person has, has had, or proposes to have
21 any business relationship (including a relation-
22 ship by way of sale, purchase, legal or commer-
23 cial representation, shipping or other transport,
24 insurance, investment, or supply) with or in the
25 boycotted country, with any business concern

1 organized under the laws of the boycotted coun-
2 try, with any national or resident of the boy-
3 cotted country, or with any other person which
4 is known or believed to be restricted from hav-
5 ing any business relationship with or in the boy-
6 cotted country. Nothing in this subparagraph
7 shall prohibit the furnishing of normal business
8 information in a commercial context as defined
9 by the Secretary.

10 (E) Furnishing information about whether
11 any person is a member of, has made contribu-
12 tions to, or is otherwise associated with or in-
13 volved in the activities of any charitable or fra-
14 ternal organization which supports the boy-
15 cotted country.

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

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

3 (A) complying or agreeing to comply with
4 requirements—

5 (i) prohibiting the import of goods or
6 services from the boycotted country or
7 goods produced or services provided by any
8 business concern organized under the laws
9 of the boycotted country or by nationals or
10 residents of the boycotted country; or

11 (ii) prohibiting the shipment of goods
12 to the boycotting country on a carrier of
13 the boycotted country, or by a route other
14 than that prescribed by the boycotting
15 country or the recipient of the shipment;

16 (B) complying or agreeing to comply with
17 import and shipping document requirements
18 with respect to the country of origin, the name
19 of the carrier and route of shipment, the name
20 of the supplier of the shipment or the name of
21 the provider of other services, except that no in-
22 formation knowingly furnished or conveyed in
23 response to such requirements may be stated in
24 negative, blacklisting, or similar exclusionary
25 terms, other than with respect to carriers or

1 route of shipment as may be permitted by such
2 regulations in order to comply with pre-
3 cautionary requirements protecting against war
4 risks and confiscation;

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

14 (D) complying or agreeing to comply with
15 export requirements of the boycotting country
16 relating to shipments or transshipments of ex-
17 ports to the boycotted country, to any business
18 concern of or organized under the laws of the
19 boycotted country, or to any national or resi-
20 dent of the boycotted country;

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

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

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

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

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

24 (5) APPLICATION.—This section shall apply to
25 any transaction or activity undertaken, by or

1 through a United States person or any other person,
2 with intent to evade the provisions of this section as
3 implemented by the regulations issued pursuant to
4 this subsection, and such regulations shall expressly
5 provide that the exceptions set forth in paragraph
6 (2) shall not permit activities or agreements (ex-
7 pressed or implied by a course of conduct, including
8 a pattern of responses) otherwise prohibited, which
9 are not within the intent of such exceptions.

10 (b) FOREIGN POLICY CONTROLS.—

11 (1) IN GENERAL.—In addition to the regula-
12 tions issued pursuant to subsection (a), regulations
13 issued under subtitle A to carry out the policies set
14 forth in section 812(1)(D) shall implement the poli-
15 cies set forth in this section.

16 (2) REQUIREMENTS.—Such regulations shall
17 require that any United States person receiving a re-
18 quest for the furnishing of information, the entering
19 into or implementing of agreements, or the taking of
20 any other action referred to in subsection (a) shall
21 report that fact to the Secretary, together with such
22 other information concerning such request as the
23 Secretary may require for such action as the Sec-
24 retary considers appropriate for carrying out the
25 policies of that section. Such person shall also report

1 to the Secretary whether such person intends to
2 comply and whether such person has complied with
3 such request. Any report filed pursuant to this para-
4 graph shall be made available promptly for public in-
5 spection and copying, except that information re-
6 garding the quantity, description, and value of any
7 goods or technology to which such report relates
8 may be kept confidential if the Secretary determines
9 that disclosure thereof would place the United States
10 person involved at a competitive disadvantage. The
11 Secretary shall periodically transmit summaries of
12 the information contained in such reports to the Sec-
13 retary of State for such action as the Secretary of
14 State, in consultation with the Secretary, considers
15 appropriate for carrying out the policies set forth in
16 section 832.

17 (c) PREEMPTION.—The provisions of this section and
18 the regulations issued pursuant thereto shall preempt any
19 law, rule, or regulation of any of the several States or the
20 District of Columbia, or any of the territories or posses-
21 sions of the United States, or of any governmental subdivi-
22 sion thereof, which law, rule, or regulation pertains to par-
23 ticipation in, compliance with, implementation of, or the
24 furnishing of information regarding restrictive trade prac-

1 tices or boycotts fostered or imposed by foreign countries
2 against other countries friendly to the United States.

3 **SEC. 834. ENFORCEMENT.**

4 (a) CRIMINAL PENALTY.—A person who willfully
5 commits, willfully attempts to commit, or willfully con-
6 spires to commit, or aids or abets in the commission of,
7 an unlawful act section 833—

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

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

12 (b) CIVIL PENALTIES.—The President may impose
13 the following civil penalties on a person who violates sec-
14 tion 833 or any regulation issued under this subtitle:

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

19 (2) Revocation of a license issued under title I
20 to the person.

21 (3) A prohibition on the person's ability to ex-
22 port, reexport, or transfer any items controlled
23 under subtitle A.

24 (c) PROCEDURES.—Any civil penalty or administra-
25 tive sanction (including any suspension or revocation of

1 authority to export) under this section may be imposed
 2 only after notice and opportunity for an agency hearing
 3 on the record in accordance with sections 554 through 557
 4 of title 5, United States Code, and shall be subject to judi-
 5 cial review in accordance with chapter 7 of such title.

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

12 **Subtitle C—Sanctions Regarding**
 13 **Missile Proliferation and Chem-**
 14 **ical and Biological Weapons**
 15 **Proliferation**

16 **SEC. 841. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

17 (a) VIOLATIONS BY UNITED STATES PERSONS.—

18 (1) SANCTIONS.—

19 (A) SANCTIONABLE ACTIVITY.—The Presi-
 20 dent shall impose the applicable sanctions de-
 21 scribed in subparagraph (B) if the President
 22 determines that a United States person know-
 23 ingly—

24 (i) exports, reexports, or transfers of
 25 any item on the MTCR Annex, in violation

1 of the provisions of section 38 (22 U.S.C.
2 2778) or chapter 7 of the Arms Export
3 Control Act, subtitle A, or any regulations
4 or orders issued under any such provisions;
5 or

6 (ii) conspires to or attempts to engage
7 in such export, reexport, or transfer.

8 (B) SANCTIONS.—The sanctions that apply
9 to a United States person under subparagraph
10 (A) are the following:

11 (i) If the item on the MTCR Annex
12 involved in the export, reexport, or transfer
13 is missile equipment or technology within
14 category II of the MTCR Annex, then the
15 President shall deny to such United States
16 person, for a period of 2 years, licenses for
17 the transfer of missile equipment or tech-
18 nology controlled under subtitle A.

19 (ii) If the item on the MTCR Annex
20 involved in the export, reexport, or transfer
21 is missile equipment or technology within
22 category I of the MTCR Annex, then the
23 President shall deny to such United States
24 person, for a period of not less than 2

1 years, all licenses for items the transfer of
2 which is controlled under subtitle A.

3 (2) DISCRETIONARY SANCTIONS.—In the case
4 of any determination referred to in paragraph (1),
5 the President may pursue any other appropriate
6 penalties under section 820.

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

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

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

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

22 (1) SANCTIONS.—

23 (A) SANCTIONABLE ACTIVITY.—Subject to
24 paragraphs (3) through (7), the President shall
25 impose the applicable sanctions under subpara-

graph (B) on a foreign person if the President—

(i) determines that a foreign person knowingly—

(I) exports, reexports, or transfers any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under subtitle A;

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

(III) facilitates such export, reexport, or transfer by any other person; or

(ii) has made a determination with respect to the foreign person under section 73(a) of the Arms Export Control Act.

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

1 (i) If the item involved in the export,
2 reexport, or transfer is within category II
3 of the MTCR Annex, then the President
4 shall deny, for a period of 2 years, licenses
5 for the transfer to such foreign person of
6 missile equipment or technology the trans-
7 fer of which is controlled under subtitle A.

8 (ii) If the item involved in the export,
9 reexport, or transfer is within category I of
10 the MTCR Annex, then the President shall
11 deny, for a period of not less than 2 years,
12 licenses for the transfer to such foreign
13 person of items the transfer of which is
14 controlled under subtitle A.

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

18 (A) any export, reexport, or transfer that
19 is authorized by the laws of an MTCR adher-
20 ent, if such authorization is not obtained by
21 misrepresentation or fraud; or

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

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

13 (4) WAIVER AND REPORT TO CONGRESS.—

14 (A) WAIVER AUTHORITY.—The President
15 may waive the application of paragraph (1) to
16 a foreign person if the President determines
17 that such waiver is essential to the national se-
18 curity of the United States.

19 (B) NOTIFICATION AND REPORT TO CON-
20 GRESS.—In the event that the President decides
21 to apply the waiver described in subparagraph
22 (A), the President shall so notify the appro-
23 priate congressional committees not less than
24 20 working days before issuing the waiver.
25 Such notification shall include a report fully ar-

1 tulating the rationale and circumstances
2 which led the President to apply the waiver.

3 (5) ADDITIONAL WAIVER.—The President may
4 waive the imposition of sanctions under paragraph
5 (1) on a person with respect to a product or service
6 if the President certifies to the appropriate congress-
7 sional committees that—

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

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

17 (6) EXCEPTIONS.—The President shall not
18 apply the sanction under this subsection prohibiting
19 the importation of the products of a foreign per-
20 son—

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

23 (i) under existing contracts or sub-
24 contracts, including the exercise of options
25 for production quantities to satisfy require-

1 ments essential to the national security of
2 the United States;

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

11 (iii) if the President determines that
12 such articles or services are essential to the
13 national security of the United States
14 under defense coproduction agreements or
15 NATO Programs of Cooperation;

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

20 (C) to—

21 (i) spare parts;

22 (ii) component parts, but not finished
23 products, essential to United States prod-
24 ucts or production;

1 (iii) routine services and maintenance
2 of products, to the extent that alternative
3 sources are not readily or reasonably avail-
4 able; or

5 (iv) information and technology essen-
6 tial to United States products or produc-
7 tion.

8 (c) DEFINITIONS.—In this section:

9 (1) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term “appropriate congressional com-
11 mittees” means—

12 (A) the Committee on Foreign Affairs of
13 the House of Representatives; and

14 (B) the Committee on Foreign Relations
15 and the Committee on Banking, Housing, and
16 Urban Affairs of the Senate.

17 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—
18 The terms “defense articles” and “defense services”
19 mean those items on the United States Munitions
20 List as defined in section 47(7) of the Arms Export
21 Control Act (22 U.S.C. 2794 note).

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

24 (4) MISSILE TECHNOLOGY CONTROL REGIME;
25 MTCR.—The term “Missile Technology Control Re-

1 gime” or “MTCR” means the policy statement, be-
2 tween the United States, the United Kingdom, the
3 Federal Republic of Germany, France, Italy, Can-
4 ada, and Japan, announced on April 16, 1987, to re-
5 strict sensitive missile-relevant transfers based on
6 the MTCR Annex, and any amendments thereto.

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

14 (6) MTCR ANNEX.—The term “MTCR Annex”
15 means the Guidelines and Equipment and Tech-
16 nology Annex of the MTCR, and any amendments
17 thereto.

18 (7) MISSILE EQUIPMENT OR TECHNOLOGY;
19 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
20 “missile equipment or technology” and “MTCR
21 equipment or technology” mean those items listed in
22 category I or category II of the MTCR Annex.

23 **SEC. 842. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
24 **LIFERATION SANCTIONS.**

25 (a) IMPOSITION OF SANCTIONS.—

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

6 (A) through the export from the United
7 States of any item that is subject to the juris-
8 diction of the United States under this subtitle;
9 or

10 (B) through the export from any other
11 country of any item that would be, if they were
12 United States goods or technology, subject to
13 the jurisdiction of the United States under this
14 subtitle,
15 to the efforts by any foreign country, project, or en-
16 tity described in paragraph (2) to use, develop,
17 produce, stockpile, or otherwise acquire chemical or
18 biological weapons.

19 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
20 CEIVING ASSISTANCE.—Paragraph (1) applies in the
21 case of—

22 (A) any foreign country that the President
23 determines has, at any time after January 1,
24 1980—

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

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

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

8 (B) any foreign country whose government
9 is determined for purposes of section 914(c) to
10 be a government that has repeatedly provided
11 support for acts of international terrorism; or

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

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

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

21 (B) any successor entity to that foreign
22 person; and

23 (C) any foreign person that is a parent,
24 subsidiary, or affiliate of that foreign person if
25 that parent, subsidiary, or affiliate knowingly

1 assisted in the activities which were the basis of
2 that determination.

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

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

12 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
13 TION.—In order to pursue such consultations with
14 that government, the President may delay imposition
15 of a sanction pursuant to this section for a period
16 of up to 90 days. Following such consultations, the
17 President shall impose the sanction unless the Presi-
18 dent determines and certifies to the appropriate con-
19 gressional committees that the Government has
20 taken specific and effective actions, including appro-
21 priate penalties, to terminate the involvement of the
22 foreign person in the activities described in sub-
23 section (a)(1). The President may delay imposition
24 of the sanction for an additional period of up to 90
25 days if the President determines and certifies to the

1 Congress that the government is in the process of
2 taking the actions described in the preceding sen-
3 tence.

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

12 (c) SANCTION.—

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

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

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

24 (i) under existing contracts or sub-
25 contracts, including the exercise of options

1 for production quantities to satisfy United
2 States operational military requirements;

3 (ii) if the President determines that
4 the person or other entity to which the
5 sanctions would otherwise be applied is a
6 sole source supplier of the defense articles
7 or defense services, that the defense arti-
8 cles or defense services are essential, and
9 that alternative sources are not readily or
10 reasonably available; or

11 (iii) if the President determines that
12 such articles or services are essential to the
13 national security under defense coproduc-
14 tion agreements;

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

19 (C) to—

20 (i) spare parts;

21 (ii) component parts, but not finished
22 products, essential to United States prod-
23 ucts or production; or

24 (iii) routine servicing and mainte-
25 nance of products, to the extent that alter-

1 native sources are not readily or reason-
2 ably available;

3 (D) to information and technology essen-
4 tial to United States products or production; or
5 (E) to medical or other humanitarian
6 items.

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

18 (e) WAIVER.—

19 (1) CRITERION FOR WAIVER.—The President
20 may waive the application of any sanction imposed
21 on any person pursuant to this section if the Presi-
22 dent determines and certifies to the appropriate con-
23 gressional committees that such waiver is important
24 to the national security interests of the United
25 States.

1 (2) NOTIFICATION OF AND REPORT TO CON-
2 GRESS.—If the President decides to exercise the
3 waiver authority provided in paragraph (1), the
4 President shall so notify the appropriate congress-
5 sional committees not less than 20 days before the
6 waiver takes effect. Such notification shall include a
7 report fully articulating the rationale and cir-
8 cumstances which led the President to exercise the
9 waiver authority.

10 (f) DEFINITIONS.—In this section:

11 (1) APPROPRIATE CONGRESSIONAL COMMIT-
12 TEES.—The term “appropriate congressional com-
13 mittees” means—

14 (A) the Committee on Foreign Affairs of
15 the House of Representatives; and

16 (B) the Committee on Foreign Relations
17 and the Committee on Banking, Housing, and
18 Urban Affairs of the Senate.

19 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—
20 The terms “defense articles” and “defense services”
21 mean those items on the United States Munitions
22 List or are otherwise controlled under the Arms Ex-
23 port Control Act.

1 **Subtitle D—Administrative**
2 **Authorities**

3 **SEC. 851. UNDER SECRETARY OF COMMERCE FOR INDUS-**
4 **TRY AND SECURITY.**

5 (a) IN GENERAL.—The President shall appoint, by
6 and with the advice and consent of the Senate, an Under
7 Secretary of Commerce for Industry and Security who
8 shall carry out all the functions of the Secretary under
9 this title and such other provisions of law that relate to
10 the implementation of the dual-use export system.

11 (b) ASSISTANT SECRETARIES OF COMMERCE.—The
12 President shall appoint, by and with the advice and con-
13 sent of the Senate, two Assistant Secretaries of Commerce
14 to assist the Under Secretary in carrying out the functions
15 described in paragraph (1).

Passed the House of Representatives June 26, 2018.

Attest:

KAREN L. HAAS,
Clerk.

Calendar No. 492

115TH CONGRESS
2^D Session

H. R. 5841

AN ACT

To modernize and strengthen the Committee on Foreign Investment in the United States to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment, and for other purposes.

JUNE 27, 2018

Received; read twice and placed on the calendar