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## **Nuclear, Biological, Chemical, and Missile Proliferation Sanctions: Selected Current Law**

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# Report Documentation Page

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# Nuclear, Biological, Chemical, and Missile Proliferation Sanctions: Selected Current Law

## Summary

The use of economic sanctions to stem weapons proliferation acquired a new dimension in the 1990s. While earlier legislation required the cutoff of foreign aid to countries engaged in specified nuclear proliferation activities and mentioned other sanctions as a possible mechanism for bringing countries into compliance with goals of treaties or international agreements, it was not until 1990 that Congress enacted explicit guidelines for trade sanctions related to missile proliferation. In that year a requirement for the President to impose sanctions against U.S. persons or foreign persons engaging in trade of items or technology listed in the Missile Technology Control Regime Annex (MTCR Annex) was added to the Arms Export Control Act and to the Export Administration Act of 1979. Subsequently, Congress legislated economic sanctions against countries that contribute to the proliferation of chemical, biological, and nuclear weapons in a broad array of laws.

This report offers a listing and brief description of legal provisions that require or authorize the imposition of some form of economic sanction against countries, companies, or persons who violate U.S. nonproliferation norms. For each provision, information is included on what triggers the imposition of sanctions, their duration, what authority the President has to delay or abstain from imposing sanctions, and what authority the President has to waive the imposition of sanctions.

This report also includes a list of legislation pending before the 109<sup>th</sup> Congress that, if enacted, would be relevant in the use of economic sanctions as a part of U.S. nonproliferation policy.

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# Nuclear, Biological, Chemical, and Missile Proliferation Sanctions: Selected Current Law

## Background

The use of economic sanctions to stem weapons proliferation acquired a new dimension in the 1990s.<sup>1</sup> While earlier legislation required the cutoff of foreign aid to countries engaged in specified nuclear proliferation activities and mentioned other sanctions as a possible mechanism for bringing countries into compliance with goals of treaties or international agreements,<sup>2</sup> it was not until 1990 that Congress enacted explicit guidelines for trade sanctions related to missile proliferation. In that year a requirement for the President to impose sanctions against U.S. persons or foreign persons engaging in trade of items or technology listed in the Missile Technology Control Regime Annex (MTCR Annex) was added to the Arms Export Control Act and to the Export Administration Act of 1979. Subsequently, Congress legislated economic sanctions against countries that contribute to the proliferation of chemical, biological, and nuclear weapons in a broad array of laws.

This report offers an alphabetic listing and brief description of legal provisions that require or authorize the imposition of some form of economic sanction on countries, companies, or persons who violate U.S. nonproliferation norms.<sup>3</sup> For each provision, information is included on what triggers the imposition of sanctions, their duration, what authority the President has to delay or abstain from imposing sanctions, and what authority the President has to waive the imposition of sanctions.

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<sup>1</sup> For a more general discussion on the use of sanctions in foreign policy, see Rennack, Dianne E. and Robert D. Shuey. *Economic Sanctions to Achieve U.S. Foreign Policy Goals: Discussion and Guide to Current Law*. CRS Report 97-949. For a broader discussion on issues related to nuclear, biological, and chemical weapons and missiles, see Squassoni, Sharon. *Nuclear, Biological, and Chemical Weapons and Missiles: The Current Situation and Trends*. CRS Report RL30699.

<sup>2</sup> The International Atomic Energy Act of 1954 and the Nuclear Non-Proliferation Act of 1978 sought to increase international participation in and adherence with the International Atomic Energy Agency and Nuclear Non-Proliferation Treaty, respectively, and, to that end, authorized the President to enter into international discussions, including the imposition of sanctions against those who abrogate or violate these international agreements.

<sup>3</sup> The list is arranged alphabetically, with references to the U.S. Code and *Legislation on Foreign Relations* where applicable. Legislative history of pertinent amendments is also given, in italics.

## Pending Before the 109<sup>th</sup> Congress

Of the several legislative proposals before the 109<sup>th</sup> Congress that pertain to or have some implication for the control of weapons of mass destruction, the following bills relate to nonproliferation and have implications for the use of economic sanctions in foreign policy or national security matters:

<p><b>H.R. 282</b> (see also S. 333)</p>	<p><b>Iran Freedom Support Act.</b> Requires WMD-related sanctions, controls and regulations to remain in place until President certifies that “the Government of Iran has permanently and verifiably dismantled its weapons of mass destruction programs and has committed to combating the proliferation of such weapons.” Links Secretary of State’s designation of Iran as a supporter of acts of international terrorism to its WMD activities. Amends Iran and Libya Sanctions Act of 1996 (ILSA) to require periodic reports from President, toughens President’s waiver authority in relation to third parties, and requires investigation into reports of prohibited investment. Makes mandatory the imposition of sanctions for activities related to WMD or military capability. Amends ILSA to remove conditions for terminating application to Libya, making it easier to normalize relations with that country. Amends ILSA to make it permanent, removing the requirement for legislators to periodically renew its authority. Authorizes a two-track policy toward Iran, imposing sanctions on the government while providing assistance to pro-democracy entities.</p> <p><i>Introduced January 6, 2005, by Representative Ros-Lehtinen. Referred to Committee on International Relations. Subcommittee on Middle East and Central Asia marked up, adding: flexibility to the President’s authority to impose sanctions, increased inclusion of Congress when sanctions change, sanctions against any third country investing in Iran’s petroleum industry, and a mandatory referral to the United Nations to require Iran’s cooperation with the International Atomic Energy Agency (IAEA).</i></p>
<p><b>H.R. 1453</b></p>	<p><b>United States-Libya Relations Act of 2005.</b> Amends ILSA to remove all references, including the imposition of economic sanctions, to Libya. Authorizes the establishment of diplomatic and cultural facilities in Libya, as well as assistance in fields of education, health, governance, trade, and investment, notwithstanding any existing restrictions on foreign aid. Authorizes assistance, notwithstanding any other provision of law, for retraining Libyans formerly a part of the country’s WMD program.</p> <p><i>Introduced March 20, 2005, by Representative Lantos. Referred to Committees on International Relations, Financial Services, Ways and Means, and Government Reform.</i></p>

<b>H.R. 1815</b>	<p><b>National Defense Authorization Act for Fiscal Year 2006.</b> Requires a report of the Secretary of Defense and Chairman of the Joint Chiefs of Staff assessing Iran's acquisition of nuclear weapons, entities that have facilitated that acquisition, and the United States' capability to counter Iran's nuclear weapons, if necessary (§ 1211).</p> <p>Prohibits the Secretary of Defense from procuring goods or services from any foreign person who has "exported, transferred, or otherwise provided to governmental or nongovernmental entities of the People's Republic of China any item or class of items on the United States Munitions List" (§ 1212).</p> <p>Prohibits the Secretary of Defense from procuring goods and services from any Communist Chinese military company (§ 1213).</p> <p><i>Introduced April 26, 2005, by Representative Hunter. Referred to Committee on Armed Services. Reported May 20, 2005 (H.Rept. 109-89). Agreed to in the House May 25, 2005, by vote of 390-39 (Roll no. 222). Sent to the Senate, and referred to Committee on Armed Services Committee, June 6, 2005.</i></p>
<b>H.R. 3057</b>	<p><b>Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006</b> (House passed) / <b>Department of State, Foreign Operations, and Related Programs Appropriations Act, 2006</b> (Senate passed). Restricts use of Export-Import Bank funds for certain nuclear materials-related transactions. Withholds a percentage of funding to Russia until the President certifies that the Government of Russia has terminated its assistance to Iran in that country's quest to develop nuclear energy, nuclear research facilities, or ballistic missile capability. In the House-passed version, sec. 589 prohibits the U.S. Export-Import Bank from providing loans or loan guarantees to China for a nuclear project.</p> <p><i>Reported as an original measure by the Committee on Appropriations, June 24, 2005. Agreed to in the House, June 28, 2005, by a vote of 393-32. In the Senate, reported out of the Committee on Appropriations, with an amendment in the nature of a substitute, on June 30, 2005. Agreed to in the Senate, July 20, 2005, by a vote of 98-1. Senate has appointed conferees.</i></p>
<b>H.R. 3184</b>	<p>Relating to the <b>Small Quantities Protocol, Additional Protocol, and cooperation with the International Atomic Energy Agency.</b> Requires the President to deny most foreign aid, defense articles and services, and dual use goods or technology to any country that does not sign the Additional Protocol, which would allow IAEA inspections and data collection on that country's nuclear materials consumption. Some 87 countries have signed the Small Quantities Protocol and thus could be subject to sanctions.</p> <p><i>Introduced June 30, 2005, by Representative Ros-Lehtinen. Referred to Committee on International Relations. Marked up September 15, 2005, and ordered reported.</i></p>

<p><b>H.R. 4003</b> (See also S. 1713)</p>	<p><b>Iran Nonproliferation Amendments Act of 2005.</b> Amends the Iran Nonproliferation Act of 2000 to broaden the definition of “extraordinary payments,” and require more information on payments in the President’s reports to Congress.</p> <p><i>Introduced October 6, 2005, by Representative Paul. Referred to Committees on International Relations, and Science.</i></p>
<p><b>S. 270</b></p>	<p><b>Sanctions Policy Reform Act.</b> Requires any legislative proposal that would impose unilateral economic sanctions to be printed in advance of committee consideration to solicit the public’s comments. Establishes guidelines for legislation that imposes unilateral economic sanctions (i.e., contract sanctity, sunset provision, consideration of domestic impact). Requires similar evaluation from the President, Secretary of the Treasury, Congressional Budget Office, and International Trade Commission. Requires the President to notify Congress 45 days in advance of any new imposition of a unilateral economic sanction, and requires ongoing consultation with the Congress. Establishes a Sanctions Review Committee, made of key cabinet-level and senior Executive Branch officials, to coordinate U.S. use of unilateral economic sanctions. Finally, authorizes the President to waive the application of nuclear weapons-related sanctions (i.e., §§ 101 and 102 of the Arms Export Control Act, § 620E(e) of the Foreign Assistance Act of 1961, § 2(b)(4) of the Export Import Bank Act of 1945).</p> <p><i>Introduced February 2, 2005, by Senator Lugar. Referred to Committee on Foreign Relations.</i></p>
<p><b>S. 299</b></p>	<p><b>Investor in Iran Accountability Act of 2005.</b> Requires the Secretary of the Treasury to maintain and publish a list of “each U.S. person or each person that is controlled in fact by a United States person that maintains any direct or indirect investment in the energy sector in Iran.” Requires the President to enter into negotiations with foreign governments to prohibit investments in Iran’s energy sector. Also extends ILSA.</p> <p><i>Introduced February 7, 2005, by Senator Wyden. Referred to Committee on Banking, Housing, and Urban Affairs.</i></p>
<p><b>S. 333</b></p>	<p><b>Iran Freedom and Support Act of 2005.</b> Very similar to H.R. 282 (see above).</p> <p><i>Introduced February 9, 2005, by Senator Santorum. Referred to Committee on Foreign Relations.</i></p>
<p><b>S. 1713</b></p>	<p><b>Iran Nonproliferation Amendments Act of 2005.</b> Very similar to H.R. 4003 (see above).</p> <p><i>Introduced September 15, 2005, by Senator Lugar. Referred to Committee on Foreign Relations. Discharged from Committee by unanimous Consent September 21, 2005. Agreed to by the Senate by Unanimous Consent September 21, 2005. Received in the House; held at the desk, September 21, 2005.</i></p>



<b>S. 1737</b>	<p><b>Iranian Nuclear Trade Prohibition Act of 2005.</b> Amends ILSA to add a new section that requires the President to prohibit the United States, or any entity therein, “from purchasing nuclear fuel assemblies from any person or government entity, or any entity affiliated with such person or entity, that sells nuclear assemblies to Iran.” The President may waive imposition on national security grounds.</p> <p><i>Introduced September 20, 2005, by Senator Santorum. Referred to Committee on Foreign Relations.</i></p>
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## Selected Current Law: Sanctions Provisions

### 18 U.S.C. (Relating to Criminal Procedure)

**18 U.S.C. 229-229F (part I, chapter 11)** makes it generally unlawful for a person knowingly “(1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or (2) to assist, induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).” The sections establish criminal and civil penalties, and terms of criminal forfeiture.

*Sec. 201 of the Chemical Weapons Convention Implementation Act of 1998 (Division I of P.L. 105-277; approved October 21, 1998) enacted these sections to bring the criminal and civil penalties section of United States Code into conformity with the requirements of the Chemical Weapons Convention. Sec. 211 of that Act, furthermore, authorized the President to suspend or revoke export privileges of anyone found in violation of 18 U.S.C. 229.*

**18 U.S.C. 832** makes it an offense to attempt to willfully participate in or knowingly provide material support or resources to a nuclear weapons program or other weapons of mass destruction (WMD) program of a foreign terrorist power. Such an offense is punishable by imprisonment of not more than 20 years. The section also makes it an offense to develop, possess, or attempt or conspire to develop or possess, a radiological weapon, to threaten to use, or use, such a weapon against any person in the United States, and any U.S. national regardless of where he/she may be, or against property owned or used by the United States. Such offense is punishable by imprisonment for “any term of years or for life.”

*Sec. 6803(c) of the Weapons of Mass Destruction Prohibition Improvement Act of 2004 (title VI, subtitle I, of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458; approved December 17, 2004) added sec. 832.*

**18 U.S.C. 2332a** makes it an offense to use, threaten to use, attempt or conspire to use WMD against a national of the United States or within the United States. A “weapon of mass destruction” is a destructive device as defined in 18 U.S.C. 921 — any explosive, incendiary, or poison gas bomb, grenade, mine, or rocket or missile of a certain size, any type of weapon of a certain size that delivers its projectile by explosion or other propellant — and any weapon that delivers toxic or poisonous

chemicals, biological agent, toxin, or vector, radiation, or radioactivity. One found to have used a WMD for such use “shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years of for life.”

*Sec. 60023(a) of P.L. 103-322 (108 Stat. 1980) added sec. 2332a. The section was substantially reworked by the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132; approved April 24, 1996). The Chemical Weapons Convention Implementation Act of 1998 (division I of P.L. 105-277; approved October 21, 1998) exempted chemical weapons from application of this section of 18 U.S.C., and in its place enacted chapter 11B of part I of 18 U.S.C. (secs. 229 through 229F, above) to establish criminal and civil penalties in conformity with the Chemical Weapons Convention. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188; approved June 12, 2002) made technical changes. The Weapons of Mass Destruction Prohibition Improvement Act of 2004 (title VI, subtitle I, of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458; approved December 17, 2004) expanded the means of delivering the WMD to include the U.S. mail service and variations on “foreign commerce,” included attacks against property, and changed the section heading from “Use of certain weapons of mass destruction” to “Use of weapons of mass destruction,” consolidating WMD-related offenses in this chapter and section.*

## **Arms Export Control Act<sup>4</sup>**

The Arms Export Control Act (AECA), as amended, authorizes U.S. government military sales, loans, leases, and financing, and licensing of commercial arms sales to other countries. The AECA coordinates such actions with other foreign policy considerations, including nonproliferation, and determines eligibility of recipients for military exports, sales, leases, loans, and financing.

**Section 3(f) (Eligibility; 22 U.S.C. 2753(f))** prohibits U.S. military sales or leases to any country that the President determines is in material breach of binding commitments to the United States under international treaties or agreements regarding nonproliferation of nuclear explosive devices and unsafeguarded special nuclear material.

*Subsec. (f) was added by sec. 822(a)(1) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; P.L. 103-236; approved April 30, 1994).*

**Section 38 (Control of Arms Exports and Imports; 22 U.S.C. 2778)** authorizes the President, “in furtherance of world peace and the security and foreign policy of the United States,” to control the import and export of defense articles and services, to provide foreign policy guidelines to U.S. importers/exporters, and to promulgate the United States Munitions List (USML) constituting what defense articles and services are regulated. Section 38(c) establishes that any person who

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<sup>4</sup> P.L. 90-629; approved October 22, 1968; 22 U.S.C. 2751 and following. *Legislation on Foreign Relations Through 2004*, vol. I-A, p. 399.

willfully violates any provision of the section (or of section 39 relating to the reporting of fees, contributions, gifts, and commissions paid by those involved in commercial sales of defense articles or services) may be fined not more than \$1 million (for each violation), imprisoned not more than ten years, or both. Section 38(e) gives the Secretary of State the authority to assess civil penalties and initiate civil actions against violators; any civil penalty for violations under this section is capped at \$500,000. Section 38(j) authorizes the President to exempt a foreign country from licensing requirements under the AECA when that country commits to a binding bilateral agreement with the United States to establish export controls on a par with export controls in U.S. law and regulations.

*Section 38 was added by sec. 212(a)(1) of the International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329; approved June 30, 1976). Subsec. (c) was added by the 1976 amendment; the fine and imprisonment terms were amended, however, by sec. 119(a) of the International Security and Development Cooperation Act of 1985 (P.L. 99-83; approved August 8, 1985). Formerly, fine was “not more than \$100,000,” and period of imprisonment was not more than two years. Subsec. (e) was added by the 1976 amendment. Sec. 119(b) of P.L. 99-83, in 1985, however, added the language that caps civil penalties, and sec. 1303 of the Arms Control, Nonproliferation and Security Assistance Act of 1999 (division B of the Nance/Donovan Foreign Relations Authorization Act, FY 2000-2001; H.R. 3427, enacted by reference in P.L. 106-113), gave civil action authority to the Secretary of State. Previously the section referred to such authority in the Export Administration Act, which resides with the Secretary of Commerce and was capped in that Act at \$100,000. Sec. 102(a) of the Security Assistance Act of 2000 (P.L. 106-280; approved October 6, 2000) limited the President’s authority to exempt a foreign country from certain licensing exceptions in subsec. (f), and added subsec. (j).*

**Section 40 (Transactions With Countries Supporting Acts of International Terrorism; 22 U.S.C. 2780)** prohibits exporting or otherwise providing munitions, providing financial assistance to facilitate transfer of munitions, granting eligibility to such transfers, issuing licenses for such transfers, or otherwise facilitating the acquisition of munitions to a country the government of which “has repeatedly provided support for acts of international terrorism.” The section includes in its definition of acts of international terrorism, “all activities that the Secretary [of State] determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use, development, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.”

The President may rescind the Secretary’s determination (sec. 40(f)) by reporting to the Speaker of the House and the Chairman of the Senate Foreign Relations Committee, before issuing the rescission, that the leadership and policies of the country in question have changed, the government is not supporting international terrorism, and the government has issued assurances that it will not support international terrorism in the future. Congress may block the rescission of the terrorist determination by enacting a joint resolution. The President, however, may unilaterally waive any or all of the prohibitions in this section if he determines

to do so is essential to the national security interests of the United States, and so reports to Congress.

Those found to be in violation of the section face criminal prosecution with penalties of as much as a \$1 million fine and imprisonment of not more than ten years. Civil penalties for violations under this section, similar to those in sec. 38, are capped at \$500,000; the Secretary of State has the authority to assess civil penalties and initiate civil actions against violators.

*Section 40 was added by the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399; approved August 27, 1986), and later amended and restated by the Anti-Terrorism and Arms Export Amendments Act of 1989 (P.L. 101-222; approved August 27, 1986). Sec. 822(a)(2)(A) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; P.L. 103-236; approved April 30, 1994) added a definition of acts of international terrorism that would lead the Secretary of State to make a determination. The same section added definitions “nuclear explosive device” and “unsafeguarded special nuclear material”. Sec. 321 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (P.L. 102-138; approved October 28, 1991), made technical changes to the guidelines for Congress’s passage of a joint resolution relating to the section. Sec. 1303 of the Arms Control, Nonproliferation and Security Assistance Act of 1999 (division B of the Nance/Donovan Foreign Relations Authorization Act, FY 2000-2001; H.R. 3427, enacted by reference in P.L. 106-113) gave civil action authority to the Secretary of State. Previously the section referred to such authority in the Export Administration Act, which resides with the Secretary of Commerce and was capped in that Act at \$100,000. Sec. 1204 of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; approved September 30, 2002), expanded the definitions to make the sanctions applicable to an individual or group in pursuit of chemical, biological, or radiological weapons.*

**Sections 72 and 73 (Denial of the Transfer of Missile Equipment or Technology by U.S. Persons; 22 U.S.C. 2797a; Transfers of Missile Equipment or Technology by Foreign Persons; 2797b)**, require sanctions against any U.S. citizen or any foreign person whom the President determines to be engaged in exporting, transferring, conspiring to export or transfer, or facilitating an export or transfer of, any equipment or technology identified by the Missile Technology Control Regime (MTCR) that “contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent...”

Sanctions vary with the type of equipment or technology exported, and are increasingly severe where the type of equipment or technology is more controlled. Worst-case sanctions may be imposed for not less than two years, and include denial of U.S. government contracts, denial of export licenses for items on the U.S. Munitions List, and a prohibition on importation into the United States.

The law allows several exceptions, wherein some or all of the sanctions may not be imposed against foreign persons:

- if an MTCR adherent with jurisdictional authority finds the foreign person innocent of wrongdoing in relation to the transaction;

- if the State Department issues an advisory opinion to the individual stating that a transaction would not result in sanctions;
- if the export, transfer, or trading activity is authorized by the laws of an MTCR adherent and not obtained by misrepresentation or fraud, except when the activity in question is conducted by an entity subordinate to a government of an independent state of the former Soviet Union, and when the President determines that government has knowingly transferred missiles or missile technology in a manner inconsistent with MTCR guidelines;
- if the export, transfer, or trade is made to an end-user in a country that is an MTCR adherent;
- in the case of foreign persons fulfilling contracts for defense services or defense articles; then the President will not prohibit importations if
  - the articles or services are considered essential to U.S. national security,
  - the President determines that the provider is a sole supplier and the articles or services are essential to U.S. national security, or
  - the President determines that the articles or services are essential to U.S. national security under defense cooperation agreements or NATO Programs of Cooperation;
- in the case of foreign persons importing products or services into the United States in fulfillment of contracts entered into before the President announces intentions to impose sanctions, then the President will not prohibit importations; or
- in the case of foreign persons providing spare parts, component parts essential to U.S. products or production, routine service and maintenance, essential information and technology.

Sanctions are not imposed, or those imposed may be lifted, against individuals when the President certifies that a foreign government, which is an MTCR adherent, has adequately attended to the violation through some judicial process or enforcement action.

The President may waive the sanction, for either a U.S. citizen or foreign person, if he certifies to Congress that it is essential to the national security of the United States, or that the individual provides a product or service essential to U.S. national security, and that person is sole provider of the product or service.

*Section 1703 of the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510; approved November 5, 1990) added sections 71-74. In section 72,*

*sec. 734(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236; approved April 30, 1994), added paragraph about “presumption” in guidelines for Presidential determination on transfers of MTCR Annex materials. In sec. 73, sec. 323(a) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (P.L.102-138; approved October 28, 1991), added assisting another country in acquiring missiles to the list of sanctionable acts; sec. 1136 of the Arms Control and Nonproliferation Act of 1999 (title XI of the Nance/Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; H.R. 3427, enacted by reference in P.L. 106-113; approved November 29, 1999) added potential limitation on independent states of the former Soviet Union and the President’s certification pertaining to judicial attention by MTCR adherents. Sec. 734(b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 added the Director of the Arms Control and Disarmament Agency to those with whom the Secretary of State consults when administering the policy. This language, however, was struck out to conform with agency reorganization, particularly that of ACDA being incorporated into the State Department, by sec. 1136 of the Arms Control and Nonproliferation Act of 1999. Sec. 1408 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104-106; approved February 10, 1996) made technical changes to reporting requirements relating to issuing a waiver.*

**Section 73B (Authority Relating to MTCR Adherents; 22 U.S.C. 2797b-2)** authorizes the President to impose sanctions against a foreign person, notwithstanding that person’s operating in compliance with the laws of an MTCR adherent or that person exporting to an end-user in a country that is an MTCR adherent, if the country of jurisdiction over that foreign person is a country (1) that has entered into an understanding with the United States after January 1, 2000, (2) for which the United States retains the right to impose sanctions against those in the country’s jurisdiction for exporting of controlled items that contribute to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent.

*Sec. 1137 of the Arms Control and Nonproliferation Act of 1999 (title XI of the Nance/Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; H.R. 3427, enacted by reference in P.L. 106-113; approved November 29, 1999) added sec. 73B, and made supporting amendments in sec. 73 relating to conditions of applicability, and sec. 74, defining “international understanding.”*

**Section 74 (Definitions; 22 U.S.C. 2797c)** provides definitions of terms that also affect how the sanctions may be applied. For example, while the MTCR is a policy statement originally announced on April 16, 1987, by the United States, the United Kingdom, Germany, France, Italy, Canada, and Japan, the term “MTCR adherent” in this law is much more broadly defined, to include the countries that participate in the MTCR “or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR.”<sup>5</sup> Within that definition, the

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<sup>5</sup> See also sec. 73A of the AECA (22 U.S.C. 2797b-1), which requires the President to notify Congress when U.S. action results in any country becoming an MTCR adherent. The (continued...)

term “international understanding” has been further defined to limit its applicability or to make the President’s authority to impose sanctions broader. As another example, the term “person” has changed over time. The law formerly included as part of the definition of “person,” “countries where it may be impossible to identify a specific governmental entity.” This has been amended to refer to “countries with non-market economies (excluding former members of the Warsaw Pact).” The same definition formerly restricted government activity relating to development of aircraft; this now refers specifically to military aircraft.

*Sec. 323 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (P.L. 102-138; approved October 28, 1991) amended the definition of “person” to target China — the “Helms amendment,” and narrowed the definition of “person” to include activities of a government affecting the development of, among other things, “military aircraft” (formerly referred to “aircraft”). Sec. 1136(a) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Nance/Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; H.R. 3427, enacted by reference in P.L. 106-113; approved November 29, 1999) added the definition of “international understanding,” a term used in the course of defining “MTCR adherent.”*

**Section 81 ([CBW] Sanctions Against Foreign Persons; 22 U.S.C. 2798)** requires imposition of sanctions to deny government procurement, contracts with the U.S. government, and imports from foreign persons who knowingly and materially contribute, through exports from the United States or another country, or through other transactions, to foreign efforts to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons. Foreign persons are sanctionable if the recipient country has used chemical or biological weapons in violation of international law, has used chemical or biological weapons against its own people, or has made preparations to engage in such violations. Foreign persons are sanctionable if the recipient country has been determined to be a supporter of international terrorism, pursuant to section 6(j) of the Export Administration Act, or if the President has specifically designated the country as restricted under this section.

The President may delay the imposition of sanctions for up to 180 days if he is in consultation with the sanctionable person’s government to bring that government to take specific and effective steps to terminate the sanctionable activities. The President may not be required to impose sanctions if the sanctionable person otherwise provides goods needed for U.S. military operations, if the President determines that the sanctionable person is a sole source provider of some good or service, or if the President determines that goods and services provided by the sanctionable person are essential to U.S. national security under defense cooperation agreements. Exceptions are also made for completing outstanding contracts, the purchase of spare or component parts, service and maintenance otherwise not readily

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<sup>5</sup> (...continued)

sections also requires an independent assessment to be submitted to Congress by the Director of Central Intelligence covering the newly designated MTCR adherent and several proliferation issues.

available, information and technology essential to U.S. products or production, or medical or other humanitarian items.

The President may terminate the sanctions after 12 months if he determines and certifies to Congress that the sanctioned person no longer aids or abets any foreign government, project, or entity in its efforts to acquire biological or chemical weapons capability. The President may waive the application of a sanction after a year of its imposition if he determines it is in U.S. national security interests to do so. Not less than 20 days before a national security waiver is issued, the President must notify Congress, fully explaining the rationale for waiving the sanction.

*Sec. 81 was added by sec. 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of P.L. 102-182; approved December 4, 1991.)<sup>6</sup>*

**Section 101 (Nuclear Enrichment Transfers; 22 U.S.C. 2799aa)** (similar to former section 669 of the Foreign Assistance Act of 1961) prohibits foreign economic or military assistance to any country that the President determines delivers or receives nuclear enrichment equipment, materials, or technology. The prohibition is not required if the countries involved in the transaction agree to place all materials, equipment, or technology under multilateral safeguard arrangements. The prohibition is not required, furthermore, if the recipient country has an agreement with the International Atomic Energy Agency (IAEA) regarding safeguards.

The President may waive the sanction if he determines, and certifies to the Speaker of the House and the Senate Committee on Foreign Relations, that denying assistance would have a serious adverse effect on vital U.S. interests, and he has been assured that the country in question will not acquire, develop, or assist others in acquiring or developing nuclear weapons. Congress may negate a certification by enacting a joint resolution stating its disapproval.

*Sec. 826(a) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; P.L. 103-236; approved April 30, 1994) added secs. 101 and 102. Similar language, however, previously had been in the Foreign Assistance Act of 1961, as secs. 669 and 670. Sec. 669, popularly referred to as the Symington amendment, was added by sec. 305 of the International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329; approved June 30, 1976). The section was amended and restated by sec. 12 of the International Security Assistance Act of 1977 (P.L. 95-92; approved August 4, 1977), which also added sec. 670 to the law. Sec. 669 was further amended by secs. 10(b)(4) and 12 of the International Security Assistance Act of 1978 (P.L. 95-384; approved September 26, 1978). Sec. 737(b) of the International Security and*

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<sup>6</sup> Two versions of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 were enacted. Title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1992 (P.L. 102-138; approved October 28, 1991) enacted the first. Later in the same session, title III of P.L. 102-182 (a trade act otherwise unrelated to nonproliferation issues) repealed the first version and enacted a new Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. This report refers only to the second enactment — that which currently stands in law.



*Development Cooperation Act of 1981 (P.L. 97-113; approved December 29, 1981) amended and restated both secs. 669 and 670. Sec. 1204 of the International Security and Development Cooperation Act of 1985 (P.L. 99-83; approved August 8, 1985), made further changes to sec. 670 before both sections were repealed in 1994 and similar language was incorporated into the AECA.*

**Section 102 (Nuclear Reprocessing Transfers, Illegal Exports for Nuclear Explosive Devices, Transfers of Nuclear Explosive Devices, and Nuclear Detonations; 22 U.S.C. 2799aa-1)** (similar to former section 670 of the Foreign Assistance Act of 1961) prohibits foreign economic or military assistance to countries that the President determines deliver or receive nuclear reprocessing equipment, material, or technology to or from another country; or any non-nuclear-weapon state that illegally exports, through a person serving as that country's agent, from the United States items that would contribute to nuclear proliferation.

The President may waive the sanction if he determines, and certifies to the Speaker of the House and the Senate Committee on Foreign Relations, that terminating assistance would adversely impact on the United States' nonproliferation objectives, or would jeopardize the common defense and security. Congress may negate a certification by enacting a joint resolution stating its disapproval.

The section further prohibits assistance (except humanitarian or food assistance), defense sales, export licenses for U.S. Munitions List items, other export licenses subject to foreign policy controls (except medicines or medical equipment), and various credits and loans (except Department of Agriculture credits and support to procure food and agriculture commodities) to any country that the President has determined (A) transfers a nuclear explosive device to a non-nuclear-weapon state; (B) is a non-nuclear-weapon state and either (i) receives a nuclear explosive device; or (ii) detonates an nuclear explosive device; (C) transfers to a non-nuclear-weapon state any design information or component that is determined by the President to be important to, and known by the transferring country to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive devices; or (D) is a non-nuclear-weapon state and seeks and receives any design information or component that is determined by the President to be important to, and intended by the recipient state for use in, the development or manufacture of any nuclear explosive device.

In any of these latter four instances, sanctions are mandatory once the President has determined that an event has occurred. If the event has to do with transferring a nuclear explosive device to a non-nuclear-weapon state, or a non-nuclear-weapon state receiving or detonating a nuclear explosive device, the President may delay the imposition of sanctions for 30 days (of congressional continuous session) if he determines that the immediate imposition of sanctions "would be detrimental to the national security of the United States," and so certifies to the Speaker of the House and the Chairman of the Senate Committee on Foreign Relations.

If the President makes such a determination, he may further waive the imposition of sanctions if the Congress, within those 30 days after the first determination, takes up a joint resolution under expedited procedure,<sup>7</sup> that states:

That the Congress having received on \_\_\_\_\_ a certification by the President under section 102(b)(4) of the Arms Export Control Act with respect to \_\_\_\_\_, the Congress hereby authorizes the President to exercise the waiver authority contained in section 102(b)(5) of that Act.

With passage of a joint resolution authorizing him to exercise further waiver authority, the President may waive any sanction which would otherwise be required in instances involving the transferring of a nuclear explosive device to a non-nuclear-weapon state, or a non-nuclear-weapon state receiving or detonating a nuclear explosive device. To exercise this waiver, the President determines and certifies in writing to the Speaker of the House and the Senate Committee on Foreign Relations “that the imposition of such sanction would be seriously prejudicial to the achievement of United State nonproliferation objectives or otherwise jeopardize the common defense and security.”

Alternatively, if Congress does not take up a relevant joint resolution within the 30 days, the sanctions enter into effect. Section 102 does not state the means for otherwise suspending or terminating the sanctions.<sup>8</sup>

*For legislative history of the origin of and early changes to this section, see discussion following sec. 101, above. Section 102, and sec. 670 before it, is popularly referred to as the Glenn amendment. Sec. 2(a) of the Agriculture Export Relief Act of 1998 (P.L. 105-194; approved July 14, 1998) broadened the kinds of exchanges that are exempt from the application of sanctions to include medicine, medical equipment, and Department of Agriculture financing.<sup>9</sup>*

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<sup>7</sup> Sec. 601(b) of the International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329. See *Legislation on Foreign Relations Through 2004*, vol. I-A, p. 829.

<sup>8</sup> Sanctions under sec. 102 were applied to India and Pakistan after each country tested nuclear explosive devices in May 1998. Congress has enacted six laws after the sanctions were imposed to ease their application or authorize the President to waive their application. See the Agriculture Export Relief Act of 1998 (P.L. 105-194; approved July 14, 1998), India-Pakistan Relief Act of 1998 (title IX of P.L. 105-277; approved October 21, 1998), the Department of Defense Appropriations Act, 2000, title IX (P.L. 106-79; approved October 25, 1999); P.L. 107-57 (approved October 27, 2001; 115 Stat. 403), which authorizes the provision of foreign assistance to Pakistan to October 2003; P.L. 108-447 (of which division D is the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005; approved December 8, 2004), which amends P.L. 107-57 to extend foreign assistance to Pakistan to October 1, 2005; and P.L. 108-458 (of which title VII is the 9/11 Commission Implementation Act of 2004; approved December 17, 2004), which seeks to amend P.L. 107-57 to extend foreign aid to Pakistan to October 1, 2006. This amendment, however, is not executable for technical reasons. A technical correction is likely to be enacted in an omnibus appropriations measure before the end of 2005.

<sup>9</sup> Medicine and food were further exempted from the application of sanctions in most cases with the enactment of the Trade Sanctions Reform and Export Enhancement Act of 2000

## Atomic Energy Act of 1954<sup>10</sup>

The Atomic Energy Act of 1954 declares U.S. policy for the development, use, and control of atomic energy. The Act authorizes the Nuclear Regulatory Commission to oversee the export of special nuclear materials and nuclear technology in accordance with bilateral and international cooperation agreements negotiated by the Department of State. The Act defines the nature and requirements of those cooperative agreements and the procedure by which Congress reviews them. The Act states export licensing criteria for nuclear materials and sensitive equipment and technology.

**Section 129 (Conduct Resulting in Termination of Nuclear Exports; 42 U.S.C. 2158)** prohibits the transfer of nuclear materials, equipment, or sensitive technology from the United States to any non-nuclear-weapon state that the President finds to have detonated a nuclear explosive device, terminated or abrogated safeguards of the International Atomic Energy Agency (IAEA), materially violated an IAEA safeguards agreement, or engaged in manufacture or acquisition of nuclear explosive devices. The section similarly prohibits transfers to any country, or group of countries, that the President finds to have violated a nuclear cooperation agreement with the United States, assisted, encouraged, or induced a non-nuclear-weapon state to engage in certain activities related to nuclear explosive devices, or agreed to transfer reprocessing equipment, materials, or technology to a non-nuclear-weapon state, except under certain conditions.

The President may waive the restriction if he determines that the prohibition would hinder U.S. nonproliferation objectives or jeopardize the common defense and security. Sixty days before a determination is issued, the President is required to forward his reasons for waiving the sanctions to Congress, which may block the waiver by adopting a concurrent resolution. Congress may alternatively counter the Presidential determination with passage of a joint resolution within 45 days of the President's action.

The section, as amended August 5, 2005, also prohibits the export, transfer, or licensing for export or transfer, of nuclear materials, nuclear equipment, or sensitive

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<sup>9</sup> (...continued)

Act (P.L. 106-387; approved October 28, 2000). For further discussion, see Jurenas, Remy. *Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation*. CRS Issue Brief IB10061.

<sup>10</sup> P.L. 83-703, approved August 30, 1954, 42 U.S.C. 2011 and following.

P.L. 99-183, a joint resolution approving an Agreement for Nuclear Cooperation Between the United States and China, (approved December 16, 1985; 99 Stat. 1174), required Presidential certification that China was not violating section 129 of the Atomic Energy Act of 1954. On January 12, 1998, President Clinton made such a determination, also certifying that China had met nuclear weapons nonproliferation standards stated in section 902(a)(6)(B)(i) of P.L. 101-246 (22 U.S.C. 2151 note; often referred to as the "Tiananmen Square sanctions"). See Presidential Determination No. 98-10 (63 F.R. 3447; January 23, 1998).

nuclear technology that could be applied to the design or construction of a nuclear reactor or nuclear weapon, to any country the government of which is cited as a supporter of acts of international terrorism, pursuant to sec. 620A(a) of the Foreign Assistance Act of 1961, sec. 6(j) of the Export Administration Act of 1979, or sec. 40(d) of the Arms Export Control Act.

The President may waive the restriction if he determines that to do so will not result in any increased risk that the targeted country will acquire a nuclear weapon, nuclear reactor, or any materials or components of a nuclear weapon. The President's authority to waive sanctions also requires his determination and certification that the government of the country in question has not aided or abetted in the international proliferation of nuclear explosive devices or the acquisition of unsafeguarded nuclear materials within the past year, "has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism," that waiving imposition is in the vital U.S. national security interest, or is "essential to prevent or respond to a serious radiological hazard in the country...that may or does threaten public health and safety."

*Sec. 307 of the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242; approved March 10, 1978) added sec. 129. Sec. 632(a) of the Energy Policy Act of 2005 (P.L. 109-58; approved August 5, 2005) added authorities related to restricting exports to a country the government of which is found to be a supporter of acts of international terrorism.*

## **Chemical and Biological Weapons Control and Warfare Elimination Act of 1991<sup>11</sup>**

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 mandates U.S. sanctions, and encourages international sanctions, against countries that use chemical or biological weapons in violation of international law.

**Section 307 (Sanctions Against Use of Chemical or Biological Weapons; 22 U.S.C. 5605)** requires the President to terminate foreign assistance (except humanitarian, food, and agricultural assistance), arms sales and licenses, credits, guarantees, and certain exports to a government of a foreign country that he has determined has used or made substantial preparation to use chemical or biological weapons. Within three months, the President must determine and certify to Congress that the government: is no longer using chemical or biological weapons in violation of international law; is no longer using such weapons against its own people; has provided credible assurances that such behavior will not resume; and is willing to cooperate with U.N. or other international observers to verify that biological and chemical weapons are not still in use. Without this three-month determination, sanctions are required affecting multilateral development bank loans, U.S. bank loans or credits, exports, imports, diplomatic relations, and aviation access to and from the United States.

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<sup>11</sup> P.L. 102-182; approved December 4, 1991; 22 U.S.C. 5601-5606.

The President may lift the sanctions after a year, with a determination and certification to Congress that the foreign government has met the conditions listed above, and that it is making restitution to those affected by its use of chemical or biological weapons.

The President may waive the imposition of these sanctions if he determines and certifies to Congress and the appropriate committees that such a waiver is essential to U.S. national security interests.

*The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 was enacted as title III of P.L. 102-182 (a law dealing with trade issues otherwise unrelated to nonproliferation). No amendments have been enacted.*<sup>12</sup>

### **Chemical Weapons Convention Implementation Act of 1998<sup>13</sup>**

The Chemical Weapons Convention Implementation Act of 1998 implements the Chemical Weapons Convention, which was originally signed on January 13, 1993, and to which the United States became a party on April 29, 1997.<sup>14</sup> The Convention bans the development, production, stockpiling, and use of chemical weapons, requires the destruction of existing weapons and related materials, establishes an international verification regime, and requires export controls and punitive measures to be leveled for noncompliance.

**Section 103 (Civil Liability of the United States; 22 U.S.C. 6713)** requires a wide range of sanctions to be imposed, for a period of not less than ten years, on an individual who is a member of, or affiliated with, the Organization for the Prohibition of Chemical Weapons “whose actions or omissions the United States has been held liable for a tort or taking...”; or a foreign company or an individual affiliated with that company, “which knowingly assisted, encouraged, or induced, in any way, a foreign person” affiliated with the Organization “to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information” including:

- no arms export transactions — sales of items on U.S. Munitions List, transactions under Arms Export Control Act; no licenses for goods or services covered by foreign policy controls under the Export Administration Act of 1979;
- U.S. opposition to support in international financial institutions;

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<sup>12</sup> Two versions of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 were enacted. Title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (P.L. 102-138; approved October 28, 1991) enacted the first. Later in the same session, title III of P.L. 102-182 (a trade act otherwise unrelated to nonproliferation issues) repealed the first version and enacted a new Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. This report refers only to the second enactment — that which currently stands in law.

<sup>13</sup> Division I of P.L. 105-277; approved October 21, 1998; 112 Stat. 2681-856. See also 18 U.S.C. 229 *et seq.*

<sup>14</sup> See S.Res. 75, 105<sup>th</sup> Congress, 1<sup>st</sup> Session.

- no U.S. Export-Import Bank transactions;
- prohibition on U.S. private banks engaging with sanctioned person;
- assets in United States to be frozen by Presidential action; and
- no rights to land aircraft in the United States (other than in cases of emergency).

The Secretary of State is further required to deny a visa to any individual affiliated with the Organization who divulges any confidential U.S. business if that disclosure results in financial loss or damages.

The section requires the President to impose similar sanctions on any foreign government found by the President to have similarly divulged such information, with the sanctions imposed for not less than five years. Foreign countries are further subject to:

- no U.S. economic assistance (other than humanitarian assistance), military assistance, foreign military financing, grant military education and training, military credits, guarantees; and no export licensing for commercial satellites.

Sanctions may be suspended if the sanctioned entity fully and completely compensates the U.S. government to cover the liability. The President, alternatively, may waive the sanctions if he determines and notifies Congress that U.S. national security interests are served by such a waiver.

## **Export Administration Act of 1979<sup>15</sup>**

The Export Administration Act of 1979 (EAA) authorizes the executive branch to regulate private sector exports of particular goods and technology to other countries. The EAA coordinates such actions with other foreign policy considerations, including nonproliferation, and determines eligibility of recipients for exports. **Section 5 (National Security Controls; 50 U.S.C. app. 2404)** authorizes the President to curtail or prohibit the export of any goods or services for national security reasons: to comply with other laws regarding a potential recipient country's political status or political stability; to cooperate with international agreements or

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<sup>15</sup> P.L. 96-72; approved September 29, 1979; 50 U.S.C. App. 2401. Authority granted by the Export Administration Act was continued to August 20, 2001, by the Export Administration Modification and Clarification Act of 2000 (P.L. 106-508; approved November 13, 2000). Approaching another expiration, President Bush invoked authority granted his office pursuant to the International Emergency Economic Powers Act and National Emergencies Act, to issue Executive Order 13222 (August 17, 2001; 66 F.R. 44025), extending authorities of the Export Administration Act for one year. On August 14, 2002, the President issued a notice to extend the authority of that Executive Order another year (67 F.R. 53721). Since then, Executive Order 13222 has been extended annually in Presidential notices. Such steps have precedent: the Export Administration Act expired in September 1990, to be renewed by Executive Order until Congress passed reauthorizing legislation in 1993. Since 1990, the authorities of the Act have been made available by either Executive Order, determinations renewing those Orders, or short-term legislative extensions.

understandings; or to protect militarily critical technologies. **Section 6 (Foreign Policy Controls; 50 U.S.C. app. 2405)** similarly authorizes the President to curtail or prohibit the export of goods or services for foreign policy reasons. Within section 6, for example, **section 6(j)** establishes the State Department’s list of countries found to be supporting acts of international terrorism, a list on which many other restrictions and prohibitions in law are based.<sup>16</sup> **Section 6(k)** restricts exportation of certain crime control equipment. **Section 6(l)** restricts exportation for a list of dual use goods and technology. **Section 6(m)** restricts exportation for a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons.

**Section 11A (Multilateral Export Control Violations; 50 U.S.C. app. 2410a)** requires the President to prohibit, for two to five years, the U.S. government from contracting with, or procuring goods or services from, a foreign person who has violated any country’s national security export regulations in accordance with the agreement of the Coordinating Committee for Multilateral Export Controls (COCOM),<sup>17</sup> and that the violation results “in substantial enhancement of Soviet and East Bloc capabilities in submarines or antisubmarine warfare, ballistic or antiballistic missiles technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies.” The President also is required generally to prohibit importation of products from the sanctioned person. The President may impose sanctions at his discretion if the first but not the second

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<sup>16</sup> Many laws link the support of acts of international terrorism with WMD activities. Section 40 of the Arms Export Control Act (22 U.S.C. 2780), for example, defines acts of international terrorism, in part, as “all activities that the Secretary [of State] determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use, development, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.” See that Act and sec. 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), in *Legislation on Foreign Relations Through 2004*, vol. I-A, pages 472, 318, respectively.

<sup>17</sup> The Coordinating Committee for Multilateral Export Controls (COCOM) agreed to cease to exist on March 31, 1994. Member nations agreed to retain current control lists until a successor organization is established. On December 19, 1995, the United States and 27 other countries, including NATO participants and Russia, agreed to establish a new multilateral export control arrangement. In July 1996, thirty-three countries gave final approval to the Wassenaar Arrangement for Export Controls for Conventional Arms and Dual-Use Goods and Technologies (“Wassenaar Arrangement”). On January 15, 1998, the Bureau of Export Administration (BXA — now the Bureau of Industry and Security, or BIS) of the Department of Commerce issued an interim rule to implement the Wassenaar Arrangement list of dual-use items and revisions to the Commerce Control List required by implementation of the Wassenaar Arrangement (63 F.R. 2452). BXA issued a final rule on July 23, 1999 (64 F.R. 40106), and a revision to that rule where it pertains to national security controls on July 12, 2000 (65 F.R. 43130). On December 1, 2000, participants in the Wassenaar Arrangement agreed to adopt new standards for controlling exports of electronics, computers, and telecommunications technology. A current version of the Commerce Control List may be found at 15 CFR part 774, with an overview at 15 CFR part 738. See [[http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)]

condition exists. In this case, the restrictions may be in place no longer than five years.

Sanctions may not be required for some goods if contracts with the sanctionable person meet U.S. operational military requirements, if the President determines that the sanctionable person is a sole source provider of an essential defense article or service, or if the President determines that such articles or services are essential to U.S. national security under defense coproduction agreements. The President also may not be required to apply sanctions if he determines that a company affiliated with the sanctionable person had no knowledge of the export control violation. After sanctions have been in place for two years, the President may modify terms of the restrictions under certain conditions, and if he notifies Congress.

*Sec. 2444 of the Multilateral Export Control Enhancement Amendments Act (title II, subtitle D, part II of the Omnibus Trade and Competitiveness Act of 1988; P.L. 100-418; approved August 23, 1988) added sec. 11A. The section has not been amended.*

**Section 11B (Missile Proliferation Control Violations; 50 U.S.C. app. 2410b)** is similar to sections 72 and 73 of the AECA, but authorizes sanctions against U.S. persons and foreign persons who engage in commercial transactions that violate missile proliferation controls. The section requires sanctions against any U.S. citizen who the President determines to be engaged in exporting, transferring, conspiring to export or transfer, or facilitating an export or transfer of, any equipment or technology identified by the Missile Technology Control Regime Annex. Sanctions vary with the type of equipment or technology exported; worst-case sanctions deny export licenses for goods on controlled pursuant to the Export Administration Act for not less than two years.

The President may waive the imposition of sanctions if he certifies to Congress that the product or service to be restricted is essential to U.S. national security, and that the provider is a sole source provider.

The section further requires sanctions against any foreign person who the President determines to be engaged in exporting, transferring, conspiring to export or transfer, or facilitating an export or transfer of, any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent. Sanctions vary with the type of equipment or technology exported; worst-case sanctions deny licenses for transfer to the foreign person items otherwise controlled by the Export Administration Act for not less than two years. The President may also prohibit importation into the United States of products produced by the foreign person.

The law allows several exceptions, wherein some or all of the sanctions may not be imposed against foreign persons. These exceptions are nearly identical to those found in sections 72 and 73 of the AECA. The President may waive the imposition of sanctions for national security reasons, but must notify Congress beforehand. The Presidential authority to restrict importation is conditional in a manner identical to that in section 73 of the AECA.



The definition of “MTCR adherent” in section 11B is also identical to that in section 74 of the AECA. The definition of “person,” however, retains its earlier form, applying to all “countries where it may be impossible to identify a specific governmental entity,” and not adopting the narrower reference to military aircraft but referring to government activity relating to development of aircraft generally.

*Sec. 1702(b) of the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510; approved November 5, 1990) added sec. 11B. The section has not been amended.*

**Section 11C (Chemical and Biological Weapons Proliferation Sanctions; 50 U.S.C. app. 2410c)**, similar to section 81 of the AECA, authorizes the President to apply procurement and import sanctions against foreign persons that he determines knowingly contribute to the use, development, production, stockpile, or acquisition of chemical or biological weapons by exporting goods or technology from the United States or any other country.

The President may delay the imposition of sanctions for up to 180 days if he is in consultation with the sanctionable person’s government to bring that government to take specific and effective steps to terminate the sanctionable activities. The President may not be required to impose or maintain sanctions if the sanctionable person otherwise provides goods needed for U.S. military operations, if the President determines that the sanctionable person is a sole source provider of some good or service, or if the President determines that goods and services provided by the sanctionable person are essential to U.S. national security under defense cooperation agreements. Exceptions are also made for completing outstanding contracts, the purchase of spare or component parts, service and maintenance otherwise not readily available, information and technology essential to U.S. products or production, or medical or other humanitarian items.

The President may terminate the sanctions after 12 months, if he determines and certifies to Congress that the sanctioned person no longer aids or abets any foreign government, project, or entity in its efforts to acquire biological or chemical weapons capability. The President may waive the application of a sanction after a year of its imposition, if he determines it is in U.S. national security interests to do so. Not less than 20 days before a national security waiver is issued, the President must notify Congress, fully explaining the rationale for waiving the sanction.

*Sec. 505(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of P.L. 102-182; approved December 4, 1991) added sec. 11C. No amendments have been enacted.*

## **Export-Import Bank Act of 1945<sup>18</sup>**

The Export-Import Bank Act of 1945 establishes the Export-Import Bank of the United States and authorizes the Bank to finance and facilitate exports and imports

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<sup>18</sup> P.L. 79-173; approved July 31, 1945; 12 U.S.C. 635 *et seq.*

and the exchange of commodities and services between the United States and foreign countries.

**Section 2(b)(1)(B) (12 U.S.C. 635(b)(1)(B))** generally states the United States’ policy of administering loan programs through the Export-Import Bank. The section provides that the Bank will deny applications for credit for nonfinancial or noncommercial considerations only when the President determines it is in the U.S. national interest to deny credit to advance U.S. policies in international terrorism — including taking into account a nation’s lack of cooperation in efforts to eradicate terrorism — nuclear proliferation, environmental protection, and human rights.

*Sec. 2(b)(1) was amended and restated in 1972 (P.L. 92-126) and again in 1974 (P.L. 93-646). The language pertaining to “international terrorism, nuclear proliferation,...” was added by sec. 1904 of the Export-Import Bank Act Amendments of 1978 (title XIX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978; P.L. 95-630; approved November 10, 1978). The Export-Import Bank Reauthorization Act of 2002 (P.L. 107-189; approved June 14, 2002) added a reference to the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948 (sec. 15), added language pertaining to a nation’s lack of cooperation with efforts to eradicate terrorism (sec. 17), and added enforcement of the Foreign Corrupt Practices Act, the Arms Export Control Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979, as justification for denying Export-Import Bank financing (sec. 21). Numerous technical changes were made by P.L. 107-189, as well.*

**Section 2(b)(4) (12 U.S.C. 635(b)(4))** provides that the Secretary of State can determine, and report to Congress and to the Export-Import Bank Directors, if:

- any country has agreed to IAEA nuclear safeguards but has materially violated, abrogated, or terminated such safeguards after October 26, 1977;
- any country has entered into a cooperation agreement with the United States concerning the use of civil nuclear energy, but has violated, abrogated, or terminated any guarantee or other undertaking related to that agreement after October 26, 1977;
- any country has detonated a nuclear explosive device after October 26, 1977, but is not a nuclear-weapon state;
- any country willfully aids or abets, after June 29, 1994, any non-nuclear-weapon state to acquire a nuclear explosive device or to acquire unsafeguarded special nuclear material; or
- any person knowingly aids or abets, after September 23, 1996, any non-nuclear-weapon state to acquire a nuclear explosive device or to acquire unsafeguarded special nuclear material.

If such a determination is made relating to a person, the Secretary is urged to consult with that person's government to curtail that person's activities. Consultations are allowed 90 days, at the end of which the Secretary will report to Congress as to their progress. After the 90 days, unless the Secretary requests an additional 90 days, or unless the Secretary reports that the violations have ceased, the Export-Import Bank will not approve any transactions to support U.S. exports to any country, or to or by any person, for which/whom a determination has been made. The imposition of sanctions may also be waived if the President, 45 days before any transaction is approved, certifies that the violations have ceased, and that steps have been taken to ensure the questionable transactions will not resume. The President may also waive the imposition of sanction if he certifies that to impose them would have a serious adverse effect on vital U.S. interests, or if he certifies that the objectionable behavior has ceased.

*Sec. 2(b)(4) was added by sec. 3(b) of P.L. 95-143; approved October 26, 1977. Sec. 825 of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; P.L. 103-236; approved April 30, 1994) added "(as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994), or that any country has willfully aided or abetted any non-nuclear-weapons state (as defined in section 830(5) of that Act) to acquire any such nuclear explosive device or to acquire unsafeguarded special nuclear material (as defined in section 830(8) of that Act)" to define "nuclear explosive device" and to broaden what acts are sanctionable. This is often referred to as a "Glenn Amendment" (but not to be confused with "the Glenn Amendment," which, by all accounts, would be sec. 102 of the AECA). The section was further amended and restated by sec. 1303 of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104-201; approved September 23, 1996). Sec. 1303(b) of that Act further required the President to report to Congress within 180 days "his recommendations on ways to make the laws of the United States more effective in controlling and preventing the proliferation of weapons of mass destruction and missiles. The report shall identify all sources of government funds used for such nonproliferation activities."*

**Section 2(b)(12) (12 U.S.C. 635(b)(12))** requires the President to notify the Export-Import Bank if he determines "that the military or Government of the Russian Federation has transferred or delivered to the People's Republic of China an SS-N-22 missile system and that the transfer or delivery represents a significant and imminent threat to the security of the United States... Upon receipt of the notice and if so directed by the President of the United States, the Board of Directors of the Bank shall not give approval to guarantee, insure, extend credit, or participate in the extension of credit in connection with the purchase of any good or service by the military or Government of the Russian Federation."

*Sec. 12 of the Export-Import Bank Reauthorization Act of 1997 (P.L. 105-121; approved November 26, 1997) added paragraph 12.*

## Foreign Assistance Act of 1961<sup>19</sup>

The Foreign Assistance Act of 1961 (FAA) authorizes U.S. government foreign aid programs including development assistance, economic support funding, numerous multilateral programs, housing and other credit guaranty programs, Overseas Private Investment Corporation, international organizations, debt-for-nature exchanges, international narcotics control, international disaster assistance, development funding for Africa, assistance to states of the former Soviet Union, military assistance, international military education and training, peacekeeping, antiterrorism, and various regional enterprise funds.

**Section 307(c) (Withholding of United States Proportionate Share for Certain Programs of International Organizations; 22 U.S.C. 2227)** requires that foreign assistance the United States pays in to international organizations and programs not be used for programs in certain countries. The section exempts the International Atomic Energy Agency (IAEA) from this limitation,<sup>20</sup> except for particular projects the IAEA finances in Cuba. U.S. proportionate support to the IAEA, in particular, is not available to any IAEA project relating to the Juragua Nuclear Power Plant near Cienfuegos, Cuba, or the Pedro Pi Nuclear Research Center in Cuba, unless Cuba (I) ratifies the Treaty on Non-Proliferation of Nuclear Weapons or the Treaty of Tlatelelco and is in compliance with terms of the treaty; (II) negotiates full-scope safeguards of the IAEA not later than two years after treaty ratification; and (III) “incorporates internationally accepted nuclear safety safeguards.”

*Section 307 was added to the Foreign Assistance Act of 1961 by sec. 403 of the International Security and Development Cooperation Act of 1985 (P.L. 99-83; approved August 8, 1985). The countries to which it is applied has changed over time; the countries for which program funding is currently restricted are Burma, Iraq, North Korea, Syria, Libya, Iran, Cuba, and the Palestine Liberation Organization (though application to the PLO has been waived under other*

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<sup>19</sup> P.L. 87-195; approved September 4, 1961; 22 U.S.C. 2151 *et seq.* See *Legislation on Foreign Relations Through 2004*, vol. 1-A, p. 15. See also chapter 9 in this Act, relating to “Nonproliferation and Export Control Assistance,” added by sec. 301 of the Security Assistance Act of 2000 (P.L. 106-280; approved October 6, 2000), further amended by the Russian Federation Debt for Nonproliferation Act of 2002 (division B, title VIII, subtitle B, of P.L. 107-228; approved September 30, 2002), and the Security Assistance Act of 2002 (division B of P.L. 107-228; approved September 30, 2002), codified at 22 U.S.C. 2349bb *et seq.* This chapter does not impose sanctions; instead it makes assistance available to friendly countries to ultimately “enhance the nonproliferation and export control capabilities...by providing training and equipment to detect, deter, monitor, interdict, and counter proliferation”.

<sup>20</sup> Sec. 307(d) of this Act, however, imposes no sanctions but requires the Secretary of State to report to Congress whenever he/she determines “that programs of the International Atomic Energy Agency in Iran are inconsistent with United States nuclear nonproliferation and safety goals, will provide Iran with training or expertise relevant to the development of nuclear weapons, or are being used as a cover for the acquisition of sensitive nuclear technology”. Added to sec. 307 by sec. 1342 of the Iran Nuclear Proliferation Prevention Act of 2002 (subtitle D of title XIII of P.L. 107-228; approved September 30, 2002).

*legislation in the course of peace negotiations), and communist countries listed under sec. 620(f) of the Act (currently North Korea, China, Cuba, Vietnam, and Tibet). Limitations in subsec. (c) were originally added by sec. 431(a)(2) of the Foreign Relations Authorization Act, 1994 and 1995 (P.L. 103-236; approved April 30, 1994). Language pertaining to nuclear developments in Cuba was added by sec. 2809(a)(1) of the Foreign Relations Authorization Act, 1998 and 1999 (subdivision B of division G of P.L. 105-277; approved October 21, 1998).*

**Section 498A(b) (Criteria for Assistance to Governments of the Independent States; 22 U.S.C. 2295a(b))** requires that the President not provide assistance to independent states of the former Soviet Union if he determines that the government of that state, among other things, (1) has failed to implement arms control obligations signed by the former Soviet Union, or (2) has knowingly transferred to another country: missiles or missile technology inconsistent with guidelines and parameters of the Missile Technology Control Regime; “any material, equipment, or technology that would contribute significantly to the ability of such country to manufacture any weapon of mass destruction (including nuclear, chemical, and biological weapons) if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of such weapon.” The section further prohibits foreign assistance under chapter 11 of the Foreign Assistance Act of 1961 to any country for which a determination has been issued pursuant to sections 101 or 102 of the Arms Export Control Act or sections 306(a)(1) or 307 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

The President may waive the prohibition — other than that based on other proliferation legislation as cited in the section — on U.S. national security grounds, if he determines that furnishing assistance “will foster respect for internationally recognized human rights and the rule of law or the development of institutions of democratic governance,” or to alleviate suffering resulting from a natural or man-made disaster. Assistance may also be provided under the U.S. Information Agency’s (USIA) secondary school exchange program notwithstanding a country’s ineligibility (except in instances where ineligibility is based on nonproliferation violations). Any waiver requires an immediate report to Congress of any determination or decision.

*Section 498A was added by sec. 201 of the FREEDOM Support Act (P.L. 102-511; approved October 24, 1992). See also discussion above, on sec. 73(b)(2) and sec. 73B of the AECA, as amended. Those sections refer to sec. 498A(b)(3)(A) to limit certain transactions with independent states of the former Soviet Union if the transactions involve missiles or missile technology and are conducted in a manner inconsistent with guidelines and parameters of the MTCR.*

**Section 620(y) (Prohibitions Against Furnishing Assistance; 22 U.S.C. 2370)** restricts foreign assistance, or assistance pursuant to any other act, to any country providing nuclear fuel, related assistance, and credits to Cuba. Assistance denied the country in question equals the value of that country’s nuclear development assistance, sales, or transfers to Cuba. The requirement to limit assistance is waived if Cuba (A) ratifies the Treaty on Non-Proliferation of Nuclear Weapons or the Treaty of Tlatelco and is in compliance with terms of the treaty; (B) “has negotiated and is

in full compliance with full-scope safeguards of the International Atomic Energy Agency” within two years of the treaty ratification; and (C) “incorporates and is in compliance with internationally accepted nuclear safety safeguards.” The section also requires an annual report on the matter to be filed with Congress by the Secretary of State.

*Added by sec. 2810(a) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (subdivision B of Division G of P.L. 105-277; approved October 21, 1998).*

**Section 620E (Assistance to Pakistan; 22 U.S.C. 2375)**, related to U.S. assistance to Pakistan, was enacted in reaction to the threat posed by Soviet occupation of neighboring Afghanistan. **Section 620E(d)** authorizes the President to waive sanctions under section 101 of the AECA to provide assistance to Pakistan, if he determines it is in the U.S. national interest to do so.

**Subsection 620E(e)** states that no military assistance shall be furnished and no military equipment or technology shall be sold or transferred to Pakistan unless the President certifies to the Speaker of the House and the Chairman of the Senate Foreign Relations Committee that, for the fiscal year in which the assistance, sale or transfer would occur, Pakistan does not possess a nuclear explosive device and that proposed military assistance would significantly reduce the risk that Pakistan will possess a nuclear explosive device. This restriction does not apply to international narcotics control assistance, International Military Education and Training funds, funding for humanitarian and civic assistance projects, peacekeeping or other multilateral operations funds, or antiterrorism assistance.

*Sec. 620E was added to the Foreign Assistance Act of 1961 by sec. 736 of the International Security and Development Cooperation Act of 1981 (P.L. 97-113; approved December 29, 1981). Sec. 620E(d) was amended by the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; P.L. 103-236; approved April 30, 1994) to reflect the repeal of secs. 669 and 670 and the enactment of secs. 101 and 102 of the Arms Export Control Act. Sec. 620E(e), the “Pressler amendment,” was added by sec. 902 of the International Security and Development Cooperation Act of 1985 (P.L. 99-83; approved August 8, 1985). Sec. 559(a)(1)(D) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (P.L. 104-107; approved February 12, 1996), amended the section to exclude certain assistance programs from the ban, as noted in the last sentence, above. The same Act amended the section to authorize the President to: release Pakistan from paying storage costs of items purchased before October 1, 1990, but not delivered (presumably F-16s); release other items serviced in the United States; and continue the applicability of other laws pertaining to ballistic missile sanctions. This bloc of amendments is sometimes referred to as the “Brownback amendment.” The same Act made several changes to restrict only “military assistance,” formerly the section had referred to assistance generally; this amendment is popularly referred to as the “Brown amendment.”*

*After India and Pakistan tested nuclear explosive devices in May 1998, sanctions were imposed in accordance with requirements of sec. 102 of the Arms*

*Export Control Act (see above). Subsequently, Congress enacted six laws to ease sanctions or to grant the President discretionary authority to waive their application. The Agriculture Export Relief Act of 1998 (P.L. 105-194; approved July 14, 1998) authorizes the exemption of sanctions as they pertain to certain agricultural commodities. The India-Pakistan Relief Act (title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999; division A, sec. 101(a) of P.L. 105-277; 112 Stat. 2681-40; approved October 21, 1998) authorizes the President to waive the application of most sanctions under secs. 101 and 102 of the AECA, sec. 620E(e) of the Foreign Assistance Act of 1961, and sec. 2(b)(4) of the Export-Import Bank Act of 1945, for a period of one year. The Department of Defense Appropriations Act, 2000 (P.L. 106-79; approved October 21, 1999; see title IX), repeals the India-Pakistan Relief Act, but also authorizes the President to waive the same sections of law, including sec. 620E(e). President Bush exercised this authority in issuing Presidential Determination No. 2000-4 on October 27, 1999 (64 F.R. 60649) to the extent it applied, in the case of Pakistan, to “credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and the making of any loan or the providing of any credit to the Government of Pakistan by any U.S. bank.” On September 22, 2001, the President lifted all remaining nuclear test-related sanctions against India and Pakistan, including sec. 620E(e), under the authority granted him in P.L. 106-79 (Presidential Determination No. 2001-28; 66 F.R. 50095). The fourth measure, P.L. 107-57 (115 Stat. 403, approved October 27, 2001), authorizes the President to waive remaining restrictions (relating to its military dictatorship and debt arrearage, statutorily required by the Foreign Assistance Act of 1961 and annual foreign operations appropriations measures) on foreign assistance to Pakistan. P.L. 108-447 (of which division D is the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005; approved December 8, 2004), amends P.L. 107-57 to extend foreign assistance to Pakistan to October 1, 2005. P.L. 108-458 (of which title VII is the 9/11 Commission Implementation Act of 2004; approved December 17, 2004), seeks to amend P.L. 107-57 to extend foreign aid to Pakistan to October 1, 2006. This amendment, however, is not executable for technical reasons. A technical correction is likely to be enacted in an omnibus appropriations measure before the end of 2005.*

## **Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005<sup>21</sup>**

A Foreign Operations Appropriations Act is enacted annually, generally at the start of a fiscal year, to make appropriations for various foreign assistance, military assistance, and international financial institutions programs. Language in the current fiscal year act pertains only to that fiscal year unless otherwise expressly stated. Congress has not enacted a comprehensive foreign aid authorization bill since 1985, however; as a result, the annual appropriations act increasingly has become a means

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<sup>21</sup> Division D of the Consolidated Appropriations Act, 2005 (P.L. 108-447; 118 Stat. 2809; approved December 8, 2004). See *Legislation on Foreign Relations Through 2004*, vol. I-A, p. 869. Congress is currently considering H.R. 3057 to fund programs in FY2006 (see box note at beginning of this report).

of enacting authorizing language that carries the force of law beyond the fiscal year. In recent years, Security Assistance Acts and authorization acts addressing single issues have been enacted. Single-issue legislation has included Millennium Challenge Account, trafficking in persons, microenterprise, HIV/AIDS, tuberculosis and malaria treatment and prevention programs, North Korea, Afghanistan, Russia, and Sudan.

**Title I, Export-Import Bank of the United States**, prohibits the use of Export-Import Bank funds in the current fiscal year to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel or technology to any non-nuclear-weapon state, if that state is otherwise eligible to receive economic or military assistance under this Act.

**Title II, Assistance for the New Independent States of the Former Soviet Union**, appropriates \$560 million for assistance to the states of the former Soviet Union. The paragraph withholds 60 percent of any funds obligated for the Government of Russia until the President determines and certifies to the Committees on Appropriations that the Government of Russia has terminated its efforts “to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability...” The restriction does not apply to assistance for combating infectious diseases, child survival activities, assistance for victims of trafficking in persons, and nonproliferation and disarmament programs authorized under title V of the FREEDOM Support Act.

*Congress has incorporated this language into the foreign assistance appropriations bill for several years. In earlier years, the President was authorized to waive the restriction on the basis of vital U.S. national security interests, or if he found that the Government of Russia was taking meaningful steps to limit major supply contracts and to curtail the transfer of technology and technical expertise to certain programs in Iran. The FY2005 Act does not include such a waiver.*

## **International Emergency Economic Powers Act<sup>22</sup>**

**Section 203 (Grants of Authorities; 50 U.S.C. 1702)** authorizes the President “to deal with any unusual and extraordinary threat with respect to a declared national emergency.”<sup>23</sup> After he declares a national emergency exists, pursuant to the authority in the National Emergencies Act, the President may use the authority in this section to investigate, regulate, or prohibit foreign exchange transactions, credit transfers or payments, currency or security transfers, and may take specified actions relating to property in which a foreign country or person has interest. In terms of nonproliferation concerns, it is pursuant to this section that the President has continued the authority of the expired Export Administration Act, prohibited transactions with “those who disrupt the Middle East peace process,” issued export controls on encryption items, established export controls related to weapons of mass

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<sup>22</sup> 50 U.S.C. 1701 *et seq.*

<sup>23</sup> The “situations in which authorities may be exercised” are stated in sec. 202 (50 U.S.C. 1701).



destruction, prohibited transactions “with persons who commit, threaten to commit, or support terrorism,” and blocked certain property of, and transactions with, governments of specific countries found to be engaged in activities that constitute an extraordinary threat, including the proliferation of weapons of mass destruction.<sup>24</sup>

*Enacted as title II of P.L. 95-223; approved December 28, 1977, to update and continue authority carried earlier in the Trading With the Enemy Act (P.L. 65-92; approved October 6, 1917). It has been amended from time to time to update the list of what cannot be restricted, mostly to keep up with changes in technology (for example, the law allows the free flow of informational materials, most recently amended to include CD ROMs). Most recently, the USA PATRIOT Act (P.L. 107-56; approved October 26, 2001) made amendments to clarify the applicability of the IEEPA to persons or property subject to the jurisdiction of the United States, and to make available any classified materials in court proceedings related to IEEPA violations.*

## **Iran and Libya Sanctions Act<sup>25</sup>**

**Section 5 (Imposition of Sanctions)** requires the President to impose sanctions on persons found to have invested in Iran — investments “that directly and significantly contributed to the enhancement of Iran’s ability to develop petroleum resources...” The section also requires the imposition of sanctions if a person is found to have “exported, transferred, or otherwise provided to Libya any goods, services, technology, or other items the provision of which...” contribute to “Libya’s ability to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advances conventional weapons or enhanced Libya’s military or paramilitary capabilities...”

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<sup>24</sup> Unless otherwise noted, all codified at 50 U.S.C. 1701 note, see Executive Order 12938, Proliferation of Weapons of Mass Destruction (November 14, 1994; 59 F.R. 59099, amended); Executive Order 12947, Prohibiting Transactions with Terrorists Who Threaten To Disrupt the Middle East Peace Process (January 23, 1995; 60 F.R. 5079); Executive Order 12957, Prohibiting Certain Transactions with Respect to Development of Iran Petroleum Resources (March 15, 1995; 60 F.R. 14615); Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran (May 6, 1995; 60 F.R. 24757); Executive Order 13026, Administration of Export Controls on Encryption Products (November 15, 1996; 61 F.R. 58767; 50 U.S.C. App. 2401 note); Executive Order 13059, Prohibiting Certain Transactions with Respect to Iran (August 19, 1997; 62 F.R. 44531); Executive Order 13159, Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons (June 21, 2000; 65 F.R. 39279); Executive Order 13222, Administration of Export Controls (August 17, 2001; 66 F.R. 44025); Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten To Commit, or Support Terrorism (September 23, 2001; 66 F.R. 49079); and Executive Order 13338, Blocking Property of Certain Persons and Prohibiting Export of Certain Goods To Syria (May 11, 2004; 69 F.R. 26751). The President also uses the authority in IEEPA to issue executive orders to implement United Nations Security Council Resolutions. Of the several that are current, Executive Order 12724, Blocking Iraqi Government Property and Prohibiting Transactions with Iraq (August 9, 1990; 55 F.R. 33089) has relevance to issues of proliferation.

<sup>25</sup> 50 U.S.C. 1701 note.

**Section 6 (Description of Sanctions)** authorizes the President to employ a range of punitive measures, including denial of Export-Import funding, denial of export licenses, prohibition on U.S. government and commercial bank financing, refusal of U.S. government procurement contracts, and additional measures as the President sees fit.

**Section 8 (Termination of Sanctions)** cancels the requirement for sanctions if the President determines that Iran has ceased all efforts to design, develop, manufacture, or acquire weapons of mass destruction or related delivery systems, and if Iran is removed from the list of supporters of international terrorism. For Libya, the President may be relieved of the requirement to impose sanctions if he finds that country has complied with United Nations resolutions issued in the wake of the PanAm Flight 103 explosion over Lockerbie, Scotland.<sup>26</sup>

**Section 9 (Duration of Sanctions; Presidential Waiver)** authorizes the President to delay the imposition of sanctions for up to 90 days if consultations are entered into with a government that holds jurisdiction over the offending party. Sanctions may be further delayed another 90 days if the government of jurisdiction takes action to terminate the offending behavior and penalize the offender. Otherwise, sanctions are imposed for not less than two years or until such time that the President can certify that the offending behavior has ceased, at which juncture sanctions remain in place for at least one year. Alternatively, the President may waive the imposition of sanctions if he finds it important to U.S. national interests to do so.

*P.L. 104-172; approved August 5, 1996. It has been amended to lower the threshold of investment in Libya that triggers the imposition of sanctions, change reporting requirements, fine-tune definitions, and extend the authorities herein another five years, to 2006 (P.L. 107-24; approved August 3, 2001). Effective April 23, 2004, this Act is waived as it applies to Libya; see note, below.*

## **Iran-Iraq Arms Nonproliferation Act of 1992<sup>27</sup>**

**Section 1603 (Application to Iran of Certain Iraq Sanctions)** makes sanctions in section 586G(a)(1) through (4) of the Iran Sanctions Act of 1990 also fully applicable against Iraq (see below).

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<sup>26</sup> On April 23, 2004, the President determined that “Libya has fulfilled the requirements of United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993 (Presidential Determination No. 2004-30; 69 F.R. 24907). The determination met the requirements of the law to authorize the President to terminate economic sanctions imposed on Libya under this Act. The President has subsequently revoked four Executive Orders relating to Libya — E.O. 12538, 12543, 12544, and 12801 — in Executive Order 13357 of September 20, 2004 (69 F.R. 56665), removing most of the statutory barriers to full and normal trade relations with that country. Libya remains on the state sponsors of terrorism list, however, pursuant to sec. 6(j) of the Export Administration Act of 1979.

<sup>27</sup> 50 U.S.C. 1701 note.

**Section 1604 (Sanctions Against Certain Persons)** requires the President to impose sanctions against any person whom he has determined to be engaged in transferring goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq to acquire chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons. **Section 1605 (Sanctions Against Certain Foreign Countries)** similarly addresses activities of foreign governments.

In both cases, mandatory sanctions prohibit, for a period of two years, the U.S. government from entering into procurement agreements with, or issuing licenses for exporting to or for the sanctioned person or country. Where a foreign country is found to be in violation of the law, the President must suspend U.S. assistance; instruct U.S. Executive Directors in the international financial institutions to oppose multilateral development bank assistance; suspend codevelopment and coproduction projects the U.S. government might have with the offending country for one year; suspend, also for one year, most technical exchange agreements involving military and dual-use technology; and prohibit the exportation of U.S. Munitions List items for one year. In the case of foreign countries targeted for sanctions under this Act, the President may, at his discretion, use authority granted him under the International Emergency Economic Powers Act to further prohibit transactions with the country.

The President may waive the mandatory sanctions against persons or foreign country with 15 days notice to congressional committees that exercising such a waiver is essential to U.S. national interests.

*Enacted as title XVI of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484; approved October 23, 1992). Sec. 1408(a) of P.L. 104-106 (110 Stat. 494) amended sections 1604 and 1605 to apply not just to conventional weapons but also to chemical, biological, or nuclear weapons. Sec. 1308 of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; approved September 30, 2002) consolidated various reports related to missile proliferation and essential components of nuclear, biological, chemical, and radiological weapons in one section of law, and repealed language in other sections of law, including a report required under sec. 1607 of this Act, to result in fewer reports overall.*

## **Iran Nonproliferation Act of 2000<sup>28</sup>**

**Sections 2 through 5 (Reports; Application; Procedures; Determination; 50 U.S.C. 1701 note)** require the President to report to Congress twice a year to identify “every foreign person with respect to whom there is credible information indicating that the person, on or after January 1, 1999, transferred to Iran...” goods, services or technology the export of which (1) is controlled for nonproliferation

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<sup>28</sup> 50 U.S.C. 1601 note. See also sec. 708 of the Security Assistance Act of 2000 (P.L. 106-280; 114 Stat. 862; 22 U.S.C. 2797b note; approved October 6, 2000), which requires the President to certify that any Russian person he identifies as “a party to an agreement related to commercial cooperation on MTCR equipment or technology with a United States person” is not also one who transfers goods, services, or technology to Iran, as identified pursuant to sec. 2(a)(1)(B) of this Act.

reasons in accordance with various international agreements, or (2) is not controlled by the country of origin but would be subject to controls if shipped from the United States. The President is authorized to apply a range of sanctions against any foreign person included in his report, including denial of procurement contracts with the U.S. government, prohibition on importation into the United States, and denial of foreign assistance — sanctions laid out in Executive Order 12938, as amended.<sup>29</sup> A foreign person named in the President’s report may also be denied U.S. government sales of items on the U.S. Munitions List and export licenses for dual-use items.

The decision to impose sanctions is left to the President, but if he decides to take no action, he is required to notify Congress of his reasons. The President may also take no action if he finds that (1) the person in question did not “knowingly transfer” objectionable items to Iran; (2) the goods, services or technology “did not materially contribute to Iran’s efforts to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems, or weapons listed on the Wassenaar Arrangement Munitions List...”; (3) the named person falls under the jurisdiction of a government that is an adherent to “one or more relevant nonproliferation regimes” and his actions were consistent with such regime’s guidelines; or (4) the government of jurisdiction “has imposed meaningful penalties” on the named person.

**Section 6 (Restrictions on Extraordinary Payments in Connection with the International Space Station)** prohibits any agency of the U.S. government from making extraordinary payments to the Russian Aviation and Space Agency, or any affiliates, or the Government of the Russian Federation, or any entities of the government, until the President determines and reports to Congress that: (1) it is the Russian government’s policy “to oppose the proliferation to Iran of weapons of mass destruction and missile systems capable of delivering such weapons;” (2) the Russian government has demonstrated a commitment to preventing transfers of such goods to Iran; and (3) the Russian Aviation and Space Agency, or its affiliates, has not made such transfers to Iran in the preceding year (other than those allowed by the President’s certification for exemptions).

The President may allow extraordinary payments when “such payments are necessary to prevent the imminent loss of life by or grievous injury to individuals aboard the International Space Station.” This allowance requires the President to notify to Congress such payments will be allowed, and to report to Congress on details within 30 days of the initial notification. The President may also allow extraordinary payments for specific development programs of the International Space Station provided he notify Congress ahead of payment and that the recipients of that payment are not subject to nonproliferation sanctions.

*P.L. 106-178; approved March 14, 2000. Sec. 1306 of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; approved September 30, 2002),*

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<sup>29</sup> Executive Order authorizing the Secretaries of Commerce, Treasury, and State to limit or prohibit some transactions to stop the proliferation of weapons of mass destruction. Issued November 14, 1994 (59 F.R. 59099); subsequently amended. See 50 U.S.C. 1701 notes for current text.

*added the reference to weapons listed on the Wassenaar Arrangement Munitions List.*

## **Iraq Sanctions Act of 1990<sup>30</sup>**

This Act reaffirmed the United States' commitment to sanctions leveled by the United Nations after Iraq invaded Kuwait in August 1990. The findings, laid out in **section 586F (Declarations Regarding Iraq's Long-Standing Violations of International Law)**, cite Iraq's violation of international law relating to chemical and biological warfare, Iraq's use of chemical weapons against Iran and its own Kurdish population, efforts to expand its chemical weapons capabilities, evidence of biological weapons development, and its efforts to establish a nuclear arsenal.

**Section 586C (Trade Embargo Against Iraq)** continues sanctions imposed pursuant to four executive orders issued at the outset of Iraq's invasion of Kuwait. Sanctions include foreign assistance, trade, economic restrictions, and the freezing of Iraqi assets under U.S. jurisdiction. The President may alter or terminate the sanctions issued in his executive orders only with prior 15-day notification to Congress.

**Section 586D (Compliance with U.N. Sanctions Against Iraq)** prohibits foreign assistance, Overseas Private Investment Corporation (OPIC) funding, and assistance or sales under the AECA to countries found to be not in compliance with United Nations Security Council sanctions against Iraq. The President may waive these sanctions if he determines and certifies to Congress that assistance is in U.S.

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<sup>30</sup> 50 U.S.C. 1701 note. *Legislation on Foreign Relations Through 2004*, vol. I-B, p. 46. Sec. 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (P.L. 108-11; approved April 16, 2003), as amended by P.L. 108-106 (approved November 6, 2003), authorized the President to "suspend the application of any provision of the Iraq Sanctions Act of 1990: *Provided*, That nothing in this section shall affect the applicability of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Public Law 102-484), except that such Act shall not apply to humanitarian assistance and supplies: *Provided further*, That the President may make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961 or any other provision of law that applies to countries that have supported terrorism: *Provided further*, That military equipment, including equipment as defined by title XVI, section 1608(1)(A) of Public Law 102-484, shall not be exported under the authority of this section: *Provided further*, That section 307 of the Foreign Assistance Act of 1961 shall not apply with respect to programs of international organizations for Iraq: *Provided further*, that provisions of law that direct the United States Government to vote against or oppose loans or other uses of funds, including for financial or technical assistance, in international financial institutions for Iraq shall not be construed as applying to Iraq: *Provided further*,...That the authorities contained in this section shall expire on September 30, 2005, or on the date of enactment of a subsequent Act authorizing assistance for Iraq and that specifically amends, repeals or otherwise makes inapplicable the authorities of this section, whichever occurs first."

On May 7, 2003, the President issued a memorandum to suspend the application of all the provisions, other than section 586E (which establishes penalties for violating the sanctions imposed in the wake of Iraq's invasion of Kuwait in 1990), of this Act on Iraq. Presidential Determination No. 2003-23 (68 F.R. 26459).

national interest, that assistance will benefit the targeted country's needy, or such assistance will be in the form of humanitarian assistance for foreign nationals fleeing Iraq and Kuwait.

**Section 586G (Sanctions Against Iraq)**<sup>31</sup> prohibits the United States from engaging in the following activities relating to Iraq: (1) U.S. foreign military sales under the AECA; (2) commercial arms sales licensing of items on the U.S. Munitions List; (3) exports of control list goods and technology, as defined by secs. 4(b) and 5(c)(1) of the Export Administration Act; (4) issuance of licenses or other authorizations relating to nuclear equipment, materials, and technology; (5) international financial institutions support; (6) Export-Import Bank funding; (7) Commodity Credit Corporation funding; and (8) foreign assistance other than emergency medical or humanitarian funding.

Pursuant to **section 586H (Waiver Authority)**, the President may waive the application of sec. 586G sanctions if he certifies to Congress that the Government of Iraq has demonstrated improved respect for human rights, does not support international terrorists, and “is not acquiring, developing, or manufacturing (I) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses...” The President must further certify that Iraq is meeting its obligations under several international agreements. Finally, the President must certify that it is in the national interest of the United States to make such a waiver and resume any or all of these economic supports. The section also authorizes the President to waive the restrictions in response to a fundamental change in Iraq's leadership, provided the new government makes credible assurances that it meets the above criteria.

**Section 586I (Denial of Licenses for Certain Exports to Countries Assisting Iraq's Rocket or Chemical, Biological, or Nuclear Weapons Capability)** prohibits the export licensing of supercomputers to any government (or its officials) that the President finds to be assisting Iraq in improving its rocket technology, or chemical, biological, or nuclear weapons capability. While the section includes no waiver authority, it is triggered by the President making a determination and so its implementation rests with the executive branch.

*Enacted as secs. 586-586J of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (P.L. 101-513; approved November 5, 1990). It has not been amended.*

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<sup>31</sup> Section 1603 of the Iran-Iraq Arms Nonproliferation Act of 2000 (P.L. 102-484; 50 U.S.C. 1701 note; approved October 23, 1992) makes sec. 586G(a)(1) through (4) of the Iran Sanctions Act of 1990 applicable to Iran.

## National Emergencies Act

**Title II (50 U.S.C. 1621, 1622)** authorizes the President to declare, administer, and terminate national emergencies. Such a condition is required for the President to exercise his authority under the International Emergency Economic Powers Act.

*P.L. 94-412; approved September 14, 1976. There have been no substantive amendments relevant to proliferation issues.*

## North Korea Threat Reduction Act of 1999

The North Korea Threat Reduction Act of 1999 prohibits the entering into effect for the United States of any international agreement or agreement for cooperation with North Korea that would result in North Korea obtaining nuclear materials. The law also prohibits U.S. issuance of export licenses for, or approval for transfer or retransfer of, a specified nuclear item. To make such items available, the President must determine and report to Congress that North Korea has met certain benchmarks on the safe use of nuclear materials, including cooperation with the IAEA on inspections, compliance with IAEA safeguard agreements, compliance with terms of the Agreed Framework it reached with the United States, implementation of terms of the Joint Declaration on Denuclearization, no accrual of enriched uranium or the means to develop that material, and no efforts to acquire or develop nuclear weapon capability. The President must also determine and certify that it is the U.S. national interest to transfer key nuclear components to North Korea.

*Enacted as subtitle B of title VIII of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of P.L. 106-113; 113 Stat. 1501A-472; approved November 29, 1999). Sec. 1307 of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; 116 Stat. 1438) amended the Act to define more clearly what nuclear-related materials require licensing for export to North Korea by citing terms and requirements in the Atomic Energy Act of 1954 and Annex A and Annex B of the Nuclear Suppliers Group.*

## Nuclear Non-Proliferation Act of 1978<sup>32</sup>

The Nuclear Non-Proliferation Act of 1978 states U.S. policy for actively pursuing more effective international controls over the transfer and use of nuclear materials, equipment, and technology for peaceful purposes in order to prevent proliferation. The policy statement includes the establishment of common international sanctions. The Act promotes the establishment of a framework for international cooperation for developing peaceful uses of nuclear energy, authorizes the U.S. government to license exports of nuclear fuel and reactors to countries that adhere to nuclear non-proliferation policies, provides incentives for countries to establish joint international cooperative efforts in nuclear non-proliferation, and authorizes relevant export controls. The Act requires the Nuclear Regulatory

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<sup>32</sup> 22 U.S.C. 3201 and following.

Commission to publish regulations establishing procedures for granting, suspending, revoking or amending nuclear export licenses. The Act also requires the Department of Commerce to issue regulations relating to all export items that could be of significance for nuclear explosive purposes.

**Section 304(b) (Export Licensing Procedures; 42 U.S.C. 2155a)** requires the Nuclear Regulatory Commission to publish regulations establishing the procedures for granting, suspending, revoking or amending nuclear export licenses. **Section 309 (42 U.S.C. 2139a)** similarly requires the Department of Commerce to issue regulations relating to all export items that could be of significance for nuclear explosive purposes.

**Section 402 (Additional Requirements; 42 U.S.C. 2153a)** provides that, unless otherwise stated in a cooperation agreement, no source or special nuclear material exported from the United States may be enriched after exportation unless the United States approves the enrichment. The section prohibits the export of nuclear material for the purpose of enrichment or reactor fueling if the recipient country is party to a cooperation agreement with the United States amended or concluded after 1978, unless the agreement specifically allows for such transfers. Finally, the section prohibits export of any major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility, unless a cooperation agreement specifically designates these items as exportable.

*The Nuclear Non-Proliferation Act of 1978 was enacted as P.L. 95-242; approved March 10, 1978. Secs. 304(b) and 402 have not been amended. Minor changes have been incorporated into sec. 309, relating to a requirement of prior consultation and the reorganization of the Department of State.*

## **Nuclear Proliferation Prevention Act of 1994**

The Nuclear Proliferation Prevention Act of 1994 was enacted to update current law to reflect growing concerns about nuclear proliferation.

**Section 821 (Imposition of Procurement Sanction on Persons Engaging in Export Activities That Contribute to Proliferation; 22 U.S.C. 6301)**<sup>33</sup> requires U.S. government procurement sanctions against any U.S. person or foreign person if the President determines that person has materially, and with requisite knowledge, contributed, through export of goods or technology, to efforts to acquire unsafeguarded special nuclear material, or to use, develop, produce, stockpile, or otherwise acquire a nuclear explosive device. Terms of the sanctions are that the U.S. government may not, for 12 months, procure from or enter into procurement contracts with the sanctioned individual. Sanctions may be terminated after 12 months if the President determines and certifies to Congress that the individual has

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<sup>33</sup> Formerly at 22 U.S.C. 3201 note, all the freestanding sections of the Nuclear Proliferation Prevention Act of 1994 have been reclassified as full sections of the United States Code: within title 22, at Chapter 72 — Nuclear Proliferation Prevention, and therein, Subchapter 1 — Sanctions for Nuclear Proliferation, and Subchapter 2 — International Atomic Energy Agency [in P.L. 103-236].



stopped whatever activities that brought on the sanctions, and that the individual will not engage in such activities in the future. Otherwise, to waive the sanctions at the end of 12 months, the President must determine and certify to Congress, 20 days in advance, that continuing the sanctions would have a serious adverse effect on vital U.S. interests.

The President is not required to apply or maintain sanctions if the articles or services provided are essential to U.S. national security; if the provider is a sole source; if the articles or services is essential to national security under defense cooperative agreements; if the articles are essential spare parts, essential component parts, routine servicing or maintenance, or information and technology essential to U.S. production. Sanctions may also not be required if the individual relied on an advisory opinion of the State Department stating that a particular activity was not deemed to be sanctionable.

In the case of a foreign person, the President is required to enter into consultation with the foreign government with primary jurisdiction over that person, and thus may delay the imposition of sanctions for up to 90 days. Sanctions may be further averted if the President determines and certifies that the foreign government has taken steps to end the foreign person's activities.

**Section 823 (Role of International Financial Institutions; 22 U.S.C. 6302)** requires the Secretary of the Treasury to instruct U.S. executive directors of international financial institutions to use voice and vote to oppose promotion of the acquisition of unsafeguarded special nuclear material or the development, stockpiling, or use of nuclear explosive devices by any non-nuclear-weapon state.

**Section 824 (Prohibition on Assisting Nuclear Proliferation Through the Provision of Financing; 22 U.S.C. 6303)** prohibits financial institutions and persons involved with financial institutions from assisting nuclear proliferation through the provision of financing. The section requires that when the President determines that a U.S. person or foreign person has engaged in a prohibited activity, he shall impose the following sanctions: (1) ban on dealing in U.S. government debt instruments; (2) ban on serving as a depository for U.S. government funds; (3) ban on pursuing, directly or indirectly, new commerce in the United States; and (4) ban on conducting business from a new location in the United States.

The President is required to consult with any foreign government that serves as primary jurisdiction for any foreign person sanctioned under this section. Sanctions may be delayed for 90 days while consultation with a foreign government is underway, and may be further averted if the foreign government takes steps to stop the prohibited activity.

Sanctions are in place for not less than 12 months, and are terminated then only if the President determines and certifies to Congress that the person's engagement in prohibited activity has ceased and will not resume. The President may waive the continued use of sanctions when he determines and certifies to Congress that continuing the restrictions would have a serious adverse effect on the safety and soundness of the domestic or international financial system or the domestic or international payments system.

*The Nuclear Proliferation Prevention Act of 1994 was enacted as title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236; approved April 30, 1994). Sec. 157(b) of P.L. 104-164 (approved July 21, 1996) made changes to sec. 824, including striking out a requirement that any Presidential determination pursuant to subsec. (c) be reviewed by the courts.*

## **Syria Accountability and Lebanese Sovereignty Restoration Act of 2003<sup>34</sup>**

**Section 5 (Penalties and Authorization)** requires the President to prohibit the export to Syria of any dual-use item on the U.S. Munitions List or Commerce Control List, prohibit the issuance of export licenses for such items, and to choose from a menu of other restrictions, to impose two or more of the following: (A) prohibit the export of most U.S. products, (B) prohibit U.S. businesses from operating in Syria, (C) limit U.S. travel of Syrian diplomats, (D) prohibit landing or flyover rights to Syrian air carriers, (E) curtail diplomatic relations between the United States and Syria, or (F) block transactions in which the Government of Syria has an interest.

For sanctions to be lifted, the President must certify to Congress that four conditions have been met, that the Government of Syria has ceased: (1) providing support for international terrorist groups and does not allow terrorist groups to maintain facilities in territory under Syrian control; (2) its occupation of Lebanon; (3) “the development and deployment of medium- and long-range surface-to-surface ballistic missiles, is not pursuing or engaged in the research, development, acquisition, production, transfer, or deployment of biological, chemical, or nuclear weapons, has provided credible assurances that such behavior will not be undertaken in the future, and has agreed to allow United Nations and other international observers to verify such actions and assurances”; and (4) support for, and facilitation of, terrorist activities in Iraq.

The President may waive any or all sanctions, however, if he finds it in the U.S. national security interest to do so and notifies Congress.

*P.L. 108-175; approved December 12, 2003. No amendments have been enacted.*

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<sup>34</sup> 22 U.S.C. 2151 note.