

Report for Congress

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

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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.

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The use of economic sanctions to stem weapons proliferation acquired a new dimension in the 1990s.¹ 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,² 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 against countries, companies, or persons who violate U.S. nonproliferation norms.³ 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.

¹ 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.

² 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.

³ 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.

Of the several legislative proposals before the 108th 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 sanctions in foreign policy or national security matters:

H.R. 55	<p>Export Administration Act of 2003. Replaces the Export Administration Act of 1979 and, among other things:</p> <ul style="list-style-type: none"> – restates terms of the Commerce Control List, – provides for sanctions related to proliferation of weapons of mass destruction, – provides for sanctions related to terrorism, – restricts exports for national security and foreign policy reasons. <p><i>Introduced January 7, 2003, by Reps. Dreier and Menendez. Referred to Committee on International Relations.</i></p>
H.R. 182	<p>Threat Reduction Implementation Act of 2003.</p> <ul style="list-style-type: none"> – Sec. 2 amends the National Defense Authorization Act of 2003 to grant the President permanent waiver authority relating to the availability of Cooperative Threat Reduction funds to states of the former Soviet Union. – Sec. 3 amends the Defense Appropriations Act, 2003, to grant the President permanent waiver authority relating to the availability of funds for chemical weapons destruction. <p><i>Introduced January 7, 2003, by Rep. Schiff. Referred to Committees on Armed Services and International Relations.</i></p>
H.J.Res. 2	<p>Omnibus Continuing Resolution, 2003. Senate-passed version of the bill includes sense of the Senate critical of North Korea's recent pursuit of nuclear weapons.</p> <p><i>Introduced January 7, 2003, by Rep. Young. Passed the House January 8, 2003. Agreed to in the Senate, amended, January 23, 2003. Senate conferees appointed.</i></p>
S. 145	<p>North Korea Democracy Act of 2003.</p> <ul style="list-style-type: none"> – prohibits assistance to North Korea under the Agreed Framework, directly or through KEDO; – limits the entry into force of any nuclear cooperation agreement between the United States and North Korea, including the transfer or trade of materials; and – requires that agencies charged with enforcing sanctions against North Korea enforce nothing "that is less restrictive than the sanctions regime in effect against North Korea immediately prior to the September 17, 1999" easing of licensing and travel restrictions announced by President Clinton. <p><i>Introduced by Senator Kyl on January 13, 2003; referred to the Committee on Foreign Relations.</i></p>

Selected Current Law: Sanctions Provisions

18 U.S.C. (relating to criminal procedure)⁴

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. 2332a makes it an offense to use, threaten to use, attempt or conspire to use certain weapons of mass destruction (WMD) against a national of the United States or within the United States. Weapons of mass destruction include a range of destructive devices, defined in 18 U.S.C. 921, and “any biological agent, toxin, or vector.” 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 or 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.

Arms Export Control Act⁵

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.

⁴ *Legislation on Foreign Relations Through 2000*, vol. II, page 880.

⁵ P.L. 90-629; approved October 22, 1968; 22 U.S.C. 2751 and following. *Legislation on Foreign Relations Through 2001*, vol. I-A, p. 367.

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 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 constituting what defense articles and services are regulated. Section 38(c) establishes that any person who 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, 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 status for 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.”⁶

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

⁶ See also sec. 544 of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (P.L. 107-115; 115 Stat. 2155).

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.”⁷ Within that definition, the 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

⁷ 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 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.

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 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.)⁸

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

⁸ 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.

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 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 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,⁹ 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.¹⁰

For legislative history of the origin of and early changes to this section, see discussion following sec. 101, above. Sec. 2(a) of the Agriculture Export Relief Act of 1998 (P.L. 105-194; approved July 14, 1998) broadened the kinds of exchanges

⁹ 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 2001*, vol. I-A, p. 635.

¹⁰ Sanctions under sec. 102 were applied to India and Pakistan after each country tested nuclear explosive devices in May 1998. Congress enacted four 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), and P.L. 107-57 (approved October 27, 2001; 115 Stat. 403), which authorizes the provision of foreign assistance relief to Pakistan through October 2003.

that are exempt from the application of sanctions to include medicine, medical equipment, and Department of Agriculture financing.¹¹

Atomic Energy Act of 1954¹²

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

¹¹ 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 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.

¹² P.L. 83-703, approved August 30, 1954, 42 U.S.C. 2011 and following. *Legislation on Foreign Relations Through 2000*, vol. II, p. 1819.

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. *Legislation on Foreign Relations Through 2000*, vol. II, p. 1902), 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).

Presidential determination with passage of a joint resolution within 45 days of the President's action.

Sec. 307 of the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242; approved March 10, 1978) added sec. 129.

Chemical and Biological Weapons Control and Warfare Elimination Act of 1991¹³

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.

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.¹⁴

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 3-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.

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.

¹³ P.L. 102-182; approved December 4, 1991; 22 U.S.C. 5601-5606. *Legislation on Foreign Relations Through 2000*, vol. II, p. 1772.

¹⁴ 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.

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.

Chemical Weapons Convention Implementation Act of 1998¹⁵

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, 1997.¹⁶ 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 from international financial institutions;
- no U.S. Export-Import Bank transactions;
- prohibition on U.S. private banks engaging with sanctions 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:

¹⁵ Division I of P.L. 105-277; approved October 21, 1998; 112 Stat. 2681-856. See also 18 U.S.C. 229 *et seq.* *Legislation on Foreign Relations Through 2000*, vol. II, p. 1688.

¹⁶ See S.Res. 75, 105th Congress, 1st Session.

- 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 1979¹⁷

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 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.¹⁸ **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

¹⁷ P.L. 96-72; approved September 29, 1979; 50 U.S.C. App. 2401. *Legislation on Foreign Relations Through 1996*, vol. III, p. 1022. 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). Such steps have precedent: the Export Administration Act expired in September 1990, to be renewed by Executive Order until Congress passed reauthorizing legislation. Since 1990, the authorities of the Act have been made available by either Executive Order, determinations renewing those Orders, or short-term legislative extensions.

¹⁸ Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and sec. 40 of the Arms Export Control Act (22 U.S.C. 2780) grant similar authority to the Secretary of State to withhold assistance and programs governed by those two laws. See *Legislation on Foreign Relations Through 2001*, vol. I-A, pages 293, 439, respectively. See also sec. 40A of the AECA (22 U.S.C. 2781), which denies defense articles and defense services to a foreign country the President has determined is not fully cooperating with U.S. antiterrorism efforts; *Legislation on Foreign Relations Through 2001*, vol. I-A, page 446.

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 that has violated any country's national security export regulations in accordance with the agreement of the Coordinating Committee for Multilateral Export Controls (COCOM),¹⁹ 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 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.

¹⁹ 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) 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. BXA issued supporting revisions to the Commerce Control List on April 9, 2001 (66 F.R. 18402), January 3, 2002 (67 F.R. 457), and March 5, 2002 (67 F.R. 10611).

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 the U.S. Commodity List 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 1945²⁰

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 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.

The Export-Import Bank Act of 1945 was enacted as P.L. 79-173; approved July 31, 1945. Sec. 2(b)(1) has been 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 after human rights (sec.

²⁰ *Legislation on Foreign Relations Through 1996*, vol. III, p. 952.

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 Ex-Im 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 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 referred to as a “Glenn Amendment.” 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 1961²¹

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, except for

²¹ P.L. 87-195; approved September 4, 1961; 22 U.S.C. 2151 and following. *Legislation on Foreign Relations Through 2001*, 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), 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”.

particular projects the IAEA funds 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 Tlatehelco 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 legislation in the course of peace negotiations), and communist countries listed elsewhere in the Act. 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 Tlatelelco 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 620A (Prohibition on Assistance to Governments Supporting International Terrorism; 22 U.S.C. 2371) prohibits any foreign assistance, food assistance, Peace Corps funding, and support under the Export-Import Bank Act of 1945 from being made available to countries that the Secretary of State has certified as supporters of international terrorism.²² The restriction remains in place until such time that the Secretary certifies that there has been a fundamental change in the leadership and policies of the targeted country, the country is no longer supporting international terrorists, and that the targeted government has assured no such support will resume.

The President may waive the prohibition on the basis of U.S. national security, and some assistance may be restored to address humanitarian concerns. A waiver requires notification and justification being provided to Congress 15 days before assistance is given.

Section 620A was added by sec. 303 of the International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329; approved June 30, 1976). The section has been amended and restated since then by sec. 503(a) of the International Security Assistance and Development Cooperation Act of 1985 (P.L. 99-83;

²² Section 40 of the Arms Export Control Act (22 U.S.C. 2780) and sec. 6(j) of the Export Administration Act (50 U.S.C. app. 2404) grant similar authority to the Secretary of State to withhold assistance and programs governed by those two laws. See also sec. 40A of the AECA (22 U.S.C. 2781), which denies defense articles and defense services to a foreign country the President has determined is not fully cooperating with U.S. antiterrorism efforts.

approved August 8, 1985) and sec. 5 of the Anti-Terrorism and Arms Export Amendments Act of 1989 (P.L. 101-222; approved December 12, 1989).

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.

Enacted as P.L. 87-195; approved September 4, 1961. Sec. 620E was added to the Foreign Assistance Act 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 in 1994 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 made several changes to restrict only "military assistance," formerly the section had referred to assistance generally. 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.

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 four laws to grant the President discretionary authority to waive those sanctions. The third, the Department of Defense Appropriations Act, 2000 (P.L. 106-79; approved October 21, 1999; see title IX), authorized the President to waive section 620E(e). President Bush exercised this authority in issuing Presidential Determination No. 2001-28 on September 22, 2001 (66 F.R. 50095). The fourth measure, P.L. 107-57 (115 Stat. 403, approved October 27, 2001), authorized the President to waive remaining restrictions on foreign assistance to Pakistan.

Section 620G (Prohibition on Assistance to Countries that Aid Terrorist States; 22 U.S.C. 2377) requires the President to withhold all foreign assistance to the government of any country that provides assistance to the government of a country listed as a terrorist state by the Secretary of State pursuant to sec. 620A of this Act (22 U.S.C. 2370).

The President may waive the imposition of the sanction if he determines that furnishing such assistance is important to the U.S. national interest and notifies the appropriate congressional committees of his intent 15 days prior to lifting the ban. His notification shall include the determination, a detailed explanation of the assistance to be provided with its estimated dollar amount, and an explanation of how such assistance furthers U.S. national interests.

Section 620G was added by sec. 325 of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132; approved April 24, 1996). See also sec. 40 of the AECA (above).

Section 620H (Prohibition on Assistance to Countries that Provide Lethal Military Equipment to Terrorist States; 22 U.S.C. 2378) requires the President to withhold all foreign assistance to the government of any country that provides lethal military equipment to a country listed by the Secretary of State as a supporter of international terrorism, either on the sec. 6(j) list under the Export Administration Act, or the sec. 620A list pursuant to this Act. The prohibition remains in place until one year after such transfers or transactions cease. The section is not retroactive, but includes all contracts entered into after April 24, 1996 (the date of enactment of the amendment).

The President may waive the imposition of the sanction if he determines that furnishing such assistance is important to the U.S. national interest and notifies the appropriate congressional committees of his intent 15 days prior to lifting the ban. His notification shall include the determination, a detailed explanation of the assistance to be provided with its estimated dollar amount, and an explanation of how such assistance furthers U.S. national interests.

Section 620H was added by sec. 326 of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132; approved April 14, 1996).

Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002²³

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.

²³ P.L. 107-115, approved January 10, 2002. See also sec. 506, Prohibition on Financing Nuclear Goods; sec. 531, Compliance with U.N. Sanctions Against Iraq; and sec. 565, Korean Peninsula Energy Development Organization. *Legislation on Foreign Relations Through 2001*, vol. I-A, p. 675.

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 of enacting authorizing language that carries the force of law beyond the fiscal year. (Freestanding authorization bills for security assistance programs and related funding levels, however, were enacted in FYs 1999 and 2000.)

Title I, Export-Import Bank of the United States, prohibits the use of Export-Import Bank funds in the current fiscal year to be used 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 \$784 million for assistance to the states of the former Soviet Union, of which not less than \$154 million is directed to Ukraine and of that amount, not less than \$30 million “should be made available for nuclear reactor safety initiatives”. The title withholds 60 percent of 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 previous 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 FY2002 Act does not include such a waiver.

Section 544, Prohibition on Assistance to Foreign Governments That Export Lethal Military Equipment to Countries Supporting International Terrorism, prohibits assistance to such foreign governments that provide equipment to any country the government of which the Secretary of State has found, pursuant to sec. 6(j) of the Export Administration Act, to be a terrorist government. The President may waive the prohibition if he determines it important to U.S. national interests to do so, but must report to Congress the basis for the determination, the nature and value of resumed assistance, and an explanation of how such assistance furthers U.S. national interests. The sanction is in place for 12 months after the targeted government ceases providing lethal military equipment.

Similar language has been included in the annual foreign assistance appropriations measure since FY1994. Previous years' Acts have referred to findings pursuant to sec. 40(d) of the Arms Export Control Act.

International Emergency Economic Powers Act²⁴

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.”²⁵ 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 destruction, and prohibited transactions “with persons who commit, threaten to commit, or support terrorism.”²⁶

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

²⁴ 50 U.S.C. 1701 and following. *Legislation on Foreign Relations Through 1996*, vol. III, p. 1144.

²⁵ The “situations in which authorities may be exercised” is stated in sec. 202 (50 U.S.C. 1701).

²⁶ 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 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 13026, Administration of Export Controls on Encryption Products (November 15, 1996; 61 F.R. 58767; 50 U.S.C. App. 2401 note); and 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; 50 U.S.C. 1701 note). 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; 50 U.S.C. 1701 note) has relevance to issues of proliferation.

make available any classified materials in court proceedings related to IEEPA violations.

Iran and Libya Sanctions Act²⁷

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...”

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.

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).

²⁷ 50 U.S.C. 1701 note. *Legislation on Foreign Relations Through 1996*, vol. III, p. 1228.

Iran-Iraq Arms Nonproliferation Act of 1992²⁸

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.

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).

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.

²⁸ 50 U.S.C. 1701 note. *Legislation on Foreign Relations Through 2000*, vol. II, p. 1767.

Iran Nonproliferation Act of 2000²⁹

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 that person, on or after January 1, 1999, transferred to Iran...” goods, services or technology the export of which (1) is controlled for nonproliferation 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.³⁰ 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 he is required to notify Congress of his reasons to take no action. 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).

²⁹ 114 Stat. 38. *Legislation on Foreign Relations Through 2000*, vol. II, p. 1668. 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 Russian persons 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.

³⁰ 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.

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

Iraq Sanctions Act of 1990³¹

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. 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) 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;

³¹ 50 U.S.C. 1701 note. *Legislation on Foreign Relations Through 1999*, vol. I-B, p. 30.

(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.

National Emergencies Act³²

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 1999³³

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

³² *Legislation on Foreign Relations Through 1996*, vol. III, p. 1150.

³³ *Legislation on Foreign Relations Through 2000*, vol. II, p. 161.

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) more clearly defined what nuclear-related materials required 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 1978³⁴

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 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

³⁴ *Legislation on Foreign Relations Through 2000*, vol. II, p. 1795.

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 1994³⁵

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)³⁶ 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 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.

³⁵ *Legislation on Foreign Relations Through 2000*, vol. II, p. 1748.

³⁶ 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].

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.