



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

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Summary

The proliferation of nuclear, biological, and chemical weapons, and the means to deliver them, are front and center today for policy makers who guide and form U.S. foreign policy and national security policy, and economic sanctions are considered a valuable asset in the national security and foreign policy toolbox. The United States currently maintains robust sanctions regimes against foreign governments it has identified as proliferators (particularly Iran, North Korea, and Syria). If the 112th Congress takes up even a fraction of the proposals introduced by its predecessor involving economic sanctions, the President and the Departments of State, Commerce, and Treasury—those agencies that implement and administer the bulk of sanctions regimes—will likely find the role of Congress in determining the use of sanctions also robust.

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, persons, or entities that 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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Background

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.

The use of economic sanctions in furtherance of foreign policy or national security policy fell into disfavor in the mid- to late 1990s, in reaction to reports of the substantial toll paid by civilian populations when sanctions were cast broadly or wielded as a blunt force. At the same time, however, concerns about nuclear weapons proliferation shifted into high gear, fueled by nuclear weapons tests conducted by India and Pakistan (1998), and later by North Korea (2006 and 2009), North Korea's formal withdrawal from the Nuclear Nonproliferation Treaty (2003), multiple missile tests by North Korea, reports of Iraq having weapons of mass production, possibly chemical and biological (leading into war in 2003); Iran's noncompliance with international agreements (which the International Atomic Energy Act began reporting in 2005), and the 2004 discovery that a leading nuclear scientist in Pakistan—A.Q. Khan—had been selling nuclear materials, technology, and knowledge to the highest bidder, including North Korea, Iraq, Iran, and Libya, for more than a decade.

The 111th Congress enacted the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, but some have expressed concern that the executive branch is taking full advantage of flexibility the Act provides in its implementation. The new Congress might revisit this legislation. Unfinished initiatives of the 111th Congress raise the possibility that Belarus, Burma, Pakistan, Saudi Arabia, the United Arab Emirates, and Venezuela are supporting proliferation of weapons of mass destruction. Events of recent weeks signaling North Korea's and Iran's belligerence, disclosure of classified diplomatic documents that has churned up speculation and conjecture in the policy making and policy analysis communities, and the shift in political power particularly in the House of Representatives, could all have an impact on the 112th Congress's approach to both sanctions and proliferation concerns. Other foreign policy and national security concerns—terrorism, regional stability, human rights, and the nexus among these issues that shape rogue regimes—could result in increased use of economic sanctions.

¹ For a more general discussion on the use of sanctions in foreign policy, see CRS Report 97-949, *Economic Sanctions to Achieve U.S. Foreign Policy Goals: Discussion and Guide to Current Law*, by Dianne E. Rennack and Robert D. Shuey. For a more general discussion on proliferation, see CRS Report RL31559, *Proliferation Control Regimes: Background and Status*, coordinated by Mary Beth Nikitin.

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.

President Obama has also initiated a scrutiny of U.S. export policy, with an eye toward streamlining licensing procedures and increasing exports. Many statutes that establish an authority or a requirement to impose economic sanctions to deter proliferation are implicated in export controls and thus are likely to be at least impacted by export control reforms, and perhaps will present an obstacle to that reform.

This report offers an alphabetic listing and brief description of legal provisions that require or authorize the imposition of some form of economic sanction on countries, companies, or persons who violate U.S. nonproliferation norms.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.

Selected Current Law: Sanctions Provisions

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

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

Sec. 201 of the Chemical Weapons Convention Implementation Act of 1998 (Division I of P.L. 105-277; approved October 21, 1998) enacted these sections to bring the criminal and civil penalties section of United States Code into conformity with the requirements of the Chemical Weapons Convention. Sec. 211 of that Act, furthermore, authorized the President to suspend or revoke export privileges of anyone found in violation of 18 U.S.C. 229. P.L. 109-304 (enacted Oct. 6, 2006) made a technical correction.

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

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

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.

18 U.S.C. 2332a makes it an offense to use, threaten to use, attempt or conspire to use WMD against a national of the United States or within the United States. A “weapon of mass destruction” is a destructive device as defined in 18 U.S.C. 921—any explosive, incendiary, or poison gas bomb, grenade, mine, or rocket or missile of a certain size, any type of weapon of a certain size that delivers its projectile by explosion or other propellant—and any weapon that delivers toxic or poisonous chemicals, biological agent, toxin, or vector, radiation, or radioactivity. One found to have used a WMD “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 Economic Espionage Act of 1996 (P.L. 104-294; approved October 11, 1996) and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188; approved June 12, 2002) made technical changes. The Weapons of Mass Destruction Prohibition Improvement Act of 2004 (title VI, subtitle I, of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458; approved December 17, 2004) expanded the means of delivering the WMD to include the U.S. mail service and variations on “foreign commerce,” included attacks against property, and changed the section heading from “Use of certain weapons of mass destruction” to “Use of weapons of mass destruction,” consolidating WMD-related offenses in this chapter and section.

Arms Export Control Act⁴

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 requires the President to coordinate such actions with other foreign policy considerations, including nonproliferation, and states guidelines by which the President determines eligibility of recipients for military exports, sales, leases, loans, and financing.

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

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

Section 38 (Control of Arms Exports and Imports; 22 U.S.C. 2778) authorizes the President, “in furtherance of world peace and the security and foreign policy of the United States,” to control the import and export of defense articles and services, to provide foreign policy guidelines

⁴ P.L. 90-629; approved October 22, 1968; 22 U.S.C. 2751 and following. *Legislation on Foreign Relations Through 2008*, vol. I-A, p. 427.

to U.S. importers/exporters, and to promulgate the United States Munitions List (USML) constituting what defense articles and services are regulated. Section 38(c) establishes that any person who willfully violates any provision of the section, section 39 (relating to the reporting of fees, contributions, gifts, and commissions paid by those involved in commercial sales of defense articles or services), certain treaties, or rules and regulations relating to any of these provisions, may be fined not more than \$1 million (for each violation), imprisoned not more than 20 years, or both. Section 38(e) authorizes the Secretary of State 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, or in instances where particular defense trade cooperation treaties are a factor.

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. Sec. 107(a)(2) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (P.L. 111-195; approved July 10, 2010) extended the imprisonment terms from 10 years to twenty. Applicability of subsecs. (c), (e), (f), and (j) were expanded to include certain defense treaties by sec. 103(a) of the Defense Trade Cooperation Treaties Implementation Act of 2010 (title I of the Security Cooperation Act of 2010; P.L. 111-266; approved October 8, 2010). 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). Sec. 6910 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004 (subtitle J, title VI, of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458; 118 Stat. 3774) expanded requirements on the President to develop mechanisms to identify persons subject to various Public Laws that restrict transactions related to WMD.

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

The President may rescind the Secretary’s determination (sec. 40(f)) by reporting to the Speaker of the House and the Chairperson 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 20 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. Sec. 107(a)(3) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (P.L. 111-195; approved July 10, 2010) extended the imprisonment terms from 10 years to twenty.

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

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

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

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

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

The President may waive the sanction, for either a U.S. citizen or foreign person, if he certifies to Congress that it is essential to the national security of the United States, or that the individual provides a product or service essential to U.S. national security, and that person is a sole source 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."⁵ Within that definition, the term "international understanding" has been further defined to limit its applicability or to broaden the President's authority to impose sanctions. 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

⁵ 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 section 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.

Nance/Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; H.R. 3427, enacted by reference in P.L. 106-113; approved November 29, 1999) added the definition of “international understanding,” a term used in the course of defining “MTCR adherent.”

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

The President may delay the imposition of sanctions for up to 180 days if he is in consultation with the sanctionable person’s government to bring that government to take specific and effective steps to terminate the sanctionable activities. The President may not be required to impose sanctions if the sanctionable person otherwise provides goods needed for U.S. military operations, if the President determines that the sanctionable person is a sole source provider of some good or service, or if the President determines that goods and services provided by the sanctionable person are essential to U.S. national security under defense cooperation agreements. Exceptions are also made for completing outstanding contracts, the purchase of spare or component parts, service and maintenance otherwise not readily 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.)⁶

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.

⁶ 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 sanctions if he determines, and certifies to the Speaker of the House and the Senate Committee on Foreign Relations, that denying assistance would have a serious adverse effect on vital U.S. interests, and he has been assured that the country in question will not acquire, develop, or assist others in acquiring or developing nuclear weapons. Congress may negate a certification by enacting a joint resolution stating its disapproval.

Sec. 826(a) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; P.L. 103-236; approved April 30, 1994) added secs. 101 and 102. Similar language, however, previously had been in the Foreign Assistance Act of 1961, as secs. 669 and 670. Sec. 669, popularly referred to as the Symington amendment, was added by sec. 305 of the International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329; approved June 30, 1976). The section was amended and restated by sec. 12 of the International Security Assistance Act of 1977 (P.L. 95-92; approved August 4, 1977), which also added sec. 670 to the law. Sec. 669 was further amended by secs. 10(b)(4) and 12 of the International Security Assistance Act of 1978 (P.L. 95-384; approved September 26, 1978). Sec. 737(b) of the International Security and 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 sanctions 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 Chairperson 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,⁷ 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 that 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.⁸

For legislative history of the origin of and early changes to this section, see discussion following sec. 101, above. Section 102, and sec. 670 before it, is popularly referred to as the Glenn

⁷ Sec. 601(b) of the International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329, states what is required under “expedited procedure.” See *Legislation on Foreign Relations Through 2008*, vol. I-A, p. 1058.

⁸ Sanctions under sec. 102 were applied to India and Pakistan after each country tested nuclear explosive devices in May 1998 (India: Presidential Determination 98-22, May 13, 1998; 63 F.R. 27665) (Pakistan: Presidential Determination 98-25, May 30, 1998; 63 F.R. 31881). Congress has enacted a series of 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), and the Department of Defense Appropriations Act, 2000, title IX (P.L. 106-79; approved October 25, 1999), which authorized the President to waive the nuclear test-related sanctions against the two countries permanently. The President exercised this waiver authority case-by-case several times over 1999-2001, and then finally comprehensively in Presidential Determination 01-28 of September 22, 2001 (66 F.R. 50095).

On September 10, 2004, the President determined that Libya had received nuclear materials and was in violation of sec. 102, but also determined that “the application of sanctions, as required by this section, would have a serious adverse effect on vital United States interests and that I have received reliable assurances that Libya will not acquire or develop nuclear weapons or assist other nations in doing so.” (Presidential Determination 2004-44, September 10, 2004; 69 F.R. 56153).

The President invoked sec. 102 in response to North Korea’s nuclear pursuits on December 7, 2006 (Presidential Determination 2007-7; 72 F.R. 1899). See, however, sec. 1405 of the Supplemental Appropriations Act, 2008 (P.L. 110-252; 122 Stat. 2337).

amendment. Sec. 2(a) of the Agriculture Export Relief Act of 1998 (P.L. 105-194; approved July 14, 1998) broadened the kinds of exchanges that are exempt from the application of sanctions to include medicine, medical equipment, and Department of Agriculture financing.⁹

Waiver of Section 102, AECA, Sanctions Against North Korea

Section 1405 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations, 2008 (P.L. 110-252; approved June 30, 2008) (22 U.S.C. 2799aa-1 note), provides:

SEC. 1405. (a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Except as provided in subsection (b), the President may waive in whole or in part, with respect to North Korea, the application of any sanction contained in subparagraph (A), (B), (D) or (G) under section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)), for the purpose of providing assistance related to—

(A) the implementation and verification of the compliance by North Korea with its commitment, undertaken in the Joint Statement of September 19, 2005, to abandon all nuclear weapons and existing nuclear programs as part of the verifiable denuclearization of the Korean Peninsula; and

(B) the elimination of the capability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction and their delivery systems.

(2) LIMITATION.—The authority under paragraph (1) shall expire 5 years after the date of enactment of this Act.

(b) EXCEPTIONS.—

(1) LIMITED EXCEPTION RELATED TO CERTAIN SANCTIONS AND PROHIBITIONS.—The authority under subsection (a) shall not apply with respect to a sanction or prohibition under subparagraph (B) or (G) of section 102(b)(2) of the Arms Export Control Act, unless the President determines and certifies to the appropriate congressional committees that—

(A) all reasonable steps will be taken to assure that the articles or services exported or otherwise provided will not be used to improve the military capabilities of the armed forces of North Korea; and

(B) such waiver is in the national security interests of the United States.

(2) LIMITED EXCEPTION RELATED TO CERTAIN ACTIVITIES.—Unless the President determines and certifies to the appropriate congressional committees that using the authority under subsection (a) is vital to the national security interests of the United States, such authority shall not apply with respect to—

(A) an activity described in subparagraph (A) of section 102(b)(1) of the Arms Export Control Act that occurs after September 19, 2005, and before the date of the enactment of this Act;

(B) an activity described in subparagraph (C) of such section that occurs after September 19, 2005; or

(C) an activity described in subparagraph (D) of such section that occurs after the date of enactment of this Act.

(3) EXCEPTION RELATED TO CERTAIN ACTIVITIES OCCURRING AFTER DATE OF ENACTMENT.—The authority under subsection (a) shall not apply with respect to an activity described in subparagraph (A) or (B) of section 102(b)(1) of the Arms Export Control Act that occurs after the date of the enactment of this Act.

(4) LIMITED EXCEPTION RELATED TO LETHAL WEAPONS.—The authority under subsection (a) shall not apply with respect to any export of lethal defense articles that would be prevented by the application of section 102(b)(2) of the Arms Export Control Act.

(c) NOTIFICATIONS AND REPORTS.—* * *

⁹ 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 (title IX of P.L. 106-387; approved October 28, 2000).

Atomic Energy Act of 1954¹⁰

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 joint resolution.

The section, as amended August 8, 2005, also prohibits the export, transfer, or licensing for export or transfer, of nuclear materials, nuclear equipment, or sensitive nuclear technology that could be applied to the design or construction of a nuclear reactor or nuclear weapon, to any country the government of which is cited as a supporter of acts of international terrorism, pursuant to sec. 620A(a) of the Foreign Assistance Act of 1961, sec. 6(j) of the Export Administration Act of 1979, or sec. 40(d) of the Arms Export Control Act.

The President may waive the restriction if he determines that to do so will not result in any increased risk that the targeted country will acquire a nuclear weapon, nuclear reactor, or any materials or components of a nuclear weapon. The President's authority to waive sanctions also requires his determination and certification that the government of the country in question has not

¹⁰ P.L. 83-703; approved August 30, 1954; 42 U.S.C. 2011 and following. P.L. 99-183, a joint resolution approving an Agreement for Nuclear Cooperation Between the United States and China, (approved December 16, 1985; 99 Stat. 1174), requires the President to certify 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). Section 104 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (P.L. 109-401; approved December 18, 2006; 22 U.S.C. 8003) authorizes the President to exempt a proposed U.S.-India nuclear cooperation agreement from requirements of sec. 123 a.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2153), and to waive secs. 128 and 129 of that Act as each would apply to India, provided the standards stated in sec. 104(b) of that Act are met. President Bush exercised this authority in Presidential Determination 2008-26 (September 10, 2008; 73 F.R. 54287).

aided or abetted in the international proliferation of nuclear explosive devices or the acquisition of unsafeguarded nuclear materials within the past year, “has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism,” that waiving imposition is in the vital U.S. national security interest, or is “essential to prevent or respond to a serious radiological hazard in the country...that may or does threaten public health and safety.”

Sec. 307 of the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242; approved March 10, 1978) added sec. 129. Sec. 632(a) of the Energy Policy Act of 2005 (P.L. 109-58; approved August 8, 2005) added authorities related to restricting exports to a country the government of which is found to be a supporter of acts of international terrorism. Originally, the statute stated Congress could block a President’s waiving of restrictions for common defense and security reasons by adopting a concurrent resolution; this was amended to “joint resolution” by sec. 203 of the U.S.-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (P.L. 110-369, approved October 8, 2008).

Chemical and Biological Weapons Control and Warfare Elimination Act of 1991¹¹

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

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

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

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

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 was enacted as title III of P.L. 102-182 (a law dealing with trade issues otherwise unrelated to nonproliferation). Sec. 1308 of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L.

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

107-228; approved September 30, 2002) struck out reporting requirements that had been stated in sec. 308, as similar reports are required in other statutes.¹²

Chemical Weapons Convention Implementation Act of 1998¹³

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, 1997.¹⁴ The Convention bans the development, production, stockpiling, and use of chemical weapons, requires the destruction of existing weapons and related materials, establishes an international verification regime, and requires export controls and punitive measures to be leveled for noncompliance.

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

- no arms export transactions—sales of items on U.S. Munitions List, transactions under Arms Export Control Act; no licenses for goods or services covered by foreign policy controls under the Export Administration Act of 1979;
- U.S. opposition to support in international financial institutions;
- no U.S. Export-Import Bank transactions;
- prohibition on U.S. private banks engaging with sanctioned person;
- assets in United States to be frozen by presidential action; and
- no rights to land aircraft in the United States (other than in cases of emergency).

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

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

¹² 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.

¹³ Division I of P.L. 105-277; approved October 21, 1998; 112 Stat. 2681-856; 22 U.S.C. 6701 and following. See also 18 U.S.C. 229 and following, where the CWC Implementation Act of 1998 establishes crime and criminal procedures related to violation of the Chemical Weapons Convention.

¹⁴ 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.

Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010¹⁵

This Act, often referred to by its acronym—CISADA—substantively amends the Iran Sanctions Act of 1996, discussed elsewhere in this report. Several freestanding sections of CISADA, however, further codify restrictions on economic trade and transactions with Iran, and provide the President enhanced authority, and in some instances, require the President to take further steps, to isolate the government of Iran.

Section 103 (Economic Sanctions Relating to Iran; 22 U.S.C. 8512) prohibits most imports and exports from Iran, and freezes Iranian assets that are under U.S. jurisdiction. The restrictions are redundant to steps taken by the President under the authority of the International Emergency Economic Powers Act (IEEPA), but in effect further codify the broadest restrictions on transactions with Iran. The section imposes these restrictions “notwithstanding section 101 of the Iran Freedom Support Act,” which codifies sanctions imposed by the President as of January 1, 2006, under authority granted his office in the IEEPA. The section requires the President to justify the import of any Iran-origin good on U.S. national interest grounds, and requires the President to certify this to Congress in advance of entering into such trade. He may also waive the application of sanctions if he finds it in the national interest to do so and certifies to Congress (under sec. 401).

Section 104 (Mandatory Sanctions With Respect to Financial Institutions That Engage in Certain Transactions; 22 U.S.C. 8513) requires the Secretary of the Treasury, with consultation from the Secretary of State, to issue regulations “to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly” facilitates the efforts of Iran to acquire WMD or related delivery systems, supports any foreign terrorist organization, or supports acts of international terrorism; or facilitates the activities of a person subject to U.N. financial sanctions. The Secretary may waive the imposition of sanctions if he determines it in the national interest to do so and notifies Congress.

¹⁵ P.L. 111-195; 124 Stat. 1312; approved July 1, 2010. See also the Iran Sanctions Act of 1996, which CISADA substantively amended. CISADA also amended the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)), Arms Export Control Act (22 U.S.C. 2778(c), 2780(j)), and Trading with the Enemy Act (50 U.S.C. App. 16(a)) as each provides terms for criminal penalties relating to sanctions violations. The Act also requires the President to impose sanctions on individuals identified as human rights violators in the course and aftermath of Iran’s elections of June 12, 2009 (sec. 105; 22 U.S.C. 8514); and requires the U.S. government not to enter into or renew any procurement contract with a person who exports technology to Iran that can be used to suppress the flow of information or free speech of Iranian people, unless the President exempts the contract based on requirements free trade agreements to which the United States is a party (sec. 106; 22 U.S.C. 8515). He may also waive the application of sanctions required under secs. 105 and 106 if he finds it in the national interest to do so and certifies to Congress (under sec. 401).

Section 302 (Identification of Countries of Concern With Respect to the Diversion of Certain Goods, Services, and Technologies to or through Iran; 22 U.S.C. 8542) requires the Director of National Intelligence to identify countries of concern that are diverting to or through Iran goods, services, and technologies that are controlled or make a material contribution to Iran's WMD pursuits. **Section 303 (Destinations of Diversion Concern; 22 U.S.C. 8543)** requires the President to designate any country of concern as a Destination of Diversion Concern if he determines that its government "allows substantial diversion of goods, services, or technologies ... to Iranian end-users or Iranian intermediaries." The President is required to report to Congress such determinations, and "shall require a license under the Export Administration Regulations or the International Traffic in Arms Regulations (whichever is applicable) to export to that country a good, service, or technology on the list required under subsection (b)(2), with the presumption that any application for such a license will be denied." The President may, however, delay the imposition of imposing licensing requirements if he finds the offending country is improving its own export control regime, indicting materials destined for Iran, complying with related U.N. Security Council resolutions, or meeting other standards. He may also waive the application of license controls if he finds it in the national interest to do so (under sec. 401). **Section 304 (Report on Expanding Diversion Concern System to Address the Diversion of United States Origin Goods, Services, and Technologies to Certain Countries Other Than Iran)** requires the President to report on broader diversion of U.S. Munitions List (USML) and Commerce Control List (CCL) items, and could ultimately serve as grounds for a new facet in the U.S. export control system.

Section 401 (General Provisions; 22 U.S.C. 8551) terminates many of these authorities and the CISADA amendments to the Iran Sanctions Act of 1996 on the President's certification to Congress that Iran no longer supports acts of international terrorism and has "ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology."

P.L. 111-195; approved July 1, 2010. No amendments have been enacted.

Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010¹⁶

An appropriations act funding Department of State and foreign operations programs is enacted annually—with rare exceptions when the previous year's legislation is continued through the next fiscal year by a continuing resolution—generally at the start of a fiscal year, to make appropriations for various foreign assistance, military assistance, and international financial institutions programs. Language enacted to fund programs in a current fiscal year act pertains only to that fiscal year unless otherwise expressly stated.

Congress has not enacted a comprehensive foreign aid authorization bill since 1985; however, as a result, the annual appropriations act increasingly has become a means of enacting authorizing language that carries the force of law beyond the fiscal year. In recent years, Security Assistance

¹⁶ P.L. 111-117; 123 Stat. 3034 at 3312 (division F of the Consolidated Appropriations Act, 2010; approved December 16, 2009). The 2nd Session of the 111th Congress has not completed work on a State Department/foreign operations appropriations bill for Fiscal Year 2011. Section 101(7) of the Continuing Appropriations Act, 2011 (P.L. 111-242; 124 Stat. 2607; approved September 30, 2011) continues appropriations stated in P.L. 111-117 through December 3, 2010.

Acts and authorization acts addressing single issues have been enacted. Recent single-issue legislation has established the Millennium Challenge Corporation; authorized funding for microenterprise, HIV/AIDS, tuberculosis and malaria treatment and prevention programs, clean water, and programs for orphans and vulnerable children; transferred excess military equipment; established trafficking in persons as a human rights issue; and country-specific programs as a part of U.S. relations with North Korea, Afghanistan, Russia, and Sudan.

Title VI, Export and Investment Assistance, Export-Import Bank of the United States, prohibits the use of Export-Import Bank funds in the current fiscal year to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel or technology to any non-nuclear-weapon state, if that state is otherwise eligible to receive economic or military assistance under this Act, but has detonated a nuclear explosive device after the date of enactment of this Act.

Title VII, General Provisions, Section 7043, Iran Sanctions, states that it is U.S. policy “to seek to prevent Iran from achieving the capability to produce or otherwise manufacture nuclear weapons....” The section prohibits the use of Export-Import Bank funds to guarantee, insure, or extend credit to any “energy producer or refiner that continues to ... provide Iran with significant refined petroleum resources; ... materially contribute to Iran’s capability to import refined petroleum resources; or ... allow Iran to maintain or expand ... its domestic production of refined petroleum resources....” This prohibition may be waived by the Secretary of State if she determines that the country targeted for these sanctions is “closely cooperating” with U.S. policy toward Iran. The President also retains the authority to waive the aid prohibition if he finds it important to U.S. national security interests to do so.

Title VII, General Provisions, Section 7073, Independent States of the Former Soviet Union, withholds 60 percent of funds allocated for Russia of the funds appropriated for “Assistance for Europe, Eurasia and Central Asia”—the Act provides \$741,632,000 for the region (123 Stat. 3330)—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 ... and ... is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.” 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 the language related to Export-Import Bank programs into the foreign assistance appropriations bill for several years. Iran-related text is new in FY2010. Russia-related text has been enacted in the foreign assistance appropriations measure since FY1999, though year-to-year the language has changed to make a comparison not particularly meaningful. In earlier years, the President was authorized to waive the restriction on the basis of vital U.S. national security interests, or if he found that the Government of Russia was taking meaningful steps to limit major supply contracts and to curtail the transfer of technology and technical expertise to certain programs in Iran. Beginning with the FY2006 Act, the latter condition was omitted.

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 in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons.

Section 11A (Multilateral Export Control Violations; 50 U.S.C. app. 2410a) requires the President to prohibit, for two to five years, the U.S. government from contracting with, or procuring goods or services from, a foreign person who has violated any country's national security export regulations in accordance with the agreement of the Coordinating Committee for Multilateral Export Controls (COCOM),¹⁹ and that the violation results "in substantial

¹⁷ P.L. 96-72; approved September 29, 1979; 50 U.S.C. App. 2401 and following. Authority granted by the Export Administration Act was continued to August 20, 2001, by the Export Administration Modification and Clarification Act of 2000 (P.L. 106-508; approved November 13, 2000). Approaching another expiration, President Bush invoked authority granted his office pursuant to the International Emergency Economic Powers Act and National Emergencies Act, to issue Executive Order 13222 (August 17, 2001; 66 F.R. 44025), extending authorities of the Export Administration Act for one year. On August 14, 2002, the President issued a notice to extend the authority of that executive order another year (67 F.R. 53721). Since then, Executive Order 13222 has been extended annually in presidential notices, most recently with presidential notice of August 12, 2010 (75 F.R. 50679). Such steps have precedent: the Export Administration Act expired in September 1990, to be renewed by executive order until Congress passed reauthorizing legislation in 1993. Since 1990, the authorities of the Act have been made available by either executive order, determinations renewing those orders, or short-term legislative extensions.

¹⁸ Many laws link the support of acts of international terrorism with WMD activities. Section 40 of the Arms Export Control Act (22 U.S.C. 2780), for example, defines acts of international terrorism, in part, as "all activities that the Secretary [of State] determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use, development, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons." See sec. 40 of the Arms Export Control Act and sec. 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), in *Legislation on Foreign Relations Through 2008*, vol. I-A, pages 507, 340, respectively.

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—now the Bureau of Industry and Security, or BIS) of the Department of Commerce issued an interim rule to implement the Wassenaar Arrangement list of dual-use items and revisions to the Commerce Control List required by implementation of the Wassenaar Arrangement (63 F.R. 2452). BXA issued a final rule on July 23, 1999 (64 F.R. 40106), and a revision to that rule where it pertains to national security controls on July 12, 2000 (65 F.R. 43130). On December 1, 2000, participants in (continued...)

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.

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 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 Annex. Sanctions vary with the type of equipment or technology exported; worst-case sanctions deny export licenses for goods on controlled pursuant to the Export Administration Act for not less than two years.

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

The section further requires sanctions against any foreign person whom 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.

(...continued)

the Wassenaar Arrangement agreed to adopt new standards for controlling exports of electronics, computers, and telecommunications technology. A current version of the Commerce Control List may be found at 15 CFR part 774, with an overview at 15 CFR part 738. See http://www.access.gpo.gov/bis/ear/ear_data.html.

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.

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

Section 2(b)(4) (12 U.S.C. 635(b)(4)) provides that the Secretary of State can determine, and report to Congress²¹ 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

²⁰ P.L. 79-173; approved July 31, 1945; 12 U.S.C. 635 and following.

²¹ Section 1062 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417; 50 U.S.C. 2370 note; approved October 14, 2008), requires the Secretaries of Defense, Energy, Commerce, and State, and the Nuclear Regulatory Commission to keep the Committees on Armed Services informed with respect to “any activities undertaken ... with respect to nonproliferation programs; and any other activities undertaken ... to prevent the proliferation of nuclear, chemical, or biological weapons or the means of delivery of such weapons.” It further requires the Director of National Intelligence to inform the committees “with respect to any activities of foreign nations that are significant with respect to the proliferation of nuclear, chemical, or biological weapons or the means of delivery of such weapons.”

- any person knowingly aids or abets, after September 23, 1996, any non-nuclear-weapon state to acquire a nuclear explosive device or to acquire unsafeguarded special nuclear material.

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

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

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

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

Foreign Assistance Act of 1961²²

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,²³ except for particular projects the IAEA finances in Cuba. U.S. proportionate support to the IAEA, in particular, is not available to any IAEA project relating to the Juragua Nuclear Power Plant near Cienfuegos, Cuba, or the Pedro Pi Nuclear Research Center in Cuba, unless Cuba: ratifies the Treaty on Non-Proliferation of Nuclear Weapons or the Treaty of Tlatelco and is in compliance with terms of the treaty; negotiates full-scope safeguards of the IAEA not later than two years after treaty ratification; and “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, North Korea, Syria, 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 under sec. 620(f) of the Act (currently North Korea, China, Cuba, Vietnam, and Tibet). Most recently, sec. 616 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of P.L. 110-161; 121 Stat. 2320) removed Libya from the sec. 307 list.²⁴ Limitations in subsec. (c) were originally added by sec. 431(a)(2) of the Foreign Relations Authorization Act,

²² P.L. 87-195; approved September 4, 1961; 22 U.S.C. 2151 *et seq.* See *Legislation on Foreign Relations Through 2008*, vol. 1-A, p. 11. See also chapter 9 in this Act, relating to “Nonproliferation and Export Control Assistance,” added by sec. 301 of the Security Assistance Act of 2000 (P.L. 106-280; approved October 6, 2000), further amended by the Russian Federation Debt for Nonproliferation Act of 2002 (division B, title VIII, subtitle B, of P.L. 107-228; approved September 30, 2002), and the Security Assistance Act of 2002 (division B of P.L. 107-228; approved September 30, 2002), codified at 22 U.S.C. 2349bb *et seq.* This chapter does not impose sanctions; instead it makes assistance available to friendly countries to ultimately “enhance the nonproliferation and export control capabilities ... by providing training and equipment to detect, deter, monitor, interdict, and counter proliferation.”

²³ Sec. 307(d) of this Act, however, imposes no sanctions but requires the Secretary of State to report to Congress whenever he/she determines “that programs of the International Atomic Energy Agency in Iran are inconsistent with United States nuclear nonproliferation and safety goals, will provide Iran with training or expertise relevant to the development of nuclear weapons, or are being used as a cover for the acquisition of sensitive nuclear technology.” Added to sec. 307 by sec. 1342 of the Iran Nuclear Proliferation Prevention Act of 2002 (subtitle D of title XIII of P.L. 107-228; approved September 30, 2002).

²⁴ Previously, sec. 431 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236; 108 Stat. 459) struck out the Southwest Africa People’s Organization (SWAPO) and added Burma, Iraq, North Korea, and Syria to this prohibition; sec. 2101 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13; 119 Stat. 266) removed Iraq.

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 [of the Former Soviet Union]; 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. Sec. 106 of the Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (P.L. 104-114; adopted March 12, 1996) added requirements to curtail assistance to any third country engaged in certain support of Cuba.

Section 620(y) (Prohibitions Against Furnishing Assistance; 22 U.S.C. 2370) restricts foreign assistance, or assistance pursuant to any other act, to any country providing nuclear fuel, related assistance, and credits to Cuba. Assistance denied the country in question equals the value of that country’s nuclear development assistance, sales, or transfers to Cuba. The requirement to limit assistance is waived if Cuba (A) ratifies the Treaty on Non-Proliferation of Nuclear Weapons or the Treaty of Tlatelco and is in compliance with terms of the treaty; (B) “has negotiated and is in full compliance with full-scope safeguards of the International Atomic Energy Agency” within two years of the treaty ratification; and (C) “incorporates and is in compliance with internationally accepted nuclear safety safeguards.” The section also requires the Secretary of State to report to Congress annually on the matter.

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

Section 620E (Assistance to Pakistan; 22 U.S.C. 2375), related to U.S. assistance to Pakistan, was enacted in response 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 Chairperson of the Senate Foreign Relations Committee that, for the fiscal year in which the assistance, sale or transfer would occur, Pakistan does not possess a nuclear explosive device and that proposed military assistance would significantly reduce the risk that Pakistan will possess a nuclear explosive device. This restriction does not apply to international narcotics control assistance, International Military Education and Training funds, funding for humanitarian and civic assistance projects, peacekeeping or other multilateral operations funds, or antiterrorism assistance.

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

After India and Pakistan tested nuclear explosive devices in May 1998, sanctions were imposed in accordance with requirements of sec. 102 of the Arms Export Control Act (see above). Subsequently, Congress enacted several laws to ease sanctions or to grant the President discretionary authority to waive their application. The Agriculture Export Relief Act of 1998 (P.L. 105-194; approved July 14, 1998) authorizes the exemption of sanctions as they pertain to certain agricultural commodities. The India-Pakistan Relief Act (title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999; division A, sec. 101(a) of P.L. 105-277; 112 Stat. 2681-40; approved October 21, 1998) authorizes the President to waive the application of most sanctions under secs. 101 and 102 of the AECA, sec. 620E(e) of the Foreign Assistance Act of 1961, and sec. 2(b)(4) of the Export-Import Bank Act of 1945, for a period of one year. The Department of Defense Appropriations Act, 2000 (P.L. 106-79; approved October 21, 1999; see title IX), repeals the India-Pakistan Relief Act, but also authorizes the President to waive the same sections of law, including sec. 620E(e). President Clinton exercised this authority in issuing Presidential Determination No. 2000-4 on October 27, 1999 (64 F.R. 60649) to the extent it applied, in the case of Pakistan, to “credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and the making of any loan or the providing of any

credit to the Government of Pakistan by any U.S. bank.” On September 22, 2001, President Bush lifted all remaining nuclear test-related sanctions against India and Pakistan, including sec. 620E(e), under the authority granted him in P.L. 106-79 (Presidential Determination No. 2001-28; 66 F.R. 50095).

Other measures addressed sanctions imposed on Pakistan for other reasons. P.L. 107-57 (115 Stat. 403, approved October 27, 2001), authorizes the President to waive remaining restrictions (relating to military dictatorship and debt arrearage, statutorily required by the Foreign Assistance Act of 1961 and annual foreign operations appropriations measures) on foreign assistance to Pakistan. P.L. 108-447 (of which division D is the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005; approved December 8, 2004), amends P.L. 107-57 to extend foreign assistance to Pakistan to October 1, 2005. P.L. 108-458 (of which title VII is the 9/11 Commission Implementation Act of 2004; approved December 17, 2004), sought to amend P.L. 107-57 to extend foreign aid to Pakistan to October 1, 2006. This amendment, however, was not executable for technical reasons. Sec. 117 of the Continuing Resolution (P.L. 109-77; 119 Stat. 2037; approved September 30, 2005), and subsequently, sec. 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (P.L. 109-102; 119 Stat. 2210, approved November 14, 2005), however, authorizes the President to waive the applicability to Pakistan of restrictions imposed on a country under military dictatorship and waives debt arrearage requirements for Fiscal Year 2006. Authorities contained in P.L. 109-102, in turn, were continued into fiscal year 2007 by division B of P.L. 109-289 (120 Stat. 1257 at 1311; approved September 29, 2006), as amended.

Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006²⁵

The Hyde U.S.-India Peaceful Atomic Energy Cooperation Act of 2006 exempts some requirements of the Atomic Energy Act of 1954 in order for the President to negotiate a U.S.-India nuclear cooperation agreement. The Act reaffirms the United States’ commitment to the Nuclear Non-Proliferation Treaty (to which India is not a signatory) and adherence to Nuclear Suppliers Group guidelines. The Act authorizes the Secretary of Energy, with consultation from the Secretaries of State and Defense, to “establish a cooperative nuclear nonproliferation program to pursue jointly with scientists from the United States and India a program to further common nuclear nonproliferation goals.” The Act also implements a new U.S. Additional Protocol to the Nuclear Non-Proliferation Treaty, signed on June 12, 1998, to demonstrate the United States’ commitment to the Treaty and to encourage non-nuclear-weapon states to commit to international nuclear nonproliferation standards.

Section 104(d)(3) (Waiver Authority and Congressional Approval; Restrictions on Nuclear Transfers; Termination of Nuclear Transfers to India; 22 U.S.C. 8003(d)(3)) terminates exports of nuclear and nuclear-related material, equipment, or technology to India if, after the proposed U.S.-India nuclear cooperation agreement enters into force, any Indian person transfers: “(i) nuclear or nuclear-related material, equipment, or technology that is not consistent with NSG guidelines or decisions, or (ii) ballistic missiles or missile-related equipment or technology that is not consistent with MTCR guidelines.”

²⁵ P.L. 109-401; approved December 18, 2006; 22 U.S.C. 8001 *et seq.*

The President may determine “that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security” to allow nuclear-related exports to India to continue. The President may also allow exports to continue if he finds that (i) the transfer in question was made without the knowledge of the Government of India; (ii) at the time of the transfer, either the Government of India did not own, control, or direct the Indian person that made the transfer or the Indian person that made the transfer is a natural person who acted without the knowledge of a Indian commercial or government entity ; and “(iii) the President certifies to the appropriate congressional committees that the Government of India has taken or is taking appropriate judicial or other enforcement actions against the Indian person with respect to such transfer.”

Sec. 106. (Inoperability of Determination and Waivers; 22 U.S.C. 8005) cancels any waiver or determination issued under section 104 “if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this title.”

Secs. 101 and 105 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (P.L. 110-369; approved October 8, 2008) modified sunset and report provisions in the Hyde Act.

International Emergency Economic Powers Act²⁶

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.”²⁷ 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, prohibited transactions “with persons who commit, threaten to commit, or support terrorism,” and blocked certain property of, and transactions with, governments of specific countries found to be engaged in activities that constitute an extraordinary threat,²⁸ including the proliferation of weapons of mass destruction (see **Table 1** for the proliferation-based exercise of IEEPA authorities and **Table 2** for an index of regulations implementing those authorities).

²⁶ P.L. 95-223; 50 U.S.C. 1701 *et seq.*

²⁷ The “situations in which authorities may be exercised” are stated in sec. 202 (50 U.S.C. 1701).

²⁸ The President currently maintains restrictions on trade and transaction with a number of states, using his IEEPA authorities, for a wide range of concerns not directly relating to WMD proliferation. In some instances, however, the targeted government may also have a history of engaging in proliferation activities and, as a result, the clear lines between issues may be blurred. Other current sanctions regimes in place pursuant to IEEPA authorities include: Somalia (U.N. requirements, piracy, armed robbery at sea, arms embargo), Iran (human rights), Burma (human rights, corruption, rule of law and democracy), Sudan (regional stability, terrorism, human rights, religious freedom, slavery), Balkans (regional stability), Zimbabwe (democracy, rule of law), Iraq (post-war protection of assets), Liberia (regional stability, arms trafficking, protection of ceasefire), Cote d’Ivoire (regional stability, human rights, protection of international peacekeeping forces), Syria (terrorism, regional stability, corruption, implication in assassination of Lebanon’s prime minister), Belarus (democracy), Congo (regional stability), and Lebanon (democracy). IEEPA authorities are also used to address narcotics trafficking, terrorism, and conflict diamond trade.

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

Table I. Executive Orders Issued Pursuant to IEEPA Authorities in Furtherance of Nonproliferation Objectives

Executive Order	Purpose
12938, as amended (November 14, 1994; 59 F.R. 59099)	Proliferation of weapons of mass destruction
12947, as amended (January 23, 1995; 60 F.R. 5079)	Prohibiting transactions with terrorists who threaten to disrupt the Middle East peace process (relating to those who commit “grave acts of violence”)
12957, as amended (March 15, 1995; 60 F.R. 14615)	Prohibiting certain transactions with respect to the development of Iranian petroleum resources
12959, as amended (May 6, 1995; 60 F.R. 24757)	Prohibiting certain transactions with respect to the development of Iranian petroleum resources
13059, as amended (August 19, 1997; 62 F.R. 44531)	Prohibiting certain transactions with respect to Iran
13159 (June 21, 2000; 65 F.R. 39279)	Blocking property of the Government of the Russian Federation relating to the disposition of highly enriched uranium extracted from nuclear weapons
13222 (August 17, 2001; 66 F.R. 44025)	Continuation of export control regulations (with the expiration of the Export Administration Act of 1979)
13338, as amended (May 11, 2004; 69 F.R. 26751)	Blocking property of certain persons and prohibiting export of certain goods to Syria (relating to pursuit of weapons of mass destruction, terrorism, occupation of Lebanon, and stability in Iraq)
13382 (June 28, 2005; 70 F.R. 38567)	Blocking property of weapons of mass destruction proliferators and their supporters
13466 (June 26, 2008; 73 F.R. 36787)	Continuing certain restrictions with respect to North Korea and North Korean Nationals (imposed on the same day the designation as a state sponsor of acts of international terrorism and Trading With the Enemy Act restrictions were lifted)
13551 (August 30, 2010; 75 F.R. 53837)	Blocking Property of Certain Persons With Respect to North Korea
13553 (September 28, 2010; 75 F.R. 60587)	Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions (in part implements the requirements of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010)

Source: The National Archives prints executive orders in the *Federal Register* and maintains a database of orders and subsequent amendments at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.

Notes: 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, some of which are the result of proliferation concerns, currently including multilateral sanctions applied against Iran and North Korea.

Table 2. Selected Regulations Implementing IEEPA Authorities in Furtherance of Nonproliferation Objectives

Regulation	Department and Agency / Purpose
15 CFR Part 700	Department of Commerce, Bureau of Industry and Security <ul style="list-style-type: none">• Chemical Weapons Convention regulations (parts 710-722)• Export Administration regulations (EAR; parts 730-780), including: Commerce Control List (CCL) overview and the Country Chart, 15 CFR 738.1 et seq.; CCL-based controls, 15 CFR 742.1 et seq.; embargoes and other special controls, 15 CFR 746.1 et seq.; and the CCL, 15 CFR 774.1 et seq.
31 CFR Part 500	Department of the Treasury, Office of Foreign Assets Control Foreign assets control regulations
31 CFR Part 501	Department of the Treasury, Office of Foreign Assets Control Reporting, procedures, penalties
31 CFR Part 510	Department of the Treasury, Office of Foreign Assets Control North Korea assets
31 CFR Part 535	Department of the Treasury, Office of Foreign Assets Control Iran assets
31 CFR Part 539	Department of the Treasury, Office of Foreign Assets Control Weapons of mass destruction trade
31 CFR Part 540	Department of the Treasury, Office of Foreign Assets Control Highly enriched uranium (HEU) agreement assets
31 CFR Part 542	Department of the Treasury, Office of Foreign Assets Control Syria sanctions
31 CFR Part 544	Department of the Treasury, Office of Foreign Assets Control Weapons of mass destruction proliferators sanctions
31 CFR Part 549	Department of the Treasury, Office of Foreign Assets Control Lebanon sanctions
31 CFR Part 560	Department of the Treasury, Office of Foreign Assets Control Iran transactions
31 CFR Part 561	Department of the Treasury, Office of Foreign Assets Control Iran transactions

Source: *Code of Federal Regulations*.

Notes: 50 U.S.C. 1701 note.

Iran Freedom Support Act²⁹

Section 101 (Codification of Sanctions) locks in place the substantive elements of three Executive orders in effect on January 1, 2006.³⁰ The orders, first issued by President Clinton in 1995 and 1997, and renewed annually by him and then by his successors, impose economic sanctions on transactions and trade with Iran, including prohibiting any U.S. person from: entering into a contract or financing related to the development of petroleum resources in Iran; making new investments in property owned or controlled by the Government of Iran; or exporting goods or technology to Iran, investing there, or engaging in transactions to traffic Iran-made goods or technology.

The executive orders were issued by the President under authority granted his office in the National Emergencies Act and the International Emergency Economic Powers Act. To terminate the sanctions, the President is now required to notify Congress 15 days in advance, unless circumstances require the President to first terminate sanctions and notify Congress after the fact, but then within three days after exercising the authority. In effect, the section dampens the President's authority to lift the sanctions on Iran without advising Congress, though notification is the only requirement to satisfy the law.

Iran-Iraq Arms Nonproliferation Act of 1992³¹

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

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-

²⁹ P.L. 109-293; approved September 30, 2006; 50 U.S.C. 1701 note. Title III of the Act, relating to democracy promotion in Iran, is codified at 22 U.S.C. 2151 note.

See also sec. 1241—Report on U.S. Engagement with Iran (123 Stat. 2538), and sec. 1254—Sense of Congress on Imposing Sanctions with Respect to Iran (123 Stat. 2550), in the National Defense Authorization Act for fiscal Year 2010 (P.L. 111-184; approved October 28, 2009).

³⁰ Executive Order 12957 (March 15, 1995; 60 F.R. 14615), as amended; Executive Order 12959 (May 6, 1995; 60 F.R. 24757), as amended; and Executive Order 13059 (August 19, 1997; 62 F.R. 44531)—all codified as notes to 50 U.S.C. 1701.

³¹ 50 U.S.C. 1701 note.

use technology; and prohibit the exportation of U.S. Munitions List items for one year. In the case of foreign countries targeted for sanctions under this Act, the President may, at his discretion, use authority granted him under the International Emergency Economic Powers Act to further prohibit transactions with the country.

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

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

Iran, North Korea, and Syria Nonproliferation Act of 2000³²

Sections 2 through 5 (Reports; Application; Procedures; Determination; 50 U.S.C. 1701 note) require the President to report to Congress twice a year to identify “every foreign person with respect to whom there is credible information indicating that the person, on or after January 1, 1999, transferred to or acquired from Iran, or on or after January 1, 2005, transferred to or acquired from Syria...” 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.³³ A foreign person named in the President’s report may also be denied U.S. government sales of items on the U.S. Munitions List and export licenses for dual-use items.

The decision to impose sanctions is left to the President, but if he decides to take no action, he is required to notify Congress of his reasons. The President may also take no action if he finds that (1) the person in question did not “knowingly transfer to or acquire from Iran or Syria” objectionable items; (2) the goods, services or technology “did not materially contribute to the efforts of Iran or Syria, as the case may be, 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.

³² 50 U.S.C. 1701 note. Originally enacted as the Iran Nonproliferation Act of 2000.

³³ 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.

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 or from Iran or Syria 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 or from Iran or Syria; and (3) the Russian Aviation and Space Agency, or its affiliates, has not made such transfers to or from Iran or Syria in the preceding year (other than those allowed by the President’s certification for exemptions).

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

P.L. 106-178; approved March 14, 2000. Originally enacted as the Iran Nonproliferation Act of 2000. Sec. 4(e) of the Iran Nonproliferation Amendments Act of 2005 (P.L. 109-112; approved November 22, 2005) inserted the reference to Syria, and that Act broadened the application of the original Act to encompass transfers to and from both Iran and Syria. The North Korea Nonproliferation Act of 2006 (P.L. 109-353; approved October 13, 2006) inserted the reference to North Korea throughout the Act. Sec. 125 of the Continuing Appropriations Resolution, 2009 (division A of P.L. 110-329; approved September 30, 2008) amended text unrelated to sanctions authorities.

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

Iran Sanctions Act of 1996³⁴

Section 4 (Multilateral Regime) authorizes the President to waive, on a case-by-case basis, sanctions imposed on any national of another country found to be investing in Iran's oil capabilities if he finds it vital to U.S. national security interests to do so. The section also authorizes the President to waive, on a case-by-case, basis, sanctions imposed on persons (as defined by the Act in sec. 14) whose government of jurisdiction cooperates "with the United States in multilateral efforts to prevent Iran from acquiring or developing chemical, biological, or nuclear weapons, or related technologies; or ... acquiring or developing destabilizing numbers and types of advanced conventional weapons...." The President is required to determine such a waiver is vital to U.S. national security interests and report details to Congress. The President is required to investigate any person for which "credible information" indicates that person is engaged in sanctionable activity.

Section 5 (Imposition of Sanctions) requires the President to impose sanctions on any person found to have invested in Iran's ability to develop petroleum resources, or sold, leased or provided Iran refined petroleum products or related technology, information, or support. The President is required to impose three or more of the sanctions listed in section 6 on any person he finds has, after July 1, 2010 (the date of enactment of amendments in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010), "exported, transferred, or otherwise provided to Iran any goods, services, technology, or other items knowing that the provision of such ... items would contribute materially to the ability of Iran to ... acquire or development chemical, biological, or nuclear weapons or related technologies; or acquire or develop destabilizing numbers and types of advanced conventional weapons." In addition, the President is required to deny export licenses to any person subject to these sanctions, and the government of primary jurisdiction for the sanctioned person is also to be denied transfer or retransfer "of any nuclear material, facilities, components, or other goods, services, or technology that are or would be subject to an agreement for cooperation between the United States and that government" unless the President determines that the government "does not know or have reason to know about the activity" or "has taken, or is taking all reasonably steps necessary to prevent a recurrence of the activity and to penalize the person for the activity." The President also may waive the sanctions if he finds it "vital to the national security interests of the United States" to do so, and so notifies the Committees on Foreign Affairs and Foreign Relations.

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, prohibition on foreign exchange transactions, limit on financial transactions including credit and inter-bank payments with banks under U.S. jurisdiction, prohibition on transactions

³⁴ 50 U.S.C. 1701 note; enacted originally as the Iran and Libya Sanctions Act of 1996. On April 23, 2004, the President determined that "Libya has fulfilled the requirements of United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993" (Presidential Determination No. 2004-30; 69 F.R. 24907). The determination met the requirements of the law to authorize the President to terminate economic sanctions imposed on Libya under this Act. The President has subsequently revoked four executive orders relating to Libya—E.O. 12538, 12543, 12544, and 12801—in Executive Order 13357 of September 20, 2004 (69 F.R. 56665), removing most of the statutory barriers to full and normal trade relations with that country. On May 12, 2006, the President certified that Libya was no longer a supporter of acts of international terrorism, and removed that country from the sec. 6(j) list (Presidential Determination No. 2006-14; 71 F.R. 31909; June 1, 2006).

related to property under U.S. jurisdiction, and additional measures as the President sees fit. Under language added by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, persons entering into a U.S. government contract are now required to certify that they do not engage in any activity that could be subject to sanctions under this Act.

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.

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 necessary to U.S. national interests to do so.

P.L. 104-172; approved August 5, 1996. Originally enacted as the Iran and Libya Sanctions Act. The President waived its application toward Libya on April 23, 2004 (see note), and the Iran Freedom Support Act (P.L. 109-293; approved September 30, 2006) struck out the reference to Libya and made other substantive changes to focus the intent of the Act solely on Iran and that country's efforts to develop weapons of mass destruction or other military capabilities. Thus, for example, where section 5 previously required the imposition of sanctions on any person found to be contributing to Libya's pursuit of weapons of mass destruction, advanced conventional weapons, or other military resources, the amended section hones in only on Iran's development of military resources. The Iran Freedom Support Act also struck out references in section 8 to Libya's complicity in the PanAm Flight 103 explosion over Lockerbie, Scotland. Previously, the Act had been amended to lower the threshold of investment in Libya that triggered 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). Authorities were further extended to September 29, 2006 (P.L. 109-267; approved August 4, 2006), to December 31, 2011 (P.L. 109-293), and again to December 31, 2016 (P.L. 111-195).

The Comprehensive Iran Sanctions, Divestment, and Accountability Act of 2010 (P.L. 111-195; approved July 1, 2010) substantially reframed the original Act to intensify the focus on reducing the likelihood of Iran obtaining advanced conventional weapons, weapons of mass destruction, and the means to deliver them. Amendments therein: require close cooperation with the United States in multilateral nonproliferation efforts (sec. 4(c)(1)(B)); require the President to initiate investigations and impose more sanctions for a broader range of activities at lower transaction thresholds (sec. 4(e), sec. 5); and add restrictions on foreign exchange, banking, property, and government contracts to the list of sanction options available to the President (sec. 6).

Iraq Sanctions Act of 1990³⁵

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)³⁶ prohibits the United States from engaging in the following activities relating to Iraq: (1) U.S. foreign military sales under the AECA; (2) commercial arms sales licensing of items on the U.S. Munitions List; (3) exports of control list goods and technology, as defined by secs. 4(b) and 5(c)(1) of the Export Administration Act; (4) issuance of licenses or other authorizations relating to nuclear equipment, materials, and technology; (5) international financial institutions support; (6) Export-Import Bank funding; (7) Commodity Credit Corporation funding; and (8) foreign assistance other than emergency medical or humanitarian funding.

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

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

³⁶ Section 1603 of the Iran-Iraq Arms Nonproliferation Act of 2000 (P.L. 102-484; 50 U.S.C. 1701 note; approved October 23, 1992) makes sec. 586G(a)(1) through (4) of the Iran Sanctions Act of 1990 applicable to Iran.

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 Act

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

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

North Korea Threat Reduction Act of 1999

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

Enacted as subtitle B of title VIII of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of P.L. 106-113; 113 Stat. 1501A-472; approved November 29, 1999). Sec. 1307 of the

Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; 116 Stat. 1438) amended the Act to define more clearly what nuclear-related materials require licensing for export to North Korea by citing terms and requirements in the Atomic Energy Act of 1954 and Annex A and Annex B of the Nuclear Suppliers Group.

Nuclear Non-Proliferation Act of 1978³⁷

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 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 (42 U.S.C. 2139a), relating to a requirement of prior consultation and the reorganization of the Department of State.

Nuclear Proliferation Prevention Act of 1994

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

³⁷ 22 U.S.C. 3201 and following.

Section 821 (Imposition of Procurement Sanction on Persons Engaging in Export Activities That Contribute to Proliferation; 22 U.S.C. 6301)³⁸ 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 are essential to national security under defense cooperative agreements; if the articles constitute essential spare parts, essential component parts, routine servicing or maintenance, or information and technology essential to U.S. production. Sanctions may also not be required if the individual relied on an advisory opinion of the State Department stating that a particular activity was not deemed to be sanctionable.

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

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

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

The President is required to consult with any foreign government that serves as primary jurisdiction for any foreign person sanctioned under this section. Sanctions may be delayed for 90

³⁸ 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].

days while consultation with a foreign government is underway, and may be further averted if the foreign government takes steps to stop the prohibited activity.

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

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

Syria Accountability and Lebanese Sovereignty Restoration Act of 2003³⁹

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

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

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

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

³⁹ 22 U.S.C. 2151 note.

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