

(b) Reimbursement of consumed materials, etc.

The materials, supplies, or equipment loaned to a country under this section may be expended or otherwise consumed in connection with any testing or evaluation program without a requirement for reimbursement of the United States if the Secretary—

(1) determines that the success of the research, development, test, or evaluation depends upon expending or otherwise consuming the materials, supplies, or equipment loaned to the country; and

(2) approves of the expenditure or consumption of such materials, supplies, or equipment.

(c) Prohibitions

The Secretary of Defense may not loan to a country under this section any material if the material is a strategic and critical material and if, at the time the loan is to be made, the quantity of the material in the National Defense Stockpile (provided for under section 98b of title 50) is less than the quantity of such material to be stockpiled, as determined by the President under section 98b(a) of title 50.

(d) “NATO ally” defined

For purposes of this section, the term “NATO ally” means a member country of the North Atlantic Treaty Organization (other than the United States).

(Pub. L. 90-629, ch. 6, §65, as added Pub. L. 100-456, div. A, title X, §1003(a), Sept. 29, 1988, 102 Stat. 2038; amended Pub. L. 102-25, title VII, §705(d)(2), Apr. 6, 1991, 105 Stat. 120; Pub. L. 104-164, title I, §147(a)(3)(B), July 21, 1996, 110 Stat. 1435.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-164 struck out “or major non-NATO” after “NATO” and “or a foreign country other than a member nation of NATO designated as a major non-NATO ally under section 2350a(i)(3) of title 10” after “(other than the United States)”.

1991—Subsec. (d). Pub. L. 102-25 substituted “section 2350a(i)(3) of title 10” for “section 2767a of this title”.

SUBCHAPTER VII—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY

§ 2797. Licensing**(a) Establishment of list of controlled items**

The Secretary of State, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under section 2405(l) of title 50, Appendix.

(b) Referral of license applications

(1) A determination of the Secretary of State to approve a license for the export of an item on the list established under subsection (a) of this section may be made only after the license application is referred to the Secretary of Defense.

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a) of this section, the Secretary of State shall provide to the Secretary of Defense and the Secretary of Commerce the li-

cence application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(c) Information sharing

The Secretary of State shall establish a procedure for sharing information with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and with other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(d) Exports to space launch vehicle programs

Within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than \$50,000,000 that are controlled under this chapter pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, utilization, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex, the Secretary shall transmit to the Congress a report describing the licensed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. The requirement contained in the preceding sentence shall not apply to licenses for exports to countries that were members of the MTCR as of April 17, 1987.

(Pub. L. 90-629, ch. 7, §71, as added Pub. L. 101-510, div. A, title XVII, §1703, Nov. 5, 1990, 104 Stat. 1745; amended Pub. L. 103-236, title VII, §714(a)(3)-(6), 735(c), Apr. 30, 1994, 108 Stat. 497, 506; Pub. L. 105-277, div. G, subdiv. A, title XII, §1225(a)(4)-(7), Oct. 21, 1998, 112 Stat. 2681-773; Pub. L. 106-280, title VII, §708(c), Oct. 6, 2000, 114 Stat. 863.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-280 substituted “Within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than \$50,000,000 that are controlled under this chapter pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, utilization, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex,” for “Within 15 days after the issuance of a license for the export of items valued at less than \$14,000,000 that are controlled under this chapter pursuant to United States obligations under the Missile Technology Control Regime and intended to support the design, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex.”

1998—Subsec. (a). Pub. L. 105-277, §1225(a)(4), struck out “, the Director of the Arms Control and Disarmament Agency,” after “Secretary of Defense”.

Subsec. (b)(1). Pub. L. 105-277, §1225(a)(5), struck out “and the Director of the United States Arms Control and Disarmament Agency” after “Secretary of Defense”.

Subsec. (b)(2). Pub. L. 105-277, § 1225(a)(6), substituted “and the Secretary of Commerce” for “the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency” and struck out “or the Director” after “the relevant Secretary”.

Subsec. (c). Pub. L. 105-277, § 1225(a)(7), struck out “with the Director of the United States Arms Control and Disarmament Agency,” after “Director of Central Intelligence.”

1994—Subsec. (a). Pub. L. 103-236, § 714(a)(3), inserted “, the Director of the Arms Control and Disarmament Agency,” after “the Secretary of Defense”.

Subsec. (b)(1). Pub. L. 103-236, § 714(a)(4), inserted “and the Director of the United States Arms Control and Disarmament Agency” after “Secretary of Defense”.

Subsec. (b)(2). Pub. L. 103-236, § 714(a)(5), substituted “, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency” for “and the Secretary of Commerce” and inserted “or the Director” after “relevant Secretary”.

Subsec. (c). Pub. L. 103-236, § 714(a)(6), inserted “with the Director of the United States Arms Control and Disarmament Agency,” after “Director of Central Intelligence.”

Subsec. (d). Pub. L. 103-236, § 735(c), added subsec. (d).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of this title.

DELEGATION OF FUNCTIONS

Memorandum of President of the United States, June 25, 1991, 56 F.R. 31041, which provided for delegation of certain functions of the President, was superseded by Ex. Ord. No. 12851, § 7, June 11, 1993, 58 F.R. 33181, set out below.

POLICY AND SENSE OF CONGRESS ON NONPROLIFERATION OF BALLISTIC MISSILES

Pub. L. 108-375, div. A, title XII, § 1212, Oct. 28, 2004, 118 Stat. 2087, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) Certain countries are seeking to acquire ballistic missiles and related technologies that could be used to attack the United States or place at risk United States interests, deployed members of the Armed Forces, and allies of the United States and other friendly foreign countries.

“(2) Certain countries continue to actively transfer or sell ballistic missile technologies in contravention of standards of behavior established by the United States and allies of the United States and other friendly foreign countries.

“(3) The spread of ballistic missiles and related technologies worldwide has been slowed by a combination of national and international export controls, forward-looking diplomacy, and multilateral interdiction activities to restrict the development and transfer of such missiles and technologies.

“(b) POLICY.—It is the policy of the United States to develop, support, and strengthen international accords and other cooperative efforts to curtail the prolifera-

tion of ballistic missiles and related technologies which could threaten the territory of the United States, allies of the United States and other friendly foreign countries, and deployed members of the Armed Forces of the United States with weapons of mass destruction.

“(c) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the United States should vigorously pursue foreign policy initiatives aimed at eliminating, reducing, or retarding the proliferation of ballistic missiles and related technologies; and

“(2) the United States and the international community should continue to support and strengthen established international accords and other cooperative efforts, including United Nations Security Council Resolution 1540 (April 28, 2004) and the Missile Technology Control Regime, that are designed to eliminate, reduce, or retard the proliferation of ballistic missiles and related technologies.”

MTCR REPORT TRANSMITTALS

Pub. L. 106-280, title VII, § 704, Oct. 6, 2000, 114 Stat. 861, provided that: “For purposes of section 71(d) of the Arms Export Control Act (22 U.S.C. 2797(d)), the requirement that reports under that section shall be transmitted to the Congress shall be considered to be a requirement that such reports shall be transmitted to the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing and Urban Affairs of the Senate.”

REPORT ON MISSILE PROLIFERATION

Pub. L. 101-510, div. A, title XVII, § 1704, Nov. 5, 1990, 104 Stat. 1749, directed President to submit to Congress reports on international transfers of aircraft which the Secretary had reason to believe may be intended to be used for delivery of nuclear, biological, or chemical weapons and international transfers of MTCR equipment or technology to any country seeking to acquire such equipment or technology, and which provided for contents of reports, countries excluded from such reports, classification of information, and definitions, prior to repeal by Pub. L. 102-190, div. A, title X, § 1097(g), Dec. 5, 1991, 105 Stat. 1491.

EX. ORD. NO. 12851. ADMINISTRATION OF PROLIFERATION SANCTIONS, MIDDLE EAST ARMS CONTROL, AND RELATED CONGRESSIONAL REPORTING RESPONSIBILITIES

Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code; sections 1701-1703 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510 (50 U.S.C. App. 2402 note, 2405, 2410b; 22 U.S.C. 2797-2797c); sections 303, 324 [105 Stat. 708, 711], and 401-405 [22 U.S.C. 2778 note] of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102-138; sections 305-308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Public Law 102-182 (50 U.S.C. App. 2410c; 22 U.S.C. 2798, 5604-5606); sections 241 [105 Stat. 1326] and 1097 [former 22 U.S.C. 2751 note] of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190; and section 1364 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 [106 Stat. 2561], I hereby order as follows:

SECTION 1. *Chemical and Biological Weapons Proliferation and Use Sanctions.* (a) *Chemical and Biological Weapons Proliferation.* The authority and duties vested in me by section 81 of the Arms Export Control Act, as amended (“AECA”) (22 U.S.C. 2798), and section 11C of the Export Administration Act of 1979, as amended (“EAA”) (50 U.S.C. App. 2410c), are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to deny certain United States Government contracts, as provided

in section 81(c)(1)(A) of the AECA and section 11C(c)(1)(A) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, as well as the authority and duties vested in me to make the determinations provided for in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA are delegated to the Secretary of Defense. The Secretary of Defense shall notify the Secretary of the Treasury of determinations made pursuant to section 81(c)(2) of the AECA and section 11C(c)(2) [11C(c)(2)] of the EAA.

(2) The authority and duties vested in me to prohibit certain imports as provided in section 81(c)(1)(B) of the AECA and section 11C(c)(1)(B) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, and the obligation to implement the exceptions provided in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA, insofar as the exceptions affect imports of goods into the United States, are delegated to the Secretary of the Treasury.

(b) *Chemical and Biological Weapons Use.* The authority and duties vested in me by sections 306–308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5604–5606) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to restrict certain imports as provided in section 307(b)(2)(D) [22 U.S.C. 5605(b)(2)(D)], pursuant to a determination made by the Secretary of State under section 307(b)(1), are delegated to the Secretary of the Treasury.

(2) The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 307(d)(1)(A)(ii).

(3) The authority and duties vested in me to prohibit certain exports as provided in section 307(a)(5) and section 307(b)(2)(C), pursuant to a determination made by the Secretary of State under section 306(a)(1) and section 307(b)(1), are delegated to the Secretary of Commerce.

(c) *Coordination Among Agencies.* The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise the prohibition authority delegated hereby.

SEC. 2. *Missile Proliferation Sanctions.* (a) *Arms Export Control Act.* The authority and duties vested in me by sections 72–73 of the AECA (22 U.S.C. 2797a–2797b) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me by section 72(a)(1) to make determinations with respect to violations by United States persons of the EAA [50 U.S.C. App. 2401 et seq.] are delegated to the Secretary of Commerce.

(2) The authority and duties vested in me to deny certain United States Government contracts as provided in sections 73(a)(2)(A)(i) and 73(a)(2)(B)(i), pursuant to a determination made by the Secretary of State under section 73(a)(1), as well as the authority and duties vested in me to make the findings provided in sections 72(c), 73(f), and 73(g)(1), are delegated to the Secretary of Defense. The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, any waivers based upon findings made pursuant to sections 72(c) and 73(f).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 73(a)(2)(C), pursuant to a determination made by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 73(g), are delegated to the Secretary of the Treasury.

(b) *Export Administration Act.* The authority and duties vested in me by section 11B of the EAA (50 U.S.C. App. 2410b) are delegated to the Secretary of Commerce, except that:

(1) The authority and duties vested in me by sections 11B(a)(1)(A) (insofar as such section authorizes determinations with respect to violations by United States persons of the AECA [22 U.S.C. 2751 et seq.]), 11B(b)(1) (insofar as such section authorizes determinations regarding activities by foreign persons), and 11B(b)(5) are delegated to the Secretary of State.

(2) The authority and duties vested in me to make the findings provided in sections 11B(a)(3), 11B(b)(6), and 11B(b)(7)(A) are delegated to the Secretary of Defense. The Secretary of Commerce shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(a)(3). The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(b)(6).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 11B(b)(1), pursuant to a determination by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 11B(b)(7), are delegated to the Secretary of the Treasury.

(c) *Reporting Requirements.* The authority and duties vested in me to make certain reports to the Congress as provided in section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 [former 22 U.S.C. 2751 note] and section 1364 of the National Defense Authorization Act for Fiscal Year 1993 [Pub. L. 102–484, 106 Stat. 2561] are delegated to the Secretary of State.

(d) *Coordination Among Agencies.* The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise prohibition authority delegated hereby.

SEC. 3. *Arms Control in the Middle East.* The certification and reporting functions vested in me by sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 [22 U.S.C. 2778 note], are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

SEC. 4. *China and Weapons Proliferation.* The reporting functions regarding China and weapons proliferation vested in me by sections 303(a)(2) and 324 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 [Pub. L. 102–138, 105 Stat. 709, 711], are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

SEC. 5. *Arrow Tactical Anti-Missile Program.* The authority and duties vested in me to make certain certifications as provided by section 241(b)(3)(C) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 [Pub. L. 102–190, 105 Stat. 1327] are delegated to the Secretary of State.

SEC. 6. *Delegations.* The functions delegated herein may be redelegated as appropriate. Regulations necessary to carry out the functions delegated herein may be issued as appropriate.

SEC. 7. *Priority.* This order supercedes the Memorandum of the President, “Delegation of Authority Regarding Missile Technology Proliferation,” June 25, 1991. To the extent that this order is inconsistent with any provisions of any prior Executive order or Presidential memorandum, this order shall control.

WILLIAM J. CLINTON.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of this title.]

§ 2797a. Denial of transfer of missile equipment or technology by United States persons

(a) Sanctions

(1) If the President determines that a United States person knowingly—

(A) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 2778 of this title, section 2404 or 2405 of title 50, Appendix, or any regulations or orders issued under any such provisions,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in paragraph (2).

(2) The sanctions which apply to a United States person under paragraph (1) are the following:

(A) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer of missile equipment or technology controlled under this chapter.

(B) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR, then the President shall deny to such United States person for a period of not less than 2 years—

(i) all United States Government contracts, and

(ii) all export licenses and agreements for items on the United States Munitions List.

(b) Discretionary sanctions

In the case of any determination made pursuant to subsection (a) of this section, the President may pursue any penalty provided in section 2778(c) of this title.

(c) Presumption

In determining whether to apply sanctions under subsection (a) of this section to a United States person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 2405(j)(1)(A)¹ of title 50, Appendix, has repeatedly provided support for acts of international terrorism.

(d) Waiver

The President may waive the imposition of sanctions under subsection (a) of this section with respect to a product or service if the President certifies to the Congress that—

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

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(Pub. L. 90-629, ch. 7, §72, as added Pub. L. 101-510, div. A, title XVII, §1703, Nov. 5, 1990, 104 Stat. 1745; amended Pub. L. 103-236, title VII, §734(a), Apr. 30, 1994, 108 Stat. 505.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2)(A)(ii), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

1994—Subsecs. (c), (d). Pub. L. 103-236 added subsec. (c) and redesignated former subsec. (c) as (d).

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12851, §2(a), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title.

§ 2797b. Transfers of missile equipment or technology by foreign persons

(a) Sanctions

(1) Subject to subsections (c) through (g)¹ of this section, if the President determines that a foreign person, after November 5, 1990, knowingly—

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

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 2410b(b)(1) of title 50, Appendix, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this chapter.

¹ So in original. Probably should be preceded by “section”.

¹ See References in Text note below.