

President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) of this section has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) Waiver

(1) Criterion for waiver

The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) Notification of and report to Congress

If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) "Foreign person" defined

For the purposes of this section, the term "foreign person" means—

- (1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or
- (2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

(Pub. L. 90-629, ch. 8, §81, as added and amended Pub. L. 102-182, title III, §§305(b), 309(b)(2), Dec. 4, 1991, 105 Stat. 1250, 1258.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a)(1)(C), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

PRIOR PROVISIONS

A prior subchapter VIII, consisting of former section 2798, as added by Pub. L. 102-138, title V, §505(b), Oct. 28, 1991, 105 Stat. 727, was substantially identical to subchapter VIII, as added by section 305(b) of Pub. L. 102-182, prior to repeal by Pub. L. 102-182, title III, §309(a), Dec. 4, 1991, 105 Stat. 1258.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 101-182, §309(b)(2), substituted "October 28, 1991" for reference to the "date of the enactment of this section" which was enacted Dec. 4, 1991.

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12851, §1(a), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title.

SUBCHAPTER IX—TRANSFER OF CERTAIN CFE TREATY-LIMITED EQUIPMENT TO NATO MEMBERS

§ 2799. Purpose

The purpose of this subchapter is to authorize the President to support, consistent with the CFE Treaty, a NATO equipment transfer program that will—

- (1) enhance NATO's forces,
- (2) increase NATO standardization and interoperability, and
- (3) better distribute defense burdens within the NATO alliance.

(Pub. L. 90-629, ch. 9, §91, as added Pub. L. 102-228, §2, Dec. 12, 1991, 105 Stat. 1691.)

§ 2799a. CFE Treaty obligations

The authorities provided in this subchapter shall be exercised consistent with the obligations incurred by the United States in connection with the CFE Treaty.

(Pub. L. 90-629, ch. 9, §92, as added Pub. L. 102-228, §2, Dec. 12, 1991, 105 Stat. 1691.)

§ 2799b. Authorities

(a) General authority

The President may transfer to any NATO/CFE country, in accordance with NATO plans, defense articles—

- (1) that are battle tanks, armoured combat vehicles, or artillery included within the CFE Treaty's definition of "conventional armaments and equipment limited by the Treaty";
- (2) that were, as of the date of signature of the CFE Treaty, in the stocks of the Department of Defense and located in the CFE Treaty's area of application; and
- (3) that the President determines are not needed by United States military forces within the CFE Treaty's area of application.

(b) Acceptance of NATO assistance in eliminating direct costs of transfers

In order to eliminate direct costs of facilitating transfers of defense articles under subsection (a) of this section, the United States may utilize services provided by NATO or any NATO/CFE country, including inspection, repair, or transportation services with respect to defense articles so transferred.

(c) Acceptance of NATO assistance in meeting certain United States obligations

In order to facilitate United States compliance with the CFE Treaty-mandated obligations for destruction of conventional armaments and equipment limited by the CFE Treaty, the United States may utilize services or funds provided by NATO or any NATO/CFE country.

(d) Authority to transfer on grant basis

Defense articles may be transferred under subsection (a) of this section without cost to the recipient country.

(e) Third country transfers restrictions

For purposes of sections 2753(a)(2), 2753(a)(3), 2753(c), and 2753(d) of this title, defense articles transferred under subsection (a) of this section

shall be deemed to have been sold under this chapter.

(f) Maintenance of military balance in Eastern Mediterranean

The President shall ensure that transfers by the United States under subsection (a) of this section, taken together with transfers by other NATO/CFE countries in implementing the CFE Treaty, are of such valuations so as to be consistent with the United States policy, embodied in section 2373 of this title, of maintaining the military balance in the Eastern Mediterranean.

(g) Expiration of authority

(1) In general

Except as provided in paragraph (2), the authority of subsection (a) of this section expires at the end of the 40-month period beginning on the date on which the CFE Treaty enters into force.

(2) Transition rule

Paragraph (1) does not apply with respect to a transfer of defense articles for which notification under section 2799c(a) of this title is submitted before the end of the period described in that paragraph.

(Pub. L. 90-629, ch. 9, §93, as added Pub. L. 102-228, §2, Dec. 12, 1991, 105 Stat. 1691.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), 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.

DELEGATION OF FUNCTIONS

Memorandum of President of the United States, Feb. 13, 1992, 57 F.R. 6663, provided:

Memorandum for the Secretary of State and the Secretary of Defense

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Defense the functions vested in me by section 93(a) and section 94 of the Arms Export Control Act, as amended (the “Act”) [22 U.S.C. 2799b(a), 2799c], and to the Secretary of State the functions vested in me by section 93(f) of the Act. Consistent with section 2 of the Act [22 U.S.C. 2752], transfers of defense articles under section 93(a) shall be subject to the policy direction of the Secretary of State, including the determination of whether such transfers shall occur.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

§ 2799c. Notifications and reports to Congress

(a) Notifications

Not less than 15 days before transferring any defense articles pursuant to section 2799b(a) of this title, the President shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications pursuant to section 2394-1 of this title.

(b) Annual reports

Not later than February 1 each year, the President shall submit to the Committee on

Foreign Affairs and the Committee on Armed Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report that—

(1) lists all transfers made to each recipient NATO/CFE country by the United States under section 2799b(a) of this title during the preceding calendar year;

(2) describes how those transfers further the purposes described in paragraphs (1) through (3) of section 2799 of this title; and

(3) lists, on a country-by-country basis, all transfers to another country of conventional armaments and equipment limited by the CFE Treaty—

(A) by each NATO/CFE country (other than the United States) in implementing the CFE Treaty, and

(B) by each country of the Eastern Group of States Parties in implementing the CFE Treaty.

(Pub. L. 90-629, ch. 9, §94, as added Pub. L. 102-228, §2, Dec. 12, 1991, 105 Stat. 1692; amended Pub. L. 103-199, title IV, §402(1), Dec. 17, 1993, 107 Stat. 2324.)

AMENDMENTS

1993—Subsec. (b)(3)(B). Pub. L. 103-199 substituted “country of the Eastern Group of States Parties” for “Warsaw Pact country”.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by Memorandum of President of the United States, Feb. 13, 1992, 57 F.R. 6663, set out as a note under section 2799b of this title.

§ 2799d. Definitions

As used in this subchapter—

(1) the term “CFE Treaty” means the Treaty on Conventional Armed Forces in Europe (signed at Paris, November 19, 1990);

(2) the term “conventional armaments and equipment limited by the CFE Treaty” has the same meaning as the term “conventional armaments and equipment limited by the Treaty” does under paragraph 1(J) of article II of the CFE Treaty;

(3) the term “NATO” means the North Atlantic Treaty Organization;

(4) the term “NATO/CFE country” means a member country of NATO that is a party to the CFE Treaty and is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed or acceded to the Treaty of Brussels of 1948 or the Treaty of Washington of 1949 (the North Atlantic Treaty); and

(5) the term “country of the Eastern Group of States Parties” means a country that is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed the Treaty of Warsaw of 1955 or a successor state to such a country.

(Pub. L. 90-629, ch. 9, §95, as added Pub. L. 102-228, §2, Dec. 12, 1991, 105 Stat. 1693; amended Pub. L. 103-199, title IV, §402(2), Dec. 17, 1993, 107 Stat. 2324.)

AMENDMENTS

1993—Par. (5). Pub. L. 103-199 substituted “country of the Eastern Group of States Parties” for “Warsaw Pact