

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 tech-

¹ So in original. Probably should be preceded by "section".

¹ See References in Text note below.