

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 3001 of Title 50, War and National Defense.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 40205, set out as a note under section 2370a of this title.

§ 2797b-2. Authority relating to MTCR adherents

Notwithstanding section 2797b(b) of this title, the President may take the actions under section 2797b(a)(2) of this title under the circumstances described in section 2797c(b)(2) of this title.

(Pub. L. 90-629, ch. 7, §73B, as added Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XI, §1137], Nov. 29, 1999, 113 Stat. 1536, 1501A-496).

§ 2797c. Definitions**(a) In general**

For purposes of this subchapter—

(1) the term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term “MTCR adherent” means a country that participates 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;

(4) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex;

(6) the term “United States person” has the meaning given that term in section 2415(2) of title 50, Appendix;

(7) the term “foreign person” means any person other than a United States person;

(8)(A) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating

as a business enterprise, and any successor of any such entity; and

(B) in the case of countries with non-market economies (excluding former members of the Warsaw Pact), the term “person” means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of electronics, space systems or equipment, and military aircraft; and

(9) the term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(b) International understanding defined

For purposes of subsection (a)(3), as it relates to any international understanding concluded with the United States after January 1, 2000, the term “international understanding” means—

(1) any specific agreement by a country not to export, transfer, or otherwise engage 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; or

(2) any specific understanding by a country that, notwithstanding section 2797b(b) of this title, the United States retains the right to take the actions under section 2797b(a)(2) of this title in the case of any export or transfer 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.

(Pub. L. 90-629, ch. 7, §74, as added Pub. L. 101-510, div. A, title XVII, §1703, Nov. 5, 1990, 104 Stat. 1748; amended Pub. L. 102-138, title III, §323(b), (c), Oct. 28, 1991, 105 Stat. 711; Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XI, §1136(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-495.)

REFERENCES IN TEXT

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

1999—Pub. L. 106-113 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1991—Par. (8)(B). Pub. L. 102-138, §323(b), substituted “countries with non-market economies (excluding former members of the Warsaw Pact)” for “countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A)”.

Par. (8)(B)(ii). Pub. L. 102-138, §323(c), substituted “electronics, space systems or equipment, and military aircraft” for “aircraft, electronics, and space systems or equipment”.

SUBCHAPTER VIII—CHEMICAL OR
BIOLOGICAL WEAPONS PROLIFERATION

§ 2798. Sanctions against certain foreign persons

(a) Imposition of sanctions

(1) Determination by the President

Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after October 28, 1991, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.],

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) Countries, projects, or entities receiving assistance

Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

- (i) used chemical or biological weapons in violation of international law;
- (ii) used lethal chemical or biological weapons against its own nationals; or
- (iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 [50 U.S.C. App. 2405(j)] to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) Persons against whom sanctions are to be imposed

Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were

the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) Consultations with and actions by foreign government of jurisdiction

(1) Consultations

If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) Actions by government of jurisdiction

In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) Report to Congress

The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) Sanctions

(1) Description of sanctions

The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) Procurement sanction

The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) Import sanctions

The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) Exceptions

The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

- (i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;
- (ii) if the President determines that the person or other entity to which the sanc-