''(11) Some biological products are genetically manipulated to develop new commercial products, optimizing production and ensuring the integrity of the product, making it difficult to distinguish between legitimate commercial activities and offensive military activities.

''(12) Only a small culture of a biological agent and some growth medium are needed to produce a large amount of biological agents with the potential for offensive purposes.

''(13) The United States pharmaceutical and biotechnology industries are a national asset and resource that contribute to the health and well-being of the American public as well as citizens around the world.

''(14) One bacterium strain can represent a large proportion of a company's investment in a pharmaceutical product and thus its potential loss during an arms control monitoring activity could conceivably be worth billions of dollars.

''(15) Biological products contain proprietary genetic information.

''(16) The proposed compliance regime for the Biological Weapons Convention entails new data reporting and investigation requirements for industry.

''(17) A compliance regime which contributes to the control of biological weapons and materials must have a reasonable chance of success in reducing the risk of production, stockpiling, or use of biological weapons while protecting the reputations, intellectual property, and confidential business information of legitimate companies.

''SEC. 1124. TRIAL INVESTIGATIONS AND TRIAL VISITS.

''(a) NATIONAL SECURITY TRIAL INVESTIGATIONS AND TRIAL VISITS.—The President shall conduct a series of national security trial investigations and trial visits, both during and following negotiations to develop a compliance protocol to the Biological Weapons Convention, with the objective of ensuring that the compliance procedures of the protocol are effective and adequately protect the national security of the United States. These trial investigations and trial visits shall be conducted at such sites as United States Government facilities, installations, and national laboratories.

''(b) UNITED STATES INDUSTRY TRIAL INVESTIGATIONS AND TRIAL VISITS.—The President shall take all appropriate steps to conduct or sponsor a series of United States industry trial investigations and trial visits, both during and following negotiations to develop a compliance protocol to the Biological Weapons Convention, with the objective of ensuring that the compliance procedures of the protocol are effective and adequately protect the national security and the concerns of affected United States industries and research institutions. These trial investigations and trial visits shall be conducted at such sites as academic institutions, vaccine production facilities, and pharmaceutical and biotechnology firms in the United States.

''(c) PARTICIPATION BY DEFENSE DEPARTMENT AND OTHER APPROPRIATE PERSONNEL.—The Secretary of Defense and, as appropriate, the Director of the Federal Bureau of Investigation shall make available specialized personnel to participate—

''(1) in each trial investigation or trial visit conducted pursuant to subsection (a); and

''(2) in each trial investigation or trial visit conducted pursuant to subsection (b), except for any investigation or visit in which the host facility requests that such personnel not participate,

for the purpose of assessing the information security implications of such investigation or visit. The Secretary of Defense, in coordination with the Director of the Federal Bureau of Investigation, shall add to the report required by subsection (d)(2) a classified annex containing an assessment of the risk to proprietary and classified information posed by any investigation or visit procedures in the compliance protocol.

''(d) STUDY.—

''(1) IN GENERAL.—The President shall conduct a study on the need for investigations and visits under the compliance protocol to the Biological Weapons Convention, including—

''(A) an assessment of risks to national security and United States industry and research institutions of such on-site activities; and

''(B) an assessment of the monitoring results that can be expected from such investigations and visits.

''(2) REPORT.—Not later than the date on which a compliance protocol to the Biological Weapons Convention is submitted to the Senate for its advice and consent to ratification, the President shall submit to the Committee on Foreign Relations of the Senate a report, in both unclassified and classified form, setting forth—

''(A) the findings of the study conducted pursuant to paragraph (1); and

''(B) the results of trial investigations and trial visits conducted pursuant to subsections (a) and (b).''

§ 5602. Multilateral efforts

(a) Multilateral controls on proliferation

It is the policy of the United States to seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. In furtherance of this policy, the United States shall—

(1) promote agreements banning the transfer of missiles suitable for armament with chemical or biological warheads;

(2) set as a top priority the early conclusion of a comprehensive global agreement banning the use, development, production, and stockpiling of chemical weapons;

(3) seek and support effective international means of monitoring and reporting regularly on commerce in equipment, materials, and technology applicable to the attainment of a chemical or biological weapons capability; and

(4) pursue and give full support to multilateral sanctions pursuant to United Nations Security Council Resolution 620, which declared the intention of the Security Council to give immediate consideration to imposing ''appropriate and effective'' sanctions against any country which uses chemical weapons in violation of international law.

(b) Multilateral controls on chemical agents, precursors, and equipment

It is also the policy of the United States to strengthen efforts to control chemical agents, precursors, and equipment by taking all appropriate multilateral diplomatic measures—

(1) to continue to seek a verifiable global ban on chemical weapons at the 40 nation Conference on Disarmament in Geneva;

(2) to support the Australia Group's objective to support the norms and restraints against the spread and the use of chemical warfare, to advance the negotiation of a comprehensive ban on chemical warfare by taking appropriate measures, and to protect the Australia Group's domestic industries against inadvertent association with supply of feedstock chemical equipment that could be misused to produce chemical weapons;

(3) to implement paragraph (2) by proposing steps complementary to, and not mutually exclusive of, existing multilateral efforts seek-

ing a verifiable ban on chemical weapons, such as the establishment of—

(A) a harmonized list of export control rules and regulations to prevent relative commercial advantage and disadvantages accruing to Australia Group members,

(B) liaison officers to the Australia Group's coordinating entity from within the diplomatic missions,

(C) a close working relationship between the Australia Group and industry,

(D) a public unclassified warning list of controlled chemical agents, precursors, and equipment,

(E) information-exchange channels of suspected proliferants,

(F) a ''denial'' list of firms and individuals who violate the Australia Group's export control provisions, and

(G) broader cooperation between the Australia Group and other countries whose political commitment to stem the proliferation of chemical weapons is similar to that of the Australia Group; and

(4) to adopt the imposition of stricter controls on the export of chemical agents, precursors, and equipment and to adopt tougher multilateral sanctions against firms and individuals who violate these controls or against countries that use chemical weapons.

(Pub. L. 102–182, title III, § 303, Dec. 4, 1991, 105 Stat. 1245.)

§ 5603. United States export controls

The President shall—

(1) use the authorities of the Arms Export Control Act [22 U.S.C. 2751 et seq.] to control the export of those defense articles and defense services, and

(2) use the authorities of the Export Administration Act of 1979 to control the export of those goods and technology,

that the President determines would assist the government of any foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons.

(Pub. L. 102–182, title III, § 304(a), Dec. 4, 1991, 105 Stat. 1246.)

Editorial Notes

REFERENCES IN TEXT

The Arms Export Control Act, referred to in par. (1), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Export Administration Act of 1979, referred to in par. (2), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§ 4601 et seq.) of Title 50, War and National Defense, prior to repeal by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613).

§ 5604. Determinations regarding use of chemical or biological weapons

(a) Determination by President

(1) When determination required; nature of determination

Whenever persuasive information becomes available to the executive branch indicating the substantial possibility that, on or after October 28, 1991, the government of a foreign country has made substantial preparation to use or has used chemical or biological weapons, the President shall, within 60 days after the receipt of such information by the executive branch, determine whether that government, on or after October 28, 1991, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals. Section 5605 of this title applies if the President determines that that government has so used chemical or biological weapons.

(2) Matters to be considered

In making the determination under paragraph (1), the President shall consider the following:

(A) All physical and circumstantial evidence available bearing on the possible use of such weapons.

(B) All information provided by alleged victims, witnesses, and independent observers.

(C) The extent of the availability of the weapons in question to the purported user.

(D) All official and unofficial statements bearing on the possible use of such weapons.

(E) Whether, and to what extent, the government in question is willing to honor a request from the Secretary General of the United Nations to grant timely access to a United Nations fact-finding team to investigate the possibility of chemical or biological weapons use or to grant such access to other legitimate outside parties.

(3) Determination to be reported to Congress

Upon making a determination under paragraph (1), the President shall promptly report that determination to the Congress. If the determination is that a foreign government had used chemical or biological weapons as described in that paragraph, the report shall specify the sanctions to be imposed pursuant to section 5605 of this title.

(b) Congressional requests; report

(1) Request

The Chairman of the Committee on Foreign Relations of the Senate (upon consultation with the ranking minority member of such committee) or the Chairman of the Committee on Foreign Affairs of the House of Representatives (upon consultation with the ranking minority member of such committee) may at any time request the President to consider whether a particular foreign government, on or after December 4, 1991, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals.