

(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 “foreign person” means any person other than a United States person;

(7)(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 where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), 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 aircraft, electronics, and space systems or equipment; and

(8) 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.

(Pub. L. 96-72, §11B, as added Pub. L. 101-510, div. A, title XVII, §1702(b), Nov. 5, 1990, 104 Stat. 1741.)

#### REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (a)(1)(A)(i), is Pub. L. 90-269, Oct. 22, 1968, 82 Stat. 1320. Chapter 7 of the Act is classified generally to subchapter VII (§2797 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Sections 4605, 4606, and 4610 of this title, referred to in subsecs. (a)(1)(A)(i), (2) and (c), were repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

This chapter, referred to in subsecs. (a)(1)(B) and (b)(1), was in the original “this Act”, meaning Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, known as the Export Administration Act of 1979, which was classified principally to this chapter, 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).

#### CODIFICATION

Section was formerly classified to section 2410b of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

#### POLICY ON MISSILE TECHNOLOGY CONTROL

Pub. L. 101-510, div. A, title XVII, §1701, Nov. 5, 1990, 104 Stat. 1738, provided that: “It should be the policy of the United States to take all appropriate measures—

“(1) to discourage the proliferation, development, and production of the weapons, material, and technology necessary to produce or acquire missiles that can deliver weapons of mass destruction;

“(2) to discourage countries and private persons in other countries from aiding and abetting any states from acquiring such weapons, material, and technology;

“(3) to strengthen United States and existing multilateral export controls to prohibit the flow of materials, equipment, and technology that would assist countries in acquiring the ability to produce or acquire missiles that can deliver weapons of mass destruction, including missiles, warheads and weaponization technology, targeting technology, test and evaluation technology, and range and weapons effect measurement technology; and

“(4) with respect to the Missile Technology Control Regime (‘MTCR’) and its participating governments—

“(A) to improve enforcement and seek a common and stricter interpretation among MTCR members of MTCR principles;

“(B) to increase the number of countries that adhere to the MTCR; and

“(C) to increase information sharing among United States agencies and among governments on missile technology transfer, including export licensing, and enforcement activities.”

#### DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Commerce, with certain exceptions, by section 2(b) of Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of Title 22, Foreign Relations and Intercourse.

### § 4613. Chemical and biological weapons proliferation sanctions

#### (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 under this chapter, or

(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 under this chapter,

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 4605(j)<sup>1</sup> of this title 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 which 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 deter-

mination 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 sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense co-production agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

**(d) Termination of sanctions**

The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Con-

<sup>1</sup> See References in Text note below.

gress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) 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) Definition of foreign person**

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. 96-72, §11C, as added and amended Pub. L. 102-182, title III, §§305(a), 309(b)(1), Dec. 4, 1991, 105 Stat. 1247, 1258.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original “this Act”, meaning Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, known as the Export Administration Act of 1979, which was classified principally to this chapter, 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).

Section 4605(j) of this title, referred to in subsec. (a)(2)(B), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For similar provisions, see section 4813(c) of this title, as enacted by Pub. L. 115-232.

CODIFICATION

Section was formerly classified to section 2410c of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 11C of Pub. L. 96-72, as added Pub. L. 102-138, title V, §505(a), Oct. 28, 1991, 105 Stat. 724, contained provisions substantially identical to those added by section 305(a) of Pub. L. 102-182, prior to repeal by Pub. L. 102-182, §309(a).

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-182, §309(b)(1), substituted “October 28, 1991” for “December 4, 1991”.

DEPARTMENT OF DEFENSE REVIEW OF EXPORT LICENSES FOR CERTAIN BIOLOGICAL PATHOGENS

Pub. L. 104-106, div. A, title XIII, §1323, Feb. 10, 1996, 110 Stat. 480, provided that:

“(a) DEPARTMENT OF DEFENSE REVIEW.—Any application to the Secretary of Commerce for a license for the export of a class 2, class 3, or class 4 biological pathogen to a country identified to the Secretary under subsection (c) as a country that is known or suspected to have a biological weapons program shall be referred to the Secretary of Defense for review. The Secretary of Defense shall notify the Secretary of Commerce within 15 days after receipt of an application under the preceding sentence whether the export of such biological pathogen pursuant to the license would be contrary to the national security interests of the United States.

“(b) DENIAL OF LICENSE IF CONTRARY TO NATIONAL SECURITY INTEREST.—A license described in subsection (a) shall be denied by the Secretary of Commerce if it is determined that the export of such biological pathogen to that country would be contrary to the national security interests of the United States.

“(c) IDENTIFICATION OF COUNTRIES KNOWN OR SUSPECTED TO HAVE A PROGRAM TO DEVELOP OFFENSIVE BIOLOGICAL WEAPONS.—(1) The Secretary of Defense shall determine, for the purposes of this section, those countries that are known or suspected to have a program to develop offensive biological weapons. Upon making such determination, the Secretary shall provide to the Secretary of Commerce a list of those countries.

“(2) The Secretary of Defense shall update the list under paragraph (1) on a regular basis. Whenever a country is added to or deleted from such list, the Secretary shall notify the Secretary of Commerce.

“(3) Determination under this subsection of countries that are known or suspected to have a program to develop offensive biological weapons shall be made in consultation with the Secretary of State and the intelligence community.

“(d) DEFINITION.—For purposes of this section, the term ‘class 2, class 3, or class 4 biological pathogen’ means any biological pathogen that is characterized by the Centers for Disease Control as a class 2, class 3, or class 4 biological pathogen.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with certain exceptions, by section 1(a) of Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of Title 22, Foreign Relations and Intercourse.

**§§ 4614 to 4621. Repealed. Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232**

Section 4614, Pub. L. 96-72, §12, Sept. 29, 1979, 93 Stat. 530; Pub. L. 97-145, §§3, 5, Dec. 29, 1981, 95 Stat. 1727, 1728; Pub. L. 99-64, title I, §113, July 12, 1985, 99 Stat. 148; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-418, title II, §2427, Aug. 23, 1988, 102 Stat. 1361; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 114-125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210, related to enforcement authority under this chapter. See section 4820 of this title.

Section 4615, Pub. L. 96-72, §13, Sept. 29, 1979, 93 Stat. 531; Pub. L. 99-64, title I, §114, July 12, 1985, 99 Stat. 150; Pub. L. 100-418, title II, §2428, Aug. 23, 1988, 102 Stat. 1361, related to administrative procedure and judicial review. See section 4821 of this title.

Section 4616, Pub. L. 96-72, §14, Sept. 29, 1979, 93 Stat. 532; Pub. L. 99-64, title I, §115, July 12, 1985, 99 Stat. 152; Pub. L. 100-418, title II, §§2418(c), 2445, Aug. 23, 1988, 102 Stat. 1357, 1369, related to annual report on the administration of this chapter. See section 4824 of this title.

Section 4617, Pub. L. 96-72, §15, Sept. 29, 1979, 93 Stat. 533; Pub. L. 99-64, title I, §116(a), July 12, 1985, 99 Stat. 152; Pub. L. 100-418, title II, §§2420(b), 2429, Aug. 23, 1988, 102 Stat. 1358, 1362, related to appointment of Under