Section 4607, Pub. L. 96–72, § 8, Sept. 29, 1979, 93 Stat. 521, related to issuance of regulations prohibiting intentional boycotting of friendly countries. See section 4842 of this title.

Section 4608, Pub. L. 96–72, § 9, Sept. 29, 1979, 93 Stat. 524, related to procedures for hardship relief from export controls.

Section 4609, Pub. L. 96–72, § 10, Sept. 29, 1979, 93 Stat. 525; Pub. L. 99–64, title I, § 111, July 12, 1985, 99 Stat. 142; Pub. L. 100–418, title II, § 2425(a), (c), Aug. 23, 1988, 102 Stat. 1360, 1361, related to processing of export license applications. See section 4815 of this title.

Section 4610, Pub. L. 96–72, § 11, Sept. 29, 1979, 93 Stat. 529; Pub. L. 97–145, § 4(a)–(c), Dec. 29, 1981, 95 Stat. 1727; Pub. L. 99–64, title I, § 112, July 12, 1985, 99 Stat. 146; Pub. L. 100–418, title II, § 2426, Aug. 23, 1988, 102 Stat. 1361, related to penalties for violations. See section 4819 of this title.

Sections 4605 to 4610 were formerly classified to sections 2405 to 2410, respectively, of the former Appendix to this title prior to editorial reclassification and renumbering.

Prior sections 2405 to 2410 of the former Appendix to this title expired with the expiration of Pub. L. 91–184 on Sept. 30, 1979.

Section 2405, Pub. L. 91–184, § 6, Dec. 30, 1969, 83 Stat. 844; Pub. L. 95–52, title I, §§ 103(d), 112, title II, § 203(a), June 22, 1977, 91 Stat. 237, 240, 247; Pub. L. 95–223, title III, § 301(b)(2), Dec. 28, 1977, 91 Stat. 1629, set forth provisions respecting violations and penalties.

Section 2406, Pub. L. 91–184, § 7, Dec. 30, 1969, 83 Stat. 845; Pub. L. 95–52, title I, §§ 113(a), 114, title II, § 201(c), June 22, 1977, 91 Stat. 241, 246, set forth enforcement procedures applicable to the Export Administration Act of 1969.

Section 2407, Pub. L. 91–184, § 8, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95–52, title II, § 203(b), June 22, 1977, 91 Stat. 247, related to exemption from administrative procedure and judicial review provisions.

Section 2408, Pub. L. 91–184, § 9, Dec. 30, 1969, 83 Stat. 846, related to providing information to exporters.

Section 2409, Pub. L. 91–184, § 10, Dec. 30, 1969, 83 Stat. 846; Pub. L. 93–500, § 3(b), Oct. 29, 1974, 88 Stat. 1552; Pub. L. 93–608, § 2(1), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 95–52, title I, § 116(a), (b)(2), June 22, 1977, 91 Stat. 241, 242, set forth requirements respecting semiannual reports to President and Congress.

Section 2410, Pub. L. 91–184, § 11, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95–52, title II, § 204, June 22, 1977, 91 Stat. 247, defined ''person'' and ''United States person'' for purposes of the Export Administration Act of 1969.

§ 4611. Multilateral export control violations

(a) Determination by the President

The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after August 23, 1988.

(b) Sanctions

The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

(c) Exceptions

The President shall not apply sanctions under this section—

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

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

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

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) Exclusion

The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(D) a system of export control documentation to verify the movement of goods and technology; and

(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

(e) Definitions

For purposes of this section—

(1) the term ''component part'' means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term ''finished product'' means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term ''sanctioned person'' means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

(f) Subsequent modifications of sanctions

The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

(g) Reports to Congress

The President shall include in the annual report submitted under section 4616[1] of this title, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

(h) Discretionary imposition of sanctions

If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

(i) Compensation for diversion of militarily critical technologies to controlled countries

(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

(j) Other actions by the President

Upon making a determination under subsection (a) or (h), the President shall—

(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

(k) Damages for certain violations

(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for

[1] See References in Text note below.

damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

(3)[2] The total amount awarded in any case brought under paragraph (2)[2] shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

(*l*) Definition

For purposes of this section, the term ''foreign person'' means any person other than a United States person.

(Pub. L. 96–72, § 11A, as added Pub. L. 100–418, title II, § 2444, Aug. 23, 1988, 102 Stat. 1366.)

REFERENCES IN TEXT

Section 4616 of this title, referred to in subsec. (g), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232.

CODIFICATION

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

SHORT TITLE

Pub. L. 100–418, title II, § 2441, Aug. 23, 1988, 102 Stat. 1364, provided that: ''This part [part II (§§ 2441–2447) of subtitle D of title II of Pub. L. 100–418, enacting this section, amending former sections 4604 and 4616 of this title and section 1864 of Title 19, Customs Duties, and enacting provisions formerly set out as notes under section 2410a of the former Appendix to this title] may be cited as the 'Multilateral Export Control Enhancement Amendments Act'.''

§ 4612. Missile proliferation control violations

(a) Violations by United States persons

(1) Sanctions

(A) If the President determines that a United States person knowingly—

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act [22 U.S.C. 2797 et seq.], section 4604 or 4605[1] of this title, or any regulations or orders issued under any such provisions,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in subparagraph (B).

(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) 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, licenses for the transfer of missile equipment or technology controlled under this chapter.

(ii) 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 Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this chapter.

(2) Discretionary sanctions

In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 4610[1] of this title.

(3) Waiver

The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) 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.

(b) Transfers of missile equipment or technology by foreign persons

(1) Sanctions

(A) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after November 5, 1990, knowingly—

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the 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,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act [22 U.S.C. 2797b(a)], then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this chapter.

[2] So in original. Subsec. (k) was enacted without a par. (2).

[1] See References in Text note below.