

108TH CONGRESS
2D SESSION

H. R. 4965

To impose sanctions on foreign entities that engage in certain nuclear proliferation activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. LANTOS (for himself, Ms. ROS-LEHTINEN, Mr. BERMAN, Mr. ACKERMAN, and Mr. SHERMAN) introduced the following bill; which was referred to the Committee on International Relations

A BILL

To impose sanctions on foreign entities that engage in certain nuclear proliferation activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Black-Market
5 Elimination Act”.

1 **TITLE I—SANCTIONS FOR NU-**
2 **CLEAR ENRICHMENT AND RE-**
3 **PROCESSING TRANSFERS BY**
4 **FOREIGN PERSONS**

5 **SEC. 101. AUTHORITY TO IMPOSE SANCTIONS.**

6 Notwithstanding any other provision of law, the
7 President is authorized to prohibit, for a period of not less
8 than three years, any transaction or dealing by a United
9 States person or within the United States with any foreign
10 person or entity that the President determines sells, trans-
11 fers, brokers, finances, assists, delivers or otherwise pro-
12 vides or receives, on or after the date of the enactment
13 of this Act—

14 (1) nuclear enrichment or reprocessing equip-
15 ment, materials, or technology to—

16 (A) any country for which an additional
17 protocol with the International Atomic Energy
18 Agency for the application of safeguards (as de-
19 rived from IAEA document INFCIRC/540 and
20 related corrections and additions) is not in
21 force; or

22 (B) to any country that the President de-
23 termines is developing, constructing, manufac-
24 turing, or acquiring a nuclear explosive device;
25 or

1 (2) designs, equipment, or specific information
2 to assist in the development, construction, manufac-
3 ture, or acquisition of a nuclear explosive device by
4 a non-nuclear weapon state.

5 **SEC. 102. PRESIDENTIAL DETERMINATION.**

6 (a) DETERMINATION.—If the President receives cred-
7 ible information or evidence regarding any activity de-
8 scribed in section 101(a) by a foreign person or entity,
9 the President shall promptly make a determination as to
10 whether, in his judgment, such activity occurred.

11 (b) REPORT.—If the President makes an affirmative
12 determination under subsection (a), the President shall,
13 within 5 days after making the determination, report the
14 fact and substance of the determination to the appropriate
15 congressional committees.

16 (c) PUBLICATION OF DETERMINATION.—If the Presi-
17 dent makes an affirmative determination under subsection
18 (a), the President shall publish in the Federal Register,
19 not later than 15 days after reporting such determination
20 to the Committees under subsection (b), the identity of
21 each foreign person or entity that is subject to that deter-
22 mination and on whom sanctions have been imposed under
23 section 101(a), the reasons for the sanctions, and period
24 during which the sanctions will be in effect.

1 **SEC. 103. ADDITIONAL REPORTS.**

2 (a) POSSIBLE ACTIVITY.—The President shall submit
3 to the appropriate congressional committees, not later
4 than January 30th of each year, a report containing all
5 credible information regarding the activities described in
6 section 101(a), regardless of whether the President deter-
7 mines that such activities did in his judgment occur.

8 (b) TRANSACTIONS BY FOREIGN PERSONS.—The
9 President shall submit to the appropriate congressional
10 committees, not later than June 30th of each year, a re-
11 port that identifies any foreign person or entity that en-
12 gages in transactions or dealings with foreign persons or
13 entities on whom sanctions are in effect under section
14 101(a) that—

15 (1) would be prohibited transactions or dealings
16 subject to sanctions under section 101(a) if those
17 transactions or dealings had been conducted by
18 United States persons or within the United States;
19 and

20 (2) could make material contributions to a nu-
21 clear enrichment, reprocessing, or nuclear weapon
22 development program.

23 The report under this subsection shall be unclassified to
24 the maximum extent feasible, but may also include a clas-
25 sified annex.

1 **TITLE II—INCENTIVES FOR PRO-**
2 **LIFERATION INTERDICTION**
3 **COOPERATION**

4 **SEC. 201. AUTHORITY TO PROVIDE ASSISTANCE.**

5 Notwithstanding any other provision of law, the
6 President is authorized to provide, on such terms as he
7 deems appropriate, assistance under section 202 to any
8 country that cooperates with the United States and with
9 other countries allied with the United States to prevent
10 the transport and transshipment of items of proliferation
11 concern in its national territory or airspace or in vessels
12 under its control or registry.

13 **SEC. 202. TYPES OF ASSISTANCE.**

14 The assistance authorized under section 201 is the
15 following:

16 (1) Assistance under section 23 of the Arms
17 Export Control Act (22 U.S.C. 2763).

18 (2) Assistance under chapter 4 of part II of the
19 Foreign Assistance Act of 1961, notwithstanding
20 section 531(e) or 660(a) of that Act.

21 (3) Drawdown of defense equipment and serv-
22 ices under section 516 of the Foreign Assistance Act
23 of 1961.

1 **SEC. 203. CONGRESSIONAL NOTIFICATION.**

2 Assistance authorized under this title may not be pro-
3 vided until at least 30 days after the date on which the
4 President has provided notice thereof to the appropriate
5 congressional committees, in accordance with the proce-
6 dures applicable to reprogramming notifications under
7 section 634A(a) of the Foreign Assistance Act of 1961.

8 **SEC. 204. LIMITATION.**

9 Assistance may be provided to a country under sec-
10 tion 201 in no more than 3 fiscal years.

11 **SEC. 205. USE OF ASSISTANCE.**

12 To the extent practicable, assistance provided under
13 this title shall be used to enhance the capability of the
14 recipient country to prevent the transport and trans-
15 shipment of items of proliferation concern in its national
16 territory or airspace, or in vessels under its control or reg-
17 istry, including through the development of a legal frame-
18 work in that country to enhance such capability.

19 **SEC. 206. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) APPROPRIATIONS.—There is authorized to be ap-
21 propriated \$250,000,000 to carry out this title.

22 (b) AVAILABILITY.—Amounts appropriated pursuant
23 to subsection (a) are authorized to remain available until
24 expended.

1 **SEC. 207. LIMITATION ON SHIP TRANSFERS.**

2 Notwithstanding any other provision of law, the
3 United States may not transfer any excess defense article
4 that is a vessel to a country that has not provided written
5 assurances to the United States that it will support and
6 assist efforts by the United States to interdict items of
7 proliferation concern.

8 **SEC. 208. LIMITATION ON AIRCRAFT TRANSFERS.**

9 Notwithstanding any other provision of law, the
10 United States may not transfer any excess defense article
11 that is an aircraft to any country that has not provided
12 written assurances to the United States that it will sup-
13 port and assist efforts by the United States to interdict
14 items of proliferation concern.

15 **TITLE III—ROLLBACK OF KHAN**
16 **NUCLEAR PROLIFERATION**
17 **NETWORK**

18 **SEC. 301. COOPERATION OF PAKISTAN.**

19 (a) LIMITATION.—Notwithstanding any other provi-
20 sion of law, the President may not provide, in any fiscal
21 year, more than 75 percent of United States assistance
22 to Pakistan unless the President determines and certifies
23 to the appropriate congressional committees that Paki-
24 stan—

25 (1) has verifiably halted any cooperation with
26 any state in the development of nuclear or missile

1 technology, material, or equipment, or any other
2 technology, material, or equipment that is useful for
3 the development of weapons of mass destruction, in-
4 cluding exports of such technology, material, or
5 equipment; and

6 (2) is fully sharing with the United States all
7 information relevant to the A.Q. Khan proliferation
8 network, and has provided full access to A.Q. Khan
9 and his associates and any documentation, declara-
10 tions, affidavits, or other material that bears upon
11 their proliferation network activities and contacts.

12 (b) WAIVER.—

13 (1) AUTHORITY.—The President may waive the
14 requirements of subsection (a) in a fiscal year if—

15 (A) the President has certified to the ap-
16 propriate congressional committees that—

17 (i) the waiver is in the vital interest of
18 the national security of the United States;

19 (ii) the waiver will promote Pakistan's
20 cooperation in achieving the conditions set
21 forth in paragraphs (1) and (2) of sub-
22 section (a); and

23 (iii) Pakistan's lack of cooperation is
24 not significantly hindering efforts of the
25 United States to investigate and eliminate

1 the Khan proliferation network and any
2 successor networks; and

3 (B) 30 days have elapsed since making the
4 certification under subparagraph (A).

5 (2) BRIEFING.—Within 5 days after making a
6 certification under paragraph (1), the Secretary of
7 State shall brief the appropriate congressional com-
8 mittees on the degree to which Pakistan has or has
9 not satisfied the conditions set forth in paragraphs
10 (1) and (2) of subsection (a)(1).

11 (3) LIMITATION.—The waiver authority under
12 paragraph (1) may not be exercised in two succes-
13 sive fiscal years.

14 **SEC. 302. IDENTIFICATION OF PROLIFERATION NETWORK**
15 **HOST COUNTRIES.**

16 (a) REPORT.—Not later than 30 days after the date
17 of the enactment of this Act, the President shall submit
18 a report to the appropriate congressional committees that
19 identifies any country in which manufacturing, brokering,
20 shipment, transshipment, or other significant activity oc-
21 curs that is related to the transactions carried out by the
22 various elements and entities of the A.Q. Khan nuclear
23 proliferation network.

24 (b) ADDITIONAL INFORMATION.—After the report is
25 submitted under subsection (a), the President shall submit

1 to the appropriate congressional committees any addi-
2 tional information described in subsection (a) with respect
3 to any country, as such information becomes available.

4 **SEC. 303. SUSPENSION OF ARMS SALES LICENSES AND DE-**
5 **LIVERIES TO PROLIFERATION NETWORK**
6 **HOST COUNTRIES.**

7 (a) SUSPENSION.—Upon submission of the report
8 and any additional information under section 302 to the
9 appropriate congressional committees, the President shall
10 suspend all licenses issued under the Arms Export Control
11 Act, and shall prohibit any licenses to be issued under that
12 Act, to any country identified in the report or additional
13 information, until such time as the President certifies to
14 the appropriate congressional committees that such coun-
15 try—

16 (1) has—

17 (A) fully investigated the activities of any
18 person or entity within its territory that has
19 participated in the Khan nuclear proliferation
20 network; and

21 (B) taken effective steps to permanently
22 halt all such activities;

23 (2) is fully cooperating with the United States
24 in investigating and eliminating the Khan nuclear

1 proliferation network and any successor networks
2 operating within its territory; and

3 (3) has enacted new laws, promulgated decrees
4 or regulations, or established practices designed to
5 prevent future such activities from occurring within
6 its territory.

7 (b) WAIVER.—The President may waive the require-
8 ments of subsection (a) in a fiscal year if—

9 (1) the President has certified to the appro-
10 priate congressional committees that the waiver is in
11 the vital interest of the national security of the
12 United States; and

13 (2) 5 days have elapsed since making the cer-
14 tification under paragraph (1).

15 **TITLE IV—GENERAL** 16 **PROVISIONS**

17 **SEC. 401. DEFINITIONS.**

18 In this Act:

19 (1) APPROPRIATE CONGRESSIONAL COMMIT-
20 TEES.—The term “appropriate congressional com-
21 mittees” means the Committee on International Re-
22 lations of the House of Representatives and the
23 Committee on Foreign Relations of the Senate.

24 (2) EXCESS DEFENSE ARTICLE.—The term
25 “excess defense article” has the meaning given that

1 term in section 644(g) of the Foreign Assistance Act
2 of 1961 (22 U.S.C. 2403(g)).

3 (3) FOREIGN PERSON.—The term “foreign per-
4 son” means a person other than a United States
5 person.

6 (4) ITEMS OF PROLIFERATION CONCERN.—The
7 term “items of proliferation concern” means any
8 equipment, materials, or technology that could mate-
9 rially support the research, development, manufac-
10 turing, or acquisition by any means of a nuclear ex-
11 plosive device, a chemical or biological weapon, or
12 missile with a payload of 500 kilograms or greater
13 and with a range of 300 kilometers or greater.

14 (5) NON-NUCLEAR WEAPON STATE.—The term
15 “non-nuclear weapon state” means any state other
16 than the United States, the United Kingdom,
17 France, the Russian Federation, or the People’s Re-
18 public of China.

19 (6) PERSON.—The term “person”—

20 (A) means a natural person as well as a
21 corporation, business association, partnership,
22 society, trust, any other nongovernmental enti-
23 ty, organization, or group, and any govern-
24 mental entity, or subsidiary, subunit, or parent

1 entity thereof, and any successor of any such
2 entity; and

3 (B) in the case of a country where it may
4 be impossible to identify a specific governmental
5 entity referred to in subparagraph (A), means
6 all activities of that government relating to the
7 development or production of any nuclear
8 equipment or technology.

9 (7) UNITED STATES ASSISTANCE.—The term
10 “United States assistance” means assistance under
11 the foreign operations, export financing, and related
12 programs appropriations Act for a fiscal year, and
13 assistance under the Foreign Assistance Act of
14 1961.

15 (8) UNITED STATES PERSON.—The term
16 “United States person” has the meaning given that
17 term in section 14 of the Iran and Libya Sanctions
18 Act of 1996 (22 U.S.C. 1701 note).

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