

§ 2797b. Transfers of missile equipment or technology by foreign persons

(a) Sanctions

(1) Subject to subsections (c) through (g),¹ if the President determines that a foreign person, after November 5, 1990, knowingly—

(A) exports, transfers, or otherwise engages 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.

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

(C) 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 4612(b)(1) of title 50, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) 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—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this chapter.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b) Inapplicability with respect to MTCR adherents

(1) In general

Except as provided in paragraph (2), subsection (a) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(2) Limitation

Notwithstanding paragraph (1), subsection (a) shall apply to an entity subordinate to a government that engages in exports or transfers described in section 2295a(b)(3)(A) of this title.

(c) Effect of enforcement actions by MTCR adherents

Sanctions set forth in subsection (a) may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts, and if the President certifies to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

(1) for any judicial or other enforcement action taken by the MTCR adherent, such action has—

(A) been comprehensive; and

(B) been performed to the satisfaction of the United States; and

(2) with respect to any finding of innocence of wrongdoing, the United States is satisfied with the basis for such finding.

(d) Advisory opinions

The Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(e) Waiver and report to Congress

(1) In any case other than one in which an advisory opinion has been issued under subsection (d) stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives not less than 45 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(f) Presumption

In determining whether to apply sanctions under subsection (a) to a foreign person involved

¹ See References in Text note below.

in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 4605(j)(1)(A)² of title 50, has repeatedly provided support for acts of international terrorism.

(g) Additional 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—

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

(2) 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.

(h) Exceptions

The President shall not apply the sanction under this section prohibiting the importation of the products of a foreign person—

(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 requirements essential to the national security of the United States;

(B) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(C) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

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

(3) to—

(A) spare parts,

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

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

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

(Pub. L. 90-629, ch. 7, § 73, as added Pub. L. 101-510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1746; amended Pub. L. 102-138, title III, § 323(a), Oct. 28, 1991, 105 Stat. 711; Pub. L.

103-236, title VII, §§ 714(a)(7), 734(b), Apr. 30, 1994, 108 Stat. 497, 505; Pub. L. 104-106, div. A, title XIV, § 1408(d), Feb. 10, 1996, 110 Stat. 494; Pub. L. 105-277, div. G, subdiv. A, title XII, § 1225(a)(8), Oct. 21, 1998, 112 Stat. 2681-773; Pub. L. 106-113, div. B, § 1000(a)(7) [div. B, title XI, § 1136(b), (c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-495; Pub. L. 113-276, title II, § 208(a)(5), Dec. 18, 2014, 128 Stat. 2993.)

Editorial Notes

REFERENCES IN TEXT

Subsections (f) and (g), referred to in subsec. (a)(1), were redesignated subsecs. (g) and (h), respectively, by Pub. L. 103-236, title VII, § 734(b)(1), Apr. 30, 1994, 108 Stat. 505.

This chapter, referred to in subsec. (a)(1)(A), (2)(A)(ii), 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

2014—Subsec. (e)(2). Pub. L. 113-276 substituted “the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives” for “the Committee on National Security and the Committee on International Relations of the House of Representatives”.

1999—Subsec. (b). Pub. L. 106-113, § 1000(a)(7) [title XI, § 1136(b)], designated existing provisions as par. (1), inserted par. heading, in introductory provisions, substituted “Except as provided in paragraph (2), subsection (a)” for “Subsection (a)”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (c). Pub. L. 106-113, § 1000(a)(7) [title XI, § 1136(c)], inserted before period at end “, and if the President certifies to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

“(1) for any judicial or other enforcement action taken by the MTCA adherent, such action has—

“(A) been comprehensive; and

“(B) been performed to the satisfaction of the United States; and

“(2) with respect to any finding of innocence of wrongdoing, the United States is satisfied with the basis for such finding”.

1998—Subsec. (d). Pub. L. 105-277 substituted “and the Secretary of Commerce” for “, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency”.

1996—Subsec. (e)(2). Pub. L. 104-106 substituted “the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives” for “the Congress” and “45 working days” for “20 working days”.

1994—Subsec. (d). Pub. L. 103-236, § 714(a)(7), substituted “, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency,” for “and the Secretary of Commerce.”

Subsecs. (f) to (h). Pub. L. 103-236, § 734(b), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1991—Subsec. (a)(1)(A). Pub. L. 102-138 inserted “acquisition,” before “design.”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Af-

²So in original. Probably should be preceded by “section”.

fairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of this title.

SPACE COOPERATION WITH RUSSIAN PERSONS

Pub. L. 106-280, title VII, § 708, Oct. 6, 2000, 114 Stat. 862, as amended by Pub. L. 109-112, § 4(e)(2), Nov. 22, 2005, 119 Stat. 2370, provided that:

“(a) ANNUAL CERTIFICATION.—

“(1) REQUIREMENT.—The President shall submit each year to the appropriate committees of Congress [Committee on Foreign Relations of the Senate and Committee on Foreign Affairs of the House of Representatives], with respect to each Russian person described in paragraph (2), a certification that the reports required to be submitted to Congress during the preceding calendar year under section 2 of the Iran and Syria Nonproliferation Act (Public Law 106-178) [now Iran, North Korea, and Syria Nonproliferation Act] [50 U.S.C. 1701 note] do not identify that person on account of a transfer to Iran of goods, services, or technology described in section 2(a)(1)(B) of such Act.

“(2) APPLICABILITY.—The certification requirement under paragraph (1) applies with respect to each Russian person that, as of the date of the certification, is a party to an agreement relating to commercial cooperation on MTCR equipment or technology with a United States person pursuant to an arms export license that was issued at any time since January 1, 2000.

“(3) EXEMPTION.—No activity or transfer which specifically has been the subject of a Presidential determination pursuant to section 5(a)(1), (2), or (3) of the Iran and Syria Nonproliferation Act (Public Law 106-178) [now Iran, North Korea, and Syria Nonproliferation Act] [50 U.S.C. 1701 note] shall cause a Russian person to be considered as having been identified in the reports submitted during the preceding calendar year under section 2 of that Act for the purposes of the certification required under paragraph (1).

“(4) COMMENCEMENT AND TERMINATION OF REQUIREMENT.—

“(A) TIMES FOR SUBMISSION.—The President shall submit—

“(i) the first certification under paragraph (1) not later than 60 days after the date of the enactment of this Act [Oct. 6, 2000]; and

“(ii) each annual certification thereafter on the anniversary of the first submission.

“(B) TERMINATION OF REQUIREMENT.—No certification is required under paragraph (1) after termination of cooperation under the specific license, or 5 years after the date on which the first certification is submitted, whichever is the earlier date.

“(b) TERMINATION OF EXISTING LICENSES.—If, at any time after the issuance of a license under section 36(c) of the Arms Export Control Act [22 U.S.C. 2776(c)] relating to the use, development, or co-production of commercial rocket engine technology with a foreign person, the President determines that the foreign person has engaged in any action described in section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)) since the date the license was issued, the President may terminate the license.

“(c) REPORT ON EXPORT LICENSING OF MTCR ITEMS UNDER \$50,000,000.—[Amended section 2797 of this title.]

“(d) DEFINITIONS.—In this section:

“(1) FOREIGN PERSON.—The term ‘foreign person’ has the meaning given the term in section 74(7) of the Arms Export Control Act (22 U.S.C. 2797c(7)).

“(2) MTCR EQUIPMENT OR TECHNOLOGY.—The term ‘MTCR equipment or technology’ has the meaning given the term in section 74(5) of the Arms Export Control Act (22 U.S.C. 2797c(5)).

“(3) PERSON.—The term ‘person’ has the meaning given the term in section 74(8) of the Arms Export Control Act (22 U.S.C. 2797c(8)).

“(4) UNITED STATES PERSON.—The term ‘United States person’ has the meaning given the term in section 74(6) of the Arms Export Control Act (22 U.S.C. 2797c(6)).”

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12851, § 2(a), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title.

§ 2797b-1. Notification of admittance of MTCR adherents

(a) Policy report

Following any action by the United States that results in a country becoming a MTCR adherent, the President shall transmit promptly to the Congress a report which describes the rationale for such action, together with an assessment of that country’s nonproliferation policies, practices, and commitments. Such report shall also include the text of any agreements or understandings between the United States and such country regarding the terms and conditions of the country’s adherence to the MTCR.

(b) Intelligence assessment report

At such times that a report is transmitted pursuant to subsection (a), the Director of Central Intelligence shall promptly prepare and submit to the Congress a separate report containing any credible information indicating that the country described in subsection (a) has engaged in any activity identified under subparagraph (A), (B), or (C) of section 2797b(a)(1) of this title within the previous two years.

(Pub. L. 90-629, ch. 7, § 73A, as added Pub. L. 103-236, title VII, § 735(d), Apr. 30, 1994, 108 Stat. 506; amended Pub. L. 106-113, div. B, § 1000(a)(7) [div. B, title XI, § 1136(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A-496.)

Editorial Notes

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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.

Executive Documents

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of