

United States Law & Policy - Nonproliferation Sanctions

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The United States strongly opposes proliferation of weapons of mass destruction, accumulations of conventional weapons that would tend to increase regional tensions or instability, or any cooperation of potential military usefulness with governments that we judge to support or sponsor terrorism. In pursuit of these objectives, the United States works closely with its friends and allies, and in international and multilateral fora to advance policies of restraint.

In addition, our willingness to extend certain forms of cooperation to other governments, or in some cases to individual persons or entities, depends on whether that government, individual, or entity has transferred items or technology that facilitate proliferation of weapons of mass destruction or advanced conventional weapons, or has transferred lethal military equipment that we believe might increase tensions or regional instability. That is, if another government, or person, engages in activity that we believe contributes to proliferation, regional instability, or support for terrorism, we impose sanctions.

In general terms, sanctions means that we will not provide U.S. assistance to the offender, we will not buy products from the offender, we will not license exports to the offender, and we will not license imports from the offender into the United States.

You have no doubt heard objections to this U.S. policy. Some claim that this is "extra-territorial" – that the U.S. is seeking to enforce U.S. law outside of U.S. jurisdiction. A different, and we believe more correct, way to understand U.S. policy is that we want to cooperate with other governments, other countries, other people, but we want to cooperate with those who share certain basic values and policy objectives. We are not obligated to cooperate with you, and you are not obligated to cooperate with us. We cooperate because we both believe that it is in our respective interests to do that.

In this regard, under U.S. law the Secretary of State is charged to identify any country that transgresses a certain fundamental tenet of international behavior – a country that sponsors terrorism. At this time the countries identified as state sponsors of terrorism are Iran, Iraq, Libya, North Korea, Syria, Sudan, and Cuba. As we will see, this special category - state sponsors of terrorism - plays a key role in U.S. sanctions policy.

The United States has several laws that help guide our policy regarding the sale/transfer of arms-related and proliferation-related items to countries of concern. In addition to the laws mentioned in this paper, there are other U.S.

laws, executive orders and regulations that may be applicable to certain transactions by non-U.S. persons.

Iran-Iraq Arms Non-Proliferation Act of 1992

The Iran-Iraq Arms Non-proliferation Act of 1992 imposes mandatory sanctions on any foreign person or government that transfers or retransfers goods or technology so as to contribute knowingly and materially to efforts by Iran or Iraq to acquire chemical, biological or nuclear weapons or to acquire destabilizing numbers and types of certain advanced conventional weapons. In the case of transfers by foreign governments, the mandatory sanctions include: for a period of one year, suspension of U.S. assistance (except for urgent humanitarian assistance); suspension of codevelopment, coproduction and military and dual-use technical exchange agreements; suspension of exports to the country of items on the U.S. munitions list; and a requirement for the U.S. to oppose multilateral bank assistance to the country. The President may waive the imposition of sanctions on the ground that such waiver is "essential to the national security interest of the United States."

Iran and Libya Sanctions Act (ILSA)

The mandatory nonproliferation-related sanctions in ILSA are triggered by transfers that: (1) contribute to Libya's acquisition of WMD or advanced conventional weapons, enhance Libya's military or paramilitary capabilities, develop their petroleum resources, or maintain their aviation capabilities; and (2) are prohibited by U.N. Security Council Resolution 748. Because the relevant provisions of Resolution 748 (which relate to the Pan Am 103 bombing) have been suspended, this particular ILSA sanction cannot be triggered by activities that take place after the suspension.

Should the Secretary of State determine that activity sanctionable under ILSA has occurred, and should he decide to impose sanctions (the law also includes a provision for waiver) he must choose at least two of the following sanctions measures to be imposed with respect to the sanctioned entity: a ban on Export-Import Bank assistance; a ban on export licenses; a ban on U.S. private sector loans over \$10 million per year; a ban on USG procurement; and/or a ban or restriction on imports.

Lethal Military Equipment to State Sponsors of Terrorism

Section 62 OH of the Foreign Assistance Act (FAA) of 1961, as amended, requires withholding of assistance under the FAA from any foreign government that provides lethal military equipment to a state sponsor of terrorism. The President may waive this restriction if he determines that such assistance is "important to the national interests of the United States."

Section 620G of the FAA requires withholding assistance under the FAA from any foreign government that provides assistance to a state sponsor of terrorism. The term "assistance" is defined to include assistance provided by any means on

terms more favorable than generally available in the applicable market, whether in the form of a loan, lease, credit, debt relief or otherwise. The President may waive this restriction if he determines that such assistance is "important to the national interests of the United States."

Section 40A of the Arms Export Control Act (AECA) prohibits the export of defense articles or services to a foreign country if the President determines and notifies to Congress by May 15 of the calendar year that the country "is not fully cooperating with United States antiterrorism efforts."

Iran Nonproliferation Act of 2000

The Iran Nonproliferation Act of 2000 requires the President to submit a report to Congress every six months identifying foreign persons who have transferred items listed by the multilateral export control regimes to Iran as well as items that the U.S. would prohibit to Iran because of their potential to contribute to missile or weapons of mass destruction programs. The President is authorized to apply any or all of a list of sanctions against a foreign person included in the report. The available sanctions are: a ban on U.S. Government procurement from the foreign person; a ban on foreign assistance to the foreign person; a ban on imports from the foreign person; a ban on exports of munitions list items to the foreign person; and a ban on exports to the foreign person of items controlled under the Export Administration Act of 1979 (EAA) or the Export Administration Regulations.

UN Sanctions on Iraq

UN Security Council resolutions, in particular UNSCRs 661, 687, 986 and 1409, have established significant restrictions on trade with Iraq. UNSCR 687 prohibits any state from selling or supplying arms or related materiel to Iraq. This arms embargo remains in full force. UNSCR 1409, taken together with various previous resolutions, establishes a UN humanitarian program that allows Iraq to legitimately purchase civilian goods without prior UNSC approval, except for those goods on a UN control list comprised of dual-use items suitable for supporting conventional military, ballistic missile, nuclear, chemical and biological weapons programs (the "Goods Review List").

The annual foreign operations appropriations acts prohibit the use of funds appropriated by those acts to provide assistance to any country "not in compliance" with UNSC sanctions on Iraq. This prohibition may be waived under certain circumstances.

Nuclear Proliferation Prevention Act of 1994

Section 821 of the Nuclear Proliferation Prevention Act of 1994 provides for procurement sanctions against any non-government foreign entity determined by the President to have "materially and with requisite knowledge contributed" through its exports to the efforts of a non-nuclear-weapon state to acquire unsafeguarded special nuclear material or to use, develop, produce, stockpile, or

otherwise acquire any nuclear explosive device. This sanction can be waived after 12 months if continued imposition of the sanction "would have a serious adverse impact on vital United States interests."

Missile Sanctions Law

Section 73 of the AECA and section 11B of the EAA provide for procurement, export, and in some cases import sanctions against foreign persons who transfer MTCR-class equipment or technology that contributes to a missile program in a country that is not an MTCR adherent. The waiver standard is "essential to the national security of the United States."

Chemical and Biological Weapons Law

Section 81(a) of the AECA and Section IIC(a) of the EAA direct the President to impose sanctions against "foreign persons" (including corporations or other entities organized under the laws of a foreign country) if the President determines that a foreign person has knowingly and materially contributed, through the export of goods or technology or any other transaction, to the efforts of certain countries to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons. The sanctions are a ban on U.S. Government procurement from the foreign person and a ban on imports from the foreign person.

The duration of these sanctions is at least twelve months. Sanctions may only be terminated thereafter if: (1) a determination and certification to the Congress are made that reliable information indicates that the sanctioned entity has ceased to aid or abet any CBW project described in the law; or (2) sanctions are waived on the grounds that such a waiver is important to the national security interests of the United States.

Symington Amendment

Section 101 of the AECA prohibits the U.S. Government from providing various types of foreign assistance to any country that the President determines has delivered or received nuclear enrichment equipment, materials, or technology. The waiver standard for the Symington amendment is difficult to meet: (1) termination of assistance would have a serious adverse impact on vital U.S. interests; and (2) reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Glenn Amendment

Section 102(b) of the AECA requires sanctions against: (1) a foreign country that transfers a nuclear explosive device (or components or design information for such a device) to a non-nuclear-weapon state; (2) a non-nuclear-weapon state that receives a nuclear explosive device (or components or design information for such a device); or (3) a non-nuclear-weapon state that detonates a nuclear explosive device. Sanctions include: no foreign assistance; no arms sales; no foreign military financing; no USG credit, credit guarantees, or other financial

assistance (except related to agricultural exports); USG opposition to loans from international financing institutions; no loans from U.S. banks to the foreign government; and restrictions on U.S. dual-use exports. Congress must pass legislation authorizing a waiver.