

Chapter 5: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

A. Economic Authorities in National Emergencies

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

In 1977, Congress passed the International Emergency Economic Powers Act (IEEPA).¹ The Act grants the President authority to regulate a comprehensive range of financial and commercial transactions in which foreign parties are involved but allows the President to exercise this authority only in order “to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency . . . with respect to such threat.”

Background

Public Law 95-223, of which IEEPA constitutes title II, redefined the President's authorities to regulate international economic transactions in times of national emergency, until then provided by section 5(b) of the Trading With the Enemy Act (TWEA) (50 App. U.S.C. 5(b)), by eliminating TWEA's applicability to national emergencies² and instead providing such authorities in a separate statute of somewhat narrower scope and subject to congressional review.

The authorities initially granted to the President under IEEPA broadly parallel those contained in section 5(b) of the TWEA but are somewhat fewer and more circumscribed. While under the TWEA the existence of any declared national emergency, whether or not connected with the circumstances requiring emergency action, was used as the basis for such action, the IEEPA allows emergency measures against an external threat only if a national emergency under the National Emergencies Act has been declared with respect to the same threat.³ Nevertheless, the President's authorities under the IEEPA still remain extensive and, as noted below, were further enhanced in 2001 by the USA Patriot Act, Public Law 109-56 (Oct. 26, 2001). Under IEEPA the President may “by means of instructions, licenses, or otherwise . . . investigate, regulate, prevent, or prohibit” virtually any foreign economic transaction, from import or export of goods and currency, to transfer of exchange or credit. The only international transactions exempted from this authority are personal communications not involving a transfer of anything of value; charitable donations of necessities of life to relieve human suffering (except

¹ Public Law 95-223, title II, approved December 28, 1977, 91 Stat. 1626, 50 U.S.C. 1701-1706.

² Title I of Public Law 95-223 also provides for the continuation in force, through annual presidential extensions, of certain measures implemented on the basis of national emergencies declared under the TWEA. For further detail, see section on the Trading With the Enemy Act.

³ Public Law 94-412.

in certain circumstances); the importation to or expatriation from any country of information and informational materials, such as publications, not otherwise controlled by export control law or prohibited by espionage law; or personal transactions ordinarily incident to travel.

IEEPA was amended by section 106 of the USA Patriot Act, Public Law 107-56 (Oct. 26, 2001), to enhance its authorities. First, the Patriot Act clarified that the broad authorities granted to the President in the IEEPA include the power to block property during the pendency of an investigation. It also allows the President to confiscate and vest property of any foreign country or foreign national that has planned, authorized, aided, or engaged in armed hostilities with or attacks against the United States. In addition, the USA Patriot Act provides that in any judicial review of a determination made under the authorities section of IEEPA, if that determination was based on classified information, such information may be submitted to the reviewing court *ex parte* and *in camera*.

IEEPA requires the President to consult with Congress, whenever possible, before declaring a national emergency, and regularly while it remains in force. Once a national emergency goes into effect, the President must submit to Congress a detailed report explaining and justifying his actions and listing the countries against which such actions are to be taken, and why. The President is also required to provide Congress periodic follow up reports every six months with respect to the actions taken since the last report and report any change in information previously reported. IEEPA programs are established pursuant to a Declaration of National Emergency under the National Emergencies Act.⁴ They can be terminated by the President and are typically continued annually on the anniversary date of the declaration of the national emergency if the President determines it is necessary.

Application

Since its enactment, the authority conferred by IEEPA has been exercised on various occasions and for different purposes. For example IEEPA has been used to impose a variety of economic sanctions on foreign countries, as well as to block property and prohibit transactions with specially designated persons, such as persons who commit, threaten to commit or support terrorism; persons indicted as war criminals by the International Criminal Tribunal for the former Yugoslavia; persons who threaten international stabilization efforts in the Western Balkans; and persons undermining democratic processes or institutions in Zimbabwe. In addition, IEEPA has been used to continue in force the authority of the Export Administration Act during several periods when statutory authority has lapsed. Below are some examples of the application of the IEEPA authorities.

⁴ Public Law 94-412.

Iran

In response to the seizure of the American Embassy and hostages in Teheran, President Carter, using IEEPA authority on November 14, 1979, declared a national emergency and ordered the blocking of all property of the government of Iran and of the Central Bank of Iran within the jurisdiction of the United States.⁵ The measure and its later amendments were implemented through Iranian Assets Control Regulations (31 CFR 535). Sanctions against Iran were broadened on April 7, 1980,⁶ and April 17, 1980,⁷ to constitute eventually an embargo on all commercial, financial, and transportation transactions with Iran, with minimal exceptions. The trade embargo was revoked by President Carter on January 19, 1981, after the release of the Teheran hostages, but the national emergency has remained in effect and has been extended.⁸

President Clinton invoked his authority under IEEPA and other statutes on March 15, 1995 to prohibit the entry of any U.S. person or any entity controlled by a U.S. person into a contract involving the financing or overall supervision and management of the development of the petroleum resources located in Iran.⁹ The President imposed additional sanctions on May 8, 1995.¹⁰ The sanctions were then amended in 1997.¹¹ As discussed below, additional sanctions on Iran were imposed by the Iran and Libya Sanctions Act.¹²

Extensions of Export Control Regulations

Just as with the TWEA, the IEEPA authority also has been used on several occasions to continue in force the administration of export controls when extensions of the Export Administration Act of 1979 (EAA) have not been enacted in time to continue the export control authority in force by statutory extension. Upon the expiration of the EAA on October 15, 1983, President Reagan used the IEEPA authority to declare a national emergency and to continue in force the existing

⁵ Executive Order 12170, 44 Fed. Reg. 65729.

⁶ Executive Order 12205, 45 Fed. Reg. 24099.

⁷ Executive Order 12211, 45 Fed. Reg. 26685.

⁸ Following Iranian attacks on U.S. flag ships in the Iran-Iraq war, an embargo was reimposed on October 29, 1987 (Executive Order 12613, 52 Fed. Reg. 41,940), on imports of goods and services from Iran under the authority of section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9) and implemented through Iranian Transactions Regulations (31 CFR part 560). The embargo is still in force, although was eased somewhat to allow some agricultural trade in 2000. (31 CFR 560.535, 65 Fed. Reg. 25642, 25643). In 2004, some publishing activities were allowed to resume between the two countries. (31 CFR. 515.577, 31 CFR 538.529, and 31 CFR 560.538).

⁹ Executive Order 12957, 60 Fed. Reg. 14615.

¹⁰ Executive Order 12959, 60 Fed. Reg. 24757. See also discussion on the Iran and Libya Sanctions Act of 1996.

¹¹ Executive Order 13059, 62 Fed. Reg. 44531; 34 Weekly Comp. Pres. Doc. 2324 (Nov. 16, 1998); 31 CFR Part 560.

¹² Public Law 99-83, 22 U.S.C. 2349.

regulations for the administration of export controls.¹³ After the EAA was temporarily extended by law¹⁴ retroactively to October 15, 1983, and through February 29, 1984, the President revoked its extension under the IEEPA and rescinded the declaration of economic emergency.¹⁵ On February 29, 1984, the EAA was again extended by law¹⁶ through March 30, 1984, when the authority for administering the export control provisions again had to be extended by the President under the IEEPA authority upon the declaration of a national economic emergency.¹⁷ The extension and the declared emergency remained in force during the protracted, if unsuccessful, House-Senate attempts at resolving the disagreements on the reauthorization of the EAA during the 98th Congress, and in the 99th Congress until July 12, 1985, when the EAA was again extended by law,¹⁸ the executive extension of export controls was revoked and the emergency rescinded.¹⁹ The President invoked the IEEPA authority on September 30, 1990 to maintain existing export controls upon expiration of the EAA on that date, pending enactment of further reauthorizing legislation.

The 1990 extension of the export control authority under the IEEPA was maintained in force by means of annual continuations of the export control emergency until legislation was passed in the 106th Congress.²⁰ Upon expiration of this authority on August 20, 2001, President Bush continued the national emergency under Executive Order 13222.²¹

Nicaragua

On May 1, 1985, President Reagan, under his IEEPA powers, declared a national emergency because of the “Nicaraguan government's aggressive activities in Central America” and prohibited all imports of Nicaraguan goods and services, all exports to Nicaragua (other than those destined for the organized democratic resistance) and transactions related thereto, and all activities of Nicaraguan ships and aircraft at U.S. sea- and airports.²² The declaration of emergency and the imposed sanctions were terminated on March 13, 1990.²³

¹³ Executive Order 12444, 48 Fed. Reg. 48215.

¹⁴ Public Law 98-207, 97 Stat. 1391.

¹⁵ Executive Order 12451, 48 Fed. Reg. 56563.

¹⁶ Public Law 98-222, 98 Stat. 36.

¹⁷ Executive Order 12470, 49 Fed. Reg. 13099.

¹⁸ Export Administration Act of 1979, Reauthorization; Public Law 99-64, 1985, 99 Stat. 120.

¹⁹ Executive Order 12525, 50 Fed. Reg. 28757.

²⁰ Public Law 106-508.

²¹ 66 FR 44025.

²² Executive Order 12513, 50 Fed. Reg. 18629. The embargo is implemented by Nicaraguan Trade Control Regulations (31 CFR part 540).

²³ Executive Order 12707, 55 Fed. Reg. 9707.

South Africa

IEEPA was also used by President Reagan to declare a national emergency with respect to South Africa because of its “policy and practice of apartheid” and impose, using also several other authorities, effective on October 11, 1985, an embargo on certain trade (including specifically the importation of krugerrands) and financial transactions with the government of South Africa.²⁴ The embargo, implemented through South African Transactions Regulations (31 CFR 545), was later greatly expanded, and additional economic sanctions were imposed by the Comprehensive Anti-Apartheid Act of 1986,²⁵ upon the enactment of which the President allowed the declaration of the South African emergency to expire.²⁶

Under the South African Democratic Transition Support Act of 1993, Congress repealed certain sections of the Comprehensive Anti-Apartheid Act and provided for the total repeal of the Act upon certification by the President that an interim government, elected on a non-racial basis through free and fair elections, had taken office in South Africa.²⁷ President Clinton sent such certification to Congress on June 8, 1994.²⁸

Libya

President Reagan similarly used the IEEPA authority, among several others, to impose economic sanctions on Libya because of Libyan-supported terrorist attacks on the Rome and Vienna airports. On January 7, 1986, he declared a national emergency and prohibited all trade (with minimal exceptions) and transportation transactions with Libya, extension of credit to the Libyan government, and personal travel to or within Libya.²⁹ On the following day, he ordered the blocking of all property and interests of the Libyan government and its instrumentalities in the United States.³⁰ These measures are implemented by Libyan Sanctions Regulations (31 CFR 550). Also in 1992 the President used IEEPA authority to place restrictions on air travel to and from Libya.³¹ As discussed below additional sanctions were imposed on Libya by the Iran and Libya Sanctions Act of 1996.³² In response to Libya’s commitments and actions to abandon its weapons of mass destruction programs and cooperate in efforts against international terrorism, on

²⁴ Executive Order 12532, 50 Fed. Reg. 36861; Executive Order 12535, 50 Fed. Reg. 40325.

²⁵ Public Law 99-440, 100 Stat. 1086, 22 U.S.C. 5001 et seq.

²⁶ Weekly Compilation of Presidential Documents, v. 23, no. 36, September 14, 1987, p. 997.

²⁷ Public Law 103-149, 22 U.S.C. 5001 note.

²⁸ Message to the Congress on Elections in South Africa, 30 Weekly Compilation of Documents 1258 (June 8, 1994).

²⁹ Executive Order 12543, 51 Fed. Reg. 875.

³⁰ Executive Order 12544, 51 Fed. Reg. 1235.

³¹ Executive Order 12308, 57 Fed. Reg. 14319.

³² Public Law 99-83, 22 U.S.C. 2349.

September 20, 2004, President George W. Bush terminated the national emergency declared in respect to Libya and ended most sanctions.³³

Panama

President Reagan, on April 8, 1988, under the IEEPA authority, declared a national emergency with respect to Panama and ordered the imposition of economic sanctions on that country³⁴ because of “the actions of Manuel Antonio Noriega and Manuel Solis Palma, to challenge the duly constituted authorities of the government of Panama.” The order involved the blocking of all property and interests of the government of Panama, including all its agencies and instrumentalities and controlled entities, that are or may come within the United States. The blocking applies specifically to payments of transfers of any kind or financial transactions for the benefit of the Noriega-Solis regime from the United States or by any physical or legal U.S. person located in Panama. The order, implemented through Panamanian Transactions Regulations (31 CFR 565), was revoked on April 5, 1990.³⁵

Iraq and Kuwait

On August 2, 1990, in response to the Iraqi invasion of Kuwait, President Bush, declared a national emergency and, using IEEPA authorities, blocked Iraqi and Kuwaiti government property and prohibited all transactions with Iraq, except exports and imports of informational materials and donations to relieve human suffering.³⁶ Additional restrictions, including a prohibition of all transactions with Kuwait, were imposed a week later. Regulations implementing the restrictions were promulgated with respect to Kuwait on November 30, 1990, and with respect to Iraq on January 18, 1991.³⁷ The Kuwaiti sanctions were revoked on July 25, 1991, after the liberation of Kuwait.³⁸ On March 20, 2003 the President took additional steps with respect to the national emergency and, using the authorities of IEEPA as amended by the USA Patriot Act, ordered the confiscation and vesting of certain property of the Government of Iraq and its agencies, instrumentalities, and controlled entities that had been blocked in the United States.³⁹ On July 29, 2004 President George W. Bush terminated the national emergency and lifted most of the related economic sanctions by Executive Order 13350.⁴⁰

³³ Executive Order 13357, 69 Fed. Reg. 56665.

³⁴ Executive Order 12635, 53 Fed. Reg. 12134.

³⁵ Executive Order 12710, 55 Fed. Reg. 13099.

³⁶ Executive Order 12722, 55 Fed. Reg. 31803 and Executive Order 12723, 55 Fed. Reg. 31805.

³⁷ Kuwaiti Assets Control Regulations, 55 Fed. Reg. 49856, 31 CFR 570; Iraqi Sanctions Regulations, 56 Fed. Reg. 2112, 31 CFR 575.

³⁸ Executive Order 12771, 56 Fed. Reg. 35993.

³⁹ Executive Order 13290, 68 Fed. Reg. 14307.

⁴⁰ Executive Order 13350, 69 Fed. Reg. 46055

Threats Related to Chemical, Biological and Nuclear Weapons

President Bush also used his authority under the IEEPA and other acts to declare a national emergency on November 16, 1990 with respect to the threat posed to the national security and foreign policy of the United States by the proliferation of chemical and biological weapons.⁴¹ Under this declaration, the President ordered that trade sanctions be imposed against foreign persons determined by the Secretary of State as having used or made substantial preparations to use chemical or biological weapons in violation of international law. This order was implemented under the Export Administration Regulations on Proliferation Controls.⁴²

The national emergency was expanded by President Clinton to include the proliferation of nuclear weapons on November 14, 1994⁴³ through Executive Order 12938. On July 28, 1998 President Clinton amended this Executive Order imposing, among other measures, an import ban on certain foreign persons determined by the Secretary of State to have engaged in activities related to the proliferation of weapons of mass destruction.⁴⁴ Later on June 26, 2000, President Clinton used IEEPA to specifically address the accumulation of weapons-usable fissile material by the Russian Federation, by issuing Executive Order 13159 (65 Fed. Reg. 39279). This Executive Order blocked property of the Russian Federation relating to the disposition of highly enriched uranium extracted from nuclear weapons in order to protect the property from legal action and help facilitate an international agreement between the United States and Russia relating to the conversion of highly enriched uranium from nuclear weapons for use in commercial nuclear reactors.⁴⁵

Haiti

President Bush used his authority under IEEPA and other acts on October 4, 1991 to declare a national emergency with respect to the illegal seizure of power from the democratically elected government of Haiti.⁴⁶ Under this declaration, all property and interests of the de facto regime in Haiti were blocked. The order was expanded by the President on October 28, 1991 to prohibit trade and other transactions with Haiti.⁴⁷ These measures were subsequently implemented by the Haitian Transactions Regulations.⁴⁸ After the signing of the Governors Island Agreement on July 3, 1993, U.S. trade restrictions against Haiti were suspended, and new financial and other transactions with the government of Haiti were authorized consistent with

⁴¹ Executive Order 12735, 55 Fed. Reg. 48587.

⁴² 15 CFR part 778.

⁴³ Executive Order 12938, 59 Fed. Reg. 59099.

⁴⁴ Executive Order 13094, 63 Fed. Reg. 40803; 31 CFR Part 539.

⁴⁵ Executive Order 13159, 65 Fed. Reg. 39279.

⁴⁶ Executive Order 12775, 56 Fed. Reg. 50641.

⁴⁷ Executive Order 12779, 56 Fed. Reg. 55975.

⁴⁸ 31 CFR part 580.

U.N. Security Council Resolution 861. The rule, however, did not unblock property of the government of Haiti that was blocked before August 30, 1993. Due to the failure of the de facto regime in Haiti to fulfill its obligations under the Governors Island Agreement, the restrictions against trade, as well as financial and other transactions, with Haiti were reimposed on October 19, 1993.⁴⁹ In response to the restoration of the democratically elected government of Haiti, President Clinton terminated the national emergency on October 14, 1994.⁵⁰

The Former Yugoslavia and the Balkans

In response to the involvement of Serbia and Montenegro with groups attempting to seize territory in Croatia and Bosnia-Herzegovina, President Bush declared a national emergency under the IEEPA and other authorities on May 30, 1992, blocking all property and interests of the governments of Serbia and Montenegro in the United States.⁵¹ Additional orders were later issued by the President to prohibit trade and other transactions with Serbia and Montenegro.⁵² The orders were implemented in the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY(S&M)) Sanctions Regulations (31 CFR 585). The emergency with respect to Serbia and Montenegro was expanded in scope on October 25, 1994 to include the Bosnian Serb military and the areas of the Republic of Bosnia and Herzegovina under the control of those forces.⁵³ In conjunction with the acceptance by the various relevant parties of the Dayton peace accords, on December 27, 1995, President Clinton directed the suspension of sanctions against the FRY(S&M) while keeping previously blocked property blocked.⁵⁴

On June 9, 1998, in response to the actions of the FRY (S&M) in Kosovo, President Clinton declared a second national emergency under the IEEPA blocking the property and interests in property of the governments of the FRY (S&M) as well as the governments of Serbia and Montenegro.⁵⁵ Subsequently, President Clinton also imposed a broad trade embargo on the FRY (S&M).⁵⁶ In response to a peaceful democratic transition begun in the FRY (S&M) by newly elected leaders, on January 17, 2001, President Clinton lifted and modified, with respect to future transactions, most of the economic sanctions imposed against the FRY (S&M) while imposing continuing restrictions on certain persons, including persons under

⁴⁹ Presidential Notice of September 30, 1993 (58 Fed. Reg. 51563); Haitian Transactions Regulations, 31 CFR part 580.

⁵⁰ Executive Order 12932, 59 Fed. Reg. 52403.

⁵¹ Executive Order 12808, 57 Fed. Reg. 23299.

⁵² Executive Order 12810, 57 Fed. Reg. 2,347; Executive Order 12831, 58 Fed. Reg. 5253; Executive Order 13121, 64 Fed. Reg. 24021.

⁵³ Presidential Notice of May 25, 1994 (59 Fed. Reg. 27,429); Executive Order 12934, 59 Fed. Reg. 54119.

⁵⁴ Presidential Determination 96-7 of December 27, 1995 (61 Fed. Reg. 2887).

⁵⁵ Executive Order 13088, 63 Fed. Reg. 32109.

⁵⁶ Executive Order 13121, 64 Fed. Reg. 24021.

open indictment for war crimes by the International Criminal Tribunal for the Former Yugoslavia (ICTY).⁵⁷ Previously blocked property remained blocked.

In October 2001 and February 2003, significant amounts of previously blocked property were unblocked pursuant to general licenses issued by the Department of the Treasury.⁵⁸ Both the 1992 national emergency relating to Bosnia & Herzegovina and the 1998 national emergency relating to Kosovo were revoked. On June 26, 2001, in response to extremist violence and acts obstructing multilateral stabilization efforts in the Western Balkans region, President George W. Bush declared a national emergency under the IEEPA blocking the property of persons determined to be engaged in such violent and obstructionist activities.⁵⁹

Angola

On September 26, 1993, President Clinton declared a national emergency under the IEEPA and other acts with respect to the actions and policies of the National Union for the Total Independence of Angola (UNITA).⁶⁰ As a result of this emergency, the President's order prohibited the sale or supply of arms and related material or petroleum and petroleum products to Angola, except through designated points of entry. These restrictions, implemented by the UNITA (Angola) Sanctions Regulations, were revoked on May 6, 2003.⁶¹

Persons Disrupting the Middle East Peace Process

President Clinton also invoked his authority under the IEEPA and other acts to declare a national emergency on January 23, 1995 with respect to the disruption of the Middle East peace process by foreign terrorists.⁶² In this declaration, the President prohibited all transactions with persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, as having committed or posing a significant risk of committing acts of violence to disrupt the Middle East peace process.

Burma

President Clinton issued IEEPA declarations with respect to Burma's repression of democratic oppression (Executive Order 13047 (62 FR 28301)) on May 22, 1997. This Executive Order sought to prohibit new investments in Burma, and

⁵⁷ Executive Order 13192, 66 Fed. Reg. 7379.

⁵⁸ See 66 Fed. Reg. 50506; 67 Fed. Reg. 78973.

⁵⁹ Executive Order 13219, 66 Fed. Reg. 34777.

⁶⁰ Executive Order 12865, 58 Fed. Reg. 51,005.

⁶¹ UNITA (Angola) Sanctions Regulations, 58 Fed. Reg. 64,904, 31 CFR part 590; Executive Order 13098, 63 Fed. Reg. 44771.

⁶² Executive Order 12947, 60 Fed. Reg. 5,079.

additional sanctions against Burma were established by the Burmese Freedom and Democracy Act of 2003, as discussed below.

Sudan

On November 3, 1997, President Clinton used IEEPA authority to block Sudan government property and prohibit certain transactions with Sudan because of Sudan's support for international terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations.⁶³ Congress later responded with legislation to address a problem U.S. companies were experiencing in locating high quality gum arabic in countries outside of Sudan.⁶⁴ The legislation, passed in 2000, required that requests for licenses to import the highest commercial grade of gum arabic from Sudan be promptly considered, and that the Secretaries of State and Treasury (in consultation with the Secretary of Commerce and heads of other appropriate agencies) should consider whether adequate quantities of this grade of gum arabic are available in countries other than Sudan.

Afghanistan, the Taliban, and International Terrorism

On July 4, 1999, President Clinton used his IEEPA authority against the Taliban in Afghanistan.⁶⁵ This emergency was terminated by President Bush on July 3, 2002⁶⁶ when he added the Taliban and Mohammed Omar to the list of terrorists and supporters of terrorism contained in the Annex to Executive Order 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism.⁶⁷ This Executive Order 13224 was issued by the President on September 23, 2001 following the attacks of September 11, 2001 and declares a national emergency with respect to the grave acts of international terrorism. In this Executive order, the President blocked all property and interests in property and prohibited U.S. persons from engaging in any transactions with 27 persons identified in the Annex to the order.⁶⁸ He further delegated authority to the Secretary of State to name additional foreign persons against whom these sanctions would be imposed upon a determination, in consultation with the Secretaries of Treasury and Homeland Security⁶⁹ and the Attorney General, that such foreign persons have committed or pose a significant risk of committing acts of terrorism

⁶³ Executive Order 13067, 62 Fed. Reg. 59989.

⁶⁴ Public Law 106-476.

⁶⁵ Executive Order 13129, 64 Fed. Reg. 36750. The President continued the emergency on July 5, 2000 (65 Fed. Reg. 41549).

⁶⁶ Executive Order 13268, 67 Fed. Reg. 44751.

⁶⁷ Executive Order 13224, 66 Fed. Reg. 49079.

⁶⁸ Since amended by Executive Order 13268, *supra*.

⁶⁹ The Secretary of Homeland Security was added to the consultation process on January 23, 2003 by Executive Order 13284, 68 Fed. Reg. 4075.

that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States. The President further delegated authority to the Secretary of the Treasury to name additional persons against whom these sanctions would be imposed upon a determination, in consultation with the Secretaries of State and Homeland Security⁷⁰ and the Attorney General, that such persons are owned and controlled by, operating for or on behalf of, assisting, sponsoring, providing financial, material, technological support or services, or are otherwise associated with persons named pursuant to the Order and subjected to the Order's sanctions. Since the issuance of the Executive Order, hundreds of additional persons have been designated.

Trade in Illicit Diamonds: Sierra Leone and Liberia

On January 18, 2001, President Clinton declared a national emergency in response to the insurgent Revolutionary United Front's illicit trade in diamonds by prohibiting, with limited exception, the importation of rough diamonds from Sierra Leone into the United States (Executive Order 13194 (66 FR 7389)). President Bush, in response to the Government of Liberia's complicity in this illicit trade, expanded the scope of the national emergency on May 22, 2001, and prohibited the importation of rough diamonds from Liberia (Executive Order 13213 (66 FR 28829)). Congress passed legislation, The Clean Diamond Trade Act of 2003, on this issue as discussed below.⁷¹

Trafficking in Persons

On October 28, 2000, Congress passed legislation that would authorize the exercise of IIEPA authority in the case of trafficking in persons.⁷² Under Section 111 of the Trafficking Victims Protection Act of 2000, the President is authorized to use IIEPA powers to address any foreign person that plays a significant role in a severe form of trafficking in person, directly or indirectly in the United States, as well as certain foreign persons that assist, support, provide goods or services to, or are owned, controlled, directed, by or acting on behalf of a person playing a significant role in a severe form of trafficking. The President is also authorized to delegate the authorities granted under this section.⁷³

⁷⁰ The Secretary of Homeland Security was added to the consultation process on January 23, 2003 by Executive Order 13284, 68 Fed. Reg. 4075.

⁷¹ Public Law 108-19, 19 U.S.C. 3901-13.

⁷² Section 111 of Public Law 106-386.

⁷³ Section 111 of Public Law 106-386.

TRADING WITH THE ENEMY ACT

The Trading With the Enemy Act⁷⁴ (TWEA) prohibits trade with any enemy or ally of an enemy during time of war. From enactment in 1917 until 1977, the scope of the authority granted to the President under this Act was expanded to provide the statutory basis for control of domestic as well as international financial transactions and was not restricted to trading with “the enemy.” In response to the use of the Act’s authority under section 5(b) during peacetime for domestic purposes that were often unrelated to a preexisting declared state of emergency, Congress amended the Act in 1977. In 1977 Congress removed from the TWEA the authority of the President to control economic transactions during peacetime emergencies.⁷⁵ Similar authorities, though more limited in scope and subject to the accountability and reporting requirements of the National Emergencies Act,⁷⁶ were conferred upon the President by the International Emergency Economic Powers Act, enacted in 1977 as title II of Public Law 95-223.⁷⁷ Presidential authority during wartime to regulate and control foreign transactions and property interests were retained under the Trading With the Enemy Act. In addition, the 1977 legislation authorized the continuation of various foreign policy controls implemented under the Trading With the Enemy Act, such as trade embargoes and foreign assets controls. The retention of such existing controls, however, was made subject to one-year extensions conditioned upon a presidential determination that the extension is in the national interest.

Background

The Trading With the Enemy Act was passed in 1917 “to define, regulate, and punish trading with the enemy.” The Act was designed to provide a set of authorities for use by the President in time of war declared by Congress. In its original 19 sections, the TWEA provided general prohibitions against trading with the enemy; authorized the President to regulate and prohibit international economic transactions by means of license or otherwise; established an office to administer U.S.-held foreign property; and set up procedures for claims to such property by non-enemy persons, among other provisions. The original 1917 Act appeared not to

⁷⁴ Public Law 65-91, ch. 106, 40 Stat. 411, 50 App. U.S.C. 1-44.

⁷⁵ Public Law 95-223, title I.

⁷⁶ The National Emergencies Act provided a statutory role for Congress in the declaration and termination of national emergencies. Public Law 94-412, 90 Stat. 1255, 50 U.S.C. 1601 et seq.

⁷⁷ See discussion of International Emergency Economic Powers Act, *supra*.

authorize the control of domestic transactions and limited its use to wartime exigencies.

Over the years, through use and amendment of section 5(b), the basic authorizing provision, the scope of presidential actions under the TWEA was greatly expanded. First, the Act was expanded to control domestic as well as international transactions. Second, the authorities of the Act were used to apply to presidentially declared periods of “national emergency” as well as war declared by Congress. From 1933, when Congress retroactively approved President Roosevelt’s declaration of a national banking emergency by expanding the use of section 5(b) to include national emergencies, until 1977, when Congress amended section 5(b) by passage of title I of Public Law 95-223, the President was authorized in time of war or national emergency to:

- (1) regulate or prohibit any transaction in foreign exchange, any banking transfer, and the importing or exporting of money or securities;
- (2) prohibit the withdrawal from the United States of any property in which any foreign country or national has an interest;
- (3) vest, or take title to, any such property; and
- (4) use such property in the interest and for the benefit of the United States.⁷⁸

The Trading With the Enemy Act did not provide a statement of findings and standards to guide the administration of section 5(b). There was no provision in the Act for congressional participation or review or for presidential reporting at specified periods for actions undertaken under section 5(b). There was no fixed time period for terminating a state of emergency. Nor was there any practical constraint on limiting actions taken under emergency authority to measures related to the emergency.

Application

By 1977 a state of national emergency had been declared by the President on four occasions and left unrescinded. In 1933 President Roosevelt declared a national emergency to close the banks temporarily and to issue emergency banking regulations. In 1950 President Truman declared a national emergency in connection with the Korean conflict. President Nixon declared a national emergency in 1970 to deal with the Post Office strike and another in 1971 based on the balance-of-payments crisis. As one measure to remedy this crisis, President Nixon at the same time imposed an import surcharge without specifically referring to section 5(b), but later did take recourse to it as an additional authority when the action was challenged in court.⁷⁹

⁷⁸ Public Law 95-223.

⁷⁹ In mid-1974, the U.S. Customs Court found the President’s action unconstitutional with respect to all invoked authorities, but this decision was later reversed on appeal with respect to section 5(b). *U.S. v. Yoshida International*, 526 F.2d 560 (C.C.P.A. 1975). The surcharge was terminated after having been in force for somewhat over 4 months, long before the lower court’s decision.

Based on these states of emergency, Presidents have used the powers of section 5(b) to deal with a number of varied events. In 1940 and 1941, President Roosevelt used section 5(b) to freeze the U.S.-held assets of the Axis powers and countries occupied by them to prevent their falling into the hands of the enemy powers. In August 1941, President Roosevelt, under section 5(b) authority, ordered the imposition of consumer credit controls by the Federal Reserve Board as an anti-inflationary measure. These executive uses by President Roosevelt were retroactively ratified by Congress.

The 1950 Korean emergency has been used in conjunction with section 5(b) powers for a wide range of controls among them the imposition of a total embargo on transactions with China and North Korea in December 1950 which was extended to North Vietnam in May 1964 and to Cambodia and South Vietnam in April 1975.⁸⁰ In 1968, President Johnson, citing the authority of section 5(b) and the continued existence of the 1950 emergency, imposed foreign direct investment controls on U.S. investors. These controls remained in effect until they were eliminated by legislation in 1974. During the period 1969 through 1976, Presidents have invoked the 1950 and 1971 emergencies to extend temporarily export control regulations.

Four sets of regulations controlling international transactions with specific countries, imposed under the former national emergency authority of section 5(b) and during the Korean national emergency, continued in effect after 1977 pursuant to the 1-year extension authority of title I of Public Law 95-223. First, under the Foreign Assets Control Regulations, virtually all transactions between the United States and North Korea, Vietnam, and Cambodia were prohibited unless licensed by the Department of the Treasury. The regulations also blocked all assets of those countries held in the United States.

Later, the embargo with respect to Cambodia and Vietnam was lifted, and the property of these countries in the United States was unblocked.⁸¹ On October 21, 1994, the United States and North Korea agreed, in the context of broader negotiations, to begin reducing barriers to trade and investment. Based on these mutual commitments, a limited number of restrictions under the embargo against North Korea was lifted.⁸² On June 19, 2000, all but a few of the remaining restrictions on trade with North Korea were lifted in order to improve overall bilateral relations and encourage North Korea to continue to refrain from testing long-range missiles.⁸³

⁸⁰ In mid-1971, trade embargo on China was in practice lifted, and on January 31, 1980, the applicability of any restrictive measures imposed under section 5(b) was terminated with respect to China (45 Fed. Reg. 7224).

⁸¹ Foreign Assets Control Regulations; Unblocking of Cambodian Assets, 59 Fed. Reg. 60558, 31 CFR part 500; Foreign Assets Control Regulations, Unblocking of Vietnamese Assets, 60 Fed. Reg. 12885, 31 CFR part 500.

⁸² Foreign Assets Control Regulations, North Korean Travel and Financial Transactions; Information and Informational Materials, 60 Fed. Reg. 8933, 31 CFR part 500.

⁸³ Foreign Assets Control Regulations, 65 Fed. Reg. 38165, 31 CFR part 500.

Second, the Cuban Assets Control Regulations,⁸⁴ based on section 5(b) as well as on foreign assistance legislation, (see also section on the embargo on transactions with Cuba) impose a ban on virtually all transactions in which Cuba or Cuban nationals have an interest.

Third, Transaction Control Regulations,⁸⁵ prohibiting any person within the United States⁸⁶ from engaging in any trade or trade-financing transaction involving transfer of strategic commodities from a foreign country to a Communist country (still including formerly Communist countries), are also based on section 5(b) of the Trading With the Enemy Act.

Fourth, the wartime anti-Axis Foreign Funds Control Regulations,⁸⁷ issued under the authority of section 5(b), remained in effect in part until the remaining sanctioned countries of Estonia, Latvia, and Lithuania achieved their independence and were removed from the sanctioned country list on September 29, 1992.⁸⁸

B. Embargo on Transactions with Cuba

While almost totally restrictive controls had been placed on U.S. exports to Cuba even earlier,⁸⁹ under the general authority of the Export Control Act of 1949, specific authority for a total trade embargo on Cuba was contained in section 620(a) of the Foreign Assistance Act of 1961.⁹⁰ Based on this authority "to establish and maintain a total embargo upon all trade between the United States and Cuba," President Kennedy proclaimed the embargo and directed the Secretaries of the Treasury (for imports) and of Commerce (for exports) to implement it. Both Secretaries were also given the authority to modify the embargo in the national interest.⁹¹

The export embargo already being in force, the added ban on imports from Cuba was implemented through Cuban Import Regulations,⁹² to which were subsequently added, in general terms, all transactions falling within the authority of the Trading With the Enemy Act (TWEA), based on the specific addition of TWEA to the statutory authority for the regulations.⁹³ Under this broader authority, Cuban Assets Control Regulations applicable to imports from Cuba as well as, in great detail, to non-trade transactions with Cuba were promulgated.⁹⁴ After several changes, these regulations still remain in force. The embargo on transactions with Cuba is

⁸⁴ 31 CFR part 515.

⁸⁵ 31 CFR part 505.

⁸⁶ Any "person within the United States" includes foreign subsidiaries of U.S. firms.

⁸⁷ Formerly 31 CFR part 520.

⁸⁸ Foreign Funds Control Regulations, 60 Fed. Reg. 33725, 31 CFR part 520.

⁸⁹ 25 Fed. Reg. 1006.

⁹⁰ Public Law 87-195, 22 U.S.C. 2370(a)(1).

⁹¹ Proclamation 6447, 27 Fed. Reg. 1085.

⁹² 31 CFR 515, 27 Fed. Reg. 1085.

⁹³ 27 Fed. Reg. 2765.

⁹⁴ 28 Fed. Reg. 6974.

implemented at present for exports by the Export Administration Regulations (15 U.S.C. 768-799.2), particularly sections 770, 785.1, and 799.1, and for imports and other transactions by the Cuban Assets Control Regulations (15 CFR 515). (These regulations were later codified by the Cuban Liberty and Democratic Solidarity Act, discussed below. A ban on imports from Cuba and a tightening of the regulations on non-tourist travel to Cuba was included in the Trade Sanctions Reform and Export Enhancement Act of 2000, discussed below.)

The provisions of section 620(a) of the Foreign Assistance Act of 1961 and the regulatory exercise with respect to Cuba of authorities under the TWEA, the International Emergency Economic Powers Act, and the Export Administration Act of 1979, however, were preempted by the Cuban Democracy Act of 1992 (title XVII of the National Defense Authorization Act of 1992)⁹⁵ to the extent that they have been either restated or modified by provisions of that Act. Section 1705 of the Act specifically permits donations of food to Cuban non-governmental organizations and individuals; with some exceptions and, subject to specific licenses and end-use verification, exports of medicines and medical supplies and equipment; providing telecommunications services and appropriate facilities, and issuing licenses for related payments; direct mail service between the United States and Cuba; and assistance for promoting non-violent democratic change in Cuba.

On the other hand, section 1706 enacts specific restrictions: it prohibits the issuance of licenses for any transactions of American-owned firms in foreign countries with Cuba, previously permitted by the relevant regulation;⁹⁶ requires specific license for a ship to load or unload any freight in a U.S. port if it has traded, within the past 180 days, with a Cuban port; or to enter a U.S. port or obtain ship stores if it is carrying goods or passengers to or from Cuba, or Cuban goods. These restrictions do not apply to activities allowed by sections 1705 or 1707 of the Act, or to transactions in informational materials unless subject to national security or espionage controls. The President is required to set strict controls on remittances to Cubans for the purpose of financing their travel to the United States.

The law authorizes a relaxation of the embargo by permitting humanitarian aid to Cuba under foreign assistance and Food-for-Peace legislation if the President determines that the Cuban government has made and is implementing commitments to hold free elections and respect internationally recognized worker rights and basic democratic freedoms, and is not materially supporting groups in other countries seeking violent overthrow of the government. The President also is authorized to waive the restrictions of section 1706 if he determines that the Cuban government has taken steps that provide various political, human rights, and economic freedoms, and is directed to take various actions (including steps to end the trade embargo) to assist a freely and democratically elected Cuban government. The Act empowers the Secretary of the Treasury to enforce its provisions under the authority

⁹⁵ Public Law 102-484, 22 U.S.C. 6001 et seq.

⁹⁶ Public Law 104-114; 31 CFR 515 and 559.

of the TWEA, to which provisions for civil penalties, forfeitures, and judicial review are added.

THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT

In 1996, the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act was enacted to further strengthen U.S. sanctions against Cuba.⁹⁷ The legislation, which is commonly referred to as “Helms-Burton” or the “LIBERTAD Act,” contains a number of new sanction provisions. Title I of the Act provides that the Cuban embargo as in force on March 1, 1996 (including the executive branch discretion contained therein), is to remain in effect until the President takes certain steps outlined in section 204 of the Act to suspend or terminate the embargo based on the existence of a transition government or a democratically elected government in Cuba.

In title III, the Helms-Burton legislation allows U.S. nationals, including Cuban-Americans who became U.S. citizens after their properties were confiscated, to sue for money damages in U.S. Federal court those persons who traffic in their confiscated property. The President has the authority to delay implementation of title III provisions for a period of up to 6 months at a time if he determines that such a delay would be in the national interest and would expedite a transition to democracy in Cuba. On July 16, 1996, the President announced that he would allow title III to go into effect, but would suspend for 6 months the right of individuals to file lawsuits. In making his announcement, the President indicated that the liability of foreign companies under Helms-Burton would be established during the suspension period and that legal action could be taken against them immediately upon the lifting of the suspension. Since then, the right to bring a cause of action under title III has been suspended by the President at 6 month intervals.

Under the provisions in title IV of the Helms-Burton legislation, certain aliens involved in the confiscation or trafficking of U.S. property in Cuba, a claim to which is owned by a U.S. citizen, are denied U.S. visas and excluded from the United States. The ban applies to corporate officers, principals, or shareholders with a controlling interest of an entity involved in this activity. It also applies to the spouses, minor children, and agents of aliens who are excluded under the provision. This provision of the Act is mandatory and is waiveable on a case-by-case basis for travel to the United States only for humanitarian medical reasons or for purposes of litigation of an action under title III. On June 12, 1996, the guidelines for implementing title IV provisions were published in the Federal Register.⁹⁸ This notice stipulated that the admission sanction would not apply to persons merely having business dealings with persons excluded under the title's provisions. To date, the State Department has applied the visa provision to a number of executives and their families from three companies because of their investment in confiscated U.S.

⁹⁷ Public Law 104-114; 222 U.S.C. 6021 et seq.

⁹⁸ 61 Fed. Reg. 30655.

property in Cuba: Grupos Domos, a Mexican telecommunications company; Sherritt International, a Canadian mining company; and BM Group, an Israeli citrus company. In 1997, Grupos Domos disinvested from U.S.-claimed property, and as a result its executives are again eligible to enter the United States. Action against executives from STET, an Italian telecommunications company was averted by a July 1997 agreement in which the company agreed to pay the U.S.-based ITT Corporation for the use of ITT-claimed property in Cuba for 10 years.

In addition to these major provisions, section 103 of the Helms-Burton legislation prohibits loans, credits, or other financing by any U.S. national, U.S. agency, or permanent resident alien for financing transactions involving any property confiscated by the Cuban government, the claim to which is owned by a U.S. national (except for financing by the U.S. national owning such a claim for a transaction permitted by U.S. law). Section 106(d) of the Act requires that U.S. assistance for independent states of the former Soviet Union be withheld by an amount equal to the sum of assistance and credits provided (on or after March 12, 1996) in support of intelligence facilities in Cuba, including the facility at Lourdes, Cuba. However, Russia closed its Lourdes facility in August 2002.

Section 104 of the Act requires the United States to vote against Cuba's admission to the international financial institutions (IFIs) until the President has submitted a determination that a democratically elected government is in power. The provision also requires the reduction of U.S. payment to any IFI if it approves a loan or other assistance to Cuba over the opposition of the United States. Finally, title II of the law contains numerous conditions for determining when a "transition" government and a "democratic" government is in power in Cuba, conditions which would qualify Cuba for various types of U.S. assistance and would lead to suspension of U.S. trade sanctions against Cuba.

C. Economic Sanctions Against Libya, Iran, and Iraq (Including Broader Provisions Against International Terrorism)

THE INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1985

Section 504 of the International Security and Development Act of 1985⁹⁹ gives the President specific authority to prohibit all imports to the United States from Libya or the export to Libya of any goods or technologies subject to U.S. jurisdiction. As noted above and discussed in the following section, on September 20, 2004, President George W. Bush ended most sanctions applied under this and other legislative authority against Libya in response to that nation's efforts to end its weapons of mass destruction programs and cooperate in efforts against international terrorism.¹⁰⁰ Section 505 of the International

⁹⁹ Public Law 99-83, 22 U.S.C. 2349 aa-8, aa-9.

¹⁰⁰ Executive Order 13357, 69 Fed. Reg. 56665.

Security and Development Act of 1985¹⁰¹ also gives the President broader discretionary authority to restrict or ban imports from any country which the United States determines “supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations.” The section requires advance consultations with Congress before invoking the authority and a semi-annual report to Congress with respect to actions taken since the last report and any changes which may have occurred since the last report.

IRAQ SANCTIONS ACT OF 1990

The Iraq Sanctions Act of 1990 was enacted as part of the Foreign Operations, Export Financing, and Related Program Appropriations Act for Fiscal Year 1991,¹⁰² in response to Iraq's invasion of Kuwait on August 2, 1990. The Act makes a number of declarations concerning Iraq's invasion of Kuwait and requires the President to consult with the Congress on U.S. actions taken in response.

Section 586C enacts into law the trade embargo and other economic sanctions imposed on Iraq by presidential executive order under authority of the International Emergency Economic Powers Act and the National Emergencies Act.¹⁰³ Those sanctions entailed a near-total prohibition on transactions between the United States and Iraq, including a ban on: imports and exports; most travel and fulfillment of contracts; and credits and loans. The executive orders also froze all assets of the governments of Iraq and Kuwait. Section 586C requires the President to notify Congress at least 15 days before the termination of any of the above sanctions. Section 586E imposes civil and criminal penalties on persons violating the executive orders.

The Iraq Sanctions Act also imposes sanctions on Iraq beyond those imposed by executive order. Section 586G imposes a wide range of sanctions, including a ban on the following transactions: arms sales; exports of certain goods and technology, including nuclear technology and equipment; U.S. government credits and credit guarantees; and other forms of assistance. Those sanctions may be waived by the President if he makes a certification of fundamental changes in Iraqi leadership, policies, or actions, under criteria set forth in section 586H.

The Act contains provisions aimed at increasing compliance by third countries with U.N. Security Council sanctions against Iraq. Section 586D denies assistance under the Foreign Assistance Act of 1961 or the Arms Export Control Act to any country not in compliance with the U.N. sanctions, subject to certain exceptions. It also authorizes the President to ban imports into the United States from any country

¹⁰¹ Public Law 99-83, 22 U.S.C. 2349 aa-8, aa-9.

¹⁰² Public Law 101-513; sections 586 through 586J. Note that the sections numbers for this Act as passed by the Congress, such as “586J,” were enacted in a different format than is typical of legislation and that the section headings in this document reflect this fact.

¹⁰³ Executive Orders 12724 and 12725, and, to the extent that they were still in effect on the date of enactment, Executive Orders 12722 and 12723.

that has not imposed a ban on trade with Iraq, if he considers that such action would promote the effectiveness of the U.N. and U.S. sanctions against Iraq. Section 586I denies export licenses for super-computer exports to any country the President determines is assisting Iraq to improve its capabilities in rocket technology or chemical, biological, or nuclear weapons.

The Iraq Sanctions Act mandates a number of studies and reports to Congress concerning international exports to Iraq of nuclear, biological, chemical and ballistic missile technology; Iraq's offensive military capability; and third country sanctions against Iraq.

On May 7, 2003 President George W. Bush suspended the Iraq Sanctions Act following United States military action in Iraq.¹⁰⁴

IRAN-IRAQ ARMS NON-PROLIFERATION ACT OF 1992

The Iran-Iraq Nonproliferation Act of 1992, under Section 1604, requires the President to impose sanctions against persons that he determines to be engaged in transferring goods or technology so as to contribute knowingly and materially to efforts by Iran or Iraq to acquire chemical biological, nuclear or destabilizing types or amounts of certain advanced conventional weapons.¹⁰⁵ Section 1605 of this act similarly addresses activities of foreign governments, as opposed to persons. Mandatory sanctions are applied if the President makes a finding under either section and require that the President prohibit, for a period of two years, the U.S. government from entering into procurement agreements with, or issuing license for exporting to or for, a sanctioned country or person. In the case of countries sanctioned under these provisions, the President must also suspend U.S. assistance; instruct U.S. representatives in international financial institutions to oppose multilateral assistance; suspend coproduction or codevelopment projects that the U.S. government might have with the sanctioned government for one year; suspend most technical exchange agreements involving military or dual-use technology; and prohibit the exportation of U.S. Munitions List items for one year. In addition, the Act provides that the President may, except in the case of urgent humanitarian assistance, exercise his authorities under the International Emergency Economic Powers Act (IEEPA) with respect to the sanctioned country. The President may waive the requirement to impose the mandatory sanctions described above if he determines that such a waiver is essential to the national interests of the United States and provides 15 days

¹⁰⁴68 Fed. Reg. 26459.

¹⁰⁵ 50 U.S.C. 1701 note. Section 1408 of Pub. Law 104-106 amended sections 1604 and 1605 to apply not just to chemical, biological and nuclear weapons..

notice to certain Congressional Committees. Finally, Section 1603 makes the sanctions in Section 586G(a) of the Iraq Sanctions Act of 1990 (described above) related to foreign military sales, commercial arms sales, exports of certain goods and technology, and restrictions related to nuclear equipment materials and technology, also fully applicable against Iraq.

THE IRAN AND LIBYA SANCTIONS ACT OF 1996

U.S. imports of goods and services of Iran have been prohibited since 1987. In May 1993 President Clinton articulated a policy of “dual containment” of Iran and Iraq. Administration officials said that Iran needed to be isolated because of its: (1) support for international terrorism; (2) efforts to undermine the Arab-Israeli peace process; (3) attempts to subvert other governments in the Middle East; (4) programs to develop weapons of mass destruction; and (5) poor human rights record. On March 15, 1995, the President declared a national emergency to respond to Iran's actions and policies and issued an executive order prohibiting U.S. persons from entering contracts to finance or manage Iran's petroleum resources.

On April 30, 1995, after an internal policy review found that continued trade with Iran was undermining U.S. efforts to isolate Iran, President Clinton announced that he would impose significant new economic sanctions on Iran. Executive Order 12959, issued May 8, prohibits trade in goods, services, or technology with Iran, re-export to Iran of U.S. goods or technology from third countries controlled for export, as well as any financing, loans, or related services for trade with Iran. New investment is also prohibited in Iran. The prohibitions also apply to foreign branches of U.S. companies. However, the ban provides for the licensing of crude oil swap arrangements with Iran in the Caspian Sea and Central Asia, and does not prohibit the importation to the United States of Iranian oil that is refined outside Iran.

Out of a concern that the trade ban did not succeed in shifting international attitudes toward Iran, the President signed the Iran and Libya Sanctions Act¹⁰⁶ on August 5, 1996, which mandates sanctions against foreign investment in the petroleum sectors of Iran and Libya as well as exports of weapons, oil equipment, and aviation equipment to Libya in violation of U.N. Resolutions 748 and 883. Congressional findings in this legislation state that the efforts of the government of Iran to acquire weapons of mass destruction and the means to deliver them, as well as its support for international terrorism, endanger the interests of the United States. In the case of Libya, Congress found that Libya's failure to comply with U.N. Resolutions 731, 748, and 883, its support of international terrorism, and its efforts to acquire weapons of mass destruction constitute a threat to international peace and security that endangers the national security of the United States.

Under the Iran and Libya Sanctions Act, the President must impose, on any

¹⁰⁶ Public Law 104-172, 50 U.S.C. 1701.

foreign person (individual, firm or government enterprise) that invests more than \$40 million in any one year in the petroleum resources of Iran or Libya, or violates the U.N. prohibited transactions with Libya, at least two of the following six sanctions: (1) denial of Export-Import Bank loans for U.S. exports to the sanctioned entity; (2) denial of specific U.S. licenses for exports to the sanctioned entity (assuming the exports require a license to be exported); (3) denial of U.S. bank loans of over \$10 million in one year to the sanctioned entity; (4) disallowing a sanctioned entity, if it is a financial institution, to serve as a primary dealer in U.S. government bonds or as a repository of U.S. government funds; (5) import sanctions taken by the President in accordance with the International Emergency Economic Powers Act (IEEPA); and (6) prohibition on U.S. government procurement from or contracting with the sanctioned person.

The law provides for the waiving of sanctions for firms of countries that join a multilateral sanctions regime against Iran and lowers the threshold of permissible investment from \$40 million to \$20 million for firms of countries that do not join such a regime. The Act “sunsets” in 5 years.

The ILSA Extension Act of 2001 extended the authorities of the Iran and Libya Sanctions Act of 1996 until 2006.¹⁰⁷ The Act lowers the investment threshold for mandatory sanctions against persons investing in petroleum resources in either country from \$40,000,000 to \$20,000,000. It also requires the President to transmit a report to Congress between 24 and 30 months after the date of enactment concerning 1) the effectiveness of the law in achieving its national security policy objectives, 2) its effect on humanitarian interests in Iran and Iraq, and 3) the impact on other U.S. security and economic interests, including relations with nations friendly to the United States and on the U.S. economy. The President waived the Act’s application to Libya on April 23, 2004 in response to that nation’s commitments, noted above, related to its weapons programs and to cooperating on counter-terrorism efforts.

EMERGENCY PROTECTION FOR IRAQI CULTURAL ANTIQUITIES ACT OF 2004

Title III of the Miscellaneous Trade and Technical Corrections Bill of 2004 (Public Law 108-429) authorized the President to exercise authority under section 304 of the Convention on Cultural Property Implementation Act (CCPIA) (19 U.S.C. 2603) until September 30, 2009, with respect to any archeological or ethnological material of Iraq and without regard to whether Iraq is a State Party under the CCPIA.¹⁰⁸ Under this law, “archaeological or ethnological material of Iraq” means cultural property of Iraq and other items of archaeological, historical, cultural, rare scientific or religious importance illegally removed from the Iraq National Museum, the National Library of Iraq, and other locations in Iraq, since the adoption of United Nations Security

¹⁰⁷ Public Law 107-24.

¹⁰⁸ Public Law 108-429; 19 U.S.C. 2603.

Council Resolution 661 of 1990.¹⁰⁹ Prior law under subsection 304(c) of the CCPIA gave the President such authority only if a member country of the Convention on Cultural Property requested action to protect against illegal trade in such cultural material.

D. Sanctions Against Countries Related to Counternarcotics Efforts

NARCOTICS CONTROL TRADE ACT

Provisions in Effect from 1986 to 2001

The Drug Enforcement, Education, and Control Act of 1986¹¹⁰ contains a number of measures to respond to the serious problem of illegal drug smuggling into the United States and the growing threat of foreign sourced drug production. Among these measures are revisions to many basic customs laws to deter illegal drug imports and to increase enforcement capabilities of the U.S. Customs Service against drug traffic.

Title IX of the Act amended the Trade Act of 1974 by adding title VIII, entitled the "Narcotics Control Trade Act," to create new authority for the President to take appropriate trade actions as of March 1 of each year against uncooperative major drug-producing or drug-transit countries. Section 806 of the Foreign Relations Authorization Act, fiscal years 1988 and 1989,¹¹¹ and section 4408 of the Anti-Drug Abuse Act of 1988¹¹² expanded the sanctions available and the criteria for determining and certifying that a country has cooperated fully with the United States. Similar criteria apply under the Foreign Assistance Act of 1961 for denying foreign aid to uncooperative countries.

For every major drug-producing or drug-transit country, the President is authorized to exercise discretion to deny to any or all of its products preferential tariff treatment under the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), or any other law; to raise or impose duties of up to 50 percent ad valorem on any or all of its products; to suspend air carrier transportation to or from the United States and the country and to terminate any air service agreement with the country; to withdraw U.S. personnel and resources from participating in any arrangement with the country for customs preclearance; or to take any combination of these actions considered necessary to achieve the

¹⁰⁹ Adopted by the UN Security Council on August 6, 1990.

¹¹⁰ Public Law 99-570.

¹¹¹ Public Law 100-204, 19 U.S.C. 2492.

¹¹² Public Law 100-690.

objectives of the Act.

Such sanctions do not apply if the President determines and certifies to the Congress, at the time the annual report required by section 481(e) of the Foreign Assistance Act of 1961 or section 489A after September 30, 1994 is submitted, that during the previous year the country has cooperated fully with the United States or has taken adequate steps on its own: (1) in satisfying goals agreed to in a bilateral or multilateral narcotics agreement with the United States; (2) in preventing illegal drugs from being sold illegally to U.S. government personnel or their dependents or from being transported into the United States; (3) in preventing and punishing the laundering of drug-related profits or monies; and (4) in preventing and punishing bribery and other public corruption which facilitate production, processing, or shipment of illegal drugs.

A country that would not otherwise qualify for certification may be exempted from sanctions if the President determines and certifies to the Congress that the vital national interests of the United States require that sanctions not be applied. A country designated as a major drug-producing or drug-transit country in the previous year may not be determined to be cooperating fully unless it has in place a bilateral or multilateral narcotics agreement.

The Congress may disapprove the President's certification and require the application of sanctions through enactment of a joint resolution within 45 legislative days. Actions remain in effect until the President submits a certification of full cooperation and Congress does not enact a joint resolution of disapproval within 45 legislative days.

In addition, section 803 prohibits the President from allocating any quota for imports of sugar to any country which has a government involved in illegal drug trade or which is failing to cooperate with the United States in narcotics enforcement activities.

The Urgent Assistance for Democracy in Panama Act of 1990¹¹³ deemed the conditions under the Narcotics Control Trade Act to have been satisfied by Panama, because of U.S. vital national interests and because the Endara government had indicated its willingness and was taking steps to cooperate fully with the United States to control narcotics production, trafficking, and money laundering. Consequently, GSP and CBI trade benefits removed under the Noriega regime by presidential proclamation on March 23, 1988 were restored to the new government of Panama.

Revisions to the Drug Certification Process after 2001

Following complaints from many countries about the unilateral and non-cooperative nature of the drug certification process, a movement to modify the process developed in Congress in 2000.¹¹⁴ In January 2002, President George

¹¹³ Public Law 101-243, section 103.

¹¹⁴ For a detailed discussion of the Congressional concerns and the processes summarized here, see

W. Bush signed the Foreign Operations Appropriations Act for FY2002,¹¹⁵ which contained a one-year suspension of the drug certification procedures, along with new requirements. Under the new requirements, the President was required to designate and withhold assistance from major illicit drug producing and trafficking countries that had, over the past 12 months, “failed demonstrably” to make substantial efforts to adhere to their obligations under international counter-narcotics agreements. The President could, however, waive the sanctions and continue to provide assistance to a country that met the “fail demonstrably” criteria, if the President determined that assistance to that country was vital to the national interest of the United States and notified Congress of this determination. Using these procedures, on February 23, 2002, the President designated three countries—Afghanistan, Burma, and Haiti—as having “failed demonstrably” under these standards but granted national interest waivers to Afghanistan and Haiti.

Continuing these reform efforts, in September 2002 the President signed the Foreign Relations Authorization for FY2003,¹¹⁶ establishing permanent new requirements for drug certification procedures. These new procedures require that, not later than September 15 of each year, the President shall make a report identifying the major drug transit and drug producing countries. At the same time, the President is required to designate any of the named countries that “failed demonstrably,” during the previous twelve months, to make substantial efforts to adhere to certain international counter-narcotics agreements and to take other counter-narcotics measures. Assistance to these countries would be withheld from any designated countries unless the President determines that the provision of assistance to that country is vital to the national interest or that country has subsequently made substantial counter-narcotics efforts. The new legislation also gave the president the option of using the drug certification and sanctions procedures that had been in place prior to their suspension in 2002. As the new law came into effect with little time to implement the new procedures, a transition rule in the legislation provided that for FY2003, the required report had to be submitted at least 15 days before foreign assistance funds could be obligated or expended.

CRS Report of Congress RL32038, Drug Certification/Designation Procedures for Illicit Narcotics Producing and Transit Countries, K. Larry Storrs, updated Sept. 20, 2004.

¹¹⁵ Public Law 107-115.

¹¹⁶ Public Law 107-228.

**E. Sanctions Related to Missile Proliferation and the Use of
Chemical or Biological Weapons¹¹⁷**

SECTION 73 OF THE ARMS EXPORT CONTROL ACT

Section 73 of the Arms Export Control Act (AECA) provides authorities for the President to impose sanctions on any foreign person that he determines has knowingly exported, transferred, facilitated, conspired to or otherwise engaged or attempted to engage in the trade of Missile Technology Control Regime (MCTR) equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not a MTCR adherent and would be subject to U.S. jurisdiction under the AECA if it was U.S. equipment or technology. Mandatory sanctions following such a Presidential determination include denying any government contracts or licenses related missile technology to the sanctioned person for two years. If the item involved in export, transfer or trade is listed under category I of the MCTR Annex, the President shall deny the sanctioned person, for two years, all U.S. Government contracts as well as any licenses for the transferring items on the U.S. Munitions List to that person. In addition, if the President determines the export, transfer or trade has substantially contributed to the missile design, development, or production efforts of a country that is not an MCTR adherent, the President shall prohibit for not less than two years, the importation into the United States of products produced by the sanctioned person, unless these products are subject to the exceptions noted below.

Section 73 provides, however, that the sanctions noted above will generally not apply to any export, transfer, or trading activity that either is authorized by the laws of an MCTR adherent or is made to an end user in a country that is an MCTR adherent. In addition, the Act prevents the imposition of sanctions and terminates existing sanctions on foreign persons if an MCTR adherent is taking or has taken appropriate judicial or enforcement actions with regards to the acts under review and President makes a certification to certain Congressional committees. The Act also allows the Secretary of State, in consultation with the Secretaries of Defense and Commerce, to issue advisory opinions on whether certain activities would subject a person to sanctions under this section, and provides that anyone who relies in good faith on an advisory opinion stating that their activities are not subject to such sanctions shall not be sanctioned under Section 73 for those activities.

Section 73 also contains additional waiver provisions and exceptions. In cases where no advisory opinion has been issued, the President may waive the application of sanctions under this section if he determines that it is essential to the national security of the United States and notifies and reports to certain

¹¹⁷ This section does not repeat the sanctions on specific countries dealing with these issues, such as those discussed in the section on Iraq and Iran above.

Congressional committees. The President may also waive such sanctions if he certifies to Congress that a product or service involved is essential to the national security of the United States and there are either not other sources from which to acquire the product in a reliable fashion or the need for the product or services cannot be met in a timely fashion by improved manufacturing processes or technological requirements. In addition, the section specifically exempts foreign persons supplying: certain defense articles or services that are essential to the national security of the United States and that might be difficult to otherwise acquire; products or services provided under previously existing contracts; spare parts and certain types of component parts; routine service and maintenance services (to the extent that alternate sources are not readily or reasonably available); and information and technology essential to U.S. products or production.

**CHEMICAL AND BIOLOGICAL WEAPONS CONTROL AND WARFARE
ELIMINATION ACT OF 1991**

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991¹¹⁸ establishes U.S. sanctions and encourages international sanctions against countries that use chemical or biological weapons in violation of international law or against its own nationals. If the President determines that a government of a foreign country has engaged in these activities, the President is required to terminate arms sales and financing, foreign assistance (except humanitarian, food, and agricultural assistance), U.S. government credit or financial assistance, and certain exports to that government. Additional sanctions would apply unless the President determines and certifies within three months that the government has met the following conditions: it is no longer using these weapons in violation of international law or against its own nationals; it has provided reliable assurances that it will not in the future engage in any such activities; and it is willing to allow certain inspections to ensure that the government has not engaged in such activities. If after three months the President does not make such a determination, the President must impose at least three of the following sanctions, namely to: 1) vote against the extension of any loan or financial or technical assistance to the country by an international financial institution; 2) prohibit U.S. bank loans (except for those for purchasing food or agricultural products); 3) impose additional export restrictions; 4) impose restrictions on imports from that country; 5) downgrade or suspend diplomatic relations; or 6) restrict aviation access to and from the United States. The President may waive the application of any provision of this act if he determines that it is in the national interest of the United States and reports this to the appropriate Congressional committees. In addition, the President may lift

¹¹⁸Public Law 102-182.

any sanctions imposed under the act after one year, if the government of the foreign country has met the conditions listed above, and is making restitution to those affected by its use of these weapons.

SECTION 81 OF THE ARMS EXPORT CONTROL ACT

Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 amended the Arms Export Control Act at section 81 to provide for sanctions to deny government procurement, U.S. Government contracts, and imports from foreign persons who knowingly and materially contribute, through exports from the United States or another country, or other transactions, to foreign efforts to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons. Foreign persons are subject to sanctions if the recipient country has used chemical or biological weapons in violation of international law or against its own people, or has made preparations to take such actions. Foreign persons are also subject to sanctions if the recipient country has been determined to be a supporter of international terrorism or if the foreign country, project or entity involved has been designated by the President as being subject to the provisions of this section.

The imposition of sanctions may be delayed for up to 180 days if the President is in consultations with the sanctioned person's government on specific and effective steps by that government to terminate the sanctionable activities. The President is not required to impose sanctions on goods and services if they are: provided under a contract existing before he published his intent to impose sanctions or if the goods or services involved are spare parts; component parts essential to U.S. products or production; routine service and maintenance that is not otherwise readily or reasonably available; information and technology essential to U.S. products or production; or medical and humanitarian goods or services. In the case of defense articles or services, the President is also not required to apply the sanctions if: 1) the President determines that sanctioned person is a sole source provider of essential articles or services and alternate sources are not readily or reasonably available; or 2) the President determines that such articles or services are essential to national security under defense coproduction agreements.

The sanctions may be terminated after 12 months if the President determines and certifies to Congress that the sanctioned person has ceased to aid or abet efforts by foreign governments, projects, or entities to acquire chemical or biological weapons. The President may also waive the application of any sanction under this section 12 months after the sanction's imposition if he determines that such a waiver is essential to the national security interest of the United States and provides Congress with a certification of this determination and a report and notification of his intent to issue a waiver 20 days before it takes effect.

F. Sanctions Exemptions for Food and Medicine

On April 28, 1999, President Clinton announced that existing unilateral economic sanctions programs would be amended to modify licensing policies to permit case-by-case review of specific proposals for the commercial sale of agriculture commodities and products, as well as medicine and medical equipment, where the United States has the discretion to do so.¹¹⁹ Licenses are issued by the Treasury's Office of Foreign Assets Control.

TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000

The "Trade Sanctions Reform and Export Enhancement Act of 2000" was enacted as title IX of Public Law 106-387, the FY 2001 agriculture appropriations bill.¹²⁰ The Act made two principal changes to existing U.S. unilateral agricultural and medical sanctions that have been imposed for foreign policy or national security purposes. First, the Act required the President to terminate within 120 days after enactment (February 25, 2001), subject to certain exceptions, any unilateral agricultural or medical sanctions imposed for foreign policy or national security reasons that were in effect on the date of enactment. (With respect to Cuba, the Act did not affect requirements for the export and reexport of medicines and medical devices set forth in the Cuban Democracy Act of 1992.) Unilateral agricultural or medical sanctions are defined by the Act not to include any multilateral regime where the other members of that regime have agreed to impose substantially equivalent measures or a mandatory decision of the United Nations Security Council. The Act contains certain other exceptions with respect to circumstances related to war, use of force, hostilities, items used to facilitate development or production of biological and chemical weapons and items controlled under the Arms Export Control Act, the Export Administration Act.

The Act prohibits the availability of any U.S. governmental assistance, or financing by the U.S. government or a private person, of commercial exports to Iran, Libya, North Korea or Sudan, or exports to Cuba. In the case of Cuba, sales must be paid for by cash in advance or through financing by third country financial institutions. In the case of Iran, Libya, North Korea and the Sudan, the legislation authorizes the President to waive this prohibition for national security or humanitarian reasons.

Second, the Act prohibits the licensing of travel-related transaction for travel to, from or within Cuba for tourist activities. In particular, licensed travel to Cuba may not include travel for tourist activities which are defined in the Act as any activity with respect to travel to, from, or within Cuba that is not authorized in 31 Code of Federal Regulations 515.560(a) or in any section referred to in 515.560(a).

¹¹⁹ 64 Fed. Reg. 41784; 31 CFR Parts 538, 550, and 560.

¹²⁰ Public Law 106-387.

With respect to new unilateral sanctions, the Act prohibits the imposition of unilateral agricultural sanctions or medical sanctions unless; (1) no later than 60 days before the proposed sanction is imposed the President submits a reports to Congress that describes the activity proposed to be prohibited, restricted, or conditioned, and describes the actions by the foreign country or foreign entity that justify the sanction; and (2) a joint resolution is enacted stating the approval of the Congress for the President's report. The Act sunsets any unilateral agricultural or medical sanction that is imposed not later than 2 years after the effective date of the sanction unless the President submits another report to Congress and another joint resolution is enacted.

G. Sanctions Against Sudan

THE SUDAN PEACE ACT

In addition to the legislation relating to gum arabic imports enacted on November 9, 2002 and discussed in the IEEPA section above, President Bush signed the Sudan Peace Act, which requires the President to certify to Congress, on a semi-annual basis, whether the Government of Sudan and the Sudan People's Liberation Movement are negotiating in good faith and that negotiations should continue. Under the Act, the President is required to implement, after consultations with Congress, certain sanctions if President determines and certifies to Congress: 1) that the Government of Sudan has not engaged in good faith negotiations "to achieve a permanent, just and equitable peace agreement, or has unreasonably interfered with humanitarian efforts," (these sanctions "shall not apply," however, if the President also certifies that the Sudan People's Liberation Movement has not engaged in good faith negotiations); or 2) that the Government of Sudan is not in compliance with a the terms of a permanent, negotiated peace agreement between the parties. Specifically, the President would be required to: 1) instruct U.S. executive directors in the international financial institutions to continue to vote against loans, credits, guarantees, or extension of any of these, to the Government of Sudan; 2) take steps to deny the Government of Sudan access to oil revenues; and 3) seek a U.N. Security Council Resolution to impose an arms embargo on the Government of Sudan. The President can lift these sanctions if he certifies to Congress that the Government of Sudan has resumed good faith negotiations or comes into compliance with a peace agreement.

THE COMPREHENSIVE PEACE IN SUDAN ACT OF 2004

Congress later passed the Comprehensive Peace in Sudan Act of 2004 ("Comprehensive Peace Act"), which was signed by the President on December 23, 2004 (Public Law 108-497). The Comprehensive Peace Act expresses the sense of Congress that the Sudan Peace Act should remain in effect and be extended to

include the Darfur region of Sudan.¹²¹ In addition, the Comprehensive Peace in Sudan Act, requires the President, notwithstanding the determinations required under the Sudan Peace Act, to implement sanctions specified in that Act and to block assets of appropriate senior officials of the Government of Sudan within 30 days of the passage of the Comprehensive Peace Act. The President is, however, given the authority to waive these sanctions if he determines and certifies to appropriate Congressional committees that such a waiver is in the national interest of the United States.¹²²

H. Sanctions to Address the Illicit Diamond Trade

CLEAN DIAMOND TRADE ACT OF 2003

The Clean Diamond Trade Act of 2003 (Public Law 108-19) establishes measures for the importation and exportation of rough diamonds.¹²³ The Act provides that the President implement the “Kimberley Process Certification Scheme,” an international agreement to regulate the trade of rough diamonds in order to prevent African conflict diamonds from being used to fuel rebel activities. The Act mandates the President ban non-compliant trade and prescribes civil and criminal penalties for violators. The Act also authorizes the President to “direct the appropriate agencies of the United States Government to make available technical assistance to countries seeking to implement the Kimberley Process Certification Scheme,” while also urging the President to “work with Participants to strengthen the Kimberley Process Certification Scheme through the adoption of measures for the sharing of statistics on the production of and trade in rough diamonds.”

The Act requires the Administration to submit an annual report, “not later than 1 year after the date of the enactment of this Act and every 12 months thereafter for such period as this Act is in effect.” On August 6, 2004, the State Department submitted an annual report reviewing the practices, standards, and procedures of the United States Kimberley Process Authority.

The Act also requires that no later than 24 months after the effective date of the Act, the Comptroller General of the United States is to transmit a report to the Congress on the “effectiveness of the provisions of this Act in preventing the importation or exportation of rough diamonds that is prohibited under section 4” and any recommendations pertaining to the Act.

¹²¹Public Law 108-19.

¹²²Public Law 108-19.

¹²³Public Law 108-497.

I. Sanctions Against Burma

BURMESE FREEDOM AND DEMOCRACY ACT OF 2003

On July 28, 2003, President George W. Bush signed the Burmese Freedom and Democracy Act of 2003.¹²⁴ This Act condemns the State Peace and Development Council (SPDC), which the Act cites as having failed to transfer power to the National League for Democracy following elections in Burma in 1990 and engaging in a range of human rights violations. The Act imposes a ban on Burmese imports to the United States and instructs the Secretary of the Treasury to have U.S. officials at international financial institutions oppose and vote against the expansion of loans or financial assistance to Burma. The Act also includes measures to: track assets in U.S. financial institutions owned by certain individuals and groups cited in the Act; authorize the President to freeze those assets; authorize the President to deny visas to certain individuals cited; encourage the Secretary of State to highlight the record of the SPDC to the international community and encourage other nations to restrict resources to the SPDC; and authorize the President to provide assistance to democracy activists in Burma. The President is given the authority to waive the import sanctions if he finds such a waiver to be in the national interest of the United States and reports this to appropriate committees in Congress. The import sanctions in the Act will terminate after one year unless the Congress passes a joint renewal resolution, and these sanctions can also be terminated if the President certified to Congress that certain conditions are met relating in three specific areas: Burma's human rights record; transition to a democratic government; and efforts against narcotics. The President can also terminate any provision of the act upon the request of a democratically elected government if the conditions in these three areas were met. On July 7, 2004 the Congress renewed the import restrictions contained in the Act for an additional year, pursuant to renewal provisions in the initial Act.¹²⁵

J. Sanctions Against Syria

SYRIAN ACCOUNTABILITY AND LEBANESE SOVEREIGNTY RESTORATION ACT OF 2003

On December 12, 2003, the Syrian Accountability and Lebanese Sovereignty Restoration Act of 2003 was enacted.¹²⁶ The Act states that it will be U.S. policy that the U.S. Secretary of State will continue to list Syria as a state sponsor of terrorism until that country: ends its support for terrorists, including support for Hizballah and other terrorist groups operating in Lebanon; stops hosting terrorist groups; and comes into full compliance with U.S. law relating to terrorism and U.N.

¹²⁴ Public Law 108-61.

¹²⁵ H.J. Res. 97, July 7, 2004.

¹²⁶ Public Law 108-175.

Security Council Resolution 1373. The Act requires that the President prohibit the export to Syria of any item on the U.S. Munitions List of the Commerce Control List of dual-use items under the Export Administration Regulations, until the President certifies to Congress that Syria meets the requirements of the Act. It also requires that the President impose two or more sanctions from a menu of economic and diplomatic options, including: prohibiting the export to Syria of most U.S. products; prohibiting U.S. businesses from investing or operating in Syria; restricting the range of U.S. travel by Syrian diplomats; prohibiting Syria-owned or –controlled aircraft from taking off from, landing in, or flying over the United States; reducing the U.S. diplomatic contacts with Syria; and blocking transactions with regard to any property in which the Government of Syria has an interest, by a person, or with respect to any property, subject to U.S. jurisdiction. The President is authorized to waive the sanctions if he finds it in U.S. national security interest to do so.

K. Sanctions Against Belarus

THE BELARUS DEMOCRACY ACT OF 2004

Enacted on October 20, 2004, the Belarus Democracy Act expresses the sense of Congress that no funds of the Export-Import Bank, Overseas Private Development Corporation, or the Trade and Development Agency should be made available for projects in Belarus until certain democracy and human rights conditions are met.¹²⁷

L. The Hong Kong Policy Act and Taiwan’s Accession to the WTO

On July 1, 1997, China assumed sovereignty over Hong Kong according to the terms of the Sino-British Joint Declaration of 1994. The question of how Hong Kong will continue to fare under Chinese rule is important to U.S. interests because of: (1) the large U.S. economic presence in Hong Kong and; (2) any adverse developments in Hong Kong will affect U.S.-China relations. Under the Sino-British Joint Declaration, China committed to preserving a high degree of autonomy under the so-called “one-China, two-systems” policy.

¹²⁷ Public Law 108-347.

The Hong Kong Policy Act which was passed by Congress in 1992 sets forth declarations and conditions for how the United States should conduct bilateral relations with Hong Kong after July 1, 1997.¹²⁸ This legislation: (1) declares that support for democratization is a fundamental principle of the United States that should apply to U.S. policy toward Hong Kong after 1997; (2) declares U.S. support for the Sino-British Joint Declaration and makes a number of findings of what is provided for under this agreement; (3) requires that the United States apply the same laws toward Hong Kong after 1997 as were in force before then, but permits the President to suspend the application of any law beginning in July 1, 1997, if he determines that China is not giving Hong Kong sufficient autonomy, and; (4) requires the Secretary of State to report to Congress every 18 months on the situation in Hong Kong, including the development of its democratic institutions.

As part of legislation granting China unconditional normal trade relations upon its accession to the WTO, Congress included a provision which states the sense of Congress that immediately upon approval of China's accession by the WTO General Council, the United States should request that the Council consider Taiwan's accession as the next order of business during the same Council session. Furthermore, the legislation provides that the United States should be prepared to aggressively counter any effort by any WTO Member to block Taiwan's accession after approval of the PRC's accession.¹²⁹ Recognizing Taiwan's important position in the global trading system, WTO trade ministers approved Taiwan's WTO membership in November 2001. Taiwan became a WTO member on January 1, 2002.

M. Section 27 of the Merchant Marine Act, 1920 (Jones Act)

The Jones Act is a cabotage law that restricts the transportation of property by water between points in the United States, its possessions and territories (with very few exceptions) to vessels built and (if applicable) substantially repaired in U.S. shipyards, owned by U.S. citizens, manned by U.S. citizen crews, and registered in the United States. The first act passed by the First Congress was a cabotage measure that made it extremely expensive for foreign-flag, foreign-built vessels to operate in our coasting trades. Early cabotage laws (1789, 1790, 1817) were, it is claimed, in response to similar laws enforced by England, France, and other European countries.

During World War I, U.S. cabotage prohibitions were relaxed temporarily, but reinstated in 1920 by section 27 of the Merchant Marine Act, 1920, now usually referred to as the Jones Act. The penalty for violation is forfeiture of the cargo.

¹²⁸ Public Law 102-383, approved October 5, 1992.

¹²⁹ Title VI of Public Law 106-286, approved October 10, 2000.

The law continues to be questioned by U.S. trading partners for its discriminatory impact, and many WTO members have requested during trade negotiations that the United States liberalize its access for marine transportation services.

**N. Section 721 of the Defense Production Act of 1950, as amended
("Exon/Florio")**

The proposed purchase in 1988 of an 80 percent share of Fairchild Semiconductor Corporation by Fujitsu, Ltd. sparked congressional interest concerning takeovers of American firms by foreign companies which raise national security considerations. Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 amended title VII of the Defense Production Act of 1950¹³⁰ to add provisions (commonly known as "Exon/Florio," the chief congressional sponsors) because of concerns that the Federal Government lacked specific authority to prevent such acquisitions.

The provisions authorize the President, after he makes certain findings, to take actions for such time as he considers appropriate to suspend or prohibit any acquisition, merger, or takeover of a person engaged in interstate commerce in the United States by or with foreign persons so that such control will not threaten to impair the national security. To activate this authority, the President has to find that there is credible evidence that leads him to believe the foreign interest exercising control might take action that threatens to impair the national security and that other laws do not provide adequate and appropriate authority to protect the national security in the matter. The President has to report the findings to the Congress with a detailed explanation.

In making any decision to exercise the authority under this provision, the President may consider such factors as: (1) domestic production needed for projected national defense requirements; (2) the capability and capacity of domestic industries to meet national defense requirements; and (3) the control of domestic industries and commercial activities by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security. The standard of review is "national security"; the provision affects only overseas investment flowing into the United States and is not intended to authorize investigations of investments that could not result in foreign control of persons engaged in interstate commerce nor to have any effects on transactions which are outside the realm of national security.

Among the actions available to the President is the ability to suspend a transaction. The President may also seek appropriate relief in the district courts of the United States in order to implement and enforce the provisions, including broad injunctive and equitable relief including, but not limited to divestment relief.

¹³⁰ 50 U.S.C. App. 2170, as added by Public Law 100-418, section 5021, approved August 23, 1988.