

IRAN MISSILE PROLIFERATION SANCTIONS ACT OF 1997

NOVEMBER 4, 1997.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GILMAN, from the Committee on International Relations,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2709]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 2709) to impose certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Iran Missile Proliferation Sanctions Act of 1997".

SEC. 2. REPORTS ON MISSILE PROLIFERATION TO IRAN.

(a) REPORTS.—Except as provided in subsection (c), the President shall, at the times specified in subsection (b), submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying every foreign person with respect to whom there is credible information indicating that that person, on or after August 8, 1995—

(1)(A) transferred items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that contributed to Iran's efforts to acquire, develop, or produce ballistic missiles, or

(B) provided technical assistance or facilities which the President deems to be of concern because of their direct contribution to Iran's efforts to acquire, develop, or produce ballistic missiles; or

(2)(A) attempted to transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that would have contributed to Iran's efforts to acquire, develop, or produce ballistic missiles, or

(B) attempted to provide technical assistance or facilities which the President deems to be of concern because of their direct contribution to Iran's efforts to acquire, develop, or produce ballistic missiles.

(b) **TIMING OF REPORTS.**—The reports under subsection (a) shall be submitted not later than 30 days after the date of the enactment of this Act, not later than 180 days after such date of enactment, not later than 1 year after such date of enactment, and not later than the end of each 1-year period thereafter.

(c) **EXCEPTIONS FOR PERSONS PREVIOUSLY IDENTIFIED, SANCTIONED, OR SUBJECT OF WAIVER.**—Any foreign person who—

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer, transaction, or attempt,

(2) has engaged in a transfer or transaction that was the basis for the imposition of sanctions with respect to that person under section 73 of the Arms Export Control Act or section 1604 of the Iran-Iraq Arms Non-Proliferation Act of 1992, or

(3) may have engaged in a transfer or transaction, or made an attempt, that was the subject of a waiver under section 4, is not required to be identified on account of that same transfer, transaction, or attempt in any report submitted thereafter under this section.

SEC. 3. IMPOSITION OF SANCTIONS.

(a) **REQUIREMENT TO IMPOSE SANCTIONS.**—

(1) **REQUIREMENT TO IMPOSE SANCTIONS.**—The sanctions described in subsection (b) shall be imposed on—

(A) any foreign person identified under subsection (a)(1) of section 2 in a report submitted under that section, and

(B) any foreign person identified under subsection (a)(2) of section 2 in a report submitted under that section, if that person has been identified in that report or a previous report as having made at least 1 other attempt described in subsection (a)(2) of that section.

(2) **EFFECTIVE DATE OF SANCTIONS.**—The sanctions shall be effective—

(A) 30 days after the report triggering the sanction is submitted, if the report is submitted on or before the date required by section 2(b);

(B) 30 days after the date required by section 2(b) for submitting the report, if the report triggering the sanction is submitted within 30 days after that date; and

(C) on the date that the report triggering the sanction is submitted, if that report is submitted more than 30 days after the date required by section 2(b).

(b) **DESCRIPTION OF SANCTIONS.**—The sanctions referred to in subsection (a) that are to be imposed on a foreign person described in that subsection are the following:

(1) **ARMS EXPORT SANCTION.**—For a period of not less than 2 years, the United States Government shall not sell to that person any item on the United States Munitions List as in effect on August 8, 1995, and shall terminate sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act.

(2) **DUAL USE SANCTION.**—For a period of not less than 2 years, the authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export to that person of any goods or technology on the control list established under section 5(c)(1) of that Act.

(3) **UNITED STATES ASSISTANCE.**—For a period of not less than 2 years, the United States Government shall not provide any assistance in the form of grants, loans, credits, guarantees, or otherwise, to that person.

SEC. 4. WAIVER ON BASIS OF ADDITIONAL INFORMATION.

(a) **IN GENERAL.**—The President may waive the imposition of any sanction that would otherwise be required under section 3 on any foreign person 15 days after the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that, on the basis of information provided by that person, or otherwise obtained by the President, the President is persuaded that the person did not, on or after August 8, 1995—

(1)(A) transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that contributed to Iran's efforts to acquire, develop, or produce ballistic missiles, or

(B) provide technical assistance or facilities which the President deems to be of concern because of their direct contribution to Iran's efforts to acquire, develop, or produce ballistic missiles; or

(2) attempt on more than one occasion—

(A) to transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that would have contributed to Iran's efforts to acquire, develop, or produce ballistic missiles, or

(B) to provide technical assistance or facilities described in paragraph (1)(B).

(b) WRITTEN JUSTIFICATION.—The determination and report of the President under subsection (a) shall include a written justification describing in detail—

(1) the credible information indicating that the person—

(A) transferred items described in section 2(a)(1)(A), or provided technical assistance or facilities described in section 2(a)(1)(B); or

(B) attempted to transfer items described in section 2(a)(1)(A), or attempted to provide technical assistance or facilities described in section 2(a)(1)(B);

(2) the additional information which persuaded the President that the person did not—

(A) transfer items described in section 2(a)(1)(A), or provide technical assistance or facilities described in section 2(a)(1)(B); or

(B) attempt to transfer items described in section 2(a)(1)(A), or attempt to provide technical assistance or facilities described in section 2(a)(1)(B); and

(3) the analysis of the information supporting the President's conclusion.

(c) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, the determination and report of the President under subsection (a) and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 5. WAIVER ON BASIS OF NATIONAL SECURITY.

(a) IN GENERAL.—The President may waive the imposition of any sanction that would otherwise be required under section 3 on any foreign person 15 days after the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that such waiver is essential to the national security of the United States.

(b) WRITTEN JUSTIFICATION.—The determination and report of the President under subsection (a) shall include a written justification describing in detail the facts and circumstances supporting the President's conclusion.

(c) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 6. ADDITIONAL INFORMATION REGARDING ACTIONS BY GOVERNMENT OF PRIMARY JURISDICTION.

As part of each report submitted under section 2, the President shall include the following information with respect to each foreign person identified in that report:

(1) A statement regarding whether the government of primary jurisdiction over that person was aware of the activities that were the basis for the identification of that person in the report.

(2) If the government of primary jurisdiction was not aware of the activities that were the basis for the identification of that person in the report, an explanation of the reasons why the United States Government did not inform that government of those activities.

(3) If the government of primary jurisdiction was aware of the activities that were the basis for the identification of that person in the report, a description of the efforts, if any, undertaken by that government to prevent those activities, and an assessment of the effectiveness of those efforts, including an explanation of why those efforts failed.

(4) If the government of primary jurisdiction was aware of the activities that were the basis for the identification of that person in the report and failed to undertake effective efforts to prevent those activities, a description of any sanctions that have been imposed on that government by the United States Government because of such failure.

SEC. 7. PURCHASE OF WEAPONS TECHNOLOGY.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that the President should exercise the authority granted to him under section 504 of the Freedom for

Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5854)—

(1) to prevent the transfer of weapons-related material and delivery systems to Iran through the purchase, barter, or other acquisition of such material and delivery systems; and

(2) to prevent the transfer to Iran of scientific and technical expertise with respect to such weapons-related material and delivery systems.

(b) AVAILABILITY OF AMOUNTS.—Amounts hereafter made available to carry out chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance for the independent states of the former Soviet Union) may be used to carry out subsection (a).

SEC. 8. DEFINITIONS.

For the purposes of this Act—

(1) the terms “foreign person” and “person” mean—

(A) a natural person that is an alien;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) any foreign governmental entity operating as a business enterprise; and

(D) any successor or subsidiary of any entity described in subparagraph (B) or (C);

(2) the term “government of primary jurisdiction” means—

(A) in the case of a natural person, the foreign government of the country of which the person is a citizen or national;

(B) in the case of an entity described in subparagraph (B) of paragraph (1), the foreign government of the country in which the entity has its principal place of business, or the foreign government under whose laws that entity is organized; and

(C) in the case of a foreign governmental entity described in subparagraph (C) of paragraph (1), the foreign government of which that entity is a part; and

(3) the term “MTCR Annex” has the meaning given that term in section 11B(c)(4) of the Export Administration Act of 1979 (50 U.S.C. 2410b(c)(4)).

BACKGROUND AND PURPOSE

H.R. 2709, the Iran Missile Proliferation Sanctions Act of 1997, is intended to provide additional leverage to the Administration to address ongoing assistance by Russian institutes, research facilities, and other business entities for Iran’s medium and long range missile program by closing loopholes in existing sanctions laws that have been used in the past to avoid sanctioning firms that have transferred missile goods or technology to Iran.

The Committee believes that one of our most important national security objectives in the area of non-proliferation is to prevent Iran from obtaining and in some instances, from improving, its weapons of mass destruction capabilities. Most critical, in the short-term, is the prospect of Iran enhancing its ballistic missile capability. Iranian acquisition of ballistic missiles with a range of 1,300 kilometers or more poses an unacceptable threat to American forces in the Middle East as well as to our allies throughout the Persian Gulf region.

The Committee notes that Russian entities have already provided Iran with missile components and critical know-how and technological support. The question facing the Administration and the Congress is whether we can halt further assistance. Time is short and the U.S. has but a few months to prevent Iran from achieving a significant advance in its missile program.

The Committee notes that, according to open sources, early this year U.S. and Israeli intelligence reports revealed a technology transfer between Russia and Iran involving construction of a delivery system for the Russian SS-4 and Iranian Shahab-3 and Shahab-4 long-range missiles. Successive reports detailed contracts signed between numerous Russian entities and Iran's Defense Industries Organization (DIO) to help produce liquid-fueled ballistic missiles, a wind tunnel for missile development and related technologies.

The Committee notes, again according to open sources, the following entities have been involved in missile technology transfers to Iran:

- Defense Industries Organization (DIO), an Iranian agency charged with development, production and procurement of military technology;

- Shahid Hemmat Industrial Group (SHIG), part of the DIO responsible for development and production of ballistic missiles and related technology;

- Inor, a Russian scientific and production center implicated in transfer to SHIG of materials used in missile construction;

- Russian Central Aerohydrodynamic Institute, implicated in collaboration with SHIG on wind tunnel construction;

- Russian State Corporation for Export and Import on Armament and Military Equipment (Rosvoorouzhenie);

- Bauman Institute, a leading Russian scientific research center;

- NPO Trud, a Russian rocket motor manufacturer;

- Polyus, a leading Russian developer of laser technology; and Russian Space Agency, headed by Yuri Koptev.

The Committee believes that an incremental approach to this issue or reliance on friendly persuasion does not appear to be achieving any demonstrable results. Dialogue cannot substitute for more forceful and immediate action, including the imposition of sanctions on those entities engaging in missile cooperation with Iran.

At present, the Administration appears unable or unwilling to sanction the Russian entities that are providing essential missile components and technical assistance to extend the range of Iran's Scud missiles to 1,300 kilometers.

The Committee fully supports the ongoing discussions between the U.S. and the Russian government and believes we must continue talking at the highest levels to put an immediate end to this assistance. However, we see no meaningful prospects for enforcement action by the Russian government at the local and regional level that would turn non-proliferation rhetoric into reality.

With Russia's cash-strapped technical institutes and research facilities eager to sell to Iranian weapons purchasers, Russia's effective adherence to the obligations of the Missile Technology Control Regime (MTCR) is open to serious question. In testimony before the full Committee in early October, a State Department official all but acknowledged that there is little likelihood the Administration will impose sanctions on these entities before the Iranian missile program becomes fully operational.

It is clear that the Congress has a fundamental disagreement with the Administration over the utility of sanctions legislation. The Committee makes two points in that regard:

First, with respect to concerns about the Congress imposing unilateral sanctions, the Committee notes that the Congress will not hesitate to take such action when an Administration's policy is demonstrably ineffective in protecting America's vital interests.

Furthermore, the imposition of these sanctions would be used to bring Russia, a member of the Missile Technology Control Regime (MTCR), back into conformity with its norms and standards.

Second, the Committee believes that the Administration will continue to see legislation of this type until it can make a credible case to the Congress that current non-proliferation sanctions laws are being implemented vigorously.

In short, the Committee is not satisfied that the Administration has made it absolutely clear to Russia that halting missile cooperation with Iran is vital to our interests and that U.S. assistance, particularly in the area of space cooperation, may be jeopardized if such cooperation does not end immediately.

The bill requires the President to submit a report to Congress 30 days after the date of enactment, and periodically thereafter, identifying those entities where there is credible evidence they have transferred key missile components or technology to Iran. Thirty days after this report is required to be submitted, three sanctions (denying munitions licenses, dual use licenses and U.S. foreign assistance to these entities) would be imposed for a period of at least two years on the entities identified in the report.

It gives the Administration ample flexibility in the final determination to impose these sanctions but it closes the loopholes in existing sanctions laws that have been used to avoid sanctioning firms that have transferred key missile components to Iran.

In the 1980s the world stood by as Saddam Hussein built up his arsenal of weapons of mass destruction that we have yet to fully identify and destroy. The Committee strongly believes that the U.S. cannot afford to do the same with Iran as it uses its petrodollars to purchase weapons systems that will threaten its neighbors and endanger our forces throughout the Persian Gulf Region.

COMMITTEE ACTION

On September 25, 1997, the full Committee held a closed briefing with Dr. Gordon Oehler, Director of the Non-Proliferation Center at the Central Intelligence Agency. On October 23, 1997, the full Committee held a second closed briefing with Ambassador Frank Wisner, Special Presidential Envoy, Department of State, Mr. John McLaughlin, Deputy Director for Intelligence, Central Intelligence Agency, and other officials.

On October 9, 1997, the full Committee marked up related legislation, H. Con. Res. 121, a concurrent resolution expressing the sense of the Congress regarding proliferation of missile technology from Russia to Iran. During the full Committee debate on the measure, testimony was taken from Congresswoman Jane Harman, the sponsor of the resolution, and several State Department witnesses including Mr. Michael Klosson, a Deputy Assistant Secretary of State for Legislative Affairs, Mr. James P. Timbie, Senior

Advisor to the Under Secretary of State for Arms Control and International Security Affairs, and Ms. Robin Frank, Legal Affairs, Department of State.

After concluding consideration of the resolution, the Committee adopted the resolution and agreed to a motion to consider the resolution under suspension of the rules by voice vote, a quorum being present.

On October 24, 1997, the full Committee marked up H.R. 2709. During the full Committee debate, testimony was taken from two State Department officials, Mr. Michael Klosson, a Deputy Assistant Secretary of State for Legislative Affairs, and Mr. Robert J. Einhorn, a Deputy Assistant Secretary of State for Politico-Military Affairs.

The full Committee considered the bill as original text for the purpose of amendment and took the following preliminary action, all by voice vote: Adopting the Ackerman amendment, expressing the sense of the Congress that the President should use the authority of section 504 of the FREEDOM Act and authorizing funds made available under that Act for such purpose. Adopting the Berman amendment, limiting goods and technology or technical assistance and facilities transferred to Iran's ballistic missile program to those items on the Missile Technology Control Regime (MTCR) Annex.

After concluding consideration of the bill, the full Committee ordered the bill reported to the House by voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. No roll-call votes were held on the motion to report the legislation or on amendments to the legislation.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The Committee adopts the cost estimate of the Congressional Budget Office, set out below, as its submission of any required information on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt re-

quired by clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee cites the following specific powers granted to the Congress in the Constitution as authority for enactment of H.R. 2709 as reported by the Committee: Article I, section 8, clause 3 (relating to the regulation of commerce with foreign nations and among the several states); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth with respect to H.R. 2709 as reported by the Committee the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 4, 1997.

Hon. BENJAMIN A. GILMAN,
Chairman, Committee on International Relations,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2709, the Iran Missile Proliferation Sanctions Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2709—Iran Missile Proliferation Sanctions Act of 1997

H.R. 2709 would require the President to report to the Congress and to impose sanctions upon foreign persons who have contributed to Iran's efforts to acquire, develop, or produce ballistic missiles. Persons identified in the report would be ineligible for export licenses for arms or controlled goods and technology, and for foreign aid. In addition, section 7 of the bill would authorize the use of appropriated funds to acquire weapons-related material, delivery systems, or technology to prevent their transfer to Iran.

Based on information from the Department of State (DOS), CBO estimates that the additional reporting requirements would cost less than \$500,000 annually, assuming appropriation of the necessary funds. CBO estimates that section 7 of the bill would have no budgetary impact because current law already allows DOS to take the measures authorized by that section and enactment of H.R. 2709 would not increase spending on such activities. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The Unfunded Mandates Reform Act of 1995 (UMRA) excludes from application of that act legislative provisions that are necessary for the national security. CBO has determined that the provisions of H.R. 2709 either fit within this exclusion or do not contain private-sector or intergovernmental mandates as defined by UMRA.

The estimate was prepared by Joseph C. Whitehill. The estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Provides that the Act may be cited as the "Iran Missile Proliferation Sanctions Act of 1997".

SECTION 2. REPORTS ON MISSILE PROLIFERATION TO IRAN

Requires the President to submit periodic reports on missile proliferation to Iran to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. Such reports are required to be submitted not later than 30 days after the date of enactment, not later than 180 days after the date of enactment, not later than one year after the date of enactment, and not later than the end of each one-year period thereafter.

Each such report must identify every foreign person with respect to whom there is credible information that that person, on or after August 8, 1995—

(1) transferred items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that contributed to Iran's efforts to acquire, develop or produce ballistic missiles;

(2) provided technical assistance or facilities which the President deems to be of concern to the United States because of

their direct contribution to Iran's efforts to acquire, develop or produce ballistic missiles;

(3) attempted to transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that would have contributed to Iran's efforts to acquire, develop or produce ballistic missiles; or

(4) attempted to provide technical assistance or facilities which the President deems to be of concern to the United States because of their direct contribution to Iran's efforts to acquire, develop or produce ballistic missiles.

The Committee included technical assistance or facilities that the President "deems to be of concern to the United States" in order to make clear that range of transfers or attempted transfers subject to this legislation is not limited to technical assistance, facilities, and other items listed on the MTCR Annex.

The only foreign persons otherwise required to be identified in a report under this section who need not be so identified are any foreign persons who—

(1) were identified in a previous report submitted under this section;

(2) were sanctioned previously under section 73 of the Arms Export Control Act or section 1604 of the Iran-Iraq Arms Non-Proliferation Act of 1992; or

(3) were not necessarily identified in a previous report submitted under this section but were the subject of a waiver on the basis of additional information exercised pursuant to section 4 of this Act.

The exception to the requirement to identify foreign persons otherwise required to be identified under this section extends only to the same transfer, transaction, or attempt that gave rise to the exception. Credible information regarding any additional transfer, transaction, or attempt by that same foreign person gives rise to a new and separate requirement to identify that foreign person in a report under this section, which is overcome only if that additional transfer, transaction, or attempt falls into one of the exceptions categories.

The "credible information" requirement of this section is intended to be a very low evidentiary standard. For purposes of this Act, "credible information" is information that is sufficiently believable as to raise a serious question in the mind of a reasonable person as to whether a foreign person may have transferred or attempted to transfer missile goods, technology, technical assistance, or facilities of the type described in subsection (a) of this section. "Credible information" is information that, by itself, may not be sufficient to permit a reasonable person to conclude with confidence that a foreign person has transferred or attempted to transfer missile goods, technology, technical assistance, or facilities subject to this Act.

The Committee adopts this very low evidentiary standard because of its dissatisfaction with the way the evidentiary standard contained in other counter-proliferation laws has been applied. These laws, including the missile technology proliferation sanctions of section 73 of the Arms Export Control Act and the Iran-Iraq Arms Non-Proliferation Act, essentially contain a "preponderance of the evidence" standard. Under these laws, sanctions for pro-

scribed transfers need not be imposed until the President determines that such a transfer in fact occurred. In practice, however, the Executive branch generally has delayed imposing sanctions until all doubt about whether a transfer occurred has been erased. In effect, the Executive branch has elevated the evidentiary standard of these laws to a requirement of “proof beyond a reasonable doubt.” The Committee believes that this practice has undermined the effectiveness of our non-proliferation laws by blunting their intended deterrent effect. Accordingly, in order to ensure the effectiveness of this Act, the Committee has adopted a lower evidentiary standard.

SECTION 3. IMPOSITION OF SANCTIONS

Sanctions are required to be imposed on any foreign person who has been identified in a report under section 2 as having—

- (1) transferred items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that contributed to Iran’s efforts to acquire, develop or produce ballistic missiles; or
- (2) provided technical assistance or facilities which the President deems to be of concern to the United States because of their direct contribution to Iran’s efforts to acquire, develop or produce ballistic missiles.

In addition, sanctions are required to be imposed on any foreign person who, on the basis of information contained in one or more reports under section 2, has been identified as having on more than one occasion—

- (1) attempted to transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that would have contributed to Iran’s efforts to acquire, develop or produce ballistic missiles; or
- (2) attempted to provide technical assistance or facilities which the President deems to be of concern to the United States because of their direct contribution to Iran’s efforts to acquire, develop or produce ballistic missiles.

Three sanctions must be imposed for a period of not less than two years on any foreign person required to be sanctioned under this Act. These sanctions are to take effect 30 days after the report identifying the foreign person was submitted or required to be submitted. The sanctions are—

- (1) prohibition of sales to that foreign person of items on the United States Munitions List as in effect on August 8, 1995, and termination of sales of defense articles, defense services, and design and construction services under the Arms Export Control Act;
- (2) prohibition of exports to that foreign person of dual use items listed on the control list established under section 5(c)(1) of the Export Administration Act of 1979; and
- (3) prohibition on the provision to that foreign person of United States assistance in the form of grants, loans, credits, guarantees, or otherwise.

SECTION 4. WAIVER ON BASIS OF ADDITIONAL INFORMATION

The President may waive the imposition of any sanction otherwise required to be imposed under section 3 if, on the basis of additional information provided by the foreign person in question or otherwise available to the President, the President determines and reports that he is persuaded that the foreign person did not carry out the act that would be the basis for imposition of sanctions pursuant to section 3.

The President's determination and report must be submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate at least 15 days before the waiver takes effect. The determination and report must be accompanied by a written justification describing in detail, among other matters, the credible information that otherwise would give rise to the requirement to impose sanctions, the additional information which persuaded the President that the credible information was misleading or incorrect, and the President's analysis of the information. The President's determination, report, and written justification may, to the extent considered appropriate by the President, be submitted in classified form.

The President is not required to wait until after a foreign person has been identified in a periodic report pursuant to section 2 before exercising the waiver provided by this section. This fact, along with the President's ability to exercise the waiver in classified form and the provision of section 2 exempting foreign persons subject to a waiver under this section from the requirement that they be identified in a report under that section, means that the President need not apply sections 2 and 3 with respect to foreign persons that he finds to be innocent of wrongdoing.

It is the Committee's expectation that the President will utilize these provisions of the Act to develop a process for judging the guilt or innocence of foreign persons about whom there emerges credible information suggesting that they may have transferred or attempted to transfer missile goods, technology, technical assistance, or facilities subject to the Act. This process should begin as soon as credible information suggesting that there may have been such a transfer or attempted transfer is obtained. As part of this process, the Executive branch should seek to obtain additional information from all sources. The President will then evaluate all relevant information and decide whether the evidence taken as a whole supports a determination by the President that no transfer or attempted transfer occurred. Only if the President is unable to conclude by a preponderance of the evidence that no transfer or attempted transfer occurred will sanctions actually be imposed.

SECTION 5. WAIVER ON BASIS OF NATIONAL SECURITY

The President may waive the imposition of any sanction otherwise required to be imposed under section 3 if the President determines and reports that such waiver is essential to the national security of the United States.

The President's determination and report must be submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate

at least 15 days before the waiver takes effect. The determination and report must be accompanied by a written justification describing in detail the facts and circumstances supporting the President's conclusion. The written justification accompanying the determination and report may, to the extent considered appropriate by the President, be submitted in classified form.

The Committee anticipates that, in virtually every case in which the waiver provided by this section is exercised, the national security justification for the waiver will be related to the Act's objective of preventing the proliferation of missile technology to Iran. Thus, in a typical case, the President might report that he has obtained reliable and credible assurances that the foreign person in question will refrain from future missile transfers to Iran, but only if the sanctions otherwise required to be imposed by this Act are suspended or not imposed.

SECTION 6. ADDITIONAL INFORMATION REGARDING ACTIONS BY GOVERNMENT OF PRIMARY JURISDICTION

As part of each report submitted under section 2, the President is required to provide additional information with respect to each foreign person identified in that report. This additional information relates to the knowledge and actions, or lack thereof, of the government of primary jurisdiction over that foreign person with respect to the activities that were the basis for the identification of that foreign person in the report. If the government of primary jurisdiction had knowledge of the activities and failed to undertake effective efforts to prevent them, the President is required to describe the sanctions that have been imposed on that government by the United States because of such failure.

SECTION 7. PURCHASE OF WEAPONS TECHNOLOGY

Expresses the sense of Congress that the President should use his authority under section 504 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 to prevent the transfer to Iran of weapons-related material, delivery systems, and related scientific and technical expertise through purchase, barter, or other acquisition of such items. Amounts hereafter made available to carry out chapter 11 of the Foreign Assistance Act of 1961 may be used to carry out this section.

SECTION 8. DEFINITIONS

Provides definitions of the terms "foreign person", "person", "government of primary jurisdiction", and "MTCR Annex" for purposes of this Act.

ADDITIONAL VIEWS ON H.R. 2709, THE IRAN MISSILE
PROLIFERATION SANCTIONS ACT OF 1997

The Chairman of the Committee deserves commendation for his efforts to focus attention on the issue of missile technology transfers to Iran. This issue is of grave importance to peace and stability in the Middle East, the security of key U.S. partners and allies—including Israel and Turkey—and the security of U.S. forces stationed in the Gulf region.

We believe that Congress and the Executive branch share the same policy goal: to stop the transfer of missile technology to Iran. The question before us is the most effective way to achieve that shared goal.

It is our belief that achievement of this goal requires the President to initiate a high-level diplomatic effort with those countries that provide missile technology to Iran. The role of Congress should be to strengthen the President's hand in his negotiations with Russia, or any other government, to stop such transfers. Legislation can play a helpful role in support of diplomacy, but such legislation needs to be shaped through careful consultation with the Executive branch.

Missile technology transfers to Iran have become a contentious issue between the Committee and the Executive branch, in part because the consultation process has been weak. The Committee has had difficulty in getting detailed, timely information from the Executive branch on this issue. The Committee requested in early September an opportunity to meet with Ambassador Wisner, the President's envoy who is conducting negotiations with Russia on this topic. The Committee benefited greatly from its meeting with Ambassador Wisner, but he was not available until the day before the Committee's mark-up of H.R. 2709.

Members of the Committee also seek to meet with the Vice President on this issue. Because of his involvement in the Gore-Chernomyrdin Commission, the vice President is the senior official most knowledgeable about the question of U.S. policy on Russian missile transfers to Iran. We believe that many of the Committee members' questions—particularly with regard to how high a priority the United States attaches to a resolution of this issue—can be best addressed by the Vice President, and we look forward to the earliest possible meeting with him. We believe that, through the involvement of the vice President, many of the problem areas identified by the Executive branch with H.R. 2709 can be addressed.

In her letter of October 24, 1997 to the Ranking Democratic Member, the Secretary of State commented on a draft of the Iran Missile Proliferation Act of 1997 as follows: "If presented to the President in its current form, the Secretary of State and the President's National Security Advisor would recommend that he veto this bill."

CHANGES TO THE BILL

Prior to and during mark-up, a number of improvements in H.R. 2709 took place:

We commend the Chairman for adding a waiver to sanctions that would be imposed by this bill. That waiver allows the President to waive sanctions if he determines and reports to Congress that such waiver is "essential to the national security of the United States."

The Committee adopted Mr. Berman's excellent amendment, limiting the scope of sanctioned activities to those involving the transfer or attempted transfer of Missile Technology Control Regime (MTCR) annex items or related items; or technical assistance or facilities that contribute directly to Iran's missile programs;

The Committee adopted Mr. Ackerman's excellent amendment, expressing the sense of Congress that the President should exercise existing authorities and available funds to prevent the transfer of weapons-related material and delivery systems to Iran through the purchase, barter or other acquisition of such material and delivery systems. In relative terms, because the amount of funds involved in Iran's purchases of missile technology are not large, Mr. Ackerman and other members of the Committee expressed the view that an approach other than sanctions may be a more useful way to achieve U.S. policy goals.

PROBLEMS REMAIN

Still, it is clear that several problems with H.R. 2709 remain:

The bill establishes too low a threshold for the imposition of sanctions. The bill allows little flexibility for the Executive to exercise judgment in evaluating the vast amount of information it receives about missile transfers to Iran. It is required to report, and impose sanctions, based on "credible information" about transfers or attempted transfers of goods or technology that contribute to Iran's missile program. Credible information is not a defined term, and is subject to the broadest interpretation. One report, or one phone call, could initiate a requirement to report and impose sanctions.

The bill does not allow enough time between the requirement to report and the requirement to sanction. Sanctions would have to be imposed no later than 30 days after the date of the required report. In many cases, sanctions could be imposed erroneously, needlessly damaging U.S. credibility with other governments in our efforts to prevent Iran from obtaining missile technology.

The bill has no requirement that actions subject to sanction be taken "knowingly." Sanctions would be imposed on entities unaware that items are going to Iran or will be used in missiles. Such a provision is fundamentally unfair and will undermine U.S. credibility and the willingness of foreign entities to cooperate with the United States.

The bill's waiver provision, while a step forward, could be improved further.

The bill retroactive in its application.

The bill applies sanctions on the U.S. subsidiaries of foreign firms that are sanctioned.

The bill's reporting requirements, even if interpreted not to require the public release of sensitive information, could dissuade foreign governments or persons from cooperating with the United States to prevent Iran from obtaining missile technology.

Not each of us agree with every problem in the list as outlined above. But each of us believe that the bill needs substantial improvement.

Even at this late date, we do not have a full understanding of the bill's impact if it were enacted into law. For this reason, we believe that further consultation with the Executive branch is necessary.

Through such consultation, and through further work by the Committee, we believe that this bill can be improved so that it will strengthen, not undermine, the President's ability to achieve the goals all of us share—to stop Iran's missile program.

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