

TITLE 22 - FOREIGN RELATIONS AND INTERCOURSE
CHAPTER 75 - CHEMICAL WEAPONS CONVENTION IMPLEMENTATION
SUBCHAPTER I - GENERAL PROVISIONS

§ 6713. Civil liability of United States

(a) Claims for taking of property

(1) Jurisdiction of courts of the United States

(A) United States Court of Federal Claims

The United States Court of Federal Claims shall, subject to subparagraph (B), have jurisdiction of any civil action or claim against the United States for any taking of property without just compensation that occurs by reason of the action of any officer or employee of the Organization for the Prohibition of Chemical Weapons, including any member of an inspection team of the Technical Secretariat, or by reason of the action of any officer or employee of the United States pursuant to this chapter or the Convention. For purposes of this subsection, action taken pursuant to or under the color of this chapter or the Convention shall be deemed to be action taken by the United States for a public purpose.

(B) District courts

The district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any civil action or claim described in subparagraph (A) that does not exceed \$10,000.

(2) Notification

Any person intending to bring a civil action pursuant to paragraph (1) shall notify the United States National Authority of that intent at least one year before filing the claim in the United States Court of Federal Claims. Action on any claim filed during that one-year period shall be stayed. The one-year period following the notification shall not be counted for purposes of any law limiting the period within which the civil action may be commenced.

(3) Initial steps by United States Government to seek remedies

During the period between a notification pursuant to paragraph (2) and the filing of a claim covered by the notification in the United States Court of Federal Claims, the United States National Authority shall pursue all diplomatic and other remedies that the United States National Authority considers necessary and appropriate to seek redress for the claim including, but not limited to, the remedies provided for in the Convention and under this chapter.

(4) Burden of proof

In any civil action under paragraph (1), the plaintiff shall have the burden to establish a prima facie case that, due to acts or omissions of any official of the Organization or any member of an inspection team of the Technical Secretariat taken under the color of the Convention, proprietary information of the plaintiff has been divulged or taken without authorization. If the United States Court of Federal Claims finds that the plaintiff has demonstrated such a prima facie case, the burden shall shift to the United States to disprove the plaintiff's claim. In deciding whether the plaintiff has carried its burden, the United States Court of Federal Claims shall consider, among other things—

(A) the value of proprietary information;

(B) the availability of the proprietary information;

(C) the extent to which the proprietary information is based on patents, trade secrets, or other protected intellectual property;

(D) the significance of proprietary information; and

(E) the emergence of technology elsewhere a reasonable time after the inspection.

(b) Tort liability

NB: This unofficial compilation of the U.S. Code is current as of Jan. 3, 2005 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

The district courts of the United States shall have exclusive jurisdiction of civil actions for money damages for any tort under the Constitution or any Federal or State law arising from the acts or omissions of any officer or employee of the United States or the Organization, including any member of an inspection team of the Technical Secretariat, taken pursuant to or under color of the Convention or this chapter.

(c) Waiver of sovereign immunity of United States

In any action under subsection (a) or (b) of this section, the United States may not raise sovereign immunity as a defense.

(d) Authority for cause of action

(1) United States actions in United States district court

Notwithstanding any other law, the Attorney General of the United States is authorized to bring an action in the United States District Court for the District of Columbia against any foreign nation for money damages resulting from that nation's refusal to provide indemnification to the United States for any liability imposed on the United States by virtue of the actions of an inspector of the Technical Secretariat who is a national of that foreign nation acting at the direction or the behest of that foreign nation.

(2) United States actions in courts outside the United States

The Attorney General is authorized to seek any and all available redress in any international tribunal for indemnification to the United States for any liability imposed on the United States by virtue of the actions of an inspector of the Technical Secretariat, and to seek such redress in the courts of the foreign nation from which the inspector is a national.

(3) Actions brought by individuals and businesses

Notwithstanding any other law, any national of the United States, or any business entity organized and operating under the laws of the United States, may bring a civil action in a United States District Court for money damages against any foreign national or any business entity organized and operating under the laws of a foreign nation for an unauthorized or unlawful acquisition, receipt, transmission, or use of property by or on behalf of such foreign national or business entity as a result of any tort under the Constitution or any Federal or State law arising from acts or omissions by any officer or employee of the United States or any member of an inspection team of the Technical Secretariat taken pursuant to or under the color of the Convention or this chapter.

(e) Recoupment

(1) Policy

It is the policy of the United States to recoup all funds withdrawn from the Treasury of the United States in payment for any tort under Federal or State law or taking under the Constitution arising from the acts or omissions of any foreign person, officer, or employee of the Organization, including any member of an inspection team of the Technical Secretariat, taken under color of the Chemical Weapons Convention or this chapter.

(2) Sanctions on foreign companies

(A) Imposition of sanctions

The sanctions provided in subparagraph (B) shall be imposed for a period of not less than ten years upon—

- (i)** any foreign person, officer, or employee of the Organization, including any member of an inspection team of the Technical Secretariat, for whose actions or omissions the United States has been held liable for a tort or taking pursuant to this chapter; and
- (ii)** any foreign person or business entity organized and operating under the laws of a foreign nation which knowingly assisted, encouraged or induced, in any way, a foreign person described in clause (i) to publish, divulge, disclose, or make known in any manner

or to any extent not authorized by the Convention any United States confidential business information.

(B) Sanctions

(i) Arms export transactions

The United States Government shall not sell to a person described in subparagraph (A) any item on the United States Munitions List and shall terminate sales of any defense articles, defense services, or design and construction services to a person described in subparagraph (A) under the Arms Export Control Act [22 U.S.C. 2751 et seq.].

(ii) Sanctions under Export Administration Act of 1979

The authorities under section 6 of the Export Administration Act of 1979 [50 App. U.S.C. 2405] shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act [50 App. U.S.C. 2404 (c)(1)] to a person described in subparagraph (A).

(iii) International financial assistance

The United States shall oppose any loan or financial or technical assistance by international financial institutions in accordance with section 262d of this title to a person described in subparagraph (A).

(iv) Export-Import Bank transactions

The United States shall not give approval to guarantee, insure, or extend credit, or to participate in the extension of credit to a person described in subparagraph (A) through the Export-Import Bank of the United States.

(v) Private bank transactions

Regulations shall be issued to prohibit any United States bank from making any loan or providing any credit to a person described in subparagraph (A).

(vi) Blocking of assets

The President shall take all steps necessary to block any transactions in any property subject to the jurisdiction of the United States in which a person described in subparagraph (A) has any interest whatsoever, for the purpose of recouping funds in accordance with the policy in paragraph (1).

(vii) Denial of landing rights

Landing rights in the United States shall be denied to any private aircraft or air carrier owned by a person described in subparagraph (A) except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(3) Sanctions on foreign governments

(A) Imposition of sanctions

Whenever the President determines that persuasive information is available indicating that a foreign country has knowingly assisted, encouraged or induced, in any way, a person described in paragraph (2)(A) to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information, the President shall, within 30 days after the receipt of such information by the executive branch of Government, notify the Congress in writing of such determination and, subject to the requirements of paragraphs (4) and (5), impose the sanctions provided under subparagraph (B) for a period of not less than five years.

(B) Sanctions

(i) Arms export transactions

The United States Government shall not sell a country described in subparagraph (A) any item on the United States Munitions List, shall terminate sales of any defense articles, defense services, or design and construction services to that country under the Arms Export Control Act [22 U.S.C. 2751 et seq.], and shall terminate all foreign military financing for that country under the Arms Export Control Act.

(ii) Denial of certain licenses

Licenses shall not be issued for the export to the sanctioned country of any item on the United States Munitions List or commercial satellites.

(iii) Denial of assistance

No appropriated funds may be used for the purpose of providing economic assistance, providing military assistance or grant military education and training, or extending military credits or making guarantees to a country described in subparagraph (A).

(iv) Sanctions under Export Administration Act of 1979

The authorities of section 6 of the Export Administration Act of 1979 [50 App. U.S.C. 2405] shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act [50 App. U.S.C. 2404 (c)(1)] to a country described in subparagraph (A).

(v) International financial assistance

The United States shall oppose any loan or financial or technical assistance by international financial institutions in accordance with section 262d of this title to a country described in subparagraph (A).

(vi) Termination of assistance under Foreign Assistance Act of 1961

The United States shall terminate all assistance to a country described in subparagraph (A) under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], except for urgent humanitarian assistance.

(vii) Private bank transactions

The United States shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit through the Export-Import Bank of the United States to a country described in subparagraph (A).

(viii) Private bank transactions

Regulations shall be issued to prohibit any United States bank from making any loan or providing any credit to a country described in subparagraph (A).

(ix) Denial of landing rights

Landing rights in the United States shall be denied to any air carrier owned by a country described in subparagraph (A), except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(4) Suspension of sanctions upon recoupment by payment

Sanctions imposed under paragraph (2) or (3) may be suspended if the sanctioned person, business entity, or country, within the period specified in that paragraph, provides full and complete compensation to the United States Government, in convertible foreign exchange or other mutually acceptable compensation equivalent to the full value thereof, in satisfaction of a tort or taking for which the United States has been held liable pursuant to this chapter.

(5) Waiver of sanctions on foreign countries

The President may waive some or all of the sanctions provided under paragraph (3) in a particular case if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that such waiver is necessary to protect

NB: This unofficial compilation of the U.S. Code is current as of Jan. 3, 2005 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

the national security interests of the United States. The certification shall set forth the reasons supporting the determination and shall take effect on the date on which the certification is received by the Congress.

(6) Notification to Congress

Not later than five days after sanctions become effective against a foreign person pursuant to this chapter, the President shall transmit written notification of the imposition of sanctions against that foreign person to the chairmen and ranking members of the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(f) Sanctions for unauthorized disclosure of United States confidential business information

The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States any alien who, after October 21, 1998—

- (1) is, or previously served as, an officer or employee of the Organization and who has willfully published, divulged, disclosed, or made known in any manner or to any extent not authorized by the Convention any United States confidential business information coming to him in the course of his employment or official duties, or by reason of any examination or investigation of any return, report, or record made to or filed with the Organization, or any officer or employee thereof, such practice or disclosure having resulted in financial losses¹ or damages to a United States person and for which actions or omissions the United States has been found liable of a tort or taking pursuant to this chapter;
- (2) traffics in United States confidential business information, a proven claim to which is owned by a United States national;
- (3) is a corporate officer, principal, shareholder with a controlling interest of an entity which has been involved in the unauthorized disclosure of United States confidential business information, a proven claim to which is owned by a United States national; or
- (4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(g) “United States confidential business information” defined

In this section, the term “United States confidential business information” means any trade secrets or commercial or financial information that is privileged and confidential—

- (1) including—
 - (A) data described in section 6724 (e)(2) of this title,
 - (B) any chemical structure,
 - (C) any plant design process, technology, or operating method,
 - (D) any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed, or produced, or
 - (E) any commercial sale, shipment, or use of a chemical, or
- (2) as described in section 552 (b)(4) of title 5,

and that is obtained—

- (i) from a United States person; or
- (ii) through the United States Government or the conduct of an inspection on United States territory under the Convention.

Footnotes

¹ So in original. Probably should be “losses”.

(Pub. L. 105–277, div. I, title I, § 103, Oct. 21, 1998, 112 Stat. 2681–861.)

References in Text

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. I of Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681–856, known as the Chemical Weapons Convention Implementation Act of 1998, to reflect the probable intent of Congress. For complete classification of division I to the Code, see Short Title note set out under section 6701 of this title and Tables.

The Arms Export Control Act, referred to in subsec. (e)(2)(B)(i), (3)(B)(i), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsec. (e)(3)(B)(vi), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.