

**TITLE 22 - FOREIGN RELATIONS AND INTERCOURSE
CHAPTER 78 - TRAFFICKING VICTIMS PROTECTION****§ 7107. Actions against governments failing to meet minimum standards****(a) Statement of policy**

It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that—

- (1) does not comply with minimum standards for the elimination of trafficking; and
- (2) is not making significant efforts to bring itself into compliance with such standards.

(b) Reports to Congress**(1) Annual report**

Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report with respect to the status of severe forms of trafficking in persons that shall include—

- (A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;
- (B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance; and
- (C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.

(2) Interim reports

In addition to the annual report under paragraph (1), the Secretary of State may submit to the appropriate congressional committees at any time one or more interim reports with respect to the status of severe forms of trafficking in persons, including information about countries whose governments—

- (A) have come into or out of compliance with the minimum standards for the elimination of trafficking; or
- (B) have begun or ceased to make significant efforts to bring themselves into compliance, since the transmission of the last annual report.

(3) Special watch list**(A) Submission of list**

Not later than the date on which the determinations described in subsections (c) and (d) of this section are submitted to the appropriate congressional committees in accordance with such subsections, the Secretary of State shall submit to the appropriate congressional committees a list of countries that the Secretary determines requires special scrutiny during the following year. The list shall be composed of the following countries:

- (i) Countries that have been listed pursuant to paragraph (1)(A) in the current annual report and were listed pursuant to paragraph (1)(B) in the previous annual report.
- (ii) Countries that have been listed pursuant to paragraph (1)(B) pursuant to the current annual report and were listed pursuant to paragraph (1)(C) in the previous annual report.
- (iii) Countries that have been listed pursuant to paragraph (1)(B) pursuant to the current annual report, where—
 - (I) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

(II) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or

(III) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

(B) Interim assessment

Not later than February 1st of each year, the Secretary of State shall provide to the appropriate congressional committees an assessment of the progress that each country on the special watch list described in subparagraph (A) has made since the last annual report.

(C) Relation of special watch list to annual trafficking in persons report

A determination that a country shall not be placed on the special watch list described in subparagraph (A) shall not affect in any way the determination to be made in the following year as to whether a country is complying with the minimum standards for the elimination of trafficking or whether a country is making significant efforts to bring itself into compliance with such standards.

(4) Significant efforts

In determinations under paragraph (1) or (2) as to whether the government of a country is making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking, the Secretary of State shall consider—

(A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and

(C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.

(c) Notification

Not less than 45 days or more than 90 days after the submission, on or after January 1, 2003, of an annual report under subsection (b)(1) of this section, or an interim report under subsection (b)(2) of this section, the President shall submit to the appropriate congressional committees a notification of one of the determinations listed in subsection (d) of this section with respect to each foreign country whose government, according to such report—

(A) does not comply with the minimum standards for the elimination of trafficking; and

(B) is not making significant efforts to bring itself into compliance, as described in subsection (b)(1)(C) of this section.

(d) Presidential determinations

The determinations referred to in subsection (c) of this section are the following:

(1) Withholding of nonhumanitarian, nontrade-related assistance

The President has determined that—

(A) (i) the United States will not provide nonhumanitarian, nontrade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

(2) Ongoing, multiple, broad-based restrictions on assistance in response to human rights violations

The President has determined that such country is already subject to multiple, broad-based restrictions on assistance imposed in significant part in response to human rights abuses and such restrictions are ongoing and are comparable to the restrictions provided in paragraph (1). Such determination shall be accompanied by a description of the specific restriction or restrictions that were the basis for making such determination.

(3) Subsequent compliance

The Secretary of State has determined that the government of the country has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance.

(4) Continuation of assistance in the national interest

Notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking and to make significant efforts to bring itself into compliance, the President has determined that the provision to the country of nonhumanitarian, nontrade-related foreign assistance or funding for participation in educational and cultural exchange programs, or the multilateral assistance described in paragraph (1)(B), or both, would promote the purposes of this chapter or is otherwise in the national interest of the United States.

(5) Exercise of waiver authority

(A) In general

The President may exercise the authority under paragraph (4) with respect to—

- (i) all nonhumanitarian, nontrade-related foreign assistance or funding for participation in educational and cultural exchange programs to a country;
- (ii) all multilateral assistance described in paragraph (1)(B) to a country; or
- (iii) one or more programs, projects, or activities of such assistance.

(B) Avoidance of significant adverse effects

The President shall exercise the authority under paragraph (4) when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

(6) Definition of multilateral development bank

In this subsection, the term “multilateral development bank” refers to any of the following institutions: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Inter-American Investment Corporation,

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

the African Development Bank, the African Development Fund, the European Bank for Reconstruction and Development, and the Multilateral Investment Guaranty Agency.

(e) Certification

Together with any notification under subsection (c) of this section, the President shall provide a certification by the Secretary of State that, with respect to any assistance described in clause (ii), (iii), or (v) of section 7102 (7)(A) of this title, or with respect to any assistance described in section 7102 (7)(B) of this title, no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.

(f) Subsequent waiver authority

After the President has made a determination described in subsection (d)(1) of this section with respect to the government of a country, the President may at any time make a determination described in paragraphs (4) and (5) of subsection (d) of this section to waive, in whole or in part, the measures imposed against the country by the previous determination under subsection (d)(1) of this section.

(Pub. L. 106–386, div. A, § 110, Oct. 28, 2000, 114 Stat. 1482; Pub. L. 108–193, § 6(e), (h), (i), Dec. 19, 2003, 117 Stat. 2882, 2884.)

Amendments

2003—Subsec. (b)(3), (4). Pub. L. 108–193, § 6(e), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(4). Pub. L. 108–193, § 6(h)(1), inserted “or funding for participation in educational and cultural exchange programs” after “nonhumanitarian, nontrade-related foreign assistance”.

Subsec. (d)(5)(A)(i). Pub. L. 108–193, § 6(h)(2), inserted “or funding for participation in educational and cultural exchange programs” after “foreign assistance”.

Subsec. (f). Pub. L. 108–193, § 6(i), added subsec. (f).

Presidential Determination With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons

Determination of President of the United States, No. 2004–46, Sept. 10, 2004, 69 F.R. 56155, provided:

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended [22 U.S.C. 7107], (the “Act”), I hereby:

Make the determination provided in section 110(d)(1)(A)(i) of the Act, with respect to Equatorial Guinea and Venezuela, not to provide certain funding for those countries’ governments for fiscal year 2005, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Burma, Cuba, Sudan, and North Korea, not to provide certain funding for those countries’ governments for fiscal year 2005, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(3) of the Act, concerning the determinations of the Deputy Secretary of State with respect to Bangladesh, Ecuador, Guyana, and Sierra Leone;

Determine, consistent with section 110(d)(4) of the Act, with respect to Equatorial Guinea, for the implementation of programs, projects, or activities regarding police professionalization, business responsibility, and promotion of the rule of law, that provision to Equatorial Guinea of the assistance described in section 110(d)(1)(A)(i) of the Act for such programs, projects, or activities would promote the purposes of the Act [22 U.S.C. 7101 et seq.] or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Sudan, for all programs, projects, or activities of assistance as may be necessary to implement a North/South peace accord and to address the crisis in Darfur, that provision to Sudan of the assistance described in section 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States; and

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>).

Determine, consistent with section 110(d)(4) of the Act, with respect to Venezuela, for all programs, projects, or activities designed to strengthen the democratic process, including strengthening of political parties and supporting electoral observation and monitoring, that provision to Venezuela of the assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress, and to publish it in the Federal Register.

George W. Bush.

Prior determinations and certifications regarding trafficking in persons were contained in the following:

Determination of President of the United States, No. 2003-35, Sept. 9, 2003, 68 F.R. 53871.