## b. The Arms Export Control Act

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## b. The Arms Export Control Act

**Public Law 90–629 [H.R. 15681], 82 Stat. 1320, approved October 22, 1968, as amended by Public Law 91–672 [H.R. 15628], 84 Stat. 2053, approved January 12, 1971; Public Law 92–226 [Foreign Assistance Act of 1971, S. 2819], 86 Stat. 20, 32, approved February 7, 1972; Public Law 93–189 [Foreign Assistance Act of 1973, S. 1443], 87 Stat. 714, approved December 17, 1973; Public Law 93–559 [Foreign Assistance Act of 1974, S. 3394], 88 Stat. 1795, 1813, approved December 31, 1974; Public Law 94–329 [International Security Assistance and Arms Export Control Act of 1976, H.R. 13680], 90 Stat. 729, approved June 30, 1976; Public Law 95–92 [International Security Assistance Act of 1977, H.R. 6884], 91 Stat. 614, approved August 4, 1977; Public Law 95–105 [Foreign Relations Authorization Act, Fiscal Year 1978; H.R. 6689], 91 Stat. 844 at 846, approved August 17, 1977; Public Law 95–384 [International Security Assistance Act of 1978, S. 3075], 92 Stat. 730, approved September 26, 1978; Public Law 96–70 [Panama Canal Act of 1979; H.R. 111], 93 Stat. 452 at 499, approved September 27, 1979; Public Law 96–72 [Export Administration Act of 1979, S. 737], 93 Stat. 503 at 535, approved September 29, 1979; Public Law 96–92 [International Security Assistance Act of 1979; H.R. 3173], 93 Stat. 701, approved October 29, 1979; Public Law 96–533 [International Security and Development Cooperation Act of 1980; H.R. 6942], 94 Stat. 3131, approved December 16, 1980; Public Law 97–113 [International Security and Development Cooperation Act of 1981; S. 1196], 95 Stat. 1519, approved December 29, 1981; Public Law 97–392 [H.R. 6758], 96 Stat. 1962, approved December 29, 1982; Public Law 98–151 [Further Continuing Appropriations, 1984; H.J. Res. 413], 97 Stat. 964, approved November 14, 1983; Public Law 98–473 [Continuing Appropriations Act, 1985; H.J. Res. 648], 98 Stat. 1837, approved October 12, 1984; Public Law 99–64 [Export Administration Amendments Act of 1985, S. 883], 99 Stat. 156, approved July 12, 1985; Public Law 99–83 [International Security and Development Cooperation Act of 1985, S. 960], 99 Stat. 190, approved August 8, 1985; Public Law 99–139 [Act to amend Sec. 51(b) of the Arms Export Control Act, S. 1726], 99 Stat. 562, approved October 30, 1985; Public Law 99–247 [Act to amend the Arms Export Control Act to require that congressional vetoes of certain arms export proposals be enacted into law, S. 1831], 100 Stat. 9, approved February 12, 1986; Public Law 99–399 [Omnibus Diplomatic Security and Antiterrorism Act of 1986; H.R. 4151], 100 Stat. 853, approved August 27, 1986; Public Law 99–433 [Department of Defense Reorganization Act of 1986, H.R. 3622], 100 Stat. 992, approved October 1, 1986; Public Law 99–591 [Continuing Appropriations Act, 1987; H.J. Res. 738], 100 Stat. 3341, approved October 30, 1986; Public Law 99–661 [National Defense Authorization Act for Fiscal Year 1987, S. 2638], 100 Stat. 3816, approved November 14, 1986; Public Law 100–71 [Supplemental Appropriations Act, 1987; H.R. 1827], 101 Stat. 391, approved July 11, 1987; Public Law 100–202 [Continuing Appropriations Act, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; Public Law 100–204 [Foreign Relations Authorization Act, 1988 and 1989; H.R. 1777], 101 Stat. 1331, approved December 22, 1987; Public Law 100–456 [National Defense Authorization Act, 1989; H.R. 4481], 102 Stat. 1918, approved September 29, 1988; Public Law 100–461 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989; H.R. 4637], 102 Stat. 2268, approved October 1, 1988; Public Law 101–165 [Department of Defense Appropriations Act, 1990; H.R. 3072], 103 Stat. 1112, approved November 21, 1989; Public Law 101–167 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990; H.R. 3743], 103 Stat. 1195, approved November 21, 1989; Public Law 101–222 [Anti-Terrorism and Arms Export Amendments Act of 1989, H.R. 91], 103 Stat. 1892, approved December 12, 1989; Public Law 101–231 [International Narcotics Control Act of 1989, H.R.**

3611], 103 Stat. 1954, approved December 13, 1989; Public Law 101–510 [National Defense Authorization for Fiscal Year 1991, H.R. 4739], 104 Stat. 1485, approved November 5, 1990; Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979, approved November 5, 1990; Public Law 102–25 [Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991; S. 725], 105 Stat. 75, approved April 6, 1991; Public Law 102–138 [Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; H.R. 1415], 105 Stat. 647, approved October 28, 1991; Public Law 102–182 [title III—Chemical and Biological Weapons Control and Warfare Elimination Act of 1991; H.R. 1724], 105 Stat. 1233 at 1245; approved December 4, 1991; sec. 545 of H.R. 2621 as passed by the House on June 19, 1991, enacted by reference in Public Law 102–145 [H.J. Res. 360; 105 Stat. 968, approved October 28, 1991; Public Law 102–228 [Conventional Forces in Europe Treaty Implementation Act of 1991; H.R. 3807], 105 Stat. 1691, approved December 12, 1991; Public Law 102–391 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993; H.R. 5368], 106 Stat. 1633, approved October 6, 1992; Public Law 102–429 [Export Enhancement Act of 1992; H.R. 5739], 106 Stat. 2186, approved October 21, 1992; Public Law 102–484 [National Defense Authorization Act for Fiscal Year 1993, H.R. 5006], 106 Stat. 2315, approved October 23, 1992; Public Law 102–583 [International Narcotics Control Act of 1992; H.R. 6187], 106 Stat. 4914, approved November 2, 1992; Public Law 103–87 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994; H.R. 2295], 107 Stat. 931, approved September 30, 1993; Public Law 103–199 [FRIENDSHIP Act; H.R. 3000], 107 Stat. 2317, approved December 17, 1993; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–306 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995; H.R. 4426], 108 Stat. 1608, approved August 23, 1994; Public Law 103–437 [United States Code Technical Amendments; H.R. 4777], 108 Stat. 4581, approved November 2, 1994; Public Law 104–99 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996; H.R. 1868], enacted by reference in section 301 of H.R. 2880, 110 Stat. 26, approved January 26, 1996, enacted again as Public Law 104–107 [H.R. 1868], 110 Stat. 755, approved February 12, 1996; Public Law 104–106 [National Defense Authorization Act for Fiscal Year 1996; S. 1124], 110 Stat. 186, approved February 10, 1996; Public Law 104–132 [Antiterrorism and Effective Death Penalty Act of 1996; S. 735], 110 Stat. 1214, approved April 24, 1996; Public Law 104–164 [H.R. 3121], 110 Stat. 1421, approved July 21, 1996; Public Law 104–201 [National Defense Authorization Act for Fiscal Year 1997, H.R. 3230], 110 Stat. 2422, approved September 23, 1996; Public Law 104–208 [Omnibus Consolidated Appropriations Act, 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 105–118 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998; H.R. 2159], 111 Stat. 2386, approved November 26, 1997; Public Law 105–194 [Agriculture Export Relief Act of 1998; S. 2282], 112 Stat. 627, approved July 14, 1998; Public Law 105–277 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999; and Foreign Affairs Agencies Consolidation Act of 1998; H.R. 4328], 112 Stat. 2681, approved October 21, 1998; Public Law 106–113 [Arms Control, Nonproliferation, and Security Assistance Act of 1999; division B of H.R. 3427, enacted by reference in sec. 1000(a)(7) of Consolidated Appropriations Act for Fiscal Year 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; Public Law 106–113 [Arms Control and Nonproliferation Act of 1999; title XI of H.R. 3427, enacted by reference in sec. 1000(a)(7) of Consolidated Appropriations Act for Fiscal Year 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; Public Law 106–113 [Security Assistance Act of 1999; title XII of H.R. 3427, enacted by reference in sec. 1000(a)(7) of Consolidated Appropriations Act for Fiscal Year 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; Public Law 106–113 [Defense Offsets Disclosure Act of 1999; subtitle D, title XII of H.R. 3427, enacted by reference in sec. 1000(a)(7) of Consolidated Appropriations Act for Fiscal Year 2000; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; and by Public Law 106–280 [Security Assistance Act of 2000; H.R. 4919], 114 Stat. 845, approved October 6, 2000

AN ACT To consolidate and revise foreign assistance legislation relating to reimbursable military exports.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Arms Export Control Act".[1]

## Chapter 1—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

**Section 1.[2] The Need for International Defense Cooperation and Military Export Controls.**—As declared by the Congress in the Arms Control and Disarmament Act, an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments; in which the use of force has been subordinated to the rule of law; and in which international adjustments to a changing world are achieved peacefully. In furtherance of that goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.

The Congress recognizes, however, that the United States and other free and independent countries continue to have valid requirements for effective and mutually beneficial defense relationships in order to maintain and foster the environment of international peace and security essential to social, economic, and political progress. Because of the growing cost and complexity of defense equipment, it is increasingly difficult and uneconomic for any country, particularly a developing country, to fill all of its legitimate defense requirements from its own design and production base. The need for international defense cooperation among the United States and those friendly countries to which it is allied by mutual defense treaties is especially important, since the effectiveness of their armed forces to act in concert to deter or defeat aggression is directly related to the operational compatibility of their defense equipment.

Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of

[1] The new title, "Arms Export Control Act," was added in lieu of "The Foreign Military Sales Act" by sec. 201 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 734). Sec. 201 further stated that "any reference to the Foreign Military Sales Act shall be deemed to be a reference to the Arms Export Control Act.".

[2] 22 U.S.C. 2751. See also sec. 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1489), relating to an annual report on the proliferation of missiles and essential components of nuclear, biological, and chemical weapons; sec. 1605 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1845), establishing the Joint Committee for Review of Counterproliferation Programs of the United States; sec. 1503 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2916), relating to a report of the findings of the Counterproliferation Program Review Committee, in *Legislation on Foreign Relations Through 2000*, vol. I–B.

See also sec. 564 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1994 (Public Law 103–236; 108 Stat. 484) relating to prohibiting sales and leases to those participating in or supporting the Arab boycott of Israel, in *Legislation on Foreign Relations Through 2000*, vol. II.

Sec. 154 of Public Law 104–164 (110 Stat. 1440) provided the following:

"SEC. 154. ELIGIBILITY OF PANAMA UNDER THE ARMS EXPORT CONTROL ACT.

"The Government of the Republic of Panama shall be eligible to purchase defense articles and services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), except as otherwise specifically provided by law.".

cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern. To this end, this Act authorizes sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter.

It is the sense of the Congress that all such sales be approved only when they are consistent with the foreign policy interests of the United States, the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended, the extent and character of the military requirement, and the economic and financial capability of the recipient country, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to the impact of the sales on programs of social and economic development and on existing or incipient arms races.[3]

It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments. United States programs for or procedures governing the export, sale, and grant of defense articles and defense services to foreign countries and international organizations shall be administered in a manner which will carry out this policy.

It is the sense of the Congress that the President should seek to initiate multilateral discussions for the purpose of reaching agreements among the principal arms suppliers and arms purchasers and other countries with respect to the control of the international trade in armaments. It is further the sense of Congress that the President should work actively with all nations to check and control the international sale and distribution of conventional weapons of death and destruction and to encourage regional arms control arrangements. In furtherance of this policy, the President should undertake a concerted effort to convene an international conference of major arms-supplying and arms-purchasing nations which shall consider measures to limit conventional arms transfers in the interest of international peace and stability.

It is the sense of the Congress that the aggregate value of defense articles and defense services—

[3] A paragraph, as amended by sec. 4 of Public Law 91–672 and which had previously appeared at this point, was repealed by sec. 734(a)(10) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1560). It formerly read as follows:

"It is further the sense of Congress that sales and guaranties under sections 21, 22, 23, and 24, shall not be approved where they would have the effect of arming military dictators who are denying the growth of fundamental rights or social progress to their own people: *Provided,* That the President may waive this limitation when he determines it would be important to the security of the United States, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate.".

(1) which are sold under section 21 or section 22 of this Act; or

(2) which are licensed or approved for export under section 38 of this Act to, for the use, or for benefit of the armed forces, police, intelligence, or other internal security forces of a foreign country or international organization under a commercial sales contract;

in any fiscal year should not exceed current levels.[4]

It is the sense of the Congress that the President maintain adherence to a policy of restraint in conventional arms transfers and that, in implementing this policy worldwide, a balanced approach should be taken and full regard given to the security interests of the United States in all regions of the world and that particular attention should be paid to controlling the flow of conventional arms to the nations of the developing world. To this end, the President is encouraged to continue discussions with other arms suppliers in order to restrain the flow of conventional arms to less developed countries.[5]

**Sec. 2.**[6] **Coordination With Foreign Policy.**—(a) Nothing contained in this Act shall be construed to infringe upon the powers or functions of the Secretary of State.

(b)[7] Under the direction of the President, the Secretary of State (taking into account other United States activities abroad, such as military assistance, economic assistance, and food for peace program) shall be responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this Act, including, but not limited to, determining—

(1) whether there will be a sale to or financing for a country and the amount thereof;

(2) whether there will be a lease to a country;

(3) whether there will be a cooperative project and the scope thereof; and

(4) whether there will be delivery or other performance under the sale, lease, cooperative project, or export,

to the end that sales, financing, leases, cooperative projects, and exports will be integrated with other United States activities and

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[4] Sec. 202(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 734) amended sec. 1 by striking out the last paragraph and adding the language beginning with "It shall be the policy of the United States". The last paragraph of sec. 1 formerly read as follows: "In order to reduce the role of the United States Government in the furnishing of defense articles and defense services to foreign countries and international organizations, and return such transactions to commercial channels, the United States Government shall reduce its sales, credit sales, and guaranties of such articles, and defense services as soon as, and to the maximum extent, practicable.".

[5] This paragraph was added by sec. 15(a) of the International Security Assistance Act of 1978 (92 Stat. 739). Sec. 15(b) of the same Act required a report from the President to the Congress by December 31, 1979, concerning the implications of the multilateral discussions referred to in the paragraph.

[6] 22 U.S.C. 2752. See also Presidential determinations, in notes at section 38.

[7] Subsec. (b) was amended and restated by sec. 115(b) of Public Law 99–83 (99 Stat. 201). It previously read as follows:

"(b) Under the direction of the President, the Secretary of State, taking into account other United States activities abroad, such as military assistance, economic assistance, and food for freedom, shall be responsible for the continuous supervision and general direction of sales, leases, and exports under this Act, including, but not limited to, determining whether there shall be a sale to a country and the amount thereof, whether there shall be a lease to a country, and whether there shall be delivery or other performance under such sale, lease, or export, to the end that sales, leases, and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.".

to the end that the foreign policy of the United States would be best served thereby.

(c) The President shall prescribe appropriate procedures to assure coordination among representatives of the United States Government in each country, under the leadership of the Chief of the United States Diplomatic Mission. The Chief of the diplomatic mission shall make sure that recommendations of such representatives pertaining to sales are coordinated with political and economic considerations, and his comments shall accompany such recommendations if he so desires.

**Sec. 3.**[8] **Eligibility.**—(a) No defense article or defense service shall be sold or leased[9] by the United States Government under this Act to any country or international organization,[10] and no agreement shall be entered into for a cooperative project (as defined in section 27 of this Act), unless—

(1)[11] the President finds that the furnishing of defense articles and defense services to such country or international organization will strengthen the security of the United States and promote world peace;

(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service[12] so furnished to it, or produced in a cooperative project (as defined in section 27 of this Act),[13] to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative

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[8] 22 U.S.C. 2753. Sec. 906 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3356) provided the following:

"SEC. 906. ELIGIBILITY OF BALTIC STATES FOR NONLETHAL DEFENSE ARTICLES.

"(a) ELIGIBILITY.—Estonia, Latvia, and Lithuania shall each be eligible—

"(1) to purchase, or to receive financing for the purchase of, nonlethal defense articles—

"(A) under the Arms Export Control Act (22 U.S.C. 2751 et seq.), without regard to section 3(a)(1) of that Act, or

"(B) under section 503 of the Foreign Assistance Act of 1961 (22 U.S.C. 2311), without regard to the requirement in subsection (a) of that section for a Presidential finding; and

"(2) to receive nonlethal excess defense articles transferred under section 519 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321m), without regard to the restrictions in subsection (a) of that section.

"(b) DEFINITIONS.—As used in this section—

"(1) the term 'defense article' has the same meaning given to that term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2794(3)); and

"(2) the term 'excess defense article' has the same meaning given to that term in section 644(g) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(g)).".

[9] The words "or leased" were added by sec. 109(b)(2)(A) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1526).

[10] The words "and no agreement * * * of this Act)", were added by sec. 115(b)(2)(A) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 201).

[11] The President made no determinations pursuant to this sec. in 1998–2000. In 1997, the President determined that the furnishing of defense articles and services to the Governments of Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan, Russia, Ukraine, and Uzbekistan, would strengthen the security of the United States and promote world peace (Presidential Determination No. 97-19 of March 11, 1997; 62 F.R. 13531).

In 1995 and 1996, the President made similar determinations for Angola (Presidential Determination No. 95–32 of July 28, 1995; 60 F.R. 40255), Mongolia (Presidential Determination No. 95–38 of August 22, 1995; 60 F.R. 50069), Bosnia and Herzegovina (Presidential Determination No. 96–10 of February 23, 1996; 61 F.R. 8463), Slovenia, and the Former Yugoslav Republic of Macedonia (Presidential Determination No. 96–18 of March 8, 1996; 61 F.R. 11497).

[12] Sec. 203(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 735) added the words "or related training or other defense service".

[13] Sec. 115(b)(2)(B)(i) of Public Law 99–83 (99 Stat. 201), added the words "or produced * * * of this Act".

project)[14] and not to use or permit the use of such article or related training or other defense service[12] for purposes other than those for which furnished[15] unless the consent of the President has first been obtained;

(3)[16] the country or international organization shall have agreed that it will maintain the security of such article or service[17] and will provide substantially the same degree of security protection afforded to such article or service[17] by the United States Government; and

(4)[16] the country or international organization is otherwise eligible to purchase or lease[18] defense articles or defense services.

In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or other implement of war to another country, the President shall not give his consent under paragraph (2) to the transfer unless the United States itself would transfer the defense article under consideration to that country.[19] In addition, the President shall not give his consent under paragraph (2) to the transfer of any significant defense articles on the United States Munitions List unless the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President.[20] The President shall promptly submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate on the implementation of each agreement entered into pursuant to clause (2) of this subsection.

(b)[21] The consent of the President under paragraph (2) of subsection (a) or under paragraph (1) of section 505(a) of the Foreign Assistance Act of 1961 (as it relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign coun-

[14] Sec. 115(b)(2)(B)(ii) of Public Law 99–83 (99 Stat. 201), added the words "(or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative project)".

[15] Sec. 25(2) of the FA Act of 1973 struck out "and" at the end of par. (2) and added the words to this point beginning with "and not to use or permit".

[16] Sec. 25(2)(B) of the FA Act of 1973 added par. (3) and redesignated former par. (3) as par. (4).

[17] The words "or service" were added by sec. 115(b)(2)(c) of Public Law 99–83 (99 Stat. 201). Sec. 1102(3)(C) of Public Law 99–145 (99 Stat. 710) made this same amendment.

[18] The words "or lease" were added by sec. 109(b)(2)(B) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1526).

[19] Sec. 204(b)(1) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 736) amended sec. 3 by striking out the following language after "country": ", and prior to the date he intends to give his consent to the transfer, the President notifies the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate in writing of each such intended consent, the justification for giving such consent, the defense article for which he intends to give his consent to be so transferred, and the foreign country to which that defense article is to be transferred".

[20] The words to this point, beginning with "In considering a request for approval" were added by sec. 25(2)(C) of the FA Act of 1973.

[21] Sec. 142 of Public Law 104–164 (110 Stat. 1433) inserted a new subsec. (b). Former subsec. (b), as amended by sec. 1 of Public Law 91–71, was repealed by sec. 15 of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 622). It had concerned U.S. military assistance to a country which had seized an American fishing vessel outside a 12–mile limit.

try or international organization of defense articles sold by the United States under this Act if—

(1) such articles constitute components incorporated into foreign defense articles;

(2) the recipient is the government of a member country of the North Atlantic Treaty Organization, the Government of Australia, the Government of Japan, or the Government of New Zealand;

(3) the recipient is not a country designated under section 620A of the Foreign Assistance Act of 1961;

(4) the United States-origin components are not—

(A) significant military equipment (as defined in section 47(9));

(B) defense articles for which notification to Congress is required under section 36(b); and

(C) identified by regulation as Missile Technology Control Regime items; and

(5) the foreign country or international organization provides notification of the transfer of the defense articles to the United States Government not later than 30 days after the date of such transfer.

(c)(1)(A) [22] No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (i) by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 4 for a purpose not authorized under such agreement; (ii) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (iii) by failing to maintain the security of such articles or services.

(B) No cash sales or deliveries pursuant to previous sales may be made with respect to any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantity or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.

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[22] Sec. 304(b)(1) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 754) amended subsec. (c), which formerly read as follows:

"(c) Except as otherwise provided in subsection (d), any foreign country which hereafter uses defense articles or defense services furnished such country under this Act, in substantial violation of any provision of this Act or any agreement entered into under this Act, shall be immediately ineligible for further cash sales, credits, or guarantees.".

(2) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

(3)(A) A country shall be deemed to be ineligible under subparagraph (A) of paragraph (1) of this subsection, or both subparagraphs (A) and (B) of such paragraph in the case of a violation described in both such paragraphs, if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution.

(B) Notwithstanding a determination by the President of ineligibility under subparagraph (B) of paragraph (1) of this subsection, cash sales and deliveries pursuant to previous sales may be made if the President certifies in writing to the Congress that a termination thereof would have significant adverse impact on United States security, unless the Congress adopts or has adopted a joint resolution pursuant to subparagraph (A) of this paragraph with respect to such ineligibility.

(4) A country shall remain ineligible in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(d)[23] (1)[24] The President may not give his consent under paragraph (2) of subsection (a) or under the third sentence of such subsection, or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $50,000,000 or more,[25] unless[26] the President submits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification with respect to such proposed transfer containing—

(A)[24] the name of the country or international organization proposing to make such transfer,

[23] Sec. 204(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 735) added subsecs. (e) and (f). Sec. 304(b)(2) of the same Act repealed subsec. (d) and redesignated subsecs. (e) and (f) as (d) and (e). Previously, subsec. (d) read as follows:

"(d) A country shall remain ineligible in accordance with subsection (c) of this section until such time as the President determines that such violation has ceased, that the country concerned has given assurances satisfactory to the President that such violation will not recur, and that, if such violation involved the transfer of sophisticated weapons without the consent of the President, such weapons have been returned to the country concerned.".

[24] Sec. 16 of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 622) added the designation "(1)", redesignated former pars. (1) through (5) as subpars. (A) through (E), and added a new par. (2).

[25] The words to this point beginning with "or under section 505(a)(1) * * *" were inserted in lieu of similar text by sec. 101(a)(1)(A) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1519). Previously, the President was required to submit a certification to Congress on all transfers of these items regardless of their value.

[26] The words ", 30 days prior to giving such consent,", which previously appeared at this point were struck out by sec. 16(1) of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 622).

(B)[24, 27] a description of the article or service proposed to be transferred, including its acquisition cost,

(C)[24] the name of the proposed recipient of such article or service,[28]

(D)[24] the reasons for such proposed transfer, and

(E)[24] the date on which such transfer is proposed to be made.

Any certification submitted to Congress pursuant to this paragraph shall be unclassified, except that information regarding the dollar value and number of articles or services[28] proposed to be transferred may be classified if public disclosure thereof would be clearly detrimental to the security of the United States.

(2)[24] (A) Except as provided in subparagraph (B),[29] unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until 30 calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact,[30] within such 30-day period, a joint resolution[31] prohibiting the proposed transfer.

(B)[29] In the case of a proposed transfer to the North Atlantic Treaty Organization, or any member country of such Organization, Japan, Australia, or New Zealand, unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until fifteen calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact,[30] within such fifteen-day period, a joint resolution[32] prohibiting the proposed transfer.

(C)[33] If the President states in his certification under subparagraph (A) or (B) that an emergency exists which requires that consent to the proposed transfer become effective immediately in the

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[27] Subpar. (B) was amended and restated by sec. 101(a)(1)(B) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1519). It formerly read as follows:

"(B) a description of the defense article or related training or other defense service proposed to be transferred, including the original acquisition cost of such defense article or related training or other defense service".

[28] The words "defense" and "related training or other defense", which formerly appeared before the words "article" and "service", respectively, were deleted by sec. 101(a)(1) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1519).

[29] Sec. 102(a) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520) inserted the subpar. (A) designation, added the words to this point in subpar. (A), and added a new subpar. (B).

[30] Public Law 99–247 (100 Stat. 9) replaced the language "adopt * * * concurrent resolution disapproving" with the current text.

[31] Sec. 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461; 102 Stat. 2268–45), struck out "law' and inserted in lieu thereof "joint resolution, as provided for in sections 36(b)(2) and 36(b)(3) of this Act". Sec. 141(a)(1) of Public Law 104–164 (110 Stat. 1430) subsequently struck out "as provided for in sections 36(b)(2) and 36(b)(3) of this Act".

[32] Sec. 141(a)(2) of Public Law 104–164 (110 Stat. 1430) struck out "law" and inserted in lieu thereof "joint resolution".

[33] Sec. 141(a)(3) of Public Law 104–164 (110 Stat. 1430) added subparas. (C) and (D).

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

national security interests of the United States, thus waiving the requirements of that subparagraph, the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate immediate consent to the transfer and a discussion of the national security interests involved.

(D)[33] (i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(3)[34] (A)[35] The President may not give his consent to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, the export of which has been licensed or approved under section 38 of this Act,[36] unless[37] before giving such consent the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a certification[38] containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted—[39]

(i) at least 15 calendar days before such consent is given in the case of a transfer to a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(ii) at least 30 calendar days before such consent is given in the case of a transfer to any other country,

unless the President states in his certification that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists (thus waiving the requirements of clause (i) or (ii), as the case may be, and of subparagraph (B)) the President

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[34] Sec. 101(a) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3131) redesignated existing par. (3) as par. (4) and added this new par. (3). Par. (4) was originally added as par. (3) by sec. 17 of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 622).

[35] Sec. 141(b)(1) of Public Law 104–164 (110 Stat. 1431) added subpara. (A) designation.

[36] The value of the items listed in this sentence was increased from $7,000,000 and $25,000,000 to $14,000,000 and $50,000,000, respectively, by sec. 101(a)(2) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1519).

[37] Sec. 141(b)(2)(A) of Public Law 104–164 (110 Stat. 1431) struck out "at least 30 calendar days" after "unless".

[38] Sec. 141(b)(2)(B) of Public Law 104–164 (110 Stat. 1431) struck out "report" and inserted in lieu thereof "certification".

[39] Sec. 141(b)(3) of Public Law 104–164 (110 Stat. 1431) struck out a sentence after "paragraph (1).", which read : "Such consent shall become effective then only if the Congress does not enact, within a 30-day period, a joint resolution, as provided for in sections 36(c)(2) and 36(c)(3) of this Act prohibiting the proposed transfer.", and inserted in lieu thereof the text beginning with "Such certification shall be submitted—". The former text had been added by sec. 577 of Public Law 100–461 (102 Stat. 2268–45).

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that consent to the proposed transfer become effective immediately and a discussion of the national security interests involved.

(B) Consent to a transfer subject to subparagraph (A) shall become effective after the end of the 15-day or 30-day period specified in subparagraph (A)(i) or (ii), as the case may be, only if the Congress does not enact, within that period, a joint resolution prohibiting the proposed transfer.

(C)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4)[34] This subsection shall not apply—

(A) to transfers of maintenance, repair, or overhaul defense services, or of the repair parts or other defense articles used in furnishing such services, if the transfer will not result in any increase, relative to the original specifications, in the military capability of the defense articles and services to be maintained, repaired, or overhauled;

(B) to temporary transfers of defense articles for the sole purpose of receiving maintenance, repair, or overhaul; or

(C)[40] to arrangements among members of the North Atlantic Treaty Organization or between the North Atlantic Treaty Organization and any of its member countries—

(i) for cooperative cross servicing, or

(ii) for lead-nation procurement if the certification transmitted to the Congress pursuant to section 36(b) of this Act with regard to such lead-nation procurement identified the transferees on whose behalf the lead-nation procurement was proposed.

(D)[41] * * * [Repealed—1981]

(e)[23] If the President receives any information that a transfer of any defense article, or related training or other defense service, has been made without his consent as required under this section or under section 505 of the Foreign Assistance Act of 1961, he shall report such information immediately to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

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[40] Subpar. (C) was amended and restated by sec. 11 of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 705). It formerly read as follows:

"(C) to cooperative cross servicing arrangements among members of the North Atlantic Treaty Organization.".

[41] Subpar. (D), as added by sec. 101(b) of Public Law 96–536 (94 Stat. 3131), was repealed by sec. 101(a)(3)(C) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520). Subpar. (D) had stipulated that subsec. (d) would not apply to transfers to NATO, member countries of NATO, Japan, Australia, or New Zealand of major defense equipment valued at less than $7,000,000 or defense articles or related training or other defense service valued at less than $25,000,000.

(f)[42] No sales or leases shall be made to any country that the President has determined is in material breach of its binding commitments to the United States under international treaties or agreements concerning the nonproliferation of nuclear explosive devices (as defined in section 830(4) of the Nuclear Proliferation Prevention Act of 1994) and unsafeguarded special nuclear material (as defined in section 830(8) of that Act).

(g)[43] Any agreement for the sale or lease of any article on the United States Munitions List entered into by the United States Government after the date of enactment of this subsection shall state that the United States Government retains the right to verify credible reports that such article has been used for a purpose not authorized under section 4 or, if such agreement provides that such article may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.

**Sec. 4.**[44] **Purposes for Which Military Sales by the United States Are Authorized.**—Defense articles and defense services shall be sold or leased[45] by the United States Government under this Act to friendly countries solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort: *Provided,* That none of the funds contained in this authorization shall be used to guarantee, or extend

[42] Sec. 822(a)(1) of the Nuclear Proliferation Prevention Act (title VIII of the Foreign Relations Authorization Act; Public Law 103–236; 108 Stat. 511) added subsec. (f).

Previously, sec. 2(b) of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101–222; 103 Stat. 1896) repealed sec. 3(f). Added by sec. 18 of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 622), sec. 3(f) formerly read as follows:

"(f)(1) Unless the President finds that the national security requires otherwise, he shall terminate all sales, under this Act to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism. The President may not thereafter make or extend sales, to such government until the end of the one year period beginning on the date of such termination, except that if during its period of ineligibility for sales, pursuant to this section such government aids or abets, by granting sanctuary from prosecution to, any other individual or group which has committed an act of international terrorism, such government's period of ineligibility shall be extended for an additional year for each such individual or group.

"(2) If the President finds that the national security justifies a continuation of sales to any government described in paragraph (1), he shall report such finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.".

[43] Sec. 1225 of the Security Assistance Act of 1999 (title XII of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) added subsec. (g).

[44] 22 U.S.C. 2754.

[45] The words "or leased" were added by sec. 109(b)(3) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1526).

credit, or participate in an extension of credit in connection with any sale of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, Iran, Israel, the Republic of China, the Philippines, and Korea unless the President determines that such financing is important to the national security of the United States and reports within thirty days each such determination to the Congress.

**Sec. 5.**[46] **Prohibition Against Discrimination.**—(a) It is the policy of the United States that no sales should be made, and no credits (including participations in credits) or guaranties extended to or for any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) from participating in the furnishing of defense articles or defense services under this Act on the basis of race, religion, national origin, or sex.

(b)(1) No agency performing functions under this Act shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(2) Each contract entered into by any such agency for the performance of any function under this Act shall contain a provision to the effect that no person, partnership, corporation, or other entity performing functions pursuant to such contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(c) The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any instance in which any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the performance of any sale or licensed transaction under this Act. Such reports shall include (1) a description of the facts and circumstances of any such discrimination, (2) the response thereto on the part of the United States or any agency or employee thereof, and (3) the result of such response, if any.

(d)(1)[47] Upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs[48] of the House of Representatives, the President shall, within 60 days after the re-

[46] 22 U.S.C. 2755. Sec. 5 was added by sec. 302(b) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 752).

[47] Functions in this paragraph are delegated to the Assistant Secretary of State for Democracy, Human Rights and Labor (Department of State Public Notice 2086; Delegation of Authority No. 214; 59 F.R. 50790).

[48] Sec. 9(a)(7) of the USC Technical Amendments (Public Law 103–437; 108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Subsequently, sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

ceipt of such request, transmit to both such committees a statement, prepared with the assistance of the Secretary of State,[49] with respect to the country designated in such request, setting forth—

(A) all the available information about the exclusionary policies or practices of the government of such country when such policies or practices are based upon race, religion, national origin or sex and prevent any such person from participating in the performance of any sale or licensed transaction under this Act;

(B) the response of the United States thereto and the results of such response;

(C) whether, in the opinion of the President, notwithstanding any such policies or practices—

(i) extraordinary circumstances exist which necessitate a continuation of such sale or licensed transaction, and, if so, a description of such circumstances and the extent to which such sale or licensed transaction should be continued (subject to such conditions as Congress may impose under this section), and

(ii) on all the facts it is in the national interest of the United States to continue such sale or licensed transaction; and

(D) such other information as such committee may request.

(2) In the event a statement with respect to a sale or licensed transaction is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within 60 days after receipt of such request, such sale or licensed transaction shall be suspended unless and until such statement is transmitted.

(3)(A) In the event a statement with respect to a sale or licensed transaction is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating or restricting such sale or licensed transaction.

(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) The term “certification”, as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

**Sec. 6.[50] Foreign Intimidation and Harassment of Individuals in the United States.**—No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued under this Act with respect to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States. The President shall report any such determination promptly to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate.

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[49] Sec. 162(f) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 405) struck out “Assistant Secretary of State for Human Rights and Humanitarian Affairs” and inserted in lieu thereof “Secretary of State”.

[50] 22 U.S.C. 2756. Sec. 6. was added by sec. 115 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1528).

## Chapter 2—FOREIGN MILITARY SALES AUTHORIZATIONS

**Sec. 21.**[51] **Sales From Stocks.**—(a)(1)[52] The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard[53] to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(A)[52] in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;[54]

(B)[52] in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

(C)[52, 55] in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 or to any high-income foreign country (as described in that chapter),[56] only those additional costs that are incurred by the United States Government in furnishing such assistance.

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[51] 22 U.S.C. 2761. Sec. 205 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 736) amended sec. 21 which formerly read as follows:

"Sec. 21. Cash Sales From Stock.—The President may sell defense articles from the stocks of the Department of Defense and defense services of the Department of Defense to any friendly country or international organization if such country or international organization agrees to pay not less than the value thereof in United States dollars. Payment shall be made in advance or, as determined by the President to be in the best interests of the United States, within a reasonable period not to exceed one hundred and twenty days after the delivery of the defense articles or the rendering of the defense services.".

Sec. 975 of title 10, U.S. Code, as added by sec. 815 of the Department of Defense Appropriation Authorization Act, 1979 (92 Stat. 1625), prohibited the sale of certain defense articles from Department of Defense stocks. See 10 U.S.C. 975, redesignated sec. 2390, in *Legislation on Foreign Relations Through 2000*, vol. I–B.

Sec. 706 of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 862) provided the following:

"SEC. 706. SENSE OF THE CONGRESS REGARDING EXCESS DEFENSE ARTICLES.

"It is the sense of the Congress that the President should make expanded use of the authority provided under section 21(a) of the Arms Export Control Act to sell excess defense articles by utilizing the flexibility afforded by section 47 of such Act to ascertain the 'market value' of excess defense articles.".

[52] Sec. 107(a)(1) and (2) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 196) redesignated pars. (1), (2) and (3) as subpars. (A), (B) and (C) and inserted a "(1)" after subsec. (a).

[53] Sec. 1222 of the Security Assistance Act of 1999 (title XII of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) inserted "and the Coast Guard" after "Department of Defense".

[54] 10 U.S.C. 114(c)(2) provides:

"(2) Notwithstanding section 37(a) of the Arms Export Control Act (22 U.S.C. 2777(a)), amounts received by the United States pursuant to subparagraph (A) of section 21(a)(1) of that Act (22 U.S.C. 2761(a)(1))—

"(A) shall be credited to the Special Defense Acquisition Fund established pursuant to chapter 5 of that Act (22 U.S.C. 2795 et seq.), as authorized by section 51(b)(1) of that Act (22 U.S.C. 2795(b)(1)), but subject to the limitation in paragraph (1) and other applicable law; and

"(B) to the extent not so credited, shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302(b) of title 31.".

[55] Subpar. (C) was amended and restated by sec. 108(a) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 197). It previously read: "in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training, only those additional costs that are incurred by the United States Government in furnishing such training.".

[56] Sec. 112(c)(2) of Public Law 104–164 (110 Stat. 1428) inserted "or to any high-income foreign country (as described in that chapter)" after "Foreign Assistance Act of 1961".

(2)[57] For purposes of subparagraph (A) of paragraph (1), the actual value of a naval vessel of 3,000 tons or less and 20 years or more of age shall be considered to be not less than the greater of the scrap value or fair value (including conversion costs) of such vessel, as determined by the Secretary of Defense.

(b) Except as provided by subsection (d) of this section, payment shall be made in advance or, if the President determines it to be in the national interest, upon delivery of the defense article or rendering of the defense service.

(c)(1)[58] Personnel performing defense services sold under this Act may not perform any duties of a combatant nature, including any duties related to training and advising that may engage United States personnel in combat activities,[59] outside the United States in connection with the performance of those defense services.

(2)[58] Within forty-eight hours of the existence of, or a change in status of significant hostilities or terrorist acts or a series of such acts, which may endanger American lives or property, involving a country in which United States personnel are performing defense services pursuant to this Act or the Foreign Assistance Act of 1961, the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, classified if necessary, setting forth—

(A) the identity of such country;

(B) a description of such hostilities or terrorist acts; and

(C) the number of members of the United States Armed Forces and the number of United States civilian personnel that may be endangered by such hostilities or terrorist acts.

(d) If the President determines it to be in the national interest pursuant to subsection (b) of this section, billings for sales made under letters of offer issued under this section after the enactment of this subsection may be dated and issued upon delivery of the defense article or rendering of the defense service and shall be due and payable upon receipt thereof by the purchasing country or international organization. Interest shall be charged on any net amount due and payable which is not paid within sixty days after the date of such billing. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on out-

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[57] Par. (2) was added by sec. 107(a)(3) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 196).

[58] The paragraph designation "(1)" and a new par. (2) were added by sec. 102 of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3132). Par. (2) was subsequently amended and restated by sec. 103 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1521). The original text of par. (2) read as follows:

"(2) Within 48 hours after the outbreak of significant hostilities involving a country in which United States personnel are performing defense services pursuant to this Act or the Foreign Assistance Act of 1961, the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

"(A) the identity of such country and a description of such hostilities; and

"(B) the number of members of the United States Armed Forces and the number of United States civilian personnel performing defense services related to such hostilities in such country, their location, the precise nature of their activities, and the likelihood of their becoming engaged in or endangered by hostilities.".

[59] The words "training and advising that may engage United States personnel in combat activities" were inserted in lieu of "training, advising, or otherwise providing assistance regarding combat activities" by sec. 102(1) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3132).

standing short-term obligations of the United States as of the last day of the month preceding the billing and shall be computed from the date of billing. The President may extend such sixty-day period to one hundred and twenty days if he determines that emergency requirements of the purchaser for acquisition of such defense articles or defense services exceed the ready availability to the purchaser of funds sufficient to pay the United States in full for them within such sixty-day period and submits that determination to the Congress together with a special emergency request for the authorization and appropriation of additional funds to finance such purchases under this Act.

(e)(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 22 of this Act shall include appropriate charges for—

(A)[60] administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operations costs)[61] of administration of sales made under this Act to all purchasers of such articles and services as specified in section 43(b) and section 43(c) of this Act;[62]

(B)[63] a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 or from funds made available on a nonrepayable basis under section 23 of this Act);[64] and

(C)[65] the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

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[60] The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (H.R. 5526, as introduced on October 24, 2000, enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900), provided the following under "Foreign Military Financing Program": "*Provided further*, That not more than $340,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2001 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations:".

[61] The wording in parentheses was added by sec. 109 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 197).

[62] Sec. 9104(c)(1) of the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1152), inserted reference to secs. 43(b) and (c).

[63] Section 9104(c)(3) of the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1152), deleted par. (1)(B) which read "(B) any use of plant and production equipment in connection with such defense articles;" and redesignated (C) and (D) as (B) and (C), respectively.

Sec. 710 of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 864) provided the following:

"SEC. 710. WAIVER OF CERTAIN COSTS.

"Notwithstanding any other provision of law, the President may waive the requirement to impose an appropriate charge for a proportionate amount of any nonrecurring costs of research, development, and production under section 21(e)(1)(B) of the Arms Export Control Act (22 U.S.C. 2761(e)(1)(B)) for the November 1999 sale of five UH–60L helicopters to the Republic of Colombia in support of counternarcotics activities.".

[64] Sec. 9104(c)(2) of the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1152), inserted parenthetical language here.

[65] This subparagraph was added by sec. 16 of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 740) as (D), and redesignated as (C) by the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1152).

(2)[66] (A) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B)[67] for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.[68]

(B)[66] The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

(i) imposition of the charge or charges likely would result in the loss of the sale; or

(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.

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[66] Sec. 4303(a) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 658) conditionally amended para. (2) by inserting subpara. designation "(A)", and adding subparas. (B) and (C). Sec. 4303(b) of that Act stated the conditions for incorporating the amendment as follows:

"(b) CONDITIONS.—Subsection (a) shall be effective only if—

"(1) the President, in the budget of the President for fiscal year 1997, proposes legislation that if enacted would be qualifying offsetting legislation; and

"(2) there is enacted qualifying offsetting legislation.

"(c) EFFECTIVE DATE.—If the conditions in subsection (b) are met, then the amendments made by subsection (a) shall take effect on the date of the enactment of qualifying offsetting legislation.

"(d) DEFINITIONS.—For purposes of this section:

"(1) The term 'qualifying offsetting legislation' means legislation that includes provisions that—

"(A) offset fully the estimated revenues lost as a result of the amendments made by subsection (a) for each of the fiscal years 1997 through 2005;

"(B) expressly state that they are enacted for the purpose of the offset described in subparagraph (A); and

"(C) are included in full on the PayGo scorecard.

"(2) The term 'PayGo scorecard' means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

The required offsetting legislation was enacted as sec. 3303(e) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 50 U.S.C. 98d note).

[67] Sec. 9104(c)(3) of the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1152) made a conforming amendment here to show redesignation of par. (B) and (C), above.

[68] The words "standardization with the * * * and those countries," were added by sec. 104 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1521).

(3)[69] (A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the Maintenance and Supply Agency of the North Atlantic Treaty Organization in support of—

(i) a weapon system partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 43(b) of this Act in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

(i) the term "weapon system partnership agreement" means an agreement between two or more member countries of the Maintenance and Supply Agency of the North Atlantic Treaty Organization that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of a specific weapon system common to the participating countries; and

(ii) the term "NATO/SHAPE project" means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

(f) Any contracts entered into between the United States and a foreign country under the authority of this section or section 22 of this Act shall be prepared in a manner which will permit them to be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

(g)[70] The President may enter into North Atlantic Treaty Organization standardization agreements in carrying out section 814 of the Act of October 7, 1975 (Public Law 94–106), and may enter into similar agreements with countries[71] which are major non-NATO allies, for the cooperative furnishing of training on a bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect

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[69] Sec. 1002 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 102 Stat. 2037) added sec. 21(e)(3).

[70] Subsec. (g) was added by sec. 108(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 197).

Subsec. (g) was previously repealed by the Foreign Assistance Appropriations Act, 1985 (sec. 101 of the Continuing Appropriations Act, 1985; Public Law 98–473; 98 Stat. 1895). This amendment had been included as sec. 102(b) of S. 2346, as introduced on February 27, 1984. Public Law 98–473 enacted sec. 102 of S. 2346. Subsec. (g) previously read as follows:

"(g) The President may enter into North Atlantic Treaty Organization standardization agreements in carrying out section 814 of the Act of October 7, 1975 (Public Law 94–106), and may enter into similar agreements with Japan, Australia, and New Zealand, for the cooperative furnishing of training on a bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.".

[71] Sec. 147(b) of Public Law 104–164 (110 Stat. 1435) struck out "similar agreements with Japan, Australia, and New Zealand, and with other countries" and inserted in lieu thereof "similar agreements with countries". Sec. 580 of Public Law 100–202 (101 Stat. 1329–181) had added "and with other countries which are major non-NATO allies".

costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.[72]

(h)[73] (1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services,[74] and contract audit defense services under this section—

(A)[73] in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services[75] entered into after the date of enactment of this subsection by, or under this Act on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

(B)[73] in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services[75] pursuant to the North Atlantic Treaty Organization Security Investment program[76] in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.

(2)[73] In carrying out the objectives of this section, the President is authorized to provide cataloging data and cataloging services, without charge, to the North Atlantic Treaty Organization or to any member government of that Organization if that Organization or member government provides such data and services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government.

(i)[77] (1) Sales of defense articles and defense services which could have significant adverse effect on the combat readiness of the Armed Forces of the United States shall be kept to an absolute

[72] Sec. 147(a)(3)(A) of Public Law 104–164 (110 Stat. 1435) struck out the last sentence of subsec. (g). Originally added by sec. 580 of Public Law 100–202 (101 Stat. 1329–181), and amended by sec. 705(d)(1) of Public Law 102–25 (105 Stat. 120), the sentence read: " As used in this subsection, the term "major non-NATO allies" means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10, United States Code.".

[73] Sec. 12 of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 705) redesignated subsec. (h) as subsec. (i) and added this new subsec. (h).

Subsequently, sec. 111 (1), (2), and (3) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 197), inserted the designation (1) after subsec. (h), added par. (2) and redesignated what was previously pars. (1) and (2) as subpars. (A) and (B) of the newly designated (h)(1).

[74] The language "contract administration services" was added by sec. 110 of Public Law 99–83 (99 Stat. 197).

[75] The reference to design and construction services was added by sec. 115(b) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3134).

[76] Sec. 2802(d)(2) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2787) struck out "North Atlantic Treaty Organization Infrastructure Program" and inserted in lieu thereof "North Atlantic Treaty Organization Security Investment program".

[77] Subsec. (i), originally added as subsec. (h) by sec. 206 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 738), was redesignated as subsec. (i) by sec. 12 of Public Law 96–92.

minimum. The President shall transmit to the Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section or under authority of chapter 2B,[78] any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

(A) the country or international organization to which the sale is proposed to be made;

(B) the amount of the proposed sale;

(C) a description of the defense article or service proposed to be sold;

(D) a full description of the impact which the proposed sale will have on the Armed Forces of the United States; and

(E) a justification for such proposed sale, including a certification that such sale is important to the security of the United States.

A certification described in subparagraph (E) shall take effect on the date on which such certification is transmitted and shall remain in effect for not to exceed one year.

(2) No delivery may be made under any sale which is required to be reported under paragraph (1) of this subsection unless the certification required to be transmitted by paragraph (E) of paragraph (1) is in effect.

(j)[79] * * * [Repealed—1996]

(k)[80] Before entering into the sale under this Act of defense articles that are excess to the stocks of the Department of Defense, the President shall determine that the sale of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities

[78] The reference to the authority under chapter 2B was added by sec. 3 of Public Law 97–392 (96 Stat. 1962).

[79] Sec. 112 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 206) repealed subsec. (j), originally added by sec. 114 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2333). The subsec. read as follows:

"(j) Tank and Infantry Vehicle Upgrades.—(1) Funds received from the sale of tanks under this section shall be available for the upgrading of tanks for fielding to the Army.

"(2) Funds received from the sale of infantry fighting vehicles or armored personnel carriers under this section shall be available for the upgrading of infantry fighting vehicles or armored personnel carriers for fielding to the Army.

"(3) Paragraphs (1) and (2) apply only to the extent provided in advance in appropriations Acts.

"(4) This subsection applies with respect to funds received from sales occurring after September 30, 1989.".

[80] Sec. 731(d) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 503) added subsec. (k). Sec. 104(b)(1) of Public Law 104–164 (110 Stat. 1426) struck out "the President shall first consider the effects of the sale of the articles on the national technology and industrial base, particularly the extent, if any, to which the sale reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the excess defense articles are sold." and inserted the text beginning "the President shall * * *".

in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred.

(l)[81] REPAIR OF DEFENSE ARTICLES.—

(1) IN GENERAL.—The President may acquire a repairable defense article from a foreign country or international organization if such defense article—

(A) previously was transferred to such country or organization under this Act;

(B) is not an end item; and

(C) will be exchanged for a defense article of the same type that is in the stocks of the Department of Defense.

(2) LIMITATION.—The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act; and

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act.

(3) REQUIREMENT.—(A) The foreign government or international organization receiving a new or repaired defense article in exchange for a repairable defense article pursuant to paragraph (1) shall, upon the acceptance by the United States Government of the repairable defense article being returned, be charged the total cost associated with the repair and replacement transaction.

(B) The total cost charged pursuant to subparagraph (A) shall be the same as that charged the United States Armed Forces for a similar repair and replacement transaction, plus an administrative surcharge in accordance with subsection (e)(1)(A) of this section.

(4) RELATIONSHIP TO CERTAIN OTHER PROVISIONS OF LAW.—The authority of the President to accept the return of a repairable defense article as provided in subsection (a) shall not be subject to chapter 137 of title 10, United States Code, or any other provision of law relating to the conclusion of contracts.

(m)[82] RETURN OF DEFENSE ARTICLES.—

(1) IN GENERAL.—The President may accept the return of a defense article from a foreign country or international organization if such defense article—

[81] Sec. 152(a) of Public Law 104–164 (110 Stat. 1438) added subsec. (l). Subsec. (c) (22 U.S.C. 2761 note) of that section provided: "Under the direction of the President, the Secretary of Defense shall promulgate regulations to implement subsections (l) and (m) of section 21 of the Arms Export Control Act.".

[82] Sec. 152(b) of Public Law 104–164 (110 Stat. 1439) added subsec. (m). Subsec. (c) (22 U.S.C. 2761 note) of that section provided: "Under the direction of the President, the Secretary of Defense shall promulgate regulations to implement subsections (l) and (m) of section 21 of the Arms Export Control Act.".

(A) previously was transferred to such country or organization under this Act;

(B) is not significant military equipment (as defined in section 47(9) of this Act); and

(C) is in fully functioning condition without need of repair or rehabilitation.

(2) LIMITATION.—The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act; and

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this Act.

(3) CREDIT FOR TRANSACTION.—Upon acquisition and acceptance by the United States Government of a defense article under paragraph (1), the appropriate Foreign Military Sales account of the provider shall be credited to reflect the transaction.

(4) RELATIONSHIP TO CERTAIN OTHER PROVISIONS OF LAW.—The authority of the President to accept the return of a defense article as provided in paragraph (1) shall not be subject to chapter 137 of title 10, United States Code, or any other provision of law relating to the conclusion of contracts.

**Sec. 22.**[83] **Procurement for Cash Sales.**—(a) Except as otherwise provided in this section, the President may, without require-

[83] 22 U.S.C. 2762. Sec. 25(3) of the FA Act of 1973 amended and restated sec. 22, which formerly read as follows:

"Sec. 22. Procurement for Cash Sales.—The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any friendly country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract, and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due: *Provided,* That the President may, when he determines it to be in the national interest accept a dependable undertaking to make full payment within one hundred and twenty days after delivery of the defense articles, or the rendering of the defense services, and appropriations available to the Department of Defense may be used to meet the payments required by the contracts and shall be reimbursed by the amounts subsequently received from the country or international organization: *Provided further,* That the President may, when he determines it to be in the national interest, enter into sales agreements with purchasing countries or international organizations which fix prices to be paid by the purchasing countries or international organizations for the defense articles or defense services ordered. Funds made available under section 31 for financing sales shall be used to reimburse the applicable appropriations in the amounts required by the contracts which exceed the price so fixed, except that such reimbursement shall not be required upon determination by the President that the continued production of the defense article being sold is advantageous to the Armed Forces of the United States. Payments by purchasing countries or international organizations which exceed the amounts required by such contracts shall be transferred to the general fund of the Treasury. To the maximum extent possible, prices fixed under any such sales agreement shall be sufficient to reimburse the United

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ment for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.[84]

(b) The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.[85] Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the

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States for the cost of defense articles or defense services ordered. The President shall submit to the Congress promptly a detailed report concerning any fixed- price sales agreement under which the aggregate cost to the United States exceeds the aggregate amount required to be paid by the purchasing country or international organization. No sales of unclassified defense articles shall be made to the government of any economically developed nation under the provisions of this section unless such articles are not generally available for purchase by such nations from commercial sources in the United States: *Provided, however,* That the President may waive the provisions of this sentence when he determines that the waiver of such provisions is in the national interest.".

[84] The words beginning with "Interest shall be charged on any net amount * * *" were added by sec. 207(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 738).

[85] Sec. 207(b) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 738) amended subsec. (b) by striking out the first sentence and adding in lieu thereof the words to this point. The first sentence of subsec. (b) formerly read as follows: "(b) The President may, when he determines it to be in the national interest, accept a dependable undertaking of a foreign country or international organization with respect to any such sale, to make full payment within 120 days after delivery of the defense articles or the rendering of the defense services.".

Sec. 1007(b)(5) of the DOD Authorization Act, 1985 (Public Law 98–525; 98 Stat. 2579) waived the requirement under sec. 22 for payment in advance of delivery with respect to the purchase by the Federal Republic of Germany of one Patriot missile fire unit.

amounts subsequently received from the country or international organization to whom articles or services are sold.

(c)[86] The provisions of the Renegotiation Act of 1951 do not apply to procurement contracts, heretofore or hereafter entered into under this section, section 29, or predecessor provisions of law.

(d)[87] COMPETITIVE PRICING.—(1)[88] Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased by the Department of Defense for its own use.

(2)[88] Direct costs associated with meeting additional or unique requirements of the purchaser shall be allowable under contracts described in paragraph (1). Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

**Sec. 23.**[89, 90] **Credit Sales.**—(a)[91] The President is authorized to finance the procurement of defense articles, defense services, and

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[86] Subsec. (c), as added by sec. 17 of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 740), was amended and restated by sec. 105(b)(2) of the International Security and Development Cooperation Act of 1980 (Public Law 96–553; 94 Stat. 3134). It formerly read as follows:

"(c) The provisions of the Renegotiation Act of 1951 do not apply to contracts for the procurement of defense articles and defense services heretofore or hereafter entered into under this section or predecessor provisions of law.".

[87] Sec. 531A(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107; 110 Stat. 731), added subsec. (d). Subsecs. (b) and (c) of sec. 531A provided the following:

"(b) EFFECTIVE DATE AND IMPLEMENTING REGULATIONS.—Section 22(d) of the Arms Export Control Act, as added by subsection (a)—

"(1) shall take effect on the 60th day following the date of the enactment of this Act;

"(2) shall be applicable only to contracts made in implementation of sales made after such effective date; and

"(3) shall be implemented by revised procurement regulations, which shall be issued prior to such effective date.

"(c) DIRECT COSTS ALLOWABLE.—Direct costs associated with meeting a foreign customer's additional or unique requirements will continue to be allowable under such contracts. Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.".

Sec. 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference in sec. 1000(a)(2) of Public Law 106–113; 113 Stat. 1535), provided the following:

"COMPETITIVE PRICING FOR SALES OF DEFENSE ARTICLES

"SEC. 556. Direct costs associated with meeting a foreign customer's additional or unique requirements will continue to be allowable under contracts under section 22(d) of the Arms Export Control Act. Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.".

[88] Sec. 1223 of the Security Assistance Act of 1999 (title XII of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) struck out "Procurement contracts", inserted in lieu thereof "(1) Procurement contracts", and added para. (2).

[89] 22 U.S.C. 2763. Sec. 23 was amended and restated by sec. 102 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 195). It previously read as follows:

"The President is authorized to finance procurements of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations on terms requiring the payment to the United States Government in United States dollars of—

"(1) the value of such articles or services within a period not to exceed twelve years after the delivery of such articles or the rendering of such services; and

"(2) interest on the unpaid balance of that obligation for payment of the value of such articles or services, at a rate equivalent to the current average interest rate, as of the last day of the month preceding the financing of such procurement that the United States Government pays on outstanding marketable obligations of comparable maturity, unless the President certifies to

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Congress that the national interest requires a lesser rate of interest and states in the certification the lesser rate so required and the justification therefor.''.

Prior to that, sec. 45(a)(2) of the FA Act of 1974 amended sec. 23, which formerly read as follows: ''Sec. 23. Credit Sales.—The President is hereby authorized to finance procurements of defense articles and defense services by friendly countries and international organizations on terms of repayment to the United States Government of not less than the value thereof in the United States dollars within a period of not to exceed ten years after the delivery of the defense articles or the rendering of the defense services.''.

[90] Sec. 101(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 193) provided an authorization for each of the fiscal years 1986 and 1987 of $5,371,000,000 to carry out sec. 23 and set a ceiling of $553,900,000 for each fiscal year of the amount that may be made available at concessional interest rates.

Sec. 101 of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 846) provided the following:

''TITLE I—MILITARY AND RELATED ASSISTANCE

''SUBTITLE A—FOREIGN MILITARY SALES AND FINANCING AUTHORITIES

''SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated for grant assistance under section 23 of the Arms Export Control Act (22 U.S.C. 2763) and for the subsidy cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of direct loans under such section $3,550,000,000 for fiscal year 2001 and $3,627,000,000 for fiscal year 2002.''.

See also title V of that Act, relating to integrated security assistance planning, particularly secs. 511, authorizing security assistance for the Czech Republic, Poland, and Hungary; sec. 513, authorizing ESF for Israel; sec. 514, authorizing ESF for Egypt; sec. 515, authorizing security assistance for Estonia, Latvia, Lithuania, the Philippines, Georgia, Malta, Slovenia, Slovakia, Romania, Bulgaria, and Jordan; and sec. 516, authorizing border security and territorial independence assistance to Armenia and the ''group of countries that signed a protocol on quadrilateral cooperation on November 25, 1997, together with Uzbekistan.'' (GUUAM countries, as defined in sec. 516(b)).

Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (H.R. 5526, as introduced on October 24, 2000, enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–16), provided the following:

''NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

''For necessary expenses for nonproliferation, anti-terrorism and related programs and activities, $311,600,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, section 504 of the FREEDOM Support Act, section 23 of the Arms Export Control Act or the Foreign Assistance Act of 1961 for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA) and a voluntary contribution to the Korean Peninsula Energy Development Organization (KEDO), and for a United States contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided*, That the Secretary of State shall inform the Committees on Appropriations at least 20 days prior to the obligation of funds for the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided further,* That of this amount not to exceed $15,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law, to promote bilateral and multilateral activities relating to nonproliferation and disarmament: *Provided further*, That such funds may also be used for such countries other than the Independent States of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further*, That such funds shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That funds appropriated under this heading may be made available for the International Atomic Energy Agency only if the Secretary of State determines (and so reports to the Congress) that Israel is not being denied its right to participate in the activities of that Agency: *Provided further*, That of the funds appropriated under this heading, $40,000,000 should be made available for demining, clearance of unexploded ordnance, and related activities: *Provided further*, That of the funds made available for demining and related activities, not to exceed $500,000, in addition to funds otherwise available for such purposes, may be used for administrative expenses related to the operation and management of the demining program.''.

Title III of that Act (114 Stat. 1900A–18) provided the following:

''FOREIGN MILITARY FINANCING PROGRAM

''For expenses necessary for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, $3,545,000,000: *Provided*, That of the funds appropriated under this heading, not less than $1,980,000,000 shall be available for grants only for Israel, and not less than $1,300,000,000 shall be made available for grants only for Egypt: *Provided further*, That the funds appropriated by this paragraph for Israel shall be disbursed within 30 days of the enactment of this Act or by October 31, 2000, whichever is later: *Provided further*, That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel by this paragraph shall, as agreed by Israel and the

United States, be available for advanced weapons systems, of which not less than $520,000,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further*, That of the funds appropriated by this paragraph, not less than $75,000,000 should be available for assistance for Jordan: *Provided further,* That of the funds appropriated by this paragraph, not less than $3,000,000 shall be made available for assistance for Malta: *Provided further*, That of the funds appropriated by this paragraph, not less than $8,500,000 shall be made available for assistance for Tunisia: *Provided further*, That during fiscal year 2001, the President is authorized to, and shall, direct the drawdowns of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of not less than $5,000,000 under the authority of this proviso for Tunisia for the purposes of part II of the Foreign Assistance Act of 1961 and any amount so directed shall count toward meeting the earmark in the preceding proviso: *Provided further,* That of the funds appropriated by this paragraph, not less than $8,000,000 shall be made available for Georgia: *Provided further,* That during fiscal year 2001, the President is authorized to, and shall, direct the draw-downs of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of not less than $4,000,000 under the authority of this proviso for Georgia for the purposes of part II of the Foreign Assistance Act of 1961 and any amount so directed shall count toward meeting the earmark in the preceding proviso: *Provided further*, That funds appropriated by this paragraph shall be nonrepayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further*, That funds made available under this paragraph shall be obligated upon apportionment in accordance with paragraph (5)(C) of title 31, United States Code, section 1501(a).

"None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurements has first signed an agreement with the United States Government specifying the conditions under which such procurements may be financed with such funds: *Provided*, That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 515 of this Act: *Provided further*, That none of the funds appropriated under this heading shall be available for assistance for Sudan and Liberia: *Provided further*, That funds made available under this heading may be used, notwithstanding any other provision of law, for demining, the clearance of unexploded ordnance, and related activities, and may include activities implemented through nongovernmental and international organizations: *Provided further*, That none of the funds appropriated under this heading shall be available for assistance for Guatemala: *Provided further*, That only those countries for which assistance was justified for the 'Foreign Military Sales Financing Program' in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further*, That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further*, That not more than $33,000,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales: *Provided further*, That not more than $340,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2001 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations: *Provided further,* That foreign military financing program funds estimated to be outlayed for Egypt during fiscal year 2001 shall be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York within 30 days of enactment of this Act or by October 31, 2000, whichever is later: *Provided further,* That the Committees on Appropriations shall be informed at least 10 days prior to the obligation of any interest accrued by the account established by the previous proviso.".

Title VI of that Act (114 Stat. 1900A–63), relating to emergency supplemental appropriations, provided the following:

"FOREIGN MILITARY FINANCING PROGRAM

"For an additional amount for 'Foreign Military Financing Program', to enable the President to carry out section 23 of the Arms Export Control Act, $31,000,000, to remain available until September 30, 2002, for grants to countries of the Balkans and southeast Europe: *Provided,* That funds appropriated in this paragraph shall be made available notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956: *Provided further,* That funds made available under this heading shall be nonrepayable, notwithstanding sections 23(b) and 23(c) of the Act: *Provided further,* That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further,* That the amount provided shall be available only to the extent that an official budget request that includes designation of the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.".

Title V of that Act (114 Stat. 1900A–24, 26) provided the following:

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design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine consistent with the requirements of this section. Notwithstanding any other provision of law, and subject to the regular notification requirements of the Committees on Appropriations, the authority of this section may be used to provide financing to Israel and Egypt for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under this Act.[92]

(b) The President shall require repayment in United States dollars within a period not to exceed twelve years[93] after the loan agreement with the country or international organization is signed on behalf of the United States Government, unless a longer period is specifically authorized by statute for that country or international organization.

(c)(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section—

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"DEOBLIGATION/REOBLIGATION AUTHORITY

"SEC. 510. Obligated balances of funds appropriated to carry out section 23 of the Arms Export Control Act as of the end of the fiscal year immediately preceding the current fiscal year are, if deobligated, hereby continued available during the current fiscal year for the same purpose under any authority applicable to such appropriations under this Act: *Provided*, That the authority of this subsection may not be used in fiscal year 2001.

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"NOTIFICATION REQUIREMENTS

"SEC. 515. * * * *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: * * *".

[91] The Foreign Operations, Export Financing, and Related Programs Appropriations Act, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (H.R. 5526, as introduced on October 24, 2000, enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–59), provided the following:

"COMMERCIAL LEASING OF DEFENSE ARTICLES

"SEC. 589. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under such Act.".

[92] The last sentence of subsec. (a) was added by sec. 572 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Continuing Appropriations for 1988, Public Law 100–202).

[93] Sec. 208(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 739) originally substituted "twelve years" in lieu of "ten years". Sec. 208(b) of the same Act went on to say, "The amendment made by subsection (a) shall apply with respect to financing under agreements entered into on or after the date of enactment of this Act for the procurement of defense articles to be delivered, or defense services to be rendered, after such date".

(A) the term "concessional rate of interest" means any rate of interest which is less than market rates of interest; and

(B) the term "market rate of interest" means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.

(d) References in any law to credits extended under this section shall be deemed to include reference to participations in credits.

(e)[94] (1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 24, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of principal or interest pursuant to the authority of paragraph (1).

(f)[95] For each fiscal year, the Secretary of Defense, as requested by the Director of the Defense Security Assistance Agency, shall conduct audits on a nonreimbursable basis of private firms that have entered into contracts with foreign governments under which defense articles, defense services, or design and construction services are to be procured by such firms for such governments from financing under this section.

(g)[96] (1) For each country and international organization that has been approved for cash flow financing under this section, any letter of offer and acceptance or other purchase agreement, or any amendment thereto, for a procurement of defense articles, defense services, or design and construction services in excess of $100,000,000 that is to be financed in whole or in part with funds made available under this Act or the Foreign Assistance Act of 1961 shall be submitted to the congressional committees specified in section 634A(a) of the Foreign Assistance Act of 1961 in accordance with the procedures applicable to reprogramming notifications under that section.

(2) For purposes of this subsection, the term "cash flow financing" has the meaning given such term in subsection (d) of section 25, as added by section 112(b) of Public Law 99–83.

(h)[97] Of the amounts made available for a fiscal year to carry out this section, not more than $100,000,000 for such fiscal year may be made available for countries other than Israel and Egypt for the purpose of financing the procurement of defense articles, defense services, and design and construction services that are not sold by the United States Government under this Act.

**Sec. 24.**[98] **Guaranties.**—(a) The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Govern-

[94] Subsec. (e) was added by sec. 580 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2045).
[95] Sec. 102(a) of Public Law 104–164 (110 Stat. 1422) added subsec. (f).
[96] Sec. 102(b) of Public Law 104–164 (110 Stat. 1422) added subsec. (g).
[97] Sec. 102(c) of Public Law 104–164 (110 Stat. 1422) added subsec. (h).
[98] 22 U.S.C. 2764.

ment agencies other than the Federal Financing Bank)[99] against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles, defense services, and design and construction services[75] to friendly countries and international organizations. Fees shall be charged for such guaranties.

(b) The President may sell to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies other than the Federal Financing Bank)[99] promissory notes issued by friendly countries and international organizations as evidence of their obligations to make repayments to the United States on account of credit sales financed under section 23, and may guarantee payment thereof.

(c)[100] Funds obligated under this section before the date of enactment of the International Security and Development Cooperation Act of 1980 which constitute a single reserve for the payment of claims under guaranties issued under this section shall remain available for expenditure for the purposes of this section on and after that date. That single reserve may, on and after the date of enactment of the International Security and Development Cooperation Act of 1985, be referred to as the "Guaranty Reserve Fund." Funds provided for necessary expenses to carry out the provisions of section 23 of the Arms Export Control Act and of section 503 of the Foreign Assistance Act of 1961, as amended, may be used to pay claims on the Guaranty Reserve Fund to the extent that funds in the Guaranty Reserve Fund are inadequate for that purpose.

For purposes of any provision in this Act or any other Act relating to a prohibition or limitation on the availability of funds under this Act, whenever a guaranty is issued under this section, the principal amount of the loan so guaranteed shall be deemed to be funds made available for use under this Act. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

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[99] Sec. 45(a)(3) of the FA Act of 1974 inserted "(excluding United States Government agencies other than the Federal Financing Bank)" in lieu of "(excluding United States Government agencies)".

[100] Subsec. (c), as amended by the FA Act of 1973 and the FA Act of 1974, was further amended and restated by sec. 104(a) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3132). It formerly read as follows:

"(c) Funds made available to carry out this Act shall be obligated in an amount equal to 10 per centum of the principal amount of contractual liability related to any guaranty issued under this section, and all the funds so obligated shall constitute a single reserve for the payment of claims under such guaranties. Any funds so obligated which are deobligated from time to time during any current fiscal year as being in excess of the amount necessary to maintain a fractional reserve of 10 per centum in the principal amount of contractual liability under outstanding guaranties shall be transferred to the general fund of the Treasury. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.".

Sec. 106 (b) and (c) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 196) amended subsec. (c) by deleting the following text:

"The President shall report promptly to the Congress whenever the payment of a claim under any such guaranty reduces the total amount of funds in the single reserve under this subsection to an amount less than $750,000,000, together with his recommendations for the authorization of appropriations of additional funds for such reserve.".

It also added the text beginning with "That single reserve" and continued with the following: "Funds authorized to be appropriated by section 31(a) to carry out this Act which are allocated for credits at market rates of interest may be used to pay claims under such guarantees to the extent funds in the Guaranty Reserve Fund are inadequate for that purpose.".

The Supplemental Appropriations Act, 1987 (Public Law 100–71; 101 Stat. 409), deleted this text and replaced it with the present language.

**Sec. 25.**[101] **Annual Estimate and Justification for Sales Program.**—(a) Except as provided in subsection (d) of this section,[102] no later than February 1 of each year, the President shall transmit to the appropriate congressional committees,[103] as a part of the annual presentation materials for security assistance programs proposed for the next fiscal year, a report which sets forth—

(1)[104] an Arms Sales Proposal covering all sales and licensed commercial exports under this Act of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval during the current calendar year, together with an indication of which sales and licensed commercial exports are deemed most likely actually to result in the issuance of a letter of offer or of an export license during such year;

(2) an estimate of the total amount of sales and licensed commercial exports expected to be made to each foreign nation from the United States;

(3) the United States national security considerations involved in expected sales or licensed commercial exports to each country, an analysis of the relationship between anticipated sales to each country and arms control efforts concerning such country and an analysis of the impact of such anticipated sales on the stability of the region that includes such country;

(4) an estimate with regard to the international volume of arms traffic to and from nations purchasing arms as set forth in paragraphs (1) and (2) of this subsection, together with best estimates of the sale and delivery of weapons and weapons-related defense equipment by all major arms suppliers to all major recipient countries during the preceding fiscal year;

(5)(A)[105] an estimate of the aggregate dollar value and quantity of defense articles and defense services, military education and training, grant military assistance, and credits and guarantees, to be furnished by the United States to each foreign

[101] 22 U.S.C. 2765. Popularly referred to as the "Javits report". Sec. 25, as added by sec. 209(a) of Public Law 94–329 (90 Stat. 739), amended by sec. 18 of Public Law 95–384 (92 Stat. 740), secs. 13 and 14 of Public Law 96–92 (93 Stat. 706), by secs. 104 and 107 of Public Law 96–533 (94 Stat. 3183), was amended and restated by sec. 732 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1557). The previous text of sec. 25 required information similar to that specified in new paragraphs (1) through (4), (7), and (8). Much of the remaining information now required by sec. 25, was formerly required by other statutes as follows: par. (6)—sec. 43(c) of the Arms Export Control Act; par. (9)—sec. 668 of the Foreign Assistance Act of 1961; par. (10)—sec. 714 of the International Security and Development Cooperation Act of 1980; and par. (11)—sec. 634(a)(4) of the Foreign Assistance Act of 1961.

[102] Subsec. (d) and the reference to it at the beginning of subsec. (a) were added by secs. 113 (1) and (2) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 198).

[103] Sec. 519(1) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2411), struck out "Congress" and inserted in lieu thereof "appropriate congressional committees".

[104] Sec. 519 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306; 108 Stat. 1631), provided the following:

"REPORTING REQUIREMENT

"SEC. 519. The President shall submit to the Committees on Appropriations the reports required by section 25(a)(1) of the Arms Export Control Act.".

[105] Subpar. (B) and the designation for subpar. (A) were added by sec. 112(a) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 198).

country and international organization in the next fiscal year; and

(B)[105] for each country that is proposed to be furnished credits or guaranties under this Act in the next fiscal year and that has been approved for cash flow financing (as defined in subsection (d) of this section) in excess of $100,000,000 as of October 1 of the current fiscal year—

(i) the amount of such approved cash flow financing,

(ii) a description of administrative ceilings and controls applied, and

(iii) a description of the financial resources otherwise available to such country to pay such approved cash flow financing;

(6) an analysis and description of the services performed during the preceding fiscal year by officers and employees of the United States Government carrying out functions on a full-time basis under this Act for which reimbursement is provided under section 43(b) or section 21(a) of this Act, including the number of personnel involved in performing such services;

(7) the total amount of funds in the reserve under section 24(c) at the end of the fiscal year immediately preceding the fiscal year in which a report under this section is made, together with an assessment of the adequacy of such total amount of funds as a reserve for the payment of claims under guaranties issued pursuant to section 24 in view of the current debt servicing capacity of borrowing countries, as reported to the Congress pursuant to section 634(a)(5) of the Foreign Assistance Act of 1961;

(8) a list of all countries with respect to which findings made by the President pursuant to section 3(a)(1) of this Act are in effect on the date of such transmission;

(9) the progress made under the program of the Republic of Korea to modernize its armed forces, the role of the United States in mutual security efforts in the Republic of Korea and the military balance between the People's Republic of Korea and the Republic of Korea;

(10) the amount and nature of Soviet military assistance to the armed forces of Cuba during the preceding fiscal year and the military capabilities of those armed forces;

(11) the status of each loan and each contract of guaranty or insurance theretofore made under the Foreign Assistance Act of 1961, predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unpaid obligation or potential liability; the status of each extension of credit for the procurement of defense articles or defense services, and of each contract of guaranty in connection with any such procurement, theretofore made under the Arms Export Control Act with respect to which there remains outstanding any unpaid obligation or potential liability;[106]

[106] Sec. 102(d) of Public Law 104–164 (110 Stat. 1423) struck out "and" at the end of para. (11); redesignated para. (12) as para. (13); and added a new para. (12).

(12)[106] (A) a detailed accounting of all articles, services, credits, guarantees, or any other form of assistance furnished by the United States to each country and international organization, including payments to the United Nations, during the preceding fiscal year for the detection and clearance of landmines, including activities relating to the furnishing of education, training, and technical assistance for the detection and clearance of landmines; and

(B) for each provision of law making funds available or authorizing appropriations for demining activities described in subparagraph (A), an analysis and description of the objectives and activities undertaken during the preceding fiscal year, including the number of personnel involved in performing such activities; and

(13)[106] such other information as the President may deem necessary.

(b) Not later than thirty days following the receipt of a request made by any of the congressional committees described in subsection (e)[107] of the House of Representatives for additional information with respect to any information submitted pursuant to subsection (a), the President shall submit such information to such committee.

(c) The President shall make every effort to submit all of the information required by subsection (a) or (b) wholly in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.

(d)[102] The information required by subsection (a)(4) of this section shall be transmitted to the Congress no later than April 1 of each year.

(d)[108] For the purposes of subsection (a)(5)(B) of this section, the term "cash flow financing" means the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this Act or under section 503(a)(3) of the Foreign Assistance Act of 1961 and the amount of the financing that has been approved therefor;[108]

(e)[109] As used in this section, the term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

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[107] Sec. 519(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2411), struck out "the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs" and inserted in lieu thereof "any of the congressional committees described in subsection (e)".

[108] Subsec. (d), which probably should read subsec. (e), was added to the end of sec. 25 by sec. 112(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 198). It should probably end with a period instead of a semicolon.

[109] Sec. 519(3) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2411), added subsec. (e).

**Sec. 26.**[110] **Security Assistance**[111] **Surveys.**—(a) The Congress finds that surveys prepared by the United States for foreign countries have had a significant impact on subsequent military procurement decisions of those countries. It is the policy of the United States that the results of security assistance[111] surveys conducted by the United States clearly do not represent a commitment by the United States to provide any military equipment to any foreign country. Further, recommendations in such surveys should be consistent with the arms export control policy provided for in this Act.

(b) As part of the quarterly report required by section 36(a) of this Act, the President shall include a list of all security assistance surveys authorized during the preceding calendar quarter, specifying the country with respect to which the survey was or will be conducted, the purpose of the survey, and the number of United States Government personnel who participated or will participate in the survey.

(c) Upon a request of the chairman of the Committee on Foreign Affairs[112] of the House of Representatives or the chairman of the Committee on Foreign Relations of the Senate, the President shall submit to that committee copies of[113] security assistance[111] surveys conducted by United States Government personnel.

(d)[114] As used in this section, the term "security assistance surveys" means any survey or study conducted in a foreign country by United States Government personnel for the purpose of assessing the needs of that country for security assistance, and includes defense requirement surveys, site surveys, general surveys or studies, and engineering assessment surveys.

**Sec. 27.**[115] **Authority of President to Enter into Cooperative Projects with Friendly Foreign Countries.**—(a) The President may enter into a cooperative project agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization.

(b) As used in this section—

(1) the term "cooperative project" in the case of an agreement with the North Atlantic Treaty Organization[116] or with one or more member countries of that Organization, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoper-

[110] 22 U.S.C. 2766. Sec. 26 was added by sec. 19 of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 740).

[111] The term "security assistance" was inserted in lieu of "defense requirement" by sec. 114 (a)(1) and (2) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 198).

[112] Sec. 9(a)(7) of the USC Technical Amendments (Public Law 103–437; 108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Subsequently, sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[113] Sec. 114(b) of Public Law 99–83 (99 Stat. 199) inserted "submit to that committee copies of" in lieu of "grant that committee access to".

[114] Sec. 114(a)(3) of Public Law 99–83 (99 Stat. 198) added subsec. (d).

[115] 22 U.S.C. 2767. Sec. 27 was added by sec. 15 of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 706). It was amended and restated by sec. 115 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 199), at which time it was titled "North Atlantic Treaty Organization Cooperative Projects." Its current heading was added by sec. 1103(a)(2) of Public Law 99–661 (100 Stat. 3816).

[116] The words "in the case of * * * Organization" were added by sec. 1103(a)(1)(A)(i) of Public Law 99–661 (100 Stat. 3816).

ability of the armed forces of North Atlantic Treaty Organization member countries forces and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in another member country of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another member country or for procurement by the United States of munitions from the North Atlantic Treaty Organization or a subsidiary of such organization; [117]

(2) [118] the term "cooperative project", in the case of an agreement entered into under subsection (j), means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to enhance the ongoing multinational effort of the participants to improve the conventional defense capabilities of the participants and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in the country of another participant of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another participant to the agreement; and

(3) [118] the term "other participant" means a participant in a cooperative project other than the United States.

(c) Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims.[119] The United States and the other participants may contribute their equitable shares of the full cost of such cooperative project in funds or in defense articles or defense services needed for

[117] The words to this point beginning with "or for procurement" were added by sec. 1022 of Public Law 100–180 (101 Stat. 1144).

[118] Sec. 1103(a)(1)(A)(iv) of Public Law 99–661 (100 Stat. 3816) added par. (2) and redesignated the previous par. (2) as par. (3).

[119] Sec. 843(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2468) struck out "and administrative costs" and inserted in lieu thereof "costs, administrative costs, and costs of claims". Sec. 843(c) of that Act further provided:

"(c) TERMINATION.—On the date which is two years after the date of the enactment of this Act [October 23, 1992], subsections (a) and (b) shall cease to be in effect, and section 27(c) of the Arms Export Control Act and section 2350a of title 10, United States Code, shall read as if such subsections had not been enacted.".

Sec. 1318 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2902), however, repealed sec. 843(c), making permanent the authority for the Department of Defense to share the cost of claims under international armaments cooperative programs.

such cooperative project. Military assistance and financing received from the United States Government may not be used by any other participant to provide its share of the cost of such cooperative project. Such agreements shall provide that no requirement shall be imposed by a participant for worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

(d) The President may enter into contracts or incur other obligations for a cooperative project on behalf of the other participants, without charge to any appropriation or contract authorization, if each of the other participants in the cooperative project agrees (1) to pay its equitable share of the contract or other obligation, and (2) to make such funds available in such amounts and at such times as may be required by the contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the contract or other obligation in advance of the time such payments, damages, or costs are due.

(e)(1) For those cooperative projects entered into on or after the effective date of the International Security and Development Cooperation Act of 1985, the President may reduce or waive the charge or charges which would otherwise be considered appropriate under section 21(e) of this Act in connection with sales under sections 21 and 22 of this Act when such sales are made as part of such cooperative project, if the other participants agree to reduce or waive corresponding charges.

(2) Notwithstanding provisions of section 21(e)(1)(A) and section 43(b) of this Act, administrative surcharges shall not be increased on other sales made under this Act in order to compensate for reductions or waivers of such surcharges under this section. Funds received pursuant to such other sales shall not be available to reimburse the costs incurred by the United States Government for which reduction or waiver is approved by the President under this section.

(f) Not less than 30 days before a cooperative project agreement is signed on behalf of the United States, the President shall transmit to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate, a numbered certification with respect to such proposed agreement, setting forth—

(1) a detailed description of the cooperative project with respect to which the certification is made;

(2) an estimate of the quantity of the defense articles expected to be produced in furtherance of such cooperative project;

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section 21(e)(1)(A) and 43(b) of this Act,[120] for its participation in such cooperative project and

[120] The words to this point beginning with "including" were added by sec. 1103(a)(1)(B) of Public Law 99–661 (100 Stat. 3816).

an estimate of that part of the full costs to be incurred by the other participants;

(4) an estimate of the dollar value of the funds to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(5) a description of the defense articles and defense services expected to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(6) a statement of the foreign policy and national security benefits anticipated to be derived from such cooperative project; and

(7) to the extent known, whether it is likely that prime contracts will be awarded to particular prime contractors or that subcontracts will be awarded to particular subcontractors to comply with the proposed agreement.

(g) In the case of a cooperative project with a North Atlantic Treaty Organization country, section[121] 36(b) of this Act shall not apply to sales made under section 21 or 22 of this Act and to production and exports made pursuant to cooperative projects under this section, and section 36(c) of this Act shall not apply to the issuance of licenses or other approvals under section 38 of this Act, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.

(h) The authority under this section is in addition to the authority under sections 21 and 22 of this Act and under any other provision of law.

(i)(1) With the approval of the Secretary of State and the Secretary of Defense, a cooperative agreement which was entered into by the United States before the effective date of the amendment to this section made by the International Security and Development Cooperation Act of 1985 and which meets the requirements of this section as so amended may be treated on and after such date as having been made under this section as so amended.

(2) Notwithstanding the amendment made to this section made by the International Security and Development Cooperation Act of 1985, projects entered into under the authority of this section before the effective date of that amendment may be carried through to conclusion in accordance with the terms of this section as in effect immediately before the effective date of that amendment.

(j)[122] (1) The President may enter into a cooperative project agreement with any friendly foreign country not a member of the North Atlantic Treaty Organization under the same general terms and conditions as the President is authorized to enter into such an agreement with one or more member countries of the North Atlantic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.

(2) Not later than January 1 of each year, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and

[121] The words to this point beginning with "In the case of" were added by sec. 1103(a)(1)(c) of Public Law 99–661 (100 Stat. 3816).

[122] Subsec. (j) was added by sec. 1103(a)(1)(D) of Public Law 99–661 (100 Stat. 3816).

Foreign Affairs [123] of the House of Representatives a report specifying (A) the countries eligible for participation in such a cooperative project agreement under this subsection, and (B) the criteria used to determine the eligibility of such countries.

**Sec. 28.**[124] * * * [Repealed—1996]

## Chapter 2A—FOREIGN MILITARY CONSTRUCTION SALES [125]

**Sec. 29.**[126] **Foreign Military Construction Sales.**—The President may sell design and construction services to any eligible foreign country or international organization if such country or international organization agrees to pay in United States dollars not less than the full cost to the United States Government of furnishing such services. Payment shall be made to the United States Government in advance of the performance of such services by officers or employees of the United States Government. The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of design and construction services for sale under this section if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such time as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due.

## Chapter 2B—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

**Sec. 30.**[127] **General Authority.**—(a) Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company either (i) [128] on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 38 of this Act or (ii) [128] in the case of ammunition parts subject to subsection

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[123] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[124] Formerly at 22 U.S.C. 2768. Sec. 28—Reports on Price and Availability Estimates—was repealed by sec. 1064(a) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 445).

[125] Chapter 2A was added by sec. 105 of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3133).

[126] 22 U.S.C. 2769.

[127] 22 U.S.C. 2770. Sec. 30 was added by sec. 1 of Public Law 97–392 (96 Stat. 1962).

[128] Section 9097 of the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1150), amended sec. 30(a) by adding designations "(i)" and "(ii)" and adding text after "(ii)" to end of sentence.

(b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 38 of this Act. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter: *Provided, however,* That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

(b) Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only from United States Government sources or are not available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

(c) For the purpose of this section, the terms "defense articles" and "defense services" mean defense articles and defense services as defined in sections 47(3) and 47(4) of this Act.

## Chapter 2C [129]—EXCHANGE OF TRAINING AND RELATED SUPPORT

**Sec. 30A.[129] Exchange of Training and Related Support.**—(a) Subject to subsection (b), the President may provide training and related support to military and civilian defense personnel of a friendly foreign country or an international organization. Such training and related support shall be provided by a Secretary of a military department and may include the provision of transportation, food services, health services, and logistics and the use of facilities and equipment.

(b) Training and related support may be provided under this section only pursuant to an agreement or other arrangements providing for the provision by the recipient foreign country or international organization, on a reciprocal basis, of comparable training and related support to military and civilian personnel under the jurisdiction of the Secretary of the military department providing the training and related support under this section. Such reciprocal training and related support must be provided within a reasonable period of time (which may not be more than one year) of the provision of training and related support by the United States. To the extent that a foreign country or international organization to which training and related support is provided under this section does not provide such comparable training and related support to the United States within a reasonable period of time, that country or international organization shall be required to reimburse the

[129] 22 U.S.C. 2770a. Chapter 2C (sec. 30A) was added by sec. 116 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 202).

United States for the full costs of the training and related support provided by the United States.

(c) Training and related support under this section shall be provided under regulations prescribed by the President.

(d) Not later than February 1 of each year, the President shall submit to the Congress a report on the activities conducted pursuant to this section during the preceding fiscal year, including the estimated full costs of the training and related support provided by the United States to each country and international organization and the estimated value of the training and related support provided to the United States by that country or international organization.

## Chapter 3—MILITARY EXPORT CONTROLS

**Sec. 31.**[130, 131] **Authorization and Aggregate Ceiling on Foreign Military Sales Credits.**—(a) There are authorized to be ap-

[130] 22 U.S.C. 2771.

[131] The authorization figures for years 1986 and 1987 were added by sec. 101(a) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 193). Past figures authorized under sec. 31(a) are as follows: fiscal year 1969—$269,000,000; fiscal year 1970—$250,000,000; fiscal year 1971—$250,000,000; fiscal year 1972—$400,000,000; fiscal year 1974—$325,000,000; fiscal year 1975—$1,039,000,000; fiscal year 1977—$740,000,000; fiscal year 1978—$682,000,000; fiscal year 1979—$674,300,000; fiscal year 1980—$673,500,000; fiscal year 1981—$500,000,000; fiscal year 1982—$800,000,000; fiscal year 1983—$800,000,000; fiscal year 1984—$1,315,000,000; fiscal year 1985—no authorization; fiscal years 1988 through 2000—no authorization.

Sec. 101 of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 846) provided the following:

"TITLE I—MILITARY AND RELATED ASSISTANCE

"SUBTITLE A—FOREIGN MILITARY SALES AND FINANCING AUTHORITIES

"SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for grant assistance under section 23 of the Arms Export Control Act (22 U.S.C. 2763) and for the subsidy cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of direct loans under such section $3,550,000,000 for fiscal year 2001 and $3,627,000,000 for fiscal year 2002.".

Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (H.R. 5526, as introduced on October 24, 2000, enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–16), provided the following:

"NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

"For necessary expenses for nonproliferation, anti-terrorism and related programs and activities, $311,600,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, section 504 of the FREEDOM Support Act, section 23 of the Arms Export Control Act or the Foreign Assistance Act of 1961 for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA) and a voluntary contribution to the Korean Peninsula Energy Development Organization (KEDO), and for a United States contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided*, That the Secretary of State shall inform the Committees on Appropriations at least 20 days prior to the obligation of funds for the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided further,* That of this amount not to exceed $15,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law, to promote bilateral and multilateral activities relating to nonproliferation and disarmament: *Provided further*, That such funds may also be used for such countries other than the Independent States of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further*, That such funds shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That funds appropriated under this heading may be made available for the International Atomic Energy Agency only if the Secretary of State determines (and so reports to the Congress) that Israel is not being denied its right to participate in the activities of that Agency: *Provided further*, That of the funds appropriated under this heading, $40,000,000 should be made available for demining, clearance of unexploded ordnance, and related activities: *Provided further*, That of the funds made available for demining and related activities, not to exceed $500,000, in addition to funds otherwise available for such purposes, may be used for administrative expenses related to the operation and management of the demining program.''.

Title III of that Act (114 Stat. 1900A–18) provided the following:

"FOREIGN MILITARY FINANCING PROGRAM

"For expenses necessary for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, $3,545,000,000: *Provided*, That of the funds appropriated under this heading, not less than $1,980,000,000 shall be available for grants only for Israel, and not less than $1,300,000,000 shall be made available for grants only for Egypt: *Provided further*, That the funds appropriated by this paragraph for Israel shall be disbursed within 30 days of the enactment of this Act or by October 31, 2000, whichever is later: *Provided further*, That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel by this paragraph shall, as agreed by Israel and the United States, be available for advanced weapons systems, of which not less than $520,000,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further*, That of the funds appropriated by this paragraph, not less than $75,000,000 should be available for assistance for Jordan: *Provided further,* That of the funds appropriated by this paragraph, not less than $3,000,000 shall be made available for assistance for Malta: *Provided further*, That of the funds appropriated by this paragraph, not less than $8,500,000 shall be made available for assistance for Tunisia: *Provided further*, That during fiscal year 2001, the President is authorized to, and shall, direct the draw-downs of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of not less than $5,000,000 under the authority of this proviso for Tunisia for the purposes of part II of the Foreign Assistance Act of 1961 and any amount so directed shall count toward meeting the earmark in the preceding proviso: *Provided further,* That of the funds appropriated by this paragraph, not less than $8,000,000 shall be made available for Georgia: *Provided further,* That during fiscal year 2001, the President is authorized to, and shall, direct the draw-downs of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of not less than $4,000,000 under the authority of this proviso for Georgia for the purposes of part II of the Foreign Assistance Act of 1961 and any amount so directed shall count toward meeting the earmark in the preceding proviso: *Provided further*, That funds appropriated by this paragraph shall be non-repayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further*, That funds made available under this paragraph shall be obligated upon apportionment in accordance with paragraph (5)(C) of title 31, United States Code, section 1501(a).

"None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurements has first signed an agreement with the United States Government specifying the conditions under which such procurements may be financed with such funds: *Provided*, That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 515 of this Act: *Provided further*, That none of the funds appropriated under this heading shall be available for assistance for Sudan and Liberia: *Provided further*, That funds made available under this heading may be used, notwithstanding any other provision of law, for demining, the clearance of unexploded ordnance, and related activities, and may include activities implemented through nongovernmental and international organizations: *Provided further*, That none of the funds appropriated under this heading shall be available for assistance for Guatemala: *Provided further*, That only those countries for which assistance was justified for the 'Foreign Military Sales Financing Program' in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further*, That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further*, That not more than $33,000,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales: *Provided further*, That not more than $340,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2001 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations: *Provided further,* That foreign military financing program funds estimated to be outlayed for Egypt during fiscal year 2001 shall be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York within 30 days of enactment of this Act or by October 31, 2000, whichever is later: *Provided further,* That the Committees on Appropriations shall be informed at least 10 days prior to the obligation of any interest accrued by the account established by the previous proviso.''.

Title VI of that Act (114 Stat. 1900A–63), relating to emergency supplemental appropriations, provided the following:

"FOREIGN MILITARY FINANCING PROGRAM

"For an additional amount for 'Foreign Military Financing Program', to enable the President to carry out section 23 of the Arms Export Control Act, $31,000,000, to remain available until

Continued

propriated to the President to carry out this Act $5,371,000,000 for fiscal year 1986 and $5,371,000,000 for fiscal year 1987.[131] Credits may not be extended under section 23 of this Act in an amount, and loans may not be guaranteed under section 24(a) of this Act in a principal amount, which exceeds any maximum amount which may be established with respect to such credits or such loan guarantees in legislation appropriating funds to carry out this Act.[132] Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

(b)[133] (1) The total amount of credits extended under section 23 of this Act shall not exceed $5,371,000,000 for fiscal year 1986 and $5,371,000,000 for fiscal year 1987.

(2) Of the aggregate amount of financing provided under this section, not more than $553,900,000 for fiscal year 1986 and not more than $553,900,000 for fiscal year 1987 may be made available at concessional rates of interest. If a country is released from its con-

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September 30, 2002, for grants to countries of the Balkans and southeast Europe: *Provided,* That funds appropriated in this paragraph shall be made available notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956: *Provided further,* That funds made available under this heading shall be nonrepayable, notwithstanding sections 23(b) and 23(c) of the Act: *Provided further,* That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further,* That the amount provided shall be available only to the extent that an official budget request that includes designation of the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.".

Title V of that Act (114 Stat. 1900A–24, 26) provided the following:

"DEOBLIGATION/REOBLIGATION AUTHORITY

"SEC. 510. Obligated balances of funds appropriated to carry out section 23 of the Arms Export Control Act as of the end of the fiscal year immediately preceding the current fiscal year are, if deobligated, hereby continued available during the current fiscal year for the same purpose under any authority applicable to such appropriations under this Act: *Provided*, That the authority of this subsection may not be used in fiscal year 2001.

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"NOTIFICATION REQUIREMENTS

"SEC. 515. * * * *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: * * *".

The Foreign Operations, Export Financing, and Related Programs Appropriations Act, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (H.R. 5526, as introduced on October 24, 2000, enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–59), provided the following:

"COMMERCIAL LEASING OF DEFENSE ARTICLES

"SEC. 589. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under such Act.".

[132] This sentence was added by sec. 104(d) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3133).

[133] Sec. 101(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 193), amended and restated secs. 31 (b) and (c) and added authorizations for fiscal year 1986 and fiscal year 1987. See also footnote 131.

Sec. 101 (c), (d), (e) and (f) of Public Law 99–83 also included specific earmarks and conditions on the use of credits authorized under sec. 23 for Israel, Egypt, Greece and Turkey.

tractual liability to repay the United States Government with respect to financing provided under this section, such financing shall not be considered to be financing provided at concessional rates of interest for purposes of the limitation established by this paragraph.

(c)[134] Loans available under section 23 shall be provided at rates of interest that are not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities.

(d)[135] * * * [Repealed—1996]

**Sec. 32.**[136] **Prohibition Against Certain Military Export Financing by Export-Import Bank.** * * * [Repealed—1992]

**Sec. 33.**[137] **Restraint in Arms Sales to Sub-Saharan Africa.**—It is the sense of the Congress that the problems of Sub-Saharan Africa are primarily those of economic development and that United States policy should assist in limiting the development of costly military conflict in that region. Therefore, the President shall exercise restraint in selling defense articles and defense services, and in providing financing for sales of defense articles and defense services, to countries in Sub-Saharan Africa.

**Sec. 34.**[138] **Foreign Military Sales Credit Standards.**—The President shall establish standards and criteria for credit and guaranty transactions under sections 23 and 24 in accordance with the

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[134] Sec. 101 of Public Law 104–164 (110 Stat. 1422) amended and restated subsec. (c). Amended and restated earlier by sec. 101(b) of Public Law 99–83 (99 Stat. 193), it formerly read as follows:

"For fiscal year 1986 and fiscal year 1987, the principal amount of credits provided under section 23 at market rates of interest with respect to Greece, the Republic of Korea, the Philippines, Portugal, Spain, Thailand, and Turkey shall (if and to the extent each country so desires) be repaid in not more than twenty years, following a grace period of ten years on repayment of principal.".

[135] Sec. 104(b)(2)(C) of Public Law 104–164 (110 Stat. 1427) repealed subsec. (d). The subsection, originally added by sec. 210(c)(1) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 740), and amended by sec. 17(a)(4) of Public Law 96–92 (93 Stat. 709), and by sec. 596(c) of Public Law 101–513 (104 Stat. 2062), formerly read as follows:

"The aggregate acquisition cost to the United States of excess defense articles ordered by the President in any fiscal year after fiscal year 1976 for delivery to foreign countries or international organizations under the authority of chapter 2 of part II of the Foreign Assistance Act of 1961 or pursuant to sales under this Act may not exceed $250,000,000 (exclusive of ships and their onboard stores and supplies transferred in accordance with law, and of any defense articles with respect to which the President submits a certification under section 36(b) of this Act).".

[136] Formerly at 22 U.S.C. 2772; repealed by sec. 112(e)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195). Sec. 12(c)(2) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) made an identical amendment; however, sec. 12(e) of that Act also provided that if an Act to reauthorize the Export-Import Bank of the United States with identical amendments is enacted, the amendments contained in the reauthorization shall be effective. Sec. 32 formerly read as follows:

"Notwithstanding any other provision of law, no funds or borrowing authority available to the Export-Import Bank of the United States shall be used by such Bank to participate in any extension of credit in connection with any agreement to sell defense articles and defense services entered into with any economically less developed country after June 30, 1968.".

[137] 22 U.S.C. 2773. Sec. 33 was amended and restated by sec. 18 of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 709). It formerly read as follows:

"Sec. 33. Regional Ceiling on Foreign Military Sales.—(a) The aggregate of the total amount of military assistance pursuant to the Foreign Assistance Act of 1961, as amended, of credits, or participations in credits, financed pursuant to section 23, of the principal amount of loans guaranteed pursuant to section 24(a), shall, excluding training, not exceed $40,000,000 in each fiscal year for African countries.

"(b) The President may waive the limitations of this section when he determines it to be important to the security of the United States and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.".

[138] 22 U.S.C. 2774.

foreign, national security, and financial policies of the United States.

**Sec. 35.**[139] **Foreign Military Sales to Less Developed Countries.**—(a) When the President finds that any economically less developed country is diverting development assistance furnished pursuant to the Foreign Assistance Act of 1961, as amended, or sales under the Agricultural Trade Development and Assistance Act of 1954, as amended, to military expenditures, or is diverting its own resources to unnecessary military expenditures, to a degree which materially interferes with its development, such country shall be immediately ineligible for further sales and guarantees under sections 21, 22, 23, and 24, until the President is assured that such diversion will no longer take place.

(b)[140] * * * [Repealed—1974]

**Sec. 36.**[141] **Reports on Commercial and Governmental Military Exports; Congressional Action.**—(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days[142] after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be

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[139] 22 U.S.C. 2775.

[140] Subsec. (b) was repealed by sec. 45(a)(5) of the FA Act of 1974.

[141] 22 U.S.C. 2776. Sec. 211(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 740) amended sec. 36, which formerly read as follows:

"Sec. 36. Reports on Commercial and Governmental Military Exports.—

"(a) The President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate quarterly reports containing—

"(1) a listing of all letters of offer to sell any defense articles or services under this Act, if such offer has not been accepted or canceled;

"(2) a cumulative listing of all such letters of offer to sell that have been accepted during the fiscal year in which such report is submitted;

"(3) the cumulative dollar amounts, by foreign country and international organization, of credit sales under section 23 and guaranty agreements under section 24 made before the submission of such quarterly report and during the fiscal year in which such report is submitted; and

"(4) projections of the cumulative dollar amounts, by foreign country and international organization, of credit sales under section 23 and guaranty agreements under section 24 to be made in the quarter of the fiscal year immediately following the quarter for which such report is submitted.

"For each letter of offer to sell under paras. (1) and (2), the report shall specify (A) the foreign country or international organization to which the defense article or service is offered, (B) the dollar amount of the offer to sell under para. (1) or of the completed sale under para. (2), (C) a brief description of the defense article or service offered, (D) the United States armed force which is making the offer to sell, (E) the date of such offer, and (F) the date of any acceptance under paragraph (2).

"(b) In the case of any letter of offer to sell any defense articles or services under this Act for $25,000,000 or more, before issuing such letter of offer the President shall submit to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate a statement with respect to such offer to sell containing the information specified in subparagraphs (A) through (E) in subsection (a). The letter of offer shall not be issued if the Congress, within twenty calendar days after receiving any such statement, adopts a concurrent resolution stating in effect that it objects to such proposed sale, unless the President in his statement certifies that an emergency exists which requires such sale in the national security interests of the United States.

"(c) Nothing in this section shall be construed as modifying in any way the provisions of section 414 of the Mutual Security Act of 1954, as amended, relating to munitions control.".

Sec. 211(b) of the same Act further stated: "The amendment made by subsection (a) of this section shall apply with respect to letters of offer for which a certification is transmitted pursuant to section 36(b) of the Arms Export Control Act on or after the date of enactment of this Act and to export licenses for which an application is filed under section 38 of such Act on or after such date.".

[142] The number of days was increased from 30 to 60 by sec. 19(a)(1) of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 709).

listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum)[143] containing—

(1) a listing of all letters of offer to sell any major defense equipment for $1,000,000 or more under this Act to each foreign country and international organization, by category, if such letters of offer have not been accepted or canceled;

(2) a listing of all such letters of offer that have been accepted during the fiscal year in which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year;

(3) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements under section 23 and guaranty agreements under section 24 made during the fiscal year in which such report is submitted;

(4) a numbered listing of all licenses and approvals for the export to each foreign country and international organization during such fiscal year of commercially sold major defense equipment, by category, sold for $1,000,000 or more, together with the total value of all defense articles and defense services so licensed for each foreign country and international organization, setting forth, with respect to the listed major defense equipment—

(A) the items to be exported under the license,

(B) the quantity and contract price of each such item to be furnished, and

(C) the name and address of the ultimate user of each such item;

(5)[144] projections of the dollar amounts, by foreign country and international organization, of sales expected to be made under sections 21 and 22, in the quarter of the fiscal year immediately following the quarter for which such report is submitted;

(6)[144] a projection with respect to all sales expected to be made to each country and organization for the remainder of the fiscal year in which such report is transmitted;

(7)[145] an estimate of—

(A) the number of United States military personnel, the number of United States Government civilian personnel, and the United States civilian contract personnel, who were in each foreign country at the end of that quarter, and

(B) the number of members of each such category of personnel who were in each foreign country at any time during that quarter,

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[143] Sec. 7(b) of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101–222; 103 Stat. 1899) added text to close parentheses from ", and any information".

[144] Sec. 1209(c) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 279), deleted references in pars. (5) and (6) to "cash sales, and credits, and guaranty agreements".

[145] Par. (7) was amended and restated by sec. 1209(c) of Public Law 99–83 (99 Stat. 279).

in implementation of sales and commercial exports under this Act or of assistance under chapter 2, 5, 6, or 8 of part II of the Foreign Assistance Act of 1961, including both personnel assigned to the country and personnel temporarily in the country by detail or otherwise;

(8) [146] a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 39, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report;

(9) [147] a listing of each sale under section 29 during the quarter for which such report is made, specifying (A) the purchaser, (B) the United States Government department or agency responsible for implementing the sale, (C) an estimate of the dollar amount of the sale, and (D) a general description of the real property facilities to be constructed pursuant to such sale;

(10) [148] a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is $1,000,000 or more; [149]

(11) [148] a listing of all munitions items (as defined in section 40(l)(1)) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the quarter for which such report is submitted (including the name

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[146] Sec. 604(a) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 766) redesignated par. (8) as par. (9) and inserted a new par. (8). Sec. 604(c) of the same Act stated that par. (8) would "take effect sixty days after the date of enactment of this Act" (August 29, 1976).

Par. (9), as redesignated by this amendment, was struck out by sec. 19(a)(4) of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 709). It formerly read as follows:

"(9) an analysis and description of the services being performed by officers and employees of the United States Government under section 21(a) of this Act, including the number of personnel so employed.".

[147] Par. (9) was added by sec. 105(c) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3134).

[148] Par. (10) and (11) were added by sec. 7 of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101–222; 103 Stat. 1899).

The original par. (10), as added by sec. 109(f) of Public Law 96–533, was repealed by sec. 109(d)(2) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1526). Par. (10) had required information concerning leases of property valued at over $1,000,000 to a foreign government. Leases of defense articles are now covered under chapter 6 of this Act.

[149] Sec. 1045(a) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2644) struck out "; and" at the end of para. (10); struck out a period at the end of para. (11) and inserted "; and"; and added a new para. (12). Subsec. (b) of that section made para. (12) not applicable to any relevant agreement entered into before the date of enactment of the amendment (September 23, 1996).

of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

(A) the value of the munitions items was $250,000 of more; and

(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was $250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities);[149, 150]

(12)[149] a report on all concluded government-to-government agreements regarding foreign coproduction of defense articles of United States origin and all other concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin (including coproduction memoranda of understanding or agreement) that have not been previously reported under this subsection, which shall include—

(A) the identity of the foreign countries, international organizations, or foreign firms involved;

(B) a description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(C) a description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(D) if any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls incorporated in the coproduction or licensing program to ensure compliance with restrictions in the agreement on production quantities and third-party transfers; and[150]

(13)[150] a report on all exports of significant military equipment for which information has been provided pursuant to section 38(i).

For each letter of offer to sell under paragraphs (1) and (2), the report shall specify (i) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be: (ii) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, as the case may be; (iii) a description of the defense article or service offered or sold, as the case may be; and (iv) the United States Armed Forces or other agency of the United States which is making the offer to sell or the sale, as the case may be.

[150] Sec. 1302(b) of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), struck out "and" at the end of para. (11); replaced "third-party transfers." with "third-party transfers; and" at the end of para. (12); and added a new para. (13).

(b)(1)[151] In the case of any letter of offer to sell any defense articles or services under this Act for $50,000,000[152] or more, any design and construction services for $200,000,000 or more,[153] or any major defense equipment for $14,000,000[154] or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a), or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a),[155] and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services[156] proposed to be sold,[157] and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology.[158] In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy.[159] Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell (if known on the date of transmittal of such certification).[160] In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs[161] of

[151] To fulfill the requirements of sec. 36(e) of this Act, as amended by sec. 155 of Public Law 104–164; 110 Stat. 1440), the Defense Security Assistance Agency of the Department of Defense reports arms sales to which sec. 36(b) applies. In 2000, DSAA filed numerous notifications; see *Federal Register,* annual index.

[152] This figure was increased from $25,000,000 to $50,000,000 by sec. 101 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520).

[153] The words "any design and construction services for $200,000,000 or more," were added by sec. 105(d)(1) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3134).

[154] This figure was increased from $7,000,000 to $14,000,000 by sec. 101 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520).

[155] The words to this point beginning with ", or (in the case of * * *" were added by sec. 105(d)(2)(A) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3134).

[156] The reference to design and construction services was added by sec. 105(d) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3134).

[157] This sentence to this point was added by sec. 20(b) of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 710).

[158] The words to this point beginning with "and a detailed justification" were added by sec. 1180) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 995 Stat. 203).

[159] Sec. 735(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 503) inserted the sentence beginning with "In a case in which * * *".

[160] Sec. 732(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 503) inserted the sentence beginning with "Each such numbered * * *".

[161] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives. Previously, sec. 9(a)(7) of the

the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

(A) a detailed description of the defense articles, defense services, or design and construction services [162] to be offered, including a brief description of the capabilities of any defense article to be offered;

(B) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel expected to be needed in such country to carry out the proposed sale;

(C) the name of each contractor expected to provide the defense article, defense service, or design and construction services [163] proposed to be sold and a description of any offset agreement with respect to such sale; [164]

(D) [165] an evaluation, prepared by the Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence, of the manner, if any, in which the proposed sale would—

(i) contribute to an arms race;

(ii) [166] support international terrorism;

(iii) [166] increase the possibility of an outbreak or escalation of conflict;

(iv) [166] prejudice the negotiation of any arms controls; or

(v) [166] adversely affect the arms control policy of the United States;

(E) the reasons why the foreign country or international organization to which the sale is proposed to be made needs the defense articles, defense services, or design and construction services [162] which are the subject of such sale and a description of how such country or organization intends to use such de-

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USC Technical Amendments (Public Law 103–437; 108 Stat. 4581) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs".

[162] The reference to defense services or design and construction services was added by sec. 105(d)(2)(C)(ix) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3135).

[163] The reference to design and construction service was added by sec. 105(d)(2)(C)(ii) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3134).

[164] Sec. 1245(a)(1) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) struck out "and a description from such contractor of any offset agreements proposed to be entered into in connection with such sale (if known on the date of transmittal of such statement);" and inserted in lieu thereof "and a description of any offset agreement with respect to such sale;". This phrase was substantially amended previously by sec. 732(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 503).

[165] Sec. 1225(a)(1) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out "Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense" and inserted in lieu thereof "Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence".

Previously, subpar. (D) was amended and restated by sec. 21(1) of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 741). It formerly read as follows: "(D) an analysis of the arms control impact pertinent to such offer to sell, prepared in consultation with the Secretary of Defense;".

[166] Sec. 3(b) of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101–222; 103 Stat. 1896) redesignated clauses (ii) through (iv) as (iii) through (v), respectively, and inserted a new clause (ii).

fense articles, defense services, or design and construction services;[162]

(F) an analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

(G) the reasons why the proposed sale is in the national interest of the United States;

(H) an analysis by the President of the impact of the proposed sale on the military capabilities of the foreign country or international organization to which such sale would be made;

(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles, defense services, or design and construction services[162] which are the subject of such sale would be delivered and whether other countries in the region have comparable kinds and amounts of defense articles, defense services, or design and construction services;[162]

(J) an estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization to which the sale would be made which are needed and available to utilize effectively the defense articles, defense services, or design and construction services[162] proposed to be sold;

(K) an analysis of the extent to which comparable kinds and amounts of defense articles, defense services, or design and construction services[162] are available from other countries;

(L) an analysis of the impact of the proposed sale on United States relations with the countries in the region to which the defense articles, defense services, or design and construction services[162] which are the subject of such sale would be delivered;

(M) a detailed description of any agreement proposed to be entered into by the United States for the purchase or acquisition by the United States of defense articles, defense services, design and construction services[162] or defense equipment, or other articles, services, or equipment of the foreign country or international organization in connection with, or as consideration for, such letter of offer, including an analysis of the impact of such proposed agreement upon United States business concerns which might otherwise have provided such articles, services, or equipment to the United States, an estimate of the costs to be incurred by the United States in connection with such agreement compared with costs which would otherwise have been incurred, an estimate of the economic impact and unemployment which would result from entering into such proposed agreement, and an analysis of whether such costs and such domestic economic impact justify entering into such proposed agreement;

(N)[167] the projected delivery dates of the defense articles, defense services, or design and construction services[162] to be offered;

[167] Subpar. (N), (O) and (P) were added by sec. 21(4) of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 741).

(O)[167] a detailed description of weapons and levels of munitions that may be required as support for the proposed sale; and

(P)[167] an analysis of the relationship of the proposed sale to projected procurements of the same item.

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.[168] The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days[169] after receiving such certification,[170] enacts a joint[171] resolution prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.[172]

(2) Any such joint[171] resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that for purposes of consideration of any joint[171] resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, it shall be in order in the Senate to move to discharge a committee to which such joint[171] resolution was referred if such com-

[168] Sec. 1301(b)(1) of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added ", in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information".

[169] With regard to the sale to Jordan of advanced weapons systems, see Public Law 99–162 (99 Stat. 937), in *Legislation on Foreign Relations Through 2000*, vol. I–B.

[170] The words in this sentence to this point beginning with "with respect to a proposed sale * * *" were inserted in lieu of the words "if the Congress, within thirty calendar days after receiving such certification," by sec. 102(b)(1) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520).

[171] References to a "joint" resolution in lieu of a "concurrent" resolution were added by Public Law 99–247 (100 Stat. 9).

[172] This sentence was added by sec. 19(c) of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 709).

mittee has not reported such joint [171] resolution at the end of five calendar days after its introduction.[173]

(3) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint [171] resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) [174] In addition to the other information required to be contained in a certification submitted to the Congress under this subsection, each such certification shall cite any quarterly report submitted pursuant to section 28 of this Act which listed a price and availability estimate, or a request for the issuance of a letter of offer, which was a basis for the proposed sale which is the subject of such certification.

(5) [175] (A) If, before the delivery of any major defense article or major defense equipment, or the furnishing of any defense service or design and construction service, sold pursuant to a letter of offer described in paragraph (1), the sensitivity of technology or the capability of the article, equipment, or service is enhanced or upgraded from the level of sensitivity or capability described in the numbered certification with respect to an offer to sell such article, equipment, or service, then, at least 45 days before the delivery of such article or equipment or the furnishing of such service, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs [176] of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report—

(i) describing the manner in which the technology or capability has been enhanced or upgraded and describing the significance of such enhancement or upgrade; and

(ii) setting forth a detailed justification for such enhancement or upgrade.

(B) The provisions of subparagraph (A) apply to an article or equipment delivered, or a service furnished, within ten years after the transmittal to the Congress of a numbered certification with respect to the sale of such article, equipment, or service.

(C) If the enhancement or upgrade in the sensitivity of technology or the capability of major defense equipment, defense articles, defense services, or design and construction services described in a numbered certification submitted under this subsection costs $14,000,000 or more in the case of any major defense equipment, $50,000,000 or more in the case of defense articles or defense services, or $200,000,000 or more in the case of design or construction services, then the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a new numbered certification

[173] The words to this point beginning with ", except that for purposes of * * *" were added by sec. 102(b)(2) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520).

[174] Par. (4) was added by sec. 16(b) of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 708).

[175] Par. 5 was added by sec. 118(2) of the International Security and Development Cooperation Act of 1983 (Public Law 99–83; 99 Stat. 203).

[176] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

which relates to such enhancement or upgrade and which shall be considered for purposes of this subsection as if it were a separate letter of offer to sell defense equipment, articles, or services, subject to all of the requirements, restrictions, and conditions set forth in this subsection. For purposes of this subparagraph, references in this subsection to sales shall be deemed to be references to enhancements or upgrades in the sensitivity of technology or the capability of major defense equipment, articles, or services, as the case may be.

(D) For the purposes of subparagraph (A), the term "major defense article" shall be construed to include electronic devices, which if upgraded, would enhance the mission capability of a weapons system.

(c)[177] (1)[178] In the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of $14,000,000[179] or more or of defense articles or defense services sold under a contract in the amount of $50,000,000[180] or more,[181] before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export and a description of any such offset agreement.[182] In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs[183]

[177] The Director of the Office of Defense Trade Controls notified Congress of proposed commercial export licenses pursuant to this subsection in numerous Department of State Public Notices. See *Federal Register*, Annual Index.

Sec. 708(b) of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 863) provided the following:

"(b) TERMINATION OF EXISTING LICENSES.—If, at any time after the issuance of a license under section 36(c) of the Arms Export Control Act relating to the use, development, or co-production of commercial rocket engine technology with a foreign person, the President determines that the foreign person has engaged in any action described in section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)) since the date the license was issued, the President may terminate the license.".

[178] Sec. 107(b) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3136) added the paragraph designation "(1)", made several technical changes to par. (1), and added new pars. (2) and (3)

[179] This figure was increased from $7,000,000 to $14,000,000 by sec. 101 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520).

[180] This figure was increased from $25,000,000 to $50,000,000 by sec. 101 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1520).

[181] The words "not less than 30 days" which formerly appeared at this point, were struck out by sec. 107(b)(1) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3136). This 30-day prior notification requirement is now included in par. (2) of subsec. (c).

[182] Sec. 1245(a)(2) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) struck out "(if known on the date of transmittal of such certification)" and inserted in lieu thereof "and a description of any such offset agreement".

[183] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives. Previously, sec. 9(a)(7) of the USC Technical Amendments (Public Law 103–437; 108 Stat. 4581) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs".

of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement). In a case in which such articles or services are listed on the Missile Technology Control Regime Annex and are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy.[184] A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.[185]

(2)[178] Unless the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, a license for export described in paragraph (1)—

(A)[186] in the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export;[187]

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[184] Sec. 735(b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 506) inserted the sentence beginning with "In a case in which such * * *".

[185] Sec. 1301(b)(2) of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added ", in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information".

[186] Sec. 141(c) of Public Law 104–164 (110 Stat. 1431) amended and restated subparas. (A) and (B), which formerly read as follows:

"(A) shall not be issued until at least 30 calendar days after the Congress receives such certification; and

"(B) shall not be issued then if the Congress, within such 30-day period, enacts a joint resolution prohibiting the proposed export, except that this subparagraph does not apply with respect to a license issued for an export to the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand.".

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

[187] Sec. 102(c)(1) of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 849) struck out "and" at the end of subpara. (A), redesignated subpara. (B) as subpara. (C), and added a new subpara. (B). Para. (2) of that section, furthermore, provided the following:

(B)[187] in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

(C)[187] in the case of any other license, shall not be issued until at least 30 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 30-day period, enacts a joint resolution prohibiting the proposed export.

If the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, thus waiving the requirements of subparagraphs (A) and (B) of this paragraph, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the export license and a discussion of the national security interests involved.

(3)[178] (A) Any joint[171] resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint[171] resolutions under this subsection, a motion to proceed to the consideration of any such joint[171] resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4)[188] The provisions of subsection (b)(5) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in subsection (b)(5) to "a letter of offer" or "an offer" shall be deemed to be a reference to "a contract".

(d)(1)[189] In the case of an approval under section 38 of this Act of a United States commercial technical assistance or manufacturing licensing agreement[190] which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c)(1) containing comparable information, except that

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"(2) SENSE OF THE CONGRESS.—It is the sense of the Congress that the appropriate committees of Congress and the appropriate agencies of the United States Government should review the commodity jurisdiction of United States commercial communications satellites.".

[188] Sec. 1224 of the Security Assistance Act of 1999 (title XII of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) added para. (4).

[189] Sec. 141(d)(1) of Public Law 104–164 (110 Stat. 1432) inserted para. designation "(1)" after "(d)".

[190] Sec. 141(d)(2) of Public Law 104–164 (110 Stat. 1432) struck out "for or in a country not a member of the North Atlantic Treaty Organization" after "licensing agreement".

the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection.

(2)[191] A certification under this subsection shall be submitted—

(A) at least 15 days before approval is given in the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(B) at least 30 days before approval is given in the case of an agreement for or in any other country;

unless the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States.

(3) If the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, thus waiving the requirements of paragraph (4), he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate approval of the agreement and a discussion of the national security interests involved.

(4) Approval for an agreement subject to paragraph (1) may not be given under section 38 if the Congress, within the 15-day or 30-day period specified in paragraph (2)(A) or (B), as the case may be, enacts a joint resolution prohibiting such approval.

(5)(A) Any joint resolution under paragraph (4) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under paragraph (4), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(e)[192] For purposes of this section—

(1) the term "offset agreement" means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense service from the supplier; and

(2) the term "United States person" means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

[191] Sec. 141(d)(3) of Public Law 104–164 (110 Stat. 1432) added paras. (2) through (5).

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

[192] Sec. 732(c) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 503) added subsec. (e).

(i) organized under the laws of the United States or any State, district, territory, or possession thereof; or

(ii) owned or controlled in fact by individuals described in subparagraph (A).

(f)[193] The President shall cause to be published in a timely manner[194] in the Federal Register, upon transmittal to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, the full unclassified text of—[195]

(1) each numbered certification submitted pursuant to subsection (b);

(2) each notification of a proposed commercial sale submitted under subsection (c); and

(3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d).

(g)[196] Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)).

**Sec. 37.**[197] **Fiscal Provisions Relating to Foreign Military Sales Credits.**—(a) Cash payments received under sections 21, 22, and 29[198] and advances received under section 23 shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guaranties.

(b) Amounts received from foreign governments and international organizations as repayments for credits extended pursuant to section 23, amounts received from the disposition of instruments evidencing indebtedness under section 24(b) (excluding such portion of the sales proceeds as may be required at the time of disposition to be obligated as a reserve for payment of claims under guaranties issued pursuant to section 24(b), which sums are made available for such obligations),[199] and other collections (including fees and in-

[193] Sec. 155 of Public Law 104–164 (110 Stat. 1440) added this subsec. as subsec. (e). Sec. 1245(b)(1) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) redesignated as subsec. (f) to correct the occurrence of two subsecs. (e).

[194] Sec. 1301(a)(1) of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), inserted "in a timely manner" after "to be published".

[195] Sec. 1301(a)(2) of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), struck out "the full unclassified text of each numbered certification submitted pursuant to subsection (b) and each notification of a proposed commercial sale submitted under subsection (c)." and inserted in lieu thereof "the full unclassified text of—" and text of subparas. (1) through (3).

[196] Sec. 1245(b)(2) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) added subsec. (g).

[197] 22 U.S.C. 2777.

[198] The reference to sec. 29 was added by sec. 105(e)(1) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3135).

[199] The words to this point beginning with "under section 24(b) (excluding" were added by sec. 25(11) of the FA Act of 1973.

terest) shall be transferred to the miscellaneous receipts of the Treasury.

(c)[200] Notwithstanding the provisions of subsection (b), to the extent that any of the funds constituting the reserve under section 24(c) are paid out for a claim arising out of a loan guaranteed under section 24, amounts received from a foreign government or international organization after the date of such payment, with respect to such claim, shall be credited to such reserve, shall be merged with the funds in such reserve, and shall be available for any purpose for which funds in such reserve are available.

**Sec. 38.**[201] **Control of Arms Exports and Imports.**—(a)(1) In furtherance of world peace and the security and foreign policy of

[200] Subsec. (c) was added by sec. 104(b) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3133).

[201] 22 U.S.C. 2778.

Sec. 38 was added by sec. 212(a)(1) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 744). Sec. 212(b) of the same Act repealed sec. 414 of the Mutual Security Act of 1954 and stated that any reference to sec. 414 would be considered as a reference to sec. 38 of the Arms Export Control Act.

See also secs. 1402–1412 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 798 *et seq.*), relating to, among other issues, export controls, satellite licensing, technology transfers, high-performance computers, and the Defense Threat Reduction Agency.

See also sec. 1309 of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), relating to satellite export activities.

See also title XV, subtitle B, of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2173), relating to satellite export controls, particularly as they are applied to exportation to the People's Republic of China.

See also title IV, secs. 401–405, of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 718–722), relating to arms transfers restraint policy for the Middle East and Persian Gulf region.

See also in the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2561): sec. 1365, relating to landmine export moratorium; title XV—Weapons of Mass Destruction Control Act of 1992; and title XVI—Iran-Iraq Arms Non-Proliferation Act of 1992. As a result of sec. 1365 of that Act, the Department of State gave notice to the following:

"Notice is hereby given that all licenses, approvals, sales or transfers of landmines specifically designed for antipersonnel use, regardless of method of delivery, are suspended until further notice. Additionally, all existing authorizations for the sale, export, or transfer of such defense articles are revoked until further notice. This action has been taken pursuant to sections 2, 38 and 42 of the Arms Export Control Act, and section 1365 of the National Defense Authorization Act for Fiscal Year 1993." (Public Notice 1727 of November 25, 1992; 57 F.R. 55614).

Licenses and approvals to export or otherwise transfer defense articles and defense services to the following countries or foreign entities are suspended or restricted:

Iran (January 23, 1984; Department of State Notice 84–3; 49 F.R. 2836); Iraq (August 2, 1990; Department of State Public Notice 1238; 55 F.R. 31808); Serbia and Montenegro (Federal Republic of Yugoslavia) (effective July 11, 1991; Department of State Public Notice 1427; 56 F.R. 33322; July 19, 1991); Haiti—including those for use by the police (effective October 3, 1991; Department of State Public Notice 1496; 56 F.R. 50968; October 9, 1991); Sudan (effective October 8, 1992; Department of State Public Notice 1711; 57 F.R. 49741; November 3, 1992); Yemen (effective November 16, 1992; Department of State Public Notice 1734; 57 F.R. 59852; December 16, 1992); the armed forces on Cyprus (except to the United Nations Forces in Cyprus) (effective November 18, 1992; Department of State Public Notice 1738; 57 F.R. 60265; December 18, 1992); Somalia (effective December 16, 1992; Department of State Public Notice 1736; 57 F.R. 59851; December 16, 1992); Liberia (other than for the peacekeeping forces of ECOWAS) (effective December 18, 1992; Department of State Public Notice 1737; 57 F.R. 60265; December 18, 1992); Zaire (Department of State Public Notice 1795; 58 F.R. 26024; April 29, 1993); Burma (Department of State Public Notice 1820; 58 F.R. 33293; June 16, 1993); Guatemala (Department of State Public Notice 1831; 58 F.R. 38597; July 19, 1993); India (Department of State Public Notice 2825; 63 F.R. 27781; May 13, 1998); Pakistan (Department of State Public Notice 2835; 63 F.R. 33122; May 30, 1998); and Indonesia ("except for certain exports related to commercial communication satellites and Y2K compliance activities"; Department of State Public Notice 3137; 64 F.R. 55805; September 10, 1999).

Effective May 30, 1999, restrictions against Nigeria were eased. Henceforth, applications for licenses are reviewed on a case by case basis (Department of State Public Notice 3076; 64 F.R. 34304). Exports to Nigeria had been restricted since 1993 (see: Department of State Public Notice 1844; 58 F.R. 40845; July 30, 1993; and Public Notice 2313; 60 F.R. 66334; December 11, 1995).

On July 24, 1998, the State Department issued Public Notice 2825 (64 F.R. 41614) to suspend all licenses and other approvals for defense articles and services involving seven Russian entithe United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account[202] whether the export of an article would contrib-

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ties: Baltic State Technical University, Europalace 2000, Glavkosmos, Grafit (State Scientific Research Institute of Graphite, or NIIGRAFIT), INOR Scientific Center, MOSO Company, and Polyus Scientific Production Association. In addition, it was announced on the same day that any U.S. Government assistance to these entities would cease. Subsequently, the Department of State issued a second public notice (Public Notice 2866; 63 F.R. 42089; effective July 30, 1998), citing the same seven entities as having "engaged in missile technology proliferation activities that require the imposition of measures pursuant to Executive Order No. 12938 of November 14, 1994, as amended * * *" (for that Executive Order, see *Legislation on Foreign Relations Through 2000*, vol. III).

Peru and Ecuador are restricted on a case-by-case basis (Peru: Department of State Public Notice 2021; 59 F.R. 32481; June 8, 1994; and Public Notice 2168; 60 F.R. 10138; February 23, 1995; Peru and Ecuador: Department of State Public Notice 2205; 60 F.R. 26070; May 4, 1995; and Public Notice 2286; 60 F.R. 57049; November 13, 1995).

Effective July 2, 1993, the domestic arms embargo on Angola was lifted and section 126.1(a) of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 126) was amended accordingly (Department of State Public Notice 1826; 58 F.R. 35864; July 2, 1993). There continues to be a presumption of denial for lethal articles, and an embargo is in place with respect to UNITA (Executive Order 12865, September 29, 1993). See *Legislation on Foreign Relations Through 2000*, vol. III.

The following countries are embargoed under International Traffic in Arms Regulations (ITAR; 22 CFR Part 126) (Department of State Public Notice 1832; 58 F.R. 39280, as amended): Afghanistan (June 27, 1996; 61 F.R. 33313); Armenia, Azerbaijan, Byelarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Tajikistan, and Vietnam (April 4, 1994; 59 F.R. 15625). For some of these countries, other restrictions may also make arms transfers unavailable. Restrictions under the ITAR also apply to countries with respect to which the United States maintains an arms embargo: Burma, People's Republic of China, Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda (59 F.R. 42158), Somalia, Sudan, and Zaire.

Ukraine was removed from the ITAR restrictive list, effective December 27, 2000 (65 F.R. 81739).

Mongolia was removed from the ITAR restrictive list, effective June 30, 1997, in State Department Public Notice 2567 (62 F.R. 37133). The phrase "the states of the former Yugoslavia" was replaced with "the FRY (Serbia and Montenegro)", effective July 12, 1996, pursuant to State Department Public Notice 2410 (61 F.R. 36625). Georgia, Kazakhstan, Turkmenistan, and Uzbekistan were removed from the ITAR restrictive list, effective July 17, 1996, in State Department Public Notice 2407 (61 F.R. 41499).

In Department of State Public Notice 3195 of October 19, 1999, the Assistant Secretary for the Bureau of Political-Military Affairs notified Congress "* * * that it shall be the policy of the Department of State to deny all export license applications and other requests for approval pursuant to section 38 of the Arms Export Control Act, that request authorization for the export, the brokering activity involving the transfer by, for or to, or transactions that involve directly or indirectly by or to: China National Aero-Technology Import and Export Corporation (CATIC), China National Aero-Technology International Supply Company, CATIC (USA) Inc., Tal Industries, Inc., Yan Liren, Hu Boru, McDonnell Douglas Corporation, Douglas Aircraft Company, and Robert Hitt, and any of their subsidiaries, affiliates, or successor entities in connection with the transactions involving defense articles or defense services." (65 F.R. 2220).

In Department of State Public Notice 3227 of February 9, 2000, the Acting Assistant Secretary for the Bureau of Political-Military Affairs notified Congress that "* * * all licenses and other approvals for defense articles and defense services involving certain Kazakhstani and Czech entities and individuals * * * are suspended, effective immediately." (65 F.R. 7902).

In Department of State Public Notice 3557 of December 5, 2000, the Assistant Secretary for the Bureau of Political-Military Affairs notified Congress "* * * that requests for export and retransfer of C–130 spare parts to Indonesia pursuant to section 38 of the Arms Export Control Act will be considered on a case-by-case basis." (66 F.R. 7836). An earlier Department of State notice suspended licenses and approvals to export defense articles, defense services to that country, except for certain exports related to commercial communications satellites (October 14, 1999).

[202] Sec. 1225(a)(2)(A) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out "be made in coordination with

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ute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.[203]

(3)[204] In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this Act as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

(b)(1)(A)(i)[205] As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State for local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii)[206] (I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1), or in the busi-

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the Director of the United States Arms Control and Disarmament Agency, taking into account the Director's assessment as to" and inserted in lieu thereof "take into account".

[203] Sec. 1225(a)(2)(B) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out " The Director of the Arms Control and Disarmament Agency is authorized, whenever the Director determines that the issuance of an export license under this section would be detrimental to the national security of the United States, to recommend to the President that such export license be disapproved.".

Previously, sec. 714(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497), amended and restated para. (2). The paragraph formerly read as follows:

"(2) Decisions on issuing export licenses under this section shall be made in coordination with the director of the United States Arms Control and Disarmament Agency and shall take into account the Director's opinion as to whether the export of an article will contribute to an arms race, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.".

[204] Par. (3) was added by sec. 107(c) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533, 94 Stat. 3136).

[205] Sec. 151(a) of Public Law 104–164 (110 Stat. 1437) added clause designation "(i)" and added clause (ii).

[206] Sec. 151(a)(2) of Public Law 104–164 (110 Stat. 1437) added clause (ii). Subsec. (b) (22 U.S.C. 2778 note) of that section provided: "Section 38(b)(1)(A)(ii) of the Arms Export Control Act, as added by subsection (a), shall apply with respect to brokering activities engaged in beginning on or after 120 days after the enactment of this Act.".

ness of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this Act, except that no license shall be required for such activities undertaken by or for an agency of the United States Government—

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(IV) For purposes of this clause, the term "foreign defense article or defense service" includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

(B)[207] A copy of each registration made under this paragraph shall be transmitted to the Secretary of the Treasury for review regarding law enforcement concerns. The Secretary shall report to the President regarding such concerns as necessary.

(B)[207] The prohibition under such regulations required by the second sentence of subparagraph (A) shall not extend to any military firearms (or ammunition, components, parts, accessories, and attachments for such firearms) of United States manufacture furnished to any foreign government by the United States under this Act or any other foreign assistance or sales program of the United States if—

(i) such firearms are among those firearms that the Secretary of the Treasury is, or was at any time, required to authorize the importation of by reason of the provisions of section 925(e) of title 18, United States Code (including the requirement for the listing of such firearms as curios or relics under section 921(a)(13) of that title); and

(ii) such foreign government certifies to the United States Government that such firearms are owned by such foreign government.

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1), no defense articles or defense services designated by the President under subsection (a)(1) may be exported

[207] The first subparagraph (B) was added by sec. 1255(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204; 101 Stat. 1431). The second subparagraph (B), which should probably have been designated subpar. (C) was added by sec. 8142(a) of the Department of Defense Appropriations Act, 1988 (sec. 101(b) of the Continuing Appropriations for 1988, Public Law 100–202; 101 Stat. 1329–88).

or imported without a license for such export or import, issued in accordance with this Act and regulations issued under this Act, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(3) [208] (A) For each of the fiscal years 1988 and 1989, $250,000 of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for the payment of expenses incurred for—

(i) contract personnel to assist in the evaluation of munitions control license applications, reduce processing time for license applications, and improve monitoring of compliance with the terms of licenses; and

(ii) the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.

(B) The authority of this paragraph may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Any person who willfully violates any provision of this section or section 39, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000,[209] or imprisoned not more than ten years, or both.

(d) [210] * * * [Repealed—1979]

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act,[211] subject to the same terms and conditions as are applicable to such powers under such Act, except that sec-

[208] Par. (3) was added by sec. 1255(c) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204; 101 Stat. 1431). The original par. (3), as amended by sec. 21 of Public Law 96–92 (93 Stat. 710) and sec. 107(a) of Public Law 96–533 (94 Stat. 3136), was repealed by sec. 106 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1522). Par. (3) had stipulated that no license could be issued under this Act for the export of any major defense equipment sold under contract in the amount of $100,000,000 or more (exceptions were provided for NATO members, Australia, Japan, New Zealand, countries participating in co-production arrangements).

[209] Sec. 119(a) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 203) raised the amount of the fine to $1,000,000; added the limitation "for each violation"; and raised the period of imprisonment from two to ten years. Previously the fine was "not more than $100,000".

[210] Subsec. (d), which specified that sec. 38 would apply to and within the Canal Zone, was repealed by sec. 3303(a)(4) of the Panama Canal Act of 1979 (Public Law 96–70; 93 Stat. 499).

[211] These references to various sections of the Export Administration Act of 1979 were inserted in lieu of a series of references to secs. 6 and 7 of the Export Administration Act of 1969 (which expired on September 30, 1979), by sec. 22(a) of Public Law 96–72 (93 Stat. 535).

tion 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that[212] the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest.[213] Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section 11(c) of the Export Administration Act of 1979, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.[214]

(f)[215] (1) The President shall periodically review the items on the United States Munitions List to determine what items, if any, no longer warrant export controls under this section. The results of such reviews shall be reported to the Speaker of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such a report shall be submitted at least 30 days before any item is removed from the Munitions List and shall describe the nature of any controls to be imposed on that item under the Export Administration Act of 1979.[216]

(2) The President may not authorize an exemption for a foreign country from the licensing requirements of this Act for the export of defense items under subsection ( j) or any other provision of this Act until 30 days after the date on which the President has transmitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a notification that includes—

(A) a description of the scope of the exemption, including a detailed summary of the defense articles, defense services, and related technical data covered by the exemption; and

(B) a determination by the Attorney General that the bilateral agreement concluded under subsection (j) requires the compilation and maintenance of sufficient documentation relating to the export of United States defense articles, defense

[212] Sec. 1303 of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added "section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that" to secs. 38(e), 39A(c), and 40(k) of this Act.

[213] Sec. 156 of Public Law 104–164 (110 Stat. 1440) added ", except that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest".

[214] The last sentence was added by sec. 119(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 204).

[215] Subsec. (f) was added by sec. 107 of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1522). Sec. 102(b) of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 848) added para. designation "(1)" and added paras. (2) and (3).

[216] For text of Export Administration Act, see *Legislation on Foreign Relations Through 2000*, vol. III, sec. J.

services, and related technical data to facilitate law enforcement efforts to detect, prevent, and prosecute criminal violations of any provision of this Act, including the efforts on the part of countries and factions engaged in international terrorism to illicitly acquire sophisticated United States defense items.

(3) Paragraph (2) shall not apply with respect to an exemption for Canada from the licensing requirements of this Act for the export of defense items.

(g)[217] (1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

(ii) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410),

(iii) section 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or section 2339A of such title (relating to providing material support to terrorists),[218]

(iv) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16),

(v) section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. App. 1705),

(vi) section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd2),

(vii) chapter 105 of title 18, United States Code (relating to sabotage),

(viii) section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b)),

(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),

(x) section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421), or

(xi) section 603 (b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113 (b) and (c));

(B) persons who are the subject of an indictment or have been convicted under section 371 of title 18, United States Code, for conspiracy to violate any of the statutes cited in subparagraph (A); and

(C) persons who are ineligible—

(i) to contract with,

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[217] Subsec. (g) was added by sec. 1255 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204; 101 Stat. 1429).

[218] Sec. 1304 of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added "or section 2339A of such title (relating to providing material support to terrorists)".

(ii) to receive a license or other form of authorization to export from, or

(iii) to receive a license or other form of authorization to import defense articles or defense services from,

any agency of the United States Government.

(2) The President shall require that each applicant for a license to export an item on the United States Munitions List identify in the application all consignees and freight forwarders involved in the proposed export.

(3) If the President determines—

(A) that an applicant for a license to export under this section is the subject of an indictment for a violation of any of the statutes cited in paragraph (1),

(B) that there is reasonable cause to believe that an applicant for a license to export under this section has violated any of the statutes cited in paragraph (1), or

(C) that an applicant for a license to export under this section is ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government,

the President may disapprove the application. The President shall consider requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person—

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,

except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7)[219] The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office

[219] Sometimes referred to as the "Blue Lantern Program".

primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection—

(A) the term "foreign corporation" means a corporation that is not incorporated in the United States;

(B) the term "foreign government" includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term "foreign person" means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;

(D) the term "party to the export" means—

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.

(h)[220] The designation by the President (or by an official to whom the President's functions under subsection (a) have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.

(i)[221] As prescribed in regulations issued under this section, a United States person to whom a license has been granted to export an item on the United States Munitions List shall, not later than 15 days after the item is exported, submit to the Department of State a report containing all shipment information, including a description of the item and the quantity, value, port of exit, and end-user and country of destination of the item.

(j)[222] REQUIREMENTS RELATING TO COUNTRY EXEMPTIONS FOR LICENSING OF DEFENSE ITEMS FOR EXPORT TO FOREIGN COUNTRIES.—

(1) REQUIREMENT FOR BILATERAL AGREEMENT.—

(A) IN GENERAL.—The President may utilize the regulatory or other authority pursuant to this Act to exempt a foreign country from the licensing requirements of this Act with respect to exports of defense items only if the United

[220] Sec. 6 of the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101–222; 103 Stat. 1899) added subsec. (h).

[221] Sec. 1302(a) of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added subsec. (i).

[222] Sec. 102(a) of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 846) added subsec. (j).

States Government has concluded a binding bilateral agreement with the foreign country. Such agreement shall—

(i) meet the requirements set forth in paragraph (2); and

(ii) be implemented by the United States and the foreign country in a manner that is legally-binding under their domestic laws.

(B) EXCEPTION.—The requirement to conclude a bilateral agreement in accordance with subparagraph (A) shall not apply with respect to an exemption for Canada from the licensing requirements of this Act for the export of defense items.

(2) REQUIREMENTS OF BILATERAL AGREEMENT.—A bilateral agreement referred to paragraph (1)—

(A) shall, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy requiring—

(i) conditions on the handling of all United States-origin defense items exported to the foreign country, including prior written United States Government approval for any reexports to third countries;

(ii) end-use and retransfer control commitments, including securing binding end-use and retransfer control commitments from all end-users, including such documentation as is needed in order to ensure compliance and enforcement, with respect to such United States-origin defense items;

(iii) establishment of a procedure comparable to a "watchlist" (if such a watchlist does not exist) and full cooperation with United States Government law enforcement agencies to allow for sharing of export and import documentation and background information on foreign businesses and individuals employed by or otherwise connected to those businesses; and

(iv) establishment of a list of controlled defense items to ensure coverage of those items to be exported under the exemption; and

(B) should, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy regarding—

(i) controls on the export of tangible or intangible technology, including via fax, phone, and electronic media;

(ii) appropriate controls on unclassified information relating to defense items exported to foreign nationals;

(iii) controls on international arms trafficking and brokering;

(iv) cooperation with United States Government agencies, including intelligence agencies, to combat efforts by third countries to acquire defense items, the export of which to such countries would not be authorized pursuant to the export control regimes of the foreign country and the United States; and

(v) violations of export control laws, and penalties for such violations.

(3) ADVANCE CERTIFICATION.—Not less than 30 days before authorizing an exemption for a foreign country from the licensing requirements of this Act for the export of defense items, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a certification that—

(A) the United States has entered into a bilateral agreement with that foreign country satisfying all requirements set forth in paragraph (2);

(B) the foreign country has promulgated or enacted all necessary modifications to its laws and regulations to comply with its obligations under the bilateral agreement with the United States; and

(C) the appropriate congressional committees will continue to receive notifications pursuant to the authorities, procedures, and practices of section 36 of this Act for defense exports to a foreign country to which that section would apply and without regard to any form of defense export licensing exemption otherwise available for that country.

(4) DEFINITIONS.—In this section:

(A) DEFENSE ITEMS.—The term "defense items" means defense articles, defense services, and related technical data.

(B) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(i) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and

(ii) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

**Sec. 39.**[223] **Fees of Military Sales Agents and Other Payments.**—(a) In accordance with such regulations as he may prescribe, the Secretary of State shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, or offered or agreed to be paid, by any person in connection with—

(1) sales of defense articles or defense services under section 22, or of design and construction services under section 29[224] of this Act; or

[223] 22 U.S.C. 2779. Sec. 39 was added by sec. 604(b) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 767). Sec. 604(c) of the same Act stated that this amendment "shall take effect sixty days after the date of enactment of this Act" (August 29, 1976).

[224] The reference to design and construction services under sec. 29 was added by sec. 105(e)(2)(A) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3135).

(2) commercial sales of defense articles or defense services licensed or approved under section 38 of this Act;

to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales. Such regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments. The Secretary of State shall by regulation require such recordkeeping as he determines is necessary.

(b) The President may, by regulation, prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees as he determines will be in furtherance of the purposes of this Act.

(c) No such contribution, gift, commission, or fee may be included, in whole or in part, in the amount paid under any procurement contract entered into under section 22 or section 29 [225] of this Act, unless the amount thereof is reasonable, allocable to such contract, and not made to a person who has solicited, promoted, or otherwise secured such sale, or has held himself out as being able to do so, through improper influence. For the purposes of this section, "improper influence" means influence, direct or indirect, which induces or attempts to induce consideration or action by any employee or officer of a purchasing foreign government or international organization with respect to such purchase on any basis other than such consideration of merit as are involved in comparable United States procurements.

(d)(1) All information reported to the Secretary of State and all records maintained by any person pursuant to regulations prescribed under this section shall be available, upon request, to any standing committee of the Congress or any subcommittee thereof and to any agency of the United States Government authorized by law to have access to the books and records of the person required to submit reports or to maintain records under this section.

(2) Access by an agency of the United States Government to records maintained under this section shall be on the same terms and conditions which govern the access by such agency to the books and records of the person concerned.

**SEC. 39A.[226] PROHIBITION ON INCENTIVE PAYMENTS.**

(a) No United States supplier of defense articles or services sold or licensed [227] under this Act, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale or export [228] of any such defense article or defense service to a foreign country,

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[225] The reference to sec. 29 was added by sec. 105(e)(2)(B) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3155).

[226] 22 U.S.C. 2779a. Sec. 733 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 504), added sec. 39A. Functions in this section are delegated to the Under Secretary of State for International Security Affairs (Department of State Public Notice 2086; Delegation of Authority No. 214; 59 F.R. 50790).

[227] Sec. 1246(a)(1) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) inserted "or licensed" after "sold".

[228] Sec. 1246(a)(2) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) inserted "or export" after "sale".

make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

(b) Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

(c) In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 and section 12(a) of such Act, subject to the same terms and conditions as are applicable to such powers under that Act, except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that[229] notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

(d) For purposes of this section—

(1) the term "offset agreement" means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier;

(2) the term "incentive payments" means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States person to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term "United States person" means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or

[229] Sec. 1303 of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added "section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that" to secs. 38(e), 39A(c), and 40(k) of this Act.

(ii) owned or controlled in fact by individuals described in subparagraph (A) or by an entity described in clause (i).[230]

**Sec. 40.[231] Transactions With Countries Supporting Acts of International Terrorism.**

(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.—The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer

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[230] Sec. 1246(b) of the Defense Offsets Disclosure Act of 1999 (title XII, subtitle D of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) inserted "or by an entity described in clause (i)" after "subparagraph (A)".

[231] 22 U.S.C. 2780. See also 22 CFR Part 120–130. Sec. 40 was added by sec. 509(a) of Public Law 99–399 (100 Stat. 874). Sec. 40 was amended and restated by the Anti-Terrorism and Arms Export Amendments Act of 1989 (Public Law 101–222; 103 Stat. 1892). It previously read as follows:

"Sec. 40. Exports to Countries Supporting Acts of International Terrorism.

"(a) PROHIBITION.—Except as provided in subsection (b), items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

"(b) WAIVER.—The President may waive the prohibition contained in subsection (a) in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.".

of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent, which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.—

(1) IN GENERAL.—A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item with be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.—A United State person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue), takes an action described in paragraph (1) outside the United States.

(3) APPLICABILITY TO ACTIONS OUTSIDE THE UNITED STATES.—Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (l)(3)(A) or (B). To the extent provided in regulations issued under subsection (l)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United State by a person designated as a United States person in those regulations.

(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.—This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d)[232] COUNTRIES COVERED BY PROHIBITION.—The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.[233]

(e) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

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[232] Sec. 549 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (H.R. 5526, as introduced on October 24, 2000, enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–40), provided the following:

"PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

"SEC. 549. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 40(d) of the Arms Export Control Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

"(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

"(c) Whenever the waiver of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.".

[233] Sec. 822(a)(2)(A) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103–236; 108 Stat. 511), added the sentence that begins "For purposes of this subsection, * * *".

(f) RESCISSION.—(1)[234] A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(A)[235] before the proposed rescission would take effect, a report certifying that—

(i)[236] there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii)[236] that government is not supporting acts of international terrorism; and

(iii)[236] that government has provided assurances that it will not support acts of international terrorism in the future; or

(B)[235] at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i)[236] the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii)[236] the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2)[234] (A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: "That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on ________________ is hereby prohibited.", the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473),[237]

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[234] Sec. 321(3) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 710), inserted new designation for par. (1), and sec. 321(4) added a new par. (2).

[235] Sec. 321(2) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 710), redesignated pars. (1) and (2), as subpars. (A) and (B), respectively.

[236] Sec. 321(1) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 710), redesignated "subparagraphs (A), (B), and (C) of each of paragraphs (1) and (2) as clauses (i), (ii), and (iii), respectively.". Clause (2), redesignated here as subpar. (B), however, has only two subpars., redesignated here as (i) and (ii), from (A) and (B), respectively.

[237] Sec. 8066 of the Department of Defense Appropriations Act (title VIII of the Continuing Appropriations, 1985; Public Law 98–473; 98 Stat. 1837 at 1935), placed restrictions on fiscal year 1985 funds made available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities, which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. Subsec. (b) of that section allowed for the lifting of the prohibition (1) if the President reported on certain criteria; and (2) if a joint resolution approving assistance for military or paramilitary operations in Nicaragua were to be enacted.

In particular subsec. (c), pars. (1) and (3) through (7), provided the following [par. (1) included here because of repeated references to it throughout pars. (3)–(7)]:

except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs [238] of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(g) WAIVER.—The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

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"(c)(1) For the purpose of subsection (b)(2), 'joint resolution' means only a joint resolution introduced after the date on which the report of the President under subsection (b)(1) is received by the Congress, the matter after the resolving clause of which is as follows: 'That the Congress approved the obligation and expenditure of funds available for fiscal year 1985 for supporting, directly or indirectly, military or paramilitary operations in Nicaragua.'.

* * * * * * *

"(3) A resolution described in paragraph (1) introduced in the House of Representatives shall be referred to the Committee on Appropriations of the House of Representatives. A resolution described in paragraph (1) introduced in the Senate shall be referred to the Committee on Appropriations of the Senate. Such a resolution may not be reported before the eighth day after its introduction.

"(4) If the committee to which is referred a resolution described in paragraph (1) has not reported such resolution (or an identical resolution) at the end of fifteen calendar days after its introduction, such committee shall be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

"(5)(A) When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1), notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(B) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

"(C) Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

"(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

"(6) If, before the passage by the Senate of a resolution of the Senate described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

"(A) The resolution of the House of Representatives shall not be referred to a committee.

"(B) With respect to a resolution described in paragraph (1) of the Senate—

"(i) the procedure in the Senate shall be the same as if no resolution had been received from the House; but

"(ii) the vote on final passage shall be on the resolution of the House.

"(C) Upon disposition of the resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

"(7) If the Senate receives from the House of Representatives a resolution described in paragraph (1) after the Senate has disposed of a Senate originated resolution, the action of the Senate with regard to the disposition of the Senate originated resolution shall be deemed to be the action of the Senate with regard to the House originated resolution.".

[238] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(A) consults with the Committee on Foreign Affairs [238] of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS.—The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) RELATION TO OTHER LAWS.—

(1) IN GENERAL.—With regard to munitions items controlled pursuant to this Act, the provisions of this section shall apply notwithstanding any other provisions of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) SECTION 614(A) WAIVER AUTHORITY.—If the authority of section 614(a) of the Foreign Assistance Act of 1961 is used to permit a transaction under that Act or the Arms Export Control Act which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) CRIMINAL PENALTY.—Any person who willfully violates this section shall be fined for each violation not more than $1,000,000, imprisoned not more than 10 years, or both.

(k) CIVIL PENALTIES; ENFORCEMENT.—In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979[239] (subject to the same terms and conditions as are applicable to such powers under that Act), except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that,[240] notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000.

(l) DEFINITIONS.—As used in this section—

(1) the term "munitions item" means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term "United States", when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;[241]

(3) the term "United States person" means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of state, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States

with respect to that person's actions while outside the United States;

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[239] See *Legislation on Foreign Relations Through 2000*, vol. III, sec. J.

[240] Sec. 1303 of the Arms Control, Nonproliferation, and Security Assistance Act of 1999 (Division B of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536), added "section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that" to secs. 38(e), 39A(c), and 40(k) of this Act.

[241] Sec. 822(a)(2)(B) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103–236; 108 Stat. 511), struck out "and" at the end of para. (2); struck out a period at the end of para. (3), and inserted in lieu thereof a semicolon; and added new paras. (4) and (5).

(4)[241] the term "nuclear explosive device" has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994; and

(5)[241] the term "unsafeguarded special nuclear material" has the meaning given that term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.

SEC. 40A.[242] TRANSACTIONS WITH COUNTRIES NOT FULLY COOPERATING WITH UNITED STATES ANTITERRORISM EFFORTS.—

(a) PROHIBITED TRANSACTIONS.—No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) WAIVER.—The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

## Chapter 3A—END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES[243]

**SEC. 40A.[244] END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES.**

(a) ESTABLISHMENT OF MONITORING PROGRAM.—

(1) IN GENERAL.—In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the President shall establish a program which provides for the end-use monitoring of such articles and services.

(2) REQUIREMENTS OF PROGRAM.—To the extent practicable, such program—

(A) shall provide for the end-use monitoring of defense articles and defense services in accordance with the standards that apply for identifying high-risk exports for regular end-use verification developed under section 38(g)(7) of this Act (commonly referred to as the "Blue Lantern" program); and

(B) shall be designed to provide reasonable assurance that—

(i) the recipient is complying with the requirements imposed by the United States Government with re-

[242] 22 U.S.C. 2781. Sec. 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1258) added this sec. 40A. Sec. 150(a) of Public Law 104–164 (110 Stat. 1436) also added a sec. 40A, relating to end-use monitoring of defense articles and defense services.

On May 6, 1999, the Acting Secretary of State determined and certified, as is done annually, "that the following countries are not cooperating fully with United States antiterrorism efforts: Afghanistan; Cuba; Iran; Iraq; Libya; North Korea; Sudan; and Syria" (Department of State Public Notice No. 3054; 64 F.R. 26474). This list was unchanged in the May 2000 report issued by the State Department on global terrorism.

[243] Sec. 150(a) of Public Law 104–164 (110 Stat. 1436) added chapter 3A.

[244] 22 U.S.C. 2785. Added by sec. 150(a) of Public Law 104–164 (110 Stat. 1436). Sec. 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1258) added another sec. 40A, relating to transactions with countries not fully cooperating with U.S. antiterrorism efforts.

spect to use, transfers, and security of defense articles and defense services; and

(ii) such articles and services are being used for the purposes for which they are provided.

(b) CONDUCT OF PROGRAM.—In carrying out the program established under subsection (a), the President shall ensure that the program—

(1) provides for the end-use verification of defense articles and defense services that incorporate sensitive technology, defense articles and defense services that are particularly vulnerable to diversion or other misuse, or defense articles or defense services whose diversion or other misuse could have significant consequences; and

(2) prevents the diversion (through reverse engineering or other means) of technology incorporated in defense articles.

(c) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this section, and annually thereafter as a part of the annual congressional presentation documents submitted under section 634 of the Foreign Assistance Act of 1961, the President shall transmit to the Congress a report describing the actions taken to implement this section, including a detailed accounting of the costs and number of personnel associated with the monitoring program.

(d) THIRD COUNTRY TRANSFERS.—For purposes of this section, defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) includes defense articles and defense services that are transferred to a third country or other third party.

## Chapter 4—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

**Sec. 41. Effective Date.**—This Act shall take effect on July 1, 1968.

**Sec. 42.**[245] **General Provisions.**—(a)[246] In carrying out this Act, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this sec-

[245] 22 U.S.C. 2791. See also notes at section 38, regarding Presidential Determinations.

[246] Sec. 1225(a)(3) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out "the assessment of the Director of the United States Arms Control and Disarmament Agency as to" in para. (1)(c); struck out para. designation "(1)" after subsec. designation "(a)"; and struck out para. (2). Para. (2) had read as follows:

"(2) Any proposed sale made pursuant to this Act shall be approved only after consultation with the Director of the United States Arms Control and Disarmament Agency. The Director of the Arms Control and Disarmament Agency is authorized, whenever the Director determines that a sale under this section would be detrimental to the national security of the United States, to recommend to the President that such sale be disapproved.".

Previously, sec. 714(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497), added para. designation "(1)"; redesignated clauses (1), (2), and (3) as (A), (B), and (C), restated clause (C); and added para. (2). Clause (C), as redesignated, formerly read as follows:

"(C) in coordination with the Director of the United States Arms Control and Disarmament Agency, the Director's opinion as to the extent to which such sale might contribute to an arms race, or increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.".

tion, consideration shall also be given[247] to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this Act, there shall be taken into consideration (A) the extent to which the proposed sale damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States,[248] (B) the portion of the defense articles so manufactured which is of United States origin, and (C)[246] whether, and the extent to which, such sale might contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(b)[249] No credit sale shall be extended under section 23, and no guarantee shall be issued under section 24, in any case involving coproduction or licensed,[250] production outside the United States of any defense article of United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under license or coproduced outside the United States, the estimated value of such production or coproduction, and the probable impact of the proposed transaction on employment and production within the United States.

(c)[249] Funds made available under this Act may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

(d)[248] (1) With respect to sales and guaranties under sections 21, 22, 23, 24, 29, and 30[251] the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of military end-item requirements;

[247] The words "but, subject to the provisions of subsection (b) of this section, consideration shall also be given" were inserted in lieu of "but consideration shall also be given" by sec. 401(f)(1) of the FA Act of 1971 (Public Law 92–226).

[248] Sec. 401(e) of the FA Act of 1971 (Public Law 92–226) struck out the word "and" which appeared at this point.

[249] Sec. 401(f)(2) of the FA Act of 1971 added subsecs. (b) and redesignated former subsecs. (b) and (c) as subsecs. (c) and (d), respectively.

[250] Although the slip law contains a comma between "licensed, production" in the first sentence, it is interpreted as "licensed production" with no comma.

[251] The reference to sec. 29 was added by sec. 105(e)(3) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3135). The reference to sec. 30 was added by sec. 2 of Public Law 97–392 (96 Stat. 1962).

(B) the procurement of military equipment in a manner which permits its integration with service programs;

(C) the supervision of the training of foreign military personnel;

(D) the movement and delivery of military end-items; and

(E) within the Department of Defense, the performance of any other functions with respect to sales and guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e)[252] (1) Each contract for sale entered into under sections 21, 22, 29, and 30[251] of this Act, and each contract entered into under section 27(d) of this Act,[253] shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this Act.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under contracts of sale entered into under sections 21, 22, 29, and 30[251] of this Act, or under contracts entered into under sec. 27(d) of this Act,[253] that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

(f)[254] The President shall, to the maximum extent possible and consistent with the purposes of this Act, use civilian contract personnel in any foreign country to perform defense services sold under this Act.

**Sec. 43.**[255] **Administrative Expenses.**—(a) Funds made available under other law for the operations of United States Government agencies carrying out functions under this Act shall be available for the administrative expenses incurred by such agencies under this Act.

(b)[256] Charges for administrative services calculated under section 21(e)(1)(A) of this Act shall include recovery of administrative

[252] Subsec. (e) was added by sec. 213 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 745).

[253] The reference to sec. 27(d) was added by sec. 115(b)(3) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 210).

[254] Subsec. (f) was added by sec. 605(b) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 768).

[255] 22 U.S.C. 2792.

[256] Subsec. (b), as added by sec. 214 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 746), was amended and restated by sec. 7(d) of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 617).

expenses and official reception and representation expenses[257] incurred by any department or agency of the United States Government, including any mission or group thereof, in carrying out functions under this Act when—

(1) such functions are primarily for the benefit of any foreign country;

(2) such expenses are not directly and fully charged to, and reimbursed from amounts received for, sale of defense services under section 21(a) of this Act; and

(3)[258] such expenses are neither salaries of the Armed Forces of the United States nor represent unfunded estimated costs of civilian retirement and other benefits.

(c)[259] Not more than $72,500 of the funds derived from charges for administrative services pursuant to section 21(e)(1)(A) of this Act may be used each fiscal year for official reception and representation expenses.

**Sec. 44.**[260] **Statutory Construction.**—No provision of this Act shall be construed as modifying in any way the provisions of the Atomic Energy Act of 1954, as amended, or section 7307 of title 10 of the United States Code.

**Sec. 45. Statutes Repealed and Amended.**—(a) Sections 521, 522, 523, 524(b)(3), 525, 634(g), and 640 of the Foreign Assistance Act of 1961, as amended, are hereby repealed.

(b) Part III of the Foreign Assistance Act of 1961, as amended, is amended as follows:

(1) Section 622(b) is amended by striking out "or sales".

(2) Section 622(c) is amended by striking out "and sales" and "or sales".

(3) Section 632(d) is amended by striking out "sections 506, 522, and 523," in the first sentence and inserting in lieu thereof "section 506".

(4) Section 634(d) is amended by inserting "or any other" between "under this" and "Act" in the fourth sentence.

(5) Section 644(m) is amended by striking out "and sales" in the first sentence of the paragraph following numbered paragraph (3).

(c) References in law to the provisions of law repealed by subsection (a) of this section shall hereafter be deemed to be references to this Act or appropriate provisions of this Act. Except for the laws specified in section 44, no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act.

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[257] The reference to reception and representation expenses was added by sec. 120(1) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 204).

[258] Sec. 9104(b)(1) of the Department of Defense Appropriations Act, 1990 (Public Law 101–165; 103 Stat. 1152) added par. (3).

[259] Subsec. (c), as added by sec. 19(b) of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 709), was repealed by sec. 734(a)(10) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1560). The information previously contained in the annual report required by subsec. (c) is now required by sec. 25(a)(6) of this Act. Subsequently, a new subsec. (c) was added by sec. 120(2) of Public Law 99–83 (99 Stat. 204).

[260] 22 U.S.C. 2793.

**Sec. 46.**[261] **Savings Provisions.**—Except as may be expressly provided to the contrary in this Act, all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of any provisions of law repealed by section 45(a) shall continue in full force and effect until modified by appropriate authority.

**Sec. 47.**[262] **Definitions.**—For purposes of this Act, the term—

(1) "excess defense article" has the meaning provided by section 644(g) of the Foreign Assistance Act of 1961;

(2) "value" means, in the case of an excess defense article, except as otherwise provided in sec. 21(a),[263] not less than the greater of—

(A) the gross cost incurred by the United States Government in repairing, rehabilitating, or modifying such article, plus the scrap value; or

(B) the market value, if ascertainable;

(3)[264] "defense article", except as provided in paragraph (7) of this section, includes—

(A) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war,

(B) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of making military sales,

(C) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this paragraph, and

(D) any component or part of any article listed in this paragraph,

but does not include merchant vessels or (as defined by the Atomic Energy Act of 1954) source material (except uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity),[265] byproduct material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data;

(4)[264] "defense service", except as provided in paragraph (7) of this section, includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 644(e) of the Foreign Assistance Act of 1961) used for the purposes of making military sales, but does not include design and construction services under section 29 of this Act;[266]

(5)[264] "training" includes formal or informal instruction of foreign students in the United States or overseas by officers or em-

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[261] 22 U.S.C. 2341 note.

[262] 22 U.S.C. 2794 note. Sec. 47 was added by sec. 25(12) of the FA Act of 1973.

[263] This reference to sec. 21(a) was added by sec. 102(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat 197).

[264] Sec. 215 of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 746) added pars. (3), (4), (5), (6), and (7).

[265] The parenthetical phrase was added by sec. 22 of the International Security Assistance Act of 1979 (Public Law 96–92; 93 Stat. 710). See also sec. 110 of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3138).

[266] The words, "but does not include design and construction services under section 29 of this Act" were added by sec. 105(f) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3135).

ployees of the United States, contract technicians, or contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice to foreign military units and forces;

(6)[264] "major defense equipment" means any item of significant military[267] equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000;

(7)[264] "defense articles and defense services" means, with respect to commercial exports subject to the provisions of section 38 of this Act, those items designated by the President pursuant to subsection (a)(1) of such section;[268]

(8)[269] "design and construction services" means, with respect to sales under section 29 of this Act, the design and construction of real property facilities, including necessary construction equipment and materials, engineering services, construction contract management services relating thereto, and technical advisory assistance in the operation and maintenance of real property facilities provided or performed by any department or agency of the Department of Defense or by a contractor pursuant to a contract with such department or agency; and[268]

(9)[268] "significant military equipment" means articles—

(A) for which special export controls are warranted because of the capacity of such articles for substantial military utility or capability; and

(B) identified on the United States Munitions List.

## Chapter 5—SPECIAL DEFENSE ACQUISITION FUND[270]

**Sec. 51.**[271] **Special Defense Acquisition Fund.**—(a)(1) Under the direction of the President and in consultation with the Secretary of State, the Secretary of Defense shall establish a Special Defense Acquisition Fund (hereafter in this chapter referred to as the "Fund"), to be used as a revolving fund separate from other accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this Act, the Foreign Assistance Act of 1961, or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this chapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

[267] Sec. 1211 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 279) inserted "military" in lieu of "combat".

[268] Sec. 144 of Public Law 104–164 (110 Stat. 1434) struck out "and" at the end of para. (7); struck out the period at the end of para. (8) and inserted in lieu thereof "; and"; and added a new para. (9).

[269] Par. (8) was added by sec. 105(f) of the International Security and Development Cooperation Act of 1980 (Public Law 96–533; 94 Stat. 3135).

[270] Chapter 5 was added by sec. 108(a) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1522).

[271] 22 U.S.C. 2795.

(2) Nothing in this chapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this Act or the Foreign Assistance Act of 1961.

(3)[272] The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this Act, the Foreign Assistance Act of 1986, or other law.

(4)[273] The Fund shall also be used to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(b)[272] The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 21(a)(1)(A) of this Act representing the actual value of defense articles not intended to be replaced in stock,

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, and

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961) of defense articles and defense services acquired under this chapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 21(a)(1) or section 22 of this Act or section 644(m) of the Foreign Assistance Act of 1961, as appropriate,

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c)(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10, United States Code.[274] For purposes of this limitation, the size of the Fund is the amounts in the Fund plus the value (in terms of acquisition cost) of the de-

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[272] Sec. 121 (a) and (b) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 204), added 51(a)(3) and amended sec. 51(b).

Sec. 114(c) of title 10 U.S.C., limited the size of the Special Defense Acquisition Fund to $1,070,000,000.

[273] Sec. 4 of the International Narcotics Control Act of 1989 (Public Law 101–231; 103 Stat. 1957) added par. (4). Sec. 145(b) of Public Law 104–164 (110 Stat. 1434) struck out designation for subpara. (A), and struck out subpara. (B), which had required that information relating to acquisitions under this section be included in an annual report to Congress.

[274] Sec. 114(c) of title 10, U.S.C., was originally codified at sec. 138(g) of title 10, U.S.C.. Sec. 138(g) of title 10, U.S.C., as added by sec. 109(b) of Public Law 97–113 (95 Stat. 1524) and amended by sec. 1103 of the DOD Authorization Act, 1983, (Public Law 97–252; 96 Stat. 738), provided that the Special Defense Acquisition Fund "may not exceed $300,000,000 in fiscal year 1982, may not exceed $600,000,000 in fiscal year 1983, and may not exceed $900,000,000 in fiscal year 1984 or any fiscal year thereafter." The DOD Authorization Act, 1986, sec. 1403, (Public Law 99–145; 99 Stat. 743) changed the amount of the program ceiling to $1,000,000,000. Sec. 1304(a) of the DOD Authorization Act, 1987, (Public Law 99–661; 100 Stat. 3816) increased the ceiling to $1,070,000,000. Public Law 99–433, the DOD Reorganization Act of 1986, redesignated sec. 138(g) of title 10 as sec. 114(c).

fense articles acquired under this chapter which have not been transferred from the Fund in accordance with this chapter.

(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.[275]

**Sec. 52.**[276] **Use and Transfer of Items Procured by the Fund.**—(a) No defense article or defense service acquired by the Secretary of Defense under this chapter may be transferred to any foreign country or international organization unless such transfer is authorized by this Act, the Foreign Assistance Act of 1961, or other law.

(b) The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this chapter prior to their transfer to a foreign country or international organization, if such is necessary to meet national defense requirements and the United States Armed Forces bear the costs of operation and maintenance of such articles or services while in their use and the costs of restoration or replacement upon the termination of such use.

(c) Except as provided in subsection (b) of this section, the Fund may be used to pay for storage, maintenance, and other costs related to the preservation and preparation for transfer of defense articles and defense services acquired under this chapter prior to their transfer, as well as the administrative costs of the Department of Defense incurred in the acquisition of such items to the extent not reimbursed pursuant to section 43(b) of this Act.

**Sec. 53.**[277] * * * [Repealed—1996]

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[275] Title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306; 108 Stat. 1622), as amended by sec. 536 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2416), provided the following:

"SPECIAL DEFENSE ACQUISITION FUND

"Notwithstanding any provision of Public Law 102–391 as amended by Public Law 103–87, not to exceed $140,000,000 of the obligational authority provided in that Act under the heading 'Special Defense Acquisition Fund' may be obligated pursuant to section 51(c)(2) of the Arms Export Control Act.

"Not to exceed $20,000,000 may be obligated pursuant to section 51(c)(2) of the Arms Export Control Act for the purposes of closing the Special Defense Acquisition Fund, to remain available for obligation until September 30, 2000: *Provided,* That the authority provided in this Act is not used to initiate new procurements.".

Amounts provided for the Fund in recent years are as follows: fiscal year 1982—$125,000,000; fiscal year 1983—$125,000,000; fiscal year 1984—$225,000,000; fiscal year 1985—$325,000,000; fiscal year 1986—$325,000,000; fiscal year 1988—$236,835,000; fiscal year 1989—$236,865,000 (available for obligation until September 30, 1991); fiscal year 1990—$280,000,000 (available for obligation until September 30, 1992—subject to conditions in Public Law 102–298); fiscal year 1991—$350,000,000 (available for obligation until September 30, 1993—subject to conditions in Public Law 102–298); fiscal year 1992—$275,000,000 (available for obligation until September 30, 1994—subject to 1% reduction pursuant to sec. 591 of H.R. 2621 as passed by the House on June 19, 1991, and subject to 1.4781% reduction pursuant to sec. 126 of Public Law 102–145, as amended); fiscal year 1993—$225,000,000 (available for obligation until September 30, 1995); fiscal year 1994—$160,000,000.

[276] 22 U.S.C. 2795a.

[277] Formerly at 22 U.S.C. 2795b. Sec. 145(a) of Public Law 104–164 (110 Stat. 1434) repealed sec. 53, which had required the President to file an annual comprehensive report on acquisitions of defense articles and defense services under this chapter.

## Chapter 6—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES [278]

**Sec. 61.**[279] **Leasing Authority.**—(a) The President may lease defense articles in the stocks of the Department of Defense to an eligible foreign country or international organization if—

(1) he determines that there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than on a sales basis under this Act;

(2) he determines that the articles are not for the time needed for public use; [280]

(3) [280] the President first considers the effects of the lease of the articles on the national technology and industrial base, particularly the extent, if any, to which the lease reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the articles are leased; and

(4) [280] the country or international organization has agreed to pay in United States dollars all costs incurred by the United States Government in leasing such articles, including reimbursement for depreciation of such articles while leased, the costs of restoration or replacement if the articles are damaged while leased, and, if the articles are lost or destroyed while leased—[281]

(A) in the event the United States intends to replace the articles lost or destroyed, the replacement cost (less any depreciation in the value) of the articles; or

(B) in the event the United States does not intend to replace the articles lost or destroyed, an amount not less than the actual value (less any depreciation in the value) specified in the lease agreement.

The requirement of paragraph (4) [280] shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communications or electronics interface projects.[282] The President may waive the requirement of paragraph (4) for reimbursement of depreciation for any defense article which has passed three-quarters of its normal service life if the President determines that to do so is important to the national security interest of the United States.[283]

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[278] Chapter 6 was added by sec. 109(a) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1524). Sec. 1003(b) of Public Law 100–456 revised the title of chapter 6. It formerly read "Leases of Defense Articles".

[279] 22 U.S.C. 2796.

[280] Sec. 731(e) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 503), struck out "and" at the end of para. (2); redesignated para. (3) as para. (4); added a new para (3); and struck out "paragraph (3)" in lieu of "paragraph (4)" in the last two sentences of subsec. (a).

[281] Sec. 146 of Public Law 104–164 (110 Stat. 1434) struck out "and the replacement cost (less any depreciation in the value) of the articles if the articles are lost or destroyed while leased." and inserted in lieu thereof "and, if the articles are lost or destroyed while leased—" and subparas. (A) and (B).

[282] Sec. 153(a)(1) of Public Law 104–164 (110 Stat. 1440) struck out ", or to any defense article which has passed three-quarters of its normal service life" at the end of the second sentence of sec. 61(a).

[283] Sec. 153(a)(2) of Public Law 104–164 (110 Stat. 1440) added this sentence. Sec. 153(b) of that Act (22 U.S.C. 2796 note) further provided: "The third sentence of section 61(a) of the Arms

Continued

[284] The President may waive the requirement of paragraph (4)[280] with respect to a lease which is made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense, except that this waiver authority—

(A) may be exercised only if the President submits to the Committee on Foreign Affairs[285] and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate, in accordance with the regular notification procedures of those Committees, a detailed notification for each lease with respect to which the authority is exercised; and

(B) may be exercised only during the current fiscal year[286] and only with respect to one country, unless the Congress hereafter provides otherwise.

The preceding sentence does not constitute authorization of appropriations for payments by the United States for leased articles.

(b) Each lease agreement under this section shall be for a fixed duration of not to exceed five years and shall provide that, at any time during the duration of the lease, the President may terminate the lease and require the immediate return of the leased articles.

(c) Defense articles in the stocks of the Department of Defense may be leased or loaned to a foreign country or international organization only under the authority of this chapter or chapter 2 of part II of the Foreign Assistance Act of 1961, and may not be leased to a foreign country or international organization under the authority of section 2667 of title 10, United States Code.

**Sec. 62.**[287] **Reports to the Congress.**—(a) Before[288] entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this chapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961, for a period of one year or longer, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Re-

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Export Control Act, as added by subsection (a)(2), shall apply only with respect to a defense article leased on or after the date of the enactment of this Act.".

[284] The words from this point to the end of subsec. (a) were added by sec. 147 of the Continuing Appropriations Act for Fiscal Year 1987 (Public Law 99–591; 100 Stat. 3341–354).

[285] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[286] Sec. 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (division A, sec. 101(d) of Public Law 105–277; 112 Stat. 2681), struck out "1998" and inserted in lieu thereof "the current fiscal year". If executed literally, the amended text would read "during the fiscal year the current fiscal year". It is interpreted to intend to read "the current fiscal year".

Previously, sec. 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2412), struck out "1997" and inserted in lieu thereof "1998". Previously, sec. 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (sec. 101(c) of title I of the Omnibus Consolidated Appropriations Act, 1997; Public Law 104–208; 110 Stat. 3009) struck out "1996" and inserted in lieu thereof "1997"; sec. 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107; 110 Stat. 729), struck out "1995" and "inserted in lieu thereof "1996"; and sec. 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306; 108 Stat. 1633), struck out "1994" and "inserted in lieu thereof "1995".

[287] 22 U.S.C. 2796a.

[288] Sec. 141(e)(1)(A) of Public Law 104–164 (110 Stat. 1432) struck out "Not less than 30 days before" and inserted in lieu thereof "Before".

lations of the Senate and the chairman of the Committee on Armed Services of the Senate, a written certification which specifies—

(1) the country or international organization to which the defense article is to be leased or loaned;

(2) the type, quantity, and value (in terms of replacement cost) of the defense article to be leased or loaned;

(3) the terms and duration of the lease or loan; and

(4) a justification for the lease or loan, including an explanation of why the defense article is being leased or loaned rather than sold under this Act.

(b) The President may waive the requirements of this section (and in the case of an agreement described in section 63, may waive the provisions of that section) if he states in his certification,[289] that an emergency exists which requires that the lease or loan be entered into immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.[290]

(c)[291] The certification required by subsection (a) shall be transmitted)—

(1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand; and

(2) not less than 30 calendar days before the agreement is entered into or renewed in the case of an agreement with any other organization or country.

**Sec. 63.**[292] **Legislative Review.**—(a)[293] In the case of any agreement involving the lease under this chapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961, to any foreign country or international organization for a period of one year or longer of any defense articles which are either (i) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at $14,000,000 or more, or (ii) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $50,000,000 or more, the agreement may not be entered into or renewed if the Congress, within the 15-day or 30-day period specified in section 62(c) (1) or (2), as the case may

[289] Sec. 141(e)(1)(B)(i) of Public Law 104–164 (110 Stat. 1432) struck out "determines, and immediately reports to the Congress", and inserted in lieu thereof "states in his certification".

[290] Sec. 141(e)(1)(B)(ii) of Public Law 104–164 (110 Stat. 1432) added the sentence that begins "If the President states".

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

[291] Sec. 141(e)(1)(C) of Public Law 104–164 (110 Stat. 1433) added subsec. (c).

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

[292] 22 U.S.C. 2796b.

[293] Sec. 141(e)(2) of Public Law 104–164 (110 Stat. 1433) struck out designation for para. (1), and struck out para. (2), which had provided as follows:

"(2) This section shall not apply with respect to a loan or lease to the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand.".

be,[294] enacts a joint[295] resolution prohibiting the proposed lease or loan.

(b) Any joint[295] resolution under subsection (a) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(c) For the purpose of expediting the consideration and enactment of joint[295] resolutions under subsection (a), a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

**Sec. 64.**[296] **Application of Other Provisions of Law.**—Any reference to sales of defense articles under this Act in any provision of law restricting the countries or organizations to which such sales may be made shall be deemed to include a reference to leases of defense articles under this chapter.

**Sec. 65.**[297] **Loan of Materials, Supplies, and Equipment for Research and Development Purposes.**—(a)(1) Except as provided in subsection (c), the Secretary of Defense may loan to a country that is a NATO or major non-NATO ally materials, supplies, or equipment for the purpose of carrying out a program of cooperative research, development, testing, or evaluation. The Secretary may accept as a loan or a gift from a country that is a NATO or major non-NATO ally materials, supplies, or equipment for such purpose.

(2) Each loan or gift transaction entered into by the Secretary under this section shall be provided for under the terms of a written agreement between the Secretary and the country concerned.

(3) A program of testing or evaluation for which the Secretary may loan materials, supplies, or equipment under this section includes a program of testing or evaluation conducted solely for the purpose of standardization, interchangeability, or technical evaluation if the country to which the materials, supplies, or equipment are loaned agrees to provide the results of the testing or evaluation to the United States without charge.

(b) The materials, supplies, or equipment loaned to a country under this section may be expended or otherwise consumed in connection with any testing or evaluation program without a requirement for reimbursement of the United States if the Secretary—

(1) determines that the success of the research, development, test, or evaluation depends upon expending or otherwise consuming the materials, supplies, or equipment loaned to the country; and

(2) approves of the expenditure or consumption of such materials, supplies, or equipment.

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[294] Sec. 141(e)(2) of Public Law 104–164 (110 Stat. 1433) struck out "30 calendar days after receiving the certification with respect to that proposed agreement pursuant to section 62(a)," and inserted in lieu thereof "the 15-day or 30-day period specified in section 62(c) (1) or (2), as the case may be,".

Sec. 141(f) of Public Law 104–164 (110 Stat. 1433) provided that "amendments made by this section [sec. 141] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996].".

[295] Sec. (d) of Public Law 99–247 (100 Stat. 9) struck out "concurrent" and inserted "joint".

[296] 22 U.S.C. 2796c.

[297] 22 U.S.C. 2796d. Sec. 1003(a) of the National Defense Authorization Act for Fiscal Year 1989 (Public Law 100–456; 102 Stat. 2038) added sec. 65.

(c) The Secretary of Defense may not loan to a country under this section any material if the material is a strategic and critical material and if, at the time the loan is to be made, the quantity of the material in the National Defense Stockpile (provided for under section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b)) is less than the quantity of such material to be stockpiled, as determined by the President under section 3(a) of such Act.

(d) For purposes of this section, the term "NATO [298] ally" means a member country of the North Atlantic Treaty Organization (other than the United States).[299]

## CHAPTER 7—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY [300]

**Sec. 71.[301] Licensing.—**

(a) ESTABLISHMENT OF LIST OF CONTROLLED ITEMS.—The Secretary of State, in consultation with the Secretary of Defense [302] and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under section 6(l) of the Export Administration Act of 1979.

(b) REFERRAL OF LICENSE APPLICATIONS.—(1) A determination of the Secretary of State to approve a license for the export of an item on the list established under subsection (a) may be made only after the license application is referred to the Secretary of Defense.[303]

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a), the Secretary of State shall provide to the Secretary of Defense and the Secretary of Commerce [304] the license application and accompanying documents issued to the applicant, to the extent that the relevant Sec-

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[298] Sec. 147(a)(3)(B)(i) of Public Law 104–164 (110 Stat. 1435) struck out "or major non-NATO" after "NATO".

[299] Sec. 147(a)(3)(B)(ii) of Public Law 104–164 (110 Stat. 1435) struck out "or a foreign country other than a member nation of NATO designated as a major non-NATO ally under section 2350a(i)(3) of title 10, United States Code" after the parentheses. Previously, sec. 705(d)(2) of Public Law 102–25 (105 Stat. 120) struck out "section 1105 of the National Defense Authorization Act for Fiscal Year 1987 (22 U.S.C. 2767a)" and inserted in lieu thereof "section 2350a(i)(3) of title 10, United States Code". Sec. 1105 of the National Defense Authorization Act for Fiscal Year 1987 was repealed in 1989.

[300] Sec. 1703 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1745) added chapter 7, secs. 71–74.

[301] 22 U.S.C. 2797.

[302] Sec. 1225(a)(4) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out ", the Director of the Arms Control and Disarmament Agency," after "Secretary of Defense". The text had originally been added by sec. 714(a)(3) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497).

[303] Sec. 1225(a)(5) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out "and the Director of the United States Arms Control and Disarmament Agency" after "Secretary of Defense". The text had originally been added by sec. 714(a)(4) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497).

[304] Sec. 1225(a)(6)(A) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out ", the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency" and inserted in lieu thereof "and the Secretary of Commerce". Previously, sec. 714(a)(5)(A) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497), made such an amendment in the reverse.

retary[305] indicates the need to receive such application and documents.

(c) INFORMATION SHARING.—The Secretary of State shall establish a procedure for sharing information with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence,[306] and with other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(d)[307] EXPORTS TO SPACE LAUNCH VEHICLE PROGRAMS.—Within 15 days[308] after the issuance of a license (including any brokering license) for the export of items valued at less than $50,000,000 that are controlled under this Act pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, utilization, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex, the Secretary shall transmit to the Congress[309] a report describing the licensed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. The requirement contained in the preceding sentence shall not apply to licenses for exports to countries that were members of the MTCR as of April 17, 1987.

**Sec. 72.[310, 311] Denial of the Transfer of Missile Equipment or Technology by United States Persons.**

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[305] Sec. 1225(a)(6)(B) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out "or the Director" after "relevant Secretary". Previously, sec. 714(a)(5)(B) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497), made such an amendment in the reverse.

[306] Sec. 1225(a)(7) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out with the Director of the United States Arms Control and Disarmament Agency," after "Director of Central Intelligence,". Previously, sec. 714(a)(6) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497), made such an amendment in the reverse.

[307] Sec. 735(c) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 506), added subsec. (d).

[308] Sec. 708(c) of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 863) struck out "Within 15 days after the issuance of a license for the export of items valued at less than $14,000,000 that are controlled under this Act pursuant to United States obligations under the Missile Technology Control Regime and intended to support the design, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex," and inserted in lieu thereof "Within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than $50,000,000 that are controlled under this Act pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, utilization, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex,".

[309] Sec. 704 of the Security Assistance Act of 2000 (Public Law 106–280; 114 Stat. 861) provided the following:

"SEC. 704. MTCR REPORT TRANSMITTALS.

"For purposes of section 71(d) of the Arms Export Control Act (22 U.S.C. 2797(d)), the requirement that reports under that section shall be transmitted to the Congress shall be considered to be a requirement that such reports shall be transmitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing and Urban Affairs of the Senate.".

[310] 22 U.S.C. 2797a.

[311] Executive Order 12851 of June 11, 1993 (58 F.R. 33181), provided for the administration of proliferation sanctions, Middle East Arms Control, and related congressional reporting requirements, including the following:

"**Sec. 2.** *Missile Proliferation Sanctions.* (a) *Arms Export Control Act.* The authority and duties vested in me by section 72–73 of the AECA (22 U.S.C. 2797a–2797b) are delegated to the Secretary of State, except that:

"(1) The authority and duties vested in me by section 72(a)(1) to make determinations with respect to violations by United States persons of the EAA are delegated to the Secretary of Commerce.

"(2) The authority and duties vested in me to deny certain United States Government contracts as provided in sections 73(a)(2)(A)(i) and 73(a)(2)(B)(i), pursuant to a determination

(a) SANCTIONS.—(1) If the President determines that a United States person knowingly—

(A) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 of this Act, section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405), or any regulations or orders issued under any such provisions,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in paragraph (2).

(2) The sanctions which apply to a United States person under paragraph (1) are the following:

(A) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer of missile equipment or technology controlled under this Act.

(B) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR, then the President shall deny to such United States person for a period of not less than 2 years—

(i) all United States Government contracts, and

(ii) all export licenses and agreements for items on the United States Munitions List.

(b) DISCRETIONARY SANCTIONS.—In the case of any determination made pursuant to subsection (a), the President may pursue any penalty provided in section 38(c) of this Act.

(c)[312] PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a United States person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

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made by the Secretary of State under section 73(a)(1), as well as the authority and duties vested in me to make the findings provided in sections 72(c), 73(f), and 73(g)(1), are delegated to the Secretary of Defense. The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, any waivers based upon findings made pursuant to sections 72(c) and 73(f).

"(3) The authority and duties vested in me to prohibit certain imports as provided in section 73(a)(2)(C), pursuant to a determination made by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 73(g), are delegated to the Secretary of the Treasury.".

This Executive order superceded a memorandum of the President of June 25, 1991, delegating authority regarding missile technology proliferation (56 F.R. 31041; July 8, 1991).

[312] Sec. 734(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 505), redesignated subsec. (c) as subsec. (d), and added a new subsec. (c).

(d)[312] WAIVER.—The President may waive the imposition of sanctions under subsection (a) with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

**Sec. 73.**[311, 313] **Transfers of Missile Equipment or Technology by Foreign Persons.**

(a) SANCTIONS.—(1)[314] Subject to subsections (c) through (g), if the President determines that a foreign person, after the date of the enactment of this chapter, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the acquisition,[315] design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

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[313] 22 U.S.C. 2797b.

[314] On April 7, 2000, the Assistant Secretary of State for Nonproliferation issued a determination pursuant to section 73, but concluded that publication of the determination would be harmful to the national security of the United States (Department of State Public Notice 3285; 65 F.R. 20239). Similar notices were issued on November 21, 2000 (Department of State Public Notice 3481; 65 F.R. 71347), and December 4, 2000 (Department of State Public Notice 3512; 65 F.R. 79441).

On April 6, 2000 (65 F.R. 20239), the Assistant Secretary of State for Nonproliferation issued a determination pursuant to this para., finding that entities in North Korea and Iran have engaged in missile technology proliferation activities that require the imposition of the sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979. See Department of State Public Notice 3286. Similar notices were issued on November 21, 2000, pertaining to entities in Iran and Pakistan (Department of State Public Notice 3482; 65 F.R. 71348), and November 17, 2000, pertaining to entities in Iran (Department of State Public Notice 3513; 65 F.R. 79441).

On April 8, 1999 (64 F.R. 18957), the Assistant Secretary of State for Political-Military Affairs issued a determination pursuant to this para., finding that the following foreign persons, currently operating in the Middle East region, have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A)) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)) on these entities, their subunits and successors, effective March 23, 1999:

"1. Arab British Dynamics (ABD);

"2. Helwan Machinery and Equipment Company; and

"3. Kader Factory for Developed Industries.".

On April 24, 1998 (63 F.R. 24585), the Acting Assistant Secretary of State for Political-Military Affairs issued a determination pursuant to this para., finding that the "following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C)) and Section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) on these entities:

"1. Changgwang Sinyong Corporation (a.k.a. North Korea Mining Development Trading Corporation) (North Korea) and its sub-units, successors, and affiliated companies; and

"2. Khan Research Laboratories (Pakistan) and its sub-units and successors.".

For the President's Memorandum of June 25, 1991, delegating authority regarding missile technology proliferation, see 56 F.R. 31041, July 8, 1991.

[315] Sec. 323(a) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 711), inserted "acquisition,".

or if the President has made a determination with respect to a foreign person under section 11B(b)(1) of the Export Administration Act of 1979, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A)[314] If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this Act.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b)[316] INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(2)[316] LIMITATION.—Notwithstanding paragraph (1), subsection (a) shall apply to an entity subordinate to a government that engages in exports or transfers described in section 498A(b)(3)(A) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(b)(3)(A)).

(c) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in subsection (a) may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing

[316] Sec. 1136(b) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)): (1) redesignated paras. (1) and (2) as subparas. (A) and (B), respectively; (2) struck out "Subsection (a)" and inserted in lieu thereof "(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a)" at the beginning of subsec. (b); and (3) added para. (2).

with respect to such acts, and if the President certifies to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

(1) for any judicial or other enforcement action taken by the MTCR adherent, such action has—

(A) been comprehensive; and

(B) been performed to the satisfaction of the United States; and

(2) with respect to any finding of innocence of wrongdoing, the United States is satisfied with the basis for such finding.[317]

(d) ADVISORY OPINIONS.—The Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce,[318] may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(e) WAIVER AND REPORT TO CONGRESS.—(1) In any case other than one in which an advisory opinion has been issued under subsection (d) stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives[319] not less than 45 working days[319] before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

[317] Sec. 1136(c) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) added text beginning at "and if the President certifies".

[318] Sec. 1225(a)(8) of the Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A of Public Law 105–277; 112 Stat. 2681) struck out ", the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency" and inserted in lieu thereof "and the Secretary of Commerce". Previously, sec. 714(a)(7) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 497), made such an amendment in the reverse.

[319] Sec. 1408(d) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 494) (1) struck out "the Congress" and inserted in lieu thereof "the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives"; and (2) struck out "20 working days" and inserted in lieu thereof "45 working days".

The House Committee on National Security reverted back to its former name, Committee on Armed Services, in the 106th Congress. No legislation, however, was enacted to universally amend reference to that committee in Public Law. Sec. 1067 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 774) did make such a change in specific pieces of legislation and 10 United States Code.

(f)[320] PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a foreign person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

(g)[320] ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(h)[320] EXCEPTIONS.—The President shall not apply the sanction under this section prohibiting the importation of the products of a foreign person—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(C) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(3) to—

(A) spare parts,

(B) component parts, but not finished products, essential to United States products or production,

(C) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(D) information and technology essential to United States products or production.

[320] Sec. 734(b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 505), redesignated subsecs. (f) and (g) as subsecs. (g) and (h), and added a new subsec. (f).

**SEC. 73A.[321] NOTIFICATION OF ADMITTANCE OF MTCR ADHERENTS.**

(a)[322] POLICY REPORT.—Following any action by the United States that results in a country becoming a MTCR adherent, the President shall transmit promptly to the Congress a report which describes the rationale for such action, together with an assessment of that country's nonproliferation policies, practices, and commitments. Such report shall also include the text of any agreements or understandings between the United States and such country regarding the terms and conditions of the country's adherence to the MTCR.

(b)[322] INTELLIGENCE ASSESSMENT REPORT.—At such times that a report is transmitted pursuant to subsection (a), the Director of Central Intelligence shall promptly prepare and submit to the Congress a separate report containing any credible information indicating that the country described in subsection (a) has engaged in any activity identified under subparagraph (A), (B), or (C) of section 73(a)(1) within the previous two years.

**SEC. 73B.[323] AUTHORITY RELATING TO MTCR ADHERENTS.**

Notwithstanding section 73(b), the President may take the actions under section 73(a)(2) under the circumstances described in section 74(b)(2).

**Sec. 74.[324] Definitions.**

(a)[325] IN GENERAL.—For purposes of this chapter—

(1) the term "missile" means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term "MTCR adherent" means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

[321] 22 U.S.C. 2797b–1. Sec. 735(d) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 506), added sec. 73A. Functions in this section are delegated to the Under Secretary of State for International Security Affairs (Department of State Public Notice 2086; Delegation of Authority No. 214; 59 F.R. 50790).

[322] Sec. 1136(d) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) struck out "Following any action" and inserted in lieu thereof "(a) POLICY REPORT.—Following any action", and added subsec. (b).

[323] 22 U.S.C. 2797b–2. Sec. 1137 of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) added sec. 73B.

[324] 22 U.S.C. 2797c.

[325] Sec. 1136(a) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1536)) added subsec. designation and "IN GENERAL" before "For purposes of", and added subsec. (b).

(4) the term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms "missile equipment or technology" and "MTCR equipment or technology" mean those items listed in category I or category II of the MTCR Annex;

(6) the term "United States person" has the meaning given that term in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2));

(7) the term "foreign person" means any person other than a United States person;

(8)(A) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries with non-market economies (excluding former members of the Warsaw Pact),[326] the term "person" means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of electronics, space systems or equipment, and military aircraft;[327] and

(9) the term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(b)[325] INTERNATIONAL UNDERSTANDING DEFINED.—For purposes of subsection (a)(3), as it relates to any international understanding concluded with the United States after January 1, 2000, the term "international understanding" means—

(1) any specific agreement by a country not to export, transfer, or otherwise engage in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act; or

(2) any specific understanding by a country that, notwithstanding section 73(b) of this Act, the United States retains the right to take the actions under section 73(a)(2) of this Act in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin

[326] Popularly referred to as the Helms amendment. Sec. 323(b) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 711), struck out "countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A)" and inserted in lieu thereof "countries with non-market economies (excluding former members of the Warsaw Pact)".

[327] Sec. 323(c) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138; 105 Stat. 711), struck out "aircraft, electronics, and space systems or equipment" and inserted in lieu thereof "electronics, space systems or equipment, and military aircraft".

equipment or technology, subject to the jurisdiction of the United States under this Act.

## CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION [328]

### SEC. 81.[329, 330, 331] SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section,[332] has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

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[328] Two forms of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 were enacted in 1991. Sec. 505(b) of the first Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; Public Law 102–138; 105 Stat. 727) added chapter 8, sec. 81.

Sec. 305(b) of the second Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of Public Law 102–182; 105 Stat. 1245) also inserted a new chapter 8, section 81 at this point.

Subsequently, sec. 309(a) of the second Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of Public Law 102–182; 105 Stat. 1245) repealed title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (the first Chemical and Biological Weapons Control and Warfare Elimination Act), and all amendments made therein.

[329] 22 U.S.C. 2798.

[330] Executive Order 12851 of June 11, 1993 (58 F.R. 33181) provided for the administration of proliferation sanctions, Middle East Arms Control, and related congressional reporting requirements, including the following:

"Section 1. *Chemical and Biological Weapons Proliferation and Use Sanctions.* (a) *Chemical and Biological Weapons Proliferation.* The authority and duties vested in me by section 81 of the Arms Export Control Act, as amended ('AECA') (22 U.S.C. 2798), and section 11C of the Export Administration Act of 1979, as amended ('EAA') (50 U.S.C. App. 2410c), are delegated to the Secretary of State, except that:

"(1) The authority and duties vested in me to deny certain United States Government contracts, as provided in section 81(c)(1)(A) of the AECA and section 11C(c)(1)(A) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, as well as the authority and duties vested in me to make the determinations provided for in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA are delegated to the Secretary of Defense. The Secretary of Defense shall notify the Secretary of the Treasury of determinations made pursuant to section 81(c)(2) of the AECA and section 11(c)(2) of the EAA).

"(2) The authority and duties vested in me to prohibit certain imports as provided in section 81(c)(1)(B) of the AECA and section 11C(c)(1)(B) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, and the obligation to implement the exceptions provided in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA, insofar as the exceptions affect imports of goods into the United States, are delegated to the Secretary of the Treasury."

[331] Determinations relating to section 81 were issued in two instances in 1998 where it was "concluded that publication of the determination would be harmful to the national security of the United States.": Department of State Public Notice 2744 of February 10, 1998 (63 F.R. 9039); and Public Notice 2822 of May 8, 1998 (63 F.R. 28436).

In Department of State Public Notice 2745 of February 10, 1998, the Acting Assistant Secretary of State for Political-Military Affairs determined that, pursuant to section 81(a) of this Act, section 11C(a) of the Export Administration Act, and Executive Order 12851 of June 11, 1993, "the following foreign person has engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. 2410c(c)): Berge Aris Balanian (fugitive from justice previously residing in Germany, and last known to be in Lebanon).".

[332] Sec. 309(a)(2) of Public Law 102–182 (105 Stat. 1258) provides that "the 'date of the enactment of this section' * * * shall be deemed to refer to the date of the enactment of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138)", which was enacted on October 28, 1991.

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President deter-

mines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12–month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

## CHAPTER 9—TRANSFER OF CERTAIN CFE TREATY-LIMITED EQUIPMENT TO NATO MEMBERS [333]

**SEC. 91.[334] PURPOSE.**

The purpose of this chapter is to authorize the President to support, consistent with the CFE Treaty, a NATO equipment transfer program that will—

(1) enhance NATO's forces,

(2) increase NATO standardization and interoperability, and

(3) better distribute defense burdens within the NATO alliance.

**SEC. 92.[335] CFE TREATY OBLIGATIONS.**

The authorities provided in this chapter shall be exercised consistent with the obligations incurred by the United States in connection with the CFE Treaty.

[333] Sec. 2 of the Conventional Forces in Europe Treaty Implementation Act of 1991 (Public Law 102–228; 105 Stat. 1691) added chapter 9, secs. 91–95.

[334] 22 U.S.C. 2799.

[335] 22 U.S.C. 2799a.

**SEC. 93.[336] AUTHORITIES.**

(a)[337] GENERAL AUTHORITY.—The President may transfer to any NATO/CFE country, in accordance with NATO plans, defense articles—

(1) that are battle tanks, armoured combat vehicles, or artillery included within the CFE Treaty's definition of "conventional armaments and equipment limited by the Treaty";

(2) that were, as of the date of signature of the CFE Treaty, in the stocks of the Department of Defense and located in the CFE Treaty's area of application; and

(3) that the President determines are not needed by United States military forces within the CFE Treaty's area of application.

(b) ACCEPTANCE OF NATO ASSISTANCE IN ELIMINATING DIRECT COSTS OF TRANSFERS.—In order to eliminate direct costs of facilitating transfers of defense articles under subsection (a), the United States may utilize services provided by NATO or any NATO/CFE country, including inspection, repair, or transportation services with respect to defense articles so transferred.

(c) ACCEPTANCE OF NATO ASSISTANCE IN MEETING CERTAIN UNITED STATES OBLIGATIONS.—In order to facilitate United States compliance with the CFE Treaty-mandated obligations for destruction of conventional armaments and equipment limited by the CFE Treaty, the United States may utilize services or funds provided by NATO or any NATO/CFE country.

(d) AUTHORITY TO TRANSFER ON A GRANT BASIS.—Defense articles may be transferred under subsection (a) without cost to the recipient country.

(e) THIRD COUNTRY TRANSFERS RESTRICTIONS.—For purposes of sections 3(a)(2), 3(a)(3), 3(c), and 3(d) of this Act, defense articles transferred under subsection (a) of this section shall be deemed to have been sold under this Act.

(f)[337] MAINTENANCE OF MILITARY BALANCE IN THE EASTERN MEDITERRANEAN.—The President shall ensure that transfers by the United States under subsection (a), taken together with transfers by other NATO/CFE countries in implementing the CFE Treaty, are of such valuations so as to be consistent with the United States policy, embodied in section 620C of the Foreign Assistance Act of 1961, of maintaining the military balance in the Eastern Mediterranean.

(g) EXPIRATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the authority of subsection (a) expires at the end of the 40–month period beginning on the date on which the CFE Treaty enters into force.

(2) TRANSITION RULE.—Paragraph (1) does not apply with respect to a transfer of defense articles for which notification

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[336] 22 U.S.C. 2799b.

[337] In a Memorandum of February 13, 1992, the President delegated "to the Secretary of Defense the functions vested in me by section 93(a) and section 94 of the Arms Export Control Act, as amended ('the Act'), and to the Secretary of State the functions vested in me by section 93(f) of the Act. Consistent with section 2 of the Act, transfers of defense articles under section 93(a) shall be subject to the policy direction of the Secretary of State, including the determination of whether such transfers shall occur." (57 F.R. 6663; February 27, 1992).

under section 94(a) is submitted before the end of the period described in that paragraph.

**SEC. 94.[337, 338] NOTIFICATIONS AND REPORTS TO CONGRESS.**

(a) NOTIFICATIONS.—Not less than 15 days before transferring any defense articles pursuant to section 93(a), the President shall notify the Committee on Foreign Affairs [339] of the House of Representatives and the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of the Foreign Assistance Act of 1961.

(b) ANNUAL REPORTS.—Not later than February 1 each year, the President shall submit to the Committee on Foreign Affairs [339] and the Committee on Armed Services [340] of the House of Representatives and the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report that—

(1) lists all transfers made to each recipient NATO/CFE country by the United States under section 93(a) during the preceding calendar year;

(2) describes how those transfers further the purposes described in paragraphs (1) through (3) of section 91; and

(3) lists, on a country-by-country basis, all transfers to another country of conventional armaments and equipment limited by the CFE Treaty—

(A) by each NATO/CFE country (other than the United States) in implementing the CFE Treaty, and

(B) by each country of the Eastern Group of States Parties [341] in implementing the CFE Treaty.

**SEC. 95.[342] DEFINITIONS.**

As used in this chapter—

(1) the term "CFE Treaty" means the Treaty on Conventional Armed Forces in Europe (signed at Paris, November 19, 1990);

(2) the term "conventional armaments and equipment limited by the CFE Treaty" has the same meaning as the term "conventional armaments and equipment limited by the Treaty" does under paragraph 1(J) of article II of the CFE Treaty;

(3) the term "NATO" means the North Atlantic Treaty Organization;

(4) the term "NATO/CFE country" means a member country of NATO that is a party to the CFE Treaty and is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed or acceded to the Treaty of Brussels of 1948 or the Treaty of Washington of 1949 (the North Atlantic Treaty); and

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[338] 22 U.S.C. 2799c.

[339] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[340] Sec. 1(a)(1) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Armed Services of the House of Representatives shall be treated as referring to the Committee on National Security of the House of Representatives.

[341] Sec. 402(1) of the FRIENDSHIP Act (Public Law 103–199; 107 Stat. 2317) struck out "Warsaw Pact country" and inserted in lieu thereof "country of the Eastern Group of States Parties".

[342] 22 U.S.C. 2799d.

(5) the term "country of the Eastern Group of States Parties"[343] means a country that is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed the Treaty of Warsaw of 1955 or a successor state to such a country.[344]

## CHAPTER 10—NUCLEAR NONPROLIFERATION CONTROLS[345]

### SEC. 101.[346] NUCLEAR ENRICHMENT TRANSFERS.

(a) PROHIBITIONS; SAFEGUARDS AND MANAGEMENT.—Except as provided in subsection (b) of this section, no funds made available to carry out the Foreign Assistance Act of 1961 or this Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act, or extending military credits or making guarantees, to any country which the President determines delivers nuclear enrichment equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977, unless before such delivery—

(1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and

(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) CERTIFICATION BY PRESIDENT OF NECESSITY OF CONTINUED ASSISTANCE; DISAPPROVAL BY CONGRESS.—(1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection 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—

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[343] Sec. 402(2)(A) of the FRIENDSHIP Act (Public Law 103–199; 107 Stat. 2317) struck out "Warsaw Pact country" and inserted in lieu thereof "country of the Eastern Group of States Parties".

[344] Sec. 402(2)(B) of the FRIENDSHIP Act (Public Law 103–199; 107 Stat. 2317) inserted "or a successor state to such a country".

[345] Sec. 826(a) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103–236; 108 Stat. 515) added chapter 10, sections 101, 102, and 103.

[346] 22 U.S.C. 2799aa. See determinations set out in footnotes in sec. 102(b)(1).

Popularly referred to as the Symington amendment. Similar language was originally enacted as sec. 669 of the Foreign Assistance Act of 1961, and codified at 22 U.S.C. 2429, by sec. 305 of Public Law 94–329. Sec. 669 was amended and restated by sec. 12 of the International Security Assistance Act of 1977 (Public Law 95–92; 91 Stat. 620), further amended by secs. 10(b)(4) and 12 of the International Security Assistance Act of 1978 (Public Law 95–384; 92 Stat. 735, 737); and further amended by sec. 737(b) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1562). Secs. 669 and 670 were repealed by sec. 826(b) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act; Public Law 103–236; 108 Stat. 519), after section 826(a) of that Act enacted two new sections into the Arms Export Control Act (secs. 101 and 102; at 22 U.S.C. 2799aa and 2799aa–1) to state nuclear nonproliferation controls.

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2)(A) A certification under paragraph (1) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within thirty calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

**SEC. 102.**[345, 347] **NUCLEAR REPROCESSING TRANSFERS, ILLEGAL EXPORTS FOR NUCLEAR EXPLOSIVE DEVICES, TRANSFERS OF NUCLEAR EXPLOSIVE DEVICES, AND NUCLEAR DETONATIONS.**

(a) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OF NUCLEAR REPROCESSING EQUIPMENT, MATERIALS, OR TECHNOLOGY; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) Except as provided in paragraph (2) of this subsection, no funds made available to carry out the Foreign Assistance Act of 1961 or this Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act, or extending military credits or making guarantees, to any country which the President determines—

(A) delivers nuclear reprocessing equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977 (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, of technologies which are alternatives to pure plutonium reprocessing), or

(B) is a non-nuclear-weapon state which, on or after August 8, 1985, exports illegally (or attempts to export illegally) from the United States any material, equipment, or technology

[347] 22 U.S.C. 2799aa–1. Popularly referred to as the Glenn amendment. Similar language was originally enacted as sec. 670 of the Foreign Assistance Act of 1961, and codified at 22 U.S.C. 2429a, by sec. 12 of Public Law 95–92 (91 Stat. 620); amended and restated by sec. 737(c) of the International Security and Development Cooperation Act of 1981 (Public Law 97–113; 95 Stat. 1562); and further amended by sec. 1204 of the International Security and Development Cooperation Act of 1985 (Public Law 99–83; 99 Stat. 277). Sec. 670 (and sec. 669) were repealed by sec. 826(b) of the Nuclear Proliferation Prevention Act of 1994 (title VIII of the Foreign Relations Authorization Act; Public Law 103–236; 108 Stat. 519), after section 826(a) of that Act enacted two new sections into the Arms Export Control Act (secs. 101 and 102; at 22 U.S.C. 2799aa and 2799aa–1) to state nuclear nonproliferation controls.

which would contribute significantly to the ability of such country to manufacture a nuclear explosive device, if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of a nuclear explosive device.

For purposes of clause (B), an export (or attempted export) by a person who is an agent of, or is otherwise acting on behalf of or in the interests of, a country shall be considered to be an export (or attempted export) by that country.

(2) Notwithstanding paragraph (1) of this subsection, the President in any fiscal year may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing during that fiscal year to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(3)(A) A certification under paragraph (2) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within 30 calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(b) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OR USE OF NUCLEAR EXPLOSIVE DEVICES; EXCEPTIONS; PROCEDURES APPLICABLE.—(1)[348] Except as provided in para-

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[348] On May 13, 1998, the President determined "that India, a non-nuclear-weapon state, detonated a nuclear explosive device on May 11, 1998. The relevant agencies and instrumentalities of the United States Government are hereby directed to take the necessary actions to impose the sanctions described in section 102(b)(2) * * *" (Presidential Determination 98–22 of May 13, 1998; 63 F.R. 27665). In support of that determination, the Department of State issued Public Notice 2825 (63 F.R. 27781; May 15, 1998), to revoke all "licenses and other approvals to export or otherwise transfer defense articles and defense services from the United States to India, or transfer U.S. origin defense articles and defense services from a foreign destination to India, or temporarily import defense articles from India pursuant to Section 38 of the Arms Export Control Act * * *".

On May 30, 1998, the President determined "that Pakistan, a non-nuclear-weapon state, detonated a nuclear explosive device on May 28, 1998. The relevant agencies and instrumentalities of the United States Government are hereby directed to take the necessary actions to impose the sanctions described in section 102(b)(2) * * *" (Presidential Determination 98–25 of May 30, 1998; 63 F.R. 31881). In support of that determination, the Department of State issued Public Notice 2835 (63 F.R. 33122; May 30, 1998), to revoke all "licenses and other approvals to export or otherwise transfer defense articles and defense services from the United States to Pakistan, or transfer U.S. origin defense articles and defense services from a foreign destination to Pakistan, or temporarily import defense articles from Pakistan pursuant to Section 38 of the Arms Export Control Act * * *".

The India-Pakistan Relief Act, enacted as title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (division A, sec. 101(a) of Public Law 105–277; 112 Stat. 2681), however, authorized the President to waive the application of sanctions against India and Pakistan for one year. The President issued such a determination as referred to in sec. 902 of the India-Pakistan Relief Act on December 1, 1998, that provided: "I hereby waive until October 21, 1999, the sanctions and prohibitions contained in section 101 and 102 of the Arms Export Control Act, section 620E(e) of the Foreign Assistance Act of 1961, and section 2(b)(4)of the Export-Import Bank Act of 1945, insofar as such sanctions and prohibitions would otherwise apply to activities of the Export-Import Bank, the Overseas Private Investment Corporation, and the Trade and Development Agency with respect to Pakistan and India; assistance to Pakistan and India under the 'International Military Education and Training' program; the making of any loan or financial or technical assistance to Pakistan by any international financial institution in support of the assistance program that Pakistan is negotiating with the International Monetary Fund." (Presidential Determination No. 99–7; *Weekly Compilation of Presidential Documents,* vol. 34, no. 49, December 7, 1998, p. 2402).

In 1999, the President exercised authority pursuant to the India-Pakistan Relief Act of 1998 in Presidential Determination No. 99–38 of September 21, 1999 (64 F.R. 53573); Presidential Determination No. 99–44 of September 30, 1999 (64 F.R. 54503); and Presidential Determination No. 2000–4 of October 27, 1999 (64 F.R. 60649).

Title IX of the Department of Defense Appropriations Act, 2000 (Public Law 106–79; 113 Stat. 1283) repealed the India-Pakistan Relief Act, effective October 21, 1999. In its place, title IX of that Act provided the following:

"TITLE IX

"WAIVER OF CERTAIN SANCTIONS AGAINST INDIA AND PAKISTAN

"SEC. 9001. (a) WAIVER AUTHORITY.—Except as provided in subsections (b) and (c) of this section, the President may waive, with respect to India and Pakistan, the application of any sanction contained in section 101 or 102 of the Arms Export Control Act (22 U.S.C. 2799aa or 22 U.S.C. 2799aa–1), section 2(b)(4) of the Export Import Bank Act of 1945 (12 U.S.C. 635(b)(4)), or section 620E(e) of the Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2375(e)).

"(b) EXCEPTION.—The authority to waive the application of a sanction or prohibition (or portion thereof) under subsection (a) shall not apply with respect to a sanction or prohibition contained in subparagraph (B), (C), or (G) of section 102(b)(2) of the Arms Export Control Act, unless the President determines, and so certifies to the Congress, that the application of the restriction would not be in the national security interests of the United States.

"(c) TERMINATAION OF WAIVER.—The President may not exercise the authority of subsection (a), and any waiver previously issued under subsection (a) shall cease to apply, with respect to India or Pakistan, if that country detonates a nuclear explosive device after the date of the enactment of this Act or otherwise takes such action which would cause the President to report pursuant to section 102(b)(1) of the Arms Export Control Act.

"(d) TARGETED SANCTIONS.—

"(1) SENSE OF THE CONGRESS.—

"(A) it is the sense of the Congress that the broad application of export controls to nearly 300 Indian and Pakistani entities is inconsistent with the specific national security interests of the United States and that this control list requires refinement; and

"(B) export controls should be applied only to those Indian and Pakistani entities that make direct and material contributions to weapons of mass destruction and missile programs and only to those items that can contribute to such programs.

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graphs (4), (5), and (6), in the event that the President determines that any country, after the effective date of part B of the Nuclear Proliferation Prevention Act of 1994—

(A) transfers to a non-nuclear-weapon state a nuclear explosive device,

(B) is a non-nuclear-weapon state and either—

(i) receives a nuclear explosive device, or

(ii) detonates a nuclear explosive device,

(C) transfers to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by the transferring country to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(D) is a non-nuclear-weapon state and seeks and receives any design information or component which is determined by the President to be important to, and intended by the recipient state for use in, the development or manufacture of any nuclear explosive device,

then the President shall forthwith report in writing his determination to the Congress and shall forthwith impose the sanctions described in paragraph (2) against that country.

(2) The sanctions referred to in paragraph (1) are as follows:

(A) The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for humanitarian assistance or food or other agricultural commodities.

(B) The United States Government shall terminate—

(i) sales to that country under this Act of any defense articles, defense services, or design and construction services, and

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"(2) REPORTING REQUIREMENT.—Not later than 60 days after the date of the enactment of this Act, the President shall submit both a classified and unclassified report to the appropriate congressional committees listing those Indian and Pakistani entities whose activities contribute to missile programs or weapons of mass destruction programs.

"(e) CONGRESSIONAL NOTIFICATION.—The issuance of a license for export of a defense article, defense service, or technology under the authority of this section shall be subject to the same requirements as are applicable to the export of items described in section 36(c) of the Arms Export Control Act (22 U.S.C. 2776(c)), including the transmittal of information and the application of congressional review procedures.

"(f) REPEAL.—The India-Pakistan Relief Act (title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, as contained in section 101(a) of Public Law 105–277) is repealed effective October 21, 1999.".

The President waived the application of sanctions under the new law on October 27, 1999 (Presidential Determination No. 2000–4; 64 F.R. 60649), to the following extent:

"(1) with respect to India, insofar as such sanctions would otherwise apply to activities of the Export-Import Bank, the Overseas Private Investment Corporation, and the Trade and Development Agency; assistance under the 'International Military Education and Training' program; the making of any loan or the providing of any credit to the Government of India by any U.S. bank; assistance to the Asian elephant Conservation Fund, the Rhinoceros and Tiger conservation Fund, and the Indo-American Environmental Leadership program; and any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and

"(2) with respect to Pakistan, insofar as such sanctions would otherwise apply to any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and the making of any loan or the providing of any credit to the Government of Pakistan by any U.S. bank." (Presidential Determination No. 2000-4; October 27, 1999; 64 F.R. 60649).

The President and executive branch agencies have subsequently waived or adjusted sanctions against particular Indian and Pakistani entities: see Presidential Determination No. 2000–18 (March 18, 2000; 65 F.R. 16297); Bureau of Export Administration , 15 CFR Part 744 (March 17, 2000; 65 F.R. 14444); and Presidential Determination No. 2001–11 (January 19, 2001; 66 F.R. 8503).

(ii) licenses for the export to that country of any item on the United States Munitions List.

(C) The United States Government shall terminate all foreign military financing for that country under this Act.

(D) The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, except that the sanction of this subparagraph shall not apply—

(i) to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities),[349]

(ii) to medicines, medical equipment, and[350] humanitarian assistance, or[349]

(iii)[349] to any credit, credit guarantee, or financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity.

(E) The United States Government shall oppose, in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d), the extension of any loan or financial or technical assistance to that country by any international financial institution.

(F) The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities, which includes fertilizer.[351]

(G) The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agri-

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[349] Sec. 2(a) of the Agriculture Export Relief Act of 1998 (Public Law 105–194; 112 Stat. 627) struck out "or" at the end of clause (i); struck out a period at the end of clause (ii) and inserted in lieu thereof ", or"; and added clause (iii). Subsecs. (d) and (e) of that section further provided:

"(d) APPLICATION OF AMENDMENTS.—The amendment made by subsection (a)(3) shall apply to any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture before, on, or after the date of enactment of this Act through September 30, 1999.

"(e) EFFECT ON EXISTING SANCTIONS.—Any sanction imposed under section 102(b)(1) of the Arms Export Control Act before the date of the enactment of this Act shall cease to apply upon that date with respect to the items described in the amendments made by subsections (b) and (c). In the case of the amendment made by subsection (a)(3), any sanction imposed under section 102(b)(1) of the Arms Export Control Act before the date of the enactment of this Act shall not be in effect during the period beginning on that date and ending on September 30, 1999, with respect to the activities and items described in the amendment.".

[350] Sec. 2(c) of the Agriculture Export Relief Act of 1998 (Public Law 105–194; 112 Stat. 627) inserted "medicines, medical equipment, and" after "to". Subsec. (e) of that section further provided:

"(e) EFFECT ON EXISTING SANCTIONS.—Any sanction imposed under section 102(b)(1) of the Arms Export Control Act before the date of the enactment of this Act shall cease to apply upon that date with respect to the items described in the amendments made by subsections (b) and (c). In the case of the amendment made by subsection (a)(3), any sanction imposed under section 102(b)(1) of the Arms Export Control Act before the date of the enactment of this Act shall not be in effect during the period beginning on that date and ending on September 30, 1999, with respect to the activities and items described in the amendment.".

[351] Sec. 2(b) of the Agriculture Export Relief Act of 1998 (Public Law 105–194; 112 Stat. 627) struck out the period at the end of subpara. (F) and inserted in lieu thereof ", which includes fertilizer.". Subsec. (e) of that section also provided the following:

"(e) EFFECT ON EXISTING SANCTIONS.—Any sanction imposed under section 102(b)(1) of the Arms Export Control Act before the date of the enactment of this Act shall cease to apply upon that date with respect to the items described in the amendments made by subsections (b) and (c). In the case of the amendment made by subsection (a)(3), any sanction imposed under section 102(b)(1) of the Arms Export Control Act before the date of the enactment of this Act shall not be in effect during the period beginning on that date and ending on September 30, 1999, with respect to the activities and items described in the amendment.".

cultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities).

(3) As used in this subsection—

(A) the term "design information" means specific information that relates to the design of a nuclear explosive device and that is not available to the public; and

(B) the term "component" means a specific component of a nuclear explosive device.

(4)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous session, delay the imposition of sanctions which would otherwise be required under paragraph (1)(A) or (1)(B) of this subsection if the President first transmits to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a certification that he has determined that an immediate imposition of sanctions on that country would be detrimental to the national security of the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

(B) If the President transmits a certification to the Congress under subparagraph (A), a joint resolution which would permit the President to exercise the waiver authority of paragraph (5) of this subsection shall, if introduced in either House within thirty days of continuous session after the Congress receives this certification, be considered in the Senate in accordance with subparagraph (C) of this paragraph.

(C) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(D) For purposes of this paragraph, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress having received on ____ a certification by the President under section 102(b)(4) of the Arms Export Control Act with respect to ____, the Congress hereby authorizes the President to exercise the waiver authority contained in section 102(b)(5) of that Act.", with the date of receipt of the certification inserted in the first blank and the name of the country inserted in the second blank.

(5) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (4) of this subsection, the President may waive any sanction which would otherwise be required under paragraph (1)(A) or (1)(B) 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 the imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(6)(A) In the event the President is required to impose sanctions against a country under paragraph (1)(C) or (1)(D), the President shall forthwith so inform such country and shall impose the required sanctions beginning 30 days after submitting to the Congress the report required by paragraph (1) unless, and to the extent that, there is enacted during the 30-day period a law prohibiting the imposition of such sanctions.

(B) Notwithstanding any other provision of law, the sanctions which are required to be imposed against a country under paragraph (1)(C) or (1)(D) shall not apply if the President determines and certifies in writing to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs [352] of the House of Representatives that the application of such sanctions against such country would have a serious adverse effect on vital United States interests. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(7) For purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(8) The President may not delegate or transfer his power, authority, or discretion to make or modify determinations under this subsection.

(c) NON-NUCLEAR-WEAPON STATE DEFINED.—As used in this section, the term "non-nuclear-weapon state" means any country which is not a nuclear-weapon state, as defined in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.

**SEC. 103.**[345, 353] **DEFINITION OF NUCLEAR EXPLOSIVE DEVICE.**

As used in this chapter, the term "nuclear explosive device" has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994.

[352] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[353] 22 U.S.C. 2799aa–2.