ployed to carry out reconstruction and stabilization activities pursuant to section 2741 of this title (as added by section 1903(a) of this title), the benefits or privileges set forth in sections 2773, 4034, and 4031 of this title to the same extent and manner that such benefits and privileges are extended to members of the Foreign Service.

(b) Authority regarding details

The Secretary is authorized to accept details or assignments of any personnel, and any employee of a State or local government, on a reimbursable or nonreimbursable basis for the purpose of carrying out this title, and the head of any agency is authorized to detail or assign personnel of such agency on a reimbursable or nonreimbursable basis to the Department of State for purposes of section 2741 of this title, as added by section 1903(a) of this title.


Definitions

Pub. L. 110-417, div. A, title XVI, §1605, Oct. 14, 2008, 122 Stat. 4965, provided that: "In this title [enacting this section, sections 2308 and 2754 of this title, and provisions set out as notes under sections 2301 and 2306 of this title]:

"(1) ADMINISTRATION.—The term "Administrator" means the Administrator of the United States Agency for International Development.

"(2) AGENCY.—The term "agency" means any entity included in chapter 1 of title 5, United States Code.

"(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

"(4) DEPARTMENT.—Except as otherwise provided in this title, the term "Department" means the Department of State.

"(5) PERSONNEL.—The term "personnel" means individuals serving in any service described in section 2301 of title 5, United States Code, other than in the legislative or judicial branch.

"(6) SECRETARY.—The term "Secretary" means the Secretary of State."

CHAPTER 38—ARMS EXPORT CONTROL

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SUBCHAPTER I—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

§2751. Need for international defense cooperation and military export controls; Presidential waiver; report to Congress; arms sales policy

As declared by the Congress in the Arms Control and Disarmament Act [22 U.S.C. 2651 et seq.], 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 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 chapter 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 [22 U.S.C. 2151 et seq.], 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 insolvent arms races.

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 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 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 shall 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

(1) which are sold under section 2761 or section 2762 of this title; or

(2) which are licensed or approved for export under section 2778 of this title 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 shall not exceed current levels.

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.

The security interests of the United States in all regions of the world and that particular attention 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.


REFERENCES IN TEXT

The Arms Control and Disarmament Act, referred to in text, is Pub. L. 87-397, Sept. 26, 1961, 75 Stat. 631, as amended, which is classified generally to chapter 35 (§3561 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Foreign Assistance Act of 1961, as amended, referred to in text, is Pub. L. 87-165, Sept. 4, 1961, 75 Stat. 438, as amended, which is classified principally to chapter 23 (§2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note below and Tables.

REFERENCE TO FOREIGN MILITARY SALES ACT DREWED REFERENCE TO ARMS EXPORT CONTROL ACT

Section 36(b) of Pub. L. 94-352 provided that: "Any reference to the Foreign Military Sales Act (see Short Title note below) shall be deemed to be a reference to the Arms Export Control Act."

REFERENCES TO PRESENT INSTEAD OF PAST PROVISIONS; SPECIFIC APPLICATION OF OTHER PROVISIONS TO THIS CHAPTER

Section 4(4) of Pub. L. 96-438 provided that: "References in law to the provisions of law repealed by subsection (a) of this section (repealing sections 2341 to 2364, 2365A(a)(7), 2366, 2367, 2368, and 2369a of this title) shall be deemed to be references to this Act (this chapter) or appropriate provisions of this Act. Except for the laws specified in section 44 (section 2785 of this title), 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."

AMENDMENTS

1981—Pub. L. 97-113 struck out paragraph which provided that it was the sense of Congress that sales and guarantees under sections 2761, 2763, 2765, and 2766 of this title not be approved where they would have had the effect of arming military dictatorships that were denying the growth of fundamental rights or social progress to their own people but allowing the President to waive this limitation when he determined it would be important to the security of the United States, and promptly as reported to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate.

1978—Pub. L. 95-354, § 105(a), inserted paragraph relating to adherence to a policy of restraint in conventional arms transfers.

1976—Pub. L. 94-352 substituted in last paragraph provision relating to a new statement of policy whereby the United States shall exert leadership in the reduction of international trade in arms and in that regard, the President to initiate discussions and actively work with other nations with a view towards control of international trade in arms, for provisions relating to a reduction in the role of the United States in furnishing of defense articles and defense services to foreign countries and international organizations by decreasing sales, credit sales and guarantees of such articles and services.

1971—Pub. L. 91-672 substituted "denying the growth of fundamental rights or social progress" for "denying social progress" in last par.

EFFECTIVE DATE

Section 41 of Pub. L. 90-629 provided that: "This Act (amending this chapter, amending sections 2341, 2362, 2363, 2364, and 2365 of this title, repealing sections 2341 to 2366, and amending this title, and enacting provisions set out as notes under this section and section 2785 of this title) shall take effect on July 1, 1967."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-386, title I, § 1401, Oct. 5, 2010, 124 Stat. 2797, provided that: "This title [amending sections 2333, 2334, 2354, 2355, 2356, 2360, 2378, 2379, 2379a, 2379b, and 2379c of this title and enacting provisions set out as notes under this section and section 2785 of this title] may be cited as the 'Security Cooperation Act of 2010."

SHORT TITLE OF 1999 AMENDMENT


SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-213, § 2799a, 112 Stat. 213, provided that: "This Act [amending section 2799a-1 of
this title and enacting provisions set out as notes under section 279aa-1 of this title may be cited as the 'Agriculture Export Relief Act of 1966'."

Short Title of 1991 Amendment

Pub. L. 102-229, §1, Dec. 12, 1991, 105 Stat. 161, provided that: "This Act (enacting sections 2396a-1 and 2396e of this title, amending sections 2361, 2396, and 2396c of this title, and enacting provisions set out as notes under section 2391 of this title) may be cited as the 'American Export-Import Bank Act of 1991.'"

Short Title

Pub. L. 99-429, as amended by section 321(a) of Pub. L. 102-229, provided that: "This Act (enacting this chapter, amending sections 2361, 2392, 2394, and 2395 of this title, repealing sections 2391 to 2393, 2394, 2395, 2396a, and 2399 of this title, and enacting provisions set out as notes under section 2391 of this title) may be cited as the 'American Export-Import Bank Act.'"

Registration and End-Use Monitoring of Defense Articles and Defense Services Transferred to Afghanistan and Pakistan

Pub. L. 111-114, div. A, title XII, §1235, Oct. 28, 2009, 123 Stat. 2322, provided that:

(a) Program Required—

(1) in general.—The Secretary of Defense shall establish and carry out a program to provide for the registration and end-use monitoring of defense articles and defense services transferred to Afghanistan and Pakistan in accordance with the requirements under subsection (b) and to prohibit the retransfer of such defense articles and defense services without the consent of the United States. The program required under this subsection shall be limited to the transfer of defense articles and defense services:

(A) pursuant to authorities other than the Arms Export Control Act (22 U.S.C. 2771 et seq); or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.); and

(B) using funds made available to the Department of Defense, including funds available pursuant to the Pakistan Counterterrorism Fund.

(2) Exception.—No defense articles or defense services that would be subject to the program required under this subsection may be transferred to:

(A) the Government of Afghanistan or any other group, organization, citizen, or resident of Afghanistan;

(B) the Government of Pakistan or any other group, organization, citizen, or resident of Pakistan;

until the Secretary of Defense certifies to the specified congressional committees that the program required under this subsection has been established.

(b) Registration and End-Use Monitoring Requirements Under this subsection shall include the following:

(1) a detailed record of the origin, shipping, and distribution of defense articles and defense services transferred to:

(A) the Government of Afghanistan and other groups, organizations, citizens, and residents of Afghanistan; and

(B) the Government of Pakistan and other groups, organizations, citizens, and residents of Pakistan.

(c) The registration of the serial numbers of all small arms to be provided to:

(A) the Government of Afghanistan and other groups, organizations, citizens, and residents of Afghanistan; and

(B) the Government of Pakistan and other groups, organizations, citizens, and residents of Pakistan.

(d) A program of end-use monitoring of lethal defense articles and defense services transferred to the entities and individuals described in subparagraphs (A) and (B) of paragraph (c).

(e) Review—The Secretary of Defense shall periodically review the defense articles and defense services subject to the registration and end-use monitoring requirements under subsection (b) to determine which defense articles and defense services, if any, should no longer be subject to such registration and end-use monitoring requirements. The Secretary of Defense shall submit to the specified congressional committees the results of such review conducted under this paragraph.

(f) Authorization.—The Secretary of Defense may exempt a defense article or defense service from the registration and end-use monitoring requirements under subsection (b) beginning on the date that is 30 days after the date on which the Secretary provides notice of the proposed exemption to the specified congressional committees. Such notice shall describe any controls to be imposed on such defense article or defense service, as the case may be, under any other provision of law.

(g) Disapproval.—In this section:

(1) Defense Article.—The term 'defense article' has the meaning given in section 644(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2361(c)).

(2) Defense Service.—The term 'defense service' has the meaning given in section 644(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2361(c)).

(3) Small Arms.—The term 'small arm' means:

(A) a handgun or pleasure;

(B) a shoulder-fired weapon, including a submachine gun, carbine, rifle, or shotgun;

(C) a light, medium, or heavy automatic weapon up to and including a .50 caliber machine gun;

(D) a recoilless rifle up to and including 100mm;

(E) a mortar up to and including 120mm;

(F) a rocket launcher, man-portable;

(G) a grenade launcher, rifle and shoulder fired; and

(H) an individually operated weapon which is portable or can be fired without special mounts or firing devices and which has potential use in civil disturbances and is vulnerable to theft.

(4) Congressional Committees.—The term 'specified congressional committees' means—

(A) the Committee on Foreign Affairs and the Committee on Armed Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Armed Services of the Senate.

(h) Effective Date.—

(1) In General.—Except as provided in paragraph (2), this section shall take effect 180 days after the date of the enactment of this Act (Oct. 30, 2000).

(2) Exception.—The Secretary of Defense may delay the effective date of this section by an additional period of up to 120 days if the Secretary certifies in writing to the specified congressional committees for such additional period that it is in the vital interest of the United States to do so and includes in the certification a description of such vital interest.

Tracking and Monitoring of Defense Articles Provided to the Government of Iraq and Other Individuals and Groups in Iraq


(a) Export and Transfer Control Policy.—The President shall implement a policy to control the export and transfer of defense articles into Iraq, including implementation of the registration and monitoring system under subsection (c).

(b) Requirement to Implement Control System.—No defense articles may be provided to the Government of Iraq or any other group, organization, citizen, or resident of Iraq until the President certifies to the specified congressional committees that a registration
and monitoring system meeting the requirements set forth in subsection (c) has been established.

(6) REGISTRATION AND MONITORING SYSTEM.—The registration and monitoring system required under this subsection shall include—

(1) the registration of the serial numbers of all small arms to be provided to the Government of Iraq or to other groups, organizations, citizens, or residents of Iraq;

(2) a program of end-use monitoring of all lethal defense articles provided to such entities or individuals;

(3) a detailed record of the origin, shipping, and distribution of all defense articles transferred under the Iraq Security Forces Fund or any other security assistance program to such entities or individuals; and

(4) a review; examination.

(1) REVIEW.—The President shall periodically review the items subject to the registration and monitoring requirements under subsection (c) to determine what items, if any, should no longer be subject to such registration and monitoring requirements.

(2) EXEMPTION.—The President may exempt an item from the registration and monitoring requirements under subsection (c) beginning on the date that is 30 days after the date on which the President provides notice of the proposed exemption to the specified congressional committees in accordance with the procedures applicable to reprogramming notifications under section 58(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 238b(a)). Such notice shall describe any controls to be imposed on such item under any other provision of law.

(3) REGISTRATION AND MONITORING.—In this section:

(1) DEFENSE ARTICLES.—The term ‘defense articles’ means the meaning given in section 6(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 238d(d)).

(2) SMALL ARMS.—The term ‘small arms’ means—

(A) handguns;

(B) shoulder-fired weapons;

(C) light automatic weapons up to and including .50 caliber machine guns;

(D) recoilless rifles up to and including 100mm;

(E) mortars up to and including 100mm;

(F) rocket launchers, man-portable;

(G) grenade launchers, rifle and shoulder fired;

and

(H) individually-operated weapons which are portable or can be fired without special mounts or firing devices and which have potential use in civil disturbances and are vulnerable to theft.

(3) SPECIFIED CONGRESSIONAL COMMITTEES.—The term ‘specified congressional committees’ means—

(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

(2) the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect 180 days after the date of the enactment of this Act (Jan. 21, 2009).

(2) EXCEPTION.—The President may delay the effective date of this section by an additional period of up to 90 days if the President certifies in writing to the specified congressional committees for such additional period that it is in the vital interest of the United States to do so and includes in the certification a description of each vital interest.

MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS)–Pub. L. 109-472, § 12, Jan. 11, 2007, 120 Stat. 3558, provided that:

(a) STATEMENT OF POLICY.—Congress declares that it should be the policy of the United States to hold for-}

(d) DETERMINATION RELATING TO SANCTIONS.—

(1) IN GENERAL.—If the President determines that a foreign government knowingly transfers MANPADS to a foreign government described in paragraph (2) or a terrorist organization, the President shall—

(A) submit forthwith to the Committees on International Relations (now Committee on Foreign Affairs) of the House of Representatives and the Committee on Foreign Relations of the Senate a report outlining such determination; and

(B) impose forthwith on the transferring foreign government the sanctions described in subsection (e).

(2) FOREIGN GOVERNMENT DESCRIBED.—A foreign government described in this paragraph is a foreign government that—

(A) knowingly transfers MANPADS to any foreign government described in paragraph (2) or a terrorist organization; and

(B) has repeatedly provided support for acts of international terrorism.

(e) SANCTIONS DESCRIBED.—The sanctions referred to in subsection (b)(1)(C) are the following:

(1) Termination of United States Government assistance to the transferring foreign government under the Foreign Assistance Act of 1961 (22 U.S.C. 2161 et seq.), except that such termination shall not apply in the case of humanitarian assistance.

(2) Termination of United States Government—

(A) sales to the transferring foreign government of any defense articles, defense services, or design and construction services; and

(B) license for the export to the transferring foreign government of any item on the United States Munitions List.

(3) Termination of all foreign military financing for the transferring foreign government.

(4) WAIVER.—Notwithstanding any other provision of law, sanctions shall not be imposed on a transferring foreign government under this section if the President determines and certifies in writing to the Committees on International Relations (now Committee on Foreign Affairs) of the House of Representatives and the Committee on Foreign Relations of the Senate that the furnishing of the assistance, sales, licensing, or financing that would otherwise be suspended as a result of the imposition of such sanctions is important to the national security interests of the United States.

(4) DEFINITIONS.—In this section:

(1) DEFENSE ARTICLES.—The term ‘defense articles’ means the meaning given the term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2772(3)).

(2) DEFENSE SERVICES.—The term ‘defense service’ means the meaning given the term in section 47(4) of the Arms Export Control Act (22 U.S.C. 2772(4)).

(3) DESIGN AND CONSTRUCTION SERVICES.—The term ‘design and construction services’ means the meaning given the term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2772(3)).

(4) FOREIGN GOVERNMENT.—The term ‘foreign government’ includes any agency or Instrumentality of a foreign government.

(5) MANPADS.—The term ‘MANPADS’ means—

(A) a surface-to-air missile system designed to be man-portable and carried and fired by a single individual; or

(B) any other surface-to-air missile system designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.


(a) UNITED STATES POLICY ON NONPROLIFERATION AND EXPORT CONTROL.—

(1) TO LIMIT AVAILABILITY AND TRANSFER OF MANPADS.—The President shall pursue, on an urgent
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§ 2751

A defense system for commercial aircraft is issued by the Administrator, and annually thereafter until December 31, 2008, the Federal Aviation Administration shall transmit to the Committees on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

(4) Programs to Reduce MANPADS—

(1) In general.—The President is encouraged to pursue strong programs to reduce the number of MANPADs worldwide so that fewer MANPADs will be available for trade, proliferation, and sale.

(2) Reporting and Briefing Requirements.—Not later than 180 days after the date of enactment of this Act (Dec. 17, 2004), the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of the programs being pursued under subsection (a). Annually thereafter until the programs are no longer needed, the Secretary of State shall brief the appropriate congressional committees on the status of programs.

(3) Penalties.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

(3) MANPADS Vulnerability Assessments Report—

(1) In General.—Not later than one year after the date of enactment of this Act (Dec. 17, 2004), the Secretary of Homeland Security shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Department of Homeland Security's plans to secure airports and the aircraft arriving and departing from airports against MANPADs attacks.

(2) Maturing to Be Addressed.—The Secretary's report shall address, at a minimum, the following:

(a) The status of the Department's efforts to conduct MANPADs vulnerability assessments at United States airports at which the Department is conducting assessments.

(b) How intelligence is shared between the United States Intelligence agencies and Federal, State, and local law enforcement to address the MANPADS threat and potential ways to improve such intelligence sharing.

(c) Contingency plans that the Department has developed in the event that it receives intelligence indicating a high threat of a MANPADs attack on aircraft at or near United States airports.

(d) The feasibility and effectiveness of implementing public education and neighborhood watch programs in areas surrounding United States airports in cases in which intelligence reports indicate there is a high risk of MANPADs attacks on aircraft.

(e) Any other issues that the Secretary deems relevant.

(3) Format.—The report required by this subsection may be submitted in a classified format.

(4) Definitions.—In this section, the following definitions apply:

(1) Appropriated congressional committees.—The term 'appropriated congressional committees' means

(a) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Foreign Relations, and the Committee on Transportation and Infrastructure of the House of Representatives; and

(b) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) MANPADS.—The term 'MANPADS' means

(a) a surface-to-air missile system designed to be man-portable and carried and fired by a single individual; and
CHARTER, together with a full discussion of the actions taken to implement such recommendations or otherwise taken on the recommendations.

(4) A discussion and assessment of the status of each Review Committee recommendation during the two fiscal years preceding the fiscal year in which the report is submitted, including, particularly, the status of recommendations made during such preceding fiscal years that were reflected in the budget submitted to Congress pursuant to section 110(a) of title 31, United States Code, in the fiscal year of the report.

(5) Such specific Department of Energy program that the Secretary of Energy plans to develop to initial operating capability and each such program that the Secretary does not plan to develop to initial operating capability.

(6) For each technology program scheduled to reach initial operational capability, a recommendation from the Chairman of the Joint Chiefs of Staff that represents the views of the commanders of the unified and specified commands regarding the utility and requirement of the program.

(7) A discussion of the limitations and impediments to the biological weapons counterproliferation efforts of the Department of Defense (including legal, policy, and resource constraints) and recommendations for the removal or mitigation of such impediments and for ways to make such efforts more effective.

(8) A discussion of the biological weapons counterproliferation efforts of other governments, organizations, and other nations, including an analysis of the classified report for special compartmented information programs, special access programs, and special activities programs.

(9) REVIEW COMMITTEE CHARTER DEFINED.—For purposes of this section, the term 'Review Committee charter' means section 103 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-100) (22 U.S.C. 2761 note).

(10) ABORTION.—No defense article or defense service may be sold or leased by the United States Government to any country or international organization that, as a matter of policy or practice, is known to have sent letters to United States firms requesting compliance with, or soliciting information regarding, any program that is not a program of the United States Government, that country or organization does not currently maintain a policy or practice of making such requests or solicitations.

(11) WAIVER.—

(12) 1-YEAR WAIVER.—On or after the effective date of this section, the President may waive, for a period of 1 year, the application of subsection (a) with respect to any country or organization if the President determines, and reports to the appropriate congressional committees, that—

(a) such waiver is in the national interest of the United States, and such waiver will promote the objectives of this section to eliminate the Arab boycotts; or

(b) such waiver is in the national security interest of the United States.

(13) EXTENSION OF WAIVER.—If the President determines that the further extension of a waiver will promote the objectives of this section, the President, upon notification of the appropriate congressional committees, may grant further extensions of such waiver for successive 6-month periods.
"(5) TERMINATION OF WAIVER.—The President may, at any time, terminate any waiver granted under this subsection.

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

"(A) the term "appropriate congressional committees" means the Committees on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives; and

"(B) the terms "defense actions" and "defense services" have the meanings given to such terms by paragraphs (3) and (4), respectively, of section 27 of the Arms Export Control Act (22 U.S.C. 2772(a));

"(7) EFFECTIVE DATE.—This section shall take effect 1 year after the date of enactment of this Act (Apr. 30, 1994).

"(Memorandum of President of the United States, Apr. 24, 1997, 62 F.R. 23797, delegated to Secretary of State functions of President under section 501 of Public Law 102-236, set out above, were continued in the following:"

"(Determinations of President of the United States, No. 91, Apr. 26, 1997, 62 F.R. 23628.)

"(Determination of President of the United States, No. 96-30, May 1, 1996, 60 F.R. 22845.)

COUNTERPROLIFERATION POLICY AND PROGRAMS OF UNITED STATES


"SEC. 1608. STUDIES RELATING TO UNITED STATES COUNTERPROLIFERATION POLICY.

"(a) AUTHORIZATION TO CONDUCT STUDIES.—The Secretary of Defense may conduct studies and analyses programs in support of the counterproliferation policy of the United States.

"(b) COUNTERPROLIFERATION STUDIES.—Studies and analyses programs under this section may include programs intended to explore defense policy issues that might be involved in efforts to prevent and counter the proliferation of weapons of mass destruction and their delivery systems. Such efforts include—

"(1) enhancing United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction;

"(2) cooperating in international programs to enhance military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction; and

"(3) otherwise contributing to Department of Defense capabilities to deter, identify, monitor, and respond to such terrorism, theft, and proliferation involving weapons of mass destruction.

"(c) DISSEMINATION OF COORDINATOR.—The Under Secretary of Defense for Policy, subject to the supervision and control of the Secretary of Defense, shall coordinate the policy studies and analysis of the Department of Defense on countering proliferation of weapons of mass destruction and their delivery systems.

"(d) REPORT.—Not later than April 30 of each year, the Under Secretary of Defense shall submit to the appropriate congressional committees a report on the activities carried out under subsection (a). Each report shall set forth for the twelve-month period ending on the last day of the month preceding the month in which the report is due the following:

"(1) A description of the studies and analyses carried out.

"(2) The amounts spent for such studies and analyses.

"(3) The organizations that conducted the studies and analysis.

"(4) An explanation of the extent to which such studies and analyses contribute to the counterproliferation policy of the United States and United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction.

"(5) A description of the measures being taken to ensure that such studies and analyses within the Department of Defense are managed effectively and coordinated comprehensively.

"(SEC. 1609. JOINT COMMITTEE FOR REVIEW OF COUNTERPROLIFERATION PROGRAMS OF THE UNITED STATES.

"(a) ESTABLISHMENT.—(1) There is hereby established a Counterproliferation Program Review Committee composed of the following members:

"(A) The Secretary of Defense.

"(B) The Secretary of Energy.

"(C) The Director of National Intelligence.

"(D) The Chairman of the Joint Chiefs of Staff.

"(E) The Secretary of State.


"(2) The Secretary of Defense shall chair the committee. The Secretary of Energy shall serve as the Vice Chairman of the committee.

"(3) A member of the committee may designate a representative to perform routinely the duties of the member. A representative shall be in a position of Deputy Assistant Secretary or a position equivalent to or above the level of Deputy Assistant Secretary. A representative of the Chairman of the Joint Chiefs of Staff shall be a person in a grade equivalent to that of Deputy Assistant Secretary of Defense.

"(4) The Secretary of Defense may delegate to the Under Secretary of Defense for Acquisition, Technology, and Logistics the performance of the duties of the Chairman of the committee. The Secretary of Energy may delegate to the Under Secretary of Energy responsible for national security programs of the Department of Energy the performance of the duties of the Vice Chairman of the committee.

"(b) RESPONSIBILITIES.—The Committee shall have the following responsibilities:

"(1) To review the counterproliferation policy and programs of the United States.

"(2) To authorize the allocation of funds for counterproliferation activities.

"(3) To determine whether the policies and programs of the United States are consistent with national security objectives.

"(4) To report its findings and recommendations to the President and the Congress.

"(c) PURPOSES.—The Committee shall have the following purposes:

"(1) To optimize funding for, and ensure the development and deployment of—

"(A) highly effective technologies and capabilities for the detection, monitoring, collection, processing, analysis, and dissemination of information in support of United States counterproliferation policy and efforts, including efforts to stem the proliferation of weapons of mass destruction and to negate paramilitary and terrorist threats involving weapons of mass destruction; and

"(B) disabling technologies in support of such policy.

"(2) To identify and eliminate undesirable redundancies or uncoordinated efforts in the development and deployment of such technologies and capabilities.

"(3) To establish priorities for programs and funding.

"(4) To encourage and facilitate interagency and interdepartmental funding of programs in order to ensure necessary levels of funding to develop, operate, and field highly-capable systems.

"(5) To ensure that Department of Energy programs are integrated with the operational needs of other departments and agencies of the Government.
"(6) To ensure that Department of Energy national security programs include technology demonstration and prototype development of equipment.

"(c) Duties.—The committee shall—

"(1) identify and review existing and proposed capabilities and technologies and the support of United States nonproliferation policy and counterproliferation policy with regard to—

"(A) Intelligence;
"(B) handheld surveillance;
"(C) passive defenses;
"(D) active defenses; and
"(E) counterforces capabilities;

"(2) prescribe requirements and priorities for the development and deployment of highly effective capabilities and technologies;

"(3) identify deficiencies in existing capabilities and technologies;

"(4) formulate near-term, mid-term, and long-term programmatic options for meeting requirements established by the committee and eliminating deficiencies identified by the committee; and

"(5) assess each fiscal year the effectiveness of the committee actions during the preceding fiscal year, including, particularly, the status of recommendations made during such preceding fiscal year that were reflected in the budgets submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for the fiscal year following in which the assessment is made.

"(d) Access to Information.—The committee shall have access to information on all programs, projects, and activities of the Department of Defense, the Department of State, the Department of Energy, the Department of Homeland Security, the intelligence community, and the Arms Control and Disarmament Agency that are pertinent to the purposes and duties of the committee.

"(e) Recommendations.—The committee shall submit to the President and the heads of all appropriate departments and agencies of the Government such programmatic recommendations regarding existing, planned, or new programs as the committee considers appropriate to encourage funding for capabilities and technologies at the level necessary to support United States counterproliferation policy.

"(f) Termination of Committee.—The committee shall cease to exist at the end of September 30, 2015.

§ 9907. Definitions.


"(1) The term 'appropriate congressional committees' means—

"(A) the Committees on Armed Services, the Committees on Appropriations, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

"(B) the Committees on Armed Services (now Committees on National Security), the Committees on Appropriations, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives;".

"(2) The term 'intelligence community' has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 403a),".

"For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 631 of act of this title.

Restriction on Arms Sales to Saudi Arabia and Kuwait


"(a) No funds appropriated or otherwise made available by this Act or any other Act may be used in any fiscal year to conduct, support, or maintain any sale of defense articles or defense services to Saudi Arabia or Kuwait until that country has paid in full, either in cash or in mutually agreed-in-kind contributions, the following commitments made to the United States to support Operation Desert Shield/Desert Storm:

"(C) In the case of Kuwait, $23,000,000,000.

"(b) For purposes of this subsection, the term "cash sale" means any sale with respect to which the President is required to submit a certified bill of lading to Congress pursuant to the Arms Export Control Act (22 U.S.C. 2762 et seq.) or on or after the effective date of this section.

"(c) This section shall take effect 120 days after the date of enactment of this joint resolution (Dec. 12, 1991).

"(d) Any military equipment of the United States, including battle tanks, armored combat vehicles, and artillery, included within the Conventional Forces in Europe Treaty definition of 'conventional armaments and equipment limited by the Treaty,' which may be transferred to any other NATO country shall be subject to the certification procedures stated in section 626 of Public Law 101-513 (105 Stat. 2077) and in section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-7)."

Annual Report on Proliferation of Missiles and Regional Components of Nuclear, Biological, and Chemical Weapons


Conventional Arms Transfers

Pub. L. 99-66, title I, §119, Aug. 8, 1986, 90 Stat. 266, directed President, at the earliest possible date, in consultation with United States allies, to initiate discussions with the Soviet Union and France aimed at beginning multilateral negotiations to limit and control the transfer of conventional arms to less developed countries, and, within one year after Aug. 8, 1986, submit to Speaker of House of Representatives and chairman of Committee on Foreign Relations of Senate a report which specifies steps being taken to fulfill such requirements and which examines and analyzes, among specified matters, United States policies concerning the export of conventional arms, especially sophisticated weapons, and possible approaches to developing multilateral limitations on conventional arms sales.

Termination of Nonbelligerent Activities: Foreign Assistance Act of 1961 and This Chapter and Removal from Law

Section 734(c) of Pub. L. 97-113 provided that: "Except as otherwise explicitly provided by their terms, amendments to the Foreign Assistance Act of 1961 (25 U.S.C. 2151 et seq.) and the Arms Export Control Act (this chapter) which are applicable only to a single fiscal or calendar year or which require reports or other actions on a nonrecurring basis shall be deemed to have expired and shall be removed from law upon the expiration of the applicable time period for the fulfillment of the required actions."

Report to Congress by President on Multilateral Discussions Concerning Arms Transfers Policy

Section 150(c) of Pub. L. 99-394 directed President, not later than Dec. 31, 1979, to transmit to Congress a detailed report assessing results and commenting on implications of multilateral discussion referred to in

Report by President on Review of Arms Sales Controls on Non-Lethal Items


Study by President on Impact of Foreign Arms Sales and Transfers to Foreign Governments on Defender Readiness and National Security of United States


Study by President of National Security and Military Implications of International Transfers of Technology; Scope of Study; Utilization of Executive Departments and Agencies

Pub. L. 96-27, §34, Aug. 4, 1977, 91 Stat. 264, as amended by Pub. L. 97-113, title VII, §1704(a)(13), Dec. 29, 1981, 95 Stat. 1988, directed President to conduct a comprehensive study of policies and practices of United States Government with respect to national security and military implications of international transfers of technology in order to determine whether such policies and practices should be changed, with President to utilize resources and expertise of Arms Control and Disarmament Agency, Department of State, Department of Defense, Department of Commerce, National Science Foundation, Office of Science and Technology Policy, and such other entities within the Executive branch as he deemed necessary.

Statement of Policy Regarding United States Arms Sales to Israel

Pub. L. 96-27, §38, Aug. 4, 1977, 91 Stat. 264, provided that: "In accordance with the historic special relationship between the United States and Israel, and previous agreements and continuing understandings, the Congress Join the President in reaffirming that a policy of restraint in United States arms transfers, including arms sales ceilings, shall not impair Israel's deterrent strength or undermine the military balance in the Middle East."

Review by President of Categories and Arms Sales Controls on Lethal and Non-Lethal Items

Pub. L. 96-27, §77, Aug. 4, 1977, 91 Stat. 268, directed President to undertake a review of all regulations relating to arms control for the purpose of defining and categorizing lethal and non-lethal products and establishing the appropriate level of control for each category.

Review of United States Arms Sales Policies and Practices by President; Export to Congress


Presidential Export Requiring Excess Defense Articles to Foreign Governments and International Organizations


Study by Secretaries of State and Defense on Consequences of Export of Arms Export Control Provisions


Total Number of Credits to Be Extended Between July 1, 1978, and September 30, 1978

Section 200(b) of Pub. L. 94-339 provided that the total number of credits extended pursuant to this chapter, between July 1, 1978, and Sept. 30, 1978, not exceed an amount equal to one-fifth of the total amount of credits extended and guaranteed for fiscal year 1976.

Additional Military and Civilian Personnel for Department of Defense

Pub. L. 94-339, title VI, §602(a), June 30, 1976, 90 Stat. 766, provided that: "Nothing in this Act (see Short Title Note below) shall be construed as authorizing any additional military or civilian personnel for the Department of Defense for the purposes of this Act, the Foreign Assistance Act of 1961 (section 213 et seq., of this title), or the Arms Export Control Act (this chapter). Personnel levels authorized in statutes authorizing appropriations for military and civilian personnel of the Department of Defense shall be controlling over all military and civilian personnel of the Department of Defense assigned to carry out functions under the Arms Export Control Act and the Foreign Assistance Act of 1961."

Sales to Two Middle East: Requests for Additional Appropriations

Section 5 of Pub. L. 91-673 provided that: "It is the sense of Congress that (1) the President should continue to press forward energetically with his efforts to negotiate with the Soviet Union and other powers a limitation on arms shipments to the Middle East, (2) the President should be supported in his position that arms will be made available and credits provided to Israel and other friendly states, to the extent that the President determines such assistance to be needed in order to meet threats to the security and independence of such states, and (3) if the authorization provided in the Foreign Military Sales Act, as amended (this chapter), should prove to be insufficient to offset this stated policy, the President should promptly submit to the Congress requests for an appropriate supplementary authorization and appropriation.

Review of Military Aid Programs and Exports for Regulation of Conventional Arms Trade

Section 6 of Pub. L. 91-673 provided that: "It is the sense of the Congress that: (1) the President should immediately institute a thorough and comprehensive review of the military aid programs of the United States, particularly with respect to the military assistance and sales operations of the Department of Defense, and (2) the President should take such actions as may be appropriate—"(A) to initiate multilateral discussions among the United States, the Union of Soviet Socialist Republics, Great Britain, France, West Germany, Italy and other countries on the control of the worldwide trade in armaments, "(B) to commence a general debate in the United Nations with respect to the control of the conventional arms trade, and (C) to use the power and prestige of his office to signify the intention of the United States to work actively with all nations to check and control the
international sales and distribution of conventional weapons of death and destruction."

EXECUTIVE ORDER No. 11001

Ex. Ord. No. 11568, ADMINISTRATION OF CHAPTER
By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Secretary of the Treasury, as amended (22 U.S.C. 2701 et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States, I hereby order as follows:
SECTION 1. Delegation of Functions. The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2701 et seq.), hereinafter referred to as the Act, and related legislation, are delegated as follows:

(a) Those under Section 3 of the Act (22 U.S.C. 2703), with the exception of subsections (A)(1), (b), (o)(5), (o)(1), and (f) to the Secretary of State: Provided, That the Secretary of State, in the implementation of the functions delegated to him under Sections 3(a) and (f) of the Act, is authorized to give regulations for the case of a proposed transfer of a defense article or related training or other defense services by a foreign country or international organization with which the United States is not otherwise eligible under Section 3(a)(1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under Section 6 (22 U.S.C. 2705) to the Secretary of State.

(c) Those under Section 21 of the Act (22 U.S.C. 2761), with the exception of the last sentence of subsection (d) and all of subsection (1) (22 U.S.C. 2761(d), (1)), to the Secretary of Defense.

(d) Those under Sections 22(a), 29, 30 and 39A of the Act (22 U.S.C. 2702(a), 2709, 2710, 2709a) to the Secretary of Defense.

(e) Those under Section 23 of the Act (22 U.S.C. 2738) and section 511 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-165) (22 U.S.C. 2705 note), to the Secretary of Defense, to be exercised in consultation with the Secretary of State and the Secretary of the Treasury, except that the President shall determine any other activity to be charged which is less than the market rate of interest.

(f) Those under Sections 24, 27, and 28 of the Act (22 U.S.C. 2744, 2767, former 3650) to the Secretary of Defense. The Secretary of Defense, in implementing the functions delegated to him under Sections 24 and 27 (22 U.S.C. 2744, 2767), shall consult with the Secretary of State and the Secretary of the Treasury.

(g) Those under Section 25 of the Act (22 U.S.C. 2746) to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that Section.

(h) Those under Section 31 of the Act (22 U.S.C. 2774) to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under Section 36(a) of the Act (22 U.S.C. 2776(a)) to the Secretary of State.

(j) Those under Sections 36(a) and 36(b)(l) of the Act (22 U.S.C. 2776(a), (b)(i)), except with respect to the certification of an emergency as provided by subsection (b)(1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1) shall consult with the Secretary of State, which shall, with respect to matters related to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a)(2) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under Sections 36(c) and (d) of the Act (22 U.S.C. 2776(c), (d)) to the Secretary of State. Those under Section 36(e) of the Act, as added by Public Law 104-164, with respect to transmittals pursuant to Section 36(a) to the Secretary of Defense, and with respect to transmittals pursuant to Section 36(c), to the Secretary of State.

(l) Those under Section 38 of the Act (22 U.S.C. 2778):

(1) to the Secretary of Defense, except as otherwise provided in this subsection, designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense. The authority to undertake activities to ensure compliance with established export conditions may be delegated to the Secretary of Defense, or to the head of another department or agency as appropriate, which shall have such functions in consultation with the Secretary of State;

(2) to the Attorney General, to the extent that they relate to the control of the import of defense articles and defense services. The Attorney General shall be consulted by the Secretary of State or the Attorney General, as appropriate, with respect to the identification of defense articles and defense services subject to import control under Section 38 of the Act (22 U.S.C. 2778) shall have the concurrence of the Secretary of State and the Secretary of Defense;

(m) Those under Section 39 of the Act (22 U.S.C. 2779) to the Secretary of Commerce, to carry on out on behalf of the Secretary of State, to the extent such functions involve Section 39(a) of the Act (22 U.S.C. 2779(a)) and are agreed to by the Secretary of State and the Secretary of Commerce.

(n) Those under Section 39(b) of the Act (22 U.S.C. 2779(b)) to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under Section 39 of the Act (22 U.S.C. 2779).

(o) Those under Section 40A of the Act (22 U.S.C. 2786), as added by Public Law 101-164, to the Secretary of State, which shall be consulted by the Secretary of State as they relate to commercial exports excepted under the Act, and to the Secretary of Defense as they relate to defense articles and defense services sold, leased, or transferred under the Foreign Military Sales Program.

(p) Those under Section 40A of the Act (22 U.S.C. 2781), as added by the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-182), to the Secretary of State.

(q) Those under Sections 42(a) and (b) of the Act (22 U.S.C. 2782) to the Secretary of Defense.
(q) Those under Sections 52(b) and 55 of the Act [22 U.S.C. 276aa(b), former 2795(b)] to the Secretary of Defense.
(r) Those under Section 81 and 63(a) of the Act [22 U.S.C. 2761, 2796(a)] to the Secretary of Defense.
(a) Those under Section 9(b)(d) of the Export-Import Bank Act of 1946 (13 U.S.C. 330(b)(d)) to the Secretary of State.
(b) Those under Section 58(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100-458; Oct. 1, 1988, 102 Stat. 2503, as amended), to the Secretary of State.
(c) Those under Section 58(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1985 (Pub. L. 99-562; Oct. 1, 1986, 100 Stat. 5695, as amended), to the Secretary of Defense, except with respect to the determination of an emergency as provided by subsection (b)(3). The Secretary of Defense in the implementation of the functions delegated to him under section 58(b) shall consult with the Secretary of State.

505. Coordination. (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them by this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Attorney General, and the Chairman of the Export-Import Bank, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act [22 U.S.C. 276aa(1)] and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States and serve thereby.

Sect. 5. Allocation of Funds. Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

Sec. 4. Repeal. Executive Order No. 11601, as amended, is revoked; except that, to the extent consistent with this Order, all determinations, authorizations, regulations, rules, certifications, orders, directives, contracts, agreements, and other actions made, issued, taken, or entered into under the provisions of Executive Order No. 11601, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until modified, modified or terminated by appropriate authority.

For abolition, transfer of funds, and treatment of reference to United States Arms Control and Disarmament Agency, see section 661 et seq. of this title.

§ 2752. Coordination with foreign policy

(a) Noninfringement of powers or functions of Secretary of State.

Nothing contained in this chapter shall be construed to infringe upon the powers or functions of the Secretary of State.

(b) Responsibility for supervision and direction of sales, leases, financing, cooperative projects, and exports.

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 the food for peace program) shall be responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this chapter, 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 such 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 to the extent that the foreign policy of the United States would be best served thereby.

(c) Coordination among representatives of United States

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 in his desires.


References in Text

This chapter, referred to in subsec. (a) and (b), was in the original "this Act", meaning Pub. L. 90-665, Oct. 22, 1968, 82 Stat. 931, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Table.

Amendments

1986—Subsec. (a). Pub. L. 99-463 repealed section 1122(a)(2) of Pub. L. 98-93 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1986 Amendments note below.

1986—Subsec. (b). Pub. L. 99-463 amended subsec. (b) generally, substituting reference to the food for peace program for reference to food for freedom and adding financing and cooperative projects under this chapter to the list of responsibilities of the Secretary of State.

Pub. L. 99-145, §1102(a)(2), which enacted amendments similar to those provided in Pub. L. 99-463, was repealed. See 1996 Amendments note above and Repeal; Effective Date note below.


1976—Subsec. (b). Pub. L. 94-329 inserted "and exports" after "sales" wherever appearing and added subsec. (c), (d), (e), and (f).

Effective Date of 1985 Amendment

§ 2753

Eligibility for defense services or defense articles

(a) Prerequisites for consent by President; report to Congress

No defense article or defense service shall be sold or leased by the United States Government under this chapter to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 2767 of this title), unless—

(1) 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 so furnished to it, or produced in a cooperative project (as defined in section 2767 of this title), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specified member countries other than the United States) in the case of a cooperative project and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained;

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

(4) the country or international organization is otherwise eligible to purchase or lease 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. 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. 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) Necessity of consent by President

The consent of the President under paragraph (2) of subsection (a) of this section or under paragraph (1) of section 2714(a) of this title (as it relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign country or international organization of defense articles sold by the United States under this chapter if a treaty referred to in section 3778(j)(1)(C)(i) of this title permits such transfer without prior consent of the President, or 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, the Government of the Republic of Korea, the Government of Israel, or the Government of New Zealand;

(3) the recipient is a country designated under section 2771 of this title;

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

(A) significant military equipment (as defined in section 2794(g) of this title);

(B) defense articles for which notification to Congress is required under section 2776(b) of this title; and

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

(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) Termination of credits, guaranties or sales; report of violation by President; national security exception; conditions for reinstatement

(1)(A) No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this chapter as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, 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 2754 of this title or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 2754 of this title 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 chapter as hereinafter provided, if such country uses defense articles or
defense services furnished under this chapter, 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 2764 of this title or, if such agreement provides that such articles or services may only be used for purpose more limited than those authorized under section 2764 of this title, for a purpose not authorized under such agreement.

(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 subparagraphs, 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.

(C) 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) Submission of written certification to Congress; contents; classified material; effective date of consent report; report Congress; transfers not subject to procedures

(1) Subject to paragraph (5), the President may not give his consent under paragraph (2) of subsection (a) of this section or under the third sentence of such subsection, or under section 2014(a)(1) or 2014(a)(4) of this title, 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, unless 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) the name of the country or international organization proposing to make such transfer,

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

(C) the name of the proposed recipient of such article or service,

(D) the reasons for such proposed transfer, and

(E) 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 proposed to be transferred may be classified if public disclosure thereof would be clearly detrimental to the security of the United States.

(2)(A) Except as provided in subparagraph (B), 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, the President 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, within such 30-day period, a joint resolution prohibiting the proposed transfer.

(B) In the case of a proposed transfer to the North Atlantic Treaty Organization, or any other country of such organization, Japan, Australia, the Republic of Korea, Israel, 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 30 calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such 30-day period, a joint resolution prohibiting the proposed transfer.

(3) If the President 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 national security interests of the United States, this waiver of the requirements of this subsection, the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate immediate transfer of the transfer and a discussion of the national security interests involved.

(D)(1) 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.

(H) 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.

(5)(A) Subject to paragraph (5), 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 2778 of this title or has been exempted from the licensing requirements of this chapter pursuant to a treaty referred to in section 2778(c)(1)(C)(i) of this title which such treaty does not authorize the transfer without prior United States Government approval, unless 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 containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted—

(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, the Republic of Korea, Israel, 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 clauses (i) or (ii) as the case may be, and of subparagraph (B)) the President 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.

(3) 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(5) of the International Security Assistance and Arms Export Control Act of 1976.

(1) 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) 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) 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 2776(c) of this title with regard to such lead-nation procurement identified the transfers on whose behalf the lead-nation procurement was proposed.

(5) In the case of a transfer to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, the Republic of Korea, Israel, or New Zealand that does not authorize a new sales territory that includes any country other than such countries, the limitations on consent of the President set forth in paragraphs (1) and (3)(A) shall apply only if the transfer is—

(A) a transfer of major defense equipment valued (in terms of its original acquisition cost) at $35,000,000 or more; or

(B) a transfer of defense articles or defense services valued (in terms of its original acquisition cost) at $100,000,000 or more.1

(e) Transfers without consent of President; report to Congress

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 2314 of this title, he shall report such information immediately to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

(f) Sales and leases to countries in breach of nuclear nonproliferation agreements and treaties

No sales or leases shall be made to any country that the President has determined is in material breach of the binding commitments to the United States under international treaties or agreements concerning the nonproliferation of nuclear explosive devices (as defined in section 5050(c) of this title) and unsafeguarded special nuclear material (as defined in section 5050(b) of this title).

(2) Unauthorized use of articles

Any agreement for the sale or lease of any article on the United States Munitions List entered into by the United States Government after November 29, 1968, 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 2764 of this title or, if such agreement provides that such article may only be used for purposes more limited than those authorized under section 2764 of this title, for a purpose not authorized under such agreement.

180 In original, the closing parenthesis probably should not appear.

REFINEMENTS IN TEXT

This chapter, referred to in subsec. (a) (2), was in the original "this Act", meaning Pub. L. 99-224, Oct. 12, 1986, 92 Stat. 181, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2776 of this title and Tables.


AMENDMENTS

2010—Subsec. (a), Pub. L. 111-386, §102(a), inserted "a treaty referred to in section 2776(b)(3)(A)(i) of this title permits such transfer without prior consent of the President, or if not", after "under this chapter II", in introductory provisions.


Subsec. (g)(3)(A). Pub. L. 111-386, §106(a), inserted introductory provisos that has been exempted from the licensing requirements of this chapter pursuant to a treaty referred to in section 2776(b)(3)(A)(i) of this title shall be authorized if such treaty does not authorize the transfer without prior United States Government approval after "approved under section 2776 of this title.


Subsec. (g)(5). Pub. L. 111-386, §1301(3), inserted "Israel", before "or New Zealand" in introductory provisos.


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1981—Subsec. (a). Pub. L. 97-110, §130(b)(2), substituted in introductory text "sold or leased for "sales", and in par. (4) "purchase or lease" for "purchase".

Subsec. (c)(1). Pub. L. 97-113, §109(a)(1), substituted in introductory text, "or under section 221(a)(1) or 231(a)(4) of this title", to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at $4,000,000 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, for "to a transfer of a defense article, or related training or other defense service, sold under this chapter and may not give its consent to such a transfer under section 221(a)(1) or (a)(4) of this title", in subpar. (B) "a description of the article or service proposed to be transferred, including the original acquisition cost of such defense article or related training or other defense service", in subpar. (C) "articles or service" for "defense article or related training or other defense service", and in proviso, (B) which related to follow-on services for "defense articles, or related training or other defense services", and, in proviso (B) which related to follow-on services for "defense articles, or related training or other defense services", added subpar. (B).

Subsec. (d)(2). Pub. L. 97-113, §102(a), designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), unless " for "Unless", and added subpar. (B).

Subsec. (d)(2). Pub. L. 97-113, §101(a)(3), substituted "transfer of any major defense equipment valued (in terms of its original acquisition cost) at $4,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $30,000,000 or more" for "transfer to a third country of a defense article or a defense service valued (in terms of its original acquisition cost) at $25,000,000 or more, or of major defense equipment valued (in terms of its original acquisition cost) at $7,000,000 or more", struck out subpar. (D), which provided that subsec. (d) of this section not apply to transfers to the North Atlantic Treaty Organization, any member country of such organization, Japan, Australia, or New Zealand, of any major defense equipment valued (in terms of its original acquisition cost) at less than $7,000,000, or of any defense article or related training or other defense service valued (in terms of its original acquisition cost) at less than $35,000,000,

1980—Subsec. (d)(1). Pub. L. 96-535, §101(a)(2)(A), substituted "pursuant to this paragraph" for "pursuant to this subsection".

Subsec. (d)(2). Pub. L. 96-383, §101(a)(3)(B), substituted "paragraph (1) of this subsection" for "the first paragraph".


Subsec. (d)(4). Pub. L. 96-383, §101(a)(2)(A), (D), redesignated former par. (3) as (4) and, in par (4) as so redesignated, added subpar. (D).

1979—Subsec. (d)(3)(C). Pub. L. 96-82 made subsec. (d) of this section applicable to arrangements between the North Atlantic Treaty Organization and any of its member countries, incorporated existing text in provisions designated cl. (1) and added cl. (D).

1977—Subsec. (d). Pub. L. 95-55, §15, struck out subsec. (b)(2) prohibiting on sales, etc., to countries seizing or fining American fishing vessels for fishing in waters more than twelve miles from their coasts.

Subsec. (d). Pub. L. 95-55, §16, 17, redesignated existing provisions as pars. (1), struck out "30 days prior to giving such consent", before "the President" substitute, redesignated par. (3)(1) to (3) as subpars. (A) to (E), respectively, and added pars. (5) and (6).


1976—Subsec. (a). Pub. L. 94-333, §202(b)(4), redesignated in par. (3) "or related training or other defense service" after "article" wherever appearing and struck out provisos following par. (4) relating to the President's notification of his consent to transfer war implement to another country, in writing to the Speaker of the House of Representatives and the Committees on Foreign Relations of the Senate indicating his justification for the transfer and the particular war implement transferred.

Subsec. (c). Pub. L. 94-332, §300(b)(1), provided that the President, by so stating in writing to Congress, or Congress, by joint resolution, terminate credits, guarantees or sales upon determining a violation, permitted cash sales and delivers pursuant to previous sales to be made if the President certifies in writing to Congress that termination thereof would be adverse to national security unless Congress adopts or has adopted a joint resolution determining such eligibility, and specified conditions for reinstatement of eligibility, was repealed and is now covered by subsec. (c).

Subsec. (d). Pub. L. 94-332, §304(a), (304(b)(2), added subsec. (d). Former subsec. (d), which related to conditions for reinstatement after a determination of ineligibility, was repealed and is now covered by subsec. (d).

Subsec. (e). Pub. L. 94-332, §304(a), (304(b)(2), added subsec. (e).

1974—Subsec. (d). Pub. L. 93-450 struck out first sentence providing respecting furnishing of sophisticated weapons to countries in violation of agreements pursuant to subsec. (a)(2) of this section, section 221(a)(3)(A) of this title, or other similar provisions and substituted "in accordance with subsection (c) of this section" for "in accordance with subsection (c)".

1973—Subsec. (a). Pub. L. 93-185, §302(c)(2), in par. (2) inserted requirement not to use or permit the use of such articles for purposes other than for which furnished, redesignated former par. (3) as (4), added a new par. (3), and following par. (4), as so redesignated, inserted provisions relating to Presidential consideration of requests prior to consent under par. (2).

Subsec. (a). Pub. L. 93-185, §302(c)(3), added subsec. (a) and (b).

1971—Subsec. (b). Pub. L. 91-272 extended the retaliatory measures against countries seizing, taking custody or fining American vessels for fishing outside of twelve miles of their coast, to sales, credits, guarantees, and laid down a period of one year as the extent of such prohibition, and added assurances of future restraint received from such countries as an additional ground for waiver, and provided exception that the prohibition will not apply in cases governed by international agreements to which the United States is a party.

EFFECTIVE DATE OF 1998 AMENDMENT

Section 141(f) of Pub. L. 106-164 provided that: "The amendments made by this section [amending this section and sections 2776, 2790a, and 2790b of this title] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1998]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-358 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103-358, set out as an Effective Date note under section 6301 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT


EFFECTIVE DATE OF 1976 AMENDMENT

Section 202(a) of Pub. L. 94-332 provided that the amendment made by that section is effective July 1, 1976.

DELEGATION OF FUNCTIONS

Functions of President under this section, except subsec. (a)(1), (b), (c)(3), (d), and (f), delegated to Secretary of State, with Secretary authorized to make certain
SECURITY COOPERATION WITH THE REPUBLIC OF KOREA
Pub. L. 110-430, tit. II, § 203(a), Oct. 15, 2008, 122 Stat. 4644, provided that: "Congress makes the following findings:

(1) Close and continuing defense cooperation between the United States and the Republic of Korea continues to be in the national security interest of the United States.

(2) The Republic of Korea was designated a major non-NATO ally in 1967, the first such designation.

(3) The Republic of Korea has been a major purchaser of United States defense articles and services through the Foreign Military Sales (FMS) program, totaling $6,860,099,096 in deliveries over the last 10 years.

(4) Purchase of United States defense articles, services, and major defense equipment facilitates and increases the interoperability of Republic of Korea military forces with the United States Armed Forces.

(5) Congress has previously enacted important, special defense cooperation arrangements for the Republic of Korea, as in the act entitled "An Act to authorize the transfer of items in the War Reserves Stockpile for Allies, Korea," approved December 30, 2005 (Public Law 109-242; 119 Stat. 2565), which authorized the President, notwithstanding section 614 of the Foreign Assistance Act of 1961 (22 U.S.C. 2370a), to transfer to the Republic of Korea certain defense items to be included in a war reserve stockpile for that country.

(6) Enhanced support for defense cooperation with the Republic of Korea is important to the national security of the United States, including through creation of a status in law for the Republic of Korea similar to the countries in the North Atlantic Treaty Organization, Japan, Australia, and New Zealand, with respect to consideration by Congress of foreign military sales to the Republic of Korea."

REPORTING REQUIREMENTS

"(a) General report.—Not later than 180 days prior to the export to any country identified pursuant to subparagraph (a) of any lethal defense article or service in the amount of $10,000,000 or less, the President shall provide a notice to the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations (now Committee on Foreign Affairs) of the House of Representatives.

"(b) Specific report.—A detailed notification transmitted pursuant to subsection (a) shall include the same type and quantity of information required of a notification submitted pursuant to section 304(1) of the Arms Export Control Act (22 U.S.C. 2778(b)).

"(c) Quid pro quo.—This section shall apply to any country that is—

(1) identified in section 303 of this Act (Pub. L. 106-260, § 260(a)(1)), or a comparable provision in a subsequent appropriation Act; or

(2) currently ineligible, in whole or in part, under an annual appropriation Act to receive funds for International Military Education and Training or under the Foreign Military Financing Program, excluding high-income countries as defined pursuant to section 369A of the Foreign Assistance Act of 1961 (22 U.S.C. 287A); or

"(d) Exclusions.—Information reportable under title V of the National Security Act of 1947 (50 U.S.C. 416 et seq.) is excluded from the requirements of this section."
§ 2755. Discrimination prohibited if based on race, religion, national origin, or sex

(a) Congressional declaration of policy

It is the policy of the United States that no sale or licensed transaction shall be made, and no credit (including participation in credits) or guarantees 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(30) of title 26) from participating in the furnishing of defense articles or defense services under this chapter on the basis of race, religion, national origin, or sex.

(b) Employment of personnel; required contractual provisions

(1) No agency performing functions under this chapter 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 chapter 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) Report by President; contents

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(30) of title 26) 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 chapter or any import or export under a treaty referred to in section 2753(j)(1)(C)(i) of this title. 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) Congressional request for information from President; information required; 60 day period; failure to supply information; termination or restriction of sale

(1) Upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the President shall, within 60 days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Secretary of State, 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 chapter;

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

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

(1) 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

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

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

(2) In the event a statement with respect to a sale or licensed transaction is transmitted 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) Any such resolution shall be considered in the Senate in accordance with the provisions of section 609(b) of the International Security Assistance and Arms Export Control Act of 1976.

The term "certification," as used in section 611 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.


§ 2761. Sales from stocks

(a) Eligible countries or international organizations; basis of payment; valuation of certain defense articles

(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(A) 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;

(B) 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) 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 8 of part II of the Foreign Assistance Act of 1961, 22 U.S.C. 2347 et seq., or to any high-income foreign country (as described in that chapter), only those additional costs that are incurred by the United States Government in furnishing such assistance.

(2) 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) Time of payment

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

(c) Personnel performing defense services sold as prohibited from performing combat activities

(1) Personnel performing defense services sold under this chapter 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, outside the United States in connection with the performance of those defense services.

(2) 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 chapter or the Foreign Assistance Act of
1981 [22 U.S.C. 2351 et seq.], 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) Billings; interest after due date, rates of interest and extension of due date
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 June 30, 1976, 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 outstanding 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 chapter.
(e) Charges; reduction or waiver
(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 2362 of this title shall include appropriate charges for—
(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operation costs) of administration of sales made under this chapter to all purchasers of such articles and services as specified in section 2362(b) of this title and section 2372(c) of this title;
(B) 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 238(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] or from funds made available on a nonrepayable basis under section 2363 of this title); and
(C) 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.
(2)(A) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) 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, the Republic of Korea, Israel, 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.
(B) 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.
(3)(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 2782(b) of this title 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 allo-
cated credits from North Atlantic Treaty Organization bodies or by host nations with NATO defense funds.

(f) Public inspection of contracts

Any contracts entered into between the United States and a foreign country under the authority of this section or section 2762 of this title 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) North Atlantic Treaty Organization standardization agreements, similar agreements; reimbursement for costs; transmittal to Congress

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 which are major non-NATO allies, for the cooperative furnishing of training on 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.

(b) Reciprocal quality assurance, inspection, contract administrative services, and contract audit defense services; catalog data and services

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

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after October 29, 1979, by, or under this chapter on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization or the Governments of Australia, New Zealand, Japan, the Republic of Korea, or Israel, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

(B) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services pursuant to the North Atlantic Treaty Organization Security Investment program 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) 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, to any member government of that Organization, or to the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel if that Organization, member government, or the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel provides such data and services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government.

(i) Sales affecting combat readiness of Armed Forces; statement to Congress; limitation on delivery

(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 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 subchapter II-B, 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 (i) of this subsection unless the certification required to be transmitted by paragraph 1 (b) of paragraph (i) is in effect.


(k) Effect of sales of excess defense articles on national technology and industrial base

Before entering into the sale under this chapter 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.
tional technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred.

(1) 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 chapter;
(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
(B)(i) has available sufficient funds authorized and appropriated for such purpose; or
(B)(ii) 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 chapter; and
(C) 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 chapter.

(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.

(2) 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 (c)(1)(A) of this section.

(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 or any other provision of law relating to the conclusion of contracts.

(m) 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—
(A) previously was transferred to such country or organization under this chapter;
(B) 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
(B)(i) has available sufficient funds authorized and appropriated for such purpose; or
(B)(ii) 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 chapter; and
(C) 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 chapter.

(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 or any other provision of law relating to the conclusion of contracts.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 90–629, Oct. 22, 1968, 82
Stel. 1521, which is classified principally to this chapter. For complete classification of this Act to this Code, see Short Title note set out under section 2761 of this title and Tables.


For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 311 of the act of October 7, 1976 (Public Law (84) 309), referred to in subsec. (g), is not classified to the Code.

CONSIDERATION

Amendment by Pub. L. 99-478 is based on section 103 of S. 2846. Ninety-eighth Congress, as introduced in the Senate Feb. 27, 1984, which was enacted into permanent law by Pub. L. 98-478.

AMENDMENTS


Subsec. (d)(2). Pub. L. 110-383, §203(b)(4), substituted "to any member government of that Organization, or to the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel if that Organization, or the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel" for "to any member government of that Organization if that Organization or member government"


Subsec. (b)(2). Pub. L. 109-105, §366(b)(2) substituted "the" for "an" in "the" Organizations, or to the Governments of Australia, New Zealand, Japan, or Israel if that Organization, member government, or the Governments of Australia, New Zealand, Japan, or Israel" for "or to any member government of that Organization if that Organization or member government"


1986—Subsec. (a)(1)(C). Pub. L. 99-236, §120(a)(2), inserted "or to any high-income foreign country (as described in that chapter)"

Subsec. (c)(2). Pub. L. 99-236, §702(a), designation existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (d)(2). Pub. L. 99-236, §343(a)(3)(A), (B), substituted "similar agreements with countries" for "similar agreements with Japan, Australia, and New Zealand, and with other countries" in first sentence and struck out at end. "As used in this subsection, the term 'major non-NATO allies' means those countries designated as major non-NATO allies for purposes of section 2203(b)(2) of title 10".

Subsec. (c)(1)(B). Pub. L. 104-102 substituted "Security Investment program" for "Infrastructure Program"

Subsec. (p). Pub. L. 104-106, §122, struck out heading and text of subsec. (p). Text read as follows:

"(2) Funds received from the sale of tanks under this subsection shall be available for the upgrading of tanks for fielding to the Army.

"(3) 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.

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

"(5) This subsection applies with respect to funds received from sales occurring after September 30, 1969."
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1861—Subsec. (c)(2). Pub. L. 97–115, §103, substituted provision for a report within forty-eight hours of existence of or change in status of significant hostilities or terrorist acts or series of such acts, which may endanger American lives or property for provision for a report not later than forty-eight hours after a breach of significant hostilities and omitted provision for statements of relation between the defense services and hostilities in the country, the location and precise nature of personnel activities, and likelihood of personnel engagement in the hostilities.

Subsec. (c)(3). Pub. L. 97–115, §104, authorized reduction or waiver of charges for use of nonmilitary research, development, and production costs respecting sales significantly advancing United States interests in standardization with Armed Forces of Japan, Australia, and New Zealand in furtherance of the bilateral defense treaties between the United States and those countries.

Subsec. (d)(3). Pub. L. 96–533, §110(b)(2), included payment, in case of training sold to a purchaser currently receiving international military education and training assistance, of additional costs incurred by the United States Government in furnishing the training.

Subsec. (e), Pub. L. 96–93, §421, designated existing provision as par. (1), substituted “training and advising that may engage United States personnel in combat activities” for “training, advising, or otherwise providing assistance respecting combat activities”, and added par. (2).

Subsec. (g), Pub. L. 96–93, §303, authorized the President to enter into standardization agreements with Japan, Australia, and New Zealand.

Subsec. (h). Pub. L. 96–533, §106(c)(1), substituted “defense articles, defense services, or design and construction services” for “defense articles or defense services” in two places.

1979—Subsec. (b). (1), Pub. L. 96–92 added subsec. (b) and redesignated former subsec. (a) as (1).


1979—Subsec. (a). Pub. L. 94–329, §205, designated existing provisions as subsec. (a) and substituted provision authorizing President to sell defense articles and defense services from Department of Defense stocks to eligible countries and international organizations who agree to pay specified values for such articles and services in United States dollars, for provisions requiring that payment for defense articles and defense services from stocks be made in advance, or if in the best interest of the United States as determined by the President, within a reasonable period not to exceed 120 days after delivery of the articles or rendering of the services.

Subsec. (e) to (h). Pub. L. 94–329, §§205, 206, added subsec. (e) to (h).

§ 2782. Procurement for cash sales

(a) Authority of President; dependent undertaking by foreign country or international organization; interest rates

Except as otherwise provided in this section, 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 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 not amounts by which any such country or international organization is in arrears in 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 not arrearage and
shall be computed from the date of net accrual;

(b) Issuance of letters of offer under emergency
determination; availability of appropriations
for payment

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 de-
fense service and for payment within one hun-
dred and twenty days after the date of billing.
This authority may be exercised, however, only
if the President also determines that the emer-
gency requirements of the purchaser for acquisi-
tion of such defense articles and services exceed
the ready availability of the purchaser of funds
sufficient to make payments on a dependable
undertaking basis and submits both determina-
tions to the Congress together with a special
emergency request for authorisation and appro-
priation of additional funds to finance such pur-
blishes under this chapter. Appropriations avail-
able to the Department of Defense may be used
to meet the payments required by the contracts
for the procurement of defense articles and de-
fense services and shall be reimbursed by the
amounts subsequently received from the coun-
try or international organisation to whom ar-
ticles or services are sold.

(c) Applicability of Renegotiation Act of 1951

The provisions of the Renegotiation Act of
1951 (50 U.S.C. App. 1211 et seq.) do not apply to
procurement contracts herefore or hereafter
entered into under this section, section 2769 of
this title, or predecessor provisions of law.

(d) Competitive pricing

(1) Procurement contracts made in implemen-
tation 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 procure-
ments of like items purchased by the Depart-
ment of Defense for its own use.

(2) Direct costs associated with meeting addi-
tional 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 appli-
cable to procurement of like items purchased by
the Department of Defense for its own use.

760; Pub. L. 94-529, title II, §207, June 30, 1976, 90
16, 1986, 94 Stat. 3136; Pub. L. 104-107, title V,
§1223], Nov. 29, 1999, 113 Stat. 1356, 1501A-369.)

REFERENCES TO TEXT

This chapter, referred to in subsec. (b), was in the
original "vital Act", meaning "Pub. L. 90-928, Oct. 22,
1968, 82 Stat. 1321, which is classified principally to
this chapter. For complete classification of this Act to
the Code, see Short Title note set out under section 2761
of this title and Tables.
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§ 2763. Credit sales

(a) Financing procurement of defense articles and services, and design and construction services

The President is authorized to finance the procurement of defense articles, defense services, and 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 chapter.

(b) Repayment period

The President shall require repayment in United States dollars within a period not to exceed twelve years 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) Interest rate definitions

(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—

(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) Participations in credits

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

(e) Payments on account of prior credits or loans

(1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which is owed to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 2764 of this title, 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) Audit of certain private firms

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) Notification requirements with respect to cash flow financing

(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 chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2391 et seq.] shall be submitted to the congressional committees specified in section 694(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2391-1(a)], 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 2765 of this title.

(b) Limitation on use of funds for direct commercial contracts

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 chapter.


REFERENCES IN TEXT

This chapter, referred to in subsections (a), (g)(1), and (h), was in the original "this Act", meaning Pub. L. 99-629, Oct. 23, 1986, 92 Stat. 3334, which is classified principally to chapter 29 of this title and subtitle. The Foreign Assistance Act of 1961, referred to in subsection (a)(1), in Pub. L. 87-165, Sept. 4, 1961, 75 Stat. 494, as amended, which is classified principally to chapter 30 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2511 of this title and Tables.
AMENDMENTS
1965—Subsec. (f) to (g). Pub. L. 104-101 added subsec. (f) to (g).

§ 2784. Guarantees

(a) Guaranty against political and credit risks of nonpayment

The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) 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 to friendly countries and international organizations. Fees shall be charged for such guaranties.

(b) Sale of promissory notes of friendly countries and international organizations; guaranty of payment

The President may sell to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies other than the Federal Financing Bank) 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 2782 of this title, and may guarantee payment thereof.

(c) Guaranty Reserve Fund; payment of guaranties; guaranty reserve below prescribed amount

Funds obligated under this section before December 16, 1960, 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 August 8, 1965, be referred to as the "Guaranty Reserve Fund". Funds provided for necessary expenses to carry out the provisions of section 2782 of this title and of section 2791 of this title 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 chapter or any other Act relating to a prohibition or limitation on the availability of funds under this chapter, 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 chapter. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.


REFERENCES IN TEXT
This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 95-559, Oct. 22, 1980, 82 Stat. 1821, which is classified principally to this chapter. For complete classification of this Act to this Title, see Short Title note set out under section 2703 of this title and Tables.

AMENDMENTS
1987—Subsec. (o). Pub. L. 100-71, which directed that the second par. be struck out and a new one-sentence par. be inserted, was executed to reflect the probable intent of Congress by substituting the new sentence for the third sentence which read as follows: "Funds authorized to be appropriated by section 2771(a) of this title to be carried out this chapter 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."

1986—Subsec. (o). Pub. L. 99-38 inserted provisions authorizing the single reserve to be termed the "Guaranty Reserve Fund" and substituted provisions relating to payment of claims under guarantees, for provisions relating to report to Congress respecting any payment of claims reducing the single reserve. Pub. L. 99-38, § 305(b)(3), substituted "defense articles, defense services, and design and construction services" for "defense articles and defense services". Pub. L. 99-38, § 104(a), substituted provisions making funds obligated before Dec. 30, 1980 available for expenditure after such date for payment of guaranteed claims, requiring the President to report to Congress the reduction of the single reserve below $110,609,000 with recommendation for an appropriations authorization of additional funds and deeming the principal amount of a guaranteed loan to be funds made available for use under this chapter for purposes of any limitation on availability of funds for prior provisions for obligation of available funds in an amount equal to 10 per centum of the principal amount of contractual liability related to a guaranty under this section, making such funds a single reserve for payment of guaranteed claims, and providing for transfer of any funds debilitated during any current fiscal year to the general fund of the Treasury.

1978—Subsec. (a), (b), Pub. L. 95-559, §462(a)(9), inserted "other than the Federal Financing Bank" in parenthetical text.


1976—Subsec. (o). Pub. L. 93-180 substituted "to carry out this chapter" for "pursuant to section 2771 of this title" and inserted "principal amount of" before "contractual liability" wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT
Amendment by Pub. L. 95-559 effective Oct. 1, 1986, see section 1301 of Pub. L. 95-559, set out as a note under section 2701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT; ADJUSTMENT OF OBLIGATIONS CHARGED AGAINST Appropriations; CREDIT FOR FISCAL YEAR 1975 Appropriations
Section 45(c) of Pub. L. 92-400 provided that: "The amendment made by paragraph (4) of subsection (a) [amending this section] shall take effect on July 1, 1974. Obligations initially charged against appropriations made available for purposes authorized by section 231(a) of the Foreign Military Sales Act [section 2771(a) of this title] after June 30, 1974, and prior to the enactment of this section [Dec. 30, 1974] in an amount equal to $3 per centum of the principal amount of contractual liability related to guarantees issued pursuant to section 24(b) of that Act [subsec. (a) of this section] shall be adjusted to reflect such amendment with proper credit to the appropriations made available in the fiscal year 1975 to carry out that Act [this chapter]."

DELEGATION OF FUNCTIONS
Functions of President under this section delegated to Secretary of Defense, with Secretary of Defense required to consult with Secretary of State and Secretary of the Treasury in implementing delegated functions, by section 1(c) of Ex. Or. No. 11948, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2701 of this title.

FOREIGN MILITARY SALES DEBT REFORM
Pub. L. 102-165, §118, as added by Pub. L. 102-266, §122, Apr. 1, 1992, 106 Stat. 94, provided that the authority and conditions provided under the heading "Foreign Military Sales Debt Reform" in H.R. 3521, One Hundred Second Congress, 1st session, as passed by the House of Representatives on June 19, 1991, shall be applicable to funds appropriated by Pub. L. 102-165 (and are hereby enacted) in lieu of the authority and conditions provided under the heading "Foreign Military Sales Debt Reform" in Pub. L. 101-653 (set out below). Provisions under the heading "Foreign Military Sales Debt Reform" in H.R. 3521, as above provided, provided that: "Subsection (b) under the heading 'Foreign Military Sales Debt Reform' in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100-202, §110(e) [title III, §301], set out below], is hereby repealed.

Pub. L. 102-165, title III, Nov. 5, 1991, 104 Stat. 1996, provided that: "Funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100-202, §110(e) [title III, §301], set out below], for obligation and expenditure on or before October 1, 1991, subject to a Presidential budget request, under the heading 'Foreign Military Sales Debt Reform', subsection (b) "Interest Rate Reduction" shall be available, subject to the same conditions and provisions, only after October 1, 1991." Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-165, title III, Nov. 5, 1991, 104 Stat. 1996, provided in part that: "(a) REFERENCES.—Notwithstanding any other provision of law, the President is authorized during fiscal years 1988 through 1991 to transfer existing United States guarantees of outstanding Foreign Military Sales (FMS) credit, or to issue new guarantees, either of which would be applied to loans, bonds, notes or other obligations made or issued (as the case may be) by private United States financial institutions (the private lender) to finance the repayment at par of the principal amounts maturing after September 30, 1989, of existing FMS loans bearing interest rates of eight percent or higher, and accrued interest thereon. The loans, bonds, notes or other obligations are hereinafter referred to as the 'private loan'; Provided, That such guarantees which are transferred or are made pursuant to paragraph (a) shall cover no more and no less than ninety percent of the private loan or any portion or derivative thereof plus unpaid accrued interest and arrears, if any, outstanding at the time of guarantees transfer or extension: Provided further, That the total amount of the guaranty of the private loan cannot exceed ninety percent of the outstanding principal, unpaid accrued interest and arrears, if any, outstanding at the time; Provided further, That of the total amount of the private loan, the ninety percent guaranteed portion of
the private loan cannot be separated from the private loan advances or from the private loan guarantee. The sums in addition to the payment of the outstanding principal amount maturing after September 30, 1969 of the loan (if any), plus unpaid accrued interest thereon, and arrearages, if any, shall be charged by the private lender or the Federal Financing Bank as a result of such prepayment against the borrower, the guarantor, or the Guaranty Reserve Fund (GFR), except that the private lender may include, in the interest rate charged, a standard fee to cover costs, such fee which will be set at prevailing lowest rates, and no guaranty fee shall be charged on guarantees transferred or issued pursuant to this provision: Provided further, That the terms of guaranteed loan shall be issued under this paragraph shall be exactly the same as the existing loans or guarantees, except as modified by this paragraph and including but not limited to the final maturity and principal and interest structure of the existing loans which shall not be altered, except that the repayments of the private loan issued debt may be converted. Provided further, That the private loan or guarantees transferred or issued pursuant to this paragraph shall be fully and freely transferrable, except that any guaranty transferred or extended shall cease to be effective if the private loan or any derivative thereof is used to provide significant support for any non-regulated obligation: Provided further, That for purposes of sections 23 and 24 of the Arms Export Control Act (22 U.S.C. 2763, 2764), the term "defense services" shall be deemed to include the refinancing of the debt outstanding at the date of the enactment of this Act (Dec. 22, 1977): Provided further, That not later than ninety days after the enactment of this Act, the Secretary of the Treasury (Secretary) shall issue regulations to carry out the purposes of this heading and that in issuing such regulations, the Secretary shall (1) facilitate the prepayment of the principal of the loan advances hereunder, (2) provide for full processing of each application within thirty days of its submission to the Secretary, and (3) except as provided in 8 of the Arms Export Control Act (22 U.S.C. 2768 note), impose no restrictions that increase the cost to borrowers of obtaining private financing for prepayment hereunder or that inhibit the ability of the borrower to enter into prepayment arrangements hereunder: Provided further, That the Secretary of State shall transmit to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate, a copy of the text of any agreement entered into pursuant to this section not more than thirty days after its entry into force, together with a description of the transaction, "("(b) Repealed. Pub. L. 102-388, §115, as added by Pub. L. 102-232, §105, Apr. 1, 1992, 106 Stat. 56.)

(4) ANNEXATION.—(I) None of the funds provided pursuant to the Arms Export Control Act (relating to Foreign Military Sales credits (22 U.S.C. 2761 et seq.)) or pursuant to chapter 2 of part II of the Foreign Assistance Act (relating to the Military Assistance program (22 U.S.C. 2301 et seq.)) shall be made available to any country for which one or more loans are refinanced pursuant to paragraph (a) of this heading and which is in default for a period in excess of ninety days in payment of principal or interest on (A) any loan made to such country guaranteed by the United States pursuant to paragraph (a) of this heading, and (B) any other loan issued under the Arms Export Control Act outstanding on the date of enactment of this provision (Dec. 22, 1977).

(ii) In conjunction with any interest rate reduction pursuant to the authority provided in paragraph (b) of this heading, the President shall require the country to commit in writing that within two years of the effective date of the interest rate reduction it will be no more than ninety days in arrears on the repayment of principal and interest on all loans for which the interest rate is thus reduced and will remain no more than ninety days in arrears for the remaining life of all such loans. None of the funds provided pursuant to the Arms Export Control Act (relating to Foreign Military Sales credits (22 U.S.C. 2761 et seq.)) shall be made available to any country during any fiscal period in which it fails to comply with such commitment.

(4)(D) PURPOSES AND REPORTS.—The authorizations of paragraphs (a) and (b) of this heading may be utilized by the President in efforts to negotiate base rights and base access agreements, and for other bilateral foreign policy matters: Provided further, That the Secretaries of Defense, State, and Treasury shall transmit to the Committees on Foreign Affairs of the House of Representatives, the Committees on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate a joint report detailing the United States financial and foreign policy purposes served by implementation of this authority on a country by country basis not later than March 1, 1980, and a second joint report not later than August 1, 1980.

§2785. Annual estimate and justification for sales program

(a) Report to Congress; contents

Except as provided in subsection (d) of this section, no later than February 1 of each year, the President shall transmit to the appropriate congressional committees, as a part of the annual presentation materials for security assistance programs proposed to commence in the next fiscal year, a report which sets forth—

(1) an arms sales proposal covering all sales and licensed commercial exports under this chapter, as well as exports pursuant to a treaty referred to in section 2776(b)(1)(O)(i) of this title, 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, as well as exports pursuant to a treaty referred to in section 2776(b)(1)(O)(i) of this title, 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;

(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) an estimate of the aggregate dollar value and quantity of defense articles and de-
defense services, military education and training, grant military assistance, and credits and guarantees, to be furnished by the United States to each foreign country and international organization in the next fiscal year; and

(3) for each country that is proposed to be furnished credits or guarantees under this chapter 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;

(4) 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 chapter for which reimbursement is provided under section 2764(b) of this title or section 2761(a) of this title, including the number of personnel involved in performing such services;

(5) the total amount of funds in the reserve under section 2764(c) of this title 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 guarantees issued pursuant to section 2764 of this title in view of the current debt servicing capacity of borrowing countries, as reported to the Congress pursuant to section 264(a)(6) of the Foreign Assistance Act of 1961 (22 U.S.C. 2394(a)(6));

(6) a list of all countries with respect to which findings made by the President pursuant to section 2768(a)(1) of this title are in effect on the date of such transmission;

(7) the progress made under the program of the Department of Defense carrying out international military and security assistance activities under the Mutual Security Act of 1954 (22 U.S.C. 2151 et seq.), predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unprocessed 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 guarantee in connection with any such procurement, therefore made under this chapter, with respect to which there remains outstanding any unprocessed obligation or potential liability;

(12)(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;

(13) a list of weapons systems that are significant military equipment (as defined in section 2794(d) of this title), and numbers thereof, that are believed likely to become available for transfer as excess defense articles during the next 12 months; and

(14) such other information as the President may deem necessary.

(b) Congressional request for additional information

Not later than thirty days following the receipt of a request made by any of the congressional committees described in subsection (a) of this section for additional information with respect to any information submitted pursuant to subsection (a) of this section, the President shall submit such information to such committees.

(c) Submission of information in unclassified form or classified addendum with unclassified summary

The President shall make every effort to submit all of the information required by subsection (a) or (b) of this section 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) "Cash flow financing" defined

For the purposes of subsection (a)(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 chapter or under section 535(a)(6) of the Foreign Assistance Act of 1961 (22 U.S.C. 2351(e)(6)) and the amount of the financing that has been approved therefor;3

(d) Transmission of information to Congress

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

3So in original. Two underscored. (d) have been enacted.
4So in original. The semicolon probably should be a period.
"Appropriate congressional committees" defined

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.


References in Text

Subsection (d) of this section, referred to in subsec. (a), preceding par. (2), probably means the subsec. (d) added by section 112(b) of Pub. L. 99-83, relating to transmittal of information to Congress.

This chapter, referred to in subsec. (a)(1), (a)(6), (a)(7), (a)(9), and (d)(6), was in the original "this Act" and this chapter, referred to in subsec. (a)(11), was in the original "the Arms Export Control Act", both of which mean Pub. L. 93-623, Oct. 22, 1974, 88 Stat. 1221, which is classified principally to chapter 33 (§ 2411 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2761 of this title and Tables.

Amendments

2010—Subsec. (a)(1). Pub. L. 111-265, § 104(c)(1), inserted "as well as exports pursuant to treaties referred to in sections 2778(k)(1)(C)(ii) and 2780(g)(1)(C)(ii) of this title", after "commercial exports under this chapter".

Subsec. (a)(2). Pub. L. 111-265, § 104(c)(2), inserted "as well as exports pursuant to a treaty referred to in section 2778(k)(1)(C)(i) of this title", after "commercial exports".


Subsec. (b). Pub. L. 105-115, § 518(3), substituted "any of the congressional committees described in subsection (a) of this section" for "the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives".


1983—Subsec. (a). Pub. L. 98-363, § 1131(a), substituted "Except as provided in subsection (d) of this section, no" for "no".

Subsec. (a)(6). Pub. L. 99-83, § 112(a), designated existing provisos as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 99-83, § 110(b), added subsec. (d) defining "cash flow financing".

Subsec. (f). Pub. L. 99-83, § 110(2), added subsec. (d) relating to transmittal of information to Congress.

1981—Subsec. (a). Pub. L. 97-113, in provision preceding par. (1), required transmission of the report no later than Feb. 1 of each year and substituted provisions requiring annual presentation materials for programs proposed for next fiscal year for provision for presentation materials for programs proposed for each fiscal year.

Subsec. (a)(4). Pub. L. 97-113 added par. (4) which incorporated provisions of former subsec. (d)(1) of this section. See, subsec. (c), amendment note. Former par. (1) covered in par. (1).

Subsec. (a)(5). Pub. L. 97-113 added par. (5) which incorporated provisions of former par. (2) requiring the report to contain an estimate of amounts of expected sales to each country under sections 2761 and 2762 of this title, including detailed explanations of foreign policy and United States national security considerations in expected sales to each country, and (3) requiring inclusion of an arms control impact statement for each purchasing country, covering (A) an analysis of the relationship between expected sales to each country and arms control efforts relating to that country, and (2) the impact of such exported sales on the stability of the region that included the purchasing country. Former par. (2) redesignated (3).

Subsec. (b). Pub. L. 97-113 added par. (3) which incorporated provisions of former subsec. (e), which had required executive estimates of international arms traffic, including estimates on an annual basis 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 three years. Former par. (4) covered in par. (4).

Subsec. (a)(4). Pub. L. 97-113 added par. (5) which incorporated provisions of former par. (3) requiring the report to contain an estimate of amounts of expected sales to each country under sections 2761 and 2762 of this title, including detailed explanations of foreign policy and United States national security considerations in expected sales to each country, and (3) requiring inclusion of an arms control impact statement for each purchasing country, covering (A) an analysis of the relationship between expected sales to each country and arms control efforts relating to that country, and (2) the impact of such exported sales on the stability of the region that included the purchasing country. Former par. (2) redesignated (3).

Subsec. (b). Pub. L. 97-113 added par. (4) which incorporated provisions of former par. (4) requiring the report to contain a list of all findings in effect on date of the transmission made by the President pursuant to section 2763(a)(1) of this title, together with a full and complete justification for each finding, explaining how sales to each country with respect to which findings were made would strengthen the security of the United States and promote world peace.


Subsec. (b). Pub. L. 97-113 substituted "Committee on Foreign Affairs" for "Committee on International Relations" and "with respect to any information" for "with respect to any estimate".

Subsec. (c). Pub. L. 97-113 substituted "Whenever the President" for "In the event the President".

Subsec. (d). Pub. L. 97-113 incorporated in subsec. (a) introductory text and subsec. (a)(1), provisions of former subsec. (d)(1) which had required transmission to the Speaker of the House and the chairman of the Senate Foreign Relations Committee the Arms Sales Proposal covering sales and licensed commercial exports under this chapter other than such transactions to members of North Atlantic Treaty Organization, Japan, Australia, and New Zealand of major weapons or weapons-related defense equipment for $25,000,000 or more, or of any other weapons or similar equipment for $25,000,000 or more, which were eligible for approval during fiscal year beginning October 1 of such year and had required identification in the reports of sales and licensed commercial exports deemed most likely acti-
ally to result in issuance of a letter of offer or of an export license during each fiscal year, and subsec (d)(3) which has required presidential six month written notifications of Congress of any change in the Arms Sales Proposal for such fiscal year, together with reasons thereafter.

Subsec. (a). Pub. L. 97-123 incorporated in subsec. (a) introductory text and subsec. (a)(4), provisions of former subsec. (e) which had required transmission to Congress on or before Nov. 15 of such year executive estimates of international arms traffic, including estimates on an annual basis 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 three years.

1989—Subsec. (a)(3) to (5). Pub. L. 99-333, §144(c), added par. (5) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(1), (d)(4). Pub. L. 98-583, §107(d), included coverage of licensed commercial exports and substituted “letter of offer or of an export license” for “letter of offer”.

1979—Subsec. (d). Pub. L. 96-53, §13(1)-(4), designated existing provision as par. (1), substituted “major weapons or weapons-related defense equipment” for “major defense equipment” and “weapons or weapons-related defense equipment” for “defense articles or defense services”, required identification of sales likely to result in issuance of a letter of offer in the furnished report, and added par. (3).


1978—Subsec. (a). Pub. L. 96-364, §18(b), substituted “subsection (a) or (b) of this section” for “this section”.

Subsec. (d), (e). Pub. L. 96-381, §18(a), added subsec. (d).

CHAMBER OF NAMS

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1980 AMENDMENT


DELIBRATIONS OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with Secretary of Defense and Director of Arms Control and Disarmament Agency required to assist in preparation of materials for presentation to Congress, by section 1605 of Pub. L. 113-79, Jan. 13, 2014, 42 F.R. 4311, as amended, set out as a note under section 2501-1 of this title.

§2766. Security assistance surveys

(a) Statement of findings and policy

The Congress finds that security assistance 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 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 chapter.

(b) Reporting requirements

As part of the quarterly report required by section 2766(a) of this title, the President shall include a list of all security assistance surveys authorised 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) Submission of surveys to Congress

Upon a request of the chairman of the Committee on Foreign Affairs 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 security assistance surveys conducted by United States Government personnel.

(d) “Security assistance surveys defined

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.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “This Act”, meaning Pub. L. 96-629, Oct. 2, 1980, 92 Stat. 1721, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-387 substituted “Foreign Affairs” for “International Relations”.


Subsecs. (a), (b), Pub. L. 98-83, §114(a)(2), substituted “security assistance” for “defense requirement” wherever appearing.

Subsec. (e), Pub. L. 99-83, §114(a)(3), substituted “security assistance” for “defense requirement” wherever appearing.


EFFECTIVE DATE OF 1985 AMENDMENT


§2767. Authority of President to enter into cooperative projects with friendly foreign countries

(a) Authority of President

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) Definitions

As used in this section—

(1) the term “cooperative project”; in the case of an agreement with the North Atlantic Treaty Organization 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 interoperability of the armed forces of North Atlantic Treaty Organization member countries 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;

(2) the term "cooperative project", in the case of an agreement entered into under subsection (j) of this section, 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) the term "other participant" means a participant in a cooperative project other than the United States.

(e) Agreements for equitable share of costs; limiting nature of agreements

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. 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 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 working or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

(d) Contractual or other obligation; preconditions

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) Waiver of charges; administrative surcharges

(1) For those cooperative projects entered into on or after the effective date1 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 2761(e) of this title in connection with sales under sections 2761 and 2762 of this title 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 2761(e)(1)(A) and section 2762(b) of this title, administrative surcharges shall not be increased on other sales made under this chapter in order to compensate for reductions or waiver of non-surcharge 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) Transmission of numbered certification to Congress respecting proposed agreement; contents

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 section2.

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1See References in Text note below.
2In original. Probably should be "section".
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731(e)(1)(A) and 2762(b) of this title, for its participation in such cooperative project and 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 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) Reporting and certification requirements applicable

In the case of a cooperative project with a North Atlantic Treaty Organization country, section 2770(b) of this title shall not apply to sales made under section 2761 or 2762 of this title and to production and exports made pursuant to cooperative projects under this section, and section 2770(c) of this title shall not apply to the issuance of licenses or other approvals under section 2770 of this title, if such sales are made, such production and exports made, or such licenses or approvals are issued, as part of a cooperative project.

(h) Statutory provisions applicable to sales

The authority under this section is in addition to the authority under sections 2761 and 2762 of this title and under any other provision of law.

(i) Agreements entered into before October 1, 1986

(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 1986 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 by the International Security and Development Cooperation Act of 1986, projects entered into under the authority of this section before the effective date of such 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) Cooperative project agreements with friendly foreign countries not members of NATO

(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) Omitted.


REFERENCES IN TEXT


This chapter, referred to in subsec. (e)(2), was in the original "this Act", meaning Pub. L. 96-629, Oct. 29, 1980, 92 Stat. 2231, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The amendment made to this section by the International Security and Development Cooperation Act of 1986, referred to in subsec. (i), means the general amendment of this section by section 115(a) of Pub. L. 99-83. See 1986 Amendment note below.

CODIFICATION

Subsec. (j)(2) of this section, which required the President to submit to certain committees of Congress an annual report specifying countries eligible, and criteria used to determine eligibility, for participation in cooperative project agreements under subsec. (j)(1) of this section, terminated, effective May 15, 2000, pursuant to section 3503 of Pub. L. 106-65, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 39 of House Document No. 107-7.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102-484 substituted "costs, administrative costs, and costs of claims" for "and administrative costs".

1987—Subsec. (b)(1)(C). Pub. L. 100-130 inserted "or for procurement by the United States of services from the North Atlantic Treaty Organization or a subsidiary of such organization" after "member country".

1986—Pub. L. 99-661, §1351(e), repealed section 1102(c) of Pub. L. 99-145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1986 Amendment note below.

Pub. L. 99-661, §1102(a)(2), substituted "Authority of President to enter into cooperative projects with friendly foreign countries" for "North Atlantic Treaty Organization cooperative projects" in section catchline.

Subsec. (b)(1). Pub. L. 99-661, §1102(a)(1)(A)(I), inserted "in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization," in introductory provisions.

*So in original. The comma probably should not appear.

*See References in Text note below.

*So in original. The word "made" probably should not appear.
Subsec. (d)(2), (3). Pub. L. 98-661, §108(a)(3); subsec. added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(3). Pub. L. 99-461, §1108(a)(3)(B), inserted “; including an estimate of the costs as a result of withdrawal of section 2701(a)(A) and 2702(b) of this title”.

Subsec. (g). Pub. L. 99-461, §1108(a)(3)(C), substituted “in the case of a cooperative project with a North Atlantic Treaty Organization country, section” for “Section”.


1985—Pub. L. 99-33 amended section generally, substituting in subsec. (a) provisions relating to authority of the President, for provisions defining “cooperative project”, substituting in subsec. (b) provisions defining “cooperative project” and “other participant”, for provisions relating to reduction or waiver of charges, sales not subject to compensatory increases in administrative surcharges, and contribution requirements, substituting in subsec. (c) provisions relating to agreements for equitable share of costs of joint facilities; and redesignating provisions applicable to sales, and adding subsecs. (d) to (f).

Pub. L. 99-146, §1182(a)(2), which enacted a general amendment of this section similar to that provided in Pub. L. 98-83 was repealed. See 1986 Amendments note above and former section 1108(a)(3) of Pub. L. 99-146 set out as a Revised Effective Date note under section 2762 of this title.

RESPECTIVE DATE OF 1965 AMENDMENT


DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, with Secretary of Defense required to consult with Secretary of State in implementing delegated functions, by section 1(f) of Exec. Ord. No. 12710, Jan. 16, 1977, 42 F.R. 4411, as amended, set out as a note under section 2551 of this title.

ASSESSMENT OF RISK ASSOCIATED WITH DEVELOPMENT OR MAJOR WEAPON SYSTEMS TO BE PROCURED UNDER COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES


“(a) ASSESSMENT OF RISK REQUIRED.—

“(1) IN GENERAL.—Not later than two days after the President transmits a certification to Congress pursuant to section 2701(c) of the Arms Export Control Act (22 U.S.C. 2778(c)) regarding a proposed cooperative project agreement that is expected to result in the award of a Department of Defense contract for the engineering and manufacturing development of a major weapon system, the Secretary of Defense shall submit to the Chairman of the Committee on Armed Services of the Senate and the Speaker of the House of Representatives a report setting forth a risk assessment of the proposed cooperative project.

“(2) PREPARATION.—The Secretary shall prepare each report required by paragraph (1) in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Assistant Secretary of Defense for Research and Engineering, and the Director of Cost Assessment and Program Evaluation of the Department of Defense.

“(b) ELEMENTS.—The risk assessment on a cooperative project under subsection (a) shall include the following:

“(1) An assessment of the design, technical, manufacturing, and integration risks associated with developing and procuring the weapon system to be procured under the cooperative project.

“(2) A statement identifying any termination liability that would be incurred under the development contract to be entered into under subsection (a)(1), and a statement of the extent to which such termination liability would not be fully financed by appropriations available or sought in the fiscal year in which the agreement for the cooperative project is signed on behalf of the United States.

“(3) An assessment of the advisability of incurring any unfunded termination liability identified under paragraph (2) given the risks identified in the assessment under paragraph (1).

“(4) A listing of which, if any, requirements associated with the oversight and management of a major defense acquisition program (as prescribed under Department of Defense Instruction 5000.2 or related authorities) will be waived, or in any way modified, in carrying out the development contract to be entered into under subsection (a)(1), and a full explanation why such requirements need to be waived or modified.

“(5) DEFINITIONS.—In this section:

“(C) The term ‘engineering and manufacturing development’ has the meaning given that term in Department of Defense Instruction 5000.2.

“(D) The term ‘major weapon system’ has the meaning given that term in section 2701(c)(5) of title 10, United States Code.”


SUBCHAPTER II—A—FOREIGN MILITARY CONSTRUCTION SALES

§2789. 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 dam-
ages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due.


DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1(d) of Ex. Ord. No. 11666, Jan. 28, 1977, 42 F.R. 4311, as amended, set out as a note under section 2761 of this title.

SUBCHAPTER II-B—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

§ 2770. General authority

(a) Sale of defense articles and services by President to United States companies; restriction on performance of services; reimbursement credited to selling agency

Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under such 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 (1) on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 2770 of this title or (2) in the case of ammunition parts subject to subsection (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 2778 of this title.

(b) Conditions of sale

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 may not be 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) "Defense articles" and "defense services" defined

For the purpose of this section, the terms "defense articles" and "defense services" mean defense articles and defense services as defined in section 2794(3) and (4) of this title.


AMENDMENTS

1989—Subsec. (a). Pub. L. 101-165 inserted "either (1)" after "such a company" in first sentence and inserted before period at end of first sentence "or (2)" in the case of ammunition parts subject to subsection (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 2778 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 10(d) of Ex. Ord. No. 11666, Jan. 28, 1977, 42 F.R. 4311, as amended, set out as a note under section 2761 of this title.

SUBCHAPTER II-C—EXCHANGE OF TRAINING AND RELATED SUPPORT

§ 2770a. Exchange of training and related support

(a) Authorization; eligibility; scope

Subject to subsection (b) of this section, 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) Reciprocal arrangements; reimbursement

Training and related support may be provided under this section only pursuant to an agreement or other arrangement providing for the 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 United States for the full costs of the training and related support provided by the United States.

(c) Regulations

Training and related support under this section shall be provided under regulations prescribed by the President.
(d) Report to Congress
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.


REFERENCES IN TEXT
This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 99-629, Oct. 22, 1986, 92 Stat. 2531, which is omitted principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Table.

AMENDMENTS
1996—Subsec. (d). Pub. L. 104-164, §101(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “For fiscal years 1988 and fiscal year 1987, the principal amount of credits provided under section 2705 of this title at market rates of interest with respect to Turkey, 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.”

Subsec. (d), Pub. L. 104-164, §104(b)(2)(C), struck out subsec. (d) which 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 3 of part II of the Foreign Assistance Act of 1961 or pursuant to sales under this chapter may not exceed $500,000,000 (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 2706(b) of this title).”

1986—Subsec. (d). Pub. L. 99-601, §101(a) inserted “, and of any defense articles with respect to which the President submits a certification under section 2706(b) of this title,” after “law.”


Subsec. (b). Pub. L. 99-337, §104(c), amended subsec. (b) generally, substituting provisions relating to maximum amounts of credits (or participation in credits) and loans guaranteed for fiscal years 1962 and 1963, and credit, etc., programs with respect to specific countries.

Subsec. (c). Pub. L. 99-91, §101(b), amended subsec. (c) generally, substituting provisions relating to extended repayment terms for credits provided for fiscal years 1962 and 1963, for provisions relating to funds made available for fiscal year 1964 to finance procurement of defense articles, etc., by Israel.
than $1,700,000,000 for fiscal year 1964 as available to Israel, of which not less than $650,000,000 shall be available in credits under section 2931 of this title, and provisions relating to availability of funds part of the total aggregate credits, ceiling made available to Israel, for provisions authorizing not less than $450,000,000 for the fiscal years 1963 and 1964 as available to Israel, of which not less than $600,000,000 for each year shall be available as credits.

Subsec. (c). Pub. L. 89-151 substituted "1964" for "1963 and for the fiscal year 1964".

Subsec. (b)(2). Pub. L. 96-113 amended par. (c) generally, inserting provisions relating to availability to Egypt for fiscal year 1964 of not less than $600,000,000 of the total principal amount of loans guaranteed, and substituting provisions authorizing not less than $450,000,000 for the fiscal years 1963 and 1964 as available to Israel, of which not less than $600,000,000 for each fiscal years 1962 and 1963.

Subsec. (c). Pub. L. 98-131 substituted provisions relating to application to fiscal year 1964, for provisions relating to availability to fiscal years 1962 and 1963, and substituted "$500,000,000" for "$450,000,000" for fiscal year 1964 only.

Subsec. (b). Pub. L. 97-115, §165(a), substituted "$500,000,000 for the fiscal year 1963 and for the fiscal year 1964" for "$500,000,000 for the fiscal year 1963".

Subsec. (c). Pub. L. 97-115, §105(b), prescribed in par. (1) $250,000,000 limit on credits for fiscal years 1962 and 1963, striking out $500,000 limit for fiscal year 1961, in par. (2) $2,335,500,000 limit on total principal amount of guaranteed loans for fiscal years 1962 and 1963, striking out $2,335,500,000 limit for fiscal year 1961, and in par. (3) $850,000,000 limit for fiscal year 1961, for provisions authorizing not less than $2,335,500,000 for the fiscal year 1962 and $850,000,000 for each of fiscal years 1963 and 1964.

Subsec. (b). Pub. L. 97-115, §165(a), substituted "$500,000,000 for the fiscal year 1963 and for the fiscal year 1964" for "$500,000,000 for the fiscal year 1963" only.

Subsec. (c). Pub. L. 97-115, §105(b), prescribed in par. (1) $250,000,000 limit on credits for fiscal years 1962 and 1963, striking out $500,000 limit for fiscal year 1961, in par. (2) $2,335,500,000 limit on total principal amount of guaranteed loans for fiscal years 1962 and 1963, striking out $2,335,500,000 limit for fiscal year 1961, and in par. (3) $850,000,000 limit for fiscal year 1961, for provisions authorizing not less than $2,335,500,000 for the fiscal year 1962 and $850,000,000 for each of fiscal years 1963 and 1964.

Subsec. (c). Pub. L. 97-115, §165(a), substituted "$500,000,000 for the fiscal year 1963 and for the fiscal year 1964" for "$500,000,000 for the fiscal year 1963" only.

Subsec. (b). Pub. L. 97-115, §105(b), prescribed in par. (1) $250,000,000 limit on credits for fiscal years 1962 and 1963, striking out $500,000 limit for fiscal year 1961, in par. (2) $2,335,500,000 limit on total principal amount of guaranteed loans for fiscal years 1962 and 1963, striking out $2,335,500,000 limit for fiscal year 1961, and in par. (3) $850,000,000 limit for fiscal year 1961, for provisions authorizing not less than $2,335,500,000 for the fiscal year 1962 and $850,000,000 for each of fiscal years 1963 and 1964.

Subsec. (c). Pub. L. 97-115, §165(a), substituted "$500,000,000 for the fiscal year 1963 and for the fiscal year 1964" for "$500,000,000 for the fiscal year 1963" only.

Subsec. (b). Pub. L. 97-115, §105(b), prescribed in par. (1) $250,000,000 limit on credits for fiscal years 1962 and 1963, striking out $500,000 limit for fiscal year 1961, in par. (2) $2,335,500,000 limit on total principal amount of guaranteed loans for fiscal years 1962 and 1963, striking out $2,335,500,000 limit for fiscal year 1961, and in par. (3) $850,000,000 limit for fiscal year 1961, for provisions authorizing not less than $2,335,500,000 for the fiscal year 1962 and $850,000,000 for each of fiscal years 1963 and 1964.

Subsec. (c). Pub. L. 97-115, §165(a), substituted "$500,000,000 for the fiscal year 1963 and for the fiscal year 1964" for "$500,000,000 for the fiscal year 1963" only.
amounts not less than $200,000,000 shall be made available to Israel, for provisions setting out such ceiling of $200,000,000 for the fiscal years 1970 and 1971. 1971—Subsec. (a). Pub. L. 91-672, §2(1), substituted provisions authorizing appropriation of not more than $250,000,000 for each of the fiscal years 1970 and 1971 for provisions authorizing appropriation of not more than $250,000,000 for each of the fiscal years 1969 and 1970 for provisions setting out such ceiling of $250,000,000 for the fiscal year 1969.

Subsec. (b). Pub. L. 91-672, §2(2), substituted provisions setting out the foreign military sales credit ceiling of $500,000,000 for the fiscal years 1970 and 1971 for provisions setting out such ceiling of $250,000,000 for the fiscal year 1969.

EFFECTIVE DATE OF 1965 AMENDMENT

CREDITS FOR LOANS TO EMBASSIES, EMBASSY, AND TURKEY.
FISCAL YEAR 1965; REFRAISSION PERIOD; GRACE PERIOD FOR REFRAISSION OR PRINCIPAL.
Section 17(b) of Pub. L. 90-66 provided that: "Of the principal amount of loans guaranteed for the fiscal year 1969 under section 26 of the Arms Export Control Act (section 7604 of this title):--

(1) with respect to Turkey, not to exceed $50,000,000,

(2) with respect to Greece, not to exceed $50,000,000, and

(3) with respect to Sudan, not to exceed $20,000,000, shall be repaid in not less than 20 years, following a grace period of 15 years on repayment of principal.


§2773. Restraint in arms sales to Sub-Saharan Africa

It is in 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.


AMENDMENTS

1979—Pub. L. 96-92 substituted provisions respecting restraint in arms sales to Sub-Saharan Africa for provisions imposing regional ceilings on foreign military sales to African countries and Presidential waiver and report thereof to Congress.

1974—Subsec. (a). Pub. L. 93-639, §45(a)(X)(A), (B), rephrased subsec. (a) which prescribed a ceiling of $150,000,000 in each fiscal year on the total amount of military assistance, credits, participation in credits, guarantees on loans, and loans and sales under section 7307 of Title 10, for Latin American countries, and re-designated subsec. (b) as (a).

Subsec. (b). Pub. L. 93-639, §45(a)(Y)(B), added subsec. (b) and redesignated former subsec. (b) as (a).

1973—Subsec. (a). Pub. L. 93-169, §30(7), struck out reference to each sales pursuant to sections 2761 and 2762 of this title referring to exclusion of credits covered by guarantees issued under section 2761(b) of this title, and substituted reference to the face amount of contracts of guarantee issued under section 2761(a) and (b) of this title, inserted reference to the principal amount of loans guaranteed under section 2761(a) of this title, and substituted "$150,000,000" for "$100,000,000".

Subsec. (b). Pub. L. 93-169, §30(8), struck out reference to each sales pursuant to sections 2761 and 2762 of this title, reference to exclusion of credits covered by guarantees issued under section 2761(b) of this title, and inserted reference to the face amount of contracts of guarantee issued under section 2761(a) and (b) of this title, and substitute reference to the principal amount of loans guaranteed under section 2761(a) and (b) of this title, and inserted reference to the face amount of contracts of guarantee issued under section 2761(a) and (b) of this title, and reinserted reference to the principal amount of loans guaranteed under section 2761(b).

Subsec. (c). Pub. L. 93-169, §30(9), struck out subsec. (c) which provided for Presidential waiver limitations on amounts authorized under this section and set forth geographical limitations on the aggregate amounts of military assistance to be made available and percentage deviations from such ceiling amounts.

1972—Subsec. (a). Pub. L. 92-226 §401(c), substituted "$100,000,000" for "$75,000,000".

Subsec. (c). Pub. L. 92-226, §401(d), added subsec. for waiver of limitations when overriding requirements of the national security of the United States justifies waiver for prior provisions for such a waiver when important to the security of the United States, required a written report with reasons for findings and statement in detail of expenditure when in excess of applicable geographical limitations, and prescribed percentage limitation for exceeding aggregate of geographical ceiling limitation.

1971—Subsec. (a). Pub. L. 91-672, §3, made fiscal year 1972 ceiling of $75,000,000 for Latin American countries a continuing ceiling applicable in each fiscal year.

Subsec. (b). Pub. L. 91-672, §3, made fiscal year 1969 ceiling of $60,000,000 for African countries a continuing ceiling applicable in each fiscal year.

§2774. Foreign military sales credit standards

The President shall establish standards and criteria for credit and guarantee transactions under sections 2761 and 2762 of this title in accordance with the foreign, national security, and financial policies of the United States.


DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with prior concurrence of Secretary of Defense and Secretary of the Treasury required to extent standards and criteria for credit and guarantee transactions are based upon national security or financial policies, by section 1(b) of Rec. Ord. No. 1166, Jan. 16, 1977, 32 F.R. 5411, as amended, set out as a note under section 2761 of this title.

§2775. 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 (22 U.S.C. 2151 et seq.), or sales under the Food for Peace Act, as amended (7 U.S.C. 1691 et seq.), 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 foreign military sales and guarantees under sections 2761, 2762, 2763, and 2764 of this title,
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until the President is assured that such diversion will no longer take place.


REFERENCES IN TEXT

The Foreign Assistance Act of 1961, as amended, referred to in subsec. (a), is Pub. L. 97-106, Sec. 4, 1981, 95 Stat. 624, as amended, which is classified principally to chapter 2 (§3161 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Food for Peace Act, as amended, referred to in subsec. (a), is act July 10, 1954, ch. 569, 68 Stat. 365, which is classified principally to chapter 41 (§1601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 7 and Tables.

Amendments


1974—Subsec. (b). Pub. L. 93-559 inserted subsection (b), which provided for Presidential reports to Congress respecting sales and guarantees to less developed countries.

Effective Date of 2008 Amendment

Amendment by Pub. L. 110-344 effective May 29, 2008, see section 3(b) of Pub. L. 110-344, set out as an Effective Date note under section 2701 of Title 7, Agriculture.

Delegation of Functions

Functions of President under subsec. (a) of this section delegated to Secretary of State by section 1(1) of Ex. Ord. No. 11668, Jan. 19, 1977, 42 P.R. 491, as amended, set out as a note under section 2751 of this title.

§ 2776. Reports and certifications to Congress on military exports

(a) Report by President; contents

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 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 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 (1)(A) of this subsection may also be provided in a classified addendum) containing—

(1) a listing of all letters of offer to sell any major defense equipment for $1,000,000 or more under this chapter 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 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 2786 of this title and guarantee agreements under section 2764 of this title made during the fiscal year in which such report is submitted;

(4) a number 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) projections of the dollar amounts, by foreign country and international organization, of sales expected to be made under sections 2761 and 2762 of this title in the quarter of the fiscal year immediately following the quarter for which such report is submitted;

(6) 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) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 2739 of this title, 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;

(8) a listing of each sale under section 2766 of this title 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;

(9) 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 2786(a)(3) of this title, the regulations issued under section 2776 of this title, or section 2814(a)(1)(B) of this title, 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;
(10) a listing of all munitions items (as defined in section 2778(c) of this title) 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 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 or more; or

(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 (1) for disposition or use solely within the United States, or (2) 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. 418 et seq.) relating to congressional oversight of intelligence activities;  

(11) a report on all concluded government-to-government agreements regarding foreign co-production of defense articles of United States origin and all other concluded agreements involving co-production or licensed production outside of the United States of defense articles of United States origin (including co-production 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 an 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 article; 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 co-production or licensing program to ensure compliance with restrictions in the agreement on production quantities and third-party transfers; and

(12) a report on all exports of significant military equipment for which information has been provided pursuant to section 2776(1) of this title.

For each letter of offer to sell under paragraphs (1) and (2) of this subsection, the report shall specify (1) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be; (2) 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; (3) a description of the defense article or service offered or sold, as the case may be; and (4) 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.

(b) Letter of offer to sell defense articles, services, design and construction services, or major equipment; submission of numbered Presidential certification and additional statement; contents; emergency justification statement; enhancements or upgrades in sensitivity of technology or capability of major defense articles, equipment, or services

(1) Subject to paragraph (8), in the case of any letter of offer to sell any defense articles or services under this chapter for $50,000,000 or more, any design and construction services for $200,000,000 or more, or any major defense equipment for $15,000,000 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 (1) through (4) of subsection (a) of this section, and a description, containing the information specified in paragraph (8) of subsection (a) of this section, 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, proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. 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 2771 of this title), 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. Each such numbered certification shall contain an item indicating whether any offsets 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). In addition, the President shall, upon the request of such committee or the Committee on 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) a detailed description of the defense articles, defense services, or design and construction services 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;

(See References in Text note below.)
(D) the name of each contractor expected to provide the defense article, defense service, or design and construction service proposed to be sold, and a description of any offset agreement with respect to such sale;

(E) 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) support international terrorism;

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

(iv) prejudice the negotiation of any arms control agreements; or

(v) adversely affect the arms control policies of the United States;

(F) 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 which are the subject of such sale, or a description of how such country or organization intends to use such defense articles, defense services, or design and construction services;

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

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

(I) 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;

(J) 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 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;

(K) 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 proposed to be sold;

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

(M) 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 which are the subject of such sale would be delivered;

(N) 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, 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;

(O) the projected delivery dates of the defense articles, defense services, or design and construction services to be offered;

(P) a detailed description of weapons and levels of munitions that may be required as support for the proposed sale, and

(Q) 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 (i) and the details of the description specified in clause (ii) of subsection (a) of this section 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. The letter of offer shall not be made with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, the Republic of Korea, Israel, 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 after receiving such certification, enact a joint 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.

(2) Any such joint 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 resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, the Republic of Korea, Israel, or New Zealand, it
shall be in order in the Senate to move to discharge a committee to which such joint resolution was referred if such committee has not reported such joint resolution at the end of five calendar days after its introduction.

(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 resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) In addition to the other information required to be contained in a certification submitted to the Congress under this subsection, each such certification shall include any quarterly report submitted pursuant to section 2761 of this title 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)(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 services, sold pursuant to a letter of offer described in paragraph (1), the sensitivity of technology or the capability of the article, equipment, or service has been 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 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) Subject to paragraph (6), 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, $80,000,000 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 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 subpar-
cerned 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 transmission 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 2776 of this title), 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. 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 (G) 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.

(2) 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) in the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, the Republic of Korea, Israel, or New Zealand, shall not be issued until at least 16 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 16-day period, enacts a joint resolution prohibiting the proposed export;

(B) 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 16 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 16-day period, enacts a joint resolution prohibiting the proposed export; and

(C) 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) (A) Any joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 801(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of facilitating the consideration and enactment of joint resolutions under this subsection, 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) The provisions of subsection (b)(5) of this section 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)(3) of this section. For purposes of such application, any reference in subsection (b)(5) of this section to "a letter of offer" or "an offer" shall be deemed to be a reference to "a contract".

(5) In the case of an application by a person (other than with regard to a sale under section 2762 of 2762 of this title) for a license for the export to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, the Republic of Korea, Israel, or New Zealand that does not authorize a new sale for treaty use that includes any country other than such countries, the limitations on the issuance of the license set forth in paragraph (1) shall apply only if the license is for export of—

(A) major defense equipment sold under a contract in the amount of $35,000,000 or more; or

(B) defense articles or defense services sold under a contract in the amount of $100,000,000 or more.

(6) The President shall notify the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate at least 16 days prior to an export pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 2778(j)(1) of this title, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.

(d) Commercial technical assistance or manufacturing licensing agreements with non-North Atlantic Treaty Organization member countries; submission of Presidential certification; contents

(1) In the case of an approval under section 2778 of this title of a United States commercial technical assistance or manufacturing licensing agreement 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) of this section containing comparable information, except that the last sentence of such subsection shall not apply to car-
ifications submitted pursuant to this subsection.
(2) 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, the Republic of Korea, Israel, 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 3778 of this title if the Congress, within the 30-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.
(6) The President shall notify the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate at least 15 days prior to an export pursuant to a treaty referred to in section 3778(3)(A)(c)(i) of this title to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 3778(3)(i) of this title, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.
(c) Definitions
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—
         (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).
(d) Publication of arms sales certifications
The President shall cause to be published in a timely manner in the Federal Register, upon transmittal of the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, the unclassified text of—
   (1) each approved certification submitted pursuant to subsection (b) of this section;
   (2) each notification of a proposed commercial sale submitted under subsection (c) of this section; and
   (3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d) of this section.
(e) Confidentiality
Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) of this section and the second sentence of subsection (c)(1) of this section shall be treated as confidential information in accordance with section 241(c) of the Appendix to title 50.
(f) Certification requirement relating to Israel's qualitative military edge
   (1) In general
Any certification relating to a proposed sale or export of defense articles or defense services under this section to any country in the Middle East other than Israel shall include a determination that the sale or export of the defense articles or defense services will not adversely affect Israel's qualitative military edge over military threats to Israel.
   (2) Qualitative military edge defined
In this subsection, the term "qualitative military edge" means the ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors, while sustaining minimal damages and casualties, through the use of superior military means, possessed in sufficient quantity, including weapons, command, control, communication, intelligence, surveillance, and reconnaissance capabilities that in their technical characteristics are superior in capability to those of such other individual or possible coalition of states or non-state actors.

Title 22—Foreign Relations and Intercourse

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References in Text

This chapter, referred to in subsecs. (a)(1) and (b)(1), 66(a), was in the original "this Act", meaning Pub. L. 86-652, Oct. 29, 1960, 86 Stat. 652, which is classified principally to this title. For complete classification of this Act to the Code, see Short Title note set out under section 2761 of this title and Tables.


Section 801(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (b)(2), (c)(5)(A), and (d)(5)(A), is section 801(b) of Pub. L. 94-352, June 30, 1976, 90 Stat. 729, which made provision for expedited processing in the Bureau, and was not classified to the Code.


Amendments

2009—Subsec. (b). Pub. L. 111-286, §901(1), inserted "Israel," before "or New Zealand" in consolidating provisions of (c), (b), and (c), and in introductory provisions of (c), (b), and (c).

Subsec. (c). Pub. L. 111-286, §302(1), inserted "Israel," before "or New Zealand" in (2)(A) and in introductory provisions of (c), (b), and (c).


(2008)—Subsec. (b), (c), (f)(1)(A), Pub. L. 109-429, §2003(b)(1), inserted "the Republic of Korea" before "or New Zealand" whenever appearing.

Subsec. (a)(7) to (13), Pub. L. 107-228, §1302(c), redesignated para. (3) to (13) as (7) to (13), respectively, and struck out former par. (7) which read as follows: "as estimate of—"

"(A) the number of United States military personnel, the number of United States civilian United Nations personnel, and the number of United States civilian contractor 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, in implementation of sales and commercial exports under this chapter or of assistance under chapter 2, 5, 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.""

Subsec. (b). Pub. L. 107-228, §1405(a)(2)(A)(i), substituted "(ii) Subject to paragraph (4), in the case of—"

"(C) In the case ofintroductory provisions."

Subsec. (b)(9)(C). Pub. L. 107-228, §1400(a)(2)(A)(ii), substituted "(ii) Subject to paragraph (6), in the case of—"


Subsec. (c)(5). Pub. L. 107-228, §1406(a)(2)(B)(ii), added subpar. (3) and redesignated former subpar. (3) as (5).


Subsec. (d)(1). Pub. L. 106-113, §1000(a)(7) (title XIII, §1302(b)), in sixth sentence, inserted before period at end "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." Pub. L. 106-113, §1000(a)(7) (title XII, §1255(a)(1)), in sixth sentence, substituted "and a description of any offset agreement proposed to be entered into in connection with such sale (as known on the date of transmission of such statement)(b)" for "and a description from such contractor of any offset agreement proposed to be entered into in connection with such sale (as known on the date of transmission of such statement)." (b) of Pub. L. 106-113, §1000(a)(7) (title XII, §1255(a)(1)), in sixth sentence, substituted "and a description of any offset agreement proposed to be entered into in connection with such sale (as known on the date of transmission of such statement)" for "and a description from such contractor of any offset agreement proposed to be entered into in connection with such sale (as known on the date of transmission of such statement)."

Subsec. (e)(1). Pub. L. 106-113, §1000(a)(7) (title XII, §1255(a)(1)), in sixth sentence, substituted "and a description of any offset agreement proposed to be entered into in connection with such sale (as known on the date of transmission of such statement)" for "and a description from such contractor of any offset agreement proposed to be entered into in connection with such sale (as known on the date of transmission of such statement)."


Subsec. (g). Pub. L. 106-113, §1000(a)(7) (title XII, §1255(b)(1)), redesignated subsec. (a), relating to publication of arms sales certifications, as (d), relating to publication of arms sales certifications, by inserting "in a timely manner" after "to be published" and by substituting "the full unclassified text of—"

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

(2) each identification of a proposed commercial sale submitted under subsection (c) of this section; and

(3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d) of this section," for "the full unclassified text of each numbered certification submitted pursuant to subsection
(b) of this section and each notification of a proposed commercial sale submitted under subsection (d) of this section,” was executed by making the amendment in subsec. (2) to reflect the probable intent of Congress to mandate the certification of each such sale as required by subsec. (e). The amendment in subsec. (2) was made by making the amendment in subsec. (2) to reflect the probable intent of Congress to mandate the certification of each such sale as required by subsec. (e).


Subsec. (c)(2)(A), (B), Pub. L. 104-164, §110(h)(5), added subpar. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) 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 unless the Congress, within such 30-day period, enacted 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. This joint resolution after ‘manufacturing licensing agreements’ and added a para. (3) to (6).


Pub. L. 100-294, §223(a), inserted a second sentence “In a case in which such articles or services are listed on the Missile Technology Control Regime Annex intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 2697e of this title), 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. 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).”, was enacted by making the amendment in subsec. (d) to reflect the probable intent of Congress to mandate the certification of each such sale as required by subsec. (e).

The amendment in subsec. (2) was made by making the amendment in subsec. (2) to reflect the probable intent of Congress to mandate the certification of each such sale as required by subsec. (e).
Subsec. (b)(2). Pub. L. 97–113, §102(b)(2), authorized a motion in the Senate for the discharge of the committee to which a resolution pending in the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand was referred for failure to report the resolution at end of five calendar days after the introduction.

Subsec. (c)(1). Pub. L. 97–113, §102(c), inserted sales contract limits to $16,000,000 and $25,000,000 from $7,000,000 and $12,000,000 respecting sales of major defense equipment and defense articles or services.

Subsec. (d). Pub. L. 97–113, §101(c), substituted reference to subsec. "(c)(1)" for "(c)" of this section.

1986—Subsec. (a)(2), (19), (20), Pub. L. 99–333, §106(b), added paras. (9) and (10).

Subsec. (b)(4). Pub. L. 99–333, §106(c), required certification before sale of any design and construction services for $200,000,000 or more, and required such certification to contain the information specified in subsection (b)(1) and required such certification to contain an item identifying the sensitivity of technology contained in the design and construction services and, made subpar. (A), (C), (D), (G)–(B) provisions applicable to design and construction services.

Subsec. (c). Pub. L. 99–333, §107(b), designated existing provisions as pars. (1), struck out "not less than 30 days" before "before", before such subsection, redesignated as cls. (A) to (C) former paras. (2), (3), and substituted "clause (B)" and "clause (C)" for "paragraph (2)" and "paragraph (3)", respectively, and added par. (2).

1979—Subsec. (b). Pub. L. 96–199, §10(a), increased to sixty from thirty days the period for submission of the President's report at end of each quarter and struck out par. (9) which required that the report contain an analysis and description of the services of Federal personal or property to prevent from sales to foreign heads, including numbers employed.

Subsec. (b)(2). Pub. L. 96–92, §11(b)(2), required extensive emergency justification statement and the number of certifications to contain the item, classified if necessary, identifying the sensitivity of technology contained in the defense articles or defense services prepared to be sold.

1978—Subsec. (b)(3)(A), (B) to (F). Pub. L. 95–381 in subpar. (D) substituted provisions requiring an evaluation relating to the proposed sale to be prepared by the Secretary of the Army's control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense for provisions requiring an analysis of the arms control impact pertinent to the offer to sell prepared in consultation with the Secretary of Defense instead of the Secretary of State.

1976—Subsec. (a). Pub. L. 94–329, §§211(a), 604(a), expanded existing provisions to provide for increased comprehensiveness of quarterly reports on sales of defense articles or defense services, whether through governmental channels or commercial channels.

Subsec. (b). Pub. L. 94–329, §611(a), 604(a)(3), increased from 36 days to 90 days the period allowed Congress to reject a proposed offer to sell defense articles or defense services and inserted provisions covering any major defense equipment for $7,000,000 or more, requiring additional information with respect to any letter of offer to sell defense articles or defense services if requested by Congress and requiring that a certification be prepared pursuant to the section in unclassified form unless public disclosure would be detrimental to the United States.

Subsec. (c). Pub. L. 94–329, §211(a), substituted provisions relating to application by person for license for export of any major defense equipment sold and contracted for $7,000,000 or more or defense articles or defense services for $25,000,000 or more, requiring the President to transmit to Congress an unclassified number certification with respect to each application, for provisions construing this section as not modifying in any way section 1863 of this title.


1974—Subsec. (a), (b), Pub. L. 93–669 added subsecs. (a) and (b).

1973—Pub. L. 93–195 struck out subsec. (c) which required the Secretary of State to transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate semiannual reports of all exports of significant defense articles on the United States munitions list to foreign governments, etc., and subsec. (d) which provided for the inclusion in the presentation material submitted to the Congress during consideration of amendments to this chapter or Acts appropriating funds under authority of this chapter annual tables showing the dollar value of cash and credit foreign military sales orders, commitments to order, etc.

CHANGE OF NAME
Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. [see section 1031(a), (b) of Pub. L. 100–408, set out as a note under section 401 of Title 50, War and National Defense.]

EFFECTIVE DATE OF 1998 AMENDMENT

EFFECTIVE DATE OF 1996 AMENDMENTS
Section 106(c) of Pub. L. 104–201 provided that:
"Paragraph (12) of section 26(a) of the Arms Export Control Act [now 22 U.S.C. 2780(a)(11)], as added by subsection (a)(3), does not apply with respect to an agreement described in such paragraph entered into before the date of the enactment of this Act (Sept. 23, 1996).
"Amendment by section 141(c), (d) of Pub. L. 104–194 applicable with respect to certifications required to be submitted on or after July 21, 1998, see section 141(b) of Pub. L. 104–194, set out as a note under section 2785 of this title."

EFFECTIVE DATE OF 1995 AMENDMENT

EFFECTIVE DATE OF 1978 AMENDMENTS
Section 211(b) of Pub. L. 94–329 provided that:
"The amendment made by subsection (a) of this section [amending this section] shall apply with respect to letters of offer for which a certification is transmitted pursuant to section 211(b) of the Arms Export Control Act [subsec. (b) of this section] on or after the date of enactment of this Act (June 26, 1976) and to export licenses for which an application is filed under section 26 of such Act (section 2775 of this title) on or after such date."
"Section 601(a) of Pub. L. 94–339 provided that:
"The amendment made by this section [amending this section and enacting section 2775 of this title] shall take effect sixty days after the date of enactment of this Act [June 30, 1976]."

DELEGATION OF FUNCTIONS
Functions of President under subsec. (a) and (b)(1) of this section, except with respect to certification of an emergency under subsec. (b)(1), delegated to Secretary of Defense, with Secretary of Defense required to consult with other appropriate agencies in implementing the delegated functions, by section 1(1) of Ex. Ord. No. 11535, Jan. 18, 1977. 42 F.R. 4311, as amended, set out as a note under section 2785 of this title.


FUNCTIONS OF PRESIDENT UNDER SUBSEC. (c) AND (d) OF THIS SECTION DELEGATED TO SECRETARY OF STATE, AND
FUNCTIONS OF PRESIDENT UNDER SUBSEC. (e) OF THIS SECTION WITH RESPECT TO TRANSMITTALS PURSUANT TO
SUBSEC. (b) OF THIS SECTION DELEGATED TO SECRETARY OF DEFENSE AND WITH RESPECT TO TRANSMITTALS PURSUANT TO
SUBSEC. (f) OF THIS SECTION DELEGATED TO SECRETARY OF STATE, BY SECTION 1(k) OF
EXECUTIVE ORDER NO. 11584.

AMENDMENT OF ISRAEL'S QUALITATIVE MILITARY EDGE
OVER MILITARY THREATS

(a) ASSESSMENT REQUIRED.—The President shall carry out an empirical and quantitative assessment on an
ongoing basis of the extent to which Israel possesses a qualitative military edge over military threats to
Israel. The assessment required under this subsection shall be sufficiently robust so as to facilitate
comparability of data over concurrent years.

(b) USE OF ASSESSMENT.—The President shall ensure that the assessment required under subsection (a)

is used to inform the review by the United States of applications to sell defense articles and defense services
under the Arms Export Control Act (22 U.S.C. 2751 et seq.) to countries in the Middle East.

(c) REPORTS.—

(1) INITIAL REPORT.—Not later than June 30, 2009, the
President shall transmit to the appropriate congressional committees a report on the initial assess-
ment required under subsection (a).

(2) SUBSEQUENT REPORT.—Not later than four
years after the date on which the President transmits the initial report under paragraph (1), and every
four years thereafter, the President shall transmit to the appropriate congressional committees a report on the most recent assessment required under subsection (a).

(d) CERTIFICATION.—[Amended this section.]

(e) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the
Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations
of the Senate.

(2) QUALITATIVE MILITARY EDGE.—The term "qualitative military edge" has the meaning given the term in section 86(b) of the Arms Export Control Act, as
amended by subsection (c) of this section (22 U.S.C. 2766(b)).

[Memorandum of President of the United States, June 10, 2008, 74 F.R. 38893, provided that the functions of the President in section 301(a) to (c) of Pub. L. 110-428, as set out above, are delegated to the Secretary of State, in coordination with the Secretary of Defense.]

NATIONAL DISCLOSURE POLICY FOR SENSITIVE WEAPONS TECHNOLOGY: REPORT TO CONGRESS
Sec. 304(a) of Pub. L. 96-92 directed President to undertake a thorough review of interagency procedures
and disclosure criteria used by United States in determining whether sensitive weapons technology will be
transferred to other countries, and not later than Feb. 14, 1986 to transmit a report to Congress setting forth
the results of such review, together with such recommendations as are necessary to improve the current disclosure system, prior to repeal by Pub. L. 97-313, title VII, §746(d)(1), Dec. 28, 1982, 96 Stat. 3190.

§2777. Fiscal provisions relating to foreign military sales credits
(a) Permissible uses of cash payments under sections 2761, 2762, and 2763 of this title and advances received under section 2765 of this title 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 guarantees.

(b) Transfer of funds to miscellaneous receipts of Treasury
Amounts received from foreign governments and international organizations as repayments for credits extended pursuant to section 2763 of this title, amounts received from the disposition of instruments evidencing indebtedness under section 2764(b) of this title (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 guarantees issued pursuant to section 2764(c) of this title, which sums are made available for such obligations), and other collections (including fees and interest) shall be transferred to the miscellaneous receipts of the Treasury.

(c) Credit of funds to reserve under section 2764(c)
Notwithstanding the provisions of subsection (b) of this section, to the extent that any of the funds constituting the reserve under section 2764(c) of this title are paid out for a claim arising out of a loan guaranteed under section 2764 of this title, 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 such funds in such reserve are available.

National Disclosure Policy for Sensitive Weapons Technology: Report to Congress
Section 304(a) of Pub. L. 96-92 directed President to undertake a thorough review of interagency procedures and disclosure criteria used by United States in determining whether sensitive weapons technology will be transferred to other countries, and not later than Feb. 14, 1986 to transmit a report to Congress setting forth the results of such review, together with such recommendations as are necessary to improve the current disclosure system, prior to repeal by Pub. L. 97-313, title VII, §746(d)(1), Dec. 28, 1982, 96 Stat. 3190.

§2777. Control of arms exports and imports
(a) Presidential control of exports and imports of defense articles and services, guidance of policy, etc. of United States Munitions List; issuance of foreign license; negotiations information

(1) In furtherance of world peace and the security and foreign policy of the 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
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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 purpose 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 whether the export of an article or service would 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 non-proliferation agreements or other arrangements.

(3) In exercising the authorities conferred by this section, the President may require that a defense article or defense service be sold under this chapter 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) Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services

(1)(A)(i) 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) of this section 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.

(B) 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 chapter or any other foreign assistance or sales program of the United States.

(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 921(a) of title 18 (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.

(B) 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.

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in accordance with this chapter and regulations issued under this chapter, except that any 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.

\[1\] So in original. There are two subpars. designated "(3)".
(3) (A) For each of the fiscal years 1985 and 1988, $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:
(1) 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
(2) 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) Criminal violations; punishment
Any person who willfully violates any provision of this section, section 2779 of this title, a treaty referred to in subsection (c)(1)(O)(ii), or any rule or regulation issued under this section or section 2779 of this title, including any rule or regulation issued to implement or enforce a treaty referred to in subsection (c)(1)(O)(ii) or an implementing arrangement pursuant to such treaty, 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 or imprisoned not more than 20 years, or both.


(e) Enforcement powers of President
In carrying out functions under this section with respect to the export of defense articles and defense services, including defense articles and defense services exported or imported pursuant to a treaty referred to in subsection (c)(1)(O)(ii), the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (a), (d), (e), and (g) of section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2401(c), (d), (e), and (g)), and by subsections (a) and (c) of section 12 of such Act (50 U.S.C. App. 2411(a) and (c)), subject to the same terms and conditions as are applicable to such powers under such Act (50 U.S.C. App. 2401 et seq.), except that section 11(c)(2)(H) 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 chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further 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. 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.

(f) Periodic review of items on Munitions List; exemptions
(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. The President may not remove any item from the Munitions List until 30 days after the date on which the President has provided notice of the proposed removal to the Committee on International Relations of the House of Representatives and to the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications under section 2304(a) of this title. Such notice shall describe the nature of any controls to be imposed on that item under any other provision of law.

(2) The President may not authorize an exemption for a foreign country from the licensing requirements of this chapter for the export of defense items under subsection (1) of this section or any other provision of this chapter 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 (2) of this section requires the compilation and maintenance of sufficient documentation relating to the export of United States defense articles, defense services, and related technical data to facilitate law enforcement efforts to detect, prevent, and prosecute criminal violations of any provision of this chapter, 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 chapter for the export of defense items.

(4) Paragraph (2) shall not apply with respect to an exemption under subsection (2)(A) to give effect to a treaty referred to in subsection (c)(1)(O)(ii) (and any implementing arrangements to such treaty), provided that the President promulgates regulations to implement and enforce such treaty under this section and section 2779 of this title.
(g) Identification of persons convicted or subject to indictment for violations of certain provisions

(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 795 of title 18 (relating to espionage involving defense or classified information) or section 2281a of such title (relating to providing material support to terrorists),

(iv) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 56),


(vii) chapter 155 of title 18 (relating to sabotage),

(viii) section 401 of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b)),


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

(xi) section 605(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 4113(b) and (c)); or

(xii) sections 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2000, relating to missile systems designed to destroy aircraft (18 U.S.C. 3333a), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 3333c), and variola virus (18 U.S.C. 176b-4); and

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

(C) persons who are ineligible—

(i) to contract with,

(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 consignors 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) 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, the President shall detail to the office 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 (8 U.S.C. 1101 et seq.), 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) Judicial review of designation of items as defense articles or services

The designations by the President (or by an official to whom the President's functions under subsection (a) of this section 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) Report to Department of State

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) 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 chapter to exempt a foreign country from the licensing requirements of this chapter with respect to exports of defense items only if the United 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 for Canada

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 chapter for the export of defense items.

(C) Exception for defense trade cooperation treaties

(i) In general

The requirement to conclude a bilateral agreement in accordance with subparagraph (A) shall not apply with respect to an exemption from the licensing requirements of this chapter for the export of defense items to give effect to any of the following defense trade cooperation treaties, provided that the treaty has entered into force pursuant to article II, section 2, clause 2 of the Constitution of the United States:


(ii) Limitation of scope

The United States shall exempt from the scope of a treaty referred to in clause (I)—

(I) complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or complete unmanned aerial vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500-kilogram payload to a range of 500 kilometers, and associated production facilities, software, or technology for these systems, as defined in the Missile Technology Control Regime Annex Category I, Item 1; and

(II) individual rocket stages, re-entry vehicles and equipment, solid or liquid propellant motors or engines, guidance sets, thrust vector control systems, and associated production facilities, software, and technology, as defined in the Missile Technology Control Regime Annex Category I, Item 2;

(III) defense articles and defense services listed in the Missile Technology Control Regime Annex Category II that are for use in rocket systems, as that term is used in such Annex, including associated production facilities, software, or technology;

(IV) toxicological agents, biological agents, and associated equipment, as listed in the United States Munitions List (part 121.1 of chapter 1 of title 22, Code of Federal Regulations), Category XIV, subcategories (a), (b), (c)(1), (i), (j) as it pertains to (f)(1), (g) as it pertains to
(ii) and (m) as it pertains to all of the subcategories cited in this paragraph;

(V) defense articles and defense services specific to the design and testing of nuclear weapons which are controlled under United States Munitions List Category XVI(a) and (b), along with associated defense articles in Category XVI(d) and technology in Category XVI(e);

(VI) with regard to the treaty cited in clause (I)(I), defense articles and defense services that the United States controls under the United States Munitions List that are not controlled by the United Kingdom, as defined in the United Kingdom Military List or Annex 4 to the United Kingdom Dual Use List, or any successor lists thereto; and

(VII) with regard to the treaty cited in clause (I)(II), defense articles for which Australian laws, regulations, or other commitments would prevent Australia from enforcing the control measures specified in such treaty.

(2) Requirements of bilateral agreement

A bilateral agreement referred to in paragraph (I)—

(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) 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 chapter 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 2776 of this title for defense exports to a foreign country to which that sector 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—

(1) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.


References in Text

This chapter, referred to in text, was in the original "this Act," meaning Pub. L. 90-662, Oct. 22, 1968, 82 Stat. 1404, Pub. L. 92-140, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Table.

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96-72, Sept. 26, 1979, 93 Stat. 555, as amended, which is classified principally to section 3742 of this title. Another title, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.


The Terrorism and Nationality Act, referred to in subsec. (g)(9)(C), is act June 27, 1950, ch. 477, 66 Stat. 1833, as amended, which is classified principally to chapter 21 (§101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 8 and Tables.

References to Section 1014 of the Title 18 of this Title

Referred to in this section

Section 1014 of Pub. L. 94-529 provided in part that: "Any reference to such section (section 1014 of this title) shall be deemed to be a reference to section 38 of the Arms Export Control Act [this section] and any reference to licenses issued under section 25 of the Arms Export Control Act [this section] shall be deemed to include a reference to licenses issued under section 14 of the Mutual Security Act of 1961."
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 cessation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.


1987—Subsec. (b)(1). Pub. L. 100–234, §129(20), designated existing provisions as subpar. (A) and added subpar. (B) relating to review by Secretary of the Treasury of munitions control regulations.

Pub. L. 100–234 designated existing provisions as subpar. (A) and added subpar. (B) relating to allowance of return to United States of certain military firearms, etc., under certain circumstances.

Subsec. (b)(8). Pub. L. 100–234, §129(20), added par. (3).

Subsec. (g). Pub. L. 100–234, §129(20), added subsec. (g).

1988—Subsec. (a). Pub. L. 100–57, §118(a), inserted "for each violation" before "not more" and substituted "$1,000,000" for "$100,000" and "and two" for "two".

Subsec. (e). Pub. L. 100–57, §118(b), inserted provisions relating to civil penalty for each violation.

Pub. L. 100–57 substituted "(g)" for "(f)".


Subsec. (b)(2). Pub. L. 99–533, §107(a), inserted "importation of major defense equipment to all countries other than NATO countries, Japan, Australia, and New Zealand."

Subsec. (c). Pub. L. 99–533, §107(c), added subsec. (c). (f) During the period preceding the revision of regulations issued under section 38(2)(A) of the Arms Export Control Act (subsection (d) of this section) to reflect the provisions of subparagraph (b) of subsection (d) of such section, as added by such section (a), such regulations may not be applied with respect to matters covered by paragraph (2) of this subsection so as to prohibit or otherwise restrict the importation of firearms described in such paragraph or in any other manner inconsistent with that paragraph, notwithstanding that such regulations have not yet been so revised: Provided, That this section shall not take effect if during the twenty year period beginning on the date of enactment of this Act (Oct. 1, 1985), the Attorney General shall, within the period of time specified in the first provision, submit a certification to Congress indicating whether the enactment of this section will interfere with any ongoing criminal investigation with respect to this section. If a certification of criminal investigative interference or an objection to the intent of this section is made, as herein provided, no permit shall be issued to anyone.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 118(c) of Pub. L. 99–533 provides that: "This section (amending this section) shall take effect upon the date of enactment of this Act [Oct. 1, 1985], and whichever is later, The amendments made by this section shall apply with respect to violations occurring after the effective date of this section."

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–73 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–73, set out as an Effective Date note under section 3301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 118(b) of Pub. L. 99–57, set out as an Effective Date note under section 3301 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 116(b)(4)(C) of Pub. L. 100–234, set out as an Effective Date note under section 3301 of this title.

REGULATIONS

 Titile 22—Foreign Relations and Intercourse §2778

Regulation Thence) and the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007 (and any implementing arrangement thereto), consistent with other applicable provisions of the Arms Export Control Act, as amended by this Act (see Short Title of 2010 Amendment notes set out under section 2751 of this title), and with the terms of any resolution of advice and consent adopted by the Senate with respect to either treaty.

Role of Construction

Pub. L. 111-266, title I, §117, Oct. 8, 2010, 124 Stat. 2892, provided that: "Nothing in this title [see section 112 of Pub. L. 111-266, set out as a Short Title of 2010 Amendment note under section 2751 of this title, and with the terms of any resolution of advice and consent adopted by the Senate with respect to either treaty] shall be construed to modify or supersede any provision of law or regulation other than the Arms Export Control Act (22 U.S.C. 2751 et seq.), as amended by this Act [see Short Title of 2010 Amendment notes set out under section 2751 of this title, and the International Traffic in Arms Regulations (subchapter M of chapter I of title 22, Code of Federal Regulations)]."

Diligence of Functions

Functions of President under this section, with certain exceptions, delegated to Secretary of State, with concurrence of Secretary of Defense required for designations of items or categories of items which are considered as defense articles or services subject to export control under this section, by section 1101 of Pub. L. No. 111-16, Jan. 16, 1997, 14 F.R. 4311, as amended, set out as a note under section 2751 of this title.

Pursuant to a section relating to the control of imported defense articles and services transferred to Attorney General, with certain requirements for considering the views of Secretary of State and for receiving concurrence of Secretary of State and Secretary of Defense for designations of items or categories of items which are considered as defense articles and services transferred to Attorney General, with certain requirements for considering the views of Secretary of State and for receiving concurrence of Secretary of State and Secretary of Defense for designations of items or categories of items which are considered as defense articles and services subject to export control under this section, by section 1101(2) of Pub. L. No. 111-16.

Functions of President under this subsection and are served by Secretary of State and Secretary of Commerce delegated to Secretary of Commerce to be carried out on behalf of Secretary of State by section 1101(3) of Pub. L. No. 111-16.

Limitation on Implementing Arrangements

Pub. L. 111-266, title I, §118, Oct. 8, 2010, 124 Stat. 2893, provided that:

"(a) In General.—No amendment to an implementing arrangement concluded pursuant to a treaty referred to in section 2751(c)(1)(C) of the Arms Export Control Act, as added by this Act (22 U.S.C. 2778(c)(1)(C)), shall enter into effect for the United States unless the Congress adopts, and there is enacted, legislation approving the entry into effect of that amendment for the United States.

"(b) Covered Amendment.—

"(1) In General.—The requirements specified in subsection (a) shall apply to any amendment other than an amendment that addresses an administrative or technical matter. The requirements in subsection (a) shall not apply to any amendment that solely addresses an administrative or technical matter.

"(2) U.S.-UK IMPLEMENTING ARRANGEMENT.—In the case of the Implementing Arrangement Pursuant to the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed at Washington February 14, 2009, amendments to which the requirements specified in subsection (a) apply shall include—

"(A) any amendment to section 2, paragraphs (1), (2), or (3) that modifies the criteria governing operations, programs, and projects to which the treaty applies;

"(B) any amendment to section 3, paragraphs (1) or (2) that modifies the criteria governing end-use requirements and the requirements for approved community members responding to United States Government solicitations;

"(C) any amendment to section 4, paragraph (4) that modifies the criteria for including items on the list of defense articles exempt from the treaty;

"(D) any amendment to section 4, paragraph (7) that modifies licensing and other applicable requirements relating to items added to the list of defense articles exempt from the scope of the treaty;

"(E) any amendment to section 7, paragraph (6) that modifies the criteria for eligibility in the approved community under the treaty for consensual United Kingdom entities and facilities;

"(F) any amendment to section 7, paragraph (9) that modifies the conditions for suspending or removing a United Kingdom entity from the approved community under the treaty;

"(G) any amendment to section 7, paragraphs (11) or (12) that modifies the conditions under which individuals may be granted access to defense articles exported under the treaty;

"(H) any amendment to section 9, paragraphs (1), (3), (7), (8), (9), (12), or (16) that modifies the circumstances under which United States Government approval is required for the re-transfer or re-export of a defense article, or to exceptions to such requirement; and

"(I) any amendment to section 11, paragraph (10) that modifies conditions of entry to the United Kingdom community under the treaty.

"(2) U.S.-AUSTRALIA IMPLEMENTING ARRANGEMENT.—In the case of the Implementing Arrangement Pursuant to the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Washington March 14, 2009, amendments to which the requirements specified in subsection (a) apply shall include—

"(A) any amendment to section 2, paragraphs (1), (2), or (3) that modifies the criteria governing operations, programs, and projects to which the treaty applies;

"(B) any amendment to section 3, paragraphs (1) or (2) that modifies the criteria governing end-use requirements and the requirements for approved community members responding to United States Government solicitations;

"(C) any amendment to section 4, paragraph (4) that modifies the criteria for including items on the list of defense articles exempt from the scope of the treaty;

"(D) any amendment to section 4, paragraph (7) that modifies licensing and other applicable requirements relating to items added to the list of defense articles exempt from the scope of the treaty;

"(E) any amendment to section 4, paragraph (9) that modifies the conditions for suspending or removing an Australian entity from the approved community under the treaty.

"(2) Any amendment to section 6, paragraph (6) that modifies the conditions under which individuals may be granted access to defense articles exported under the treaty;
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"(A) any amendment to section 9, paragraphs (1), (2), (4), (7), or (8) that modifies the circumstances under which United States Government approval is required for the re-transfer or re-export of a defense article, or to exceptions to such requirement; and
"(B) any amendment to section 11, paragraph (6) that modifies conditions of entry to the Australian community under the treaty.
"(c) CONGRESSIONAL NOTIFICATION FOR OTHER AMENDMENTS TO IMPLEMENTING ARRANGEMENTS.—Not later than 15 days before any amendment to an implementing arrangement to which subsection (a) does not apply shall take effect, the President shall provide to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report containing:
"(1) the text of the amendment; and
"(2) an analysis of the amendment's effect, including an analysis regarding why subsection (a) does not apply.

INFORMATION MANAGEMENT PRIORITIES
"(a) OBJECTIVE.—The Secretary shall establish a secure, Internet-based system for the filing and review of applications for export of Munitions List items.
"(b) ESTABLISHMENT OF AN ELECTRONIC SYSTEM.—Of the amount made available pursuant to section 1403 of this Act (116 Stat. 1453), $1,600,000 is authorized to be available to fully automate the Defense Trade Application System, and to ensure that it is:
"(1) a secure, electronic system for the filing and review of Munitions List dangerous applications;
"(2) is accessible by United States companies through the Internet for the purpose of filing and tracking their Munitions List license applications; and
"(3) capable of exchanging data with—
"(A) the Export Control Automated Support System of the Department of Commerce;
"(B) the Foreign Disclosure and Technology Information System and the US EXPORTS system of the Department of Defense;
"(C) the Export Control System of the Central Intelligence Agency; and
"(D) the Proliferation Information Network System of the Department of Energy.
"(c) Munitions List defined.—In this section, the term 'Munitions List' means the United States Munitions List of defense articles and defense services control under any section 38 of the Arms Export Control Act (22 U.S.C. 2778).

For definition of 'Secretary' as used in section 1403 of Pub. L. 107-225, see section 3 of Pub. L. 107-225, set out as a note under section 2631 of this title.)

EFFECTIVE REGULATION OF SATELLITE EXPORT ACTIVITIES
"(a) LICENSING REGIME.—
"(1) Establishment.—The Secretary of State shall establish a regulatory regime for the licensing for export of commercial satellites, satellite technologies, their components, and systems which shall include expedited approval, as appropriate, of the licensing for export by United States companies of commercial satellites, satellite technologies, their components, and systems, to N-50 alies and major non-N-50 alies (as used within the meaning of section 64(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2156(q))).
"(2) REQUIREMENTS.—For proposed exports to those nations which meet the requirements of paragraph (1), the regime should include expedited processing of requests for export authorizations that—
"(A) are time-critical, including a transfer or exchange of information relating to a satellite failure or anomaly in-flight or on-orbit;
"(B) are required to submit bids to procurements offered by foreign persons;
"(C) relate to the re-export of unimproved materials, products, or data; or
"(D) are required to obtain launch and on-orbit insurance.
"(b) ADDITIONAL REQUIREMENT.—In establishing the regulatory regime under paragraph (1), the Secretary of State shall ensure that—
"(A) United States national security considerations and United States obligations under the Missile Technology Control Regime are given priority in the evaluation of any license; and
"(B) such time is afforded as is necessary for the Department of Defense, the Department of State, and the United States intelligence community to conduct a review of any license.

(b) FINANCIAL AND PERSONNEL RESOURCES.—Of the funds authorized to be appropriated in section 101(A) (113 Stat. 1069A-410), $5,000,000 is authorized to be appropriated for the Office of Defense Trade Controls of the Department of State for each of the fiscal years 2000 and 2001, to enable that office to carry out its responsibilities.

(c) IMPROVEMENT AND ASSESSMENT.—The Secretary of State should, not later than 3 months after the date of enactment of this Act (Nov. 28, 1999), submit to the Congress a plan for—
"(1) continuously gathering industry and public suggestions for potential improvements in the Department of State's export control regime for commercial satellites; and
"(2) arranging for the conduct and submission to Congress, not later than 15 months after the date of enactment of this Act, of an independent review of the export control regime for commercial satellites as to its effectiveness at promoting national security and economic competitiveness.

PROLIFERATION AND EXPORT CONTROLS
"SEC. 1412. ANNUAL REPORT ON TRANSFERS OF MILITARILY SENSITIVE TECHNOLOGY TO COUNTRIES AND ENTITIES OF CONCERN.

(a) ANNUAL REPORT.—Not later than March 30 of each year beginning in the year 2000 and ending in the year 2001, the President shall transmit to Congress a report on transfers to countries and entities of concern during the preceding calendar year of the most significant categories of United States technologies and technical information with potential military applications.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include, at a minimum, the following:
"(1) An assessment by the Director of Central Intelligence of efforts by countries and entities of concern to acquire technologies and technical information referred to in subsection (a) during the preceding calendar year.
"(2) An assessment by the Secretary of Defense, in consultation with the Joint Chiefs of Staff and the Director of Central Intelligence, of the cumulative impact of licenses granted by the United States for exports of technologies and technical information referred to in subsection (a) to countries and entities of concern during the preceding 12-month period on—
"(A) the military capabilities of such countries and entities; and
"(B) countermeasures that may be necessary to overcome the use of such technologies and technical information.
"(3) An audit by the inspectors general of the Departments of Defense, State, Commerce, and Energy, in consultation with the Director of Central Intell-
licensure and the Director of the Federal Bureau of Investigation, as provided in the terms and procedures of the United States Government with respect to the export of technologies and technical information referred to in subsection (a) to countries and entities of concern.

"(1) The status of the implementation or other disposition of recommendations included in reports of audits by inspectors General that have been not forth in a previous annual report under this section pursuant to paragraph (3).

"(c) ADDITIONAL REQUIREMENT FOR FIRST REPORT.—
The first annual report required by subsection (a) shall include an assessment by the inspectors General of the Departments of State, Defense, Commerce, and the Treasury and the Inspector General of the Central Intelligence Agency of the adequacy of current export controls and counterintelligence measures to protect against the acquisition by countries and entities of concern of United States technology and technical information referred to in subsection (a).

"(d) SUPPORT OF CIVILIAN AGENTS.—Upon the request of the Civilian agents responsible for performing the assessments required by subsection (b), the heads of other departments and agencies shall make available to those civilian agents all information necessary to carry out the requirements of this section.

"(e) CLASSIFIED AND UNCLASSIFIED REPORT.—Each report required by this section shall be submitted in classified and unclassified form.

"(f) DEFINITION.—As used in this section, the term 'countries and entities of concern' means:

"(1) any country that—

"(A) has detonated a nuclear explosive device (as defined in section 882a of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 653a)), and

"(B) is not a member of the North Atlantic Treaty Organization; and

"(2) any entity that—

"(A) is engaged in international terrorism or activities in preparation thereof; or

"(B) is directed or controlled by the government of a country described in paragraph (1) or (2).

"3800. RESOURCES FOR EXPORT LICENSING FUNCTIONS

"(a) OFFICE OF DEFENSE TRADE CONTROLS.—

"The Secretary of State shall take the necessary steps to ensure that those funds made available under the heading 'Administration of Foreign Affairs, Diplomatic and Consular Programs' in title IV of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277) (113 Stat. 2801-2891) are made available, upon the enactment of this Act, to the Office of Defense Trade Controls of the Department of State and to the Office of the Director of National Intelligence, to carry out the purposes of this title.

"(b) DEFENSE TRADE REGULATION AGENCY.—The Secretary of Defense shall take the necessary steps to ensure that, in any fiscal year, adequate resources are allocated to the functions of the Defense Trade Control System of the Department of Defense relating to the review of export license applications so as to ensure that those functions are performed in a thorough and timely manner.


"3820. SECURITY IN CONNECTION WITH SATELLITE EXPORT LICENSING

"As a condition of the export licenses any satellite to be launched in a country subject to section 314 of the Office of Foreign Economic and Industrial Development Act of 1972 (22 U.S.C. 2772) (22 U.S.C. 2776 note), the Secretary of State shall require the following:

"(1) That the transfer of control plan required by section 314(a)(3) of the Strom Thurman National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2776 note) be prepared by the Department of Defense and the exporter, and that the plan set forth enhanced security arrangements for the launch of the satellite, both before and during launch operations.

"(2) That each person providing security for the launch of that satellite—

"(A) report directly to the launch monitor with regard to issues relevant to the technology transfer control plan;

"(B) have received appropriate training in the International Traffic in Arms Regulations (seeft. 2(2) of the Export-Import Bank Act of 1978 (22 U.S.C. App. 2403) or other applicable law, to have repeatedly provided support for acts of international terrorism;

"(C) any country that—

"(A) has detonated a nuclear explosive device (as defined in second sentence of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 653a)), and

"(B) is not a member of the North Atlantic Treaty Organization; and

"(D) any entity that—

"(A) is engaged in international terrorism or activities in preparation thereof; or

"(B) is directed or controlled by the government of a country described in paragraph (1) or (2).

"3820. RESOURCES FOR EXPORT LICENSING FUNCTIONS

"(a) OFFICE OF DEFENSE TRADE CONTROLS.—

"The Secretary of State shall take the necessary steps to ensure that those funds made available under the heading 'Administration of Foreign Affairs, Diplomatic and Consular Programs' in title IV of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277) (113 Stat. 2801-2891) are made available, upon the enactment of this Act, to the Office of Defense Trade Controls of the Department of State and to the Office of the Director of National Intelligence, to carry out the purposes of this title.

"(b) DEFENSE TRADE REGULATION AGENCY.—The Secretary of Defense shall take the necessary steps to ensure that, in any fiscal year, adequate resources are allocated to the functions of the Defense Trade Control System of the Department of Defense relating to the review of export license applications so as to ensure that those functions are performed in a thorough and timely manner.


"3820. SECURITY IN CONNECTION WITH SATELLITE EXPORT LICENSING

"As a condition of the export licenses any satellite to be launched in a country subject to section 314 of the Office of Foreign Economic and Industrial Development Act of 1972 (22 U.S.C. 2772) (22 U.S.C. 2776 note), the Secretary of State shall require the following:

"(1) That the transfer of control plan required by section 314(a)(3) of the Strom Thurman National Defense Authorization Act for Fiscal Year 1999 (22 U.S.C. 2776 note) be prepared by the Department of Defense and the exporter, and that the plan set forth enhanced security arrangements for the launch of the satellite, both before and during launch operations.

"(2) That each person providing security for the launch of that satellite—

"(A) report directly to the launch monitor with regard to issues relevant to the technology transfer control plan;

"(B) have received appropriate training in the International Traffic in Arms Regulations (seeft. 2(2) of the Export-Import Bank Act of 1978 (22 U.S.C. App. 2403) or other applicable law, to have repeatedly provided support for acts of international terrorism;

"(C) any country that—

"(A) has detonated a nuclear explosive device (as defined in section 882a of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 653a)), and

"(B) is not a member of the North Atlantic Treaty Organization; and

"(D) any entity that—

"(A) is engaged in international terrorism or activities in preparation thereof; or

"(B) is directed or controlled by the government of a country described in paragraph (1) or (2).

"3820. RESOURCES FOR EXPORT LICENSING FUNCTIONS

"(a) OFFICE OF DEFENSE TRADE CONTROLS.—

"The Secretary of State shall take the necessary steps to ensure that those funds made available under the heading 'Administration of Foreign Affairs, Diplomatic and Consular Programs' in title IV of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277) (113 Stat. 2801-2891) are made available, upon the enactment of this Act, to the Office of Defense Trade Controls of the Department of State and to the Office of the Director of National Intelligence, to carry out the purposes of this title.

"(b) DEFENSE TRADE REGULATION AGENCY.—The Secretary of Defense shall take the necessary steps to ensure that, in any fiscal year, adequate resources are allocated to the functions of the Defense Trade Control System of the Department of Defense relating to the review of export license applications so as to ensure that those functions are performed in a thorough and timely manner.
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"SEC. 1408. ENHANCED MULTILATERAL EXPORT CONTROLS"

(a) New International Controls.—The President shall seek to establish new enhanced international controls on technology transfers that threaten international peace and United States national security.

"SEC. 1409. SHARING AND COLLECTING INFORMATION.—The President shall take appropriate actions to improve the sharing of information by nations that are major exporters of technology so that the United States can track movements of technology covered by the Wassenaar Arrangement and enforce technology control and re-export requirements for such technology.

(b) Wassenaar Arrangement.—As used in this section, the term 'Wassenaar Arrangement' means the multilateral export control regime covering conventional arms and dual-use goods and technologies that was agreed to by 30 co-founding countries in July 1996 and began operation in September 1996.

"SEC. 1410. ENHANCEMENT OF ACTIVITIES OF DEFENSE DUAL-USE ACTIVITY REVIEW PANEL"

(a) In General.—Not later than 180 days after the date of the enactment of this Act (Oct. 5, 1996), the Secretary of Defense shall prescribe regulations that—

(1) authorize the personnel of the Defense Threat Reduction Agency (DTRA) who monitor satellite launch campaigns overseas to suspend such campaigns at any time if the suspension is required for purposes of the national security of the United States;

(2) ensure that personnel assigned as space launch campaign monitors are provided sufficient training and have adequate experience in the regulations prescribed by the Secretary of State known as the FTA and have significant experience and expertise with satellite technology, launch vehicle technology, and launch operations technology;

(3) ensure that adequate numbers of such monitors are assigned to space launch campaigns so that 24-hr, 7-day per week coverage is provided;

(4) take steps to ensure, to the maximum extent practicable, the continuity of service by monitors for the entire space launch campaign period (from satellite manufacturing to launch and, if necessary, completion of a launch failure analysis);

(5) adopt measures designed to make service as a space launch campaign monitor an attractive career opportunity;

(6) allocate funds and other resources to the Agency at levels sufficient to prevent any shortfall in the number of such personnel;

(7) establish mechanisms in accordance with the provisions of section 1344(a)(2)(A) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 115 Stat. 2716; 32 U.S.C. 267b) that provide that—

(A) the payment to the Department of Defense by the person or entity receiving the launch monitoring services concerned, before the beginning of each fiscal year, of an amount equal to the amount estimated to be required by the Department to monitor the launch campaigns during that fiscal year;

(B) the reimbursement of the Department of Defense, at the end of each fiscal year, for amounts expended by the Department in monitoring the launch campaigns in excess of the amounts provided under subparagraph (A); and

(C) the reimbursement of the person or entity receiving the launch monitoring services if the amount provided under subparagraph (A) exceeds the amount actually expended by the Department of Defense in monitoring the launch campaigns;

(8) review and improve guidelines on the scope of permissible discussions with foreign persons regarding technology and technical information, including the technology and technical information that should not be included in such discussions.

(9) provide, in consultation with other Federal agencies, on at least an annual basis, briefings to the officers and employees of United States commercial satellite entities on United States export license standards, guidelines, and restrictions, and encourage such officers and employees to participate in such briefings;

(10) establish a system for—

(A) the preparation and filing by personnel of the Agency who monitor satellite launch campaigns overseas of detailed reports of all relevant activities observed by such personnel in the course of monitoring such campaigns;

(B) the systematic archiving of reports filed under subparagraph (A); and

(C) the preservation of such reports in accordance with applicable laws and regulations;

(11) establish a counterintelligence program within the Agency as part of its satellite launch monitoring program.

(12) ANNUAL REPORT ON IMPLEMENTATION OF SATellite TECHNOLOGY SAFEGUARDS.—(1) The Secretary of Defense and the Secretary of State shall submit to Congress each year, as part of the annual report for that year under section 1544(a)(6) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261; 32 U.S.C. 2778 note), the following

(A) a summary of the satellite launch campaigns and related activities monitored by the Defense Threat Reduction Agency during the preceding fiscal year;

(B) a description of any license violations or violations of conditions that may have occurred during such campaigns and activities; and

(C) a description of the personnel, funds, and other resources dedicated to the satellite launch monitoring program of the Agency during that fiscal year.

(2) Each report under paragraph (1) shall be submitted in classified form.

SEC. 1411. TIMELY NOTIFICATION OF LICENSING DECISIONS BY THE DEPARTMENT OF STATE

Not later than 45 days after the date of the enactment of this Act (Oct. 5, 1996), the Secretary of State shall prescribe regulations to provide timely notice to the manufacturer of a commercial satellite of United States origin of the final determination of the decision on the application for a license involving the overseas launch of such satellite.

"SEC. 1412. ENHANCED INTELLIGENCE CONSULTATION ON SATELLITE LICENSE APPLICATIONS"

(a) Consultation During Review of Applications.—The Secretary of State and Secretary of Defense, as appropriate, shall consult with the Director of Central Intelligence during the review of any application for a license involving the overseas launch of a commercial satellite of United States origin. The purpose of the consultation is to assess that the launch of the satellite, if the license is approved, will meet the requirements necessary to protect the national security interests of the United States.

(b) Advisory Group.—(1) The Director of Central Intelligence shall establish within the intelligence community an advisory group to provide information and analysis to Congress, and to appropriate departments and agencies of the Federal Government, on the national security implications of granting licenses involving the overseas launch of commercial satellites of United States origin.

(2) The advisory group shall include technically qualified representatives of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the National Air Intelligence Center and the Department of State Bureau of Intelligence and Research and representatives of other elements of the intelligence community with appropriate expertise.
"(c) In addition to the duties under paragraph (1), the advisory board shall—
   "(A) review, on a continuing basis, information relating to transfers of satellite, launch vehicle, or other technology or knowledge with respect to the course of the overseas launch of commercial satellites of United States origin; and
   "(B) analyze the potential impact of such transfers on the space and military systems, programs, or activities of foreign countries.

"(2) The Director of the Nonproliferation Center of the Central Intelligence Agency shall serve as chairman of the advisory group.

"(c)(1) The advisory group shall, upon request (but not less often than annually), submit reports on the matters referred to in paragraphs (1) and (2) to the appropriate committees of Congress and to appropriate departments and agencies of the Federal Government.

"(2) The first annual report under subparagraph (A) shall be submitted not later than one year after the date of the enactment of this Act (Oct. 6, 1999).

"(c) INTELLIGENCE COMMUNITY defined.—In this section, the term 'intelligence community' has the meaning given that term in section 3(d) of the National Security Act of 1947 (50 U.S.C. 403(d))."

"SEC. 142. INVESTIGATIONS OF VIOLATIONS OF EXPORT CONTROLS BY UNITED STATES SATELLITE MANUFACTURERS.

"(a) Notice to Congress of investigations.—The President shall promptly notify the appropriate committees of Congress whenever an investigation is undertaken by the Department of Justice of—
   "(1) an alleged violation of United States export control laws in connection with a commercial satellite of United States origin; or
   "(2) an alleged violation of United States export control laws in connection with an item controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778) that is likely to cause significant harm or damage to the national security interests of the United States.

"(b) Notice to Congress of certain export waivers.—The President shall promptly notify the appropriate committees of Congress whenever an export waiver pursuant to section 202 of the Foreign Relations Authorization Act, Fiscal Years 1999 and 2000 (Pub. L. 105-240) (22 U.S.C. 3151 note) is granted on behalf of any United States person that is the subject of an investigation described in subsection (a). The notice shall include a justification for the waiver.

"(c) Expiration.—The requirement in subsections (a) and (b) shall not apply if the President determines that notification of the appropriate committees of Congress under such subsections would jeopardize an ongoing criminal investigation. If the President makes such a determination, the President shall provide written notice of such determination to the Speaker of the House of Representatives, the minority leader of the Senate, the minority leader of the House of Representatives, and the minority leader of the Senate. The notification shall include a justification for the determination.

"(d) Identification of persons subject to investigation.—The Secretary of State and the Attorney General shall develop appropriate mechanisms to identify, for the purpose of processing export license for commercial satellites, persons who are subject of an investigation described in subsection (a).

"(e) Protection of classified and other sensitive information.—(1) The appropriate committees of Congress shall ensure that appropriate procedures are in place to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is furnished to those committees pursuant to this section.

"(f) Statutory construction.—Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413).

"(g) Definitions.—As used in this section:
   "(1) The term 'appropriate committees of Congress' means the following:
      "(A) The Committee on Armed Services of the Senate, and the Select Committee on Intelligence of the Senate;
      "(B) The Committee on Armed Services, the Committee on Foreign Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.
   "(2) The term 'United States person' means any United States resident or national (other than an individual residing outside the United States and employed by another than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

Memorandum of President of the United States, Jan. 5, 2000, 65 F.R. 2370, delegated to Secretary of Defense the duties and responsibilities of the President under section 142 of Public Law 106-55 and directed Department of Defense to prepare the report required by section 142 with the assistance of Department of State, Department of Commerce, Department of Energy, Department of the Treasury, National Security Agency, National Reconnaissance Office, and Department of Justice. Pursuant to the memorandum, the United States Department of Justice notified the Senate Select Committee on Intelligence, Sept. 22, 2000.

"SEC. 151. SENSE OF CONGRESS.

"(a) In the sense of Congress that—
   "(1) United States national interests must not be placed above United States national security interests;
   "(2) United States foreign policy and the policies of the United States regarding commercial relations with other countries should affirm the importance of observing and adhering to the Missile Technology Control Regime (MTR);
   "(3) the United States should encourage universal observance of the Guidelines to the Missile Technology Control Regime;
   "(4) the exportation or transfer of advanced communication satellites and related technologies from United States sources to foreign recipients should not increase the risks to the national security of the United States;
   "(5) due to the military sensitivity of the technologies involved, it is in the national security interest of the United States that United States satellites and related items be subject to the same export controls that apply under United States law and practices in munitions;

SATELLITE EXPORT CONTROLS

"SEC. 1511. SENSE OF CONGRESS.

"It is the sense of Congress that—
   "(1) United States national interests must not be placed above United States national security interests;
   "(2) United States foreign policy and the policies of the United States regarding commercial relations with other countries should affirm the importance of observing and adhering to the Missile Technology Control Regime (MTR);
   "(3) the United States should encourage universal observance of the Guidelines to the Missile Technology Control Regime;
   "(4) the exportation or transfer of advanced communication satellites and related technologies from United States sources to foreign recipients should not increase the risks to the national security of the United States;
   "(5) due to the military sensitivity of the technologies involved, it is in the national security interest of the United States that United States satellites and related items be subject to the same export controls that apply under United States law and practices in munitions;"
"(0) the United States should not issue any blanket waiver of the suspensions contained in section 602 of the Foreign Relations and Export Administration Act (Public Laws 94-453 and 101-204 (23 U.S.C. 2761 note)), regarding the export of satellites of United States origin intended for launch from a launch vehicle owned by the People's Republic of China;

"(7) the United States should pursue policies that protect and enhance the United States space launch industry; and

"(B) the United States should not export to the People's Republic of China missile equipment or technology that would improve the missile or space launch capabilities of the People's Republic of China.

"SEC. 132. CERTIFICATION OF EXPORTS OF MISSILE EQUIPMENT OR TECHNOLOGY TO CHINA.

"(a) Certification. The President shall certify to the Congress at least 15 days in advance of any export to the People's Republic of China of missile equipment or technology (as defined in section 16 of the Arms Export Control Act (22 U.S.C. 2778)) that:

"(1) such export is not detrimental to the United States space launch industry; and

"(2) the missile equipment or technology, including any indirect technical benefit that could be derived from such export, will not measurably improve the missile or space launch capabilities of the People's Republic of China.

"(B) Exception. The certification requirement contained in subsection (a) shall not apply to the export of missile reconnaissance units and components in manned civilian or satellite equipment or technology that is contained in subsection (a) shall not apply to the export of missile reconnaissance units and components in manned civilian aircraft or supplied as space or replacement parts for such aircraft.


"SEC. 133. SATELLITE CONTROLS UNDER THE UNITED STATES MUNITIONS LIST.

"(a) Control of Satellites on the United States Munitions List. Notwithstanding any other provision of law, all satellites and related items that are on the Commerce Control List of dual-use items in the Export Administration Regulations (15 CFR part 730 et seq.) on the date of enactment of this Act (Oct. 17, 1996) shall be transferred to the United States Munitions List and controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

"(B) Defense Trade Controls Registration Fees.—(Amended section 327 of this title.)

"(c) Effective Date. (1) Subsection (a) shall take effect on March 15, 1996, and shall not apply to any export license issued before such effective date or to any export license application made under the Export Administration Regulations before such effective date.

"(2) The amendments made by subsection (b) (amending section 327 of this title) shall be effective as of October 1, 1996.

"(D) Report. Not later than January 1, 1996, the Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, shall submit to Congress a report containing:

"(1) a detailed description of the plans of the Department of State to implement the requirements of this section, including any organizational changes that are required and any Executive orders or regulations that may be required;

"(2) an identification and explanation of any steps that should be taken to improve the license review process for exports of the satellites and related items described in subsection (a), including measures to share information on license application reviews, and any measures relating to the transparency of the license review process and dispute resolution procedures;

"(3) an evaluation of the adequacy of resources available to the Department of State, including fiscal and personnel resources, to carry out the additional activities required by this section; and

"(4) any recommendations for additional actions, including possible legislation, to improve the export licensing process under the Arms Export Control Act (22 U.S.C. 2761 et seq.) for the satellites and related items described in subsection (a).

"SEC. 1516. NATIONAL SECURITY CONTROLS ON SATELLITE EXPORT LICENSING.

"(a) Actions by the President. Notwithstanding any other provision of law, the President shall take such actions as are necessary to implement the following requirements for improving national security controls in the export licensing of satellites and related items:

"(1) MANDATORY TECHNOLOGY CONTROL PLAN.—All export licenses shall require a technology transfer control plan approved by the Secretary of Defense and an encryption technology transfer control plan approved by the Director of the National Security Agency.

"(2) MANDATORY MONITORS AND REIMBURSEMENT.—

"(A) Monitoring of Proposed Foreign Launch of Satellites. If any proposed foreign launch of a satellite involves the United States, the President shall monitor all aspects of the launch in order to ensure that no unauthorized transfer of technology occurs, including technical assistance and technical data. The costs of such monitoring services shall be fully reimbursed to the Department of Defense by the person or entity receiving such services. All reimbursements received under this subparagraph shall be credited to current appropriations available for the payment of the costs incurred in providing such services.

"(B) Contracts and monitoring. The monitoring under subparagraph (A) shall cover, but not be limited to:

"(i) technical discussions and activities, including the design, development, operation, maintenance, modification, and repair of satellites, satellite components, missiles, other equipment, launch facilities, and launch vehicles;

"(ii) satellite processing and launch activities, including launch preparation, satellite transportation, integration of the satellite with the launch vehicle, testing and checkout prior to launch, satellite launch, and return of equipment to the United States;

"(iii) activities relating to launch failure, delay, or cancellation, including post-launch failure investigations; and

"(iv) all other aspects of the launch.

"(3) MANDATORY LICENSES FOR CRASH-INVESTIGATIONS. In the event of the failure of a launch from a foreign country of a satellite of United States origin:

"(A) the activities of United States persons or entities in connection with any investigation of the failure are subject to the controls established under section 38 of the Arms Export Control Act (22 U.S.C. 2778), including requirements for licenses issued by the Secretary of State for participation in that investigation;

"(B) officials of the Department of Defense shall conduct all activities associated with the investigation to ensure against unauthorized transfer of technical data or services; and

"(C) the Secretary of Defense shall establish and implement a technology transfer control plan for the conduct of the investigation to prevent the transfer of information that could be used by the foreign country to improve its missile or space launch capabilities.

"(4) MANDATORY NOTIFICATION AND CERTIFICATION. All technology transfer control plans for satellites or related items shall require any United States person or entity involved in the export of a satellite of United States origin or related items to notify the Department of Defense in advance of all meetings and interactions with any foreign person or entity providing launch services and require the United States person or entity to certify after the launch that it has complied with this notification requirement.

"(5) MANDATORY INTELLIGENCE COMMUNITY REVIEW. The Secretary of Commerce and the Secretary of
State shall provide to the Secretary of Defense and the Director of Central Intelligence copies of all export license applications and technical assistance agreements submitted for approval in connection with launches in foreign countries of satellites to verify the legitimacy of the stated end-user or end-users.

(6) MANDATORY SHARING OF APPROVED LICENSES AND AGREEMENTS.—The Secretary of State shall provide copies of all approved export licenses and technical assistance agreements associated with launches in foreign countries of satellites to the Secretaries of Defense and Energy, the Director of Central Intelligence, and the Director of the Arms Control and Disarmament Agency.

(7) MANDATORY NOTIFICATION TO CONGRESS ON L-LICENSES.—Upon issuing a license for the export of a satellite or related items for launch in a foreign country, the head of the department or agency issuing the license shall so notify Congress.

(8) MANDATORY RECORDING ON MONITORING ACTIVITIES.—The Secretary of Defense shall provide to Congress an annual report on the monitoring of all launches in foreign countries of satellites of United States origin.

(9) ESTABLISHMENT OF PERFORMANCE PROGRAM.—The Secretary of Defense shall establish a program for recruiting, training, and maintaining a staff dedicated to monitoring launches in foreign countries of satellites and related items.

(10) EMERGENCY.—This section shall not apply to the export of a satellite or related items for launch in, or by nationals of, a country that in a member of the North Atlantic Treaty Organization or that is a major non-NATO ally of the United States.

(11) EFFECTIVE DATE.—The President shall take the steps required to implement this section not later than 45 days after the date of the enactment of this Act (Oct. 17, 1999).

§805. REPORT ON EXPORT OF SATELLITES FOR LAUNCH BY PEOPLE'S REPUBLIC OF CHINA.

(1) REQUIREMENT FOR REPORT.—Each report to Congress submitted pursuant to subsection (2) of section 962 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 2761 note; Public Law 101-246) to waive the restrictions contained in subsection (a) of that section on the export to the People's Republic of China of any satellite of United States origin or related items shall be accompanied by a detailed justification setting forth the following:

(a) A detailed description of all satellite sensitive characteristics integrated within, or associated with, the satellite.

(b) An estimate of the number of United States civilian contract personnel expected to be needed in country to carry out the proposed satellite launch.

(c) A detailed description of the United States Government's plan to monitor the proposed satellite launch to ensure that no unauthorized transfer of technology occurs, together with an estimate of the number of officers and employees of the United States that are expected to be needed in country to carry out monitoring of the proposed satellite launch.

(d) The estimated cost to the Department of Defense of monitoring the proposed satellite launch and the amount of each cost that is to be reimbursed to the department.

(e) The reasons why the proposed satellite launch is in the national security interest of the United States.

(f) The impact of the proposed export on employment in the United States, including the number of new jobs created in the United States, on a State-by-State basis, as a direct result of the proposed export.

(g) The number of existing jobs in the United States that would be lost, on a State-by-State basis, as a direct result of the proposed export not being licensed.

(2) USE.—In this section, the term 'militarily sensitive characteristics' includes antijamming capability, antennas, crosslinks, baseband processing, encryption devices, radiation-hardened devices, space vehicles, guidance systems, pointing accuracy, laser motors, and other such characteristics as are specified by the Secretary of Defense.

§810. RELATED ITEMS DEFINED.

In this title, the term 'related items' means the satellite fuel, ground support equipment, test equipment, payload adapter or interface hardware, replacement parts, and non-embodied solid propellant rocket engine transfer engines described in the report submitted to Congress by the Department of State on February 6, 1998, pursuant to section 383 of the Arms Export Control Act (22 U.S.C. 2781).
By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of Title 5, United States Code, I hereby delegate to you the functions of the President under section 102 of the National Defense Authorization Act for Fiscal Year 1990 (NDAA), in the performance of your responsibility under this memorandum, you shall consult, as appropriate, the heads of other executive departments and agencies.

You are authorized and directed to publish this determination in the Federal Register.

Barack Obama.

LANDMINES EXPORT MORATORIUM


"(a) FINDINGS.—The Congress makes the following findings:

"(1) Anti-personnel landmines, which are specifically designed to maim and kill people, have been used indiscriminately and in grossly increasing numbers, primarily in insurgencies in poor developing countries. Noncombatant civilians, including boys and girls, have been the primary victims.

"(2) Unlike other military weapons, landmines often remain unexploded and undiscovered after conflict has ended, causing suffering to civilian populations. In Afghanistan, Cambodia, Laos, Vietnam, and Angola, tens of millions of unexploded landmines have rendered tracts of land uninhabitable. In Afghanistan, an estimated hundreds of thousands of people have been maimed and killed by landmines during the 13-year civil war. In Cambodia, more than 20,000 people have lost limbs and another 20,000 are being maimed each month from landmines.

"(3) Over 60 countries are known to manufacture landmines, and landmines are used by the United States. However, the United States is not a major exporter of landmines. During the past ten years the Department of State has approved ten licenses for the commercial export of anti-personnel landmines valued at $800,000, and during the past five years the Department of Defense has approved the sale of 33,158 anti-personnel landmines valued at $341,415.

"(4) The United States signed, but has not ratified, the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Convention prohibits the indiscriminate use of landmines.

"(5) The United States signed, but has not ratified, the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Convention prohibits the indiscriminate use of landmines.

"(6) The United States signed, but has not ratified, the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Convention prohibits the indiscriminate use of landmines.

"(7) The United States should set an example for other countries in such negotiations, by implementing a one-year moratorium on the sale, transfer, or export of anti-personnel landmines.

"(b) STATEMENT OF POLICY.—(1) It shall be the policy of the United States to seek verifiable international agreements prohibiting the sale, transfer, or export, and further limiting the use, production, possession, and deployment of anti-personnel landmines.

"(2) It is the policy of the Congress that the President should actively seek to negotiate under United Nations auspices or other auspices an international agreement, or a modification of this Convention, to prohibit the sale, transfer, or export of anti-personnel landmines.

"(d) MORATORIUM ON TRANSFERS OF ANTIPERSONNEL LANDMINES ABROAD.—During the 23 year period beginning on October 23, 1992

"(1) no sale may be made or financed, no transfer may be made, and no license for export may be issued, under the Arms Export Control Act (22 U.S.C. 2751 et seq.), with respect to any anti-personnel landmine; and

"(2) no assistance may be provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2101 et seq.), with respect to any anti-personnel landmine.

"(e) DEFINITION.—For purposes of this section, the term 'anti-personnel landmine' means:

"(1) any munition placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or other means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person;

"(2) any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;

"(3) any manually-emplaced munition or device designed to kill, injure, or damage and which is activated by remote control or automatically after a lapse of time.

[Section 864(j) of div. J of Pub. L. 103-161, which directed the amendment of section 1366(c) of Pub. L. 102-113, set out above, by substituting "During the 23 year period beginning on October 23, 1992" for "During the 16 year period beginning on October 23, 1992" before the period at the end, was executed by making the substitution in the introductory provision, to reflect the probable intent of Congress.]

[Section 1000(a)(2) (title V, §1603) of div. B of Pub. L. 108-113, which directed the amendment of section 1366(c) of Pub. L. 108-113, set out above, by substituting "During the 11-year" for "During the five-year", was executed by making the substitution for "During the eight-year".]

ARMS TRANSFERS RESTRAINT POLICY FOR MIDDLE EAST AND PERSIAN GULF REGION


"SEC. 61. FINDINGS.

"The Congress finds that—

"(1) nations in the Middle East and Persian Gulf region, which accounted for over forty percent of the international trade in weapons and related equipment and services during the decade of the 1980's, are the principal market for the worldwide arms trade;

"(2) regional instability, large financial resources, and the desire of arms supplying governments to gain influence in the Middle East and Persian Gulf region, contribute to a regional arms race;

"(3) the continued proliferation of weapons and related equipment and services contribute further to a regional arms race in the Middle East and Persian Gulf region that is politically, economically, and militarily destabilizing;

"(4) the continued proliferation of unconventional weapons, including nuclear, biological, and chemical
weapons, as well as delivery systems associated with those weapons, pose an urgent threat to security and stability in the Middle East and Persian Gulf region;

"(b) the continued proliferation of ballistic missile technologies and ballistic missile systems that are capable of delivering conventional, nuclear, biological, or chemical weapons undermines security and stability in the Middle East and Persian Gulf region;

"(c) future security and stability in the Middle East and Persian Gulf region would be enhanced by establishing a stable military balance among regional powers by restraining and reducing both conventional and unconventional weapons;

"(d) stability, peace, and prosperity in the Middle East and Persian Gulf region are important to the welfare of the international economy and to the national security interests of the United States;

"(e) the development of a multilateral arms transfer and control regime similar to those of the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Chemical Weapons Supplier Group;

"(f) a regime should be developed, implemented, and agreed to through multilateral negotiations, including under the auspices of the 5 permanent members of the United Nations Security Council;

"(g) confidence-building arms control measures such as the establishment of a centralized arms trade registry at the United Nations, greater multinational transparency on the transfer of defense articles and services prior to a contract, or transfer, or cooperative verification measures, advance notification of military exercises, information exchanges, on-site inspections, and creation of a Middle East and Persian Gulf Conflict Prevention Center, are important to implement an effective multilateral arms transfer and control regime;

"(h) as an interim step, the United States should consider introducing, during the ongoing negotiations on confidence-building measures at the Conference on Security and Cooperation in Europe (CSCE) [now the Organisation for Security and Co-operation in Europe (OSCE)], a proposal regarding the international exchange of information, on an annual basis, on the sale and transfer of major military equipment, particularly to the Middle East and Persian Gulf region; and

"(i) such a regime should be applied to other regions with the ultimate objective of achieving an effective global arms transfer and control regime, implemented and enforced through the United Nations Security Council, that:

"(A) includes a legacy of humanitarian and developmental objectives with security objectives in Third World countries, particularly the poorest of the poor countries; and

"(B) persuades countries selling military equipment and services to consider the following factors before making conventional arms sales: the security needs of the purchasing countries, the level of defense expenditures by the purchasing countries, and the level of indigenous production of the purchasing countries.

"SEC. 402. MULTILATERAL ARMS TRANSFER AND CONTROL REGIME.

"(a) Implementation of the regime.—

"(1) Continuing negotiations.—The President shall continue negotiations among the 5 permanent members of the United Nations Security Council and commit the United States to a multilateral arms transfer and control regime for the Middle East and Persian Gulf region.

"(2) Prohibiting a temporary moratorium during negotiations.—In the context of these negotiations, the President should propose to the 5 permanent members of the United Nations Security Council a temporary moratorium on the sale and transfer of major military equipment to nations in the Middle East and Persian Gulf region until such time as the 5 permanent members agree to a multilateral arms transfer and control regime.

"(b) Purposes of the regime.—The purposes of the multilateral arms transfer and control regime should be—

"(1) to slow and limit the proliferation of conventional weapons in the Middle East and Persian Gulf region with the aim of preventing destabilizing transfers by—

"(A) controlling the transfer of conventional major military equipment;

"(B) achieving transparency among arms suppliers nations through advanced notification of agreements to, or transfer of, conventional major military equipment; and

"(C) developing and adopting common and comprehensive control guidelines on the sale and transfer of conventional major military equipment to the region;

"(2) to halt the proliferation of unconventional weapons, including nuclear, biological, and chemical weapons, as well as delivery systems associated with these weapons and the technologies necessary to produce or assemble such weapons;

"(3) to limit and halt the proliferation of ballistic missile technologies and ballistic missile systems that are capable of delivering conventional, nuclear, biological, or chemical weapons;

"(4) to maintain the military balance in the Middle East and Persian Gulf region through reductions of conventional weapons and the elimination of unconventional weapons; and

"(5) to promote regional arms control in the Middle East and Persian Gulf region.

"(c) Achieving these purposes of the regime.—

"(1) Controlling Proliferation of Conventional Weapons.—In order to achieve the purposes described in subsection (b)(1), the United States should pursue the development of a multilateral arms transfer and control regime which includes—

"(A) greater information-sharing practices among supplier nations regarding potential arms sales to all nations of the Middle East and Persian Gulf region;

"(B) applying, for the control of conventional major military equipment, procedures already developed by the International Atomic Energy Agency, the Multilateral Coordinating Committee on Export Controls (MCC), the Multilateral Coordinating Committee on Export Control (CONECCO), and the Missile Technology Control Regime (MTCR); and

"(C) other strict controls on the proliferation of conventional major military equipment to the Middle East and Persian Gulf region.

"(2) Halting Proliferation of Unconventional Weapons.—In order to achieve the purposes described in subsections (b)(2) and (3), the United States should build on existing and future agreements among supplier nations by pursuing the development of a multilateral arms transfer and control regime which includes—

"(A) limitations and controls contained in the Enhanced Proliferation Control Initiative;

"(B) limitations and controls contained in the Missile Technology Control Regime (MTCR);

"(C) guidelines followed by the Australia Group on chemical and biological arms proliferation;

"(D) guidelines adopted by the Nuclear Suppliers Group (the London Group); and

"(E) other appropriate controls that serve to halt the flow of unconventional [unconventional] weapons to the Middle East and Persian Gulf region.

"(3) Promotion of Regional Arms Control Agreements.—In order to achieve the purposes described in subsections (b)(3) and (4), the United States should pursue with nations in the Middle East and Persian Gulf region—

"(A) the maintenance of the military balance within the region, while eliminating nuclear, bio-
logical, and chemical weapons and associated delivery systems, and ballistic missiles; and
(b) the implementation of confidence-building and security-building measures, including advance notification of certain ground and aerial military exercises in the Middle East and the Persian Gulf; and
(c) other useful arms control measures.

"(4) MAJOR MILITARY EQUIPMENT.—As used in this title, the term 'major military equipment' means—
(1) air-to-air, air-to-surface, and surface-to-surface missiles and rockets;
(2) turbine-powered military aircraft;
(3) attack helicopters;
(4) main battle tanks;
(5) submarines and major naval surface combatants;
(6) nuclear, biological, and chemical weapons; and
(7) other defense articles and defense services as the President may determine.

"SEC. 406. LIMITATION ON UNITED STATES ARMS SALES TO THE REGION.

"(a) Commitments to the relevant congressional committees that the President has undertaken good faith efforts to convene a conference for the establishment of an arms supplier regime having elements described in section 406; and
"(b) submit to the relevant congressional committees a report setting forth a United States plan for leading the world community in establishing such a multilateral regime to restrict transfers of advanced conventional and unconventional arms to the Middle East and Persian Gulf region.

"SEC. 408. REPORTS TO THE CONGRESS.

"(a) Quarterly Reports.—Beginning on January 15, 1992, and quarterly thereafter through October 15, 1993, the President shall submit to the relevant congressional committees a report—
(1) describing the progress in implementing the purposes of the multilateral arms transfer and control regime described in section 406; and
(2) describing the President's efforts to take the steps necessary to accomplish the objectives of the regime.

"(b) Initial Report on Transfers and Regional Military Balance.—Not later than 60 days after the date of enactment of the International Cooperation Act of 1991 or the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, whichever is enacted first, the President shall submit to the relevant congressional committees a report—
(1) documenting all transfers of conventional and unconventional arms by any nation to the Middle East and Persian Gulf region over the previous calendar year, including sources, types, and recipient nations of weapons; and
(2) analyzing the current military balance in the region, including the effects on the balance of transfers documented under paragraph (1).
Ex. Ord. No. 15258, § 3, July 13, 1965, 30 F.R. 26767, (2) commercial sales of defense articles or defense services licensed or approved under section 2770 of this title; or export of arms or of defense services pursuant to a treaty referred to in section 2770(1)(C)(1) of this title; to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to assure 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) Presidential regulation

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 chapter.

(c) Allocation to contract; improper influence

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 2776 or section 2780 of this title, 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) Availability of records to Congress and Federal agencies

(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.


References in Text

This chapter, referred to in subsec. (b), was in the original "this Act," meaning Pub. L. 90-639, Oct. 22,
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1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111–266, which directed amendment of subsec. (a) by adding par. (3) at the end, was executed by adding par. (3) after par. (2) to reflect the probable intent of Congress.


REPEALS

Section effective 90 days after June 30, 1976, see section 445(c) of Pub. L. 94–329, set out as note under section 2776 of this title.

DELEGATION OF Functions

Functions of President under subsec. (b) of this section delegated to Secretary of State, with Secretary of State required to consult with Secretary of Defense to avoid interference in application of Department of Defense regulations to sales made under section 2799 of this title, by section 1(m) of Pub. L. 104–411, as amended, set out as a note under section 2753 of this title.

§ 2779a. Prohibition on incentive payments

(a) In general

No United States supplier of defense articles or services sold or licensed under this chapter or exported pursuant to a treaty referred to in section 2778(1)(C)(Y)(1) of this title, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale or export of any defense article or defense service to a foreign country, make any incentive payments for the purpose of agreement with that country.

(b) Civil penalties

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) Presidential authority

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 [50 U.S.C. App. 2401(c), (d), (e), (f)], and section 12(a) of such Act [50 U.S.C. App. 2411(a)], subject to the same terms and conditions as are applicable to such powers under that Act [50 U.S.C. App. 2401 et seq.], except that section 12(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 chapter and regulations prescribed therefore, and further may commence a civil action to recover such civil penalties, and except further that notwithstanding subsection 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) Definitions

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, 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 payment" 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

(II) owned or controlled in fact by individuals described in subparagraph (A) or by an entity described in clause (I).


REFERENCES IN TEXT

This chapter, referred to in subsec. (a) and (c), was in the original "this Act", meaning Pub. L. 90–628, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.


For complete classification of this Act to the Code, see Short Title note set out under section 9001 of Title 50, Appendix, and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–266 inserted "or exported pursuant to a treaty referred to in section 2778(1)(C)(Y)(1) of this title" after "under this chapter".

1989—Subsec. (a). Pub. L. 100–113, §1050(a)(7) [title XII, §1230(a)], inserted "or licensed" after "sold" and "or export" after "sale".

Subsec. (c). Pub. L. 100–113, §1050(a)(7) [title XIII, §1230], inserted "section 12(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 chapter and...".
regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that" after "except that", Subsec. (d)(3)(B)(i), Pub. L. 90-191, §1000(a)(7) (title XI) 28 U.S.C. 2569(b), inserted "or by an entity described in clause (l) after "subparagraph (A)".

**DEALINGS OF FUNCTIONS**

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1964, 59 F.R. 40365, set out as a note under section 2776(b) of this title.

§ 2780. Transactions with countries supporting acts of international terrorism

(a) **Prohibited transactions by 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) of this section under the authority of the chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h) of this section). 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) of this section, 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 chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h) of this section), with respect to the acquisition of any munitions item by a country described in subsection (d) of this section. 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) of this section. 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 2763(a) of this title, under section 566(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2341(a)], under the regulations issued to carry out section 2778 of this title, or under any other law (except as provided in subsection (h) of this section), to any transfer of any munitions item to a country described in subsection (d) of this section. 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) of this section, 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 2778 of this title for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or reproduction agreement) of any munitions item to a country described in subsection (d) of this section. 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) of this section, 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) of this section. This paragraph applies with respect to activities undertaken—

   (A) by any department, agency, or other instrumentalit 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) of this section.

   (B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d) of this section.

   (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) of this section if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d) of this section.

   (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) of this section 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 States 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 (d)(9)(A) or (B) of this section. To the extent provided in regulations issued under subsection (d)(9)(D) of this section, paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States 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) of this section; and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d) of this section, except to the extent that subparagraph (D) of subsection (b)(1) of this section provides otherwise.

(d) 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, willfully aid or abet an individual or groups in acquiring uncontrolled special nuclear material, or willfully aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.

(e) Publication of determinations

Each determination of the Secretary of State under subsection (d) of this section shall be published in the Federal Register.

(f) Rescission

(1) A determination made by the Secretary of State under subsection (d) of this section 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) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2)(A) No rescission under paragraph (1)(B) of a determination under subsection (d) of this section 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 2069(c) of the Arms Export Control Act pursuant to the report submitted to the Congress on [year] 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 2069(c) of the Department of Defense Appropriations Act (as contained in Public Law 98-476), 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 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—

(A) consults with the Committee on Foreign Affairs 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.

(b) 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 chapter, the provisions of this section shall apply notwithstanding any other provision 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 (22 U.S.C. 2364(a)) is used to permit a transaction under that Act (22 U.S.C. 2161 et seq.) or this chapter 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 $2,000,000, imprisoned not more than 20 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 (50 U.S.C. App. 2410(c), (e), (g), 2411(a)) subject to the same terms and conditions as are applicable to such powers under that Act (50 U.S.C. App. 2401 et seq.), 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 chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000.

(ii) 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;

(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;

(4) the term "nuclear explosive device" has the meaning given that term in section 6805(4) of this title; and

(5) the term "unsafe and special nuclear material" has the meaning given that term in section 6805(3) of this title.


References in Text

This chapter, referred to in subsections (a)(2), (3), and (4), was in the original "this Act", and this chapter, referred to in subsection (a)(2), was in the original "the Arms Export Control Act", both of which mean Pub. L. 99–459, Oct. 24, 1986, 102 Stat. 4321, as amended, which is §5609(a) in original. Probably should be capitalized.
classified principally to this chapter. For complete classification of this Act to the Codes, see Short Title note set out under section 2951 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsection (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§131 et seq.) of this title. For complete classification of this Act to the Codes, see Short Title note set out under section 2951 of this title and Tables.

Section 49(d) of the Arms Export Control Act, referred to in subsection (C)(2)(A), is classified to subsection (d) of this section.

Paragraphs (3) through (7) of section 906(c) of the Department of Defense Appropriations Act, as contained in Table Law 98–473, referred to in subsection (C)(3)(A), is Pub. L. 100–628, title I, §101(b) (title VIII, §809(c)(6)(C)), Oct. 12, 1988, 98 Stat. 1901, 1986, 1987, which is not classified to the Codes.

The National Security Act of 1947, referred to in subsection (b), is acts July 26, 1947, ch. 343, 61 Stat. 496, as amended. Title V of the National Security Act of 1947 is classified generally to subchapter III (§113 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Codes, see Short Title note set out under section 2951 of this title.

The Export Administration Act of 1975, referred to in subsection (c), is Pub. L. 93–539, Sept. 29, 1976, 90 Stat. 504, as amended, which is classified principally to section 546 et seq. of the Appendix to Title 50. For complete classification of this Act to the Codes, see Short Title note set out under section 2951 of the Appendix to Title 50 and Tables.

AMENDMENTS
2001—Subsec. (1). Pub. L. 111–116 substituted ‘‘90 years’’ for ‘‘10 years’’.
2002—Subsec. (d). Pub. L. 107–228 substituted ‘‘group’’ for ‘‘groups or’’ in second sentence and inserted before period at end ‘‘, or willfully aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons’’.
1996—Subsec. (b). Pub. L. 104–133 inserted section 110(c)(2)(D) 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 chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that after “except that’’.
1986—Subsec. (c). Pub. L. 100–203, §335(a)(2)(A), inserted at end ‘‘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 group in acquiring unclassified special nuclear material’’.
1985—Subsec. (d). Pub. L. 100–203, §§235(a)(2)(A), amended subsection (c) by striking ‘‘and’’ after the semicolon in parenthetical and substituting a semicolon for the period at the end of parenthetical, and adding parenthetical and (d).
1981—Subsec. (c). Pub. L. 96–299, §322, designated existing provisions as subpar. (1), redesignated former subpar. (1) as subpar. (A) and former subpar. (A) to (C) as subpar. (I), respectively, redesignated former par. (2) as subpar. (B) and former subpar. (A) and (B) as subpar. (I) and (II), respectively, and added parenthetical. So much of Pub. L. 96–299, §323, as redesignated subpar. (C) of former parenthetical of subpar. (C)(1) could not be executed because no such subpar. (C) had been enacted.
1978—Pub. L. 95–122 substituted ‘‘transactions with the United States’’ for ‘‘transactions with the United States’’ in section title and amended text generally. Prior to amendment, text read as follows:

(a) Transactions.—Except as provided in subsection (b) of this section, no transactions with the United States pursuant to section 809(a)(1)(A) of the Export Administration Act of 1979 (22 U.S.C. 2772(a)(1)(A)), has repeatedly provided support for note of international terrorism.

(b) Waiver.—The President may waive the prohibition contained in subsection (a) of this section 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.”

DEFERRED EFFECTIVE DATE OF 1984 AMENDMENT
Amendment by Pub. L. 94–166 effective 60 days after Apr. 30, 1984, see section 381(a) of Pub. L. 94–166, set out as an Effective Date note under section 2951 of this title.

§ 2781. 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 chapter 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) of this section with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

§ 2782. 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 chapter 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 2767(g)(7) of this title (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 respect to use, transfer, 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) of this section, 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 July 21, 1996, and annually thereafter as a part of the annual congressional presentation documents submitted under section 264 of the Foreign Assistance Act of 1961 (22 U.S.C. 2394), 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 and the numbers, range, and findings of end-use monitoring of United States transfers of small arms and light weapons.

(d) Third country transfers

For purposes of this section, defense articles and defense services sold, leased, or exported under this chapter or the Foreign Assistance Act of 1961 (22 U.S.C. 2321 et seq.) includes defense articles and defense services that are transferred to a third country or other third party.

(2) Considerations in procurement outside United States

In carrying out this chapter, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles or defense services 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 chapter, there shall be shall be taken into consideration (A) the extent to which the proposed sale damages or injures the military forces of the United States, (B) the extent to which the proposed sale damages or injures the military forces of the United States, (C) the extent to which the proposed sale damages or injures the military forces of the United States, (D) the extent to which the proposed sale damages or injures the military forces of the United States, (E) the extent to which the proposed sale damages or injures the military forces of the United States, (F) the extent to which the proposed sale damages or injures the military forces of the United States, (G) the extent to which the proposed sale damages or injures the military forces of the United States, (H) the extent to which the proposed sale damages or injures the military forces of the United States, (I) the extent to which the proposed sale damages or injures the military forces of the United States, (J) the extent to which the proposed sale damages or injures the military forces of the United States, (K) the extent to which the proposed sale damages or injures the military forces of the United States, (L) the extent to which the proposed sale damages or injures the military forces of the United States, (M) the extent to which the proposed sale damages or injures the military forces of the United States, (N) the extent to which the proposed sale damages or injures the military forces of the United States, (O) the extent to which the proposed sale damages or injures the military forces of the United States, (P) the extent to which the proposed sale damages or injures the military forces of the United States, (Q) the extent to which the proposed sale damages or injures the military forces of the United States, (R) the extent to which the proposed sale damages or injures the military forces of the United States, (S) the extent to which the proposed sale damages or injures the military forces of the United States, (T) the extent to which the proposed sale damages or injures the military forces of the United States, (U) the extent to which the proposed sale damages or injures the military forces of the United States, (V) the extent to which the proposed sale damages or injures the military forces of the United States, (W) the extent to which the proposed sale damages or injures the military forces of the United States, (X) the extent to which the proposed sale damages or injures the military forces of the United States, (Y) the extent to which the proposed sale damages or injures the military forces of the United States, (Z) the extent to which the proposed sale damages or injures the military forces of the United States.

(b) Information to Congress on credit sales and guarantees

No credit sale shall be extended under section 2768 of this title, and no guarantee shall be issued under section 2769 of this title, in any case involving coproduction or licensed 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 a 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) Availability of funds for procurement outside United States

Funds made available under this chapter may be used solely 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) Responsibility of Secretary of Defense with respect to sales and guarantees

(1) With respect to sales and guarantees under sections 2761, 2762, 2763, 2764, 2766, 2768, and 2770 of this title, the Secretary of Defense shall, under the direction of the President, have primary responsibility for:
   (A) the determination of military end-item requirements;
   (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 guarantees.

(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) Revocation and suspension provisions of contracts for sale and export licenses; appropriations for refunds

(1) Each contract for sale entered into under sections 2761, 2762, 2766, and 2770 of this title, and each contract entered into under section 2767(d) of this title, shall provide that such contract may be canceled in whole or in part, or the execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2) Each export license issued under section 2778 of this title 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 chapter.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund money received from purchasers under contracts of sale entered into under sections 2761, 2762, 2766, and 2770 of this title, or under contracts entered into under section 2767(d) of this title, that are canceled or suspended under this subsection to the extent such monies 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) Use of civilian contract personnel in foreign countries

The President shall, to the maximum extent possible and consistent with the purposes of this chapter, use civilian contract personnel in any foreign country to perform defense services sold under this chapter.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act," meaning Pub. L. 90-659, Oct. 22, 1968, 82 Stat. 1331, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2761 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-77 struck out par. (1) designation, struck out "the assessment of the Director of the United States Arms Control and Disarmament Agency as to whether", (A) and (B), and struck out par. (3) which read as follows: "Any proposed sale made pursuant to this chapter 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 dispensed with."

1989—Subsec. (a). Pub. L. 100-236 designated existing provisions as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, amended cl. (2) generally, and added par. (2). Prior to being amended generally, cl. (C) read as follows: "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 escag-
ination of conflict, or prejudice the development of bilateral or multilateral arms control arrangements."


(3) 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) Limitations on funds used for official reception and representation expenses

Not more than $86,500 of the funds derived from charges for administrative services pursuant to section 2761(e)(1)(A) of this title may be used each fiscal year for official reception and representation expenses.

RECEIVED IN TEXT

This chapter, referred to in subsections (a) and (b), was in the original "this Act," meaning Pub. L. 90-638, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2761 of this title and Tables.

AMENDMENTS


1986—Subsec. (b)(1). Pub. L. 99-583, §190(c)(1), inserted "and official reception and representation expenses"

1981—Subsec. (a). Pub. L. 97-359 substituted existing provisions as subsections (a) and added subsection (d).

AMENDMENTS OF 1986


AMENDMENTS OF 1985


DELIMITATION OF FUNCTIONS

Functions of President under subsections (c) and (f) of this section delegated to Secretary of Defense, with concurrence of Secretary of State and Secretary of the Treasury required for any determination proposed under subsection (c) of this section, by section 1 of Pub. L. 101-165, 101 Stat. 157, set out as a note under section 2761 of this title.

§ 2792. Administrative expenses

(a) Availability of funds

Funds made available under other law for the operations of United States Government agencies carrying out functions under this chapter shall be available for the administrative expenses incurred by such agencies under this chapter.

(b) Charges for administrative expenses and official reception and representation expenses

Charges for administrative services calculated under section 2761(e)(1)(A) of this title shall include recovery of administrative expenses and official reception and representation expenses incurred by any department or agency of the United States Government, including any mission or group thereof, in carrying out functions under this chapter 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 2761(a) of this title; and

3. 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) Limitations on funds used for official reception and representation expenses

Not more than $86,500 of the funds derived from charges for administrative services pursuant to section 2761(e)(1)(A) of this title may be used each fiscal year for official reception and representation expenses.

RECEIVED IN TEXT

This chapter, referred to in text, was in the original "this Act," meaning Pub. L. 90-638, Oct. 22, 1966, 82 Stat. 1321, which is classified principally to this chap-
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ter. For complete classification of this Act to the Code, see Short Title note set out in section 2791 of this title and Tables.


SPECIAL APPLICATION OF OTHER PROVISIONS TO THIS CHAPTER

Except for laws specified in this section, other provisions inapplicable to this chapter without a specific reference thereto or to sales of defense articles and defense services under any Act, see section 45(c) of Pub. L. 89-628, set out as a note under section 2791 of this title.

§ 2794. Definitions

For purposes of this chapter, the term—

"excess defense articles" has the meaning provided by section 2469(g) of this title;

(2) "value" means, in the case of an excess defense article, except as otherwise provided in section 2791(a) of this title, 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) "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 the preceding paragraph;

(D) any component or part of any article listed in the preceding paragraph, but does not include merchant vessels or (as defined by the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]) 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), byproduct material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data;

(4) "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 2469(c)(6) of this title), used for the purposes of making military sales, but does not include design and construction services under section 2799 of this title,

(5) "training" includes formal or informal instruction of foreign students in the United States or overseas by officers or employees 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) "major defense equipment" means any item of significant military equipment on the United States Munitions List having a non-recurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000;

(7) "defense articles and defense services" means, with respect to commercial exports subject to the provisions of section 2778 of this title, those items designated by the President pursuant to subsection (a)(1) of such section;

(8) "design and construction services" means, with respect to sales under section 2799 of this title, 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;

(9) "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;

(10) "weapons of mass destruction" has the meaning provided by section 2322(1) of title 50; and

(11) "Sales territory" means a country or group of countries to which a defense article or defense service is authorized to be reexported.


REFERENCES TO TEXT

This chapter, referred to in introductory provisions, was in the original "this Act", meaning Pub. L. 90-629, Oct. 26, 1966, 82 Stat. 1231, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out in section 2791 of this title and Tables.

complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1995—Par. (2). Pub. L. 99-63, §107(b), inserted “except as otherwise provided in section 2761(a) of this title,”.
1979—Par. (3). Pub. L. 96-556 defined “defense article” to include 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.
1976—Par. (3) to (7). Pub. L. 94-128 added pars. (3) to (7).

EFFECTIVE DATE OF 1985 AMENDMENT

SUBCHAPTER V—SPECIAL DEFENSE ACQUISITION FUND

§2795. Fund

(a) Establishment; purposes; special requirements and responsibilities; continuous orders for certain articles and services; articles for narcotics control purposes

(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 subchapter 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 services in anticipation of their transfer pursuant to this chapter, the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services for the funds in the Fund as he may determine. Acquisition under this subchapter 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.

(2) Nothing in this subchapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this chapter or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.).

(3) 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 chapter, the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), or other law.

(4) 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) Collections in Fund

The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 2761(a)(1)(A) of this title 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 (22 U.S.C. 2151 et seq.)) of defense articles and defense services acquired under this subchapter, representing the value of such items calculated in accordance with subparagraph (2) or (C) of section 2761(a)(1) of this title or section 2762 of this title or section 614(m) of the Foreign Assistance Act of 1961 (22 U.S.C. 2404(m)), as appropriate, together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c) Amounts

(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10. 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 defense articles acquired under this subchapter which have not been transferred from the Fund in accordance with this subchapter.

(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.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1) to (3), was in the original “this Act”, meaning Pub. L. 90–629, Oct. 23, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

chapter 23 (§2161 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Amendments

1996—Subsec. (a)(4). Pub. L. 104–184 redesignated subj. par. (a) as entire par. (4) and struck out subj. par. (b) which read as follows: "Each report pursuant to section 2729(b) of this title shall designate the defense articles that have been acquired or are to be acquired pursuant to this paragraph and the defense articles acquired under this subchapter that were transferred for use in narcotics control purposes."


1986—Subsec. (c)(1). Pub. L. 99–435 substituted "section 111(c)" for "section 120(c)".


Subsec. (b). Pub. L. 99–138 amended subsec. (b) generally, so as to read similar to how it read prior to the amendment by Pub. L. 99–58.

Pub. L. 99–93 amended subsec. (b) to read as follows: "The Fund shall consist of collections from sales made under treaties of offer, or transfers made under the Foreign Assistance Act of 1961, of defense articles and defense services acquired under this subchapter (representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 2761(a)(1) of this title or section 2752 of this title 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."

Effective Date of 1965 Amendments

Section 1(b) of Pub. L. 99–138 provided that: "The amendment made by subsection (a) (amending this section) shall take effect as of October 1, 1965."


§2796a Use and transfer of items procured by Fund

(a) Authorization

No defense article or defense service acquired by the Secretary of Defense under this subchapter may be transferred to any foreign country or international organization unless such transfer is authorized by this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2161 et seq.], or other law.

(b) Temporary use

The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this subchapter 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) Storage, maintenance and other costs

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 subchapter 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 2792(b) of this title.


Reference Text

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 90–628, Oct. 22, 1968, 82 Stat. 1351, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2761 of this title and Tables.


Delegation of Functions

Functions of President under subsec. (b) of this section delegated to Secretary of Defense by section 1(q) of Ex. Ord. No. 11905, Jan. 18, 1977, 42 F.R. 4511, as amended, set out as a note under section 2752 of this title.


SUBCHAPTER VI—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

§2796. Leasing authority

(a) Preconditions

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 chapter;

(2) he determines that the articles are not for the time needed for public use;

(3) 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) 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—
(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) shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communications or electronics interface projects.

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. The President may waive the requirement of paragraph (4) 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 Committees on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committees 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 fiscal year—the current fiscal year 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) Duration; termination

(1) Each lease agreement under this section shall be for a fixed duration which may not exceed (A) five years, and (B) a specified period of time required to complete major refurbishment work of the leased articles to be performed prior to the delivery of the leased articles, 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.

(2) In this subsection, the term "major refurbishment work" means work for which the period of performance is 6 months or more.

(c) Applicable statutory authorities

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 subchapter or chapter 2 of part II of the Foreign Assistance Act of 1961 (28 U.S.C. 2311 et seq.), and may not be leased to a foreign country or international organization under the authority of section 2397 of title 10.

Footnote:
10 In original. The words "the fiscal year" probably should not appear.

References in text

This chapter, referred to in subsection (a)(1), was in the original "this Act", meaning Pub. L. 90-529, Oct. 19, 1968, 82 Stat. 1221, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsection (c), is Pub. L. 90-156, Sept. 4, 1961, 75 Stat. 528, as amended. Chapter 2 of part II of this Act is classified generally to part II (§2311 et seq.) of subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of this title and Tables.

Amendments

2002—Subsec. (b). Pub. L. 107-228 redesignated existing provisions as par. (4), substituted "which may not exceed (A) five years, and (B) a specified period of time required to complete major refurbishment work of the leased articles to be performed prior to the delivery of the leased articles," for "of not to exceed five years", and added par. (2).


1996—Subsec. (a). Pub. L. 104-164, §155(a), struck out ", or to any defense article which has passed three-quarters of its normal service life", after "electronic interface projects" in second sentence and inserted after second sentence "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 de-
terms that so, as is important to the national security
Subsec. (a)(4). Pub. L. 194-164, §145, substituted "and, if the articles are lost or destroyed while leased-
"(A) in the event the United States intends to re-
place the articles lost or destroyed, the replacement
cost (less any depreciation in the value) of the arti-
cles; 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 for
"and the replacement cost (less any depreciation in
the value) of the articles if the articles are lost or de-
stroyed while leased"
Pub. L. 190-236 struck out "and" at end of par. (2),
added par. (3), redesignated former par. (3) as (4), and
substituted "paragraph (4)" for "paragraph (3)" in two
places in provisions following par. (4).
Amendment note above.
1991—Subsec. (a). Pub. L. 192-145, §118, as added by
See Codification note above.
inserted provision authorizing the President to waive the
requirements of par. (3) with respect to a lease which
is made in exchange for the lease for a lease on sub-
stantially reciprocal terms of defense articles for the
Department of Defense and providing exceptions to
such waiver authority.

EFFECTIVE DATES OF 1996 AMENDMENTS
Section 153(a)(b) of Pub. L. 194-114 provided that: "The
disposition in section 6(a) of the Arme Export
Control Act, as added by subsection (a)(2) [22 U.S.C.
3786(a)], shall apply only with respect to a defense article
leased on or after the date of the enactment of this
Act [July 21, 1996]."

DELEGATION OF FUNCTIONS
Functions of President under this section delegated to
Secretary of Defense by section 1(c) of Ex. Ord. No. 11689, Jan. 18, 1977, 39 F.R. 6111, as amended, set out as a
note under section 2813 of this title.

§ 2789a. Reports to Congress
(a) Written certification to Speaker of the House
and chairmen of Congressional committees
Before entering into or renewing any agreement
with a foreign country or international
organization to lease any defense article under this
subchapter, or to loan any defense article under chapter 2
of part II of the Foreign Assistance
Act of 1961 [22 U.S.C. 2311 et seq.], 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 Relations 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, in-
cluding an explanation of why the defense arti-

cle is being leased or loaned rather than sold
under this chapter.

(b) Waiver determination of emergency
The President may waive the requirements of
this section (and in the case of an agreement de-
scribed in section 2789a of this title, may waive
the provisions of that section) if his states in
his certification, 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.

(c) Transmission of certification
The certification required by subsection (a) of
this section 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, the
Republic of Korea, Israel, 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 organiz-
ation.

(Pub. L. 90-859, ch. 6, §652, as added Pub. L. 97-113,
title I, §109(a), Dec. 20, 1981, 96 Stat. 1625; amend-
110 Stat. 1432; Pub. L. 110-429, title II, §203(b)(1),

REFERENCES IN TEXT
The Foreign Assistance Act of 1961, referred to in sub-
sec. (a), is Pub. L. 97-113. Sept. 4, 1981, 75 Stat. 424, as
amended. Chapter 2 of part II of that Act is classified
generally to part II (§201 et seq.) of subchapter II of
this chapter. For complete classification of this Act to
the Code, see Short Title note set out under section
2181 of this title and Table.
This chapter, referred to in subsec. (a)(4), was in the
original "this Act", meaning Pub. L. 90-859, Oct. 22, 1966,
82 Stat. 1311, which is classified principally to this
chapter. For complete classification of this Act to
the Code, see Short Title note set out under section
2791 of this title and Table.

AMENDMENTS
before "or New Zealand".

2009—Subsec. (c)(1). Pub. L. 111-386 inserted "the
Republic of Korea," before "or New Zealand".
1996—Subsec. (a). Pub. L. 104–104, §141(a)(1)(A), substituted "Before" for "Not less than 30 days before".
Subsec. (b). Pub. L. 104–104, §141(c)(1)(B), substituted "states in his certification" for "determines, and immediately reports to the Congress" and inserted at end "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."

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–104 applicable with respect to certifications required to be submitted on or after July 21, 1996, see section 145(c) of Pub. L. 104–104, set out as a note under section 2768 of this title.

**Dereliction of Functions**

Functions of President under subsec. (a) of this section delegated to Secretary of Defense by section 103 of Pub. L. 104–104, Jan. 18, 1996, 10 J.R. 231, as amended, set out as a note under section 2768 of this title.

§ 2796b. Legislative review procedures

(a) Applicability

(1) Subject to paragraph (2), in the case of any agreement involving the lease under this subchapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], to any foreign country or international organization for a period of one year or longer of any defense articles which are either (A) major defense equipment valued in terms of its replacement cost less any depreciation in its value, or (B) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $50,000,000 or more, or (C) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $25,000,000 or more, or (D) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $100,000,000 or more.

(b) Consideration of resolution

Any joint resolution under subsection (a) of this section 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) Highly privileged nature of resolution

For the purpose of expediting the consideration and enactment of joint resolutions under subsection (a) of this section, 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.


**References in Text**


Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (b), is section 601(b) of Pub. L. 94–423, June 30, 1976, 90 Stat. 365, which made provisions for expedited procedures in the Senate, and was not classified to the Code.

**Amendments**


1996—Subsec. (a). Pub. L. 104–104 redesignated par. (1) as subpar. (a), substituted "the 15-day or 30-day period specified in section 2796a(c)(1) or (2) of this title, as the case may be, unless the joint resolution prohibiting the proposed lease or loan is enacted within 30 calendar days after receiving the certification with respect to that proposed agreement pursuant to section 2796a(a) of this title, or struck out par. (3) which read as follows: "This section shall not apply with respect to loan agreements to the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand." 1986—Subsec. (a)(1). Pub. L. 99–247, §104(b)(3), substituted "enacts a joint resolution prohibiting it" for "adopts a concurrent resolution stating that it objects to".


Subsec. (c). Pub. L. 99–247, §104(d)(3), substituted "enacts joint resolutions" for "adopts concurrent resolutions" and "such joint resolution" for "such resolution".

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–104 applicable with respect to certifications required to be submitted on or after July 21, 1996, see section 145(c) of Pub. L. 104–104, set out as a note under section 2768 of this title.

§2796c. Applicability of other statutory provisions

Any reference to sales of defense articles under this chapter 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 subchapter.

§ 2796d. Loan of materials, supplies, and equipment for research and development purposes

(a) Loan or gift transactions; written agreement; covered programs

(1) Except as provided in subsection (c) of this section, 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 purposes.

(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) Reimbursement of consumed materials, etc.

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.

(c) Prohibitions

The Secretary of Defense may not loan to a country under this section any material if the material is a strategic or 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 58b of title 50) is less than the quantity of such material to be stockpiled, as determined by the President under section 58b(a) of title 50.

(d) “NATO” ally defined

For purposes of this section, the term “NATO ally" means a member country of the North Atlantic Treaty Organization (other than the United States).


AMENDMENTS

1995—Subsec. (a). Pub. L. 104–134 struck out “or major non-NATO” after “NATO” and “or a foreign country other than a member nation of NATO designated as a major non-NATO ally under section 2806a(3)(C) of title 16” after “(other than the United States).”


§ 2797. Licensing

(a) Establishment of list of controlled items

The Secretary of State, in consultation with the Secretary of Defense 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 MTCA Annex the export of which is not controlled under section 2406(2) of title 50, Appendix.

(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) of this section may be made only after the license application is referred to the Secretary of Defense.

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a) of this section, the Secretary of State shall provide to the Secretary of Defense and the Secretary of Commerce the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary 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, and with other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCA equipment or technology and other missile technology.

(d) Exports to space launch vehicle programs

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 chapter 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 MTCA Annex, the Secretary shall transmit to the Congress 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 MTCA as of April 17, 1987.
TITLE 22—FOREIGN RELATIONS AND INTERCOURSE


REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this Act," meaning Pub. L. 50-169, Oct. 22, 1919, 38 Stat. 131, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title Note set out under section 2201 of this title and Tables.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-260 substituted "Within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than $20,000,000 that are controlled under this chapter pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, development, or production of a space launch vehicle system listed in Category I of the MTCA Annex, or within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than $15,000,000 that are controlled under this chapter 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 MTCA Annex, or" for "Within 15 days after the issuance of a license (including any brokering license) for the export of items valued at less than $20,000,000 that are controlled under this chapter pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, development, or production of a space launch vehicle system listed in Category I of the MTCA Annex, or".


Subsec. (b)(1). Pub. L. 103-277, §1225(a)(3), struck out "and the Director of the United States Arms Control and Disarmament Agency" after "Secretary of Defense";

Subsec. (b)(2). Pub. L. 105-277, §1225(a)(5), substituted "and the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency" for "the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency" and struck out "or the Director" after "the relevant Secretary";

Subsec. (c). Pub. L. 105-277, §1225(a)(7), struck out "with the Director of the United States Arms Control and Disarmament Agency" after "Director of Central Intelligence,";

1994—Subsec. (a). Pub. L. 103-238, §714(a)(3), inserted "the Director of the Arms Control and Disarmament Agency" after "the Secretary";

Subsec. (b)(1). Pub. L. 103-238, §714(a)(4), inserted "the Director of the United States Arms Control and Disarmament Agency" after "Secretary of Defense";

Subsec. (b)(2). Pub. L. 103-238, §714(a)(5), substituted "the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency" for "the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency" and inserted "or the Director" after "relevant Secretary";

Subsec. (c). Pub. L. 103-238, §735(c), inserted "with the Director of the United States Arms Control and Disarmament Agency" after "Director of Central Intelligence";

Subsec. (d). Pub. L. 103-238, §735(c), added subsec. (d).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency.

See sec. 1041(a), (b) of Pub. L. 103-650, set out as a note under section 1041 of this title, War and National Defense.

EFFECTIVE DATE OF 1998 AMENDMENT


DELEGATION OF FUNCTIONS

Memorandum of President of the United States, June 26, 1991, 56 F.R. 3134, which provided for delegation of certain functions of the President that was superseded by Ex. Ord. No. 12681, §7, June 11, 1988, 53 F.R. 20381, set out below.

POLICY AND ISSUES OF CONGRESS ON NONPROLIFERATION OF BALLISTIC Missiles

Pub. L. 106-260, div. A, title XII, §1213, Oct. 5, 2000, 114 Stat. 1323, provided that: "(a) FINDINGS—Congress makes the following findings:

(1) Certain countries are seeking to acquire ballistic missiles and related technologies that could be used to attack the United States or place at risk United States interests, deployed members of the Armed Forces, and allies of the United States and other friendly foreign countries;

(2) Certain countries continue to actively transfer or sell ballistic missile technologies in contravention of standards of behavior established by the United States and allies of the United States and other friendly foreign countries;

(3) The spread of ballistic missiles and related technologies worldwide has been slowed by a combination of national and international export controls, forward-deployed diplomacy, and multilateral interdiction activities to restrict the development and transfer of such missiles and technologies;

(b) POLICY—It is the policy of the United States to develop, support, and strengthen international agreements and other cooperative efforts to curtail the proliferation of ballistic missiles and related technologies which could threaten the territory of the United States, allies of the United States and other friendly foreign countries, and deployed members of the Armed Forces of the United States with weapons of mass destruction.

(c) ISSUES OF CONGRESS—It is the sense of Congress that:

(1) the United States should vigorously pursue foreign policy initiatives aimed at eliminating, reducing, or retarding the proliferation of ballistic missiles and related technologies, and

(2) the United States and the international community should continue to support and strengthen established international agreements and other cooperative efforts, including United Nations Security Council Resolution 1540 (April 29, 2004) and the Missile Technology Control Regime, that are designed to eliminate, reduce, or retard the proliferation of ballistic missiles and related technologies.

MTCA REPORT TRANSMITALS

Pub. L. 106-260, title VII, §704, Oct. 5, 2000, 114 Stat. 1323, provided that: "For purposes of section 510(d) of the Arms Export Control Act (22 U.S.C. 2770d(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 Committees on International Relations [now Committees on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing and Urban Affairs of the Senate."

REPORT ON MISSILE PROLIFERATION

Section 1704 of Pub. L. 101-163 directed President to submit to Congress reports on international transfers of aircraft which the Secretary had reason to believe
may be intended to be used for delivery of nuclear, biological, or chemical weapons and international trans- 
fer of MTCR equipment or technology to any country 
seeking to acquire such equipment or technology, and 
which provided for sanctions of persons, countries 
excluded from such reports, classification of information, 
and procedures for reporting to Congress, is re- 
dicted to remain in effect until July 1, 1992.

Ex. Ord. No. 12851. ADMINISTRATION OF PROLIFERATION 
SANCTIONS, MIDDL EAST ARMS CONTROL, AND ENHANCED 
CONGRESSIONAL REPORTING RESPONSIBILITIES 

Mr. No. 12851, June 11, 1992, 58 F.R. 33331, pro- 
vided:

by the authority vested in me as President by the Constitution and the laws of the United States of America, as President of the United States Code; sections 1701-1703 of the National Defense 
Law 102-385, sections 522-525 of the Chemical and Biological 
Weapons Control and Warfare Elimination Act 
of 1991, Public Law 102-116 (95 U.S.C. App. 2400a); 22 U.S.C. 2797c (2 U.S.C. 2797c); sections 110 of the Export Administration Act of 1969, as amended; and 
authority vested in me to require persons to report any transfers 
that may be intended to be used for delivery of nuclear, biological, or chemical weapons and 
the exceptions provided in sections 71A(e)(1), 71A(e)(2), and 71A(e)(3), are delegated to 
the Secretary of State, the Secretary of Defense, the 
Secretary of the Treasury, the Secretary of Commerce, 
the Director of the Arms Control and Disarmament 
Agency, and other departments, and agencies as appropriate, 
utilizing the appropriate interagency groups prior to 
any determination to exercise the prohibition authority delegated hereunder.

S. 32, Missile Proliferation Sanctions. (a) Arms Export 
Control Act. The authority and duties vested in me 
by sections 723(g)(1) and 723(g)(2), pursuant to a determination made by the Secretary of State under section 723(g)(1), as well as the authority and duties vested in me to make the findings provided in sections 723(c), 723(d), and 723(e) under section 723(e) under that \(723(e) \) are delegated to the Secretary of 

(b) and duties vested in me to prohibit certain imports as provided in sections 71A(c)(1), 71A(c)(2), and 71A(c)(3), pursuant to a determination made by the Secretary of State under section 71A(c)(1), are delegated to the Secretary of State, the Secretary of Defense, the 
Secretary of the Treasury, and the Secretary of Commerce.

S. 113, Export Administration Act. The authority and 
duties vested in me to prohibit certain imports and exports as provided in sections 711(a)(1), 711(a)(2), and 711(a)(3), pursuant to a determination made by the Secretary of 

(c) Coordination Among Agencies. The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the 
Secretary of State, the Secretary of Defense, the Secretary of the 
Secretary of the Treasury, the Secretary of Commerce, the 
Director of the Arms Control and Disarmament 
Agency, and other departments, and agencies as appropriate, 
utilizing the appropriate interagency groups prior to 
any determination to exercise the prohibition authority delegated hereunder.

S. 32, Missile Proliferation Sanctions. (a) Arms Export 
Control Act. The authority and duties vested in me 
by sections 723(g)(1) and 723(g)(2), pursuant to a determination made by the Secretary of State under section 723(g)(1), as well as the authority and duties vested in me to make the findings provided in sections 723(c), 723(d), and 723(e) under section 723(e) under that 
section, and the obligation to implement the exceptions provided in section 71B(b)(7), are delegated to 
the Secretary of the Treasury.

(b) Reporting Requirements. The authority and duties vested in me to make certain reports to the Congress as provided in section 727(b)(7) of the National Defense 
Authorization Act for Fiscal Year 1992 is delegated to the Secretary of 

(c) Coordination Among Agencies. The Secretaries designated in this section shall exercise all functions delegated 
to them by this section in consultation with the 
Secretary of State, the Secretary of Defense, the Secretary of the 
Secretary of the Treasury, the Secretary of Commerce, the 
Director of the Arms Control and Disarmament 
Agency, and other departments, and agencies as appropriate, 
utilizing the appropriate interagency groups prior to 
any determination to exercise the prohibition authority delegated hereunder.
SIRC. 3. Arms Control in the Middle East. The certification and reporting functions vested in me by sections 402 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (22 U.S.C. 2774 note), are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

SIRC. 4. China and Weapons Proliferation. The reporting functions regarding China and weapons proliferation vested in me by sections 233A(b)(2) and 234 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Pub. L. 102-138, 105 Stat. 766, 771), are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.


SIRC. 6. Delegation. The functions delegated herein may be redelegated as appropriate. Regulations necessary to carry out the functions delegated herein may be issued as appropriate.

SIRC. 7. Priority. This order supersedes the Memorandum of the President, "Delegation of Authority Regarding Missile Technology Proliferation," June 26, 1981. To the extent that this order is inconsistent with any provisions of any prior Executive order or Presidential memorandum, this order shall control.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of this title.]

§ 2797a. Denial of transfer of missile equipment or technology by United States persons

(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 MTOR Annex, in violation of the provisions of section 2778 of this title, section 2404 or 2405 of title 50, Appendix, or any regulations or orders issued under any such provision;

(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 MTOR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTOR 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 chapter.

(B) If the item on the MTOR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTOR, then the President shall deny to such United States person for a period of not less than 3 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) of this section, the President may impose any penalty provided in section 2778(c) of this title.

(c) Presumption

In determining whether to apply sanctions under subsection (a) of this section to a United States person involved in the export, transfer, or trade of an item on the MTOR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTOR 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 section 2360A(1)(A) of title 50, Appendix, has repeatedly provided support for acts of international terrorism.

(d) Waiver

The President may waive the imposition of sanctions under subsection (a) of this section 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.


REFERENCES IN TEXT

This chapter, referred to in subsection (a)(3)(A)(4), was in the original "this Act", meaning Pub. L. 99-269, Oct. 25, 1986, 99 Stat. 1231, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

1994—Subsecs. (c), (d). Pub. L. 103-226 added subsec. (c) and redesignated former subsec. (c) as (d).

DELIBERATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12861, §3(a), June 26, 1986, 51 F.R. 23381, set out as a note under section 2777 of this title.

§ 2797b. Transfers of missile equipment or technology by foreign persons

(a) Sanctions

(1) Subject to subsections (b) and (c) of this section, if the President determines that a
§2797b  TITLE 22—FOREIGN RELATIONS AND INTERCOUSE  Page 1098

foreign person, after November 5, 1990, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTOR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTOR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this chapter;

(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,

or if the President has made a determination with respect to a foreign person under section 2416(b)(1) of title 50, Appendix, 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) if the item involved in the export, transfer, or trade is within category II of the MTOR 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 chapter.

(B) if the item involved in the export, transfer, or trade is within category I of the MTOR 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 MTOR 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) Inapplicability with respect to MTOR adherents

(1) In general

Except as provided in paragraph (2), subsection (a) of this section does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTOR 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 MTOR adherent.

(2) Limitation

Notwithstanding paragraph (1), subsection (a) of this section shall apply to an entity subordinate to a government that engages in exports or transfers described in section 2395a(b)(3)(A) of this title.

(c) Effect of enforcement actions by MTOR adherents

Sanctions set forth in subsection (a) of this section 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 MTOR adherent is taking judicial or other enforcement action against that person with respect to such acts, or if that person has been found by the government of an MTOR adherent to be innocent of wrongdoing 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 MTOR adherent, such action has been comprehensive; and

(2) with respect to any finding of innocence of wrongdoing, the United States is satisfied with the basis for such finding.

(d) Advisory opinions

The Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, 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) of this section stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) of this section 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 not less than 45 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(f) Presumption

In determining whether to apply sanctions under subsection (a) of this section 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 2240(k)(1)(A)\(^2\) of title 50, Appendix, has repeatedly provided support for acts of international terrorism.

(g) 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) 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.

\(^2\) As in original. Probably should be preceded by "section".
Notification of admittance of MTCR adherents

(a) 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) Intelligence assessment report

At such times as a report is transmitted pursuant to subsection (a) of this section, 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) of this section has engaged in any activity identified under subparagraph (A), (B), or (C) of section 2797(b)(1) of this title within the previous two years.

Amendments

1990—Pub. L. 101–113 designated existing provisions as subsection (a), inserted heading, and added subsection (b).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency.

DELÉGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 34265, set out as a note under section 2796h of this title.

2797b-2. Authority relating to MTCR adherents

Notwithstanding section 2797b(a)(2) of this title, the President may take the actions under section 2797b(a)(2) of this title under the circumstances described in section 2797c(b)(2) of this title.

Definitions

(a) In general

For purposes of this subsection—

(1) the term "misdile" 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 15, 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; (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 1 or category II of the MTCR Annex; (6) the term "United States person" has the meaning given that term in section 2415(2) of title 50, Appendix; (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), 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; 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) International understanding defined

For purposes of subsection (a)(3) of this section, 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 chapter; or (2) any specific understanding by a country that, notwithstanding section 2797(b) of this title, the United States retains the right to take the actions under section 2797(b)(2) of this title 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 equipment or technology, subject to the jurisdiction of the United States under this chapter.


REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 90–659, Oct. 29, 1990, 62 Stat. 122, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2791 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–113 designated existing provisions as subsection (a), inserted heading, and added subsec. (b). 1991—Pub. L. 102–320, title II, §223(c), substituted "country with a non-market economy (excluding former members of the Warsaw Pact)" for "country where it may be impossible to identify a specific governmental entity referred to in subparagraph (A)". (f) Pub. L. 102–337, title II, §223(c), substituted "electronics, space systems or equipment, and military aircraft" for "aircraft, electronics, and space systems or equipment".

SUBCHAPTER VIII—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

§2798. Sanctions against certain foreign persons

(a) Imposition of sanctions

(1) Determination by the President

Except as provided in subsection (b)(2) of this section, the President shall impose both of the sanctions described in subsection (c) of this section if the President determines that a foreign person, on or after October 23, 1991, 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, (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 (50 U.S.C. App. 2401 et seq.), 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—
(1) used chemical or biological weapons in violation of international law;
(2) used lethal chemical or biological weapons against its own nationals; or
(3) made substantial preparations to engage in the activities described in clause (1) or (2);
(4) any foreign country whose government is determined for purposes of section 8(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2465(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.

(b) 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) of this section 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 determines and certifies to the Congress that the 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) of this section. 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 the 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) of this section, on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (3) 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) of this section 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)(2) of this section.

(B) Import sanctions
The importation into the United States of products produced by any person described in subsection (a)(3) of this section shall be prohibited.

(d) 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 co-production 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,
(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 certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) of this section 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 30 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) "Foreign person" defined

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.

REFERENCES IN TEXT


AMENDMENTS


DISPOSITION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Exec. Ord. No. 12585, §14(a), June 11, 1985, 50 F.R. 3481, set out as a note under section 2781 of this title.

SUBCHAPTER IX—TRANSFER OF CERTAIN CFE TREATY-LIMITED EQUIPMENT TO NATO MEMBERS

§2799b. Purpose

The purpose of this subchapter 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.


§2799a. CFE Treaty obligations

The authorities provided in this subchapter shall be exercised consistent with the obligations incurred by the United States in connection with the CFE Treaty.


§2799b. Authorities

(a) 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) of this section, 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 grant basis

Defense articles may be transferred under subsection (a) of this section without cost to the recipient country.

(e) Third country transfers restrictions

For purposes of sections 2763(a)(2), 2763(a)(3), 2763(o), and 2763(d) of this title, defense articles
transferred under subsection (a) of this section shall be deemed to have been sold under this chapter.

(f) Maintenance of military balance in Eastern Mediterranean

The President shall ensure that transfers by the United States under subsection (a) of this section, taken together with transfers by other NATO/CPE countries in implementing the CPE Treaty, are of such values as to be consistent with the United States policy, embodied in section 2793 of this title, 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) of this section expires at the end of the 40-month period beginning on the date on which the CPE Treaty enters into force.

(2) Transition rule

Paragraph (1) does not apply with respect to a transfer of defense articles for which notification under section 2793(a) of this title is submitted before the end of the period described in that paragraph.


REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 99-639, Oct. 22, 1986, 102 Stat. 1521, which is classified principally to this chapter.

(This Act) was classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2761 of this title and Tables.

DELEGATION OF FUNCTIONS

Memorandum of Presidents of the United States, Feb. 13, 1992, 57 F.R. 5662, provided:

Memorandum for the Secretary of State and the Secretary of Defense

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of Title 3 of the United States Code, 1 hereby delegate to the Secretary of Defense the functions vested in me under section 53(a) and section 24 of the Arms Export Control Act, as amended (the "Act") [22 U.S.C. 2769(a), 2769c], and to the Secretary of State the functions vested in me by section 53(b) of the Act, consistent with section 2 of the Act [22 U.S.C. 2762], transfers of defense articles under section 53(a) shall be subject to the policy direction of the Secretary of State, including the determination of whether such transfers shall occur.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

GEORGE H. W. BUSH.

§2799c. Notifications and reports to Congress

(a) Notifications

Not less than 15 days before transferring any defense article pursuant to section 2793(b) of this title, the President shall notify the Committee on Foreign Affairs 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 2345-1 of this title.

(b) Annual reports

Not later than February 1 each year, the President shall submit to the Committee on Foreign Affairs and the Committee on Armed Services 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/CPE country by the United States under section 2793(b) of this title during the preceding calendar year;

(2) describes how those transfers further the purposes described in paragraphs (1) through (3) of section 2793 of this title; and

(3) lists, on a country-by-country basis, all transfers to another country of conventional arms and equipment limited by the CPE Treaty—

(A) by each NATO/CPE country (other than the United States) in implementing the CPE Treaty, and

(B) by each country of the Eastern Group of States Parties in implementing the CPE Treaty.


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DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by Memorandum of President of the United States, Feb. 13, 1992, 57 F.R. 5662, set out as a note under section 2799b of this title.

§2799d. Definitions

As used in this subchapter—

(1) the term "CPE Treaty" means the Treaty on Conventional Armed Forces in Europe (signed at Paris, November 19, 1989);

(2) the term "conventional arms and equipment limited by the CPE Treaty" has the same meaning as the term "conventional arms and equipment limited by the Treaty" does under paragraph (1)(7) of article II of the CPE Treaty;

(3) the term "NATO" means the North Atlantic Treaty Organization;

(4) the term "NATO/CPE country" means a member country of NATO that is a party to the CPE Treaty and is listed in paragraph (1)(A) of article II of the CPE 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

(5) the term "country of the Eastern Group of States Parties" means a country that is listed in paragraph (1)(A) of article II of the CPE Treaty within the group of States Parties that signed the Treaty of Warsaw of 1956 or a successor state to such a country.


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country" and inserted before period at end "or a successor state to such a country".

SUBCHAPTER X—NUCLEAR NONPROLIFERATION CONTROLS

§ 2799aa. 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 (22 U.S.C. 2151 et seq.) or this chapter 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 (22 U.S.C. 2156 et seq.)), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act [22 U.S.C. 2348 et seq.], 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—

(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 801(b) of the International Security Assistance and Arms Export Control Act of 1976. (Pub. L. 90-629, ch. 19, §101, as added Pub. L. 100-203, title VIII, §810A(a), Apr. 30, 1984, 98 Stat. 515.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87-156, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 2 (22 U.S.C. 2151 et seq.) of this title. Chapters 4 and 6 of part II of the Act are classified generally to parts IV (22 U.S.C. 2346 et seq.) and VI (2348 et seq.), respectively, of subchapter II of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2161 of this title and Tables.

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 90-408, Oct. 31, 1968, 82 Stat. 1231, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2161 of this title and Tables.

Section 801(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (b), is section 801(b) of Pub. L. 94-296, title VI, June 30, 1976, 90 Stat. 606, which is not classified to the Code.

REFERENCES TO SECTIONS 2406 AND 2429a OF THIS TITLE DUE TO BE REFERENCES TO SECTIONS 2799aa AND 2799aa-1 OF THIS TITLE

Section 2696(c) of Pub. L. 92–283 provided that: "Any reference in law as of the date of enactment of this Act [Apr. 30, 1984] to section 669 or 876 of the Foreign Assistance Act of 1961 (former 22 U.S.C. 2159, 2348a) shall, after such date, be deemed to be a reference to section 101 or 103, as the case may be, of the Arms Export Control Act [22 U.S.C. 279aa, 279aa-1]."

EFFECTIVE DATE

Subchapter effective 80 days after Apr. 30, 1984, see section 801 of Pub. L. 92–283, set out as a note under section 6001 of this title.

WAIVER OF SANCTIONS

Sanctions contained in this section waived in certain regards with respect to India by Determination of President of the United States, No. 9000-10, Mar. 16, 2000, 65 F.R. 16267, set out as a note under section 2799aa-1 of this title.

Sanctions contained in this section waived in certain regards with respect to India and Pakistan by Determination of President of the United States, No. 9005-2, Oct. 27, 1995, 61 F.R. 60016, set out as a note under section 2799aa-1 of this title.

§ 2799aa-1. 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 (22 U.S.C. 2151 et seq.) or this chapter 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 (22 U.S.C. 2346 et seq.)), providing military assistance or grant military education and training; providing assistance under chapter 6 of part II of that Act [22
U.S.C. 2346 et seq.), or extending military credits or making guarantees, to any country which the President determines—

(A) delivers 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 5, 1985, exports illegally (or attempts to export illegally) from the United States any material, equipment, or technology 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.

(b) Prohibitions on assistance to countries involved in transfer of nuclear explosive devices; exceptions; procedures applicable

(1) Except as provided in paragraphs (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 1996—

(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 [22 U.S.C. 2351 et seq.], except for humanitarian assistance or food or other agricultural commodities.

(B) The United States Government shall terminate—

(i) sales to that country under this chapter of any defense articles, defense services, or design and construction services, and

(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 chapter.

(D) The United States Government shall deny to that country any credit, credit guarantee, 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 1957 [30 U.S.C. 413 et seq.] (relating to congressional oversight of intelligence activities),

(ii) to medicines, medical equipment, and humanitarian assistance, or

(iii) to any credit, credit guarantee, or financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodities.

(E) The United States Government shall oppose, in accordance with section 2658 of this title, 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.
(G) The authorities of section 2605 of title 60, Appendix, shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agricultural 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 [46 U.S.C. 415 et seq.], 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 (O) 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.

(E)(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, with as much speed as circumstances permit, transmit 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 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 I(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.


REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(2) and (b)(3)(A), was Pub. L. 87-180, Sept. 4, 1961, 76 Stat. 545, as amended, which is classified principally to chapter 22 (22 U.S.C. 2151 et seq.) of this title. Chapters 4 and 6 of part II of the Act are classified generally to parts 4 (22 U.S.C. 2341 et seq.) and 7 (22 U.S.C. 2361 et seq.), respectively, of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 211 of this title and Table.

This chapter, referred to in subsecs. (a)(1) and (b)(3)(B)(1), (C), was in the original "this Act", meaning Pub. L. 89-692, Oct. 22, 1968, §22. Stat. 1921, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 211 of this title and Table.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsecs. (a)(3)(D) and (b)(4)(C), is section 601(b) of Pub. L. 94-323, title VI, June 30, 1976, 80 Stat. 676, which is not classified to the Code.

For effective date of part II of the Nuclear Proliferation Prevention Act of 1980 [pars II of title VIII of Pub. L. 98-268], referred to in subsec. (a)(2), as 60 days after...
TITLE 22—FOREIGN RELATIONS AND INTERGOVERNMENTAL AFFAIRS

Apr. 20, 1994, see section 811 of Pub. L. 103-236, set out as an Effective Date note under section 801 of this title.


Section 108 of the Arms Export Control Act, referred to in subsec. (b)(1)(D), is classified to this section.

AMENDMENTS


Subsec. (b)(4)(P). Pub. L. 105-194, §2(c), inserted “, which includes fertilizer” before period at end.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 416, One Hundred Eighth Congress, Oct. 9, 2003.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-194, §2(4), July 14, 1996, 110 Stat. 677, provided that: “The amendment made by subsection (a)(3) [amending this section] 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 (July 14, 1996) through September 30, 1999.”

DELETION OF FUNCTIONS

Functions of President under subsec. (a)(3) of this section delegated to Secretary of State by section 105(g)(1)(G) of Ex. Ord. No. 13056, July 1, 2004, 69 F.R. 41667, set out as a note under section 301 of Title 3, The President.

WAIVER OF CERTAIN SANCTIONS AGAINST NORTH KOREA


(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Except as provided in subsection (b), the President may waive in whole or in part, with respect to North Korea, the application of any sanction contained in subparagraph (A), (B), (C) or (D) under section 103 of the Arms Export Control Act (22 U.S.C. 279aa-1(b)) (1)(A), (B), (D), (G)(1), for the purpose of providing assistance related to—

(A) the implementation and verification of the commitments by North Korea with its commitments undertaken in the Joint Statement of September 19, 2005, to abandon all nuclear weapons and existing nuclear programs as part of the verifiable denuclearization of the Korean Peninsula; and

(B) the elimination of the capability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction and their delivery systems.

(2) LIMITATION.—The authority under paragraph (1) shall expire 5 years after the date of enactment of this Act (June 30, 2008).

(b) EXCEPTIONS.—

(1) LIMITATION ON CERTAIN SANCTIONS AND PROHIBITIONS.—The authority under subsection (a) shall not apply—

(A) with respect to a sanction or prohibition under subparagraph (B) or (C) of section 103 of the Arms Export Control Act (22 U.S.C. 279aa-1(b)) (G)(5), unless the President determines and certifies to the appropriate congressional committees that—

(a) all reasonable steps will be taken to assure that the articles or services exported or otherwise provided will not be used to improve the military capabilities of the armed forces of North Korea; and

(b) such waiver is in the national security interest of the United States.

(2) LIMITED EXCEPTION RELATED TO CERTAIN ACTIVITIES.—Unless the President determines and certifies to the appropriate congressional committees that the authority under subsection (a) is vital to the national security interests of the United States, such authority shall not apply with respect to—

(A) an activity described in subparagraph (A) of section 103(b)(1) of the Arms Export Control Act (22 U.S.C. 279aa-1(b)(1)(A)) that occurs after September 19, 2005, and before the date of the enactment of this Act (June 30, 2003); or

(B) an activity described in subparagraph (C) of such section that occurs after September 19, 2005; or

(C) an activity described in subparagraph (C) of such section that occurs after the date of enactment of this Act.
has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs; (III) any diplomatic agreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement (other than implementing arrangements made during on-site operations); and (IV) any significant and continuing disagreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement.

"(c) Form.--The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

"(d) Appropriate Congressional Committees Defined.--In this section, the term "appropriate congressional committees" means:

"(I) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and

"(II) the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives."

EXEMPTION FOR RHINOCEROS TIGRIS, ASIAN ELEPHANT, AND GREAT APE CONSERVATION PROGRAMS

Pub. L. 107-33, title I, Nov. 5, 2001, 115 Stat. 421, provided in part:

"That funds made available under this Act [see Tables for classification] Public Law 106-291 [see Tables for classification], and Public Law 106-264 [see Tables for classification] and hereafter in annual appropriations Acts for chincoroe, tiger, Asian elephant, and great ape conservation programs are exempt from any sanctions imposed against any country under section 102 of the Arms Export Control Act (22 U.S.C. 278a-1).

Similar provisions were contained in the following:


WAIVERS OF CERTAIN SANCTIONS AGAINST INDIA AND PAKISTAN


"(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 102 or 103 of the Arms Export Control Act (22 U.S.C. 278a or 22 U.S.C. 278a-1), section 204(d) of the Export Administration Act of 1979, as amended, (22 U.S.C. 277c).

"(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 (D) of section 102(b)(3) of the Arms Export Control Act (22 U.S.C. 278a-1(b)(3)); (C), (D), (G), 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) Termination 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 (Oct. 25, 1999) or otherwise takes such action which would cause the President to report pursuant to section 192(b)(1) of the Arms Export Control Act (22 U.S.C. 278a-1(b)(3)).

"(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 600 Indian and Pakistani entities is inconsistent with the specific national security interests of the United States and that this control list requires refinement.

"(B) Export controls should be applied only to those Indian and Pakistani entities that make direct and material contributions to missiles and nuclear weapon programs and only to those items that can contribute to such programs.

"(2) Reporting Requirements.--Not later than 60 days after the date of the enactment of this Act (Oct. 25, 1999), 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) Appropriate Congressional Committees Defined.--In this section, the term "appropriate congressional committees" means:

"(I) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and

"(II) the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives."

INDIAN-PAKISTAN RELIEF


EFFECT ON EXISTING SANCTIONS

Pub. L. 106-194, §2(a), July 14, 1999, 113 Stat. 877, provided that:

"Any sanction imposed under each section 192(b)(1) of the Arms Export Control Act [see subsection (b)(1) of this section] before the date of the enactment of this Act [July 14, 1999] shall cease to apply upon that date with respect to the items described in the amendments made by subsections (b) and (c) (amending this section). In the case of the amendment made by subsection (b)(3) (amending this section), 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 1, 1999, with respect to the activities and items described in the amendment."

SANCTIONS AGAINST INDIA FOR DISPOSITION OF A NUCLEAR EXPLOSIVE DEVICE

Determination of President of the United States, No. 38-25, May 12, 1999, 66 F.R. 25943, provided a determination that India, a non-nuclear-weapon state, detonated a nuclear explosive device on May 11, 1998, and imposed sanctions described in subsec. (b)(2) of this section.

SANCTIONS AGAINST PAKISTAN FOR DISPOSITION OF A NUCLEAR EXPLOSIVE DEVICE

Determination of President of the United States, No. 38-26, May 29, 1999, 66 F.R. 26181, provided a determination that Pakistan, a non-nuclear-weapon state, detonated a nuclear explosive device on May 28, 1998, and imposed sanctions described in subsec. (b)(2) of this section.

WAIVERS OF CERTAIN SANCTIONS AGAINST INDIA AND PAKISTAN

Provisions relating to waivers of sanctions against India and Pakistan consistent with section 9001 of Pub. L. 106-79, set out as a note above, or section 1301(a) (title IX, §9001(c)) of Pub. L. 106-297, formerly set out in a note above, were contained in the following:

Determination of President of the United States, No. 5000-10, Mar. 16, 2006, 66 F.R. 16207.

§ 2799sa-2. “Nuclear explosive device” defined

As used in this subchapter, the term “nuclear explosive device” has the meaning given that term in section 3502(a)(1) of this title.


CHAPTER 40—INTERNATIONAL EXPOSITIONS

Sec. 3801. Congressional findings.
3803. Federal participation.
3804. Establishment of standards and criteria; publication in the Federal Register.
3805. Withdrawal of Federal recognition or participation.
3806. Other provisions unaffected.
3807. Authorization of appropriations.

§ 3801. Congressional findings

The Congress finds that—
(a) international expositions, when properly organized, financed, and executed, have a significant impact on the economic growth of the region surrounding the exposition and, under appropriate international sanction, are important instruments of national policy, particularly in the exchange of ideas and the demonstration of cultural achievements between peoples;
(b) in view of the widely varying circumstances under which international expositions have developed in the United States, the different degrees to which the Federal Government has assisted and participated in such expositions, and the increasing number of proposals for future expositions, the national interest requires that Federal action concerning such expositions be given orderly consideration; and
(c) such orderly consideration is best achieved by the development of uniform standards, criteria, and procedures to establish the conditions under which the Government hereafter will (A) recognize international expositions proposed to be held in the United States, and (B) take part in such expositions.


§ 3802. Federal recognition

(a) Eligibility requirements

Any international exposition proposed to be held in the United States shall be eligible on application from its sponsors to receive the recognition of the Federal Government upon a finding of the President that recognition will be in the national interest. In making such a finding the President shall consider—

(1) a report by the Secretary of Commerce which shall include (A) an evaluation of purposes and reasons for the exposition, and (B) a determination that guaranteed financial and other support has been secured by the exposition from affected State and local governments and from business and civic leadership of the region and others in amounts sufficient in his judgment to assure the successful development and progress of the exposition;
(2) a report by the Secretary of State that the proposed exposition qualifies for consideration of registration by the Bureau of International Expositions (hereafter referred to as BIE); and
(3) such other evidence as the President may consider to be appropriate.

(b) Recognition and registration procedure; compliance with international convention; participation by States and foreign governments

Up a finding by the President that an international exposition is eligible for Federal recognition, the President may take such measures recognizing the exposition as he deems proper, including, but not limited to—

(1) presenting of an official request by the United States for registration of the exposition by the BIE;
(2) providing for fulfillment of the requirements of the Convention of November 22, 1966, as amended, relating to international expositions; and
(3) extending invitations, by proclamation or by such other manner as he deems proper, to the several States of the Union and to foreign governments to take part in the exposition, provided that he shall not extend such an invitation until he has been notified officially by BIE of registration for the exposition.

(c) Report to Congress

The President shall report his actions under this section promptly to the Congress.


§ 3803. Federal participation

(a) Congressional authorization; proposals

The Federal Government may participate in an international exposition proposed to be held in the United States only upon the authorization of the Congress. If the President finds that Federal participation is in the national interest, he shall transmit to the Congress his proposal for such participation, which proposal shall include—

(1) evidence that the international exposition has met the criteria for Federal recognition and, pursuant to section 3802 of this title, it has been so recognized;
(2) a statement that the international exposition has been registered by the BIE; and
(3) a plan prepared by the Secretary of Commerce in cooperation with other interested departments and agencies of the Federal Government for Federal participation in the exposition. The Secretary of Commerce shall include in such plan any documentation described in subsection (b)(1)(A) of this section, a rendering of any design described in subsection (b)(1)(B) of this section, and any rec-