



ARMS EXPORT CONTROL ACT (P.L. 90-629)



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[As Amended Through P.L. 111-266, Enacted October 8, 2010]

(References in [brackets] are to 22 U.S.C.)

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

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

**Chapter 1.—FOREIGN AND NATIONAL SECURITY POLICY
OBJECTIVES AND RESTRAINTS**

SECTION 1. [2751] THE NEED FOR INTERNATIONAL DEFENSE COOPERATION AND MILITARY EXPORT CONTROLS.—As declared by the Congress in the Arms Control and Disarmament Act, an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments; in which the use of force has been subordinated to the rule of law; and in which international adjustments to a changing world are achieved peacefully. In furtherance of that goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.

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

Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern. To this end,

this Act authorizes sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter.

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

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

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

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

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

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

in any fiscal year should not exceed current levels.

It is the sense of the Congress that the President maintain adherence to a policy of restraint in conventional arms transfers and that, in implementing this policy worldwide, a balanced approach should be taken and full regard given to the security interests of

the United States in all regions of the world and that particular attention should be paid to controlling the flow of conventional arms to the nations of the developing world. To this end, the President is encouraged to continue discussions with other arms suppliers in order to restrain the flow of conventional arms to less developed countries.

SEC. 2. [2752] COORDINATION WITH FOREIGN POLICY.—(a) Nothing contained in this Act shall be construed to infringe upon the powers or functions of the Secretary of State.

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

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

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

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

(4) whether there will be delivery or other performance under the sale, lease, cooperative project, or export, to the end that sales, financing, leases, cooperative projects, and exports will be integrated with other United States activities and to the end that the foreign policy of the United States would be best served thereby.

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

SEC. 3. [2753] ELIGIBILITY.—(a) No defense article or defense service shall be sold or leased by the United States Government under this Act to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 27 of this Act), 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 27 of this Act), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative 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) The consent of the President under paragraph (2) of subsection (a) or under paragraph (1) of section 505(a) of the Foreign Assistance Act of 1961 (as it relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign country or international organization of defense articles sold by the United States under this Act if a treaty referred to in section 38(j)(1)(C)(i) of this Act 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 not a country designated under section 620A of the Foreign Assistance Act of 1961;

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

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

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

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

(5) the foreign country or international organization provides notification of the transfer of the defense articles to the

United States Government not later than 30 days after the date of such transfer.

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

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

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

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

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

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

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

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

(d)(1) Subject to paragraph (5), the President may not give his consent under paragraph (2) of subsection (a) or under the third sentence of such subsection, or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more, 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 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.

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

(C) If the President states in his certification under subparagraph (A) or (B) that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, thus waiving the requirements of that subparagraph, the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which neces-

sitate immediate consent to the transfer and a discussion of the national security interests involved.

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

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

(3)(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 38 of this Act or has been exempted from the licensing requirements of this Act pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act where 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 clause (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.

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

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

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed

to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) 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 36(b) of this Act with regard to such lead-nation procurement identified the transferees 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 \$25,000,000 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).

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

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

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

thorized under section 4, for a purpose not authorized under such agreement.

SEC. 4. [2754] PURPOSES FOR WHICH MILITARY SALES BY THE UNITED STATES ARE AUTHORIZED.—Defense articles and defense services shall be sold or leased by the United States Government under this Act to friendly countries solely for internal security, for legitimate self-defense, for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort: *Provided*, That none of the funds contained in this authorization shall be used to guarantee, or extend credit, or participate in an extension of credit in connection with any sale of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, Iran, Israel, the Republic of China, the Philippines, and Korea unless the President determines that such financing is important to the national security of the United States and reports within thirty days each such determination to the Congress.

SEC. 5. [2755] PROHIBITION AGAINST DISCRIMINATION.—(a) It is the policy of the United States that no sales should be made, and no credits (including participations in credits) or guaranties extended to or for any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) from participating in the furnishing of defense articles or defense services under this Act on the basis of race, religion, national origin, or sex.

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

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

ment where such policies or practices are based upon race, religion, national origin, or sex.

(c) The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any instance in which any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the performance of any sale or licensed transaction under this Act or any import or export under a treaty referred to in section 38(j)(1)(C)(i) of this Act. Such reports shall include (1) a description of the facts and circumstances of any such discrimination, (2) the response thereto on the part of the United States or any agency or employee thereof, and (3) the result of such response, if any.

(d)(1) 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 the 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 Act;

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

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

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

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

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

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

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

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

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

SEC. 6. [2756] FOREIGN INTIMIDATION AND HARASSMENT OF INDIVIDUALS IN THE UNITED STATES.—No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued under this Act with respect to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States. The President shall report any such determination promptly to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate.

Chapter 2.—FOREIGN MILITARY SALES AUTHORIZATIONS

SEC. 21. [2761] SALES FROM STOCKS.—(a)(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 5 of part II of the Foreign Assistance Act of 1961, 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) Except as provided by subsection (d) of this section, payment shall be made in advance or, if the President determines it to be in the national interest, upon delivery of the defense article or rendering of the defense service.

(c)(1) Personnel performing defense services sold under this Act may not perform any duties of a combatant nature, including any duties related to training and advising that may engage United States personnel in combat activities, 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 Act or the Foreign Assistance Act of 1961, the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, classified if necessary, setting forth—

- (A) the identity of such country;
- (B) a description of such hostilities or terrorist acts; and
- (C) the number of members of the United States Armed Forces and the number of United States civilian personnel that may be endangered by such hostilities or terrorist acts.

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

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

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

(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 503(a)(3) of the Foreign Assistance Act of 1961 or from funds made available on a nonrepayable basis under section 23 of this Act); 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 Arms Export 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 43(b) of this Act in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

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

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

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

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

(f) Any contracts entered into between the United States and a foreign country under the authority of this section or section 22 of this Act shall be prepared in a manner which will permit them

to be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

(g) 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 a bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.

(h)(1) 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 the date of enactment of this subsection by, or under this Act on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization 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)(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 chapter 2B, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

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

(B) the amount of the proposed sale;

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

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

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

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

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

(j) [Repealed—P.L. 104-106]

(k) Before entering into the sale under this Act of defense articles that are excess to the stocks of the Department of Defense, the President shall determine that the sale of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred.

(l) REPAIR OF DEFENSE ARTICLES.—

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

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

(B) is not an end item; and

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

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

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

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

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or

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

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

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

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

(m) 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 Act;

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

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

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

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

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

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

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

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

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

SEC. 22. [2762] PROCUREMENT FOR CASH SALES.—(a) 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 net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

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

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

(d) COMPETITIVE PRICING.—(1) Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to

procurements of like items purchased by the Department of Defense for its own use.

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

SEC. 23. [2763] CREDIT SALES.—(a) 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 Act.

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

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

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

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

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

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

SEC. 24. [2764] GUARANTIES.—(a) 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) 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 23, and may guarantee payment thereof.

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

Act, whenever a guaranty is issued under this section, the principal amount of the loan so guaranteed shall be deemed to be funds made available for use under this Act. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

SEC. 25. [2765] ANNUAL ESTIMATE AND JUSTIFICATION FOR SALES PROGRAM.—(a) 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 for the next fiscal year, a report which sets forth—

(1) an Arms Sales Proposal covering all sales and licensed commercial exports under this Act, as well as exports pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act, of major weapons or weapons-related defense equipment for \$7,000,000 or more, or of any other weapons or weapons-related defense equipment for \$25,000,000 or more, which are considered eligible for approval during the current calendar year, together with an indication of which sales and licensed commercial exports are deemed most likely actually to result in the issuance of a letter of offer or of an export license during such year;

(2) an estimate of the total amount of sales and licensed commercial exports, as well as exports pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act, expected to be made to each foreign nation from the United States;

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

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

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

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

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

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

- (iii) a description of the financial resources otherwise available to such country to pay such approved cash flow financing;
- (6) an analysis and description of the services performed during the preceding fiscal year by officers and employees of the United States Government carrying out functions on a full-time basis under this Act for which reimbursement is provided under section 43(b) or section 21(a) of this Act, including the number of personnel involved in performing such services;
- (7) the total amount of funds in the reserve under section 24(c) at the end of the fiscal year immediately preceding the fiscal year in which a report under this section is made, together with an assessment of the adequacy of such total amount of funds as a reserve for the payment of claims under guaranties issued pursuant to section 24 in view of the current debt servicing capacity of borrowing countries, as reported to the Congress pursuant to section 634(a)(5) of the Foreign Assistance Act of 1961;
- (8) a list of all countries with respect to which findings made by the President pursuant to section 3(a)(1) of this Act are in effect on the date of such transmission;
- (9) the progress made under the program of the Republic of Korea to modernize its armed forces, the role of the United States in mutual security efforts in the Republic of Korea and the military balance between the People's Republic of Korea and the Republic of Korea;
- (10) the amount and nature of Soviet military assistance to the armed forces of Cuba during the preceding fiscal year and the military capabilities of those armed forces;
- (11) the status of each loan and each contract of guaranty or insurance theretofore made under the Foreign Assistance Act of 1961, predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unpaid obligation or potential liability; the status of each extension of credit for the procurement of defense articles or defense services, and of each contract of guaranty in connection with any such procurement, theretofore made under the Arms Export Control Act with respect to which there remains outstanding any unpaid obligation or potential liability;
- (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 47(9) of this Act), 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) Not later than thirty days following the receipt of a request made by any of the congressional committees described in subsection (e) for additional information with respect to any information submitted pursuant to subsection (a), the President shall submit such information to such committee.

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

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

(d)¹ For the purposes of subsection (a)(5)(B) of this section, the term “cash flow financing” means the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this Act or under section 503(a)(3) of the Foreign Assistance Act of 1961 and the amount of the financing that has been approved therefor;

(e)² 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.

SEC. 26. [2766] SECURITY ASSISTANCE SURVEYS.—(a) The Congress finds that surveys prepared by the United States for foreign countries have had a significant impact on subsequent military procurement decisions of those countries. It is the policy of the United States that the results of security assistance surveys conducted by the United States clearly do not represent a commitment by the United States to provide any military equipment to any foreign country. Further, recommendations in such surveys should be consistent with the arms export control policy provided for in this Act.

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

¹ Subsection (d) was added to the end of section 25 by section 112(b) of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; 99 Stat. 198). It should probably end with a period instead of a semicolon.

² Section 519(3) of Public Law 105-118 amends section 25 of the Arms Export Control Act “by adding the following subsection:” a new subsection (e) (shown above). The amendment probably should have stated “by adding **at the end** the following subsection”.

States Government personnel who participated or will participate in the survey.

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

SEC. 27. [2767] AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—(a) The President may enter into a cooperative project agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization.

(b) As used in this section—

(1) the term “cooperative project” in the case of an agreement with the North Atlantic Treaty Organization 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 forces and which provides—

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

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

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

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

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

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

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

(3) the term “other participant” means a participant in a cooperative project other than the United States.

(c) Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims. 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 worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

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

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

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

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

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

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

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section 21(e)(1)(A) and 43(b) of this Act, 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 defense services expected to be contributed by the United States and each of the other participants on behalf of such cooperative project;

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

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

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

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

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

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

(j)(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 Atlan-

tic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.

(2) Not later than January 1 of each year, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report specifying (A) the countries eligible for participation in such a cooperative project agreement under this subsection, and (B) the criteria used to determine the eligibility of such countries.

[SEC. 28. REPORTS ON PRICE AND AVAILABILITY ESTIMATES.—
Repealed—Section 1064(a) of Public Law 104-106; 110 Stat. 445]

Chapter 2A—Foreign Military Construction Sales

SEC. 29. [2769] FOREIGN MILITARY CONSTRUCTION SALES.—
The President may sell design and construction services to any eligible foreign country or international organization if such country or international organization agrees to pay in United States dollars not less than the full cost to the United States Government of furnishing such services. Payment shall be made to the United States Government in advance of the performance of such services by officers or employees of the United States Government. The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of design and construction services for sale under this section if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such time as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due.

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

SEC. 30. [2770] GENERAL AUTHORITY.—(a) Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company either (i) on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 38 of this Act or (ii) 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 38 of this Act. The President may also sell defense services in support of such

sales of defense articles, subject to the requirements of this chapter: *Provided, however,* That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

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

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

Chapter 2C—Exchange of Training and Related Support

SEC. 30A. [2770a] EXCHANGE OF TRAINING AND RELATED SUPPORT.—(a) Subject to subsection (b), the President may provide training and related support to military and civilian defense personnel of a friendly foreign country or an international organization. Such training and related support shall be provided by a Secretary of a military department and may include the provision of transportation, food services, health services, and logistics and the use of facilities and equipment.

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

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

(d) Not later than February 1 of each year, the President shall submit to the Congress a report on the activities conducted pursuant to this section during the preceding fiscal year, including the

estimated full costs of the training and related support provided by the United States to each country and international organization and the estimated value of the training and related support provided to the United States by that country or international organization.

Chapter 3.—MILITARY EXPORT CONTROLS

SEC. 31. AUTHORIZATION AND AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS.—(a) There are authorized to be appropriated to the President to carry out this Act \$5,371,000,000 for fiscal year 1986 and \$5,371,000,000 for the fiscal 1987. Credits may not be extended under section 23 of this Act in an amount, and loans may not be guaranteed under section 24(a) of this Act in a principal amount, which exceeds any maximum amount which may be established with respect to such credits or such loan guarantees in legislation appropriating funds to carry out this Act. Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

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

(2) Of the aggregate amount of financing provided under this section, not more than \$553,900,000 for fiscal year 1986 and not more than \$553,900,000 for fiscal year 1987 may be made available at concessional rates of interest. If a country is released from its contractual liability to repay the United States Government with respect to financing provided under this section, such financing shall not be considered to be financing provided at concessional rates of interest for purposes of the limitation established by this paragraph.

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

SEC. 32. [2772] PROHIBITION AGAINST CERTAIN MILITARY EXPORT FINANCING BY EXPORT-IMPORT BANK.— * * * [Section 102(e) of Public Law 102-429; 106 Stat. 2195]

SEC. 33. [2773] RESTRAINT IN ARMS SALES TO SUB-SAHARAN AFRICA.—It is the sense of the Congress that the problems of Sub-Saharan Africa are primarily those of economic development and that United States policy should assist in limiting the development of costly military conflict in that region. Therefore, the President shall exercise restraint in selling defense articles and defense services, and in providing financing for sales of defense articles and defense services, to countries in Sub-Saharan Africa.

SEC. 34. [2774] FOREIGN MILITARY SALES CREDIT STANDARDS.—The President shall establish standards and criteria for credit and guaranty transactions under sections 23 and 24 in accordance with the foreign, national security, and financial policies of the United States.

SEC. 35. [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, or sales under the Agricultural Trade Development and Assistance Act of 1954, as amended, to military expenditures, or is diverting its own resources to unnecessary military expenditures, to a degree which materially interferes with its development, such country shall be immediately ineligible for further sales and guarantees under sections 21, 22, 23, and 24, until the President is assured that such diversion will no longer take place.

(b) [Repealed—1974]

SEC. 36. [2776] REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days 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 (11) 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 Act to each foreign country and international organization, by category, if such letters of offer have not been accepted or canceled;

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

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

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

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

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

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

(5) projections of the dollar amounts, by foreign country and international organization, of sales expected to be made under sections 21 and 22, in the quarter of the fiscal year im-

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

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

(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 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is \$1,000,000 or more;

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

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

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

(11) a report on all concluded government-to-government agreements regarding foreign coproduction of defense articles of United States origin and all other concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin (in-

cluding coproduction memoranda of understanding or agreement) that have not been previously reported under this subsection, which shall include—

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

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

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

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

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

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

(b)(1) Subject to paragraph (6), in the case of any letter of offer to sell any defense articles or services under this Act for \$50,000,000 or more, any design and construction services for \$200,000,000 or more, or any major defense equipment for \$14,000,000 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 (i) through (iv) of subsection (a), or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a), and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services 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 74), such report shall include a description of the proposed ex-

port 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). 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;

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

(D) 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 controls; or

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

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

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

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

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

(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles, defense services, or design and construction services 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;

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

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

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

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

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

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

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

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information. The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, 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 re-

ceiving such certification, enacts 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 cite any quarterly report submitted pursuant to section 28¹ of this Act which listed a price and availability estimate, or a request for the issuance of a letter of offer, which was a basis for the proposed sale which is the subject of such certification.

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

¹ Section 28 was repealed by section 1064(a) of Public Law 104-106 (110 Stat. 445).

(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, \$50,000,000 or more in the case of defense articles or defense services, or \$200,000,000 or more in the case of design or construction services, then the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a new numbered certification which relates to such enhancement or upgrade and which shall be considered for purposes of this subsection as if it were a separate letter of offer to sell defense equipment, articles, or services, subject to all of the requirements, restrictions, and conditions set forth in this subsection. For purposes of this subparagraph, references in this subsection to sales shall be deemed to be references to enhancements or upgrades in the sensitivity of technology or the capability of major defense equipment, articles, or services, as the case may be.

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

(6) The limitation in paragraph (1) and the requirement in paragraph (5)(C) shall apply in the case of a letter of offer to sell 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 only if the letter of offer involves—

(A) the sale of major defense equipment under this Act for, or the enhancement or upgrade of major defense equipment at a cost of, \$25,000,000 or more, as the case may be; and

(B) the sale of defense articles or services for, or the enhancement or upgrade of defense articles or services at a cost of, \$100,000,000 or more, as the case may be; or

(C) the sale of design and construction services for, or the enhancement or upgrade of design and construction services at a cost of, \$300,000,000 or more, as the case may be.

(c)(1) Subject to paragraph (5), in the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of \$14,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$50,000,000 or more (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more), before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with

respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export and a description of any such offset agreement. 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 description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense.¹ In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.

(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 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export;

(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 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

¹ Section 732(b)(2) of P.L. 103-236 amended section 36(c)(1) in the third sentence by inserting “and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement)” after “Secretary of Defense”. The amendment probably should have been made to the second sentence.

(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.

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

(B) For the purpose of expediting the consideration and enactment of joint 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) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in subsection (b)(5) to “a letter of offer” or “an offer” shall be deemed to be a reference to “a contract”.

(5) In the case of an application by a person (other than with regard to a sale under section 21 or 22 of this Act) 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 sales territory 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 \$25,000,000 or more; or

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

(6)¹ 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 38(j)(1)(C)(i) of this Act to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 38(j)(1) of this Act, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.

(d)(1) In the case of an approval under section 38 of this Act 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) containing comparable information, except that

¹ Margin so in law.

the last sentence of such subsection shall not apply to certifications 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 38 if the Congress, within the 15-day or 30-day period specified in paragraph (2)(A) or (B), as the case may be, enacts a joint resolution prohibiting such approval.

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

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

(6)¹ 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 38(j)(1)(C)(i) of this Act to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 38(j)(1) of this Act, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.

(e) 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

¹Margin so in law.

- (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).
- (f) The President shall cause to be published in a timely manner in the Federal Register, upon transmittal to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, the full unclassified text of—
- (1) each numbered certification submitted pursuant to subsection (b);
 - (2) each notification of a proposed commercial sale submitted under subsection (c); and
 - (3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d).
- (g) Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)).
- (h) 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.
- SEC. 37. [2777] FISCAL PROVISIONS RELATING TO FOREIGN MILITARY SALES CREDITS.—(a) Cash payments received under sections 21, 22, and 29 and advances received under section 23 shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guaranties.
- (b) Amounts received from foreign governments and international organizations as repayments for credits extended pursuant

to section 23, amounts received from the disposition of instruments evidencing indebtedness under section 24(b) (excluding such portion of the sales proceeds as may be required at the time of disposition to be obligated as a reserve for payment of claims under guaranties issued pursuant to section 24(b), which sums are made available for such obligations), and other collections (including fees and interest) shall be transferred to the miscellaneous receipts of the Treasury.

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

SEC. 38. [2778] CONTROL OF ARMS EXPORTS AND IMPORTS.—

(a)(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 export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account whether the export of an article 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 nonproliferation agreements or other arrangements.

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

(b)(1)(A)(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State for local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by

the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii)(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1), or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

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

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

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

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

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

(B)¹ The prohibition under such regulations required by the second sentence of subparagraph (A) shall not extend to any military firearms (or ammunition, components, parts, accessories, and attachments for such firearms) of United States manufacture furnished to any foreign government by the United States under this Act or any other foreign assistance or sales program of the United States if—

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

¹ So in original. There are two subparagraphs “(B)”.

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

(B)¹ 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), no defense articles or defense services designated by the President under subsection (a)(1) may be exported or imported without a license for such export or import, issued in accordance with this Act and regulations issued under this Act, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

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

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

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

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

(c) Any person who willfully violates any provision of this section, section 39, a treaty referred to in subsection (j)(1)(C)(i), or any rule or regulation issued under this section or section 39, including any rule or regulation issued to implement or enforce a treaty referred to in subsection (j)(1)(C)(i) 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.

(d) [Repealed—1979]

(e) 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 (j)(1)(C)(i), the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export

Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act, subject to the same terms and conditions as are applicable to such powers under such Act, except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that 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)(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 634A(a) of the Foreign Assistance Act of 1961. 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 Act for the export of defense items under subsection (j) or any other provision of this Act until 30 days after the date on which the President has transmitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a notification that includes—

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

(B) a determination by the Attorney General that the bilateral agreement concluded under subsection (j) requires the compilation and maintenance of sufficient documentation relating to the export of United States defense articles, defense services, and related technical data to facilitate law enforcement efforts to detect, prevent, and prosecute criminal violations of any provision of this Act, including the efforts on the part of countries and factions engaged in international terrorism to illicitly acquire sophisticated United States defense items.

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

(4)¹ Paragraph (2) shall not apply with respect to an exemption under subsection (j)(1) to give effect to a treaty referred to in subsection (j)(1)(C)(i) (and any implementing arrangements to such treaty), provided that the President promulgates regulations to implement and enforce such treaty under this section and section 39.

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

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

(i) this section,

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

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

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

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

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

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

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

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

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

(xi) section 603 (b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113 (b) and (c)); or¹

(xii)¹ section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);

¹ Margin so in law.

¹ Clause (xii) of subsection (g)(1)(A) was added by section 6910(2) of Public Law 108-458 (118 Stat. 3774). The amendment did not provide for the indentation of clause (xii), but the margin for clause (xii) was indented to conform with existing clauses in order to reflect the probable intent of Congress. In addition, the word “section” probably should read “sections”.

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

(C) persons who are ineligible—

(i) to contract with,

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

(iii) to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government.

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

(3) If the President determines—

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

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

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

the President may disapprove the application. The President shall consider requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person—

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,

except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards

shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection—

(A) the term “foreign corporation” means a corporation that is not incorporated in the United States;

(B) the term “foreign government” includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term “foreign person” means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;

(D) the term “party to the export” means—

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.

(h) The designation by the President (or by an official to whom the President’s functions under subsection (a) have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.

(i) 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 Act to exempt a foreign country from the licensing requirements of this Act 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 Act 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 Act 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:

(I) 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, done at Washington and London on June 21 and 26, 2007 (and any implementing arrangement thereto).

(II) 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).

(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 300 kilometers, and associated production facilities, software, or technology for these systems, as defined in the Missile Technology Control Regime Annex Category I, Item 1;

(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 I of title 22, Code of Federal Regulations), Category XIV, subcategories (a), (b), (f)(1), (i), (j) as it pertains to (f)(1), (l) as it pertains to (f)(1), 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 paragraph (1)—

(A) shall, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy requiring—

(i) conditions on the handling of all United States-origin defense items exported to the foreign country, including prior written United States Government approval for any reexports to third countries;

(ii) end-use and retransfer control commitments, including securing binding end-use and retransfer control commitments from all end-users, including such documentation as is needed in order to ensure compliance and enforcement, with respect to such United States-origin defense items;

(iii) establishment of a procedure comparable to a “watchlist” (if such a watchlist does not exist) and full cooperation with United States Government law en-

forcement agencies to allow for sharing of export and import documentation and background information on foreign businesses and individuals employed by or otherwise connected to those businesses; and

(iv) establishment of a list of controlled defense items to ensure coverage of those items to be exported under the exemption; and

(B) should, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy regarding—

(i) controls on the export of tangible or intangible technology, including via fax, phone, and electronic media;

(ii) appropriate controls on unclassified information relating to defense items exported to foreign nationals;

(iii) controls on international arms trafficking and brokering;

(iv) cooperation with United States Government agencies, including intelligence agencies, to combat efforts by third countries to acquire defense items, the export of which to such countries would not be authorized pursuant to the export control regimes of the foreign country and the United States; and

(v) violations of export control laws, and penalties for such violations.

(3) **ADVANCE CERTIFICATION.**—Not less than 30 days before authorizing an exemption for a foreign country from the licensing requirements of this Act for the export of defense items, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a certification that—

(A) the United States has entered into a bilateral agreement with that foreign country satisfying all requirements set forth in paragraph (2);

(B) the foreign country has promulgated or enacted all necessary modifications to its laws and regulations to comply with its obligations under the bilateral agreement with the United States; and

(C) the appropriate congressional committees will continue to receive notifications pursuant to the authorities, procedures, and practices of section 36 of this Act for defense exports to a foreign country to which that section would apply and without regard to any form of defense export licensing exemption otherwise available for that country.

(4) **DEFINITIONS.**—In this section:

(A) **DEFENSE ITEMS.**—The term “defense items” means defense articles, defense services, and related technical data.

(B) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

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

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

SEC. 39. [2779] FEES OF MILITARY SALES AGENTS AND OTHER PAYMENTS.—(a) In accordance with such regulations as he may prescribe, the Secretary of State shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, or offered or agreed to be paid, by any person in connection with—

(1) sales of defense articles or defense services under section 22, or of design and construction services under section 29 of this Act;

(2) commercial sales of defense articles or defense services licensed or approved under section 38 of this Act; or

to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales. Such regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments. The Secretary of State shall by regulation require such recordkeeping as he determines is necessary.

(3)¹ exports of defense articles or defense services pursuant to a treaty referenced in section 38(j)(1)(C)(i) of this Act;

(b) The President may, by regulation, prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees as he determines will be in furtherance of the purposes of this Act.

(c) No such contribution, gift, commission, or fee may be included, in whole or in part, in the amount paid under any procurement contract entered into under section 22 or section 29 of this Act, unless the amount thereof is reasonable, allocable to such contract, and not made to a person who has solicited, promoted, or otherwise secured such sale, or has held himself out as being able to do so, through improper influence. For the purposes of this section, “improper influence” means influence, direct or indirect, which induces or attempts to induce consideration or action by any employee or officer of a purchasing foreign government or international organization with respect to such purchase on any basis other than such consideration of merit as are involved in comparable United States procurements.

(d)(1) All information reported to the Secretary of State and all records maintained by any person pursuant to regulations prescribed under this section shall be available, upon request, to any standing committee of the Congress or any subcommittee thereof and to any agency of the United States Government authorized by

¹ Placement so in law. The amendment made by section 104(e)(3) of Public Law 111-266 probably should have inserted the new paragraph (3) following paragraph (2).

law to have access to the books and records of the person required to submit reports or to maintain records under this section.

(2) Access by an agency of the United States Government to records maintained under this section shall be on the same terms and conditions which govern the access by such agency to the books and records of the person concerned.

SEC. 39A. [22 U.S.C. 2779A] PROHIBITION ON INCENTIVE PAYMENTS.

(a) No United States supplier of defense articles or services sold or licensed under this Act or exported pursuant to a treaty referred to in section 38(j)(1)(C)(i) of this Act, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale or export of any such defense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

(b) Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

(c) In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 and section 12(a) of such Act, subject to the same terms and conditions as are applicable to such powers under that Act, except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

(d) For purposes of this section—

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

(2) the term “incentive payments” means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States person to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term “United States person” means—

- (A) an individual who is a national or permanent resident alien of the United States; and
- (B) any corporation, business association, partnership, trust, or other juridical entity—
 - (i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or
 - (ii) owned or controlled in fact by individuals described in subparagraph (A) or by an entity described in clause (i).

SEC. 40. [2780] TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.—The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of States makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent, which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.—

(1) IN GENERAL.—A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.—A United 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 (1)(3)(A) or (B). To the extent provided in regulations issued under subsection (1)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United State by a person designated as a United States person in those regulations.

(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.—This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d) 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 unsafeguarded 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) shall be published in the Federal Register.

(f) RESCISSION.—(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(A) 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) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: "That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ is hereby prohibited.", the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98-473), 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.

(h) EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS.—The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) RELATION TO OTHER LAWS.—

(1) IN GENERAL.—With regard to munitions items controlled pursuant to this Act, the provisions of this section shall apply notwithstanding any other provisions of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) SECTION 614(A) WAIVER AUTHORITY.—If the authority of section 614(a) of the Foreign Assistance Act of 1961 is used to permit a transaction under that Act or the Arms Export Control Act which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) CRIMINAL PENALTY.—Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 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 (subject to the same terms and conditions as are applicable to such powers under that Act), except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(l) DEFINITIONS.—As used in this section—

(1) the term “munitions item” means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term “United States”, when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;

(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 830(4) of the Nuclear Proliferation Prevention Act of 1994; and

(5) the term "unsafeguarded special nuclear material" has the meaning given that term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.

SEC. 40A. [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 Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) **WAIVER.**—The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

CHAPTER 3A—END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 40A.¹ [2785] END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES.

(a) **ESTABLISHMENT OF MONITORING PROGRAM.**—

(1) **IN GENERAL.**—In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the President shall establish a program which provides for the end-use monitoring of such articles and services.

(2) **REQUIREMENTS OF PROGRAM.**—To the extent practicable, such program—

(A) shall provide for the end-use monitoring of defense articles and defense services in accordance with the standards that apply for identifying high-risk exports for regular

¹Section 150(a) of Public Law 104-164 (110 Stat. 1436) added this section. Probably should be redesignated as section 40B.

end-use verification developed under section 38(g)(7) of this Act (commonly referred to as the “Blue Lantern” program); and

(B) shall be designed to provide reasonable assurance that—

(i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and

(ii) such articles and services are being used for the purposes for which they are provided.

(b) CONDUCT OF PROGRAM.—In carrying out the program established under subsection (a), the President shall ensure that the program—

(1) provides for the end-use verification of defense articles and defense services that incorporate sensitive technology, defense articles and defense services that are particularly vulnerable to diversion or other misuse, or defense articles or defense services whose diversion or other misuse could have significant consequences; and

(2) prevents the diversion (through reverse engineering or other means) of technology incorporated in defense articles.

(c) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this section, and annually thereafter as a part of the annual congressional presentation documents submitted under section 634 of the Foreign Assistance Act of 1961, the President shall transmit to the Congress a report describing the actions taken to implement this section, including a detailed accounting of the costs and number of personnel associated with the monitoring program 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 Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) includes defense articles and defense services that are transferred to a third country or other third party.

Chapter 4.—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

SEC. 41. EFFECTIVE DATE.—This Act shall take effect on July 1, 1968.

SEC. 42. [2791] GENERAL PROVISIONS.—(a) In carrying out this Act, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this Act, there shall be taken into consideration (A)¹ the extent to which the proposed sale

¹ Subparagraphs (A) through (C) of section 42(a) probably should be paragraphs (1) through (3), respectively. See section 1225(a)(3)(C) of P.L. 105-277 (112 Stat. 2681-773).

damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States, (B)¹ the portion of the defense articles so manufactured which is of United States origin, and (C)¹ whether, and the extent to which, such sale might contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(b) No credit sale shall be extended under section 23, and no guarantee shall be issued under section 24, in any case involving coproduction or licensed, production outside the United States of any defense article of United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under license or coproduced outside the United States, the estimated value of such production or coproduction, and the probable impact of the proposed transaction on employment and production within the United States.

(c) Funds made available under this Act may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

(d)(1) With respect to sales and guaranties under sections 21, 22, 23, 24, 29, and 30 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 guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e) (1) Each contract for sale entered into under sections 21, 22, 29, and 30 of this Act, and each contract entered into under section 27(d) of this Act, shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this Act.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under contracts of sale entered into under sections 21, 22, 29, and 30 of this Act, or under contracts entered into under sec. 27(d) of this Act, that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

(f) The President shall, to the maximum extent possible and consistent with the purposes of this Act, use civilian contract personnel in any foreign country to perform defense services sold under this Act.

SEC. 43. [2792] ADMINISTRATIVE EXPENSES.—(a) Funds made available under other law for the operations of United States Government agencies carrying out functions under this Act shall be available for the administrative expenses incurred by such agencies under this Act.

(b) Charges for administrative services calculated under section 21(e)(1)(A) of this Act 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 Act when—

(1) such functions are primarily for the benefit of any foreign country;

(2) such expenses are not directly and fully charged to, and reimbursed from amounts received for, sale of defense services under section 21(a) of this Act; and

(3) 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) Not more than \$86,500 of the funds derived from charges for administrative services pursuant to section 21(e)(1)(A) of this Act may be used each fiscal year for official reception and representation expenses.

SEC. 44. [2793] STATUTORY CONSTRUCTION.—No provision of this Act shall be construed as modifying in any way the provisions of the Atomic Energy Act of 1954, as amended, or section 7307 of title 10 of the United States Code.

SEC. 45. STATUTES REPEALED AND AMENDED.—(a) Sections 521, 522, 523, 524(b)(3), 525, 634(g), and 640 of the Foreign Assistance Act of 1961, as amended, are hereby repealed.

(b) Part III of the Foreign Assistance Act of 1961, as amended, is amended as follows:

(1) Section 622(b) is amended by striking out “or sales”.

(2) Section 622(c) is amended by striking out “and sales” and “or sales”.

(3) Section 632(d) is amended by striking out “sections 506, 522, and 523,” in the first sentence and inserting in lieu thereof “section 506”.

(4) Section 634(d) is amended by inserting “or any other” between “under this” and “Act” in the fourth sentence.

(5) Section 644(m) is amended by striking out “and sales” in the first sentence of the paragraph following numbered paragraph (3).

(c) References in law to the provisions of law repealed by subsection (a) of this section shall hereafter be deemed to be references to this Act or appropriate provisions of this Act. Except for the laws specified in section 44, no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act.

SEC. 46. [2341] SAVINGS PROVISIONS.—Except as may be expressly provided to the contrary in this Act, all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of any provisions of law repealed by section 45(a) shall continue in full force and effect until modified by appropriate authority.

SEC. 47. [2794] DEFINITIONS.—For purposes of this Act, the term—

(1) “excess defense article” has the meaning provided by section 644(g) of the Foreign Assistance Act of 1961;

(2) “value” means, in the case of an excess defense article, except as otherwise provided in sec. 21(a),¹ 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 this paragraph, and

(D) any component or part of any article listed in this paragraph,

but does not include merchant vessels or (as defined by the Atomic Energy Act of 1954) source material (except uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unre-

¹ Subparagraphs (A) through (C) of section 42(a) probably should be paragraphs (1) through (3), respectively. See section 1225(a)(3)(C) of P.L. 105-277 (112 Stat. 2681-773).

lated 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 644(e) of the Foreign Assistance Act of 1961) used for the purposes of making military sales, but does not include design and construction services under section 29 of this Act;

(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 nonrecurring 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 38 of this Act, 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 29 of this Act, the design and construction of real property facilities, including necessary construction equipment and materials, engineering services, construction contract management services relating thereto, and technical advisory assistance in the operation and maintenance of real property facilities provided or performed by any department or agency of the Department of Defense or by a contractor pursuant to a contract with such department or agency;

(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)¹ “weapons of mass destruction” has the meaning provided by section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104-201; 110 Stat. 2717; 50 U.S.C. 2302(1)); and

(11)¹ “Sales territory” means a country or group of countries to which a defense article or defense service is authorized to be reexported.

CHAPTER 5—SPECIAL DEFENSE ACQUISITION FUND

SEC. 51. [2795] SPECIAL DEFENSE ACQUISITION FUND.—(a)(1) Under the direction of the President and in consultation with the Secretary of State, the Secretary of Defense shall establish a Special Defense Acquisition Fund (hereafter in this chapter referred to as the “Fund”), to be used as a revolving fund separate from other

¹ Margin so in law.

accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this Act, the Foreign Assistance Act of 1961, or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this chapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

(2) Nothing in this chapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this Act or the Foreign Assistance Act of 1961.

(3) The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this Act, the Foreign Assistance Act of 1986, or other law.

(4) 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) The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 21(a)(1)(A) of this Act representing the actual value of defense articles not intended to be replaced in stock,

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, and

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961) of defense articles and defense services acquired under this chapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 21(a)(1) or section 22 of this Act or section 644(m) of the Foreign Assistance Act of 1961, as appropriate,

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c)(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10, United States Code. 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 chapter which have not been transferred from the Fund in accordance with this chapter.

(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 52. [2795a] USE AND TRANSFER OF ITEMS PROCURED BY THE FUND.—(a) No defense article or defense service acquired by the Secretary of Defense under this chapter may be transferred to any foreign country or international organization unless such transfer is authorized by this Act, the Foreign Assistance Act of 1961, or other law.

(b) The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this chapter prior to their transfer to a foreign country or international organization, if such is necessary to meet national defense requirements and the United States Armed Forces bear the costs of operation and maintenance of such articles or services while in their use and the costs of restoration or replacement upon the termination of such use.

(c) Except as provided in subsection (b) of this section, the Fund may be used to pay for storage, maintenance, and other costs related to the preservation and preparation for transfer of defense articles and defense services acquired under this chapter prior to their transfer, as well as the administrative costs of the Department of Defense incurred in the acquisition of such items to the extent not reimbursed pursuant to section 43(b) of this Act.

SEC. 53. ANNUAL REPORTS TO CONGRESS.—[Repealed—Section 145(a) of Public Law 104-164; 110 Stat. 1434]

CHAPTER 6—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

SEC. 61. [22 U.S.C. 2796] LEASING AUTHORITY.—(a) The President may lease defense articles in the stocks of the Department of Defense to an eligible foreign country or international organization if—

(1) he determines that there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than on a sales basis under this Act;

(2) he determines that the articles are not for the time needed for public use;

(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 communication 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 Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relation 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 year¹ 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)(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) Defense articles in the stocks of the Department of Defense may be leased or loaned to a foreign country or international organization only under the authority of this chapter or chapter 2 of part II of the Foreign Assistance Act of 1961, and may not be leased to a foreign country or international organization under the authority of section 2667 of title 10, United States Code.

SEC. 62. [2796a] REPORTS TO THE CONGRESS.—(a) Before entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this

¹Section 524 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in section 101(d) of division A of Public Law 105-277), amended subsection (a) in the second subparagraph (B) by striking out “1998” and inserting in lieu thereof “the current fiscal year”. The amendment probably should have struck out “fiscal year 1998”.

chapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961, for a period of one year or longer, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign 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, including an explanation of why the defense article is being leased or loaned rather than sold under this Act.

(b) The President may waive the requirements of this section (and in the case of an agreement described in section 63, may waive the provisions of that section) if he states in his certification, 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) The certification required by subsection (a) shall be transmitted—

- (1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, 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 organization or country.

SEC. 63. [2796b] LEGISLATIVE REVIEW.—(a)(1) Subject to paragraph (2), in the case of any agreement involving the lease under this chapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961, to any foreign country or international organization for a period of one year or longer of any defense articles which are either (i) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at \$14,000,000 or more, or (ii) defense articles valued (in terms of their replacement cost less any depreciation in their value) at \$50,000,000 or more, the agreement may not be entered into or renewed if the Congress, within the 15-day or 30-day period specified in section 62(c) (1) or (2), as the case may be, enacts a joint resolution prohibiting the proposed lease or loan.

(2) In the case of an agreement described in paragraph (1) that is entered into with a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, the Republic of Korea, Israel, or New Zealand, the limitations in paragraph (1) shall apply only if the agreement involves a lease or loan of—

(A) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at \$25,000,000 or more; or

(B) defense articles valued (in terms of their replacement cost less any depreciation in their value) at \$100,000,000 or more.

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

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

SEC. 64. [2796c] APPLICATION OF OTHER PROVISIONS OF LAW.—Any reference to sales of defense articles under this Act in any provision of law restricting the countries or organizations to which such sales may be made shall be deemed to include a reference to leases of defense articles under this chapter.

SEC. 65. [2796d] LOAN OF MATERIALS, SUPPLIES, AND EQUIPMENT FOR RESEARCH AND DEVELOPMENT PURPOSES.—(a)(1) Except as provided in subsection (c), the Secretary of Defense may loan to a country that is a NATO or major non-NATO ally materials, supplies, or equipment for the purpose of carrying out a program of cooperative research, development, testing, or evaluation. The Secretary may accept as a loan or a gift from a country that is a NATO or major non-NATO ally materials, supplies, or equipment for such purpose.

(2) Each loan or gift transaction entered into by the Secretary under this section shall be provided for under the terms of a written agreement between the Secretary and the country concerned.

(3) A program of testing or evaluation for which the Secretary may loan materials, supplies, or equipment under this section includes a program of testing or evaluation conducted solely for the purpose of standardization, interchangeability, or technical evaluation if the country to which the materials, supplies, or equipment are loaned agrees to provide the results of the testing or evaluation to the United States without charge.

(b) The materials, supplies, or equipment loaned to a country under this section may be expended or otherwise consumed in connection with any testing or evaluation program without a requirement for reimbursement of the United States if the Secretary—

(1) determines that the success of the research, development, test, or evaluation depends upon expending or otherwise consuming the materials, supplies, or equipment loaned to the country; and

(2) approves of the expenditure or consumption of such materials, supplies, or equipment.

(c) The Secretary of Defense may not loan to a country under this section any material if the material is a strategic and critical material and if, at the time the loan is to be made, the quantity of the material in the National Defense Stockpile (provided for under section 3 of the Strategic and Critical Materials Stock Piling

Act (50 U.S.C. 98b)) is less than the quantity of such material to be stockpiled, as determined by the President under section 3(a) of such Act.

(d) For purposes of this section, the term “NATO ally” means a member country of the North Atlantic Treaty Organization (other than the United States).

CHAPTER 7—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY

SEC. 71. [22 U.S.C. 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 MTCR Annex the export of which is not controlled under section 6(l) of the Export Administration Act of 1979.

(b) REFERRAL OF LICENSE APPLICATIONS.—(1) A determination of the Secretary of State to approve a license for the export of an item on the list established under subsection (a) may be made only after the license application is referred to the Secretary of Defense.

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a), the Secretary of State shall provide to the Secretary of Defense and the Secretary of Commerce, 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 MTCR 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 Act pursuant to United States obligations under the Missile Technology Control Regime and are goods or services that are intended to support the design, utilization, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex, the Secretary shall transmit to the Congress a report describing the licensed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. The requirement contained in the preceding sentence shall not apply to licenses for exports to countries that were members of the MTCR as of April 17, 1987.

SEC. 72. [22 U.S.C. 2797a] DENIAL OF THE 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 MTCR Annex, in violation of the provisions of section 38 of this Act, section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405), or any regulations or orders issued under any such provisions,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in paragraph (2).

(2) The sanctions which apply to a United States person under paragraph (1) are the following:

(A) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer of missile equipment or technology controlled under this Act.

(B) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR, then the President shall deny to such United States person for a period of not less than 2 years—

(i) all United States Government contracts, and

(ii) all export licenses and agreements for items on the United States Munitions List.

(b) DISCRETIONARY SANCTIONS.—In the case of any determination made pursuant to subsection (a), the President may pursue any penalty provided in section 38(c) of this Act.

(c) PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a United States person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

(d) WAIVER.—The President may waive the imposition of sanctions under subsection (a) with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

SEC. 73. [22 U.S.C. 2797b] TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS

(a) **SANCTIONS.**—(1) Subject to subsections (c) through (g), if the President determines that a foreign person, after the date of the enactment of this chapter, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 11B(b)(1) of the Export Administration Act of 1979, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this Act.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development,

or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b) **INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), subsection (a) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(2) **LIMITATION.**—Notwithstanding paragraph (1), subsection (a) shall apply to an entity subordinate to a government that engages in exports or transfers described in section

498A(b)(3)(A) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(b)(3)(A)).

(c) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in subsection (a) may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts, and if the President certifies to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

(1) for any judicial or other enforcement action taken by the MTCR adherent, such action has—

(A) been comprehensive; and

(B) been performed to the satisfaction of the United States; and

(2) with respect to any finding of innocence of wrongdoing, the United States is satisfied with the basis for such finding.

(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) stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives 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) to a foreign person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

(g) **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.

SEC. 73A. [22 U.S.C. 2797b-1] NOTIFICATION OF ADMITTANCE OF MTCR ADHERENTS.

(a) **POLICY REPORTS.**—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 that a report is transmitted pursuant to subsection (a), the Director of

Central Intelligence shall promptly prepare and submit to the Congress a separate report containing any credible information indicating that the country described in subsection (a) has engaged in any activity identified under subparagraph (A), (B), or (C) of section 73(a)(1) within the previous two years.

SEC. 73B. [22 U.S.C. 2797b-2] AUTHORITY RELATING TO MTCR ADHERENTS.

Notwithstanding section 73(b), the President may take the actions under section 73(a)(2) under the circumstances described in section 74(b)(2).

SEC. 74. [22 U.S.C. 2797c] DEFINITIONS

(a) IN GENERAL.—For purposes of this chapter—

(1) the term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex;

(6) the term “United States person” has the meaning given that term in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2));

(7) the term “foreign person” means any person other than a United States person;

(8)(A) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries with non-market economies (excluding former members of the Warsaw Pact), 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), as it relates to any international understanding concluded with the United States after January 1, 2000, the term “international understanding” means—

(1) any specific agreement by a country not to export, transfer, or otherwise engage in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act; or

(2) any specific understanding by a country that, notwithstanding section 73(b) of this Act, the United States retains the right to take the actions under section 73(a)(2) of this Act in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act.

CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

SEC. 81. [22 U.S.C. 2798] SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, 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, to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on

the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term “foreign person” means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

CHAPTER 9—TRANSFER OF CERTAIN CFE TREATY-LIMITED EQUIPMENT TO NATO MEMBERS

SEC. 91. [22 U.S.C. 2799] PURPOSE.

The purpose of this chapter is to authorize the President to support, consistent with the CFE Treaty, a NATO equipment transfer program that will—

- (1) enhance NATO’s forces,
 - (2) increase NATO standardization and interoperability,
- and
- (3) better distribute defense burdens within the NATO alliance.

SEC. 92. [22 U.S.C. 2799a] CFE TREATY OBLIGATIONS.

The authorities provided in this chapter shall be exercised consistent with the obligations incurred by the United States in connection with the CFE Treaty.

SEC. 93. [22 U.S.C. 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), the United States may utilize services provided by NATO or any NATO/CFE

country, including inspection, repair, or transportation services with respect to defense articles so transferred.

(c) ACCEPTANCE OF NATO ASSISTANCE IN MEETING CERTAIN UNITED STATES OBLIGATIONS.—In order to facilitate United States compliance with the CFE Treaty-mandated obligations for destruction of conventional armaments and equipment limited by the CFE Treaty, the United States may utilize services or funds provided by NATO or any NATO/CFE country.

(d) AUTHORITY TO TRANSFER ON A GRANT BASIS.—Defense articles may be transferred under subsection (a) without cost to the recipient country.

(e) THIRD COUNTRY TRANSFERS RESTRICTIONS.—For purposes of sections 3(a)(2), 3(a)(3), 3(c), and 3(d) of this Act, defense articles transferred under subsection (a) of this section shall be deemed to have been sold under this Act.

(f) MAINTENANCE OF MILITARY BALANCE IN THE EASTERN MEDITERRANEAN.—The President shall ensure that transfers by the United States under subsection (a), taken together with transfers by other NATO/CFE countries in implementing the CFE Treaty, are of such valuations so as to be consistent with the United States policy, embodied in section 620C of the Foreign Assistance Act of 1961, of maintaining the military balance in the Eastern Mediterranean.

(g) EXPIRATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the authority of subsection (a) expires at the end of the 40-month period beginning on the date on which the CFE Treaty enters into force.

(2) TRANSITION RULE.—Paragraph (1) does not apply with respect to a transfer of defense articles for which notification under section 94(a) is submitted before the end of the period described in that paragraph.

SEC. 94. [22 U.S.C. 2799c] NOTIFICATIONS AND REPORTS TO CONGRESS.

(a) NOTIFICATIONS.—Not less than 15 days before transferring any defense articles pursuant to section 93(a), the President shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of the Foreign Assistance Act of 1961.

(b) ANNUAL REPORTS.—Not later than February 1 each year, the President shall submit to the Committee on Foreign Affairs 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/CFE country by the United States under section 93(a) during the preceding calendar year;

(2) describes how those transfers further the purposes described in paragraphs (1) through (3) of section 91; and

(3) lists, on a country-by-country basis, all transfers to another country of conventional armaments and equipment limited by the CFE Treaty—

- (A) by each NATO/CFE country (other than the United States) in implementing the CFE Treaty, and
(B) by each country of the Eastern Group of States Parties in implementing the CFE Treaty.

SEC. 95. [22 U.S.C. 2799d] DEFINITIONS.

As used in this chapter—

- (1) the term “CFE Treaty” means the Treaty on Conventional Armed Forces in Europe (signed at Paris, November 19, 1990);
(2) the term “conventional armaments and equipment limited by the CFE Treaty” has the same meaning as the term “conventional armaments and equipment limited by the Treaty” does under paragraph 1(J) of article II of the CFE Treaty;
(3) the term “NATO” means the North Atlantic Treaty Organization;
(4) the term “NATO/CFE country” means a member country of NATO that is a party to the CFE Treaty and is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed or acceded to the Treaty of Brussels of 1948 or the Treaty of Washington of 1949 (the North Atlantic Treaty); and
(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 CFE Treaty within the group of States Parties that signed the Treaty of Warsaw of 1955 or a successor state to such a country.

CHAPTER 10—NUCLEAR NONPROLIFERATION CONTROLS**SEC. 101. [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 or this Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act, or extending military credits or making guarantees, to any country which the President determines delivers nuclear enrichment equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977, unless before such delivery—

- (1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and
(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) CERTIFICATION BY PRESIDENT OF NECESSITY OF CONTINUED ASSISTANCE; DISAPPROVAL BY CONGRESS.—(1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that—

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2)(A) A certification under paragraph (1) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within thirty calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

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

SEC. 102. [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 or this Act may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act, or extending military credits or making guarantees, to any country which the President determines—

(A) delivers nuclear reprocessing equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977 (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, of technologies which are alternatives to pure plutonium reprocessing), or

(B) is a non-nuclear-weapon state which, on or after August 8, 1985, exports illegally (or attempts to export illegally) from the United States any material, equipment, or technology which would contribute significantly to the ability of such

country to manufacture a nuclear explosive device, if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of a nuclear explosive device.

For purposes of clause (B), an export (or attempted export) by a person who is an agent of, or is otherwise acting on behalf of or in the interests of, a country shall be considered to be an export (or attempted export) by that country.

(2) Notwithstanding paragraph (1) of this subsection, the President in any fiscal year may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing during that fiscal year to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(3)(A) A certification under paragraph (2) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within 30 calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

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

(b) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OR USE OF NUCLEAR EXPLOSIVE DEVICES; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) 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 1994—

(A) transfers to a non-nuclear-weapon state a nuclear explosive device,

(B) is a non-nuclear-weapon state and either—

(i) receives a nuclear explosive device, or

(ii) detonates a nuclear explosive device,

(C) transfers to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by the transferring country to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(D) is a non-nuclear-weapon state and seeks and receives any design information or component which is determined by the President to be important to, and intended by the recipient state for use in, the development or manufacture of any nuclear explosive device,

then the President shall forthwith report in writing his determination to the Congress and shall forthwith impose the sanctions described in paragraph (2) against that country.

(2) The sanctions referred to in paragraph (1) are as follows:

(A) The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for humanitarian assistance or food or other agricultural commodities.

(B) The United States Government shall terminate—

(i) sales to that country under this Act of any defense articles, defense services, or design and construction services, and

(ii) licenses for the export to that country of any item on the United States Munitions List.

(C) The United States Government shall terminate all foreign military financing for that country under this Act.

(D) The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, except that the sanction of this subparagraph shall not apply—

(i) to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities),

(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 commodity.

(E) The United States Government shall oppose, in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d), the extension of any loan or financial or technical assistance to that country by any international financial institution.

(F) The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities, which includes fertilizer.

(G) The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit exports to that country of specific goods and technology (excluding food and other 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 (relating to congressional oversight of intelligence activities).

(3) As used in this subsection—

(A) the term “design information” means specific information that relates to the design of a nuclear explosive device and that is not available to the public; and

(B) the term “component” means a specific component of a nuclear explosive device.

(4)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous

session, delay the imposition of sanctions which would otherwise be required under paragraph (1)(A) or (1)(B) of this subsection if the President first transmits to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a certification that he has determined that an immediate imposition of sanctions on that country would be detrimental to the national security of the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

(B) If the President transmits a certification to the Congress under subparagraph (A), a joint resolution which would permit the President to exercise the waiver authority of paragraph (5) of this subsection shall, if introduced in either House within thirty days of continuous session after the Congress receives this certification, be considered in the Senate in accordance with subparagraph (C) of this paragraph.

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

(D) For purposes of this paragraph, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress having received on ____ a certification by the President under section 102(b)(4) of the Arms Export Control Act with respect to ____, the Congress hereby authorizes the President to exercise the waiver authority contained in section 102(b)(5) of that Act.", with the date of receipt of the certification inserted in the first blank and the name of the country inserted in the second blank.

(5) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (4) of this subsection, the President may waive any sanction which would otherwise be required under paragraph (1)(A) or (1)(B) if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(6)(A) In the event the President is required to impose sanctions against a country under paragraph (1)(C) or (1)(D), the President shall forthwith so inform such country and shall impose the required sanctions beginning 30 days after submitting to the Congress the report required by paragraph (1) unless, and to the extent that, there is enacted during the 30-day period a law prohibiting the imposition of such sanctions.

(B) Notwithstanding any other provision of law, the sanctions which are required to be imposed against a country under paragraph (1)(C) or (1)(D) shall not apply if the President determines and certifies in writing to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that

the application of such sanctions against such country would have a serious adverse effect on vital United States interests. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(7) For purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(8) The President may not delegate or transfer his power, authority, or discretion to make or modify determinations under this subsection.

(c) NON-NUCLEAR-WEAPON STATE DEFINED.—As used in this section, the term “non-nuclear-weapon state” means any country which is not a nuclear-weapon state, as defined in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.

SEC. 103. [2799aa-2] DEFINITION OF NUCLEAR EXPLOSIVE DEVICE.

As used in this chapter, the term “nuclear explosive device” has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994.