

(t) Those under Section 588(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461) [Oct. 1, 1988, 102 Stat. 2268-51], to the Secretary of Defense, except with respect to the determination of an emergency as provided by subsection (b)(3). The Secretary of Defense in implementation of the functions delegated to him under section 588(b) shall consult with the Secretary of State.

SEC. 2. *Coordination.* (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Attorney General, and the Chairman of the Export-Import Bank, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act [22 U.S.C. 2752(b)] and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

SEC. 3. *Allocation of Funds.* Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 4. *Revocation.* Executive Order No. 11501, as amended, is revoked; except that, to the extent consistent with this Order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken or entered into under the provisions of Executive Order No. 11501, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of this title.]

§ 2752. Coordination with foreign policy

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

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

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

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

- (1) whether there will be a sale to or financing for a country and the amount thereof;
- (2) whether there will be a lease to a country;
- (3) whether there will be a cooperative project and the scope thereof; and
- (4) whether there will be delivery or other performance under such sale, lease, cooperative project, or export,

to the end that sales, financing, leases, cooperative projects, and exports will be integrated with other United States activities and to the end that the foreign policy of the United States would be best served thereby.

(c) Coordination among representatives of United States

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

(Pub. L. 90-629, ch. 1, § 2, Oct. 22, 1968, 82 Stat. 1322; Pub. L. 94-329, title II, § 212(a)(2), June 30, 1976, 90 Stat. 745; Pub. L. 97-113, title I, § 109(b)(1), Dec. 29, 1981, 95 Stat. 1526; Pub. L. 99-83, title I, § 115(b)(1), Aug. 8, 1985, 99 Stat. 201; Pub. L. 99-145, title XI, § 1102(a)(2), (5), Nov. 8, 1985, 99 Stat. 710; Pub. L. 99-661, div. A, title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3991.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-661 repealed section 1102(a)(2) of Pub. L. 99-145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1985 Amendments note below.

1985—Subsec. (b). Pub. L. 99-83 amended subsec. (b) generally, substituting reference to the food for peace program for reference to food for freedom and adding financing and cooperative projects under this chapter to the list of responsibilities of the Secretary of State.

Pub. L. 99-145, § 1102(a)(2), which enacted amendments similar to those provided in Pub. L. 99-83, was repealed. See 1986 Amendments note above and Repeals; Effective Date note below.

1981—Subsec. (b). Pub. L. 97-113 substituted “sales, leases,” for “sales” in two places and “such sale, lease,” for “such sale” and inserted “whether there shall be a lease to a country,” after “whether there shall be a sale to a country and the amount thereof.”

1976—Subsec. (b). Pub. L. 94-329 inserted “and exports” after “sales” wherever appearing and “and whether there shall be delivery or other performance under such sale or export,” after “thereof.”

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

REPEALS; EFFECTIVE DATE

Pub. L. 99-145, title XI, § 1102(a)(5), Nov. 8, 1985, 99 Stat. 710, which provided for the repeal of the amendments made by § 1102(a) of Pub. L. 99-145, effective as of the effective date of similar amendments by Pub. L. 99-83, was repealed by Pub. L. 99-661, div. A, title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3991.

§ 2753. Eligibility for defense services or defense articles

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

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

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

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

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

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

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

(b) Necessity of consent by President

The consent of the President under paragraph (2) of subsection (a) of this section or under paragraph (1) of section 2314(a) of this title (as it

relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign country or international organization of defense articles sold by the United States under this chapter if a treaty referred to in section 2778(j)(1)(C)(i) of this title permits such transfer without prior consent of the President, or if—

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

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

(3) the recipient is not a country designated under section 2371 of this title;

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

(A) significant military equipment (as defined in section 2794(9) of this title);

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

(C) identified by regulation as Missile Technology Control Regime items; 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) Termination of credits, guaranties or sales; report of violation by President; national security exception; conditions for reinstatement

(1)(A) No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this chapter as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (i) by using such articles or services for a purpose not authorized under section 2754 of this title or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 2754 of this title for a purpose not authorized under such agreement; (ii) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (iii) by failing to maintain the security of such articles or services.

(B) No cash sales or deliveries pursuant to previous sales may be made with respect to any foreign country under this chapter as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, or any predecessor Act, in substantial violation (either in terms of quantity or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act by using such articles or services for a purpose not authorized under section 2754 of this title or, if such agree-