

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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

1994—Subsec. (c). Pub. L. 103-437 substituted “Foreign Affairs” for “International Relations”.

1985—Pub. L. 99-83, §114(a)(1), substituted “Security assistance” for “Defense requirement” in section catchline.

Subsecs. (a), (b). Pub. L. 99-83, §114(a)(2), substituted “security assistance” for “defense requirement” wherever appearing.

Subsec. (c). Pub. L. 99-83, §114(a)(2), (b), substituted “submit to that committee copies of security assistance surveys” for “grant that committee access to defense requirement surveys”.

Subsec. (d). Pub. L. 99-83, §114(a)(3), added subsec. (d).

## 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.

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

#### (a) Authority of President

The President may enter into a cooperative project agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization.

#### (b) Definitions

As used in this section—

(1) the term “cooperative project”, in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries and which provides—

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

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

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

(2) the term “cooperative project”, in the case of an agreement entered into under subsection (j) of this section, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to enhance the ongoing multi-

national 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) Agreements for equitable share of costs; limiting nature of agreements

Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims. The United States and the other participants may contribute their equitable shares of the full cost of such cooperative project in funds or in defense articles or defense services needed for such cooperative project. Military assistance and financing received from the United States Government may not be used by any other participant to provide its share of the cost of such cooperative project. Such agreements shall provide that no requirement shall be imposed by a participant for worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

#### (d) Contractual or other obligation; preconditions

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

#### (e) Waiver of charges; administrative surcharges

(1) For those cooperative projects entered into on or after the effective date<sup>1</sup> of the International Security and Development Cooperation Act of 1985, the President may reduce or waive

<sup>1</sup> See References in Text note below.

the charge or charges which would otherwise be considered appropriate under section 2761(e) of this title in connection with sales under sections 2761 and 2762 of this title when such sales are made as part of such cooperative project, if the other participants agree to reduce or waive corresponding charges.

(2) Notwithstanding provisions of section 2761(e)(1)(A) and section 2792(b) of this title, administrative surcharges shall not be increased on other sales made under this chapter 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) Transmission of numbered certification to Congress respecting proposed agreement; contents**

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

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

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

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section<sup>2</sup> 2761(e)(1)(A) and 2792(b) of this title, for its participation in such cooperative project and an estimate of that part of the full costs to be incurred by the other participants;

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

(5) a description of the defense articles and 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) Reporting and certification requirements applicable**

In the case of a cooperative project with a North Atlantic Treaty Organization country, section,<sup>3</sup> 2776(b) of this title shall not apply to

sales made under section 2761 or 2762 of this title and to production and exports made pursuant to cooperative projects under this section, and section 2776(c) of this title shall not apply to the issuance of licenses or other approvals under section 2778 of this title, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.

**(h) Statutory provisions applicable to sales**

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

**(i) Agreements entered into before October 1, 1985**

(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<sup>4</sup> 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<sup>5</sup> 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<sup>4</sup> 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<sup>4</sup> of that amendment.

**(j) Cooperative project agreements with friendly foreign countries not members of NATO**

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

(2) Omitted.

(Pub. L. 90-629, ch. 2, §27, as added Pub. L. 96-92, §15, Oct. 29, 1979, 93 Stat. 706; amended Pub. L. 99-83, title I, §115(a), Aug. 8, 1985, 99 Stat. 199; Pub. L. 99-145, title XI, §1102(a)(1), (5), Nov. 8, 1985, 99 Stat. 708, 710; Pub. L. 99-661, div. A, title XI, §1103(a), title XIII, §1342(e), Nov. 14, 1986, 100 Stat. 3962, 3991; Pub. L. 100-180, div. A, title X, §1022, Dec. 4, 1987, 101 Stat. 1144; Pub. L. 102-484, div. A, title VIII, §843(a), Oct. 23, 1992, 106 Stat. 2468.)

REFERENCES IN TEXT

The effective date of the International Security and Development Cooperation Act of 1985 and the effective date of the amendment to this section made by the International Security and Development Cooperation Act of 1985, referred to in subsecs. (e)(1) and (i), respectively, is October 1, 1985, see section 1301 of Pub. L.

<sup>2</sup> So in original. Probably should be "sections".

<sup>3</sup> So in original. The comma probably should not appear.

<sup>4</sup> See References in Text note below.

<sup>5</sup> So in original. The word "made" probably should not appear.

99-83, set out as an Effective Date of 1985 Amendment note under section 2151-1 of this title.

This chapter, referred to in subsec. (e)(2), 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.

The amendment made to this section made by the International Security and Development Cooperation Act of 1985, referred to in subsec. (i), means the general amendment of this section by section 115(a) of Pub. L. 99-83. See 1985 Amendment note below.

#### CODIFICATION

Subsec. (j)(2) of this section, which required the President to submit to certain committees of Congress an annual report specifying countries eligible, and criteria used to determine eligibility, for participation in cooperative project agreements under subsec. (j)(1) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 39 of House Document No. 103-7.

#### AMENDMENTS

1992—Subsec. (c). Pub. L. 102-484 substituted “costs, administrative costs, and costs of claims” for “and administrative costs”.

1987—Subsec. (b)(1)(C). Pub. L. 100-180 inserted “or for procurement by the United States of munitions from the North Atlantic Treaty Organization or a subsidiary of such organization” after “member country”.

1986—Pub. L. 99-661, §1342(e), repealed section 1102(a)(1) 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.

Pub. L. 99-661, §1103(a)(2), substituted “Authority of President to enter into cooperative projects with friendly foreign countries” for “North Atlantic Treaty Organization cooperative projects” in section catchline.

Subsec. (b)(1). Pub. L. 99-661, §1103(a)(1)(A)(i), inserted “, in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization,” in introductory provisions.

Subsec. (b)(2), (3). Pub. L. 99-661, §1103(a)(1)(A)(ii)-(iv), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(3). Pub. L. 99-661, §1103(a)(1)(B), inserted “, including an estimate of the costs as a result of waivers of section 2761(e)(1)(A) and 2792(b) of this title,”.

Subsec. (g). Pub. L. 99-661, §1103(a)(1)(C), substituted “In the case of a cooperative project with a North Atlantic Treaty Organization country, section,” for “Section”.

Subsec. (j). Pub. L. 99-661, §1103(a)(1)(D), added subsec. (j).

1985—Pub. L. 99-83 amended section generally, substituting in subsec. (a) provisions relating to authority of the President, for provisions defining “cooperative project”, substituting in subsec. (b) provisions defining “cooperative project” and “other participant”, for provisions relating to reduction or waiver of charges, sales not subject to compensatory increases in administrative surcharges, and contribution requirements, substituting in subsec. (c) provisions relating to agreements for equitable share of costs and limiting the nature of such agreements, for provisions relating to transmission of numbered certification of proposed agreement, contents of such certification, and statutory provisions applicable to sales, and adding subsecs. (d) to (i).

Pub. L. 99-145, §1102(a)(1), which enacted a general amendment of this section similar to that provided in Pub. L. 99-83 was repealed. See 1986 Amendments note

above and former section 1105(a)(5) of Pub. L. 99-145 set out as a Repeals; Effective Date note under section 2752 of this title.

#### 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.

#### DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, with certain conditions, see section 1(f) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

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

Pub. L. 112-81, div. A, title VIII, §836, Dec. 31, 2011, 125 Stat. 1508, provided that:

“(a) ASSESSMENT OF RISK REQUIRED.—

“(1) IN GENERAL.—Not later than two days after the President transmits a certification to Congress pursuant to section 27(f) of the Arms Export Control Act (22 U.S.C. 2767(f)) regarding a proposed cooperative project agreement that is expected to result in the award of a Department of Defense contract for the engineering and manufacturing development of a major weapon system, the Secretary of Defense shall submit to the Chairmen of the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a risk assessment of the proposed cooperative project.

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

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

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

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

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

“(4) A listing of which, if any, requirements associated with the oversight and management of a major defense acquisition program (as prescribed under Department of Defense Instruction 5000.02 or related authorities) will be waived, or in any way modified, in carrying out the development contract to be entered into under [subsection] (a)(1), and a full explanation why such requirements need to be waived or modified.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘engineering and manufacturing development’ has the meaning given that term in Department of Defense Instruction 5000.02.

“(2) The term ‘major weapon system’ has the meaning given that term in section 2379(f) of title 10, United States Code.”

**§ 2767a. Repealed. Pub. L. 101-189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535**

Section, Pub. L. 99-661, div. A, title XI, §1105, Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100-456, div. A, title X, §1007, Sept. 29, 1988, 102 Stat. 2040, related to cooperative research and development with major non-NATO allies. See section 2350a of Title 10, Armed Forces.

**§ 2768. Repealed. Pub. L. 104-106, div. A, title X, § 1064(a), Feb. 10, 1996, 110 Stat. 445**

Section, Pub. L. 90-629, ch. 2, §28, as added Pub. L. 96-92, §16(a), Oct. 29, 1979, 93 Stat. 708; amended Pub. L. 97-113, title I, §101(b), Dec. 29, 1981, 95 Stat. 1520; Pub. L. 100-461, title V, §588(a), Oct. 1, 1988, 102 Stat. 2268-51, related to reports on price and availability estimates.

SUBCHAPTER II—A—FOREIGN MILITARY  
CONSTRUCTION SALES

**§ 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.

(Pub. L. 90-629, ch. 2A, §29, as added Pub. L. 96-533, title I, §105(a), Dec. 16, 1980, 94 Stat. 3133.)

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, see section 1(d) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

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

**§ 2770. General authority**

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

Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under 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 2778 of this title 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 2778 of this title. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this subchapter: *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) Conditions of sale**

Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only from United States Government sources or 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) "Defense articles" and "defense services" defined**

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

(Pub. L. 90-629, ch. 2B, §30, as added Pub. L. 97-392, §1, Dec. 29, 1982, 96 Stat. 1962; amended Pub. L. 101-165, title IX, §9097, Nov. 21, 1989, 103 Stat. 1150.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-165 inserted "either (i)" after "such a company" in first sentence and inserted before period at end of first sentence "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 2778 of this title".

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, see section 1(d) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note