

1993, 107 Stat. 1786, 1788; Pub. L. 103-337, div. A, title X, §1070(b)(10), title XI, §§1114(b), (c), 1115(d), Oct. 5, 1994, 108 Stat. 2857, 2867-2869; Pub. L. 104-106, div. A, title XV, §1503(a)(27), Feb. 10, 1996, 110 Stat. 512, related to defense dual-use assistance extension program.

A prior section 2524 was renumbered section 2513 of this title.

#### [§ 2525. Renumbered § 2521]

##### PRIOR PROVISIONS

A prior section 2525 was renumbered section 2517 of this title.

A prior section 2526 was renumbered section 2518 of this title.

#### SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

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##### AMENDMENTS

2011—Pub. L. 111-350, §5(b)(36), Jan. 4, 2011, 124 Stat. 3845, substituted “chapter 83 of title 41” for “the Buy American Act” in item 2533.

2008—Pub. L. 110-181, div. A, title X, §1063(c)(8), Jan. 28, 2008, 122 Stat. 323, amended directory language of Pub. L. 109-364, §842(a)(2). See 2006 Amendment note below.

2006—Pub. L. 109-364, div. A, title VIII, §842(a)(2), Oct. 17, 2006, 120 Stat. 2337, as amended by Pub. L. 110-181, div. A, title X, §1063(c)(8), Jan. 28, 2008, 122 Stat. 323, added item 2533b.

2001—Pub. L. 107-107, div. A, title VIII, §832(a)(2), Dec. 28, 2001, 115 Stat. 1190, added item 2533a.

1994—Pub. L. 103-337, div. A, title VIII, §812(b)(2), title X, §1070(a)(13)(B), Oct. 5, 1994, 108 Stat. 2816, 2856, substituted “Determinations of public interest under the Buy American Act” for “Limitation on use of funds: procurement of goods which are other than American goods” in item 2533 and renumbered items 2540 and 2541 as 2539a and 2539b, respectively.

1993—Pub. L. 103-160, div. A, title VIII, §§828(c)(5), 842(c)(2), Nov. 30, 1993, 107 Stat. 1714, 1719, substituted “Award of certain contracts to entities controlled by a foreign government: prohibition” for “Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government” in item 2536 and added items 2538 to 2541.

1992—Pub. L. 102-484, div. A, title VIII, §§836(a)(2), 838(b), Oct. 23, 1992, 106 Stat. 2463, 2466, added items 2536 and 2537.

#### § 2531. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an inter-agency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of understanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100-456, div. A, title VIII, §824, Sept. 29, 1988, 102 Stat. 2019, §2504; amended Pub. L. 101-189, div. A, title VIII, §815(a), Nov. 29, 1989,

103 Stat. 1500; Pub. L. 101-510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102-484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

#### AMENDMENTS

1992—Pub. L. 102-484, § 4202(a), renumbered section 2504 of this title as this section.

Subsec. (a)(1). Pub. L. 102-484, § 4271(c), substituted “defense technology and industrial base” for “defense industrial base”.

1990—Subsec. (a). Pub. L. 101-510 inserted “or to the reciprocal procurement of defense items,” after “defense equipment,” in introductory provisions.

1989—Pub. L. 101-189 inserted “and related agreements” after “understanding” in section catchline and amended text generally. Prior to amendment, text read as follows: “In the negotiation and renegotiation of each memorandum of understanding between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, the Secretary of Defense shall—

“(1) consider the effect of such proposed memorandum of understanding on the defense industrial base of the United States; and

“(2) regularly solicit and consider information or recommendations from the Secretary of Commerce with respect to the effect on the United States industrial base of such memorandum of understanding.”

#### DEFENSE TRADE RECIPROCITY

Pub. L. 108-375, div. A, title VIII, § 831, Oct. 28, 2004, 118 Stat. 2017, provided that:

“(a) POLICY.—It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services should be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base.

“(b) REQUIREMENT.—The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements in a manner that undermines the United States defense industrial base. In pursuing this goal, the Secretary shall—

“(1) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of any adverse effects of offset agreements in defense trade; and

“(2) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

“(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘foreign defense trade partner’ means a foreign country with respect to which there is—

“(A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or

“(B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).

“(2) The term ‘offset agreement’ has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).

“(3) The terms ‘defense article’ and ‘defense service’ have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).”

#### § 2532. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm’s claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding \$50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.