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SUBCHAPTER I—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

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

As declared by the Congress in the Arms Control and Disarmament Act [22 U.S.C. 2551 et seq.], an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments; in which the use of force has been subordinated to the rule of law; and in which international adjustments to a changing world are achieved peacefully. In furtherance of that

goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.

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

Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern. To this end, this chapter authorizes sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter.

It is the sense of the Congress that all such sales be approved only when they are consistent with the foreign policy interests of the United States, the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended [22 U.S.C. 2151 et seq.], the extent and character of the military requirement, and the economic and financial capability of the recipient country, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to the impact of the sales on programs of social and economic development and on existing or 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 discus-

sions 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 2761 or section 2762 of this title; or

(2) which are licensed or approved for export under section 2778 of this title to, for the use, or for benefit of the armed forces, police, intelligence, or other internal security forces of a foreign country or international organization under a commercial sales contract;

in any fiscal year 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.

(Pub. L. 90-629, ch. 1, §1, Oct. 22, 1968, 82 Stat. 1321; Pub. L. 91-672, §4, Jan. 12, 1971, 84 Stat. 2053; Pub. L. 93-189, §25(1), Dec. 17, 1973, 87 Stat. 729; Pub. L. 94-329, title II, §202, formerly §202(a), June 30, 1976, 90 Stat. 734, renumbered and amended Pub. L. 95-384, §§15(a), 29(c)(1)(A), Sept. 26, 1978, 92 Stat. 739, 747; Pub. L. 97-113, title VII, §734(a)(10), Dec. 29, 1981, 95 Stat. 1560.)

REFERENCES IN TEXT

The Arms Control and Disarmament Act, referred to in text, is Pub. L. 87-297, Sept. 26, 1961, 75 Stat. 631, as amended, which is classified generally to chapter 35 (§2551 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2551 of this title, and Tables.

This chapter, referred to in text, 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 below and Tables.

The Foreign Assistance Act of 1961, as amended, referred to in text, is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

REFERENCES TO FOREIGN MILITARY SALES ACT DEEMED REFERENCE TO ARMS EXPORT CONTROL ACT

Pub. L. 94-329, title II, §201(b), June 30, 1976, 90 Stat. 734, provided that: “Any reference to the Foreign Mil-

tary Sales Act [see Short Title note below] shall be deemed to be a reference to the Arms Export Control Act.”

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

Pub. L. 90-629, ch. 4, §45(c), Oct. 22, 1968, 82 Stat. 1327, provided that: “References in law to the provisions of law repealed by subsection (a) of this section [repealing sections 2341 to 2343, 2344(b)(3), 2345, 2394(g), and 2399a of this title] shall hereafter [on and after Oct. 22, 1968] be deemed to be references to this Act [this chapter] or appropriate provisions of this Act. Except for the laws specified in section 44 [section 2793 of this title], no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act.”

AMENDMENTS

1981—Pub. L. 97-113 struck out paragraph which provided that it was the sense of Congress that sales and guaranties under sections 2761, 2762, 2763, and 2764 of this title not be approved where they would have had the effect of arming military dictators who were denying the growth of fundamental rights or social progress to their own people but allowing the President to waive this limitation when he determined it would be important to the security of the United States, and promptly so reported to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate.

1978—Pub. L. 95-384, §15(a), inserted paragraph relating to adherence to a policy of restraint in conventional arms transfer.

1976—Pub. L. 94-329 substituted in last paragraph provision relating to a new statement of policy whereby the United States shall exert leadership in the reduction of international trade in arms, and in that regard, the President to initiate discussions and actively work with other nations with a view towards control of international trade in arms, for provisions relating to a reduction in the role of the United States in furnishing of defense articles and defense services to foreign countries and international organizations by decreasing sales, credit sales and guarantees of such articles and services.

1973—Pub. L. 93-189 inserted last paragraph relating to a reduction by the United States in the furnishing of defense articles and defense services to foreign countries.

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

EFFECTIVE DATE

Pub. L. 90-629, ch. 4, §41, Oct. 22, 1968, 82 Stat. 1326, provided that: “This Act [enacting this chapter, amending sections 2344, 2382, 2392, 2394, and 2403 of this title, repealing sections 2341 to 2343, 2345, and 2399a of this title, and enacting provisions set out as notes under this section and section 2341 of this title] shall take effect on July 1, 1968.”

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114-123, §1, Feb. 18, 2016, 130 Stat. 117, provided that: “This Act [enacting provisions set out as a note under section 2753 of this title] may be cited as the ‘United States-Jordan Defense Cooperation Act of 2015’.”

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-266, §1, Oct. 8, 2010, 124 Stat. 2797, provided that: “This Act [amending sections 2321h, 2753, 2755, 2761, 2765, 2776, 2778, 2779, 2779a, 2796a, and 2796b of this title and enacting provisions set out as notes under this section and section 2778 of this title] may be cited as the ‘Security Cooperation Act of 2010’.”

Pub. L. 111-266, title I, §101, Oct. 8, 2010, 124 Stat. 2797, provided that: “This title [amending sections 2753, 2755, 2765, 2776, 2778, 2779, and 2779a of this title and enacting provisions set out as notes under section 2778 of this title] may be cited as the ‘Defense Trade Cooperation Treaties Implementation Act of 2010.’”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(7) [div. B, §1001], Nov. 29, 1999, 113 Stat. 1536, 1501A-485, provided that: “This division [div. B of H.R. 3427 as enacted by section 1000(a)(7) of Pub. L. 106-113, see Tables for classification] may be cited as the ‘Arms Control, Nonproliferation, and Security Assistance Act of 1999.’”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-194, §1, July 14, 1998, 112 Stat. 627, provided that: “This Act [amending section 2799aa-1 of this title and enacting provisions set out as notes under section 2799aa-1 of this title] may be cited as the ‘Agriculture Export Relief Act of 1998.’”

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-228, §1, Dec. 12, 1991, 105 Stat. 1691, provided that: “This Act [enacting sections 2595b-1 and 2799 to 2799d of this title, amending sections 2581, 2589, 2595, and 2595c of this title, and enacting provisions set out as notes under section 2551 of this title] may be cited as the ‘Conventional Forces in Europe Treaty Implementation Act of 1991.’”

SHORT TITLE

Pub. L. 90-629, §1, Oct. 22, 1968, 82 Stat. 1320, as amended by Pub. L. 94-329, title II, §201(a), June 30, 1976, 90 Stat. 734, provided: “That this Act [enacting this chapter, amending sections 2382, 2392, 2394, and 2403 of this title, repealing sections 2341 to 2343, 2344, 2345, 2394, and 2399 of this title, and enacting provisions set out as notes under this section and section 2341 of this title] may be cited as the ‘Arms Export Control Act.’”

ENHANCING DEFENSE AND SECURITY COOPERATION WITH INDIA

Pub. L. 114-328, div. A, title XII, §1292, Dec. 23, 2016, 130 Stat. 2559, provided that:

“(a) ACTIONS.—

“(1) IN GENERAL.—The Secretary of Defense and Secretary of State should jointly take such actions as may be necessary to—

“(A) recognize India’s status as a major defense partner of the United States;

“(B) designate an individual within the executive branch who has experience in defense acquisition and technology—

“(i) to reinforce and ensure, through inter-agency policy coordination, the success of the Framework for the United States-India Defense Relationship; and

“(ii) to help resolve remaining issues impeding United States-India defense trade, security cooperation, and co-production and co-development opportunities;

“(C) approve and facilitate the transfer of advanced technology, consistent with United States conventional arms transfer policy, to support combined military planning with India’s military for missions such as humanitarian assistance and disaster relief, counter piracy, freedom of navigation, and maritime domain awareness missions, and to promote weapons systems interoperability;

“(D) strengthen the effectiveness of the U.S.-India Defense Trade and Technology Initiative and the durability of the Department of Defense’s ‘India Rapid Reaction Cell’;

“(E) collaborate with the Government of India to develop mutually agreeable mechanisms to verify the security of defense articles, defense services, and related technology, such as appropriate cyber security and end use monitoring arrangements,

consistent with United States export control laws and policy;

“(F) promote policies that will encourage the efficient review and authorization of defense sales and exports to India;

“(G) encourage greater government-to-government and commercial military transactions between the United States and India;

“(H) support the development and alignment of India’s export control and procurement regimes with those of the United States and multilateral control regimes; and

“(I) continue to enhance defense and security cooperation with India in order to advance United States interests in the South Asia and greater Indo-Asia-Pacific regions.

“(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], and annually thereafter, the Secretary of Defense and Secretary of State shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and House of Representatives] and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on how the United States is supporting its defense relationship with India in relation to the actions described in paragraph (1).

“(b) BILATERAL COORDINATION.—To enhance cooperation and encourage military-to-military engagement between the United States and India, the Secretary of Defense should take appropriate actions to ensure that exchanges between senior military officers and senior civilian defense officials of the United States Government and the Government of India—

“(1) are at a level appropriate to enhance engagement between the militaries of the two countries for threat analysis, military doctrine, force planning, mutual security interests, logistical support, intelligence, tactics, techniques and procedures, humanitarian assistance, and disaster relief;

“(2) include exchanges of general and flag officers between the two countries;

“(3) enhance cooperative military operations, including maritime security, counter-piracy, counter-terror cooperation, and domain awareness, in the Indo-Asia-Pacific region;

“(4) accelerate the development of combined military planning for missions such as those identified in subsection (a)(1)(C) or in paragraph (1) of this subsection, or other missions in the national security interests of both countries; and

“(5) solicit and recognize actions and efforts by India that would allow the United States to treat India as a major defense partner.

“(c) ASSESSMENT REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense and Secretary of State shall jointly, on an ongoing basis, conduct an assessment of the extent to which India possesses capabilities to support and carry out military operations of mutual interest to the United States and India, including an assessment of the defense export control regulations and policies that need appropriate modification, in recognition of India’s capabilities and its status as a major defense partner.

“(2) USE OF ASSESSMENT.—The President shall ensure that the assessment described in paragraph (1) is used, consistent with United States conventional arms transfer policy, to inform the review by the United States of requests to export defense articles, defense services, or related technology to India under the Arms Export Control Act (22 U.S.C. 2751 et seq.), and to inform any regulatory and policy adjustments that may be appropriate.”

REGISTRATION AND END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES TRANSFERRED TO AFGHANISTAN AND PAKISTAN

Pub. L. 111-84, div. A, title XII, §1225, Oct. 28, 2009, 123 Stat. 2523, provided that:

“(a) PROGRAM REQUIRED.—

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

“(A) pursuant to authorities other than the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.]; and

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

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

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

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

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

“(b) REGISTRATION AND END-USE MONITORING REQUIREMENTS.—The registration and end-use monitoring requirements under this subsection shall include the following:

“(1) A detailed record of the origin, shipping, and distribution of defense articles and defense services transferred to—

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

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

“(2) The registration of the serial numbers of all small arms to be provided to—

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

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

“(3) A program of end-use monitoring of lethal defense articles and defense services transferred to the entities and individuals described in subparagraphs (A) and (B) of paragraph (1).

“(c) REVIEW; EXEMPTION.—

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

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

“(d) DEFINITIONS.—In this section:

“(1) DEFENSE ARTICLE.—The term ‘defense article’ has the meaning given the term in section 644(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(d)).

“(2) DEFENSE SERVICE.—The term ‘defense service’ has the meaning given the term in section 644(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(f)).

“(3) SMALL ARM.—The term ‘small arm’ means—

“(A) a handgun or pistol;

“(B) a shoulder-fired weapon, including a sub-carbine, carbine, or rifle;

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

“(D) a recoilless rifle up to and including 106mm;

“(E) a mortar up to and including 81mm;

“(F) a rocket launcher, man-portable;

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

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

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

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

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

“(e) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect 180 days after the date of the enactment of this Act [Oct. 28, 2009].

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

TRACKING AND MONITORING OF DEFENSE ARTICLES PROVIDED TO THE GOVERNMENT OF IRAQ AND OTHER INDIVIDUALS AND GROUPS IN IRAQ

Pub. L. 110–181, div. A, title XII, §1228, Jan. 28, 2008, 122 Stat. 377, provided that:

“(a) EXPORT AND TRANSFER CONTROL POLICY.—The President shall implement a policy to control the export and transfer of defense articles into Iraq, including implementation of the registration and monitoring system under subsection (c).

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

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

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

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

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

“(d) REVIEW; EXEMPTION.—

“(1) REVIEW.—The President shall periodically review the items subject to the registration and monitoring requirements under subsection (c) to determine what items, if any, should no longer be subject to such registration and monitoring requirements. The President shall transmit to the specified congressional committees the results of each review conducted under this paragraph.

“(2) EXEMPTION.—The President may exempt an item from the registration and monitoring require-

ments under subsection (c) beginning on the date that is 30 days after the date on which the President provides notice of the proposed exemption to the specified congressional committees in accordance with the procedures applicable to reprogramming notifications under section 634A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1(a)). Such notice shall describe any controls to be imposed on such item under any other provision of law.

“(e) DEFINITIONS.—In this section:

“(1) DEFENSE ARTICLE.—The term ‘defense article’ has the meaning given the term in section 644(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(d)).

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

“(A) handguns;

“(B) shoulder-fired weapons;

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

“(D) recoilless rifles up to and including 106mm;

“(E) mortars up to and including 81mm;

“(F) rocket launchers, man-portable;

“(G) grenade launchers, rifle and shoulder fired; and

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

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

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

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

“(f) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect 180 days after the date of the enactment of this Act [Jan. 28, 2008].

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

MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS)

Pub. L. 109-472, §12, Jan. 11, 2007, 120 Stat. 3558, provided that:

“(a) STATEMENT OF POLICY.—Congress declares that it should be the policy of the United States to hold foreign governments accountable for knowingly transferring MANPADS to state-sponsors of terrorism or terrorist organizations.

“(b) DETERMINATION RELATING TO SANCTIONS.—

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

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

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

“(2) FOREIGN GOVERNMENT DESCRIBED.—A foreign government described in this paragraph is a foreign government that the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 [50 U.S.C. 4605(j)], section 620A of the Foreign Assistance Act of 1961 [22 U.S.C. 2371], section 40 of the Arms Export Control Act [22 U.S.C. 2780], or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

“(c) SANCTIONS DESCRIBED.—The sanctions referred to in subsection (b)(1)(B) are the following:

“(1) Termination of United States Government assistance to the transferring foreign government under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], except that such termination shall not apply in the case of humanitarian assistance.

“(2) Termination of United States Government—

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

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

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

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

“(e) DEFINITIONS.—In this section:

“(1) DEFENSE ARTICLE.—The term ‘defense article’ has the meaning given the term in section 47(3) of the Arms Export Control Act [22 U.S.C. 2794(3)].

“(2) DEFENSE SERVICE.—The term ‘defense service’ has the meaning given the term in section 47(4) of the Arms Export Control Act [22 U.S.C. 2794(4)].

“(3) DESIGN AND CONSTRUCTION SERVICES.—The term ‘design and construction services’ has the meaning given the term in section 47(8) of the Arms Export Control Act [22 U.S.C. 2794(8)].

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

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

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

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

Pub. L. 108-458, title IV, §4026, Dec. 17, 2004, 118 Stat. 3724, provided that:

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

“(1) TO LIMIT AVAILABILITY AND TRANSFER OF MANPADS.—The President shall pursue, on an urgent basis, further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to limit the availability, transfer, and proliferation of MANPADS worldwide.

“(2) TO LIMIT THE PROLIFERATION OF MANPADS.—The President is encouraged to seek to enter into agreements with the governments of foreign countries that, at a minimum, would—

“(A) prohibit the entry into force of a MANPADS manufacturing license agreement and MANPADS co-production agreement, other than the entry into force of a manufacturing license or co-production agreement with a country that is party to such an agreement;

“(B) prohibit, except pursuant to transfers between governments, the export of a MANPADS, including any component, part, accessory, or attachment thereof, without an individual validated license; and

“(C) prohibit the reexport or retransfer of a MANPADS, including any component, part, accessory, or attachment thereof, to a third person, organization, or government unless the written consent of the government that approved the original export or transfer is first obtained.

“(3) TO ACHIEVE DESTRUCTION OF MANPADS.—The President should continue to pursue further strong

international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to assure the destruction of excess, obsolete, and illicit stocks of MANPADSs worldwide.

“(4) REPORTING AND BRIEFING REQUIREMENT.—

“(A) PRESIDENT’S REPORT.—Not later than 180 days after the date of enactment of this Act [Dec. 17, 2004], the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of diplomatic efforts under paragraphs (1), (2), and (3) and of efforts by the appropriate United States agencies to comply with the recommendations of the General Accounting Office [now Government Accountability Office] set forth in its report GAO-04-519, entitled ‘Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems’.

“(B) ANNUAL BRIEFINGS.—Annually after the date of submission of the report under subparagraph (A) and until completion of the diplomatic and compliance efforts referred to in subparagraph (A), the Secretary of State shall brief the appropriate congressional committees on the status of such efforts.

“(b) FAA AIRWORTHINESS CERTIFICATION OF MISSILE DEFENSE SYSTEMS FOR COMMERCIAL AIRCRAFT.—

“(1) IN GENERAL.—As soon as practicable, but not later than the date of completion of Phase II of the Department of Homeland Security’s counter-man-portable air defense system (MANPADS) development and demonstration program, the Administrator of the Federal Aviation Administration shall establish a process for conducting airworthiness and safety certification of missile defense systems for commercial aircraft certified as effective and functional by the Department of Homeland Security. The process shall require a certification by the Administrator that such systems can be safely integrated into aircraft systems and ensure airworthiness and aircraft system integrity.

“(2) CERTIFICATION ACCEPTANCE.—Under the process, the Administrator shall accept the certification of the Department of Homeland Security that a missile defense system is effective and functional to defend commercial aircraft against MANPADSs.

“(3) EXPEDITIOUS CERTIFICATION.—Under the process, the Administrator shall expedite the airworthiness and safety certification of missile defense systems for commercial aircraft certified by the Department of Homeland Security.

“(4) REPORTS.—Not later than 90 days after the first airworthiness and safety certification for a missile defense system for commercial aircraft is issued by the Administrator, and annually thereafter until December 31, 2008, the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

“(c) PROGRAMS TO REDUCE MANPADS.—

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

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

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

“(d) MANPADS VULNERABILITY ASSESSMENTS REPORT.—

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

“(2) MATTERS TO BE ADDRESSED.—The Secretary’s report shall address, at a minimum, the following:

“(A) The status of the Department’s efforts to conduct MANPADSs vulnerability assessments at United States airports at which the Department is conducting assessments.

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

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

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

“(E) Any other issues that the Secretary deems relevant.

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

“(e) DEFINITIONS.—In this section, the following definitions apply:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Armed Services, the Committee on International Relations [now Committee on Foreign Affairs], and the Committee on Transportation and Infrastructure of the House of Representatives; and

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

“(2) MANPADS.—The term ‘MANPADS’ means—

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

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

[Functions of President under subsecs. (a)(4)(A), (c)(2) of section 4026 of Pub. L. 108-458, set out above, assigned to Secretary of State by section 1 of Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 48633, set out as a note under section 301 of title 3, The President.]

BILATERAL EXCHANGES AND TRADE IN DEFENSE ARTICLES AND DEFENSE SERVICES BETWEEN THE UNITED STATES AND THE UNITED KINGDOM AND AUSTRALIA

Pub. L. 108-375, div. A, title XII, §1225, Oct. 28, 2004, 118 Stat. 2091, provided that:

“(a) POLICY.—It is the policy of Congress that bilateral exchanges and trade in defense articles and defense services between the United States and the United Kingdom and Australia are in the national security interest of the United States and that such exchanges and trade should be subjected to accelerated review and processing consistent with national security and the requirements of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

“(b) REQUIREMENT.—The Secretary of State shall ensure that any license application submitted for the export of defense articles or defense services to Australia

or the United Kingdom is expeditiously processed by the Department of State, in consultation with the Department of Defense, without referral to any other Federal department or agency, except where the item is classified or exceptional circumstances apply.

“(c) REGULATIONS.—The President shall ensure that regulations are prescribed to implement this section.”

ELIGIBILITY OF PANAMA UNDER ARMS EXPORT CONTROL ACT

Pub. L. 104-164, title I, §154, July 21, 1996, 110 Stat. 1440, provided that: “The Government of the Republic of Panama shall be eligible to purchase defense articles and defense services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), except as otherwise specifically provided by law.”

REPORTS ON COUNTERPROLIFERATION ACTIVITIES AND PROGRAMS

Pub. L. 103-337, div. A, title XV, §1503, Oct. 5, 1994, 108 Stat. 2916; Pub. L. 104-201, div. A, title XIII, §1309(d), Sept. 23, 1996, 110 Stat. 2710; Pub. L. 106-65, div. A, title XV, §1504(c), Oct. 5, 1999, 113 Stat. 808; Pub. L. 107-314, div. A, title XII, §1208(b), (c), Dec. 2, 2002, 116 Stat. 2668; Pub. L. 110-181, div. A, title XII, §1256(d), Jan. 28, 2008, 122 Stat. 404, provided that:

“(a) BIENNIAL REPORT REQUIRED.—Not later than May 1 each odd-numbered year, the Secretary of Defense shall submit to Congress a report of the findings of the Counterproliferation Program Review Committee established by subsection (a) of the Review Committee charter.

“(b) CONTENT OF REPORT.—Each report under subsection (a) shall include the following:

“(1) A complete list, by specific program element, of the existing, planned, or newly proposed capabilities and technologies reviewed by the Review Committee pursuant to subsection (c) of the Review Committee charter.

“(2) A complete description of the requirements and priorities established by the Review Committee.

“(3) A comprehensive discussion of the near-term, mid-term, and long-term programmatic options formulated by the Review Committee for meeting requirements prescribed by the Review Committee and for eliminating deficiencies identified by the Review Committee, including the annual funding requirements and completion dates established for each such option.

“(4) An explanation of the recommendations made pursuant to subsection (c) of the Review Committee charter, together with a full discussion of the actions taken to implement such recommendations or otherwise taken on the recommendations.

“(5) A discussion and assessment of the status of each Review Committee recommendation during the two fiscal years preceding the fiscal year in which the report is submitted, including, particularly, the status of recommendations made during such preceding fiscal years that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, in the fiscal year of the report.

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

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

“(8) A discussion of the limitations and impediments to the biological weapons counterproliferation efforts of the Department of Defense (including legal, policy, and resource constraints) and recommendations for the removal or mitigation of such impediments

and for ways to make such efforts more effective.

“(c) FORMS OF REPORT.—Each such report shall be submitted in both unclassified and classified forms, including an annex to the classified report for special compartmented information programs, special access programs, and special activities programs.

“(d) REVIEW COMMITTEE CHARTER DEFINED.—For purposes of this section, the term ‘Review Committee charter’ means section 1605 of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103-160] (22 U.S.C. 2751 note).

“(e) TERMINATION OF REQUIREMENT.—The final report required under subsection (a) is the report for the year following the year in which the Counterproliferation Program Review Committee established under the Review Committee Charter ceases to exist.”

ARAB LEAGUE BOYCOTT OF ISRAEL

Pub. L. 103-236, title V, §564, Apr. 30, 1994, 108 Stat. 484, as amended by Pub. L. 103-415, §1(l), Oct. 25, 1994, 108 Stat. 4301, provided that:

“(a) PROHIBITION.—No defense article or defense service may be sold or leased by the United States Government to any country or international organization that, as a matter of policy or practice, is known to have sent letters to United States firms requesting compliance with, or soliciting information regarding compliance with, the Arab League secondary or tertiary boycott of Israel, unless the President determines, and so certifies to the appropriate congressional committees, that that country or organization does not currently maintain a policy or practice of making such requests or solicitations.

“(b) WAIVER.—

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

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

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

“(2) EXTENSION OF WAIVER.—If the President determines that the further extension of a waiver will promote the objectives of this section, the President, upon notification of the appropriate congressional committees, may grant further extensions of such waiver for successive 12-month periods.

“(3) TERMINATION OF WAIVER.—The President may, at any time, terminate any waiver granted under this subsection.

“(c) DEFINITIONS.—As used in this section—

“(1) the term ‘appropriate congressional committees’ means the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives; and

“(2) the terms ‘defense article’ and ‘defense service’ have the meanings given to such terms by paragraphs (3) and (4), respectively, of section 47 of the Arms Export Control Act [22 U.S.C. 2794(3), (4)].

“(d) EFFECTIVE DATE.—This section shall take effect 1 year after the date of enactment of this Act [Apr. 30, 1994].”

[Memorandum of President of the United States, Apr. 24, 1997, 62 F.R. 24797, delegated to Secretary of State functions of President under section 564 of Public Law 103-236, set out above.]

[Certifications and determinations relating to suspension of application by President under section 564 of Pub. L. 103-236, set out above, were contained in the following:

[Determination of President of the United States, No. 96-23, Apr. 30, 1996, 61 F.R. 26029.

[Determination of President of the United States, No. 95-20, May 1, 1995, 60 F.R. 22245.]

COUNTERPROLIFERATION POLICY AND PROGRAMS OF
UNITED STATES

Pub. L. 103-160, div. A, title XVI, §§1603, 1605, 1607, Nov. 30, 1993, 107 Stat. 1843, 1845, 1847, as amended by Pub. L. 103-337, div. A, title XV, §§1502, 1505(a), (b), Oct. 5, 1994, 108 Stat. 2914, 2919; Pub. L. 104-106, div. A, title XV, §1504(b), Feb. 10, 1996, 110 Stat. 513; Pub. L. 104-201, div. A, title XIII, §1309(a)-(c), Sept. 23, 1996, 110 Stat. 2710; Pub. L. 106-65, div. A, title XV, §1504(a), (b), Oct. 5, 1999, 113 Stat. 808; Pub. L. 107-314, div. A, title XII, §1208(a), (d), Dec. 2, 2002, 116 Stat. 2668; Pub. L. 109-163, div. A, title X, §1056(f), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 110-181, div. A, title XII, §1256(a)-(c), Jan. 28, 2008, 122 Stat. 403; Pub. L. 112-239, div. A, title X, §1076(c)(1), Jan. 2, 2013, 126 Stat. 1949, provided that:

“SEC. 1603. STUDIES RELATING TO UNITED STATES
COUNTERPROLIFERATION POLICY.

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

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

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

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

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

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

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

“(1) A description of the studies and analysis carried out.

“(2) The amounts spent for such studies and analysis.

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

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

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

“SEC. 1605. JOINT COMMITTEE FOR REVIEW OF
COUNTERPROLIFERATION PROGRAMS OF THE
UNITED STATES.

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

“(A) The Secretary of Defense.

“(B) The Secretary of Energy.

“(C) The Director of National Intelligence.

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

“(E) The Secretary of State.

“(F) The Secretary of Homeland Security.

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

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

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

“(5) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall serve as executive secretary to the committee, except that during any period during which that position is vacant the Assistant Secretary of Defense for Strategy and Threat Reduction shall serve as the executive secretary.

“(b) PURPOSES OF THE COMMITTEE.—The purposes of the committee are as follows:

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

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

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

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

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

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

“(5) To ensure that Department of Energy programs are integrated with the operational needs of other departments and agencies of the Government.

“(6) To ensure that Department of Energy national security programs include technology demonstrations and prototype development of equipment.

“(c) DUTIES.—The committee shall—

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

“(A) intelligence;

“(B) battlefield surveillance;

“(C) passive defenses;

“(D) active defenses; and

“(E) counterforce capabilities;

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

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

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

“(5) assess each fiscal year the effectiveness of the committee actions during the preceding fiscal year, including, particularly, the status of recommendations made during such preceding fiscal year that

were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for the fiscal year following the fiscal year in which the assessment is made.

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

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

“(f) TERMINATION OF COMMITTEE.—The committee shall cease to exist at the end of September 30, 2013.

“SEC. 1607. DEFINITIONS.

“For purposes of this subtitle [subtitle A, §§ 1601–1607, of title XVI of div. A of Pub. L. 103–160, amending section 5859a of this title and enacting this note]:

“(1) The term ‘appropriate congressional committees’ means—

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

“(B) the Committee on Armed Services [now Committee on National Security], the Committee on Appropriations, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) The term ‘intelligence community’ has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a) [now 50 U.S.C. 3003].”

[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.]

RESTRICTION ON ARMS SALES TO SAUDI ARABIA AND KUWAIT

Pub. L. 102–229, title I, § 104, Dec. 12, 1991, 105 Stat. 1707, provided that:

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

“(1) In the case of Saudi Arabia, \$16,839,000,000.

“(2) In the case of Kuwait, \$16,006,000,000.

“(b) For purposes of this section, the term ‘any sale’ means any sale with respect to which the President is required to submit a numbered certification to the Congress pursuant to the Arms Export Control Act [22 U.S.C. 2751 et seq.] on or after the effective date of this section.

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

“(d) Any military equipment of the United States, including battle tanks, armored combat vehicles, and artillery, included within the Conventional Forces in Europe Treaty definition of ‘conventional armaments and equipment limited by the Treaty’, which may be transferred to any other NATO country shall be subject to the notification procedures stated in section 523 of Pub-

lic Law 101–513 [104 Stat. 2007] and in section 634A of the Foreign Assistance Act of 1961 [22 U.S.C. 2394–1].”

ANNUAL REPORT ON PROLIFERATION OF MISSILES AND ESSENTIAL COMPONENTS OF NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS

Pub. L. 102–190, div. A, title X, § 1097, Dec. 5, 1991, 105 Stat. 1489, as amended by Pub. L. 104–106, div. A, title XV, §§ 1502(c)(3), 1504(d), Feb. 10, 1996, 110 Stat. 507, 514; Pub. L. 106–65, div. A, title X, § 1067(9), Oct. 5, 1999, 113 Stat. 774, required the President to submit to Congress annual reports on transfers by any country of weapons, technology, or materials that can be used to deliver, manufacture, or weaponize nuclear, biological, or chemical weapons to any country (other than certain specified countries) seeking to acquire such weapons, technology, or materials, and specified time, coverage, contents and classification of such reports, prior to repeal by Pub. L. 107–228, div. B, title XIII, § 1308(g)(1)(A), Sept. 30, 2002, 116 Stat. 1441.

CONVENTIONAL ARMS TRANSFERS

Pub. L. 99–83, title I, § 129, Aug. 8, 1985, 99 Stat. 206, directed President, at the earliest possible date, in consultation with United States allies, to initiate discussions with the Soviet Union and France aimed at beginning multilateral negotiations to limit and control the transfer of conventional arms to less developed countries, and, within one year after Aug. 8, 1985, submit to Speaker of House of Representatives and chairman of Committee on Foreign Relations of Senate a report which specifies steps being taken to fulfill such requirements and which examines and analyzes, among specified matters, United States policies concerning the export of conventional arms, especially sophisticated weapons, and possible approaches to developing multilateral limitations on conventional arms sales.

TERMINATION OF NONRECURRING ACTIVITIES UNDER FOREIGN ASSISTANCE ACT OF 1961 AND THIS CHAPTER AND REMOVAL FROM LAW

Pub. L. 97–113, title VII, § 734(c), Dec. 29, 1981, 95 Stat. 1561, provided that: “Except as otherwise explicitly provided by their terms, amendments to the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] and the Arms Export Control Act [this chapter] which are applicable only to a single fiscal or calendar year or which require reports or other actions on a nonrecurring basis shall be deemed to have expired and shall be removed from law upon the expiration of the applicable time periods for the fulfillment of the required actions.”

REPORT TO CONGRESS BY PRESIDENT ON MULTILATERAL DISCUSSIONS CONCERNING ARMS TRANSFER POLICY

Pub. L. 95–384, § 15(b), Sept. 26, 1978, 92 Stat. 740, directed President, not later than Dec. 31, 1979, to transmit to Congress a detailed report assessing results and commenting on implications of multilateral discussion referred to in paragraph added to this section by section 15(a) of Pub. L. 95–384, relating to adherence to a policy of restraint in conventional arms transfer, prior to repeal by Pub. L. 97–113, title VII, § 734(a)(12), Dec. 29, 1981, 95 Stat. 1560.

REPORT BY PRESIDENT ON REVIEW OF ARMS SALES CONTROLS ON NON-LETHAL ITEMS

Pub. L. 95–384, § 25, Sept. 26, 1978, 92 Stat. 746, directed President, within 120 days after Sept. 26, 1978, to report in writing to Speaker of House of Representatives and chairman of Committee on Foreign Relations of Senate the results of the review conducted pursuant to Pub. L. 95–92, § 27, Aug. 4, 1977, 91 Stat. 626, set out below, prior to repeal by Pub. L. 97–113, title VII, § 734(a)(12), Dec. 29, 1981, 95 Stat. 1560.

REPORT BY PRESIDENT ON IMPACT OF FOREIGN ARMS SALES AND TRANSFERS TO FOREIGN GOVERNMENTS ON DEFENSE READINESS AND NATIONAL SECURITY OF UNITED STATES

Pub. L. 95–92, § 23, Aug. 4, 1977, 91 Stat. 624, set forth provisions respecting Presidential report on impact of

United States foreign arms sales and transfers on defense readiness and national security, prior to repeal by Pub. L. 95-384, §29(c)(2)(B), Sept. 26, 1978, 92 Stat. 747.

STUDY BY PRESIDENT OF NATIONAL SECURITY AND MILITARY IMPLICATIONS OF INTERNATIONAL TRANSFERS OF TECHNOLOGY; SCOPE OF STUDY; UTILIZATION OF EXECUTIVE DEPARTMENTS AND AGENCIES

Pub. L. 95-92, §24, Aug. 4, 1977, 91 Stat. 624, as amended by Pub. L. 97-113, title VII, §734(a)(13), Dec. 29, 1981, 95 Stat. 1560, directed President to conduct a comprehensive study of policies and practices of United States Government with respect to national security and military implications of international transfers of technology in order to determine whether such policies and practices should be changed, with President to utilize resources and expertise of Arms Control and Disarmament Agency, Department of State, Department of Defense, Department of Commerce, National Science Foundation, Office of Science and Technology Policy, and such other entities within the Executive branch as he deemed necessary.

STATEMENT OF POLICY REGARDING UNITED STATES ARMS SALES TO ISRAEL

Pub. L. 95-92, §26, Aug. 4, 1977, 91 Stat. 625, provided that: "In accordance with the historic special relationship between the United States and Israel and previous agreements and continuing understandings, the Congress joins with the President in reaffirming that a policy of restraint in United States arms transfers, including arms sales ceilings, shall not impair Israel's deterrent strength or undermine the military balance in the Middle East."

REVIEW BY PRESIDENT OF CATEGORIES AND ARMS SALES CONTROLS ON LETHAL AND NON-LETHAL ITEMS

Pub. L. 95-92, §27, Aug. 4, 1977, 91 Stat. 626, directed President to undertake a review of all regulations relating to arms control for the purpose of defining and categorizing lethal and non-lethal products and establishing the appropriate level of control for each category.

STUDY OF UNITED STATES ARMS SALES POLICIES AND PRACTICES BY PRESIDENT; REPORT TO CONGRESS

Pub. L. 94-329, title II, §202(b), June 30, 1976, 90 Stat. 735, set forth provisions respecting study and report to Congress of United States arms sales policies and practices, prior to repeal by Pub. L. 95-384, §29(c)(1)(A), Sept. 26, 1978, 92 Stat. 747.

PRESIDENTIAL REPORT REGARDING SALES OF EXCESS DEFENSE ARTICLES TO FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Pub. L. 94-329, title II, §217, June 30, 1976, 90 Stat. 747, set forth provisions respecting report by the President of all sales under this chapter of excess defense articles to foreign governments and international organizations, prior to repeal by Pub. L. 95-384, §29(c)(1)(B), Sept. 26, 1978, 92 Stat. 747.

STUDY BY SECRETARIES OF STATE AND DEFENSE ON CONSEQUENCES OF ENACTMENT OF ARMS EXPORT CONTROL PROVISIONS

Pub. L. 94-329, title II, §218, June 30, 1976, 90 Stat. 748, set forth provisions respecting study by the Secretaries of State and Defense on consequences of enactment of arms export control provisions by title II of Pub. L. 94-329, prior to repeal by Pub. L. 95-384, §29(c)(1)(C), Sept. 26, 1978, 92 Stat. 747.

TOTAL NUMBER OF CREDITS TO BE EXTENDED BETWEEN JULY 1, 1976, AND SEPTEMBER 30, 1976

Pub. L. 94-329, title V, §506(b), June 30, 1976, 90 Stat. 764, provided that the total number of credits extended pursuant to this chapter, between July 1, 1976, and Sept. 30, 1976, not exceed an amount equal to one-fourth

of the total amount of credits extended and guaranteed for fiscal year 1976.

ADDITIONAL MILITARY AND CIVILIAN PERSONNEL FOR DEPARTMENT OF DEFENSE

Pub. L. 94-329, title VI, §605(a), June 30, 1976, 90 Stat. 768, provided that: "Nothing in this Act [see Short Title of 1976 Amendment note set out under section 2151 of the title] is intended to authorize any additional military or civilian personnel for the Department of Defense for the purposes of this Act, the Foreign Assistance Act of 1961 [section 2151 et seq. of this title], or the Arms Export Control Act [this chapter]. Personnel levels authorized in statutes authorizing appropriations for military and civilian personnel of the Department of Defense shall be controlling over all military and civilian personnel of the Department of Defense assigned to carry out functions under the Arms Export Control Act and the Foreign Assistance Act of 1961."

SALES TO THE MIDDLE EAST; REQUESTS FOR ADDITIONAL APPROPRIATIONS

Pub. L. 91-672, §5, Jan. 12, 1971, 84 Stat. 2053, provided that: "It is the sense of Congress that (1) the President should continue to press forward urgently with his efforts to negotiate with the Soviet Union and other powers a limitation on arms shipments to the Middle East, (2) the President should be supported in his position that arms will be made available and credits provided to Israel and other friendly states, to the extent that the President determines such assistance to be needed in order to meet threats to the security and independence of such states, and (3) if the authorization provided in the Foreign Military Sales Act, as amended [this chapter], should prove to be insufficient to effectuate this stated policy, the President should promptly submit to the Congress requests for an appropriate supplementary authorization and appropriation."

REVIEW OF MILITARY AID PROGRAMS AND EFFORTS FOR REGULATION OF CONVENTIONAL ARMS TRADE

Pub. L. 91-672, §6, Jan. 12, 1971, 84 Stat. 2053, provided that: "It is the sense of the Congress that—

"(1) the President should immediately institute a thorough and comprehensive review of the military aid programs of the United States, particularly with respect to the military assistance and sales operations of the Department of Defense, and

"(2) the President should take such actions as may be appropriate—

"(A) to initiate multilateral discussions among the United States, the Union of Soviet Socialist Republics, Great Britain, France, West Germany, Italy and other countries on the control of the worldwide trade in armaments,

"(B) to commence a general debate in the United Nations with respect to the control of the conventional arms trade, and

"(C) to use the power and prestige of his office to signify the intention of the United States to work actively with all nations to check and control the international sales and distribution of conventional weapons of death and destruction."

EXECUTIVE ORDER NO. 11501

Ex. Ord. No. 11501, Dec. 22, 1969, 34 F.R. 20169, as amended by Ex. Ord. No. 11685, Sept. 25, 1972, 37 F.R. 20155, which related to the administration of foreign military sales, was revoked by Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, formerly set out below.

EXECUTIVE ORDER NO. 11958

Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended by Ex. Ord. No. 12118, Feb. 6, 1979, 44 F.R. 7939; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673; Ex. Ord. No. 12210, Apr. 16, 1980, 45 F.R. 26313; Ex. Ord. No. 12321, Sept. 14, 1981, 46 F.R. 46109; Ex. Ord. No. 12365, May 24, 1982, 47 F.R. 22933; Ex. Ord. No. 12423, May 26, 1983, 48 F.R. 24025; Ex. Ord. No. 12560, May 24, 1986, 51 F.R. 19159;

Ex. Ord. No. 12680, July 5, 1989, 54 F.R. 28995; Ex. Ord. No. 12738, §7, Dec. 14, 1990, 55 F.R. 52035; Ex. Ord. No. 13030, §2, Dec. 12, 1996, 61 F.R. 66187; Ex. Ord. No. 13091, §1, June 29, 1998, 63 F.R. 36153; Ex. Ord. No. 13118, §10(8), Mar. 31, 1999, 64 F.R. 16598; Ex. Ord. No. 13284, §13, Jan. 23, 2003, 68 F.R. 4076, which related to the administration of arms export controls, was revoked by Ex. Ord. No. 13637, §4, Mar. 8, 2013, 78 F.R. 16131, set out below.

EX. ORD. NO. 13637. ADMINISTRATION OF REFORMED EXPORT CONTROLS

Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 et seq.) (the “Act”), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Delegation of Functions.* The following functions conferred upon the President by the Act, and related laws, are delegated as follows:

(a) Those under section 3 of the Act (22 U.S.C. 2753), with the exception of subsections (a)(1), (b), (c)(3), (c)(4), and (f) (22 U.S.C. 2753(a)(1), (b), (c)(3), (c)(4), and (f)), to the Secretary of State. The Secretary of State, in the implementation of the delegated functions under sections 3(a) and (d) of the Act (22 U.S.C. 2753(a) and (d)), is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under section 3(a)(1) of the Act (22 U.S.C. 2753(a)(1)), whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under section 5 (22 U.S.C. 2755) to the Secretary of State.

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

(d) Those under sections 22(a), 29, 30, and 30A of the Act (22 U.S.C. 2762(a), 2769, 2770, and 2770a) to the Secretary of Defense.

(e) Those under section 23 of the Act (22 U.S.C. 2763), and under section 7069 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Public Law 112-74, Division I) and any subsequently enacted provision of law that is the same or substantially the same, to the Secretary of Defense to be exercised in consultation with the Secretary of State and, other than the last sentence of section 23(a) (22 U.S.C. 2763(a)), in consultation with the Secretary of the Treasury, except that the President shall determine any rate of interest to be charged that is less than the market rate of interest.

(f) Those under sections 24 and 27 of the Act (22 U.S.C. 2764 and 2767) to the Secretary of Defense. The Secretary of Defense shall consult with the Secretary of State and the Secretary of the Treasury in implementing the delegated functions under section 24 (22 U.S.C. 2764) and with the Secretary of State in implementing the delegated functions under section 27 (22 U.S.C. 2767).

(g) Those under section 25 of the Act (22 U.S.C. 2765) to the Secretary of State. The Secretary of Defense shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that section.

(h) Those under section 34 of the Act (22 U.S.C. 2774) to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security or financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under section 35(a) of the Act (22 U.S.C. 2775(a)) to the Secretary of State.

(j) Those under sections 36(a) and 36(b)(1) of the Act (22 U.S.C. 2776(a) and (b)(1)), except with respect to the certification of an emergency as provided by subsection

(b)(1) (22 U.S.C. 2776(b)(1)), to the Secretary of Defense. The Secretary of Defense, in the implementation of the delegated functions under sections 36(a) and (b)(1) (22 U.S.C. 2776(a) and (b)(1)), shall consult with the Secretary of State. With respect to those functions under sections 36(a)(5) and (6) (22 U.S.C. 2776(a)(5) and (6)), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under section 36(b)(1) with respect to the certification of an emergency as provided by subsection (b)(1) and under sections 36(c) and (d) of the Act (22 U.S.C. 2776(b)(1), (c), and (d)) to the Secretary of State.

(l) Those under section 36(f)(1) of the Act (22 U.S.C. 2776(f)(1)) to the Secretary of Defense.

(m) Those under sections 36(f)(2) and (f)(3) of the Act (22 U.S.C. 2776(f)(2) and (f)(3)) to the Secretary of State.

(n) Those under section 38 of the Act (22 U.S.C. 2778) to:

(i) the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items that shall be considered as defense articles and defense services subject to export control under section 38 (22 U.S.C. 2778) shall have the concurrence of the Secretary of Defense. The authority to undertake activities to ensure compliance with established export conditions may be redelegated to the Secretary of Defense, or to the head of another executive department or agency as appropriate, who shall exercise such functions in consultation with the Secretary of State;

(ii) the Attorney General, to the extent they relate to the control of the permanent import of defense articles and defense services. In carrying out such functions, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations, including changes in designations, by the Attorney General of items or categories of items that shall be considered as defense articles and defense services subject to permanent import control under section 38 of the Act (22 U.S.C. 2778) shall be made with the concurrence of the Secretary of State and the Secretary of Defense and with notice to the Secretary of Commerce; and

(iii) the Department of State for the registration and licensing of those persons who engage in the business of brokering activities with respect to defense articles or defense services controlled either for purposes of export by the Department of State or for purposes of permanent import by the Department of Justice.

(o) Those under section 39(b) of the Act (22 U.S.C. 2779(b)) to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under section 22 of the Act (22 U.S.C. 2762).

(p) Those under the portion of section 40A of the Act added by Public Law 104-164 (22 U.S.C. 2785), to the Secretary of State insofar as they relate to commercial exports licensed under the Act, and to the Secretary of Defense insofar as they relate to defense articles and defense services sold, leased, or transferred under the Foreign Military Sales Program.

(q) Those under the portion of section 40A of the Act added by the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (22 U.S.C. 2781), to the Secretary of State.

(r) Those under sections 42(c) and (f) of the Act (22 U.S.C. 2791(c) and (f)) to the Secretary of Defense. The Secretary of Defense shall obtain the concurrence of the Secretary of State and the Secretary of Commerce on any determination considered under the authority of section 42(c) of the Act (22 U.S.C. 2791(c)).

(s) Those under section 52(b) of the Act (22 U.S.C. 2795a(b)) to the Secretary of Defense.

(t) Those under sections 61 and 62(a) of the Act (22 U.S.C. 2796 and 2796a(a)) to the Secretary of Defense.

(u) Those under section 2(b)(6) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(6)) to 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 executive departments and agencies on matters pertaining to their responsibilities.

(b) Under the direction of the President and in accordance with section 2(b) of the Act (22 U.S.C. 2752(b)), 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 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 11958 of January 18, 1977, 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 11958, 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.

SEC. 5. *Delegation of Functions under the International Emergency Economic Powers Act.* [Amended Ex. Ord. No. 13222, listed in a table under section 1701 of Title 50, War and National Defense.]

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§ 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 Amendment 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 Amendment 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 amend-