

110TH CONGRESS  
1ST SESSION

# H. R. 4246

To improve the performance of the defense trade controls functions of the Department of State, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2007

Mr. SHERMAN (for himself, Mr. MANZULLO, Mr. CROWLEY, and Mr. BLUNT) introduced the following bill; which was referred to the Committee on Foreign Affairs

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## A BILL

To improve the performance of the defense trade controls functions of the Department of State, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4        (a) **SHORT TITLE.**—This Act may be cited as the  
5        “Defense Trade Controls Performance Improvement Act  
6        of 2007”.

7        (b) **TABLE OF CONTENTS.**—The table of contents for  
8        this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Findings.

Sec. 3. Strategic review and assessment of the United States export controls system.

- Sec. 4. Performance requirements in the processing of applications for licenses to export or import items on the United States Munitions List.
- Sec. 5. Requirement to ensure adequate staff and resources for the Directorate of Defense Trade Controls of the Department of State.
- Sec. 6. Audit by Government Accountability Office.
- Sec. 7. Increased flexibility for use of defense trade controls registration fees.
- Sec. 8. Increased transparency through publication of licensing information.
- Sec. 9. Control of items on Missile Technology Control Regime Annex.
- Sec. 10. Waiver of licensing requirements for spare and replacement parts or components and related services of defense items for exports to NATO member states, Australia, Japan, and New Zealand.
- Sec. 11. Availability of information on the status of license applications under chapter 3 of the Arms Export Control Act.
- Sec. 12. Export controls of civil aircraft products.
- Sec. 13. Definitions.
- Sec. 14. Authorization of appropriations.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) In a time of international terrorist threats  
4 and a dynamic global economic and security environ-  
5 ment, United States policy with regard to export  
6 controls is in urgent need of a comprehensive review  
7 in order to ensure such controls are protecting the  
8 national security and foreign policy interests of the  
9 United States.

10 (2) In January 2007, the Government Account-  
11 ability Office designated the effective identification  
12 and protection of critical technologies as a govern-  
13 ment wide, high-risk area, warranting a strategic re-  
14 examination of existing programs to include those  
15 relating to arms export controls.

16 (3) Federal Government agencies must review  
17 licenses for the export of munitions and dual-use  
18 items in a thorough and timely manner to ensure

1 that the United States is able to help its allies and  
2 to prevent nuclear and conventional weapons from  
3 getting into the hands of our enemies.

4 (4) A Government Accountability Office report  
5 of October 9, 2001 (GAO-02-120), documented am-  
6 biguous export control jurisdiction affecting 25 per-  
7 cent of the items that the United States Government  
8 agreed to control as part of its commitments to the  
9 Missile Technology Control Regime. More than 6  
10 years later, the Departments of Commerce and State  
11 have not clearly determined which department has  
12 jurisdiction over these items, which increases the  
13 risk that these items will fall into the wrong hands.  
14 During both the 108th and 109th Congresses, the  
15 House of Representatives passed legislation man-  
16 dating that the Administration clarify this issue.

17 (5) Both the staffing and funding that relate to  
18 the Department of State's arms export control re-  
19 sponsibilities have not kept pace with the increased  
20 workload relating to such responsibilities, especially  
21 over the last five years.

22 (6) In the report to Congress required by the  
23 Conference Report (Report 109-272) accompanying  
24 the bill, H.R. 2862 (the Science, State, Justice,  
25 Commerce and Related Agencies Appropriations Act,

1       2006; Public Law 109–108), the Department of  
2       State concluded that—

3               (A) defense trade licensing has become  
4               much more complex in recent years as a con-  
5               sequence of the increasing globalization of the  
6               defense industry;

7               (B) the most important challenge to the  
8               Department of State’s licensing process has  
9               been the sheer growth in volume of applicants  
10              for licenses and agreements, without the cor-  
11              responding increase in licensing officers;

12              (C) fiscal year 2005 marked the third  
13              straight year of roughly 8 percent annual in-  
14              creases in licensing volume;

15              (D) although an 8 percent increase in  
16              workload equates to a requirement for three ad-  
17              ditional licensing officers per year, there has  
18              been no increase in licensing officers during this  
19              period; and

20              (E) the increase in licensing volume with-  
21              out corresponding increase in trained and expe-  
22              rienced personnel has resulted in delays and in-  
23              creased processing times.

24              (7) In 2006, the Department of State processed  
25              over three times as many licensing applications as

1 the Department of Commerce with about a fifth of  
2 the staff of the Department of Commerce.

3 (8) On July 27, 2007, in testimony delivered to  
4 the Subcommittee on Terrorism, Nonproliferation  
5 and Trade of the House Committee on Foreign Af-  
6 fairs to examine the effectiveness of the United  
7 States export control regime, the Government Ac-  
8 countability Office found that—

9 (A) despite the existence of known  
10 vulnerabilities, neither the Departments of  
11 Commerce and State have conducted assess-  
12 ments to determine their overall effectiveness in  
13 the area of arms export control;

14 (B) the initiatives of the Department of  
15 State to facilitate defense trade by reducing the  
16 time it takes to process export license applica-  
17 tions have generally not been successful; and

18 (C) the processing times of the Depart-  
19 ment of State doubled over the period from  
20 2002 to 2006.

21 (9) At the end of 2006, the Department of  
22 State's backlog or open license applications reached  
23 its highest level by exceeding 10,000 cases. This re-  
24 sulted in major management and personnel chal-

1 lenges for the Department of State’s Directorate of  
2 Defense Trade Controls.

3 (10) Allowing a continuation of the status quo  
4 in resources for defense trade licensing could ulti-  
5 mately harm the United States defense industrial  
6 base. The 2007 Institute for Defense Analysis report  
7 entitled “Export Controls and the U.S. Defense In-  
8 dustrial Base” found that the large backlog and long  
9 processing times for Department of State processed  
10 licenses led to an impairment of United States firms  
11 in some sectors to conduct global business relative to  
12 foreign competitors. Additionally, the report found  
13 that United States commercial firms have been re-  
14 luctant to engage in research and development ac-  
15 tivities for the Department of Defense because this  
16 raises the future prospects that the products based  
17 on this research and development, even if intrinsi-  
18 cally commercial, will be saddled by Department of  
19 State munitions controls due to the link to that re-  
20 search.

21 (11) According to the Department of State’s  
22 fiscal year 2008 budget justification to Congress,  
23 commercial exports licensed or approved under the  
24 Arms Export Control Act exceeded  
25 \$30,000,000,000, with nearly eighty percent of these

1 items exported to United States NATO allies and  
2 other major non-NATO allies. The inability of Fed-  
3 eral Government agencies to properly assess and cat-  
4 egorize United States manufactured goods in a time-  
5 ly and consistent manner hinders legitimate trade  
6 and exacerbates the United States merchandise  
7 trade deficit, which reached \$836,000,000,000 in  
8 2006.

9 (12) The failure on the part of the Depart-  
10 ments of Commerce and State to assess the overall  
11 effectiveness of their export controls, combined with  
12 the lack of resources dedicated to these efforts at  
13 the Department of State, raises serious national and  
14 economic security concerns for the United States  
15 that must be addressed expeditiously.

16 **SEC. 3. STRATEGIC REVIEW AND ASSESSMENT OF THE**  
17 **UNITED STATES EXPORT CONTROLS SYSTEM.**

18 (a) ASSESSMENT.—The Secretary of State, in coordi-  
19 nation with the heads of other Federal agencies (including  
20 relevant law enforcement agencies), as appropriate, shall  
21 conduct a comprehensive and systematic review and as-  
22 sessment of the United States export controls system in  
23 the context of the strategic foreign policy objectives of the  
24 United States. Such review and assessment shall deter-  
25 mine the overall effectiveness of the United States export

1 controls system in order to, where appropriate, strengthen  
2 controls, improve efficiency, and reduce unnecessary  
3 redundancies across Federal Government agencies,  
4 through administrative actions, including regulations, and  
5 to formulate legislative proposals for new authorities that  
6 are needed.

7 (b) REPORT.—Not later than one year after the date  
8 of the enactment of this Act, the Secretary of State shall  
9 submit to the appropriate congressional committees a re-  
10 port that contains the results of the review and assessment  
11 conducted under subsection (a).

12 (c) CONGRESSIONAL BRIEFINGS.—At the time the  
13 report required by subsection (b) is submitted to the ap-  
14 propriate congressional committees in accordance with  
15 such subsection, the Secretary of State (or the Secretary’s  
16 designee) shall brief the chairmen and ranking members  
17 of the appropriate congressional committees on the mat-  
18 ters contained in the report.

19 **SEC. 4. PERFORMANCE REQUIREMENTS IN THE PROC-**  
20 **ESSING OF APPLICATIONS FOR LICENSES TO**  
21 **EXPORT OR IMPORT ITEMS ON THE UNITED**  
22 **STATES MUNITIONS LIST.**

23 (a) REQUIREMENTS.—The Secretary of State, acting  
24 through the Directorate of Defense Trade Controls of the  
25 Department of State, shall ensure that—



1           (1) the average processing time for review and  
2           issuance or denial of applications for licenses to ex-  
3           port or import items on the United States Munitions  
4           List that are not subject to the requirements of sub-  
5           section (b) or (c) of section 36 of the Arms Export  
6           Control Act (22 U.S.C. 2776)—

7           (A) to countries that are member states of  
8           the North Atlantic Treaty Organization  
9           (NATO), Australia, Israel, Japan, and New  
10          Zealand is not more than 20 days from receipt  
11          of application;

12          (B) to countries that are major non-  
13          NATO allies (other than major non-NATO al-  
14          lies described in subparagraph (A)) is not more  
15          than 30 days from receipt of application; and

16          (C) to other eligible countries is not more  
17          than 60 days from receipt of application; and

18          (2) prior to consultation with the appropriate  
19          congressional committees, the average processing  
20          time for review of applications for licenses to export  
21          or import items on the United States Munitions List  
22          that are subject to the requirements of subsection  
23          (b) or (c) of section 36 of the Arms Export Control  
24          Act (22 U.S.C. 2776)—

1 (A) to countries that are member states of  
2 the North Atlantic Treaty Organization  
3 (NATO), Australia, Israel, Japan, and New  
4 Zealand is not more than 40 days from receipt  
5 of application;

6 (B) to countries that are major non-  
7 NATO allies (other than major non-NATO al-  
8 lies described in subparagraph (A)) is not more  
9 than 60 days from receipt of application; and

10 (C) to other eligible countries is not more  
11 than 120 days from receipt of application;

12 (3) the average processing time for review and  
13 determinations of commodity jurisdiction requests is  
14 not more than 60 days;

15 (4) the average processing time for review and  
16 determinations of technical assistance agreements is  
17 not more than 120 days;

18 (5) at no time does the Directorate of Defense  
19 Trade Controls have more than 2,000 open applica-  
20 tions for licenses to export or import items on the  
21 United States Munitions List; and

22 (6) applications for licenses to export or import  
23 items on the United States Munitions List that are  
24 returned without action or denied are periodically re-  
25 viewed by the Managing Director of the Directorate

1 of Defense Trade Controls to ensure such decisions  
2 are consistent with both policy and regulatory re-  
3 quirements of the Department of State.

4 (b) STATEMENT OF POLICY.—Congress states that it  
5 shall be the policy of the Directorate of Defense Trade  
6 Controls of the Department of State to ensure that, to  
7 the maximum extent practicable, the average processing  
8 time for review and issuance or denial of applications for  
9 licenses to export or import items on the United States  
10 Munitions List that are not subject to the requirements  
11 of subsection (b) or (c) of section 36 of the Arms Export  
12 Control Act (22 U.S.C. 2776) to United States NATO al-  
13 lies and major non-NATO allies in direct support of com-  
14 bat operations or peacekeeping or humanitarian oper-  
15 ations with United States Armed Forces is not more than  
16 seven calendar days from receipt of application.

17 (c) DETERMINATION OF AVERAGE PROCESSING  
18 TIME.—The Secretary of State shall determine the aver-  
19 age processing times established under subsections (a) and  
20 (b) on the basis of the volume of applications received by  
21 the Directorate of Defense Trade Controls during the im-  
22 mediately preceding 6-month period.

23 (d) CONGRESSIONAL BRIEFINGS.—If, at the end of  
24 any month—

1           (1) the average processing times for review and  
2           issuance or denial of applications for licenses to ex-  
3           port or import items under any category of the  
4           United States Munitions List is in excess of the  
5           times specified in subparagraphs (A), (B), and (C)  
6           of paragraphs (1) and (2) of subsection (a),

7           (2) the average processing time for review and  
8           determinations of commodity jurisdiction requests is  
9           more than 60 days as described in subsection (a)(3),  
10          or

11          (3) the Directorate of Defense Trade Controls  
12          has more than 2,000 open applications as described  
13          in subsection (a)(5),

14          the Secretary of State, acting through the Undersecretary  
15          for Arms Control and International Affairs, the Assistant  
16          Secretary for Political and Military Affairs, or the Deputy  
17          Assistant Secretary for Defense Trade Controls of the De-  
18          partment of State, shall brief the appropriate congres-  
19          sional committees on such matters and the corrective  
20          measures that the Directorate of Defense Trade Controls  
21          will take to comply with the requirements of subsection  
22          (a).

23          (e) CONGRESSIONAL REPORT.—If the processing  
24          time for review and determination of a commodity jurisdic-  
25          tion request is more than 120 days, the Secretary of State

1 shall submit to the appropriate congressional committees  
2 a report that describes the request and the reasons for  
3 the extended duration of the processing time of the re-  
4 quest.

5 (f) REVIEW AND ASSESSMENT OF COMPREHENSIVE  
6 DEFENSE TRADE SECURITY INITIATIVES.—

7 (1) REVIEW AND ASSESSMENT.—The Secretary  
8 of State, in coordination with the heads of other rel-  
9 evant Federal departments and agencies, shall re-  
10 view each of the Department of State’s Comprehen-  
11 sive Defense Trade Security Initiative’s export au-  
12 thorizations described in paragraph (2) and assess  
13 the effectiveness of each such authorization, includ-  
14 ing the extent to which the authorization is utilized  
15 and is achieving the initiative’s stated objectives.  
16 This review should also assess how well such author-  
17 izations are supporting defense cooperation and  
18 interoperability with United States allies and part-  
19 ners by permitting timely sharing of technology,  
20 maintenance information, and spare parts and com-  
21 ponents for cooperative defense programs.

22 (2) COMPREHENSIVE DEFENSE TRADE SECUR-  
23 ITY INITIATIVES.—The Comprehensive Defense  
24 Trade Security Initiative’s export authorizations re-  
25 ferred to in paragraph (1) are the following:

1 (A) MAJOR PROJECT AUTHORIZATION.—  
2 Comprehensive authorization for a range of ex-  
3 port activities between a single registered  
4 United States exporter, as original equipment  
5 manufacturer, and a foreign company or gov-  
6 ernment, including integration, codevelopment,  
7 or production.

8 (B) MAJOR PROGRAM AUTHORIZATION.—  
9 Comprehensive authorization for a range of ex-  
10 port activities for a principal registered con-  
11 tractor covering all aspects of a commercial  
12 project with a foreign company or government,  
13 including participation by multiple subcontractors  
14 and exporters, such as a transaction for a  
15 foreign government's purchase of a United  
16 States major weapons system.

17 (C) GLOBAL PROJECT AUTHORIZATION.—  
18 Comprehensive authorization for a United  
19 States exporter to carry out broad range of ac-  
20 tivities associated with a cooperative project  
21 pursuant to a government -to-government  
22 agreement.

23 (3) REPORT.—Not later than 180 days after  
24 the date of the enactment of this Act, the Secretary  
25 of State shall submit to the appropriate congres-

1 sional committees a report that contains the results  
2 of the review and assessment conducted under para-  
3 graph (1) and recommendations based on the review  
4 and assessment of any needed improvements.

5 (g) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
6 tion shall be construed to prohibit the President or Con-  
7 gress from undertaking a thorough review of the national  
8 security and foreign policy implications of a proposed ex-  
9 port or import of items on the United States Munitions  
10 List.

11 **SEC. 5. REQUIREMENT TO ENSURE ADEQUATE STAFF AND**  
12 **RESOURCES FOR THE DIRECTORATE OF DE-**  
13 **FENSE TRADE CONTROLS OF THE DEPART-**  
14 **MENT OF STATE.**

15 (a) **REQUIREMENT.**—The Secretary of State shall en-  
16 sure that the Directorate of Defense Trade Controls of  
17 the Department of State has the necessary staff and re-  
18 sources to carry out this Act and the amendments made  
19 by this Act.

20 (b) **MINIMUM NUMBER OF LICENSING OFFICERS.**—  
21 The Secretary of State shall ensure that the Directorate  
22 of Defense Trade Controls has not less than the following  
23 number of licensing officers for the following fiscal years:

24 (1) 60 licensing officers for fiscal year 2009.

25 (2) 70 licensing officers for fiscal year 2010.

1           (3) An appropriate number of licensing officers  
2           so that the ratio between the number of licensing of-  
3           ficers to the estimated number of applications for li-  
4           censes to export or import items on the United  
5           States Munitions List for fiscal year 2011 and each  
6           subsequent fiscal year is not less than 1 to 1,250.

7           (c) **MINIMUM NUMBER OF STAFF FOR COMMODITY**  
8 **JURISDICTION REQUESTS.**—For each of the fiscal years  
9 2009 through 2011, the Secretary of State shall ensure  
10 that the Directorate of Defense Trade Controls has not  
11 less than three individuals assigned to review and make  
12 determinations of commodity jurisdiction requests.

13 **SEC. 6. AUDIT BY GOVERNMENT ACCOUNTABILITY OFFICE.**

14           (a) **AUDIT.**—Not later than end of each of the fiscal  
15 years 2009 through 2011, the Comptroller General shall  
16 conduct an independent audit to determine whether or not  
17 the Department of State is meeting the requirements of  
18 sections 4 and 5 of this Act.

19           (b) **REPORT.**—The Comptroller General shall submit  
20 to the appropriate congressional committees a report that  
21 contains the result of each audit conducted under sub-  
22 section (a).



1 **SEC. 7. INCREASED FLEXIBILITY FOR USE OF DEFENSE**  
2 **TRADE CONTROLS REGISTRATION FEES.**

3 Section 45 of the State Department Basic Authorities  
4 Act of 1956 (22 U.S.C. 2717) is amended—

5 (1) in the first sentence, by striking “Office”  
6 and inserting “Directorate”; and

7 (2) in the second sentence, to read as follows:  
8 “Fees credited to that account shall be available  
9 only for payment of expenses incurred for manage-  
10 ment, licensing, compliance, and policy activities of  
11 defense trade controls functions. In allocating fees  
12 for payment of expenses described in the preceding  
13 sentence, the Secretary of State shall accord the  
14 highest priority to payment of expenses incurred for  
15 personnel of the Directorate of Defense Trade Con-  
16 trols, including payment of expenses incurred to  
17 meet the requirements of section 5 of the Defense  
18 Trade Controls Performance Improvement Act of  
19 2007 (relating to adequate staff and resources of the  
20 Directorate of Defense Trade Controls).”.

21 **SEC. 8. INCREASED TRANSPARENCY THROUGH PUBLICA-**  
22 **TION OF LICENSING INFORMATION.**

23 (a) STATUS OF APPLICATIONS.—The Directorate of  
24 Defense Trade Controls shall establish a secure Internet-  
25 based system for tracking the progress of applications for  
26 licenses to export or import items on the United States

1 Munitions List so that applicants can track the status of  
2 their applications.

3 (b) OTHER INFORMATION.—Beginning not later than  
4 180 days after the date of the enactment of this Act, the  
5 Secretary of State shall publish on the Internet website  
6 of the Department of State, and update as appropriate—

7 (1) information concerning the average proc-  
8 essing times, by category, and the number of open  
9 applications, as required by section 4 of this Act;  
10 and

11 (2) information concerning staff and resources  
12 of the Directorate of Defense Trade Controls of the  
13 Department of State, including the number of licens-  
14 ing officers, as required by section 5 of this Act.

15 **SEC. 9. CONTROL OF ITEMS ON MISSILE TECHNOLOGY**

16 **CONTROL REGIME ANNEX.**

17 (a) CONTROL OF ITEMS ON MTCR ANNEX.—The  
18 Secretary of State, in coordination with the Secretary of  
19 Commerce, the Secretary of Defense, and the heads of  
20 other federal agencies, as appropriate, shall ensure that  
21 all items on the Missile Technology Control Regime Annex  
22 are subject to stringent control by the Government of the  
23 United States pursuant to the International Traffic in  
24 Arms Regulations and the Export Administration Regula-  
25 tions.

1 (b) CERTIFICATION.—Not later than 180 days after  
2 the date of the enactment of this Act, the Secretary of  
3 State, in coordination with the Secretary of Commerce,  
4 the Secretary of Defense, and the heads of other federal  
5 agencies, as appropriate, shall submit to the appropriate  
6 congressional committees a report that contains—

7 (1) a certification that the requirement of sub-  
8 section (a) has been met, or if the requirement has  
9 not been met, the reasons therefore; and

10 (2) a description of the updated coverage, if  
11 any, of the regulations referred to in subsection (a)  
12 with respect to all items on the MTCR Annex and  
13 an explanation of any areas of overlap or omissions,  
14 if any, among the regulations.

15 **SEC. 10. WAIVER OF LICENSING REQUIREMENTS FOR**  
16 **SPARE AND REPLACEMENT PARTS OR COM-**  
17 **PONENTS AND RELATED SERVICES OF DE-**  
18 **FENSE ITEMS FOR EXPORTS TO NATO MEM-**  
19 **BER STATES, AUSTRALIA, JAPAN, AND NEW**  
20 **ZEALAND.**

21 (a) IN GENERAL.—Section 38(j) of the Arms Export  
22 Control Act (22 U.S.C. 2778(j)) is amended—

23 (1) by redesignating paragraph (4) as para-  
24 graph (5); and

1           (2) by inserting after paragraph (3) the fol-  
2           lowing new paragraph:

3           “(4) WAIVER OF LICENSING REQUIREMENTS  
4           FOR SPARE AND REPLACEMENT PARTS OR COMPO-  
5           NENTS AND RELATED SERVICES OF DEFENSE ITEMS  
6           FOR EXPORTS TO NATO MEMBER STATES, AUS-  
7           TRALIA, JAPAN, AND NEW ZEALAND.—

8           “(A) WAIVER.—(i) Subject to subpara-  
9           graph (B), the President shall waive the licens-  
10          ing requirements of this Act for exports of  
11          spare and replacement parts or components and  
12          related services of defense items exported to  
13          NATO member states, Australia, Japan, and  
14          New Zealand.

15          “(ii) A waiver may be issued under this  
16          subparagraph only if—

17                  “(I) the export of spare and replace-  
18                  ment parts or components and related  
19                  services—

20                          “(aa) supports a defense item  
21                          previously lawfully exported;

22                          “(bb) is a one-for-one replace-  
23                          ment of the spare and replacement  
24                          parts or components and related serv-  
25                          ices; and

1                   “(cc) is limited to destruction or  
2                   return of the replaced part or compo-  
3                   nent and documentation of the proc-  
4                   ess;

5                   “(II) the spare and replacement parts  
6                   or components and related services will be  
7                   transferred to a defense agency of a coun-  
8                   try described in clause (i) that is a pre-  
9                   viously approved end-user of the defense  
10                  items and not to a distributor of such de-  
11                  fense items;

12                  “(III) the spare and replacement  
13                  parts or components and related services  
14                  will not to be used to enhance, optimize, or  
15                  otherwise upgrade the capability of the de-  
16                  fense items; and

17                  “(IV) the spare and replacement parts  
18                  or components and related services relate  
19                  to a defense item that is owned, operated,  
20                  and in the inventory of the armed forces a  
21                  country described in clause (i).

22                  “(iii) For purposes of this paragraph, the  
23                  term ‘defense items’ has the meaning given the  
24                  term in paragraph (5) of this subsection, except  
25                  that such term does not include items on the

1 list referred to in subsection (a)(1) of this sec-  
2 tion that are significant military equipment or  
3 items on the Missile Technology Control Re-  
4 gime Annex (as such term is defined in section  
5 11B(c)(4) of the Export Administration Act of  
6 1979 (50 U.S.C. App. 2401b(c)(4))).

7 “(B) EXCEPTION.—The President is au-  
8 thorized to not issue a waiver under subpara-  
9 graph (A) with respect to a country described  
10 in such subparagraph if the President deter-  
11 mines that it is in the national security inter-  
12 ests of the United States to do so.

13 “(C) INAPPLICABILITY TO RE-EXPORTS  
14 AND RE-TRANSFERS.—The provisions of this  
15 paragraph shall not apply with respect to re-ex-  
16 ports or re-transfers of spare and replacement  
17 parts or components and related services of de-  
18 fense items described in subparagraph (A).

19 “(D) ADVANCE NOTIFICATION AND DIS-  
20 APPROVAL PROVISIONS.—Every person who  
21 seeks to export spare and replacement parts or  
22 components and related services of defense  
23 items described in subparagraph (A)—

24 “(i) shall, not less than 5 days prior  
25 to the export of such parts, components,

1 and services, notify the Secretary of State  
2 of the type, number, and monetary value of  
3 such parts, components, and services; and  
4 “(ii) may export such parts, compo-  
5 nents, and services only if the Secretary of  
6 State does not disapprove the export of  
7 such parts, components, and services dur-  
8 ing such 5-day period.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 subsection (a) shall take effect on October 1, 2008.

11 **SEC. 11. AVAILABILITY OF INFORMATION ON THE STATUS**  
12 **OF LICENSE APPLICATIONS UNDER CHAPTER**  
13 **3 OF THE ARMS EXPORT CONTROL ACT.**

14 Chapter 3 of the Arms Export Control Act (22  
15 U.S.C. 2771 et seq.) is amended by inserting after section  
16 38 the following new section:

17 **“SEC. 38A. AVAILABILITY OF INFORMATION ON THE STA-**  
18 **TUS OF LICENSE APPLICATIONS UNDER THIS**  
19 **CHAPTER.**

20 “(a) AVAILABILITY TO CONGRESS.—Not later than  
21 six months after the date of the enactment of the Defense  
22 Trade Controls Performance Improvement Act of 2007,  
23 the President shall make available to the congressional  
24 committees of jurisdiction the ability to access electroni-  
25 cally, by secure means, current information on the status

1 of all license applications required to be submitted under  
2 this chapter.

3 “(b) MATTERS TO BE INCLUDED.—The information  
4 described in subsection (a) shall include, but is not limited  
5 to, the following:

6 “(1) The date on which each license is received  
7 by the Department of State and becomes an ‘open  
8 application’.

9 “(2) The date on which the Directorate of De-  
10 fense Trade Controls makes a determination with re-  
11 spect to each license or sends it out for interagency  
12 review, if required.

13 “(3) The date on which the interagency review  
14 process for each license is completed, if such a re-  
15 view process is required.

16 “(4) The date on which each license is sent to  
17 the Bureau of Legislative Affairs of the Department  
18 State for action.

19 “(5) The date on which the Bureau of Legisla-  
20 tive Affairs of the Department of State begins con-  
21 sultations with the congressional committees of ju-  
22 risdiction with respect to each license.

23 “(6) The date on which each license is formally  
24 sent to the congressional committees of jurisdiction.



1       “(c) AVAILABILITY TO UNITED STATES EXPORT-  
2 ERS.—No later than 12 months after the date of the en-  
3 actment of the Defense Trade Controls Performance Im-  
4 provement Act of 2007, the President shall make available  
5 to each United States exporter, through secure electronic  
6 means, the information described in subsection (b) with  
7 respect to each license that such exporter has submitted  
8 pursuant to this chapter.”.

9       **SEC. 12. EXPORT CONTROLS OF CIVIL AIRCRAFT PROD-**  
10                                   **UCTS.**

11       (a) EXPORT CONTROLS UNDER JURISDICTION OF  
12 DEPARTMENT OF COMMERCE.—Subject to subsections  
13 (b), (c), and (d), any civil aircraft product that was in-  
14 cluded in the type design of a type certificate for a civil  
15 aircraft issued by the Federal Aviation Administration  
16 under part 21 of title 14, Code of Federal Regulations,  
17 on or before the date of the enactment of this Act, shall  
18 be subject to the exclusive jurisdiction of the Department  
19 of Commerce and shall not be subject to controls under  
20 section 38 of the Arms Export Control Act (22 U.S.C.  
21 2778).

22       (b) REVISION TO EXPORT CONTROLS.—Not later  
23 than 180 days after the date of the enactment of this Act,  
24 the Secretary of State and the Secretary of Commerce  
25 shall promulgate regulations and publish in the Federal

1 Register amendments, as appropriate, to the Commerce  
2 Control List or the United States Munitions List, or both,  
3 specifying any civil aircraft product described in sub-  
4 section (a) that requires additional or different export con-  
5 trols than the export controls described in such subsection.

6 (c) EXPORT CONTROLS UNDER JURISDICTION OF  
7 DEPARTMENT OF STATE.—Any civil aircraft product that  
8 has a lethal military end-use, is currently subject to a li-  
9 cense issued by the Department of State, is determined  
10 to be subject to the jurisdiction of the Department of  
11 State as a result of a commodity jurisdiction determina-  
12 tion, or is an anti-missile defense item, including a special  
13 mission system installed on United States commercial air-  
14 craft for anti-missile defense, shall be subject to the juris-  
15 diction of the Department of State unless determined oth-  
16 erwise by the Secretary of State.

17 (d) WAIVER.—The President shall waive the applica-  
18 tion of any provision of this section with respect to any  
19 civil aircraft product for which the President determines  
20 that exercising such waiver is in the national security in-  
21 terests of the United States.

22 (e) CIVIL AIRCRAFT PRODUCT DEFINED.—In this  
23 section, the term “civil aircraft product” means—

24 (1) a Class I product, Class II product, or Class  
25 III product, as defined in section 21.321(b) of title

1 14, Code of Federal Regulations (as in effect on  
2 June 1, 2007); and

3 (2) any part, component, or related technical  
4 data of a product described in paragraph (1).

5 **SEC. 13. DEFINITIONS.**

6 In this Act:

7 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**  
8 **TEES.**—The term “appropriate congressional com-  
9 mittees” means the Committee on Foreign Affairs of  
10 the House of Representatives and the Committee on  
11 Foreign Relations of the Senate.

12 (2) **EXPORT ADMINISTRATION REGULATIONS.**—  
13 The term “Export Administration Regulations”  
14 means those regulations contained in sections 730  
15 through 774 of title 15, Code of Federal Regulations  
16 (or successor regulations).

17 (3) **COMMERCE CONTROL LIST.**—The term  
18 “Commerce Control List” means the list maintained  
19 under part 774 of title 15, Code of Federal Regula-  
20 tions.

21 (4) **INTERNATIONAL TRAFFIC IN ARMS REGULA-**  
22 **TIONS.**—The term “International Traffic in Arms  
23 Regulations” means those regulations contained in  
24 sections 120 through 130 of title 22, Code of Fed-  
25 eral Regulations (or successor regulations).

1           (5) MAJOR NON-NATO ALLY.—The term “major  
2 non-NATO ally” means a country that is designated  
3 in accordance with section 517 of the Foreign As-  
4 sistance Act of 1961 (22 U.S.C. 2321k) as a major  
5 non-NATO ally for purposes of the Foreign Assist-  
6 ance Act of 1961 (22 U.S.C. 2151 et seq.) and the  
7 Arms Export Control Act (22 U.S.C. 2751 et seq.).

8           (6) MISSILE TECHNOLOGY CONTROL REGIME;  
9 MTCR.—The term “Missile Technology Control Re-  
10 gime” or “MTCR” has the meaning given the term  
11 in section 11B(c)(2) of the Export Administration  
12 Act of 1979 (50 U.S.C. App. 2401b(c)(2)).

13           (7) MISSILE TECHNOLOGY CONTROL REGIME  
14 ANNEX; MTCR ANNEX.—The term “Missile Tech-  
15 nology Control Regime Annex” or “MTCR Annex”  
16 has the meaning given the term in section 11B(c)(4)  
17 of the Export Administration Act of 1979 (50  
18 U.S.C. App. 2401b(c)(4)).

19           (8) TECHNICAL ASSISTANCE AGREEMENT.—The  
20 term “technical assistance agreement” means an  
21 agreement described in section 120.22 of title 22,  
22 Code of Federal Regulations (or successor regula-  
23 tions).

24           (9) UNITED STATES MUNITIONS LIST.—The  
25 term “United States Munitions List” means the list

1 referred to in section 38(a)(1) of the Arms Export  
2 Control Act (22 U.S.C. 2778(a)(1)).

3 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums  
5 as may be necessary for fiscal year 2009 and each subse-  
6 quent fiscal year to carry out this Act and the amend-  
7 ments made by this Act.

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