

SECURITY ASSISTANCE AND ARMS EXPORT CONTROL  
 REFORM ACT OF 2008

MAY 12, 2008.—Committed to the Committee of the Whole House on the State of  
 the Union and ordered to be printed

Mr. BERMAN, from the Committee on Foreign Affairs,  
 submitted the following

R E P O R T

[To accompany H.R. 5916]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill  
 (H.R. 5916) to reform the administration of the Arms Export Control  
 Act, and for other purposes, having considered the same, reports  
 favorably thereon with an amendment and recommends that  
 the bill as amended do pass.

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## THE AMENDMENT

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

## SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Security Assistance and Arms Export Control Reform Act of 2008”.

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

Sec. 1. Short title and table of contents.

## TITLE I—REFORM OF ARMS EXPORT CONTROL PROCEDURES

## Subtitle A—Defense Trade Controls Performance Improvement Act of 2008

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. Strategic review and assessment of the United States export controls system.
- Sec. 104. Performance goals for processing of applications for licenses to export items on USML.
- Sec. 105. Requirement to ensure adequate staff and resources for DDTC of the Department of State.
- Sec. 106. Audit by Inspector General of the Department of State.
- Sec. 107. Increased flexibility for use of defense trade controls registration fees.
- Sec. 108. Review of ITAR and USML.
- Sec. 109. Special licensing authorization for certain exports to NATO member states, Australia, Japan, and New Zealand.
- Sec. 110. Availability of information on the status of license applications under chapter 3 of the Arms Export Control Act.
- Sec. 111. Sense of Congress.
- Sec. 112. Definitions.
- Sec. 113. Authorization of appropriations.

## Subtitle B—Miscellaneous Provisions

- Sec. 121. Report on self-financing options for export licensing functions of DDTC of the Department of State.
- Sec. 122. Expediting congressional defense export review period for South Korea and Israel.
- Sec. 123. Availability to Congress of Presidential directives regarding United States arms export policies, practices, and regulations.
- Sec. 124. Increase in congressional notification thresholds and expediting congressional review for South Korea and Israel.
- Sec. 125. Diplomatic efforts to strengthen national and international arms export controls.
- Sec. 126. Reporting requirement for unlicensed exports.
- Sec. 127. Report on value of major defense equipment and defense articles exported under section 38 of the Arms Export Control Act.
- Sec. 128. Report on satellite export controls.
- Sec. 129. Definition.

## TITLE II—SECURITY ASSISTANCE AND RELATED SUPPORT FOR ISRAEL

- Sec. 201. Assessment of Israel’s qualitative military edge over military threats.
- Sec. 202. Report on United States’ commitments to the security of Israel.
- Sec. 203. War Reserves Stockpile.
- Sec. 204. Implementation of Memorandum of Understanding with Israel.
- Sec. 205. Definitions.

## TITLE III—WAIVER OF CERTAIN SANCTIONS TO FACILITATE DENUCLEARIZATION ACTIVITIES IN NORTH KOREA

- Sec. 301. Waiver authority and exceptions.
- Sec. 302. Certification regarding waiver of certain sanctions.
- Sec. 303. Congressional notification and report.
- Sec. 304. Termination of waiver authority.
- Sec. 305. Expiration of waiver authority.
- Sec. 306. Continuation of restrictions against the Government of North Korea.
- Sec. 307. Report on verification measures relating to North Korea’s nuclear programs.
- Sec. 308. Definitions.

## TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Authority to build the capacity of foreign military forces.
- Sec. 402. Maintenance of European Union arms embargo against China.
- Sec. 403. Reimbursement of salaries of members of the reserve components in support of security cooperation missions.
- Sec. 404. Foreign Military Sales Stockpile Fund.
- Sec. 405. Congressional notification requirements under the Arms Export Control Act.
- Sec. 406. Sense of Congress.

## TITLE V—AUTHORITY TO TRANSFER NAVAL VESSELS

- Sec. 501. Authority to transfer naval vessels to certain foreign recipients.

## **TITLE I—REFORM OF ARMS EXPORT CONTROL PROCEDURES**

### **Subtitle A—Defense Trade Controls Performance Improvement Act of 2008**

#### **SEC. 101. SHORT TITLE.**

This subtitle may be cited as the “Defense Trade Controls Performance Improvement Act of 2008”.

#### **SEC. 102. FINDINGS.**

Congress finds the following:

(1) In a time of international terrorist threats and a dynamic global economic and security environment, United States policy with regard to export controls is in urgent need of a comprehensive review in order to ensure such controls are protecting the national security and foreign policy interests of the United States.

(2) In January 2007, the Government Accountability Office designated the effective identification and protection of critical technologies as a government-wide, high-risk area, warranting a strategic reexamination of existing programs, including programs relating to arms export controls.

(3) Federal Government agencies must review licenses for export of munitions in a thorough and timely manner to ensure that the United States is able to assist United States allies and to prevent nuclear and conventional weapons from getting into the hands of enemies of the United States.

(4) Both staffing and funding that relate to the Department of State’s arms export control responsibilities have not kept pace with the increased workload relating to such responsibilities, especially over the last five years.

(5) Outsourcing and off-shoring of defense production and the policy of many United States trading partners to require offsets for major sales of defense and aerospace articles present a potential threat to United States national security and economic well-being and serve to weaken the defense industrial base.

(6) Export control policies can have a negative impact on United States employment, nonproliferation goals, and the health of the defense industrial base, particularly when facilitating the overseas transfer of technology or production and other forms of outsourcing, such as offsets (direct and indirect), co-production, subcontracts, overseas investment and joint ventures in defense and commercial industries. Federal Government agencies must develop new and effective procedures for ensuring that export control systems address these problems and the threat they pose to national security.

(7) In the report to Congress required by the Conference Report (Report 109–272) accompanying the bill, H.R. 2862 (the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006; Public Law 109–108), the Department of State concluded that—

(A) defense trade licensing has become much more complex in recent years as a consequence of the increasing globalization of the defense industry;

(B) the most important challenge to the Department of State’s licensing process has been the sheer growth in volume of applicants for licenses and agreements, without the corresponding increase in licensing officers;

(C) fiscal year 2005 marked the third straight year of roughly 8 percent annual increases in licensing volume;

(D) although an 8 percent increase in workload equates to a requirement for three additional licensing officers per year, there has been no increase in licensing officers during this period; and

(E) the increase in licensing volume without a corresponding increase in trained and experienced personnel has resulted in delays and increased processing times.

(8) In 2006, the Department of State processed over three times as many licensing applications as the Department of Commerce with about a fifth of the staff of the Department of Commerce.

(9) On July 27, 2007, in testimony delivered to the Subcommittee on Terrorism, Nonproliferation and Trade of the House Committee on Foreign Affairs to examine the effectiveness of the United States export control regime, the Government Accountability Office found that—

(A) the United States Government needs to conduct assessments to determine its overall effectiveness in the area of arms export control; and

(B) the processing times of the Department of State doubled over the period from 2002 to 2006.

(10) Although the current number of unprocessed applications for licenses to export defense items is less than 3,800 applications, due to the extraordinary efforts of the personnel and management of the Department of State's Directorate of Defense Trade Controls, at the end of 2006, the Department of State's backlog of such unprocessed applications reached its highest level at more than 10,000 unprocessed applications. This resulted in major management and personnel challenges for the Directorate of Defense Trade Controls.

(11)(A) Allowing a continuation of the status quo in resources for defense trade licensing could ultimately harm the United States defense industrial base. The 2007 Institute for Defense Analysis report entitled "Export Controls and the U.S. Defense Industrial Base" found that the large backlog and long processing times by the Department of State for applications for licenses to export defense items led to an impairment of United States firms in some sectors to conduct global business relative to foreign competitors.

(B) Additionally, the report found that United States commercial firms have been reluctant to engage in research and development activities for the Department of Defense because this raises the future prospects that the products based on this research and development, even if intrinsically commercial, will be saddled by Department of State munitions controls due to the link to that research.

(12) According to the Department of State's fiscal year 2008 budget justification to Congress, commercial exports licensed or approved under the Arms Export Control Act exceeded \$30,000,000,000, with nearly eighty percent of these items exported to United States NATO allies and other major non-NATO allies.

(13) A Government Accountability Office report of October 9, 2001 (GAO-02-120), documented ambiguous export control jurisdiction affecting 25 percent of the items that the United States Government agreed to control as part of its commitments to the Missile Technology Control Regime. The United States Government has not clearly determined which department has jurisdiction over these items, which increases the risk that these items will fall into the wrong hands. During both the 108th and 109th Congresses, the House of Representatives passed legislation mandating that the Administration clarify this issue.

**SEC. 103. STRATEGIC REVIEW AND ASSESSMENT OF THE UNITED STATES EXPORT CONTROLS SYSTEM.**

**(a) REVIEW AND ASSESSMENT.—**

(1) **IN GENERAL.**—Not later than March 31, 2009, the President shall conduct a comprehensive and systematic review and assessment of the United States arms export controls system in the context of the national security interests and strategic foreign policy objectives of the United States.

(2) **ELEMENTS.**—The review and assessment required under paragraph (1) shall—

(A) determine the overall effectiveness of the United States arms export controls system in order to, where appropriate, strengthen controls, improve efficiency, and reduce unnecessary redundancies across Federal Government agencies, through administrative actions, including regulations, and to formulate legislative proposals for new authorities that are needed;

(B) develop processes to ensure better coordination of arms export control activities of the Department of State with activities of other departments and agencies of the United States that are responsible for enforcing United States arms export control laws;

(C) ensure that all items on the Missile Technology Control Regime Annex are subject to stringent control by the United States Government;

(D) determine the overall effect of arms export controls on counterterrorism, law enforcement, and infrastructure protection missions of the Department of Homeland Security;

(E) contain a detailed summary of known attempts by unauthorized end-users (such as international arms traffickers, foreign intelligence agencies, and foreign terrorist organizations) to acquire items on the United States Munitions List, including—

(i) data on—

(I) commodities sought, such as M-4 rifles, night vision devices, F-14 spare parts;

(II) parties involved, such as the intended end-users, brokers, consignees, and shippers;

(III) destination countries and transit countries;

- (IV) modes of transport;
- (V) trafficking methods, such as use of false documentation and front companies registered under flags of convenience;
- (VI) whether the attempted illicit transfer was successful; and
- (VII) any administrative or criminal enforcement actions taken by the United States and any other government in relation to the attempted illicit transfer;
- (ii) a thorough evaluation of the Blue Lantern Program, including the adequacy of current staffing and funding levels;
- (iii) a detailed analysis of licensing exemptions and their successful exploitation by unauthorized end-users; and
- (iv) an examination of the extent to which the increased tendency toward outsourcing and off-shoring of defense production harm United States national security and weaken the defense industrial base, including direct and indirect impact on employment, and formulate policies to address these trends as well as the policy of some United States trading partners to require offsets for major sales of defense articles; and

(F) assess the extent to which export control policies and practices under the Arms Export Control Act promote the protection of basic human rights.

(b) CONGRESSIONAL BRIEFINGS.—The President shall provide periodic briefings to the appropriate congressional committees on the progress of the review and assessment conducted under subsection (a). The requirement to provide congressional briefings under this subsection shall terminate on the date on which the President transmits to the appropriate congressional committees the report required under subsection (c).

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains the results of the review and assessment conducted under subsection (a). The report required by this subsection shall contain a certification that the requirement of subsection (a)(2)(C) has been met, or if the requirement has not been met, the reasons therefor. The report required by this subsection shall be submitted in unclassified form, but may contain a classified annex, if necessary.

**SEC. 104. PERFORMANCE GOALS FOR PROCESSING OF APPLICATIONS FOR LICENSES TO EXPORT ITEMS ON USML.**

(a) IN GENERAL.—The Secretary of State, acting through the head of the Directorate of Defense Trade Controls of the Department of State, shall establish the following goals:

(1) The processing time for review of each application for a license to export items on the United States Munitions List (other than applications for approval of agreements under part 124 of title 22, Code of Federal Regulations (or successor regulations)) shall be not more than 60 days from the date of receipt of the application.

(2) The processing time for review of each application for a commodity jurisdiction determination shall be not more than 60 days from the date of receipt of the application.

(3) The total number of applications described in paragraph (1) that are unprocessed shall be not more than 7 percent of the total number of such applications submitted in the preceding calendar year.

(b) ADDITIONAL REVIEW.—(1) If an application described in paragraph (1) or (2) of subsection (a) is not processed within the time period described in the respective paragraph of such subsection, then the Managing Director of the Directorate of Defense Trade Controls or the Deputy Assistant Secretary for Defense Trade and Regional Security of the Department of State, as appropriate, shall review the status of the application to determine if further action is required to process the application.

(2) If an application described in paragraph (1) or (2) of subsection (a) is not processed within 90 days from the date of receipt of the application, then the Assistant Secretary for Political-Military Affairs of the Department of State shall—

(A) review the status of the application to determine if further action is required to process the application; and

(B) submit to the appropriate congressional committees a notification of the review conducted under subparagraph (A), including a description of the application, the reason for delay in processing the application, and a proposal for further action to process the application.

(3) For each calendar year, the Managing Director of the Directorate of Defense Trade Controls shall review not less than 2 percent of the total number of applications described in paragraphs (1) and (2) of subsection (a) to ensure that the processing of such applications, including decisions to approve, deny, or return without

action, is consistent with both policy and regulatory requirements of the Department of State.

(c) UNITED STATES ALLIES.—Congress states that—

(1) it shall be the policy of the Directorate of Defense Trade Controls of the Department of State to ensure that, to the maximum extent practicable, the processing time for review of applications described in subsection (a)(1) to export items that are not subject to the requirements of section 36(b) or (c) of the Arms Export Control Act (22 U.S.C. 2776(b) or (c)) to United States allies in direct support of combat operations or peacekeeping or humanitarian operations with United States Armed Forces is not more than 7 days from the date of receipt of the application; and

(2) it shall be the goal, as appropriate, of the Directorate of Defense Trade Controls to ensure that, to the maximum extent practicable, the processing time for review of applications described in subsection (a)(1) to export items that are not subject to the requirements of section 36(b) or (c) of the Arms Export Control Act to government security agencies of United States NATO allies, Australia, New Zealand, Japan, South Korea, Israel, and, as appropriate, other major non-NATO allies for any purpose other than the purpose described in paragraph (1) is not more than 30 days from the date of receipt of the application.

(d) REPORT.—Not later than December 31, 2010, and December 31, 2011, the Secretary of State shall submit to the appropriate congressional committees a report that contains a detailed description of—

(1)(A) the average processing time for and number of applications described in subsection (a)(1) to—

(i) United States NATO allies, Australia, New Zealand, Japan, South Korea, and Israel;

(ii) other major non-NATO allies; and

(iii) all other countries; and

(B) to the extent practicable, the average processing time for and number of applications described in subsection (b)(1) by item category;

(2) the average processing time for and number of applications described in subsection (a)(2);

(3) the average processing time for and number of applications for agreements described in part 124 of title 22, Code of Federal Regulations (relating to the International Traffic in Arms Regulations);

(4) any management decisions of the Directorate of Defense Trade Controls of the Department of State that have been made in response to data contained in paragraphs (1) through (3); and

(5) any advances in technology that will allow the time-frames described in subsection (a)(1) to be substantially reduced.

(e) CONGRESSIONAL BRIEFINGS.—If, at the end of any month beginning after the date of the enactment of this Act, the total number of applications described in subsection (a)(1) that are unprocessed is more than 7 percent of the total number of such applications submitted in the preceding calendar year, then the Secretary of State, acting through the Under Secretary for Arms Control and International Security, the Assistant Secretary for Political-Military Affairs, or the Deputy Assistant Secretary for Defense Trade and Regional Security of the Department of State, as appropriate, shall brief the appropriate congressional committees on such matters and the corrective measures that the Directorate of Defense Trade Controls will take to comply with the requirements of subsection (a).

(f) TRANSPARENCY OF COMMODITY JURISDICTION DETERMINATIONS.—

(1) DECLARATION OF POLICY.—Congress declares that the complete confidentiality surrounding several hundred commodity jurisdiction determinations made each year by the Department of State pursuant to the International Traffic in Arms Regulations is not necessary to protect legitimate proprietary interests of persons or their prices and customers, is not in the best security and foreign policy interests of the United States, is inconsistent with the need to ensure a level playing field for United States exporters, and detracts from United States efforts to promote greater transparency and responsibility by other countries in their export control systems.

(2) PUBLICATION ON INTERNET WEBSITE.—The Secretary of State shall—

(A) upon making a commodity jurisdiction determination referred to in paragraph (1) publish on the Internet website of the Department of State not later than 30 days after the date of the determination—

(i) the name of the manufacturer of the item;

(ii) a brief general description of the item;

(iii) the model or part number of the item; and

(iv) the United States Munitions List designation under which the item has been designated, except that—

(I) the name of the person or business organization that sought the commodity jurisdiction determination shall not be published if the person or business organization is not the manufacturer of the item; and

(II) the names of the customers, the price of the item, and any proprietary information relating to the item indicated by the person or business organization that sought the commodity jurisdiction determination shall not be published; and

(B) maintain on the Internet website of the Department of State an archive, that is accessible to the general public and other departments and agencies of the United States, of the information published under subparagraph (A).

(g) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to prohibit the President or Congress from undertaking a thorough review of the national security and foreign policy implications of a proposed export of items on the United States Munitions List.

**SEC. 105. REQUIREMENT TO ENSURE ADEQUATE STAFF AND RESOURCES FOR DDTC OF THE DEPARTMENT OF STATE.**

(a) **REQUIREMENT.**—The Secretary of State shall ensure that the Directorate of Defense Trade Controls of the Department of State has the necessary staff and resources to carry out this subtitle and the amendments made by this subtitle.

(b) **MINIMUM NUMBER OF LICENSING OFFICERS.**—For fiscal year 2010 and each subsequent fiscal year, the Secretary of State shall ensure that the Directorate of Defense Trade Controls has at least 1 licensing officer for every 1,250 applications for licenses and other authorizations to export items on the United States Munitions List by not later than the third quarter of such fiscal year, based on the number of licenses and other authorizations expected to be received during such fiscal year. The Secretary shall ensure that in meeting the requirement of this subsection, the performance of other functions of the Directorate of Defense Trade Controls is maintained and adequate staff is provided for those functions.

(c) **MINIMUM NUMBER OF STAFF FOR COMMODITY JURISDICTION DETERMINATIONS.**—For each of the fiscal years 2009 through 2011, the Secretary of State shall ensure that the Directorate of Defense Trade Controls has, to the extent practicable, not less than three individuals assigned to review applications for commodity jurisdiction determinations.

(d) **ENFORCEMENT RESOURCES.**—In accordance with section 127.4 of title 22, Code of Federal Regulations, U.S. Immigration and Customs Enforcement is authorized to investigate violations of the International Traffic in Arms Regulations on behalf of the Directorate of Defense Trade Controls of the Department of State. The Secretary of State shall ensure that the Directorate of Defense Trade Controls has adequate staffing for enforcement of the International Traffic in Arms Regulations.

**SEC. 106. AUDIT BY INSPECTOR GENERAL OF THE DEPARTMENT OF STATE.**

(a) **AUDIT.**—Not later than the end of each of the fiscal years 2010 and 2011, the Inspector General of the Department of State shall conduct an independent audit to determine the extent to which the Department of State is meeting the requirements of sections 104 and 105 of this Act.

(b) **REPORT.**—The Inspector General shall submit to the appropriate congressional committees a report that contains the result of each audit conducted under subsection (a).

**SEC. 107. INCREASED FLEXIBILITY FOR USE OF DEFENSE TRADE CONTROLS REGISTRATION FEES.**

(a) **IN GENERAL.**—Section 45 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2717) is amended—

(1) in the first sentence—

(A) by striking “For” and inserting “(a) IN GENERAL.—For”; and

(B) by striking “Office” and inserting “Directorate”;

(2) by amending the second sentence to read as follows:

“(b) **AVAILABILITY OF FEES.**—Fees credited to the account referred to in subsection (a) shall be available only for payment of expenses incurred for—

“(1) management,

“(2) licensing (in order to meet the requirements of section 105 of the Defense Trade Controls Performance Improvement Act of 2008 (relating to adequate staff and resources of the Directorate of Defense Trade Controls)),

“(3) compliance,

“(4) policy activities, and

“(5) facilities,  
of defense trade controls functions.”; and

(3) by adding at the end the following:

“(c) ALLOCATION OF FEES.—In allocating fees for payment of expenses described in subsection (b), the Secretary of State shall accord the highest priority to payment of expenses incurred for personnel and equipment of the Directorate of Defense Trade Controls, including payment of expenses incurred to meet the requirements of section 105 of the Defense Trade Controls Performance Improvement Act of 2008.”

(b) CONFORMING AMENDMENT.—Section 38(b)(3)(A) of the Arms Export Control Act (22 U.S.C. 2778(b)(3)(A)) is amended to read as follows:

“(3)(A) For each fiscal year, 100 percent of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for the payment of expenses incurred for—

“(i) management,

“(ii) licensing (in order to meet the requirements of section 105 of the Defense Trade Controls Performance Improvement Act of 2008 (relating to adequate staff and resources of the Directorate of Defense Trade Controls)),

“(iii) compliance,

“(iv) policy activities, and

“(v) facilities,

of defense trade controls functions.”

(c) USE OF CIVIL PENALTIES.—Not more than \$10,000,000 of the amount of civil penalties collected in each of fiscal years 2008, 2009, 2010, 2011 and 2012 pursuant to section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) shall be made available for the expenses of the Directorate of Defense Trade Controls of the Department of State.

#### SEC. 108. REVIEW OF ITAR AND USML.

(a) IN GENERAL.—The Secretary of State shall review, with the assistance of United States manufacturers and other interested parties described in section 111(2) of this Act, the International Traffic in Arms Regulations and the United States Munitions List to determine those technologies and goods that warrant different or additional controls.

(b) CONDUCT OF REVIEW.—In carrying out the review required under subsection (a), the Secretary of State shall review not less than 20 percent of the technologies and goods on the International Traffic in Arms Regulations and the United States Munitions List in each calendar year so that for the 5-year period beginning with calendar year 2009, and for each subsequent 5-year period, the International Traffic in Arms Regulations and the United States Munitions List will be reviewed in their entirety.

(c) REPORT.—The Secretary of State shall submit to the appropriate congressional committees an annual report on the results of the review carried out under this section.

#### SEC. 109. SPECIAL LICENSING AUTHORIZATION FOR CERTAIN EXPORTS TO NATO MEMBER STATES, AUSTRALIA, JAPAN, AND NEW ZEALAND.

(a) IN GENERAL.—Section 38 of the Arms Export Control Act (22 U.S.C. 2778) is amended by adding at the end the following:

“(k) SPECIAL LICENSING AUTHORIZATION FOR CERTAIN EXPORTS TO NATO MEMBER STATES, AUSTRALIA, JAPAN, NEW ZEALAND, ISRAEL, AND SOUTH KOREA.—

“(1) AUTHORIZATION.—(A) The President may provide for special licensing authorization for exports of United States-manufactured spare and replacement parts or components listed in an application for such special licensing authorization in connection with defense items previously exported to NATO member states, Australia, Japan, New Zealand, Israel, and South Korea. A special licensing authorization issued pursuant to this clause shall be effective for a period not to exceed 5 years.

“(B) An authorization may be issued under subparagraph (A) only if the applicable government of the country described in subparagraph (A), acting through the applicant for the authorization, certifies that—

“(i) the export of spare and replacement parts or components supports a defense item previously lawfully exported;

“(ii) the spare and replacement parts or components will be transferred to a defense agency of a country described in subparagraph (A) that is a previously approved end-user of the defense items and not to a distributor or a foreign consignee of such defense items;



“(iii) the spare and replacement parts or components will not to be used to materially enhance, optimize, or otherwise modify or upgrade the capability of the defense items;

“(iv) the spare and replacement parts or components relate to a defense item that is owned, operated, and in the inventory of the armed forces a country described in subparagraph (A);

“(v) the export of spare and replacement parts or components will be effected using the freight forwarder designated by the purchasing country’s diplomatic mission as responsible for handling transfers under chapter 2 of this Act as required under regulations; and

“(vi) the spare and replacement parts or components to be exported under the special licensing authorization are specifically identified in the application.

“(C) An authorization may not be issued under subparagraph (A) for purposes of establishing offshore procurement arrangements or producing defense articles offshore.

“(D)(i) For purposes of this subsection, the term ‘United States-manufactured spare and replacement parts or components’ means spare and replacement parts or components—

“(I) with respect to which—

“(aa) United States-origin content costs constitute at least 85 percent of the total content costs;

“(bb) United States manufacturing costs constitute at least 85 percent of the total manufacturing costs; and

“(cc) foreign content, if any, is limited to content from countries eligible to receive exports of items on the United States Munitions List under the International Traffic in Arms Regulations (other than de minimis foreign content); and

“(II) that were last substantially transformed in the United States.

“(ii) For purposes of clause (i)(I)(aa) and (bb), the costs of non-United States-origin content shall be determined using the final price or final cost associated with the non-United States-origin content.

“(2) INAPPLICABILITY PROVISIONS.—(A) The provisions of this subsection shall not apply with respect to re-exports or re-transfers of spare and replacement parts or components and related services of defense items described in paragraph (1).

“(B) The congressional notification requirements contained in section 36(c) of this Act shall not apply with respect to an authorization issued under paragraph (1).”

(b) EFFECTIVE DATE.—The President shall issue regulations to implement amendments made by subsection (a) not later than 180 days after the date of the enactment of this Act.

**SEC. 110. AVAILABILITY OF INFORMATION ON THE STATUS OF LICENSE APPLICATIONS UNDER CHAPTER 3 OF THE ARMS EXPORT CONTROL ACT.**

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

**“SEC. 38A. AVAILABILITY OF INFORMATION ON THE STATUS OF LICENSE APPLICATIONS UNDER THIS CHAPTER.**

“(a) AVAILABILITY OF INFORMATION.—Not later than one year after the date of the enactment of the Defense Trade Controls Performance Improvement Act of 2008, the President shall make available to persons who have pending license applications under this chapter and the committees of jurisdiction the ability to access electronically current information on the status of each license application required to be submitted under this chapter.

“(b) MATTERS TO BE INCLUDED.—The information referred to in subsection (a) shall be limited to the following:

“(1) The case number of the license application.

“(2) The date on which the license application is received by the Department of State and becomes an ‘open application’.

“(3) The date on which the Directorate of Defense Trade Controls makes a determination with respect to the license application or transmits it for interagency review, if required.

“(4) The date on which the interagency review process for the license application is completed, if such a review process is required.

“(5) The date on which the Department of State begins consultations with the congressional committees of jurisdiction with respect to the license application.

“(6) The date on which the license application is sent to the congressional committees of jurisdiction.”

**SEC. 111. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1)(A) the advice provided to the Secretary of State by the Defense Trade Advisory Group (DTAG) supports the regulation of defense trade and helps ensure that United States national security and foreign policy interests continue to be protected and advanced while helping to reduce unnecessary impediments to legitimate exports in order to support the defense requirements of United States friends and allies; and

(B) therefore, the Secretary of State should share significant planned rules and policy shifts with DTAG for comment; and

(2) recognizing the constraints imposed on the Department of State by the nature of a voluntary organization such as DTAG, the Secretary of State is encouraged to ensure that members of DTAG are drawn from a representative cross-section of subject matter experts from the United States defense industry, relevant trade and labor associations, academic, and foundation personnel.

**SEC. 112. DEFINITIONS.**

In this subtitle:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS; ITAR.**—The term “International Traffic in Arms Regulations” or “ITAR” means those regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations (or successor regulations).

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

(4) **MISSILE TECHNOLOGY CONTROL REGIME; MTCR.**—The term “Missile Technology Control Regime” or “MTCR” has the meaning given the term in section 11B(c)(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2401b(c)(2)).

(5) **MISSILE TECHNOLOGY CONTROL REGIME ANNEX; MTCR ANNEX.**—The term “Missile Technology Control Regime Annex” or “MTCR Annex” has the meaning given the term in section 11B(c)(4) of the Export Administration Act of 1979 (50 U.S.C. App. 2401b(c)(4)).

(6) **OFFSETS.**—The term “offsets” includes compensation practices required of purchase in either government-to-government or commercial sales of defense articles or defense services under the Arms Export Control Act (22 U.S.C. 2751 et seq.) and the International Traffic in Arms Regulations.

(7) **UNITED STATES MUNITIONS LIST; USML.**—The term “United States Munitions List” or “USML” means the list referred to in section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).

**SEC. 113. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and each subsequent fiscal year to carry out this subtitle and the amendments made by this subtitle.

## **Subtitle B—Miscellaneous Provisions**

**SEC. 121. REPORT ON SELF-FINANCING OPTIONS FOR EXPORT LICENSING FUNCTIONS OF DDTC OF THE DEPARTMENT OF STATE.**

Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report on possible mechanisms to place the export licensing functions of the Directorate of Defense Trade Controls of the Department of State on a 100 percent self-financing basis.

**SEC. 122. EXPEDITING CONGRESSIONAL DEFENSE EXPORT REVIEW PERIOD FOR SOUTH KOREA AND ISRAEL.**

The Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended—

(1) in sections 3(d)(2)(B), 3(d)(3)(A)(i), 3(d)(5), 21(e)(2)(A), 36(b)(2), 36(c)(2)(A), 36(d)(2)(A), 62(c)(1), and 63(a)(2) by inserting “the Republic of Korea, Israel,” before “or New Zealand”;

(2) in section 3(b)(2) by inserting “the Government of the Republic of Korea,” before “or the Government of New Zealand”; and

(3) in section 21(h)(1)(A), by inserting “the Republic of Korea,” before “or Israel”.

**SEC. 123. AVAILABILITY TO CONGRESS OF PRESIDENTIAL DIRECTIVES REGARDING UNITED STATES ARMS EXPORT POLICIES, PRACTICES, AND REGULATIONS.**

(a) **IN GENERAL.**—The President shall make available to the appropriate congressional committees the text of each Presidential directive regarding United States export policies, practices, and regulations relating to the implementation of the Arms Export Control Act (22 U.S.C. 2751 et seq.) not later than 15 days after the date on which the directive has been signed or authorized by the President.

(b) **TRANSITION PROVISION.**—Any Presidential directive described in subsection (a) that is signed or authorized by the President on or after January 1, 2008, and before the date of the enactment of this Act shall be made available to the appropriate congressional committees not later than 90 days after the date of the enactment of this Act.

(c) **FORM.**—To the maximum extent practicable, the Presidential directives required to be made available to the appropriate congressional committees under this section shall be made available on an unclassified basis.

**SEC. 124. INCREASE IN CONGRESSIONAL NOTIFICATION THRESHOLDS AND EXPEDITING CONGRESSIONAL REVIEW FOR SOUTH KOREA AND ISRAEL.**

(a) **FOREIGN MILITARY SALES.**—

(1) **IN GENERAL.**—Subsection (b) of section 36 of the Arms Export Control Act (22 U.S.C. 2776) is amended—

(A) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively; and

(B) by striking “The letter of offer shall not be issued” and all that follows through “enacts a joint resolution” and inserting the following:

“(2) The letter of offer shall not be issued—

“(A) with respect to a proposed sale of any defense articles or defense services under this Act for \$200,000,000 or more, any design and construction services for \$300,000,000 or more, or any major defense equipment for \$75,000,000 or more, to the North Atlantic Treaty Organization (NATO), any member country of NATO, Japan, Australia, the Republic of Korea, Israel, or New Zealand, if Congress, within 15 calendar days after receiving such certification, or

“(B) with respect to a proposed sale of any defense articles or services under this Act for \$100,000,000 or more, any design and construction services for \$200,000,000 or more, or any major defense equipment for \$50,000,000 or more, to any other country or organization, if Congress, within 30 calendar days after receiving such certification,

enacts a joint resolution”.

(2) **TECHNICAL AND CONFORMING AMENDMENTS.**—Such section is further amended—

(A) in subsection (b)—

(i) in paragraph (6)(C), as redesignated, by striking “Subject to paragraph (6), if” and inserting “If”; and

(ii) by striking paragraph (7), as redesignated; and

(B) in subsection (c)(4), by striking “subsection (b)(5)” each place it appears and inserting “subsection (b)(6)”.

(b) **COMMERCIAL SALES.**—Subsection (c) of such section is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) by inserting after “for an export” the following: “of any major defense equipment sold under a contract in the amount of \$75,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$200,000,000 or more, (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more)”;

(ii) by striking “Organization,” and inserting “Organization (NATO),”

and by further striking “that Organization” and inserting “NATO”; and

(B) in subparagraph (C), by inserting after “license” the following: “for an export of any major defense equipment sold under a contract in the amount of \$50,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$100,000,000 or more, (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more)”;

(2) by striking paragraph (5).

**SEC. 125. DIPLOMATIC EFFORTS TO STRENGTHEN NATIONAL AND INTERNATIONAL ARMS EXPORT CONTROLS.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the President should redouble United States diplomatic efforts to strengthen national and international arms export controls by establishing a senior-level initiative to ensure that such arms export controls are comparable to and supportive of United States arms export controls, particularly with respect to countries of concern to the United States.

(b) REPORT.—No later than one year after the date of the enactment of this Act, and annually thereafter for four years, the President shall transmit to the appropriate committees of Congress a report on United States diplomatic efforts described in subsection (a).

**SEC. 126. REPORTING REQUIREMENT FOR UNLICENSED EXPORTS.**

Section 655(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2415(b)) is amended—

- (1) in paragraph (2), by striking “or” at the end;
- (2) in paragraph (3), by striking the period at the end and inserting “; or”;
- and
- (3) by adding at the end the following:
  - “(4) were exported without a license under section 38 of the Arms Export Control Act (22 U.S.C. 2778) pursuant to an exemption established under the International Traffic in Arms Regulations, other than defense articles exported in furtherance of a letter of offer and acceptance under the Foreign Military Sales program or a technical assistance or manufacturing license agreement, including the specific exemption provision in the regulation under which the export was made.”.

**SEC. 127. REPORT ON VALUE OF MAJOR DEFENSE EQUIPMENT AND DEFENSE ARTICLES EXPORTED UNDER SECTION 38 OF THE ARMS EXPORT CONTROL ACT.**

Section 38 of the Arms Export Control Act (22 U.S.C. 2778) is amended by adding at the end the following:

“(1) REPORT.—

“(1) IN GENERAL.—The President shall transmit to the appropriate congressional committees a report that contains a detailed listing, by country and by international organization, of the total dollar value of major defense equipment and defense articles exported pursuant to licenses authorized under this section for the previous fiscal year.

“(2) INCLUSION IN ANNUAL BUDGET.—The report required by this subsection shall be included in the supporting information of the annual budget of the United States Government required to be submitted to Congress under section 1105 of title 31, United States Code.

“(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term ‘appropriate congressional committees’ means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.”.

**SEC. 128. REPORT ON SATELLITE EXPORT CONTROLS.**

(a) REPORT.—The President shall report to the appropriate committees of the Congress, not later than 180 days after the date of the enactment of this Act regarding—

- (1) the extent to which current United States export controls on satellites and related items under the Arms Export Control Act are successfully preventing the transfer of militarily-sensitive technologies to countries of concern, especially the People’s Republic of China;
- (2) the extent to which comparable satellites and related items are available from foreign sources without comparable export controls; and
- (3) whether the current export controls on satellites and related items should be altered and in what manner, including whether other incentives or disincentives should also be employed to discourage exports of satellites and related items to the People’s Republic of China by any country.

(b) DEFINITIONS.—In this section, the terms “satellite” and “related items” mean satellites and all specifically designed or modified systems or subsystems, components, parts, accessories, attachments, and associated equipment for satellites as covered under category XV of the International Traffic in Arms Regulations (as in effect on the date of the enactment of this Act).

**SEC. 129. DEFINITION.**

In this subtitle, the term “appropriate congressional committees” means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

## TITLE II—SECURITY ASSISTANCE AND RELATED SUPPORT FOR ISRAEL

### SEC. 201. ASSESSMENT OF ISRAEL'S QUALITATIVE MILITARY EDGE OVER MILITARY THREATS.

(a) **ASSESSMENT REQUIRED.**—The President shall carry out an empirical and qualitative assessment on an ongoing basis of the extent to which Israel possesses a qualitative military edge over military threats to Israel. The assessment required under this subsection shall be sufficiently robust so as to facilitate comparability of data over concurrent years.

(b) **USE OF ASSESSMENT.**—The President shall ensure that the assessment required under subsection (a) is used to inform the review by the United States of applications to sell defense articles and defense services under the Arms Export Control Act (22 U.S.C. 2751 et seq.) to countries in the Middle East.

(c) **REPORTS.**—

(1) **INITIAL REPORT.**—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report on the initial assessment required under subsection (a).

(2) **QUADRENNIAL REPORT.**—Not later than four years after the date on which the President transmits the initial report under paragraph (1), and every four years thereafter, the President shall transmit to the appropriate congressional committees a report on the most recent assessment required under subsection (a).

(d) **CERTIFICATION.**—Section 36 of the Arms Export Control Act (22 U.S.C. 2776) is amended by adding at the end the following:

“(h) **CERTIFICATION REQUIREMENT RELATING ISRAEL’S QUALITATIVE MILITARY EDGE.**—

“(1) **IN GENERAL.**—Any certification relating to a proposed sale or export of defense articles or defense services under this section to any country in the Middle East other than Israel shall include a determination that the sale or export of the defense articles or defense services will not adversely affect Israel’s qualitative military edge over military threats to Israel.

“(2) **DEFINITION.**—In this subsection, the term ‘qualitative military edge’ has the meaning given the term in section 205 of the Security Assistance and Arms Export Control Reform Act of 2008.”

### SEC. 202. REPORT ON UNITED STATES’ COMMITMENTS TO THE SECURITY OF ISRAEL.

(a) **INITIAL REPORT.**—Not later than 30 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains—

(1) a complete, unedited, and unredacted copy of each assurance made by United States Government officials to officials of the Government of Israel regarding Israel’s security and maintenance of Israel’s qualitative military edge, as well as any other assurance regarding Israel’s security and maintenance of Israel’s qualitative military edge provided in conjunction with exports under the Arms Export Control Act (22 U.S.C. 2751 et seq.), for the period beginning on January 1, 1975, and ending on the date of the enactment of this Act; and

(2) an analysis of the extent to which, and by what means, each such assurance has been and is continuing to be fulfilled.

(b) **SUBSEQUENT REPORTS.**—

(1) **NEW ASSURANCES AND REVISIONS.**—The President shall transmit to the appropriate congressional committees a report that contains the information required under subsection (a) with respect to—

(A) each assurance described in subsection (a) made on or after the date of the enactment of this Act, or

(B) revisions to any assurance described in subsection (a) or subparagraph (A) of this paragraph, within 15 days of the new assurance or revision being conveyed.

(2) **5-YEAR REPORTS.**—Not later than 5 years after the date of the enactment of this Act, and every 5 years thereafter, the President shall transmit to the appropriate congressional committees a report that contains the information required under subsection (a) with respect to each assurance described in subsection (a) or paragraph (1)(A) of this subsection and revisions to any assurance described in subsection (a) or paragraph (1)(A) of this subsection during the preceding 5-year period.

(c) **FORM.**—Each report required by this section shall be transmitted in unclassified form, but may contain a classified annex, if necessary.

**SEC. 203. WAR RESERVES STOCKPILE.**

(a) DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005.—Section 12001(d) of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 1011), is amended by striking “4” and inserting “6”.

(b) FOREIGN ASSISTANCE ACT OF 1961.—Section 514(b)(2)(A) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321h(b)(2)(A)) is amended by striking “fiscal years 2007 and 2008” and inserting “fiscal years 2009 and 2010”.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on August 5, 2008.

**SEC. 204. IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING WITH ISRAEL.**

(a) IN GENERAL.—Of the amount made available for fiscal year 2009 for assistance under the program authorized by section 23 of the Arms Export Control Act (22 U.S.C. 2763) (commonly referred to as the “Foreign Military Financing Program”), the amount specified in subsection (b) is authorized to be made available on a grant basis for Israel.

(b) COMPUTATION OF AMOUNT.—The amount referred to in subsection (a) is the amount equal to—

- (1) the amount specified under the heading “Foreign Military Financing Program” for Israel for fiscal year 2008; plus
- (2) \$150,000,000.

**SEC. 205. DEFINITIONS.**

In this subtitle—

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

(2) the term “qualitative military edge” means the ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors, while sustaining minimal damages and casualties, through the use of superior military means, possessed in sufficient quantity, including weapons, command, control, communication, intelligence, surveillance, and reconnaissance capabilities that in their technical characteristics are superior in capability to those of such other individual or possible coalition of states or non-state actors.

## **TITLE III—WAIVER OF CERTAIN SANCTIONS TO FACILITATE DENUCLEARIZATION ACTIVITIES IN NORTH KOREA**

**SEC. 301. WAIVER AUTHORITY AND EXCEPTIONS.**

(a) WAIVER AUTHORITY.—Except as provided in subsection (b), the President may waive, in whole or in part, the application of any sanction contained in subparagraph (A), (B), (D), or (G) of section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa–1(b)(2)) with respect to North Korea in order to provide material, direct, and necessary assistance for disablement, dismantlement, verification, and physical removal activities in the implementation of the commitment of North Korea, undertaken in the Joint Statement of September 19, 2005, “to abandoning all nuclear weapons and existing nuclear programs” as part of the verifiable denuclearization of the Korean Peninsula.

(b) EXCEPTIONS.—The waiver authority under subsection (a) may not be exercised with respect to the following:

- (1) Any export of lethal defense articles that would be prevented by the application of section 102(b)(2)(B) of the Arms Export Control Act.
- (2) Any sanction relating to credit or credit guarantees contained in section 102(b)(2)(D) of the Arms Export Control Act.

**SEC. 302. CERTIFICATION REGARDING WAIVER OF CERTAIN SANCTIONS.**

Assistance described in subparagraph (B) or (G) of section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa–1(b)(2)) may be provided with respect to North Korea by reason of the exercise of the waiver authority under section 301 only if the President first determines and certifies to the appropriate congressional committees that—

- (1) all necessary steps will be taken to ensure that the assistance will not be used to improve the military capabilities of the armed forces of North Korea; and
- (2) the exercise of the waiver authority is in the national security interests of the United States.

**SEC. 303. CONGRESSIONAL NOTIFICATION AND REPORT.**

(a) **NOTIFICATION.**—The President shall notify the appropriate congressional committees in writing not later than 15 days before exercising the waiver authority under section 301.

(b) **REPORT.**—Not later than 60 days after the date of the enactment of this Act, and annually thereafter for such time during which the exercise of the waiver authority under section 301 remains in effect, the President shall transmit to the appropriate congressional committees a report that—

(1) describes in detail the progress that is being made in the implementation of the commitment of North Korea described in section 301;

(2) describes in detail any failures, shortcomings, or obstruction by North Korea with respect to the implementation of the commitment of North Korea described in section 301;

(3) describes in detail the progress or lack thereof in the preceding 12-month period of all other programs promoting the elimination of North Korea's capability to develop, deploy, transfer, or maintain weapons of mass destruction or their delivery systems; and

(4) beginning with the second report required by this subsection, a justification for the continuation of the waiver exercised under section 301 and, if applicable, section 302, for the fiscal year in which the report is submitted.

**SEC. 304. TERMINATION OF WAIVER AUTHORITY.**

Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate if the President determines that North Korea—

(1)(A) on or after September 19, 2005, transferred to a non-nuclear-weapon state, or received, a nuclear explosive device; or

(B) on or after October 10, 2006, detonated a nuclear explosive device; or

(2) on or after September 19, 2005—

(A) transferred to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by North Korea to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(B) sought and received any design information or component which is determined by the President to be important to, and intended by North Korea for use in, the development or manufacture of any nuclear explosive device, unless the President determines and certifies to the appropriate congressional committees that such waiver is vital to the national security interests of the United States.

**SEC. 305. EXPIRATION OF WAIVER AUTHORITY.**

Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate on the date that is 4 years after the date of the enactment of this Act. The waiver authority under section 301 may not be exercised beginning on the date that is 3 years after the date of the enactment of this Act.

**SEC. 306. CONTINUATION OF RESTRICTIONS AGAINST THE GOVERNMENT OF NORTH KOREA.**

(a) **IN GENERAL.**—Except as provided in section 301(a), restrictions against the Government of North Korea that were imposed by reason of a determination of the Secretary of State that North Korea is a state sponsor of terrorism shall remain in effect, and shall not be lifted pursuant to the provisions of law under which the determination was made, unless the President certifies to the appropriate congressional committees that—

(1) the Government of North Korea is no longer engaged in the transfer of technology related to the acquisition or development of nuclear weapons, particularly to the Governments of Iran, Syria, or any other country that is a state sponsor of terrorism;

(2) in accordance with the Six-Party Talks Agreement of February 13, 2007, the Government of North Korea has “provided a complete and correct declaration of all its nuclear programs,” and there are measures to effectively verify this declaration by the United States which, “[a]t the request of the other Parties,” is leading “disablement activities” and “provid[ing] the funding for those activities”; and

(3) the Government of North Korea has agreed to the participation of the International Atomic Energy Agency in the monitoring and verification of the shutdown and sealing of the Yongbyon nuclear facility.

(b) **STATE SPONSOR OF TERRORISM DEFINED.**—In this section, the term “state sponsor of terrorism” means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), section 40 of the Arms Export Control Act, section 620A of the Foreign Assist-

ance Act of 1961, or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

**SEC. 307. REPORT ON VERIFICATION MEASURES RELATING TO NORTH KOREA'S NUCLEAR PROGRAMS.**

(a) **IN GENERAL.**—Not later than 15 days after the date of enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report on verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement of February 13, 2007, with specific focus on how such verification measures are defined under the Six-Party Talks Agreement and understood by the United States Government.

(b) **MATTERS TO BE INCLUDED.**—The report required under subsection (a) shall include, among other elements, a detailed description of—

(1) the methods to be utilized to confirm that North Korea has “provided a complete and correct declaration of all of its nuclear programs”;

(2) the specific actions to be taken in North Korea and elsewhere to ensure a high and ongoing level of confidence that North Korea has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs;

(3) any formal or informal agreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement; and

(4) any disagreement expressed by North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement.

(c) **FORM.**—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

**SEC. 308. DEFINITIONS.**

In this title—

(1) the term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Appropriations of the Senate;

(2) the terms “non-nuclear-weapon state”, “design information”, and “component” have the meanings given such terms in section 102 of the Arms Export Control Act (22 U.S.C. 2799aa-1); and

(3) the term “Six-Party Talks Agreement of February 13, 2007” or “Six-Party Talks Agreement” means the action plan released on February 13, 2007, of the Third Session of the Fifth Round of the Six-Party Talks held in Beijing among the People's Republic of China, the Democratic People's Republic of Korea (North Korea), Japan, the Republic of Korea (South Korea), the Russian Federation, and the United States relating to the denuclearization of the Korean Peninsula, normalization of relations between the North Korea and the United States, normalization of relations between North Korea and Japan, economy and energy cooperation, and matters relating to the Northeast Asia Peace and Security Mechanism.

## TITLE IV—MISCELLANEOUS PROVISIONS

**SEC. 401. AUTHORITY TO BUILD THE CAPACITY OF FOREIGN MILITARY FORCES.**

(a) **AUTHORITY.**—The Secretary of State is authorized to conduct a program to respond to contingencies in foreign countries or regions by providing training, procurement, and capacity-building of a foreign country's national military forces and dedicated counter-terrorism forces in order for that country to—

(1) conduct counterterrorist operations; or

(2) participate in or support military and stability operations in which the United States is a participant.

(b) **TYPES OF CAPACITY-BUILDING.**—The program authorized under subsection (a) may include the provision of equipment, supplies, and training.

(c) **LIMITATIONS.**—

(1) **ANNUAL FUNDING LIMITATION.**—The Secretary of State may use up to \$25,000,000 of funds available under the Foreign Military Financing program for each of the fiscal years 2009 and 2010 to conduct the program authorized under subsection (a).

(2) **ASSISTANCE OTHERWISE PROHIBITED BY LAW.**—The Secretary of State may not use the authority in subsection (a) to provide any type of assistance described in subsection (b) that is otherwise prohibited by any provision of law.



- (3) **LIMITATION ON ELIGIBLE COUNTRIES.**—The Secretary of State may not use the authority in subsection (a) to provide assistance described in subsection (b) to any foreign country that is otherwise prohibited from receiving such type of assistance under any other provision of law.
- (d) **FORMULATION AND EXECUTION OF ACTIVITIES.**—The Secretary of State is authorized to coordinate with the head of any other appropriate department or agency in the formulation and execution of the program authorized under subsection (a).
- (e) **CONGRESSIONAL NOTIFICATION.**—
- (1) **ACTIVITIES IN A COUNTRY.**—Not less than 15 days before obligating funds for activities in any country under the program authorized under subsection (a), the Secretary of State shall submit to the congressional committees specified in paragraph (3) a notice of the following:
- (A) The country whose capacity to engage in activities in subsection (a) will be assisted.
- (B) The budget, implementation timeline with milestones, and completion date for completing the activities.
- (2) **SPECIFIED CONGRESSIONAL COMMITTEES.**—The congressional committees specified in this paragraph are the following:
- (A) The Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives.
- (B) The Committee on Foreign Relations and the Committee on Appropriations of the Senate.

**SEC. 402. MAINTENANCE OF EUROPEAN UNION ARMS EMBARGO AGAINST CHINA.**

- (a) **FINDINGS.**—Congress makes the following findings:
- (1) Congress has previously expressed its strong concerns in House Resolution 57 of February 2, 2005, and Senate Resolution 91 of March 17, 2005, with the transfer of armaments and related technology to the People’s Republic of China by member states of the European Union, which increased eightfold from 2001 to 2003, and with plans to terminate in the near future the arms embargo they imposed in 1989 following the Tiananmen Square massacre.
- (2) The deferral of a decision by the European Council to terminate its arms embargo following adoption of the resolutions specified in paragraph (1), the visit by the President of the United States to Europe, and growing concern among countries in the regions and the general public on both sides of the Atlantic, was welcomed by the Congress.
- (3) The decision by the European Parliament on April 14, 2005, by a vote of 421 to 85, to oppose the lifting of the European Union’s arms embargo on the People’s Republic of China, and resolutions issued by a number of elected parliamentary bodies in Europe also opposing the lifting of the arms embargo, was also welcomed by the Congress as a reassurance that its European friends and allies understood the gravity of prematurely lifting the embargo.
- (4) The onset of a strategic dialogue between the European Commission and the Government of the United States on the security situation in East Asia holds out the hope that a greater understanding will emerge of the consequences of European assistance to the military buildup of the People’s Republic of China for peace and stability in that region, to the security interests of the United States and its friends and allies in the region, and, in particular, to the safety of United States Armed Forces whose presence in the region has been a decisive factor in ensuring peace and prosperity since the end of World War II.
- (5) A more intensive dialogue with Europe on this matter will clarify for United States’ friends and allies in Europe how their “non-lethal” arms transfers improve the force projection of the People’s Republic of China, are far from benign, and enhance the prospects for the threat or use of force in resolving the status of Taiwan.
- (6) This dialogue may result in an important new consensus between the United States and its European partners on the need for coordinated policies that encourage the development of democracy in the People’s Republic of China and which discourage, not assist, China’s unjustified military buildup and pursuit of weapons that threaten its neighbors.
- (7) However, the statement by the President of France in Beijing in November 2007 that the European Union arms embargo should be lifted is troubling, especially since France will assume the six-month presidency of the European Union in July 2008.
- (8) There continues to be wide-spread concerns regarding the lack of any significant progress by the Government of the People’s Republic of China in respecting the civil and political rights of the Chinese people.

(b) **STATEMENT OF POLICY.**—It shall be the policy of the United States Government to oppose any diminution or termination of the arms embargo that was established by the Declaration of the European Council of June 26, 1989, and to take whatever diplomatic and other measures that are appropriate to convince the Member States of the European Union, individually and collectively, to continue to observe this embargo in principle and in practice. Appropriate measures should include prohibitions on entering into defense procurement contracts or defense-related research and development arrangements with European Union Member States that do not observe such an embargo in practice.

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, and every six months thereafter until December 31, 2010, the President shall transmit to the Committee on Foreign Affairs and Committee on Armed Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report on all efforts and activities of the United States Government to ensure the success of the policy declared in subsection (b).

**SEC. 403. REIMBURSEMENT OF SALARIES OF MEMBERS OF THE RESERVE COMPONENTS IN SUPPORT OF SECURITY COOPERATION MISSIONS.**

Section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d)) is amended—

(1) by striking “(d) Except as otherwise provided” and inserting “(d)(1) Except as otherwise provided”; and

(2) by adding at the end the following:

“(2) Notwithstanding provisions concerning the exclusion of the costs of salaries of members of the Armed Forces in section 503(a) of this Act and paragraph (1) of this subsection, the full cost of salaries of members of the reserve components of the Armed Forces (specified in section 10101 of title 10, United States Code) may, during each of fiscal years 2009 and 2010, be included in calculating pricing or value for reimbursement charged under section 503(a) of this Act and paragraph (1) of this subsection, respectively.”

**SEC. 404. FOREIGN MILITARY SALES STOCKPILE FUND.**

(a) **IN GENERAL.**—Subsection (a) of section 51 of the Arms Export Control Act (22 U.S.C. 2795) is amended—

(1) in paragraph (1), by striking “Special Defense Acquisition Fund” and inserting “Foreign Military Sales Stockpile Fund”; and

(2) in paragraph (4), by inserting “building the capacity of recipient countries and” before “narcotics control purposes”.

(b) **CONTENTS OF FUND.**—Subsection (b) of such section is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by inserting “and” at the end; and

(3) by inserting after paragraph (3) the following:

“(4) collections from leases made pursuant to section 61 of this Act.”

(c) **AVAILABILITY.**—Subsection (c)(2) of such section is amended to read as follows: “(2) Amounts credited to the Fund under subsection (b) shall remain available until expended.”

(d) **CONFORMING AMENDMENTS.**—(1) The heading of such section is amended by striking “SPECIAL DEFENSE ACQUISITION FUND” and inserting “FOREIGN MILITARY SALES STOCKPILE FUND”.

(2) The heading of chapter 5 of the Arms Export Control Act is amended by striking “SPECIAL DEFENSE ACQUISITION FUND” and inserting “FOREIGN MILITARY SALES STOCKPILE FUND”.

**SEC. 405. CONGRESSIONAL NOTIFICATION REQUIREMENTS UNDER THE ARMS EXPORT CONTROL ACT.**

The Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended—

(1) by striking “Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate” each place it appears and inserting “Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate”;

(2) by striking “Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate” and “Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate” each place they appear and inserting “Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate”;

(3) by striking “Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations” each place it appears and inserting

“Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations”;

(4) by striking “Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate” each place it appears and inserting “Committees on Foreign Affairs and Armed Services of the House of Representatives and the Committees on Foreign Relations and Armed Services of the Senate”;

(5) by striking “Speaker of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate” each place it appears and inserting “Chairmen of the Committees on Foreign Affairs and Armed Services of the House of Representatives and the Chairmen of the Committees on Foreign Relations and Armed Services of the Senate”; and

(6) by striking “Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations” each place it appears and inserting “Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations” each place it appears.

**SEC. 406. SENSE OF CONGRESS.**

It is the sense of Congress that the United States should not provide security assistance or arms exports to nations contributing to massive, widespread, and systematic violations of human rights or acts of genocide, particularly with respect to Darfur, Sudan.

## **TITLE V—AUTHORITY TO TRANSFER NAVAL VESSELS**

**SEC. 501. AUTHORITY TO TRANSFER NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.**

(a) **TRANSFERS BY GRANT.**—The President is authorized to transfer vessels to foreign countries on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), as follows:

(1) **PAKISTAN.**—To the Government of Pakistan, the OLIVER HAZARD PERRY class guided missile frigate MCINERNEY (FFG-8).

(2) **GREECE.**—To the Government of Greece, the OSPREY class minehunter coastal ships OSPREY (MHC-51) and ROBIN (MHC-54).

(3) **CHILE.**—To the Government of Chile, the KAISER class oiler ANDREW J. HIGGINS (AO-190).

(4) **PERU.**—To the Government of Peru, the NEWPORT class amphibious tank landing ships FRESNO (LST-1182) and RACINE (LST-1191).

(b) **GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE ARTICLES.**—The value of a vessel transferred to a recipient on a grant basis pursuant to authority provided by subsection (a) shall not be counted against the aggregate value of excess defense articles transferred in any fiscal year under section 516(g) of the Foreign Assistance Act of 1961.

(c) **COSTS OF TRANSFERS.**—Any expense incurred by the United States in connection with a transfer authorized by this section shall be charged to the recipient.

(d) **REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.**—To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the recipient to which the vessel is transferred have such repair or refurbishment of the vessel as is needed before the vessel joins the naval forces of the recipient performed at a shipyard located in the United States, including a United States Navy shipyard.

(e) **EXPIRATION OF AUTHORITY.**—The authority to transfer a vessel under this section shall expire at the end of the 2-year period beginning on the date of the enactment of this Act.

### **SUMMARY**

H.R. 5916, the Security Assistance and Arms Export Control Reform Act of 2008 makes various reforms to streamline and increase Congressional oversight over the U.S. arms export licensing process and adds South Korea and Israel to countries receiving expedited Congressional review for arms exports. It also makes a number of reforms to U.S. security assistance programs, including requiring objective analysis of Israel’s military capability vis-à-vis conven-

tional and unconventional threats, increasing oversight over the U.S.-Israeli security relationship and authorizing the first year of the U.S.-Israel Memorandum of Understanding regarding security assistance. The bill grants a limited waiver to the Arms Export Control Act (AECA) to facilitate U.S. denuclearization activities in North Korea; requires the President to certify that North Korea has met certain conditions for the President to exercise this waiver, and requires a report on verification of North Korea's nuclear declaration.

#### BACKGROUND AND PURPOSE FOR THE LEGISLATION

This bill provides for a number of important measures to strengthen and reform the U.S. security assistance and defense trade licensing and review process, a principal area of jurisdiction for the Committee on Foreign Affairs.

The Department of State, through the Directorate of Defense Trade Controls (DDTC), has primary responsibility to ensure that arms exports fully comport with U.S. foreign policy and security objectives. That process has been in disarray for at least a decade, with the system in recent years verging on becoming dysfunctional. The Department of State had so badly managed the process that in November 2006 there was an extraordinary backlog of some 10,000 unprocessed and unreviewed applications to export defense items or services. Multiple reports by the Government Accountability Office (GAO), and the long-standing experience of this Committee, confirm that DDTC was significantly mismanaged and overwhelmed by the demands placed upon it. At the same time, DDTC was also not accorded the necessary resources by the Department of State to administer the licensing process in a timely manner while appropriately safeguarding U.S. national security. The concern with management shortcomings extend beyond the challenge of expeditious processing of license applications; process breakdowns can also threaten U.S. security by diverting attention from careful consideration of the national security risk in approving a license to the urgent need to clear massive backlogs of applications. Severe stress in the licensing system can also fundamentally undermine support within the Administration, Congress and Industry for a robust export control system.

This legislation builds on recent management reforms initiated by new leadership at the DDTC to begin the process of reforming U.S. defense trade policies and practices, in particular by ensuring a more effective arms export licensing process. In particular, H.R. 5916 incorporates the bipartisan work of the Chairman of the Subcommittee on Terrorism, Nonproliferation, and Trade, and the Ranking Member of the Subcommittee on Asia, the Pacific, and the Global Environment, by incorporating the "Defense Trade Controls Performance Improvement Act of 2008".

This bill also strengthens the vital security relationship with our close friends and allies, South Korea and Israel. It includes provisions of H.R. 5443, introduced by the Ranking Member of the Subcommittee on Terrorism, Nonproliferation, and Trade, adding South Korea to the list of countries in the AECA that receive expedited Congressional review of 15 instead of 30 days, along with NATO, Australia, New Zealand and Japan. This is a significant symbolic recognition of the critical importance of South Korea to

U.S. national security and to peace and stability throughout East Asia.

H.R. 5916 also grants Israel the same recognition, for the same reasons. This bill authorizes the initial phase-in of the Foreign Military Financing (FMF) formula that was recently agreed to by the United States and Israel under the Memorandum of Understanding signed on August 16, 2007.

In addition, H.R. 5916 increases Congressional oversight over the security assurances and guarantees given Israel by the United States since 1975, as well as to the revisions that are sometimes made to those assurances. Finally, it requires the Administration to empirically assess on an ongoing basis the state of Israel's "Qualitative Military Edge" (QME) against conventional or non-conventional security threats, to report that assessment to Congress every 4 years, and to use that assessment when reviewing arms exports to other countries in the Middle East.

This Act also grants the Administration's request for a waiver from current restrictions limiting the expenditure of U.S. funds in North Korea that is needed to enhance its ability to carry out activities to disable and dismantle North Korea's nuclear programs, including facilities, as provided for in agreements reached in the Six-Party Talks. With this waiver, the Administration will be able to use Department of Energy funds for these activities instead of having to rely on the limited resources of the State Department's Nonproliferation and Disarmament Fund, thereby allowing the latter to focus on other high-priority demands.

This waiver narrows the Administration's proposal for the removal of virtually all existing statutory restrictions on the use of funds and resources regarding North Korea. Instead it provides sufficient authority to the Administration to carry out its current activities in North Korea more effectively, as well as to prepare for and implement more extensive programs that are contemplated under the phased approach of the Six-Party Talks. Sufficient authority is also provided to implement effective verification measures to ensure that North Korea is adhering to its denuclearization commitments.

The legislation also specifies that the statutory restrictions regarding North Korea resulting from its designation by the State Department as a state sponsor of terrorism may not be lifted until the President certifies that North Korea is not proliferating nuclear-related technology or materials to other countries, especially to other state sponsors of terrorism; has provided a complete and correct declaration of all of its nuclear programs and that there are means to effectively verify this declaration; and has agreed to participation by the International Atomic Energy Agency in the disabling of the Yongbyon nuclear facility.

The legislation requires the Secretary of State to submit a report on verification measures that specifies the methods to be used, the actions to be taken, any formal or informal agreement with North Korea on this subject, and any significant disagreement expressed by North Korea regarding the verification measures. The report is unclassified but may include a classified annex.

This Act also grants to the Secretary of State the authority to train and equip foreign military forces to better cooperate with our

forces and engage in counter-terrorism operations, using unobligated FMF funds.

Finally, this Act declares it to be U.S. policy to oppose the lifting of the E.U. arms embargo on China and to take whatever diplomatic and economic steps to convince E.U. Member States from taking that step. It requires the President to report to the Congress on all efforts the U.S. is taking to accomplish this goal.

#### HEARINGS

The Subcommittee on Terrorism, Nonproliferation, and Trade held a hearing on defense and dual-use export controls on July 26, 2007, entitled “Exports Controls: Are We Protecting Security and Facilitating Exports?”

#### COMMITTEE CONSIDERATION

The Committee considered H.R. 5916 on April 30, 2008, and reported the bill favorably to the House, as amended, by voice vote, a quorum being present.

#### VOTES OF THE COMMITTEE

There were no recorded votes during consideration of H.R. 5916.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The legislation authorizes \$2.55 billion in Foreign Military Financing (FMF) for Israel for FY 2009.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 8, 2008.*

Hon. HOWARD L. BERMAN, *Chairman,*  
*Committee on Foreign Affairs,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5916, the Security Assistance and Arms Export Control Reform Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte, who can be reached at 226-2840.

Sincerely,

PETER R. ORSZAG.

Enclosure

cc: Honorable Ileana Ros-Lehtinen

Ranking Member

*H.R. 5916—Security Assistance and Arms Export Control Reform Act of 2008.*

SUMMARY

H.R. 5916 would authorize security assistance for Israel and other countries, and assistance to North Korea in dismantling its nuclear facilities. In addition, the bill would require the Department of State to improve the review and processing of export licenses for defense articles, and would authorize the appropriation of such sums as may be necessary in 2009 and future years for that purpose. CBO estimates that enacting H.R. 5916 would increase discretionary spending by \$3.2 billion over the 2009–2013 period, assuming appropriation of the estimated amounts. Implementing the bill would increase direct spending by \$500 million over the 2009–2018 period, primarily by allowing a Department of Defense (DoD) revolving fund to spend balances without appropriations action. Implementing the bill would not affect revenues.

H.R. 5916 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5916 is shown in Table 1. The costs of this legislation fall within budget functions 050 (national defense) and 150 (international affairs).

TABLE 1. BUDGETARY IMPACT OF H.R. 5916, THE SECURITY ASSISTANCE AND ARMS EXPORT CONTROL REFORM ACT OF 2008

	By Fiscal Year, in Millions of Dollars				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Foreign Military Financing Program					
Estimated Authorization Level	2,575	25	0	0	0
Estimated Outlays	2,559	20	14	4	1
Assistance to Dismantle Nuclear Facilities in North Korea					
Estimated Authorization Level	300	200	50	25	0
Estimated Outlays	165	200	133	59	15
Export Licenses for Defense Articles					
Estimated Authorization Level	8	7	7	7	8
Estimated Outlays	7	7	7	7	7
Total Changes					
Estimated Authorization Level	2,883	232	57	32	8
Estimated Outlays	2,731	227	153	70	24
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	55	55	55	55	55
Estimated Outlays	54	55	55	55	55

## BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 5916 will be enacted before the end of fiscal year 2008, that the estimated authorization amounts will be appropriated near the start of each fiscal year, and that outlays will follow historical spending patterns for similar programs.

*Spending Subject to Appropriation*

H.R. 5916 would authorize the Department of State to provide security assistance to Israel and other foreign countries. Title III would authorize the President to lift certain sanctions against North Korea, thereby enabling the Department of Energy (DOE) to assist the government of North Korea in disabling and dismantling its nuclear facilities. Finally, title I would require the Department of State to improve the review and processing of export licenses for defense goods. In total, CBO estimates that implementing those provisions would cost \$3.2 billion over the 2009–2013 period, assuming appropriation of the necessary amounts.

*Foreign Military Financing Program.* Section 204 would authorize the State Department to provide security assistance in the form of a grant to Israel in 2009, and specifies that the amount provided should be an increase of \$150 million over the level of assistance specified for the Foreign Military Financing Program for Israel in the 2008 appropriations act. CBO estimates that the grant would total \$2.55 billion in 2009, assuming appropriation of the estimated amount. Section 401 would authorize the appropriation of up to \$25 million a year in 2009 and 2010 for security assistance to foreign countries. Those funds would be used for training, procurement, and building the capacity of their military forces. CBO estimates that implementing both sections would cost almost \$2.6 billion over the 2009–2013 period, assuming appropriation of the estimated amounts.

*Assistance to Dismantle Nuclear Facilities in North Korea.* Title III of H.R. 5916 would authorize the President to waive certain sanctions that were imposed against North Korea after it tested a nuclear device in 2006. Specifically, the bill would allow the United States to assist North Korea over the 2009–2012 period to dismantle three nuclear facilities at Yongbyon: the reactor, the nearby plant that fabricates natural uranium into fuel for the reactor core, and the chemical reprocessing plant where plutonium is separated from the spent fuel rods.

Under an agreement with the United States, South Korea, Japan, China, and Russia, North Korea has started to disable the Yongbyon facilities. All three facilities are scheduled to be disabled by the end of 2008, allowing the process of dismantling the facilities and removing the control rods from North Korea to begin in 2009. Based on information from the State Department and DOE, CBO estimates that the costs of dismantling the nuclear reactor and the nearby fabrication and reprocessing plants, as well as the costs for transporting and reprocessing the spent fuel outside of North Korea, would total about \$570 million over the 2009–2013 period, assuming appropriation of the estimated amounts, and contingent on North Korea allowing the facilities to be dismantled.



*Export Licenses for Defense Articles.* Title I would require the Department of State to institute specified performance goals at its Directorate of Defense Trade Controls to improve the review and processing of applications for export licenses (particularly for major allies such as Israel, South Korea, Japan, Australia, New Zealand, and members of the North Atlantic Treaty Organization) and would authorize such sums as may be necessary in 2009 and future years for staffing and resources to meet that objective.

In 2007, the directorate processed approximately 85,000 applications for export licenses and 400 requests on commodity jurisdiction (some items for export fall within the jurisdiction of the Department of Commerce), with a staff of about 47 people. The bill would require the directorate to have three staff members dedicated to requests on commodity jurisdiction and one licensing officer for every 1,250 license applications. Title I also would require expedited reviews for exports to major allies, increased review and enforcement of federal laws and regulations governing arms exports, and increased oversight and management of the licensing process.

Based on information from the Department of State, CBO expects the department would need an additional 55 employees to meet the requirements of the bill: 35 licensing officers, five staff members to review commodity jurisdiction, four staff members to oversee and review processing goals, one person to review regulations and the U.S. Munitions List, and 10 staff members for compliance and enforcement of export controls. CBO estimates that hiring those personnel would cost an average of \$110,000 per person and that the department would require additional appropriations of \$6 million in 2009 and \$31 million over the 2009–2013 period, after adjusting for inflation.

In addition, section 103 would require the President to conduct a thorough review and assessment of the nation's arms export controls. Based on information from the Department of State, CBO estimates this provision would cost \$1 million in 2009, assuming appropriation of the estimated amounts.

Finally, other sections of title I would require the Department of State to review and assess current programs, make periodic reports to the Congress, and strengthen diplomatic efforts to improve controls on the international arms trade; CBO estimates the department would require additional appropriations of \$1 million a year to implement those provisions. In total, after adjusting for inflation, CBO estimates that implementing title I would cost \$36 million over the 2009–2013 period, assuming appropriation of the estimated amounts.

*Reimbursement for Salaries of Reservists.* Section 403 would allow the Department of State to reimburse DoD for the salaries of members of the reserves who participate in international peacekeeping missions or other programs of the Department of State. Under current law, those costs are borne by DoD. While CBO expects that this provision could increase the number of reservists who are called up to active duty, we estimate those numbers would be small, and this provision would have an insignificant effect on spending subject to appropriation.

*Direct Spending*

CBO estimates that enacting H.R. 5916 would increase direct spending by \$500 million over the 2009–2018 period (see table 2), by allowing amounts in a DoD revolving fund to be available for spending without prior appropriation and by authorizing the Department of State to spend certain civil penalties.

*Foreign Military Sales Stockpile Fund.* Section 404 would rename the Special Defense Acquisition Fund, allow the deposit of certain lease payments into the fund, and delete a requirement under current law that restricts spending of fund balances to only those amounts provided in advance in appropriations acts. Under current law, DoD may deposit into the fund the proceeds from selling military equipment not intended to be replaced and other defense articles from the fund's inventory. The Defense Security Cooperation Agency (DSCA) has indicated that the fund is moribund and has no balances left, but that it would use the authorities provided under the bill to replenish the fund with sales proceeds and lease payments, and use the fund to purchase defense articles for use by U.S. allies.

Based on sales proceeds from recent years and information from DSCA, CBO estimates that deposits into the fund would begin in 2009 with sales proceeds and lease payments worth about \$45 million a year, and that the agency would spend roughly the same amount each year over the 2009–2018 period.

*Civil Penalties and Fees.* Section 107 would authorize the Department of State to spend up to \$10 million in civil penalties collected each year over the 2008–2012 period for the expenses of its Directorate of Defense Trade Controls. Under current law, the department enforces certain laws and regulations governing exports of defense articles and has the authority to assess civil penalties of up to \$500,000 for each noncriminal violation. Civil penalties are deposited into the Treasury as revenues. Collections from civil penalties assessed by the department totaled \$23 million in 2007. CBO estimates that collections would become available in the year after they were collected and that implementing this provision would increase direct spending by \$50 million over the 2009–2018 period.

The section also would allow registration fees collected by the directorate to be used for new expenses that are prohibited under current law. Recent data for collections and spending indicate that the directorate collects and spends about \$8 million in any given year; thus, CBO estimates that this provision would have no significant effect.

TABLE 2. ESTIMATED IMPACT OF H.R. 5916 ON DIRECT SPENDING

	By Fiscal Year, in Millions of Dollars										Total 2009– 2013	Total 2009– 2018
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018		
CHANGES IN DIRECT SPENDING												
Foreign Military Sales Stockpile Fund												
Estimated Budget												
Authority	45	45	45	45	45	45	45	45	45	45	225	450
Estimated Outlays	45	45	45	45	45	45	45	45	45	45	225	450
Civil Penalties and Fees												
Estimated Budget												
Authority	10	10	10	10	10	0	0	0	0	0	50	50
Estimated Outlays	9	10	10	10	10	1	*	*	0	0	49	50
Total												
Estimated Budget												
Authority	55	55	55	55	55	45	45	45	45	45	275	500
Estimated Outlays	54	55	55	55	55	46	45	45	45	45	274	500

Note: \* = less than \$500,000.

*Transfer of Defense Articles in the U.S. War Reserve Stockpile for Allies (USWRSA).* Section 203 would amend the President's authority to transfer to Israel obsolete or surplus defense articles in the USWRSA in Israel in return for concessions to be negotiated by the Secretary of Defense. The bill would raise the cap on the maximum amount that could be transferred from \$100 million to \$200 million in 2009 and 2010. Under current law, the authority to make transfers to Israel expires in August 2008; therefore this section would have no effect.

Even if the transfer authority were extended, CBO estimates this provision would not affect direct spending. The concessions negotiated by DoD may include cash, services, waiver of charges otherwise payable by the United States, or other items of value. Although the authority provided by section 203 could be used to negotiate noncash concessions instead of selling the articles, DSCA has indicated that the existing authority has not been used for Israel in the past, and CBO expects it is unlikely to be used in the next few years.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 5916 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

#### ESTIMATE PREPARED BY:

##### Federal Costs:

Assistance to Dismantle Nuclear Facilities in North Korea—Raymond Hall (226–2840)

Other Federal Costs—Sunita D'Monte (226–2840)

Impact on State, Local, and Tribal Governments: Neil Hood (225–3220)

Impact on the Private Sector: MarDestinee Perez (226–2940)

#### ESTIMATE APPROVED BY:

Theresa Gullo

## Deputy Assistant Director for Budget Analysis

## PERFORMANCE GOALS AND OBJECTIVES

This Act seeks to significantly improve the performance of the U.S. defense trade exports licensing system through setting performance goals for licensing processes, increasing Congressional oversight of the export process and expediting Congressional license review periods, all in the interest of improving the U.S. defense industry's global competitiveness while safeguarding U.S. national security. This Act also supports the U.S.-South Korea and Israel relationship by expediting defense export licensing review for these countries, and also mandates the U.S. create an objective measure of Israel's military capabilities relative to those of its neighbors to better inform U.S. licensing decisions for future arms sales to other countries in the Middle East.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

## NEW ADVISORY COMMITTEES

H.R. 5916 does not establish or authorize any new advisory committees.

## CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 5916 in general does not apply to the legislative branch, except in Sec. 124, which increases the value threshold for the Congressional review period for proposed arms sales.

## EARMARK IDENTIFICATION

H.R. 5916 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Sec. 1. Short Title and Table of Contents.*

Subsection (a) provides that this Act may be cited as the "Security Assistance and Arms Export Control Reform Act of 2008."

Subsection (b) provides for a table of contents.

## TITLE I: REFORM OF ARMS EXPORT CONTROL PROCEDURES

## SUBTITLE A: DEFENSE TRADE CONTROLS PERFORMANCE IMPROVEMENT ACT OF 2008

*Sec. 101. Short Title.*

Section 101 provides the short title for Title I, Subtitle A, the Defense Trade Controls Improvement Act of 2008. This subtitle was originally introduced by Reps. Brad Sherman and Don Manzullo as H.R. 4246.

*Sec. 102. Findings.*

Section 102 contains various findings that detail past performance problems and staffing shortfalls at the Directorate of Defense Trade Controls (DDTC), the State Department agency responsible for adjudicating licenses for commercial arms sales; notes the importance of this function to national security; describes the growth in the volume and complexity of licensing applications; notes with concern the increased tendency toward offshoring and outsourcing in the defense industry; and notes the need to update export control policies to address these trends.

*Sec. 103. Strategic review and assessment of the United States export controls system.*

Section 103 requires that the President conduct an 18-month strategic review of defense trade controls beginning in 2009 to determine the effectiveness of the current export control regime, and make improvements where necessary. The review would also seek to identify ways to make the system more efficient and seek to improve coordination across government agencies responsible for export controls and enforcement. The President will be required to review known attempts to circumvent export controls with a view to improving enforcement. The review will also examine offshoring and outsourcing in the defense industry as well as the policy of U.S. trade partners to require “offsets” for arms sales. The section requires that the President report on the results of the review.

The Committee requires this review in response to the January 2007 decision by the GAO to designate the protection of high technology critical to U.S. national security as a “high risk” area. GAO found that export control policies and procedures were in need of assessment for both effectiveness and efficiency. Given the changing nature of the security threats facing the United States from terrorism and nuclear proliferation, rapid advances in defense technology, and the continued efforts by state and non-state actors to evade U.S. export controls, the Committee believes that a high-level government-wide review of arms export control and enforcement policies is necessary.

GAO also found that coordination between the various agencies involved in export control and enforcement policies is lacking. Therefore, the strategic review should focus on ways that inter-agency cooperation and coordination can be improved. This is intended to be a government-wide review, and should not be limited to the DDTC’s policies and procedures.

The review should thoroughly examine all known attempts—successful and unsuccessful—to circumvent U.S. export controls and enforcement mechanisms. The United States, as the leader in defense technology development and defense production, is a target for criminal proliferation rings and foreign security and intelligence agencies. The damage done when a group or state agent is able to circumvent export controls is not limited to the potential use of U.S. hardware by an adversary. Ineffective export controls and enforcement policies can seriously erode U.S. supremacy in critical military technologies and lead to the development of technology that can defeat U.S. defense systems.

In conducting this review, the Administration should also devote significant attention to how export control policy facilitates the

movement of technology and defense production overseas, and the national security implications of off-shoring and outsourcing in defense production. Defense cooperation with allies is essential; however, the Committee is concerned that the defense industrial base has been harmed by the growing trend to offshore defense production, and that the spread of defense technology and production capacity to foreign countries, especially those with inadequate export controls, may harm American security. Protecting the defense industrial base and American technological supremacy need to be top priorities for arms export control policy.

Section 103 requires that the Administration periodically brief relevant Congressional committees on the progress of the review. This requirement is included to ensure Congressional oversight over the conduct of the strategic review while it is ongoing and to help ensure that the final product is fully responsive to Congressional concerns.

*Sec. 104. Performance goals for processing of applications for licenses to export items on USML.*

Section 104 sets a goal of 60 days for the DDTC to process licenses to export defense hardware to U.S. friends and allies. It also sets the goal at 30 days for applications to export defense hardware to NATO and major non-NATO allies. It further sets a goal of 7 days in cases where the hardware is to be supplied to an ally operating with the United States in a combat, peacekeeping or humanitarian deployment. It requires that applications which have not been processed within 60 days be reviewed by the top political or civil servants at DDTC; applications older than 90 days would require review by the relevant Assistant Secretary. It requires reporting on the average processing times for various categories of license. Section 104 also sets a goal for processing commodity jurisdiction (CJ) requests in 60 days, and requires increased transparency of those decisions (exporters seek CJs to determine if an item is on the U.S. Munitions List and thus subject to State Department licensing requirements).

Section 104 essentially codifies Presidential Directives issued in January 2008 that set a “soft” deadline of 60 days for the processing of applications for licenses to export items on the U.S. Munitions List. Nothing in this section or in the Presidential Directives requires that a decision on any specific application be made within 60 days. The Committee recognizes that additional time may be needed to review an application to ensure that the export is consistent with U.S. national security. The presidential directives identify five factors that would require more than 60 days to adjudicate a license application. Section 104 does not alter the Administration policy.

Nevertheless, U.S. exporters should have reasonable assurance that their licenses will be adjudicated in a fairly predictable timeframe. Unnecessary delays in adjudication can cause U.S. suppliers to be viewed as unreliable, and U.S. firms are made less competitive. Defense trade business may increasingly go to foreign competitors if there are long delays in licensing decisions. In late 2006, the DDTC was found to have a backlog of some 10,000 open applications. As a result, applications were left to languish, sometimes for months. While the current management of DDTC has elimi-

nated a number of the factors that led to that backlog and the resulting processing delays, the Committee believes that codified goals for processing times are essential to ensure predictability for U.S. exporters, and for internal resource planning at the DDTC. Section 104 also requires that DDTC management brief relevant congressional committees on the steps they will implement to address any significant backlog that arises in the future to ensure that growing backlogs and proposed remedial measures come to the attention of Congress in a timely fashion.

The goals for license processing times contained in Section 104 do not cover agreements under Part 124 of the International Traffic in Arms Regulations (ITAR) for defense services. These include technical assistance agreements and manufacturing agreements, which are needed to convey technical know-how and permission to produce USML items overseas. These agreements are often of greater complexity and have potentially greater impacts on national security, including by weakening the defense industrial base. As noted, the Committee is concerned about the increased tendency to offshore production of defense items. DDTC should place the highest priority on processing license applications that provide for the export of U.S. hardware to allies, and should generally give manufacturing and technical assistance agreements a significantly higher level of scrutiny. Furthermore, consistent with U.S. national security, licensing resources should be allocated first and foremost to ensuring that the processing goals of section 104 are generally being met.

The Committee believes that the goals established by this section reflect the priority that the Department should be giving to the respective categories. The Committee believes that DDTC should therefore give the highest priority to processing of applications that are in direct support of combat operations or peacekeeping or humanitarian operations with United States Armed Forces; followed by giving the next highest priority to processing of applications to government security agencies of United States NATO allies, Australia, New Zealand, Japan, South Korea, Israel, and as appropriate, other major non-NATO allies; and other applications will be prioritized in addition in a manner determined by the Director.”

Section 104 also includes a requirement that the managing director of the DDTC review a small percentage of the applications received by the agency to ensure that the decisions in those cases were consistent with applicable statute, regulations and DDTC policies. This requirement will serve to ensure that senior management determine whether the decisions of licensing officers are being made consistent with U.S. export control policy and practice. It will also allow for the identification and rectification of common mistakes, and to ensure that the “return-without-action” device is not used excessively to clear or effectively restart the clock on difficult cases.

Section 104 also requires that the Secretary submit a report to Congress in 2010 and 2011 on average processing times for various categories of license across different categories of allied or friendly country, and any management decisions taken to address trends in the data. This reporting requirement responds to GAO criticism of DDTC for not seeking to analyze trends in licensing data when setting policies and allocating the resources of the agency.

Section 104 requires the Secretary to make the results of commodity jurisdiction (CJ) decisions public via the Internet. This requirement responds to concerns raised by U.S. manufacturers and NGOs that the lack of transparency in the CJ process has led to a lack of consistency in CJ decisions, is unfair to some exporters, and does not provide for meaningful criticism of CJ decisions, which are essentially secret. This provision is tailored to ensure that only the minimum amount of information necessary to provide meaningful disclosure is released; to the greatest extent possible, the proprietary information of the CJ applicant is protected.

*Sec. 105. Requirement to ensure adequate staff and resources for DDTC of the Department of State.*

Section 105 requires that the Secretary ensure adequate staffing of the DDTC and mandates that there be one licensing officer on staff for every 1250 applications that the agency is estimated to receive in a given year. DDTC currently has only roughly 40 licensing officers to process approximately 85,000 applications per year.

The Committee believes that many of the past performance problems at DDTC relate to understaffing. As noted, while the licensing caseload has increased significantly, the number of licensing personnel at DDTC has not. The requirement that DDTC have at least one licensing officer for every 1,250 applications expected for a given fiscal year does not place a limit on the number of cases any one licensing officer may handle in a given year. Not all applications require the same level of staff attention, and officers who handle relatively uncomplicated applications will presumably handle more than those handling more complicated cases.

The State Department will have until the third quarter of 2010 to comply with this increased staffing requirement to allow for recruitment and training of additional licensing officers. Rather than prescribe a specific number of officers, the Committee decided to mandate a staff-to-application ratio to ensure that staffing increases are made if applications continue to increase over successive years.

Section 105's staffing mandates are necessary not only to provide for the efficiency of the agency, but to ensure its national security function is met. Applications are not only increasing in number, they are becoming more complicated. Leaving aside efficiency and processing speed, a staffing increase is necessary to ensure that DDTC's licensing decisions are consistent with American national security and foreign policy goals.

Section 105 requires that the Secretary maintain staffing levels in other areas of DDTC responsibility, especially including policy and enforcement. In order to meet the mandates of Section 105, the DDTC has to hire more people and sustain adequate staff in all of its functions throughout any given year. The requirement for licensing officers should not be met by merely pulling personnel off other functions and making them licensing officers. Nor should DDTC use temporary assignments or other schemes to merely move personnel around the DDTC to fulfill the licensing officer mandate.



*Sec. 106. Audit by Inspector General of the Department of State.*

Section 106 requires that State's IG conduct an audit in 2010 and 2011 to determine whether DDTC is meeting the goals set out in sections 104 and 105.

*Sec. 107. Increased flexibility for use of defense trade controls registration fees.*

Section 107 provides DDTC with the ability to use the fees that it collects from arms manufacturers and exporters for all expenses associated with the agency. Provides that no more than \$10 million in enforcement fines collected for violations of the Arms Export Control Act may be made available to pay for the expenses of the agency.

The committee recognizes that allowing an agency to in effect keep enforcement penalties can be a perverse incentive, leading to overzealous enforcement. The DDTC has collected \$20 million or more in fines over the last several years. By capping the amount available to the agency at an amount well below anticipated collections, there should be no incentive for improper and overzealous enforcement actions against exporters. Also, assuming that the State Department would like to see this authority subsequently extended beyond the 5 years provided in this legislation, the expiration of the provision in 2012 should also deter such improper enforcement actions. Nonetheless, the committee intends to conduct vigorous oversight over the Department's exercise of this authority.

*Sec. 108. Review of ITAR and USML.*

Section 108 requires that the Secretary review 20 percent of the USML every year, with input from U.S. defense manufacturers, NGOs, and labor and small business organizations, to determine if controls on various items should be relaxed or strengthened.

This section will also ensure that the entire USML is reviewed every 5 years.

Section 108 provides that the USML and the wider ITAR should be reviewed in their entirety every 5 years to ensure that export controls keep up with advances in defense technology. The Commerce Department generally conducts a similar 5-year review of its Control List. The 20-percent-per-year review requirement should be a floor, not a ceiling for the Administration, however. The Secretary also should not wait to place a section of the USML under review where technological advances warrant an immediate review simply because it is not yet that section's "turn" in the 5-year rotation. In coordination with other relevant government agencies that review the USML, including the Department of Defense, the Secretary should ensure that a broad cross-section of the defense industry is represented in the conduct of the review, including small- and medium-size domestic enterprises that serve as suppliers for the large defense companies. The committee believes that it is critical to include labor and arms control groups in these consultations in order to ensure a balanced review.

*Sec. 109. Special licensing authorization for Certain Exports to NATO Member States, Australia, Japan, and New Zealand.*

Section 109 provides for a special, 5-year blanket license for the export of spare parts and components for specific USML items pre-

viously exported to U.S. allies. The previously-exported equipment would have to be in inventory of a security agency of a close U.S. ally and the spare parts and components would be limited to relatively non-sensitive items (no Significant Military Equipment). The spare parts and components would have to be made in the US in order to qualify for licensing under this special type of license.

Exporters have expressed concern about the need to obtain multiple licenses for spare parts and components for defense systems that have been previously exported. Section 109 provides for a special licensing procedure for spare parts and components that meet the criteria set out in the section. The special licensing authorization provided for by this section is in effect a blanket license for the export of multiple spare parts and components for defense items in the inventory of an allied country. Section 109 sets out a number of limitations and conditions on the use of this special license, including: The spare parts and components must be shipped to and used by a security agency of the allied country for an item in its inventory; they may not be used to enhance the performance of the previously exported defense items; and the freight forwarder utilized for shipment must be the one designated by the recipient country for the Foreign Military Sales program. These conditions are designed to ensure maximum security against misuse and diversion.

The licensing procedure provided for by section 109 does not replace, amend or eliminate any other license or exemption provided for by current law or regulations, including the exemption for the temporary import and subsequent export of defense items serviced or repaired in the United States provided for in Section 123.4 of the ITAR.

The provision is limited to parts and components with a high U.S. content that have been manufactured in the United States. A part or component must include 85 percent American content on a total content basis—inclusive of all costs, including raw materials, but exclusive of costs associated with research and development, intellectual property and legal services. Eighty-five percent of the costs associated with the manufacturing of a spare part or component must also be attributable to work done in the United States in order for a part or component to qualify for licensing under this provision. The requirement that the last substantial modification be done in the United States is designed to exclude from this licensing procedure any part or component whose final assembly is done abroad. The requirement that any foreign content value be calculated based on the final price or final cost paid of the foreign item or service precludes an applicant from calculating foreign content using a price paid for that foreign content by an agent or middleman that is not reflective of the actual, final cost to the applicant. Foreign content, if any, is limited, content from countries that are eligible to receive exports of USML items, save for de minimis amounts. The Committee appreciates that it may be impossible for an applicant to trace the origin of every screw, washer and nut. However, all significant parts and processing that go into the product must be of U.S. or eligible foreign origin.

*Sec. 110. Availability of information on the Status of License Applications Under Chapter 3 of the Arms Export Control Act.*

Section 110 requires that information on the status of applications be made available electronically to the applicant and relevant Congressional committees.

*Sec. 111. Sense of Congress.*

The Defense Trade Advisory Group (DTAG) is an advisory committee that consults with the State Department on export control issues. Section 111 calls on the State Department to make its membership more diverse by including labor, NGOs, and academics, in addition to the defense industry itself.

*Sec. 112. Definitions.*

Section 112 provides various definitions that are necessary for the Act.

*Sec. 113. Authorization of Appropriations.*

Section 113 provides “such sums” authorization for FY2009 and every subsequent fiscal year.

SUBTITLE B: MISCELLANEOUS PROVISIONS

*Sec. 121. Report on Self-Financing Options for Export Licensing Functions of DDTC of the Department of State.*

Section 121 requires the Secretary of State to report 90 days after enactment of this Act to the Committees on Foreign Affairs and Foreign Relations on possible mechanisms to place the Department of State defense trade licensing functions on a 100% self-financing basis.

Currently, the licensing agency that processes Foreign Military Sales operates on a 100% self-financing basis, and is able to adapt to its changing needs without the need for annual appropriations. It would be useful to have State’s licensing functions on a similar basis, for similar reasons. This report will force the Department of State to seriously consider this possibility and inform the oversight committees as we legislate on these issues in the future.

*Sec. 122. Expediting Congressional Defense Export Review Period for South Korea and Israel.*

This section adds South Korea and Israel to the “NATO+3” (NATO countries plus Australia, Japan, New Zealand) list in various Arms Export Control Act provisions for special treatment regarding the export of U.S. defense items and services, including a 15-day Congressional review instead of 30 days.

Sec. 122 strengthens the vital security relationship with our close friends and allies, South Korea and Israel. It adds South Korea and Israel to the list of countries in the AECA that receive expedited Congressional review of 15 instead of 30 days, along with NATO, Australia, New Zealand and Japan, as well as other similar privileges. This is a significant and symbolic recognition of the critical importance of South Korea and Israel to U.S. national security and to peace and stability throughout East Asia and the Middle East.

*Sec. 123. Availability to Congress of Presidential Directives Regarding United States Arms Export Policies, Practices and Regulations.*

Section 123 requires the President to make all Presidential Directives regarding U.S. export policies available to the Congressional Committees on Foreign Affairs and Foreign Relations, the committees of jurisdiction over arms exports. Ideally, the President should provide copies of such directives to the Committees.

In January 2008, the President issued two “directives” with specific changes and taskings relating to our export control system. Unfortunately, the Administration has refused to allow representatives from the House Committee on Foreign Affairs or the Senate Foreign Relations Committee to even read these directives, much less provide copies. This provision is to ensure that the Committees of jurisdiction and oversight over arms export control policies are able to see the content of U.S. arms export policies.

*Sec. 124. Increase in Congressional Notification Thresholds and Expediting Congressional Review for South Korea and Israel.*

Section 124 increases monetary thresholds for Congressional review periods of FMS and commercial arms sales:

- For NATO+5—from \$25 to \$75 million for Significant Military Equipment (SME), \$100 million to \$200 million for total contract value.
- For all other countries—from \$15 to \$50 Million for SME, \$50 to \$100 Million for total contract value.

This provision increases the threshold level for the Congressional 15/30-day resolution-of-disapproval review period. However, it also retains existing statutory threshold levels for notification of the export to Congress.

The result is that the Committees on Foreign Affairs and Foreign Relations, the committees of jurisdiction over U.S. arms exports, will still see and evaluate arms exports to all parties at existing levels, thereby ensuring that Congressional oversight is retained. This occurs through a longstanding, informal “preconsultation” process that this and previous Administrations engage in with the Committee, through which questions and concerns are addressed, and alterations made. This preconsultation process will continue at the current threshold notification levels.

For defense exports below the new, higher formal 15/30-day Congressional review threshold that this bill will establish, export licenses can be awarded 2–4 weeks faster, thereby increasing U.S. defense exports’ competitiveness. As such, this is a “win-win” outcome: Congressional oversight for national security is preserved, but defense exporters are able to be more competitive.

*Sec. 125. Diplomatic Efforts to Strengthen National and International Arms Export Controls.*

Section 125 states the Sense of Congress that the President should increase efforts to strengthen multilateral export control regimes, with a 5-year annual report on U.S. efforts to do so.

*Sec. 126. Reporting Requirement for Unlicensed Exports.*

Section 126 adds a requirement to report on exempted commercial arms sales to an existing annual report. This provision was previously approved by the House in the 109th Congress.

*Sec. 127. Reporting on Value of Major Defense Equipment and Defense Articles Exported Under Section 38 of the Arms Export Control Act.*

Section 127 requires an annual listing of the value of actual arms deliveries by country as part of the annual Congressional Budget Justification to improve the transparency of the U.S. arms export process and facilitate Congressional oversight.

*Sec. 128. Report on Satellite Export Controls.*

Section 128 requires a report 180 days after enactment on the efficacy of current satellite export controls, especially regarding China, and whether any changes need to be made.

It has been 9 years since the Congress, in reaction to the revelations of the Cox Commission on U.S. companies sharing sensitive space technology with China during an investigation over a Chinese launch failure, mandated that the licensing of all satellites and related components be moved from the Commerce Control List at the Department of Commerce to the U.S. Munitions List at the Department of State. It is appropriate at this point that the record of bringing U.S. satellite exports under the more rigorous USML licensing system be reviewed.

The Committee is especially concerned over reports that a subsidiary of a European defense company, Thales/Alenia, is actively engaged in selling satellites that are allegedly free of any U.S.-origin or U.S.-derived component to China and others. The sales to China directly undermine U.S. export controls on China. Sales of such satellites to other recipients would allow those recipients to utilize the cut-rate Chinese “Long March” space launch vehicle; buyers of satellites with U.S. components cannot do likewise, since any such launch can only occur with the consent of the United States Government.

Utilization of Chinese launchers also undermine U.S. export controls in that greater commercial use garners China greater experience and therefore greater expertise in space launch operations and technology, which is directly applicable to its military ballistic missile program.

The Committee requests that the President devote particular attention to this troubling development by Thales/Alenia in the report required by this section, and report on what actions the United States will take to address and rectify this matter.

*Sec. 129. Definition.*

Section 129 defines “appropriate congressional committees” as used in this subtitle to mean the Committees on Foreign Affairs and Foreign Relations.

## TITLE II: SECURITY ASSISTANCE AND RELATED SUPPORT FOR ISRAEL

*Sec. 201. Assessment of Israel's Qualitative Military Edge over Military Threats.*

Section 201 requires the President to create a mechanism to empirically evaluate on an ongoing basis the extent to which Israel has a qualitative military edge (hereinafter referred to as "QME") over all possible military threats from any national source, both individually or collectively, and to use such mechanism when reviewing arms sales to the Middle East.

It has become clear to the Committee that the Administration uses a subjective judgment when evaluating Israel's QME. State and Defense officials have admitted that there is no objective, empirical method of evaluating this critical measure of whether Israel maintains a qualitative superiority over potential threats to its security.

It is also clear that such subjective evaluations are performed sale-by-sale, country-by-country, without clear overall consideration of the balance of capabilities possessed throughout the region that could conceivably affect Israel's security.

This provision would remedy this glaring lack of a robust mechanism to make critical security and export decisions that could undermine the security of one of the most important friends and ally that we have in the Middle East.

Section 201 also requires an initial report no later than 180 days after enactment, and quadrennially thereafter. It also requires that any arms sale to a Middle Eastern country that must be notified to Congress for review include a determination that such sale will not materially affect Israel's QME.

*Sec. 202. Report on United States Commitments to the Security of Israel.*

Section 202 requires the President to provide copies of all U.S. assurances made to Israel regarding its security since 1975 and on an ongoing basis, including revisions of past assurances, to the Committees on Foreign Affairs and Foreign Relations, to enable Congressional oversight over the U.S.-Israel security relationship.

The United States has made numerous assurances to Israel over the years regarding its security, especially regarding conditions under which the U.S. would sell arms to Israel's neighbors. There have been subsequent revisions and revocations of these assurances.

The Congress does not have access to these assurances and revisions, and is therefore limited in its ability to conduct real oversight over this critical U.S. security relationship, and in its ability to judge for itself the extent to which such assurances are being fulfilled.

*Sec. 203. War Reserves Stockpile.*

This provision extends the dates and amounts of U.S. excess equipment that can be transferred to Israel from regional stockpiles.

*Sec. 204. Implementation of Memorandum of Understanding with Israel.*

This section authorizes for Fiscal Year 2009 Foreign Military Financing (FMF) assistance for Israel pursuant to the Memorandum of Understanding (MOU) between the United States and Israel. In August, 2007, the United States and Israel entered into a memorandum of understanding “reflecting the unshakeable commitment of the United States to Israel’s security.” Under the MOU, the United States agreed to increase levels of U.S. FMF to Israel over a 10-year period beginning in Fiscal Year 2009, with an initial increase of \$150 million for that fiscal year, and additional increases through Fiscal Year 2013, leveling off at \$3.1 billion per year from Fiscal Year 2013 to Fiscal Year 2018. The MOU also provides that Offshore Procurement should be maintained at 26.3 percent of the yearly FMF grant. The Committee strongly supports the full and complete implementation of the MOU through Fiscal Year 2018, and section 204 represents an authorization of the first year of the MOU.

The Committee notes that the formula contained in section 204 starts from the baseline of \$2,400,000,000 specified under the heading “Foreign Military Financing” in the Department of State, Foreign Operations and Related Programs Appropriations Act, 2008, adds \$150,000,000 for a total of \$2,550,000,000.

*Sec. 205. Definitions.*

This provision defines “Qualitative Military Edge” as used in this Title, and that the term “appropriate congressional committees” means the Committee on Foreign Affairs of the House, and the Committee on Foreign Relations of the Senate.

TITLE III: WAIVER OF CERTAIN SANCTIONS TO FACILITATE  
DENUCLEARIZATION ACTIVITIES IN NORTH KOREA

*Sec. 301. Waiver Authority and Exceptions.*

This section provides the President the authority to waive four sanctions under Sec. 102 of the Arms Export Control Act (the “Glenn Amendment”) to provide “material, direct, and necessary assistance” to nuclear disablement or dismantlement activities in North Korea, including verification of denuclearization and removal of nuclear equipment and material from North Korea. Financial assistance that may be directly necessary, such as payment for North Korean workers who are currently dismantling the Yongbyon reactor, is permitted, as are non-lethal items that are controlled on the U.S. Munitions List and Commerce Control (dual-use) List. It limits the export of any equipment or services that are controlled on the U.S. Munitions List that may be necessary to non-lethal equipment and services only, so as not to benefit North Korean military capabilities, and prevents any credit or credit guarantees from being provided.

Because of AECA restrictions triggered by North Korea’s nuclear test of October 9, 2006, the United States has had to fund disablement activities through the use of the Nonproliferation and Disarmament Fund (NDF), which has the statutory authority to conduct nonproliferation activities in countries that may nevertheless be subject to U.S. sanctions and restrictions on U.S. assistance. The

NDF is a relatively small fund, which is already stressed by the Department of Energy's disablement activities in North Korea; it would be incapable of funding the larger "Phase III" dismantlement and removal programs that are contemplated, and worthy urgent nonproliferation opportunities in other countries could be missed if the NDF is depleted. It is therefore necessary to waive the AECA restrictions so that the United States can fully fund its obligations under the Six-Party Talks and proceed with the disablement, dismantlement and removal of North Korea's nuclear capabilities, and verification of its denuclearization, which is manifestly in the vital U.S. national interest.

*Sec. 302. Certification Regarding Waiver of Certain Sanctions.*

The President must certify to the Congress that, before any non-lethal exports of articles or services on the U.S. Munitions List or Commerce Control List can occur, that all necessary steps will be taken to ensure that such exports will not improve the military capabilities of North Korea's armed forces, and that such exports are in the national security interests of the United States. Section 302 does not allow the export of any item described in Section 301(b).

*Sec. 303. Congressional Notification and Report.*

The President must notify the foreign affairs and appropriations committees 15 days in advance of using the waiver authority, and must report annually on the progress, or lack thereof, in the verifiable denuclearization activities in North Korea.

*Sec. 304. Termination of Waiver Authority.*

The waiver authority in Sec. 401 terminates if North Korea conducts another nuclear test after October 10, 2006 (the day after North Korea's last nuclear test) or transfers to or receives from another state a nuclear explosive device after September 19, 2005 (the date after North Korea agreed to denuclearization). If North Korea transfers nuclear weapon-related design information or component, according to the standards of the Glenn Amendment, or sought or received same, after September 19, 2005, the waiver authority in Sec. 401 terminates unless the President certifies to the Congress that the continuation of such waiver is vital to the national security interests of the United States.

*Sec. 305. Expiration of Waiver Authority.*

This authority will terminate 4 years from enactment.

*Sec. 306. Continuation of Restrictions against the Government of North Korea.*

Section 306 provides that restrictions against the Government of North Korea because of its designation as a state sponsor of terrorism shall remain in effect, and shall not be lifted pursuant to the provisions of law under which the determination was made, unless the President certifies to the appropriate congressional committees that (1) the Government of North Korea is no longer engaged in the transfer of technology related to the acquisition or development of nuclear weapons, particularly to the Governments of Iran, Syria, or any other country that is a state sponsor of terrorism; (2) in accordance with the Six-Party Talks Agreement of



February 13, 2007, the Government of North Korea has ‘provided a complete and correct declaration of all its nuclear programs,’ and there are measures to effectively verify this declaration by the United States which, [a]t the request of the other Parties,’ is leading ‘disablement activities’ and ‘provid[ing] the funding for those activities’; and (3) the Government of North Korea has agreed to the participation of the International Atomic Energy Agency in the monitoring and verification of the shutdown and sealing of the Yongbyon nuclear facility.

The Committee believes that these requirements are fully consistent with the agreements of February and October, 2007, related to the Six-Party Talks and how the President’s representatives have explained these agreements will be implemented.

*Sec. 307. Report on Verification Measures Relating to North Korea’s Nuclear Programs.*

Subsection (a) of this section provides that not later than 15 days after the date of enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report on verification measures relating to North Korea’s nuclear programs under the Six-Party Talks Agreement of February 13, 2007, with specific focus on how such verification measures are defined under the Six-Party Talks Agreement and understood by the United States Government.

Subsection (b) provides that the report required under subsection (a) shall include, among other elements, a detailed description of: (1) the methods to be utilized to confirm that North Korea has ‘provided a complete and correct declaration of all of its nuclear programs’; (2) the specific actions to be taken in North Korea and elsewhere to ensure a high and ongoing level of confidence that North Korea has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs; (3) any formal or informal agreement with North Korea regarding verification measures relating to North Korea’s nuclear programs under the Six-Party Talks Agreement; and (4) any disagreement expressed by North Korea regarding verification measures relating to North Korea’s nuclear programs under the Six-Party Talks Agreement.

Subsection (c) provides that the report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

*Sec. 308. Definitions.*

This provision contains definitions applicable to this title.

TITLE IV: MISCELLANEOUS PROVISIONS.

*Sec. 401. Authority to Build the Capacity of Foreign Military Forces.*

This section grants the Secretary of State train-and-equip authority, authorized up to \$25,000,000 in unobligated FMF funds for the Fiscal Years 2009 and 2010, to respond to contingencies in foreign countries or regions with training, procurement and capacity-building of a foreign country’s national military forces.

This authority is necessary for the Department of State to directly provide assistance to train and equip foreign military forces

to support U.S. security operations and to better engage in counterterrorism operations.

The National Defense Authorization Act of 2006 authorized the use of DoD funds to build the capacity of a foreign country's national military forces in order for that country to conduct counterterrorist operations or participate in or support military or stability operations in which U.S. Armed Forces are a participant. Since FY 2006, the State Department and Defense Department have been working to jointly develop and implement programs under 1206 authority. The Department of State maintains that longstanding security assistance authorities and resources should be supplemented to be capable of meeting today's U.S. strategic requirements. Existing authorities exercised by the Department of State for the provision of security assistance include the Foreign Military Financing (FMF), International Military Education and Training (IMET), and Peacekeeping Operations (PKO) accounts authorized by the Foreign Assistance Act of 1961, as amended (FAA), and the Arms Export Control Act (AECA). While the committee concurs with the Administration that new security assistance tools need to be developed in order to meet the security challenges of the 21st century, we are also concerned by the apparent migration of security assistance authorities from the Department of State to the Department of Defense. This provision intends to address that trend by designating certain funds for the Secretary of State to use the full flexibility under existing law to provide training and equipment for foreign militaries when such assistance meets U.S. foreign policy objectives. It draws on unobligated FMF balances for funding. During the last fiscal year, the Department of State had almost \$4 million in unobligated funds, which could be useful for financing this program authority. The Committee intends to review the management of U.S. security assistance during the remainder of this Congress and the next.

*Sec. 402. Maintenance of European Union Arms Embargo against China.*

Sec. 402 states U.S. policy to oppose the lifting of the E.U. arms embargo and to take whatever diplomatic and economic steps necessary to convince E.U. Member States from taking that step. This section also requires the President to report to the Congress on all efforts the U.S. is taking to accomplish this goal.

Last November, President Sarkozy of France declared during his visit to Beijing that he wanted to lift this embargo. France will assume the Presidency of the EU in July, and would presumably broach this issue with the other Member States of the EU. It is important for the Congress to again send a clear message of opposition to lifting the embargo.

*Sec. 403. Reimbursement of Salaries of Members of the Reserve Components in Support of Security Cooperation Missions.*

This section provides an authority for the costs of certain transfers to include the certain personnel costs involved in the transfers.

In general, the salaries of members of the National Guard and Reserve who are performing security cooperation missions outside the U.S. cannot be reimbursed as part of an FMS contract for security cooperation, such as training. This section would allow the De-

partment of Defense to use other funds to pay Reserve members to perform missions that build global partnerships and help win the war on terror.

*Sec. 404. Foreign Military Sales Stockpile Fund.*

This section responds to a DoD request to update the moribund “Special Defense Acquisition Fund” in Sec. 51 of the AECA by adding “building partner capacity” as a purpose of the Fund, allowing proceeds from the lease of defense items under Sec. 61 of the AECA to go to the Fund, and allowing amounts in the Fund to remain available until expended.

*Sec. 405. Congressional Notification Requirements Under the Arms Export Control Act.*

This provision replaces “the Speaker” with the “Chairman of the Committee on Foreign Affairs” or the “Committee on Foreign Affairs,” as appropriate, throughout the AECA, to match the reporting requirements to the Committee on Foreign Relations of the Senate.

*Sec. 406. Sense of Congress.*

Sec. 406 states the sense of Congress that the United States should not provide security assistance or export arms to nations contributing to massive, widespread, and systematic violations of human rights or acts of genocide, particularly with respect to Darfur, Sudan.

TITLE V: AUTHORITY TO TRANSFER NAVAL VESSELS

*Sec. 501. Authority to Transfer of Naval Vessels to Certain Foreign Recipients.*

This section authorizes the grant of surplus U.S. naval vessels to Peru, Chile, Greece and Pakistan. Transfers of naval vessels must satisfy certain statutory requirements, which stipulate that naval vessels larger than 3,000 tons or less than 20 years old may not be transferred to another nation unless approved by law.

According to the Secretary of the Navy, these proposed transfers would improve U.S. political and military relationships with close allies. They would support strategic engagement goals and regional security cooperation objectives. The U.S. would incur no costs in transferring these naval vessels. The recipients would be responsible for all costs associated with the transfers, including maintenance, repairs, training, and fleet turnover costs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 45 OF THE STATE DEPARTMENT BASIC  
AUTHORITIES ACT OF 1956**

DEFENSE TRADE CONTROLS REGISTRATION FEES

SEC. 45. **[For]** (a) *IN GENERAL.*—For each fiscal year, 100 percent of the registration fees collected by the **[Office]** *Directorate* of Defense Trade Controls of the Department of State shall be credited to a Department of State account, to be available without fiscal year limitation. **[Fees credited to that account shall be available only for payment of expenses incurred for—**

**[(1) contract personnel to assist in the evaluation of defense trade controls license applications, reduction in processing time for license applications, and improved monitoring of compliance with the terms of licenses;**

**[(2) the automation of defense trade control functions, including compliance and enforcement activities, and the processing of defense trade control license applications, including the development, procurement, and utilization of computer equipment and related software; and**

**[(3) the enhancement of defense trade export compliance and enforcement activities, including compliance audits of United States and foreign parties, the conduct of administrative proceedings, monitoring of end-uses in cases of direct commercial arms sales or other transfers, and cooperation in proceedings for enforcement of criminal laws related to defense trade export controls.]**

(b) *AVAILABILITY OF FEES.*—Fees credited to the account referred to in subsection (a) shall be available only for payment of expenses incurred for—

(1) management,

(2) licensing (in order to meet the requirements of section 105 of the *Defense Trade Controls Performance Improvement Act of 2008* (relating to adequate staff and resources of the *Directorate of Defense Trade Controls*)),

(3) compliance,

(4) policy activities, and

(5) facilities,

of defense trade controls functions.

(c) *ALLOCATION OF FEES.*—In allocating fees for payment of expenses described in subsection (b), the Secretary of State shall accord the highest priority to payment of expenses incurred for personnel and equipment of the *Directorate of Defense Trade Controls*, including payment of expenses incurred to meet the requirements of section 105 of the *Defense Trade Controls Performance Improvement Act of 2008*.

\* \* \* \* \*

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**ARMS EXPORT CONTROL ACT**

\* \* \* \* \*

**Chapter 1.—FOREIGN AND NATIONAL SECURITY POLICY  
OBJECTIVES AND RESTRAINTS**

\* \* \* \* \*

SEC. 3. ELIGIBILITY.—(a) \* \* \*

(b) The consent of the President under paragraph (2) of subsection (a) or under paragraph (1) of section 505(a) of the Foreign Assistance Act of 1961 (as it relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign country or international organization of defense articles sold by the United States under this Act if—

(1) \* \* \*

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

\* \* \* \* \*

(d)(1) Subject to paragraph (5), the President may not give his consent under paragraph (2) of subsection (a) or under the third sentence of such subsection, or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more, unless the President submits to the [Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate] *Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate* a written certification with respect to such proposed transfer containing—

(A) \* \* \*

\* \* \* \* \*

(2)(A) \* \* \*

(B) In the case of a proposed transfer to the North Atlantic Treaty Organization, or any member country of such Organization, Japan, Australia, *the Republic of Korea, Israel, or New Zealand*, unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until fifteen calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such fifteen-day period, a joint resolution prohibiting the proposed transfer.

\* \* \* \* \*

(3)(A) Subject to paragraph (5), the President may not give his consent to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more, the export of which has been licensed or approved under section 38 of this Act, unless before giving such consent the President submits to the [Speaker of the House of Representatives and the Chairman of the Com-

mittee on Foreign Relations of the Senate] *Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate* a certification containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted—

(i) at least 15 calendar days before such consent is given in the case of a transfer to a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, *the Republic of Korea, Israel, or New Zealand*; and

\* \* \* \* \*

(5) In the case of a transfer to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, *the Republic of Korea, Israel, or New Zealand* that does not authorize a new sales territory that includes any country other than such countries, the limitations on consent of the President set forth in paragraphs (1) and (3)(A) shall apply only if the transfer is—

(A) \* \* \*

\* \* \* \* \*

(e) If the President receives any information that a transfer of any defense article, or related training or other defense service, has been made without his consent as required under this section or under section 505 of the Foreign Assistance Act of 1961, he shall report such information immediately to the [Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate] *Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate*.

\* \* \* \* \*

SEC. 5. PROHIBITION AGAINST DISCRIMINATION.—(a) \* \* \*

\* \* \* \* \*

(c) The President shall promptly transmit reports to the [Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate] *Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate* concerning any instance in which any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the performance of any sale or licensed transaction under this Act. Such reports shall include (1) a description of the facts and circumstances of any such discrimination, (2) the response thereto on the part of the United States or any agency or employee thereof, and (3) the result of such response, if any.

\* \* \* \* \*

SEC. 6. FOREIGN INTIMIDATION AND HARASSMENT OF INDIVIDUALS IN THE UNITED STATES.—No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued under this Act with respect to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States. The President shall report any such determination

promptly to the [Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations* of the Senate.

\* \* \* \* \*

**Chapter 2.—FOREIGN MILITARY SALES  
AUTHORIZATIONS**

SEC. 21. SALES FROM STOCKS.—(a) \* \* \*

\* \* \* \* \*

(e)(1) \* \* \*

(2)(A) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for particular sales that would, if made, significantly advance United States Government Arms Export interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, *the Republic of Korea, Israel*, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.

\* \* \* \* \*

(h)(1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services, and contract audit defense services under this section—

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after the date of enactment of this subsection by, or under this Act on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization or the Governments of Australia, New Zealand, Japan, *the Republic of Korea*, or Israel, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

\* \* \* \* \*

(i)(1) Sales of defense articles and defense services which could have significant adverse effect on the combat readiness of the Armed Forces of the United States shall be kept to an absolute minimum. The President shall transmit to the [Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate] *Committees on Foreign Affairs and Armed Services of the House of Representatives and the Committees on Foreign Relations and Armed Services of the Senate* on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section or under authority of chapter 2B, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily

classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

(A) \* \* \*

\* \* \* \* \*

SEC. 27. AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—(a) \* \* \*

\* \* \* \* \*

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

(1) \* \* \*

\* \* \* \* \*

**Chapter 3.—MILITARY EXPORT CONTROLS**

\* \* \* \* \*

SEC. 36. REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) The President shall transmit to the [Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations* of the Senate not more than sixty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum) containing—

(1) \* \* \*

\* \* \* \* \*

(b)(1) Subject to paragraph (6), in the case of any letter of offer to sell any defense articles or services under this Act for \$50,000,000 or more, any design and construction services for \$200,000,000 or more, or any major defense equipment for \$14,000,000 or more, before such letter of offer is issued, the President shall submit to the [Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations* of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a), or (in the case of a sale of design and



construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a), and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile non-proliferation policy. Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell (if known on the date of transmittal of such certification). In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

(A) \* \* \*

\* \* \* \* \*

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information. [The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days after receiving such certification, enacts a joint resolution.]

(2) *The letter of offer shall not be issued—*

(A) *with respect to a proposed sale of any defense articles or defense services under this Act for \$200,000,000 or more, any design and construction services for \$300,000,000 or more, or any major defense equipment for \$75,000,000 or more, to the North Atlantic Treaty Organization (NATO), any member country of NATO, Japan, Australia, the Republic of Korea, Israel, or New Zealand, if Congress, within 15 calendar days after receiving such certification, or*

(B) *with respect to a proposed sale of any defense articles or services under this Act for \$100,000,000 or more, any design and construction services for \$200,000,000 or more, or any major defense equipment for \$50,000,000 or more, to any other*

*country or organization, if Congress, within 30 calendar days after receiving such certification, enacts a joint resolution* prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.

[(2)] (3) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that for purposes of consideration of any joint resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, *the Republic of Korea, Israel, or New Zealand*, it shall be in order in the Senate to move to discharge a committee to which such joint resolution was referred if such committee has not reported such joint resolution at the end of five calendar days after its introduction.

[(3)] (4) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

[(4)] (5) In addition to the other information required to be contained in a certification submitted to the Congress under this subsection, each such certification shall cite any quarterly report submitted pursuant to section 28 of this Act which listed a price and availability estimate, or a request for the issuance of a letter of offer, which was a basis for the proposed sale which is the subject of such certification.

[(5)] (6)(A) \* \* \*

\* \* \* \* \*

(C) [Subject to paragraph (6), if] *If the enhancement or upgrade in the sensitivity of technology or the capability of major defense equipment, defense articles, defense services, or design and construction services described in a numbered certification submitted under this subsection costs \$14,000,000 or more in the case of any major defense equipment, \$50,000,000 or more in the case of defense articles or defense services, or \$200,000,000 or more in the case of design or construction services, then the President shall submit to the [Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate] Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a new numbered certification which relates to such enhancement or upgrade and which shall be considered for purposes of this subsection as if it were a separate letter of offer to sell defense equipment, articles, or services, subject to all of the requirements, restrictions, and conditions set forth in this subsection. For purposes of this subparagraph, references in this sub-*

section to sales shall be deemed to be references to enhancements or upgrades in the sensitivity of technology or the capability of major defense equipment, articles, or services, as the case may be.

\* \* \* \* \*

[(6) The limitation in paragraph (1) and the requirement in paragraph (5)(C) shall apply in the case of a letter of offer to sell to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, or New Zealand that does not authorize a new sales territory that includes any country other than such countries only if the letter of offer involves—

[(A) the sale of major defense equipment under this Act for, or the enhancement or upgrade of major defense equipment at a cost of, \$25,000,000 or more, as the case may be; and

[(B) the sale of defense articles or services for, or the enhancement or upgrade of defense articles or services at a cost of, \$100,000,000 or more, as the case may be; or

[(C) the sale of design and construction services for, or the enhancement or upgrade of design and construction services at a cost of, \$300,000,000 or more, as the case may be.]

(c)(1) Subject to paragraph (5), in the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of \$14,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$50,000,000 or more (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more), before issuing such license the President shall transmit to the [Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations* of the Senate an unclassified numbered certification with respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export and a description of any such offset agreement. In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense. In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. A certification transmitted pursuant

to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.

(2) Unless the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, a license for export described in paragraph (1)—

(A) in the case of a license for an export of *any major defense equipment sold under a contract in the amount of \$75,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$200,000,000 or more, (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more)* to the North Atlantic Treaty [Organization,] *Organization (NATO)*, any member country of [that Organization] *NATO* or Australia, Japan, *the Republic of Korea, Israel,* or New Zealand, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export;

\* \* \* \* \*

(C) in the case of any other license for an export of *any major defense equipment sold under a contract in the amount of \$50,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$100,000,000 or more, (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more)*, shall not be issued until at least 30 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 30-day period, enacts a joint resolution prohibiting the proposed export.

\* \* \* \* \*

(4) The provisions of [subsection (b)(5)] *subsection (b)(6)* shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in [subsection (b)(5)] *subsection (b)(6)* to “a letter of offer” or “an offer” shall be deemed to be a reference to “a contract”.

[(5) In the case of an application by a person (other than with regard to a sale under section 21 or 22 of this Act) for a license for the export to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, or New Zealand that does not authorize a new sales territory that includes any country other than such countries, the limitations on the issuance of the license set forth in paragraph (1) shall apply only if the license is for export of—

[(A) major defense equipment sold under a contract in the amount of \$25,000,000 or more; or

[(B) defense articles or defense services sold under a contract in the amount of \$100,000,000 or more.]]

(d)(1) \* \* \*

(2) A certification under this subsection shall be submitted—

(A) at least 15 days before approval is given in the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, *the Republic of Korea, Israel, or New Zealand*; and

\* \* \* \* \*

(f) The President shall cause to be published in a timely manner in the Federal Register, upon transmittal to the [Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations* of the Senate, the full unclassified text of—

(1) \* \* \*

\* \* \* \* \*

(h) *CERTIFICATION REQUIREMENT RELATING ISRAEL'S QUALITATIVE MILITARY EDGE.*—

(1) *IN GENERAL.*—*Any certification relating to a proposed sale or export of defense articles or defense services under this section to any country in the Middle East other than Israel shall include a determination that the sale or export of the defense articles or defense services will not adversely affect Israel's qualitative military edge over military threats to Israel.*

(2) *DEFINITION.*—*In this subsection, the term "qualitative military edge" has the meaning given the term in section 205 of the Security Assistance and Arms Export Control Reform Act of 2008.*

\* \* \* \* \*

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

[(3)(A) For each of the fiscal years 1988 and 1989, \$250,000 of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for the payment of expenses incurred for—

[(i) contract personnel to assist in the evaluation of munitions control license applications, reduce processing time for license applications, and improve monitoring of compliance with the terms of licenses; and

[(ii) the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.]]

(3)(A) *For each fiscal year, 100 percent of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees*

credited to that account shall be available only for the payment of expenses incurred for—

- (i) management,
  - (ii) licensing (in order to meet the requirements of section 105 of the Defense Trade Controls Performance Improvement Act of 2008 (relating to adequate staff and resources of the Directorate of Defense Trade Controls)),
  - (iii) compliance,
  - (iv) policy activities, and
  - (v) facilities,
- of defense trade controls functions.

\* \* \* \* \*

(k) *SPECIAL LICENSING AUTHORIZATION FOR CERTAIN EXPORTS TO NATO MEMBER STATES, AUSTRALIA, JAPAN, NEW ZEALAND, ISRAEL, AND SOUTH KOREA.*—

(1) *AUTHORIZATION.*—(A) *The President may provide for special licensing authorization for exports of United States-manufactured spare and replacement parts or components listed in an application for such special licensing authorization in connection with defense items previously exported to NATO member states, Australia, Japan, New Zealand, Israel, and South Korea. A special licensing authorization issued pursuant to this clause shall be effective for a period not to exceed 5 years.*

(B) *An authorization may be issued under subparagraph (A) only if the applicable government of the country described in subparagraph (A), acting through the applicant for the authorization, certifies that—*

*(i) the export of spare and replacement parts or components supports a defense item previously lawfully exported;*

*(ii) the spare and replacement parts or components will be transferred to a defense agency of a country described in subparagraph (A) that is a previously approved end-user of the defense items and not to a distributor or a foreign consignee of such defense items;*

*(iii) the spare and replacement parts or components will not to be used to materially enhance, optimize, or otherwise modify or upgrade the capability of the defense items;*

*(iv) the spare and replacement parts or components relate to a defense item that is owned, operated, and in the inventory of the armed forces a country described in subparagraph (A);*

*(v) the export of spare and replacement parts or components will be effected using the freight forwarder designated by the purchasing country's diplomatic mission as responsible for handling transfers under chapter 2 of this Act as required under regulations; and*

*(vi) the spare and replacement parts or components to be exported under the special licensing authorization are specifically identified in the application.*

(C) *An authorization may not be issued under subparagraph (A) for purposes of establishing offshore procurement arrangements or producing defense articles offshore.*

(D)(i) *For purposes of this subsection, the term “United States-manufactured spare and replacement parts or components” means A spare and replacement parts or components—*

(I) with respect to which—

(aa) United States-origin content costs constitute at least 85 percent of the total content costs;

(bb) United States manufacturing costs constitute at least 85 percent of the total manufacturing costs; and

(cc) foreign content, if any, is limited to content from countries eligible to receive exports of items on the United States Munitions List under the International Traffic in Arms Regulations (other than de minimis foreign content); and

(II) that were last substantially transformed in the United States.

(ii) For purposes of clause (i)(I)(aa) and (bb), the costs of non-United States-origin content shall be determined using the final price or final cost associated with the non-United States-origin content.

(2) **INAPPLICABILITY PROVISIONS.**—(A) The provisions of this subsection shall not apply with respect to re-exports or re-transfers of spare and replacement parts or components and related services of defense items described in paragraph (1).

(B) The congressional notification requirements contained in section 36(c) of this Act shall not apply with respect to an authorization issued under paragraph (1).

(I) **REPORT.**—

(1) **IN GENERAL.**—The President shall transmit to the appropriate congressional committees a report that contains a detailed listing, by country and by international organization, of the total dollar value of major defense equipment and defense articles exported pursuant to licenses authorized under this section for the previous fiscal year.

(2) **INCLUSION IN ANNUAL BUDGET.**—The report required by this subsection shall be included in the supporting information of the annual budget of the United States Government required to be submitted to Congress under section 1105 of title 31, United States Code.

(3) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this subsection, the term “appropriate congressional committees” means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

**SEC. 38A. AVAILABILITY OF INFORMATION ON THE STATUS OF LICENSE APPLICATIONS UNDER THIS CHAPTER.**

(a) **AVAILABILITY OF INFORMATION.**—Not later than one year after the date of the enactment of the Defense Trade Controls Performance Improvement Act of 2008, the President shall make available to persons who have pending license applications under this chapter and the committees of jurisdiction the ability to access electronically current information on the status of each license application required to be submitted under this chapter.

(b) **MATTERS TO BE INCLUDED.**—The information referred to in subsection (a) shall be limited to the following:

(1) The case number of the license application.

(2) The date on which the license application is received by the Department of State and becomes an “open application”.

(3) *The date on which the Directorate of Defense Trade Controls makes a determination with respect to the license application or transmits it for interagency review, if required.*

(4) *The date on which the interagency review process for the license application is completed, if such a review process is required.*

(5) *The date on which the Department of State begins consultations with the congressional committees of jurisdiction with respect to the license application.*

(6) *The date on which the license application is sent to the congressional committees of jurisdiction.*

\* \* \* \* \*

SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) \* \* \*

\* \* \* \* \*

(f) RESCISSION.—(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the [Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate] *Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate*—

(A) \* \* \*

\* \* \* \* \*

(g) WAIVER.—The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) \* \* \*

(2) not less than 15 days prior to the proposed transaction, the President—

(A) \* \* \*

(B) submits to the [Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate] *Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate* a report containing—

(i) \* \* \*

\* \* \* \* \*

**CHAPTER 5—[SPECIAL DEFENSE ACQUISITION FUND] FOREIGN MILITARY SALES STOCKPILE FUND**

SEC. 51. [SPECIAL DEFENSE ACQUISITION FUND] *FOREIGN MILITARY SALES STOCKPILE FUND*.—(a)(1) Under the direction of the President and in consultation with the Secretary of State, the Secretary of Defense shall establish a [Special Defense Acquisition Fund] *Foreign Military Sales Stockpile Fund* (hereafter in this chapter referred to as the “Fund”), to be used as a revolving fund separate from other accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this Act, the Foreign Assistance Act of 1961, or as otherwise authorized by



law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this chapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

\* \* \* \* \*

(4) The Fund shall also be used to acquire defense articles that are particularly suited for use for *building the capacity of recipient countries and* narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(b) The Fund shall consist of—

(1) \* \* \*

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, [and]

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961) of defense articles and defense services acquired under this chapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 21(a)(1) or section 22 of this Act or section 644(m) of the Foreign Assistance Act of 1961, as appropriate, and

(4) *collections from leases made pursuant to section 61 of this Act,*

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c)(1) \* \* \*

[(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.]

(2) *Amounts credited to the Fund under subsection (b) shall remain available until expended.*

\* \* \* \* \*

## CHAPTER 6—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

\* \* \* \* \*

SEC. 62. REPORTS TO THE CONGRESS.—(a) Before entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this chapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961, for a period of one year or longer, the President shall transmit to the [Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Armed Services of the Senate, a written certification which specifies—*

(1) \* \* \*

\* \* \* \* \*

(c) The certification required by subsection (a) shall be transmitted—

(1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, *the Republic of Korea*, *Israel*, or New Zealand; and

\* \* \* \* \*

SEC. 63. LEGISLATIVE REVIEW.—(a)(1) \* \* \*

(2) In the case of an agreement described in paragraph (1) that is entered into with a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, *the Republic of Korea*, *Israel*, or New Zealand, the limitations in paragraph (1) shall apply only if the agreement involves a lease or loan of—

(A) \* \* \*

\* \* \* \* \*

**CHAPTER 10—NUCLEAR NONPROLIFERATION CONTROLS**

**SEC. 101. NUCLEAR ENRICHMENT TRANSFERS.**

(a) \* \* \*

\* \* \* \* \*

(b) CERTIFICATION BY PRESIDENT OF NECESSITY OF CONTINUED ASSISTANCE; DISAPPROVAL BY CONGRESS.—(1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the [Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate] *Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate* that—

(A) \* \* \*

\* \* \* \* \*

**SEC. 102. NUCLEAR REPROCESSING TRANSFERS, ILLEGAL EXPORTS FOR NUCLEAR EXPLOSIVE DEVICES, TRANSFERS OF NUCLEAR EXPLOSIVE DEVICES, AND NUCLEAR DETONATIONS.**

(a) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OF NUCLEAR REPROCESSING EQUIPMENT, MATERIALS, OR TECHNOLOGY; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) \* \* \*

\* \* \* \* \*

(2) Notwithstanding paragraph (1) of this subsection, the President in any fiscal year may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing during that fiscal year to the [Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate] *Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate* that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The

President shall transmit with such certification a statement setting forth the specific reasons therefor.

\* \* \* \* \*

(b) PROHIBITIONS ON ASSISTANCE TO COUNTRIES INVOLVED IN TRANSFER OR USE OF NUCLEAR EXPLOSIVE DEVICES; EXCEPTIONS; PROCEDURES APPLICABLE.—(1) \* \* \*

\* \* \* \* \*

(4)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous session, delay the imposition of sanctions which would otherwise be required under paragraph (1)(A) or (1)(B) of this subsection if the President first transmits to the [Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations] *Chairman of the Committee on Foreign Affairs of the House of Representatives and to the Chairman of the Committee on Foreign Relations* of the Senate, a certification that he has determined that an immediate imposition of sanctions on that country would be detrimental to the national security of the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

\* \* \* \* \*

(5) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (4) of this subsection, the President may waive any sanction which would otherwise be required under paragraph (1)(A) or (1)(B) if he determines and certifies in writing to the [Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate] *Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate* that the imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

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**FOREIGN ASSISTANCE ACT OF 1961**

\* \* \* \* \*

**TITLE XII—FAMINE PREVENTION AND FREEDOM FROM HUNGER**

\* \* \* \* \*

**PART II**

\* \* \* \* \*

**CHAPTER 2—MILITARY ASSISTANCE**

\* \* \* \* \*

SEC. 514. STOCKPILING OF DEFENSE ARTICLES FOR FOREIGN COUNTRIES.—(a) \* \* \*

(b)(1) \* \* \*

(2)(A) The value of such additions to stockpiles of defense articles in foreign countries shall not exceed \$200,000,000 for each of fiscal years [2007 and 2008] 2009 and 2010.

\* \* \* \* \*

PART III

\* \* \* \* \*

CHAPTER 2—ADMINISTRATIVE PROVISIONS

\* \* \* \* \*

SEC. 632. ALLOCATION AND REIMBURSEMENT AMONG AGENCIES.—

(a) \* \* \*

\* \* \* \* \*

(d)(1) Except as otherwise provided in section 506, reimbursement shall be made to any United States Government agency, from funds available for use under part II, for any assistance furnished under part II from, by, or through such agency. Such reimbursement shall be in an amount equal to the value (as defined in section 644(m)) of the defense articles or of the defense services (other than salaries of members of the Armed Forces of the United States), or other assistance furnished, plus expenses arising from or incident to operations under part II (other than salaries of the Armed Forces of the United States and unfunded estimated costs of civilian retirement and other benefits). The amount of such reimbursement shall be credited to the current applicable appropriations, funds, or accounts of such agency.

(2) Notwithstanding provisions concerning the exclusion of the costs of salaries of members of the Armed Forces in section 503(a) of this Act and paragraph (1) of this subsection, the full cost of salaries of members of the reserve components of the Armed Forces (specified in section 10101 of title 10, United States Code) may, during each of fiscal years 2009 and 2010, be included in calculating pricing or value for reimbursement charged under section 503(a) of this Act and paragraph (1) of this subsection, respectively.

\* \* \* \* \*

CHAPTER 3—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

SEC. 655. ANNUAL MILITARY ASSISTANCE REPORT.

(a) \* \* \*

(b) INFORMATION RELATING TO MILITARY ASSISTANCE AND MILITARY EXPORTS.—Each such report shall show the aggregate dollar value and quantity of defense articles (including excess defense articles), defense services, and international military education and training activities authorized by the United States and of such articles, services, and activities provided by the United States, excluding any activity that is reportable under title V of the National Security Act of 1947, to each foreign country and international orga-

nization. The report shall specify, by category, whether such defense articles—

(1) \* \* \*

(2) were furnished with the financial assistance of the United States Government, including through loans and guarantees; **[or]**

(3) were licensed for export under section 38 of the Arms Export Control Act and, if so, a specification of those defense articles that were exported during the fiscal year covered by the report, including, in the case of defense articles that are firearms controlled under category I of the United States Munitions List, a statement of the aggregate dollar value and quantity of semiautomatic assault weapons, or spare parts for such weapons, the manufacture, transfer, or possession of which is unlawful under section 922 of title 18, United States Code, that were licensed for export during the period covered by the report~~].~~; *or*

*(4) were exported without a license under section 38 of the Arms Export Control Act (22 U.S.C. 2778) pursuant to an exemption established under the International Traffic in Arms Regulations, other than defense articles exported in furtherance of a letter of offer and acceptance under the Foreign Military Sales program or a technical assistance or manufacturing license agreement, including the specific exemption provision in the regulation under which the export was made.*

\* \* \* \* \*

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**SECTION 12001 OF THE DEPARTMENT OF DEFENSE  
APPROPRIATIONS ACT, 2005**

GENERAL PROVISIONS, THIS CHAPTER

SEC. 12001. (a) \* \* \*

\* \* \* \* \*

(d) No transfer may be made under the authority of this section more than **[4]** 6 years after the date of the enactment of this Act.

\* \* \* \* \*

EXCHANGE OF LETTERS—ARMED SERVICES COMMITTEE AND  
FOREIGN AFFAIRS COMMITTEE

COMMITTEE ON ARMED SERVICES,  
*Washington, DC, May 12, 2008.*

The Honorable HOWARD L. BERMAN, *Chairman,*  
*Committee on Foreign Affairs,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I write to confirm our mutual understanding regarding H.R. 5916, "To reform the administration of the Arms Export Control Act, and for other purposes." This legislation contains subject matter within the jurisdiction of the House Committee on Armed Services.

Our Committee recognizes the importance of H.R. 5916 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over this legislation, the Committee on Armed Services will waive further consideration of H.R. 5916. I do so with the understanding that by waiving further consideration of the bill, the Committee does not waive any future jurisdictional claims over similar measures. In the event of a conference with the Senate on this bill, the Committee on Armed Services reserves the right to seek the appointment of conferees.

I would appreciate the inclusion of this letter and a copy of the response in your Committee's report on H.R. 5916 and in the *Congressional Record* during consideration of the measure on the House floor.

Very truly yours,

IKE SKELTON, *Chairman.*

IS:jfh

cc: Honorable Nancy Pelosi  
Honorable Duncan Hunter  
Honorable Ileana Ros-Lehtinen  
Honorable John V. Sullivan

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COMMITTEE ON FOREIGN AFFAIRS,  
*Washington, DC, May 12, 2008.*

The Honorable IKE SKELTON, *Chairman,*  
*Committee on Armed Services,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 5916, the Security Assistance and Arms Export Control Reform Act of 2008.

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Armed Services. I agree that the inaction of your Committee with respect to the bill does not in any way prejudice the Armed Services Committee's jurisdictional interests and prerogatives regarding this bill or similar legislation.

Further, as to any House-Senate conference on the bill, I understand that your Committee reserves the right to seek the appointment of conferees for consideration of portions of the bill that are within the Committee's jurisdiction.

I will ensure that our exchange of letters is included in my Committee's report on the bill and in the *Congressional Record* during consideration on the House floor. I look forward to working with you on this important legislation. If you wish to discuss this matter further, please contact me or have your staff contact my staff.

Cordially,

HOWARD L. BERMAN, *Chairman*.

HLB:da/mco

