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110TH CONGRESS
2D SESSION

H. R. 5916

AN ACT

To reform the administration of the Arms Export Control Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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, New Zealand, Israel, and South Korea.
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. 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 weapons-related nuclear technology, other technology related to weapons of mass destruction, and 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 en-

forcement, 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 and related technical data, 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) attempted acquisition of technology and technical data critical to manufacture items on the United States Munitions List;

(IV) destination countries and transit countries;

(V) modes of transport;

(VI) trafficking methods, such as use of false documentation and front

companies registered under flags of convenience;

(VII) whether the attempted illicit transfer was successful; and

(VIII) 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

1 require offsets for major sales of defense
2 articles; and
3 (F) assess the extent to which export con-
4 trol policies and practices under the Arms Ex-
5 port Control Act promote the protection of
6 basic human rights.
7 (b) CONGRESSIONAL BRIEFINGS.—The President
8 shall provide periodic briefings to the appropriate congres-
9 sional committees on the progress of the review and as-
10 sessment conducted under subsection (a). The require-
11 ment to provide congressional briefings under this sub-
12 section shall terminate on the date on which the President
13 transmits to the appropriate congressional committees the
14 report required under subsection (c).
15 (c) REPORT.—Not later than 18 months after the
16 date of the enactment of this Act, the President shall
17 transmit to the appropriate congressional committees and
18 the Committee on Armed Services of the House of Rep-
19 resentatives and the Committee on Armed Services of the
20 Senate a report that contains the results of the review and
21 assessment conducted under subsection (a). The report re-
22 quired by this subsection shall contain a certification that
23 the requirement of subsection (a)(2)(C) has been met, or
24 if the requirement has not been met, the reasons therefor.
25 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 proc-

essing 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 correc-

tive 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,

1 based on the number of licenses and other authorizations
2 expected to be received during such fiscal year. The Sec-
3 retary shall ensure that in meeting the requirement of this
4 subsection, the performance of other functions of the Di-
5 rectorate of Defense Trade Controls is maintained and
6 adequate staff is provided for those functions.

7 (c) MINIMUM NUMBER OF STAFF FOR COMMODITY
8 JURISDICTION DETERMINATIONS.—For each of the fiscal
9 years 2009 through 2011, the Secretary of State shall en-
10 sure that the Directorate of Defense Trade Controls has,
11 to the extent practicable, not less than three individuals
12 assigned to review applications for commodity jurisdiction
13 determinations.

14 (d) ENFORCEMENT RESOURCES.—In accordance
15 with section 127.4 of title 22, Code of Federal Regula-
16 tions, U.S. Immigration and Customs Enforcement is au-
17 thorized to investigate violations of the International Traf-
18 fic in Arms Regulations on behalf of the Directorate of
19 Defense Trade Controls of the Department of State. The
20 Secretary of State shall ensure that the Directorate of De-
21 fense Trade Controls has adequate staffing for enforce-
22 ment 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:

1 "(b) AVAILABILITY OF FEES.—Fees credited to the
2 account referred to in subsection (a) shall be available only
3 for payment of expenses incurred for—
4 "(1) management,
5 "(2) licensing (in order to meet the require-
6 ments of section 105 of the Defense Trade Controls
7 Performance Improvement Act of 2008 (relating to
8 adequate staff and resources of the Directorate of
9 Defense Trade Controls)),
10 "(3) compliance,
11 "(4) policy activities, and
12 "(5) facilities,
13 of defense trade controls functions."; and
14 (3) by adding at the end the following:
15 "(c) ALLOCATION OF FEES.—In allocating fees for
16 payment of expenses described in subsection (b), the Sec-
17 retary of State shall accord the highest priority to pay-
18 ment of expenses incurred for personnel and equipment
19 of the Directorate of Defense Trade Controls, including
20 payment of expenses incurred to meet the requirements
21 of section 105 of the Defense Trade Controls Performance
22 Improvement Act of 2008.".
23 (b) CONFORMING AMENDMENT.—Section
24 38(b)(3)(A) of the Arms Export Control Act (22 U.S.C.
25 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.".

SEC. 108. REVIEW OF ITAR AND USML.

(a) IN GENERAL.—The Secretary of State, in coordination with the heads of other relevant departments and agencies of the United States Government, 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 tech-

nologies 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 and the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate 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, NEW ZEALAND, ISRAEL, AND SOUTH KOREA.

(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);

"(II) that were last substantially transformed in the United States; and

"(III) that are not—

"(aa) classified as significant military equipment; or

"(bb) listed on the Missile Technology Control Regime Annex.

"(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 subse-

quent 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)''; and

(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 de-

fense 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)''; and

(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:

"(l) 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.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees and the Committee on Armed Services of the House of Representatives

and the Committee on Armed Services of the Senate a report 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 congres-

sional 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.

(c) OTHER AUTHORITIES.—

(1) AVAILABILITY OF FUNDS FOR ADVANCED WEAPONS SYSTEMS.—To the extent the Government of Israel requests the United States to provide assistance for fiscal year 2009 for the procurement of advanced weapons systems, amounts authorized to be made available for Israel under this section shall, as agreed to by Israel and the United States, be available for such purposes, of which not less than $670,650,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development.

(2) DISBURSEMENT OF FUNDS.—Amounts authorized to be made available for Israel under this section shall be disbursed not later than 30 days after the date of the enactment of an Act making appropriations for the Department of State, foreign operations, and related programs for fiscal year 2009, or October 31, 2008, whichever occurs later.

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 deter-

mines 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, including all United States and international activities to verify compliance with such commitment;

(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;

(4) describes in detail all United States assistance, regardless of the source, provided to North Korea by reason of the exercise of the waiver authority under section 301 and any assistance provided under any other authority if such assistance is provided for the same or similar purposes; and

(5) 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 declara-

tion 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 Assistance 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, the Committee on Appropriations, and the Committee on Armed Services of the House of Representatives; and

(B) the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services 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 Re-

public 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 shall consult 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 reas-

surance 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 poli-

cies 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) 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. 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

1 transfer of a vessel under this section, that the recipient
2 to which the vessel is transferred have such repair or re-
3 furbishment of the vessel as is needed before the vessel
4 joins the naval forces of the recipient performed at a ship-
5 yard located in the United States, including a United
6 States Navy shipyard.

7 (e) EXPIRATION OF AUTHORITY.—The authority to
8 transfer a vessel under this section shall expire at the end
9 of the 2-year period beginning on the date of the enact-
10 ment of this Act.

Passed the House of Representatives May 14, 2008.

Attest:

Clerk.

110th CONGRESS
2d Session

H. R. 5916

AN ACT

To reform the administration of the Arms Export Control Act, and for other purposes.