SEC. ___ MAINTENANCE OF PROHIBITION ON PROCUREMENT BY DEPARTMENT OF DEFENSE OF COMMUNIST CHINESE-ORIGIN ITEMS THAT MEET THE DEFINITION OF GOODS AND SERVICES CONTROLLED AS MUNITIONS ITEMS WHEN MOVED TO THE "600 SERIES" OF THE COMMERCE CONTROL LIST.

(a) IN GENERAL.—Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. 2302 note) is amended—

(1) in subsection (b), by inserting "or in the 600 series of the control list of the Export Administration Regulations" after "in Arms Regulations,"; and

(2) in subsection (e), by adding at the end the following new paragraph:

"(3) The term '600 series of the control list of the Export Administration Regulations' means the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15 of the Code of Federal Regulations.".

(b) TECHNICAL CORRECTIONS TO ITAR REFERENCES.—Subsections (b) and (e)(2) of such section are amended by striking "Trafficking" and inserting "Traffic".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

Section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006 (Public Law 109-163) prohibits the Secretary of Defense from procuring goods or services, through a contract or any subcontract (at any tier), from any Communist Chinese military company if those goods or services are on the munitions list of the International Traffic in Arms Regulations. The term "munitions list of the International Trafficking in Arms Regulations" is currently defined in the statute as the United States Munitions List (USML), which imposes controls on defense articles and defense services.

The Administration is revising the USML in order to protect and enhance U.S. national security interests. Items remaining on the USML are those that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls; all other military items are being moved to the jurisdiction of the "600 series" of the Commerce Control List, which will increase allied access to such items. This will enhance U.S. national security by: (i) improving interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing the incentives for foreign manufacturers to "design out" and avoid U.S.-origin content and services; and (iii) allowing officials to focus government resources on transactions that pose greater concern. The Administration has concluded that, even though the items moved to the "600 series" are less-sensitive items, they are still military items and should remain prohibited for export to destinations subject to U.S. arms embargoes and, in the case of comparable Communist China-origin items, should remain prohibited from procurement by the Department of Defense.

Consistent with the intent of Congress to prohibit Department of Defense procurement of military items from Communist Chinese military companies, the Department seeks an amendment to Section 1211 of the NDAA for FY 2006 to include military items moved from the USML to the "600 series" of the Commerce Control List. This will ensure the prohibition remains in place for the same universe of items as currently required under Section 1211 and can be implemented in a change to Defense Federal Acquisition Regulations Supplement (DFARS) Clause 225.770. The amendment does not expand or narrow the scope of items subject to the current prohibition. Without an amendment, the Department of Defense could not maintain the prohibition. As a result, legislation is necessary to maintain the current prohibition effectively and more efficiently and to ensure that Communist Chinese-origin military items are not procured by the Department of Defense in order to protect the security of the supply chain for U.S. weapons systems and other defense programs.

Budget Implications:

Resource Requirements ($Millions)

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
DTSA	-	-	-	-	-	O&M, DW	04	200	0901532D8T

Changes to Existing Law: This proposal would make the following changes to section 1211 of National Defense Authorization Act (NDAA) for Fiscal Year 2006 (Public Law 109-163):

SEC. 1211. PROHIBITION ON PROCUREMENTS FROM COMMUNIST CHINESE MILITARY COMPANIES.

(a) PROHIBITION.–The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company.

(b) GOODS AND SERVICES COVERED. – For purposes of subsection (a), the goods and services described in this subsection are goods and services on the munitions list of the International ~~Trafficking~~ Traffic in Arms Regulations or in the 600 series of the control list of the Export Administration Regulations, other than goods or services procured –

(1) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People's Republic of China;

(2) for testing purposes; or

(3) for purposes of gathering intelligence.

(c) WAIVER AUTHORIZED.-The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

(d) REPORT.-The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

(e) DEFINITIONS. – In this section:

(1) The term "Communist Chinese military company" has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701 note).

(2) The term "munitions list of the International ~~Trafficking~~ Traffic in Arms Regulations" means the United States Munitions List contained in part 121 of subchapter M or title 22 of the Code of Federal Regulations.

(3) The term "600 series of the control list of the Export Administration Regulations" means the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15 of the Code of Federal Regulations.