SEC. 1213. AUTHORIZATION OF REDUCTION OF NONRECURRING COST CHARGE ASSOCIATED WITH PURCHASE OF MAJOR DEFENSE EQUIPMENT BY NATIONS NOT ELIGIBLE FOR REDUCTION BASED ON STANDARDIZATION.

(a) AUTHORIZATION OF REDUCTION.—Paragraph (2)(B) of section 21(e) of the Arms Export Control Act (22 U.S.C. 2761(e)) is amended—

(1) in the matter preceding clause (i), by inserting "reduce or" after "The President may";

(2) in clause (i), by inserting "without the reduction or waiver" after "charges"; and

(3) in clause (ii), by striking "the waiver" both places it appears and inserting "the reduction or waiver".

(b) TECHNICAL AMENDMENT.—Paragraph (3)(C)(i) of such section is amended by striking "weapon system partnership agreement" and inserting "support partnership agreement".

Section-by-Section Analysis

Current law allows the waiver of the charge or charges otherwise required under section 21(e)(2)(A) of the Arms Export Control Act if the imposition of such charge or charges would likely result in a loss of sale, but does not explicitly authorize the reduction of such a charge. However, current law does allow for the reduction or waiver of the charge or charges if the basis of the waiver request is North Atlantic Treaty Organization (NATO) standardization, or standardization with the Armed Forces of Japan, Australia, the Republic of Korea, Israel, or New Zealand in furtherance of mutual defense treaties.

This proposal would amend section 21(e)(2)(B) of the Arms Export Control Act (22 U.S.C. 2761(e)(2)(B)) to authorize a reduction, in addition to a waiver, of the nonrecurring cost charge or charges associated with the purchase of major defense equipment by partner nations not eligible to request a waiver based on standardization. This would provide the same flexibility in granting such waivers as is available for nonrecurring cost waivers for NATO members, Japan, Australia, Korea, Israel, and New Zealand. Nonrecurring cost waivers are important to partners and play a role in providing parity between foreign military sales and direct

commercial sales; however, recouped funds could be used as a source of funding for defense exportability and certain anti-tamper efforts, which would increase the potential for future sales.

Budget Implications: The proposed revision of the existing statutory requirement would not have a budgetary impact on the Department.

Changes to Existing Law: This proposal would amend section 21 of the Arms Export Control Act (22 U.S.C. 2761) as follows:

SEC. 21. SALES FROM STOCKS.—(a) ***

* * * * * * *

(e)(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 22 of this Act shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operations costs) of administration of sales made under this Act to all purchasers of such articles and services as specified in section 43(b) and section 43(c) of this Act;

(B) a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 or from funds made available on a nonrepayable basis under section 23 of this Act); and

(C) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

(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.

(B) The President may <u>reduce or</u> waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

(i) imposition of the charge or charges <u>without the reduction or waiver</u> likely would result in the loss of the sale; or

(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the <u>reduction or</u> waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the <u>reduction or</u> waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.

(3)(A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the North Atlantic Treaty Organization (NATO) Support Organization and its executive agencies in support of—

(i) a support partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 43(b) of this Act in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

(i) the term "~~weapon system~~ support partnership agreement" means an agreement between two or more member countries of the North Atlantic Treaty Organization (NATO) Support Organization and its executive agencies that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of activities common to the participating countries; and

(ii) the term "NATO/SHAPE project" means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

* * * * * * *