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APR 10 2003

The Honorable John Warner
Chairman, Senate Armed Services Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Defense requests that the Congress enact the enclosed legislative proposals that have significant defense and international relations implications. The Department of Defense and the Department of State have worked jointly to prepare these proposals. The Administration previously submitted all of these proposals as part of the Department of State Authorization Bill.

The purpose of each legislative proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

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William J. Haynes II

Enclosure:
As Stated





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The Honorable Duncan Hunter
Chairman, House Armed Services Committee
United States House of Representatives
Washington, D.C. 20515

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**SEC. ____ . INCLUSION OF STREAMLINED NOTIFICATION PROCESSES FOR
MAJOR INTERNATIONAL COOPERATIVE PROGRAMS UTILIZING A
COMPREHENSIVE PROGRAM AUTHORIZATION.**

1 Section 27 of the Arms Export Control Act (22 U.S.C. 2767f) is amended—

2 (1) in subsection (f)—

3 (A) by striking "and" at the end of paragraph (6);

4 (B) by striking the period at the end of paragraph (7) and inserting "; and" and

5 (C) by adding at the end the following new paragraph:

6 "(8) if applicable, the information specified in section 36(c)(1) or 36(d)(1)
7 for export licenses applications in support of cooperative programs under this
8 section for major defense equipment to be transferred with a value in the amount
9 of \$14,000,000 or more, or of defense articles or defense services with a value in
10 the amount of \$50,000,000 or more, being considered for approval prior to
11 submission of the numbered certification described in subsection.

12 "(A) The reporting requirement for export license applications
13 described in subparagraph (8) of this paragraph includes, but is not limited
14 to, commercial technical assistance or manufacturing licensing
15 agreements comprehensive export authorizations such as Global Project
16 Authorizations and Major Project Authorizations.

17 "(B) Pursuant to the requirements of paragraph (f) and
18 subparagraph (8) of this paragraph, including the 30 day review period,
19 one or more supplemental numbered certifications that describe export
20 license applications being considered for approval in support of

1 cooperative program agreements previously certified and entered into
2 under this section may also be transmitted."; and
3 (2) in subsection (g) by inserting "and section 36(d)" after "and section 36(c)".

Section-by-Section Analysis

This amendment would add a provision to 22 U.S.C. § 2767(f) (section 27(f) of the Arms Export Control Act) to provide additional export license related information to certain Congressional committees for international cooperative programs including, but not limited to, new comprehensive export authorizations such as Global Project Authorizations (GPAs). This proposal is based on recent experience regarding the Congressional notification process associated with the Joint Strike Fighter program GPA, as well as other export licensing notification experience associated with cooperative programs under section 27.

Specifically, this proposal would amend the existing Congressional notification process for cooperative programs to eliminate redundancy in Executive Branch Congressional notifications under section 27(f) and sections 36(c) and 36(d). In order to ensure Congress receives the same information, the reporting requirements of sections 36(c) and (d) have been added to section 27(f), and the applicability of such reporting requirements for comprehensive export authorizations through section 27(f) notifications has been made explicit. This proposal also establishes a procedure for supplemental section 27(f) notifications in cases where an international cooperative agreement is signed in advance of any related export license applications. This enables the government to submit revised section 27(f) notifications rather than additional section 36(c) and/or 36(d) license notifications.

This approach will streamline overall Executive Branch Congressional reporting by establishing a requirement for transmittal of all cooperative program Congressional notifications (including export license notifications) through comprehensive section 27(f) Congressional reporting, thereby reducing redundant Congressional notifications that potentially may hinder the effective implementation of highly valuable and operationally important programs such as the Joint Strike Fighter.

**SEC. ____ . EXPANSION OF AUTHORITIES FOR LOAN OF MATERIAL, SUPPLIES,
AND EQUIPMENT FOR RESEARCH AND DEVELOPMENT PURPOSES.**

1 Section 65 of the Arms Export Control Act (22 U.S.C. 2796d) is amended—

2 (1) in paragraph (1) of subsection (a)—

3 (A) by striking "Except as provided in subsection (c), the Secretary of Defense
4 may loan to a country that is a NATO or major non-NATO ally" and inserting "Except as
5 provided in subsection (c), the Secretary of Defense may loan to—

6 "(i) a NATO organization or a country that is a NATO ally;

7 "(ii) a major non-NATO ally; or

8 "(iii) a friendly foreign country"; and

9 (B) by striking "The Secretary may accept as a loan or a gift from a country that is
10 a NATO or major non-NATO ally" and inserting "The Secretary may accept as a loan or
11 a gift from—

12 "(i) a NATO organization or a country that is a NATO ally;

13 "(ii) a major non-NATO ally; or

14 "(iii) a friendly foreign country"; and

15 (2) by amending subsection (d) to read as follows:

16 "(d) For purposes of this section—

17 "(1) the term 'friendly foreign country' means any country not a member of the
18 North Atlantic Treaty Organization designated as a friendly foreign country under section
19 27(j)(2) of this Act; and

20 "(2) the term 'NATO organization' means any North Atlantic Treaty
21 Organization subsidiary body referred to in section 2350(2) of title 10, United States

1 Code, and any other organization of the North Atlantic Treaty Organization."

Section-by-Section Analysis

This amendment would add the term "friendly foreign country" as defined in 22 U.S.C. § 2767 (section 27 of the Arms Export Control Act) and 10 U.S.C. § 2350a to make the categories of countries with which the Department of Defense may engage in cooperative research, development, test and evaluation common and standard. Several benefits accrue from this amendment. First, it would allow DoD to loan and borrow loaned materiel (under a legally-binding international agreement) for the purpose of any cooperative research, development, test and evaluation purposes, including counter-terrorism, with a wider range of countries. No legal authority currently exists to loan equipment for RDT&E purposes to "friendly foreign countries." Section 65 Loan Agreements can be concluded very quickly, further enabling DoD to cooperate with various countries that have developed essential materiel that the Department wants.

Further, this amendment would also authorize DoD to participate in these no-cost loans with NATO organizations. This would significantly enhance the Department's ability to engage in cooperative research and development projects with NATO organizations.

**SEC. ____ . ESTABLISH DOLLAR THRESHOLD FOR CONGRESSIONAL
NOTIFICATION OF EXCESS DEFENSE ARTICLES THAT ARE
SIGNIFICANT MILITARY EQUIPMENT.**

1 Section 516(f)(1) of the Foreign Assistance Act of 1961 (Public Law 87-195; 22 U.S.C.
2 2321i) is amended by striking "excess defense articles that are significant military equipment (as
3 defined in section 47(9) of the Arms Export Control Act) or".

Section-by-Section Analysis

This proposal seeks to establish the same dollar limit for advance notification to Congress for all excess defense articles. Currently, Congress requires advance notification of all transfers of excess defense articles that are Significant Military Equipment (SME), whereas Congress only receives advance notification for those transfers of other excess defense articles valued at \$7 million or more. SME are articles for which special export controls are warranted because of their capacity for substantial military utility of capability. This proposal would apply the \$7 million advance notice threshold to transfers of all excess defense articles, including SME. This would reduce the number of congressional notifications sent annually to Congress.

**SEC. ____ . WAIVER OF NET PROCEEDS RESULTING FROM THE DISPOSAL
OF U.S. DEFENSE ARTICLES PROVIDED TO A FOREIGN COUNTRY
ON A GRANT BASIS.**

1 Section 505 of the Foreign Assistance Act of 1961 (Public Law 87-195; 22 U.S.C.
2 2314(f)) is amended to read as follows:

3 "Effective July 1, 1974, no defense article shall be furnished to any country on a grant
4 basis unless such country shall have agreed that the net proceeds of sale received by such
5 country in disposing of any weapon, weapons system, munitions, aircraft, military boat, military
6 vessel, or other implement of war received under this chapter will be paid to the United States
7 Government and shall be available to pay all official costs of the United States Government
8 payable in the currency of that country, including all costs relating to the financing of
9 international educational and cultural exchange activities in which that country participates
10 under the programs authorized by the Mutual Educational and Cultural Exchange Act of 1961.
11 The President may waive the requirement that such net proceeds be paid to the United States
12 Government if he determines that to do so is in the national interest of the United States. A
13 waiver is not required for a country to retain such net proceeds if the net proceeds are 10% or
14 less of the original acquisition value of the items."

Section-by-Section Analysis

This proposal allows the President to waive the requirement that net proceeds resulting from the disposal of defense articles provided to a foreign country on a grant basis be paid to the United States. Existing law limits the waiver authority to items delivered before 1985.

This proposal supports the goal of reducing the volume of defense articles worldwide, and reduces the potential that Defense articles inadvertently may fall into the hands of parties hostile to the United States.

This legislation would retain the requirement that the net proceeds greater than 10

percent of the original acquisition value needs to be paid to the United States Government, absent a Presidential determination that a waiver is in the national interest of the United States.

SEC. ____ . TRANSFER OF CERTAIN OBSOLETE OR SURPLUS DEFENSE

**ARTICLES IN THE WAR RESERVE STOCKPILES FOR ALLIES TO
ISRAEL.**

1 (a) **AUTHORITY.**—(1) Notwithstanding section 514 of the Foreign Assistance Act of 1961
2 (Public Law 87-195; 22 U.S.C. 2321h), the President may transfer to Israel, in return for
3 concessions to be negotiated by the Secretary of Defense, with the concurrence of the Secretary
4 of State, any or all of the items described in paragraph (2).

5 (2) The items referred to in paragraph (1) are munitions such as armor, artillery,
6 automatic weapons ammunition, missiles, and other munitions that—

7 (A) are obsolete or surplus items;

8 (B) are in the inventory of the Department of Defense;

9 (C) are intended for use as reserve stocks for Israel; and

10 (D) as of the date of enactment of this Act are located in a stockpile in

11 Israel.

12 (b) **CONCESSIONS.**—The value of concessions negotiated pursuant to subsection (a) shall
13 be at least equal to the fair market value of the items transferred. The concessions may include
14 cash compensation, services, waiver of charges otherwise payable by the United States, and
15 other items of value.

16 (c) **ADVANCE NOTIFICATION OF TRANSFER.**—Not less than 30 days before making a
17 transfer under the authority of this section, the President shall transmit to the Committee on
18 Foreign Relations of the Senate, the Committee on International Relations of the House of
19 Representatives, and the Congressional defense committees a notification of the proposed
20 transfer. The notification shall identify the items to be transferred and the concessions to be

1 received.

2 (d) EXPIRATION OF AUTHORITY.—No transfer may be made under the authority of this
3 section five years after the date of enactment of this Act.

Section-by-Section Analysis

This proposal provides the United States increased authority to transfer obsolete or surplus defense items to Israel, in exchange for concessions to be negotiated by the Secretary of Defense.

Section 514 of the Foreign Assistance Act (FAA) of 1961 (22 U.S.C. 2321h) provides that defense articles included in DoD War Reserve Stocks (WRS) be transferred to foreign governments only through Foreign Military Sales (where the foreign government buys the articles) or through grant military assistance (where the value of the article is counted against military assistance appropriations provided for the recipient country).

The DoD maintains a WRS stockpile in Israel. This is a separate stockpile of U.S.-owned munitions and equipment set aside, reserved, or intended for use as war reserve stocks by the U.S. and which may be transferred to the Government of Israel in an emergency, subject to reimbursement.

The DoD now seeks authority from Congress to transfer to Israel certain of these WRS stocks to Israel. In return for transferring these stocks to Israel, the U.S. would negotiate equivalent value concessions from the Government of Israel.

This initiative is not without precedent. During 1995-96 pursuant to section 509 of the FY94/FY95 Foreign Relations Authorization Act (Public Law 103-236), the U.S. Government provided \$66.62M (fair market value) of WRS equipment to the Republic of Korea (ROK) for equivalent value concessions.

This proposal would allow the U.S. to receive fair market value consideration, relieve the U.S. Government of storage and other stockpile maintenance costs, and avoid millions in cost to demilitarize, destroy, or retrograde munitions and equipment back to the U.S.

SEC. ___. ADDITIONS TO U.S. WAR RESERVE STOCKPILES FOR ALLIES.

1 Section 514(b)(2) of the Foreign Assistance Act of 1961 (Public Law 87-195; 22 U.S.C.
2 2321h(b)(2)) is amended—

3 (1) by amending subparagraph (A) to read as follows:

4 "(2)(A) The value of such additions to stockpiles of defense articles in foreign
5 countries shall not exceed \$100,000,000 for fiscal year 2004."; and

6 (2) by amending subparagraph (B) to read as follows:

7 "(B) Of the amount specified in subparagraph (A) for fiscal year 2004, not more
8 than \$100,000,000 may be made available for stockpiles in the State of Israel."

Section-by-Section Analysis

This proposal would allow the United States to transfer excess items to the DoD War Reserve Stock in Israel. Section 514(a) of the Foreign Assistance Act (FAA) of 1961, provides for DoD War Reserve Stockpiles in a host country that remain the property of the U.S. government. These stockpiles enable equipment and supplies to be pre-positioned in key parts of the world to enhance U.S. and host country defense readiness.

DoD maintains a War Reserve Stockpile in Israel that directly supports the U.S. European Command's strategy for the defense of Israel.

This proposal is necessary to allow the U.S. to transfer excess items to the War Reserve Stockpile in Israel. The transfer allows excess assets to remain under U.S. title but shifts the costs for maintenance, storage, transportation, and demilitarization of the excess munitions to Israel. By agreement with Israel, the U.S. does not pay for the storage, maintenance, transport, and warehousing of assets designated as War Reserve Stockpile, although the assets remain under U.S. title.