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APR 12 2005

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals. Several of the proposals are strongly supported by the Central Command, European Command, and Joint Forces Command. These proposals have been prepared through the joint effort of the Department of Defense and the Department of State.

The purpose of each 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 presenting of these legislative proposals for your consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "WJ Haynes II".

William J. Haynes II

Enclosure:
As Stated





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APR 12 2005

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

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William J. Haynes II

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**SEC. ____ . CLARIFICATION OF PURPOSES FOR WHICH MILITARY SALES BY
THE UNITED STATES ARE AUTHORIZED.**

1 Section 4 of the Arms Export Control Act (22 U.S.C. 2754) is amended by inserting
2 "(including antiterrorism and border security)" after "internal security".

Section-by-Section Analysis

This proposed legislation clarifies that antiterrorism and border security are purposes for which military sales of defense articles, services and training are authorized to be made by the United States to friendly countries under the Arms Export Control Act (AECA). It is important that all the tools available to combat terrorism be clearly identified. Lack of clarity can lead to confusion, undue delay or disapproval of assistance to foreign countries that is needed to deter terrorists and terrorists groups from engaging in international terrorist acts.

Chapter 8 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. §§ 2349aa through 2349aa-5), expressly provides authority, purposes, and limitations and authorizes appropriations for grant assistance for antiterrorism assistance to eligible foreign countries.

By comparison, the purposes for which sales of defense articles, services and training may be made under the Arms Export Control (22 U.S.C. § 2754) have been interpreted to include antiterrorism and border security. Experienced officials and lawyers at State and Defense have not disagreed and do not disagree on this issue. But today, when time is of the essence to take steps to combat and deter terrorism, we also agree that what is implied should be made express.

We want to eliminate the possibility of undue delay. We need to ensure that we can be timely in providing equipment and training to enhance the antiterrorism capabilities of friendly countries so that they may better counter, combat and deter terrorism.

The 9/11 Commission Report recommended increased engagement and collaboration with other governments to fight terrorism and to raise global border security standards. This proposed change will make it transparent to all, both at home and abroad, that sales of defense articles, services and training under the AECA may be made for antiterrorism and border security of friendly countries.

**SEC. ____ . REPORTING REQUIREMENT CONCERNING FOREIGN MILITARY
TRAINING.**

1 Subsection (a)(1) of section 656 of the Foreign Assistance Act of 1961 (22 U.S.C. 2416)
2 is amended by striking "January 31" and inserting "March 1".

Section-by-Section Analysis

This section would simplify the existing military training report required by section 656 of the Foreign Assistance Act of 1961 by making it conform to a very similar degree to a report required in the annual Foreign Operations Appropriation Act (FOAA) and change the date upon which the report is due to the Congress from January 31 to March 1.

SEC. ____ . SIMPLIFY REPORTING REQUIREMENT CONCERNING EXCESS

DEFENSE ARTICLES.

1 Section 516 (f) (1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) is amended—
2 (1) by striking "significant military equipment (as defined in section 47(9) of the
3 Arms Export Control Act) or"; and
4 (2) by striking "7,000,000" and inserting "\$14,000,000".

Section-by-Section Analysis

This section would simplify an existing reporting requirement concerning Excess Defense Articles (EDA) by eliminating the need to deliver notifications for smaller items that are "significant military equipment" (SME) and by raising the threshold level from \$7 million to \$14 million.

Existing law requires the Department of Defense to notify Congress of all EDA that are either in excess of \$7 million in original acquisition value or SME, regardless of dollar value.

This section would eliminate the requirement that DoD make reports to Congress of all de minimus transactions, and instead would maintain focus on higher value transactions that are of greater importance.

SEC. ____ . DRAWDOWN AUTHORITY.

1 Subsection 506 (a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2318), is

2 amended—

3 (1) in subsection (c)—

4 (A) by inserting "such articles or commodities or services, as well as" after

5 "supply of"; and

6 (B) by inserting "or otherwise" after "contract"; and

7 (2) in subsection (d), by inserting after "section." the following: "In the case of

8 such articles or services not taken from the stocks, inventory or existing resources of an

9 agency for purposes of the drawdown but instead acquired by contract or otherwise,

10 notwithstanding any other provision of law, reimbursement to an agency may be made

11 from any appropriations account, as the President may direct."

Section-by-Section Analysis

This proposal would allow the U.S. Government more flexibility to provide short-term security assistance to foreign nations and international organizations to support U.S. national security needs, including support for the global war on terror.

**SEC. ____ . LOANS 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 subsection (a)(1), after "major non-NATO ally" in both places it appears by
3 inserting ", or any other friendly foreign country, or NATO or a NATO organization".

4 (2) in subsection (d)—

5 (A) by striking "term" and inserting "terms used have the following
6 meanings: (i)"; and

7 (B) inserting before the period the following:

8 "; (ii) 'NATO organization' means any North Atlantic Treaty Organization
9 subsidiary body referred to in Section 2350(2) of Title 10, United States Code, and any
10 other organization of the North Atlantic Treaty Organization; and

11 "(iii) 'major non-NATO ally' means any country so designated under Section 517
12 of the Foreign Assistance Act of 1961, as amended".

Section-by-Section Analysis

This section would expand the categories of countries with which the Department of Defense (DoD) may engage in cooperative research, development, testing, and evaluation. It also would allow DoD to loan and accept loaned material (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.

Absent this section, no legal authority presently exists to loan equipment for RDT&E purposes to "friendly foreign countries". Loan Agreements executed in accordance with Section 65 of the Arms Export Control Act can be concluded very quickly, further enabling DoD to cooperate with various countries that have developed desirable material that may meet the DoD's non-developmental item material requirements. This section also would authorize DoD to participate in no-cost loans with NATO organizations. This would significantly enhance the DoD's ability to engage in cooperative research and development projects with NATO organizations such as the NATO C3 Agency.

SEC. ____ . INTEROPERABILITY DEVELOPMENT AND TRAINING.

1 Section 544 of the Foreign Assistance Act of 1961, as amended, is amended at the end by
2 adding the following new subsection:

3 "(d) The President may provide electronic distributed learning content (including
4 internet-based information and learning tools) and related training to military and civilian
5 government personnel of foreign countries aimed at developing military capabilities for
6 multinational operations, and provide information technology and develop and provide software
7 to improve interoperability between U.S. and foreign military forces, including in support of
8 authorized military information exchanges, except that any such learning, information technology
9 and software may not include controlled data. The provision of such learning, information
10 technology and software shall be without charge to funds available to carry out this chapter
11 (notwithstanding section 632(d) of this Act. Costs incurred shall be charged to any current
12 appropriations accounts or funds of participating United States Government agencies."

Section-by-Section Analysis

This section would authorize expenditures from current appropriation accounts, such as from DoD operations and maintenance funds, to provide training to foreign government personnel in order to enhance multinational operations. Such training may be conducted using information technology, such as internet-based and advanced distributed learning content. This section does not require additional Total Obligation Authority for the Department of Defense. The section would allow the Secretary of Defense to allocate funds for training that will enhance the national security interests of the United States. The training may be computer-based. This new authority is consistent with and supports the Department of Defense Training Transformation initiatives. It will enhance the ability of combatant commanders to develop the skills of allied and coalition partners to ensure interoperability for multinational operations.

Current law does not specifically address the ability of the Secretary of Defense to authorize Combatant Commanders and other Defense Agencies to expend operations and maintenance funds to support direct training of foreign forces to enhance the ability of those forces to participate in multinational operations. The Defense Department has demonstrated the value of being able to provide the training described herein through the Partnership for Peace (PfP) Program. The proposed legislative change would enable monies from PfP type initiatives

and operations and maintenance funds to be applied to a broader coalition of multinational countries. As the Global War on Terrorism continues, the need to take the Partnership for Peace type initiatives to a broader coalition audience is imperative to the ability to build strong participation by those coalition partners in a multinational operation.