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MAR 11 2004

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

Dear Mr. Chairman:

The Department of Defense requests that the Congress enact the enclosed legislative proposals. These proposals have been prepared through the joint effort of the Department of Defense and the Department of State and have been requested as part of the Department of State Authorization Bill.

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 and the consideration of the Congress.

Sincerely,

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William J. Haynes II

Enclosure:
As Stated





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

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**SEC. ____ . WAR RESERVES STOCKPILE, ALLIES, KOREA: TRANSFER OF
OBSOLETE OR SURPLUS ITEMS AND FINAL TERMINATION OF
PROGRAM.**

1 (a) ITEMS IN THE WAR RESERVES STOCKPILE, ALLIES, KOREA.

2 (1) IN GENERAL.—Notwithstanding section 514 of the Foreign Assistance Act of
3 1961 (22 U.S.C. 2321h), the President is authorized to transfer to the Republic of Korea,
4 on such conditions as the President may determine, any or all of the items described in
5 paragraph (2).

6 (2) COVERED ITEMS.—The items referred to in paragraph (1) are munitions,
7 equipment, and materiel such as tanks, trucks, artillery, mortars, general purpose bombs,
8 repair parts, barrier material, and ancillary equipment, if such items are:

9 (A) obsolete or surplus items;

10 (B) in the inventory of the Department of Defense;

11 (C) intended for use as reserve stocks for the Republic of Korea; and

12 (D) as of the date of the enactment of this Act, located in a stockpile in the
13 Republic of Korea or Japan.

14 (3) DISPOSAL OF REMAINING ITEMS.—At the conclusion of negotiations to
15 transfer War Reserves Stockpile, Allies, Korea items to the Republic of Korea, the
16 War Reserves Stockpile, Allies, Korea program will be terminated. Any items that the
17 Republic of Korea does not accept for transfer will be removed and/or disposed of by the
18 Department of Defense.

19 (b) VALUATION OF CONCESSIONS.—The value of concessions negotiated pursuant to
20 subsection (a) shall be at least equal to the fair market value of the items transferred, less the

1 savings to the Department of Defense from avoiding the cost of removal of the items from the
2 Republic of Korea and/or disposal of the items. The concessions may include cash
3 compensation; services; waiver of charges otherwise payable by the United States, such as
4 charges for demolition of U.S.-owned or U.S.-intended munitions; and other items of value.

5 (c) TERMINATION OF AUTHORITY.—No transfer may be made under the authority of this
6 section more than 3 years after the date of the enactment of this Act.

Section-by-Section Analysis

This section would authorize the Department of Defense (DoD) to transfer the War Reserves Stockpile, Allies, Korea (WRSA-K) inventory to the Republic of Korea (ROK) in exchange for concessions based on “net realizable value,” as defined in the Office of Management and Budget’s Statement of Federal Financial Accounting Standards Number 3. Valuation based on net realizable value would enable DoD to consider of the cost of disposing WRSA-K inventory not transferred. Previous legislative initiatives (Public Law 103-236, Section 509 and Public Law 106-113, Section 1232) permitted an exchange for concessions based on fair market value, but the ROK considered these efforts for peacetime transfer of WRSA-K as cost prohibitive.

22 U.S.C. §2321h provides that defense articles in WRSA-K may be transferred to the ROK only through Foreign Military Sales or through grant military assistance. Transfer of the WRSA-K in peacetime to the ROK would save the United States as much as \$1.2 billion, enable the ROK to fund necessary maintenance, improve self-sufficiency, and use aging WRSA-K munitions for near-term training purposes.

In the absence of this authority, DoD may be required to spend upwards of \$532 million to maintain the existing, aging WRSA-K inventory. The estimated cost of returning the entire inventory to the United States may exceed \$640 million, and demilitarization costs may exceed \$650 million.

**SEC. ____ . MODIFICATION OF REQUIREMENT FOR MINIMUM FOREIGN
MILITARY FINANCING (FMF) DIRECT LOAN INTEREST
RATE.**

1 Sec. 23(c)(1) of the Arms Export Control Act (22 U.S.C. § 2763(c)(1)) is
2 amended by striking “, except that such rate may not be less than 5 percent per year.”
3 and inserting “, except that such rate shall be no less than the average yield on
4 outstanding Treasury obligations of the United States of comparable maturities on the
5 date of execution of the loan agreement.”

Section-by-Section Analysis

This section would remove the fixed minimum interest rate of 5 percent and substitute a more flexible interest rate floor associated with Foreign Military Financing (FMF) direct loans. Existing law mandates a loan interest rate of not less than 5 percent. The language inserted would change the current arbitrary interest rate floor to a more flexible rate while ensuring that no loan is made at an interest rate below the Treasury’s cost of borrowing funds. This requirement has been in force since the Arms Export Control Act was enacted in 1976. The current interest rate environment could allow countries to be eligible for an FMF direct loan at an interest rate below 5 percent.

SEC. ____ . PROVISION OF CATALOGING DATA AND SERVICES TO NON-NATO COUNTRIES.

1 Section 21(h)(2) of the Arms Export Control Act (22 U.S.C. §2761(h)(2)) is amended by
2 striking “or to any member government of that Organization if that Organization or member
3 government” and inserting “to any member of that Organization, or to the government of any
4 other country if that Organization, member government, or other government”.

Section-by-Section Analysis

This section would authorize the President to provide cataloging data and services to non-NATO countries on a reciprocal basis. Presently, the United States may provide such data and services to the North Atlantic Treaty Organization (NATO) and the member governments on a reciprocal basis. The United States also may provide such services to several non-NATO countries, such as Australia and New Zealand, but on a reimbursable basis under foreign military sales. There are instances when the interests of the United States would best be served if such data and services could be provided to a non-NATO country under a reciprocal agreement.

For almost 50 years, the North Atlantic Treaty Organization (NATO) Codification System (NSC), which is based on United States standards for naming, describing and numbering items of supply, has served as the cornerstone for interoperability between the United States and its NATO allies. Many non-NATO countries that participate in joint exercises and deployments with the United States also have adopted the NCS system. Facilitating the provision of United States cataloging data for materials produced in the United States has been and continues to be in the our national interest.

**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 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 country that is a NATO ally or a NATO organization;

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

8 (iii) a friendly foreign country.”

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

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

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

14 (iii) a friendly foreign country.”

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

16 “(d) Terms defined for purposes of this section:

17 “(1) ‘NATO ally’ means a member of the North Atlantic Treaty
18 Organization (other than the United States).

19 “(2) ‘NATO organization’ means any North Atlantic Treaty Organization
20 subsidiary body referred to in Section 2350(2) of Title 10, United States Code,
21 and any other organization of the North Atlantic Treaty Organization.

1 “(3) ‘major non-NATO ally’ means any country not a member of the
2 North Atlantic Treaty Organization and designated as a major non-NATO ally
3 under Section 2350a(f)(2) of Title 10, United States Code.

4 “(4) ‘friendly foreign country’ means any country not a member of the
5 North Atlantic Treaty Organization and specified as a friendly foreign country in
6 the report required under 10 United States Code 2350a(f)(2).”.

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 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.

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. ____ . SIMPLIFY REPORTING REQUIREMENT CONCERNING EXCESS

DEFENSE ARTICLES.

1 Section 516 (f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) is amended by
2 striking “significant military equipment (as defined in section 47(9) of the Arms Export Control
3 Act)” and inserting “major defense equipment (as defined in section 47(6) of the Arms Export
4 Control Act)”.

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 replacing that term with the more broad “major defense equipment” (MDE).

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. Presently, roughly 80 percent of SME notifications involve vehicles, communications equipment, and ammunition valued under \$7 million. SME includes articles for which special export controls are warranted because of their capacity for substantial military utility of capability. In contrast, MDE includes any item of SME on the United States Munitions List having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000.

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

**SEC. ____ . TRANSFER OF CERTAIN OBSOLETE OR SURPLUS DEFENSE ARTICLES
IN THE WAR RESERVE STOCKPILES FOR ALLIES TO ISRAEL.**

1 (a) GENERAL AUTHORITY.—(1) Notwithstanding Sec. 514 of the Foreign Assistance Act
2 of 1961 (22 U.S.C. 2321h), the President may transfer to Israel, in return for concessions to be
3 negotiated by the Secretary of Defense, with the concurrence of the Secretary of State, any or all
4 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 Israel.

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

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

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

Section-by-Section Analysis

This section would provide 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 (P.L. 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 section 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. ____ . SIMPLIFY REPORTING REQUIREMENT CONCERNING FOREIGN
MILITARY TRAINING.**

1 Section 656 of the Foreign Assistance Act of 1961 (22 U.S.C. 2416) is amended as
2 follows:

3 (1) in paragraph (a)—

4 (A) by striking “January 1” and inserting “March 1”,

5 (B) after “personnel” by inserting “, excluding training provided through sales,”

6 (C) after “State” by inserting “, which was completed”,

7 (D) by striking all that follows after “previous fiscal year” before the period, and

8 (2) in paragraph (b)—

9 (A) in subparagraph (1) after “purpose for the activity,” by inserting “and” and
10 after “operation” by striking all that follows before the period,

11 (B) in subparagraph (3) after “activity” the first time it occurs by striking all that
12 follows before the period,

13 (3) in paragraph (c) after “unclassified form” by striking all that follows before the
14 period, and

15 (4) in paragraph (d) by striking “All unclassified portions of the” and inserting “The”.

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 report required in the annual Foreign Operations Appropriation Acts (FOAA). It also would eliminate those portions of the current reporting requirement that make it necessary to classify major portions of the report.

To bring the reporting requirement into conformity with that of the FOAA, this amendment would exclude “training provided through sales” from the reporting requirement and change the date upon which the report is due to the Congress from January 31 to March 1.

To eliminate the portions of the report that must be classified due to foreign policy or force protection reasons, this section would eliminate the requirement to report on projected training (i.e., “training proposed for the current fiscal year”), training locations, the U.S. military units providing the training, and training provided through sales. As a result, the new report would be completely unclassified, allowing access to the general public.