SEC. ___. REPEAL OF PROHIBITON OF CERTAIN CONTRACTS BY MISSILE DEFENSE AGENCY WITH FOREIGN ENTITIES.

Section 222 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180; 10 U.S.C. 2431 note) is repealed.

Section-by-Section Analysis

Section 222 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub.L.100-180; Dec. 4, 1987) (10 U.S.C. 2431 note) provides, in pertinent part, that "Funds appropriated to or for the use of the Department of Defense may not be used for the purpose of entering into or carrying out any contract with a foreign government or a foreign firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Strategic Defense Initiative program."

That section hinders the efforts of the Missile Defense Agency to contract directly with foreign governments and entities, with limited exceptions. National Security Presidential Directive/NSPD-23, dated December 16, 2002, states that it is essential that we work with our friends and allies around the world to defend against global missile threats. In NSPD-23, the President directed the Secretary of Defense to structure the missile defense program in a manner that encourages industrial participation by friends and allies, consistent with U.S. national security. Toward this goal, the President decreed that "[a]s part of our efforts to deepen missile defense cooperation with friends and allies, the United States shall seek to eliminate unnecessary impediments." The interests of the United States would be furthered by the repeal of section 222 of the National Defense Authorization Act for Fiscal Years 1988 and 1989.

Changes to Existing Law: This proposal would repeal section 222 of the National Defense Authorization Act for Fiscal Years 1988 and1989 (10 U.S.C. 2431 note).

~~**SEC. 222. PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES.**~~

~~(a) SDI CONTRACTS WITH FOREIGN ENTITIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the purpose of entering into or carrying out any contract with a foreign government or a foreign firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Strategic Defense Initiative program.~~

~~(b) TEMPORARY SUSPENSION OF PROHIBITION UPON CERTIFICATION OF THE SECRETARY OF DEFENSE.—The prohibition in subsection (a) shall not apply to a contract in any fiscal year if the Secretary of Defense certifies to Congress in writing at any time during such fiscal year that the research, development, testing, or evaluation to be performed under such contract cannot be competently performed by a United States firm at a price equal to or less than the price at which the re- search, development, testing, or evaluation would be performed by a foreign firm.~~

~~(c) EXCEPTIONS FOR CERTAIN CONTRACTS.—The prohibition in subsection (a) shall not apply to a contract awarded to a foreign government or foreign firm if—~~

~~(1) the contract is to be performed within the United States;~~

~~(2) the contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems; or~~

~~(3) that foreign government or foreign firm agrees to share a substantial portion of the total contract cost.~~

~~(d) DEFINITIONS.—In this section:~~

~~(1) The term "foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.~~

~~(2) The term "United States firm" means a business entity other than a foreign firm.~~

~~(e) TRANSITION.—The prohibition in subsection (a) shall not apply to a contract entered into before the date of the enactment of this Act.~~