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Foreign Military Sales Congressional Review Process

Congressional Notification

Section 36(b) of the Arms Export Control Act (AECA; P.L. 90-629) governs congressional notification requirements for proposed Foreign Military Sales (FMS). This section requires the executive branch to notify the Speaker of the House, the Senate Foreign Relations Committee, and the House Foreign Affairs Committee before the Administration can take the final steps to conclude a foreign military sale. For sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, the Administration must notify the committees 15 calendar days before it may conclude a sale, enhancement, or upgrade of major defense equipment valued at \$25 million or more; a sale, enhancement, or upgrading of defense articles and defense services valued at \$50 million or more; or a sale, enhancement, or upgrading of design and construction services valued at \$300 million or more.

For other destinations, the committees must be formally notified 30 calendar days before the Administration can proceed with the sale of major defense equipment valued at \$14 million or more, defense articles or services valued at \$50 million or more, or design and construction services valued at \$200 million or more. Certain articles or services listed on the Missile Technology Control Regime are subject to a variety of additional reporting requirements.

The Department of State submits to the committees an informal notification of prospective arms sales subject to AECA reporting requirements between 20 and 40 days prior to providing formal notification to the committees.

The President has the authority to waive the review periods described above if the President notifies Congress that “an emergency exists,” which requires the sale to proceed immediately “in the national security interests of the United States.” The President must provide Congress at the time of this notification a “detailed justification for his determination, including a description of the emergency circumstances” that necessitated this action and a “discussion of the national security interests involved.”

AECA and Congressional Options

Pursuant to Section 36(b) of the AECA, the Administration may issue a letter of offer and acceptance (LOA) for a proposed FMS sale unless Congress enacts a joint resolution “prohibiting the proposed sale.” According to the Defense Security Cooperation Agency, the LOA is “the legal instrument” used by the U.S. government “to sell defense articles, defense services including training, and design and construction services to a foreign country or international organization under authorities provided” in the AECA. The LOA “itemizes the defense articles and services offered and when implemented becomes an official tender” by the U.S. government. Congress must enact such

a resolution within 15 or 30 calendar days after receiving notification of the proposed sale, depending on the destination of the proposed sale. Otherwise, the executive branch is free to proceed with the sales process.

Past Congressional Opposition to Saudi Missile Sales

Congress has never prohibited a proposed arms sale by use of a joint resolution of disapproval. However, Congress nearly did so in the case of President Ronald Reagan’s 1986 proposed missile sales to Saudi Arabia. On April 8, 1986, President Ronald Reagan formally proposed selling Sidewinder missiles, Harpoon missiles, and Stinger missile launchers and re-loads to Saudi Arabia. The next month, both the Senate and House adopted legislation prohibiting this sale. President Reagan vetoed this legislation on May 21, 1986. But, in a letter dated the same day to then Senate Majority Leader Robert Dole, the President wrote that he would not include the Stinger missiles and launchers that had been included in the proposed sale. On June 5, 1986, the Senate narrowly sustained the President’s aforementioned veto, and the sale of the Sidewinder and Harpoon missiles to Saudi Arabia proceeded.

On October 14, 1981, the House adopted a resolution objecting to President Reagan’s proposed sale to Saudi Arabia of E-3A airborne warning and control system (AWACS) aircraft, Sidewinder missiles, Boeing 707 refueling aircraft, and defense articles and services related to F-15 aircraft. An October 28, 1981, Senate vote on identical legislation failed, however, after President Reagan made a series of written commitments to Congress regarding the proposed sale. Congress later enacted legislation requiring the President to certify that the commitments made in 1981 regarding the proposed sale had been met prior to the delivery of the AWACS planes (Section 127 of the International Security and Development Cooperation Act of 1985; P.L. 99-83).

Other Notification Provisions

The AECA contains congressional notification provisions governing certain commercially licensed arms sales, prospective retransfers of U.S.-origin major defense equipment, defense articles or defense services, and leases or loans of defense articles from U.S. Department of Defense stocks. The law also contains similar notification requirements, though not reporting thresholds, for commercial technical assistance and manufacturing licensing agreements.

Joint Resolution Procedures

The AECA has provisions that provide for expedited congressional consideration of a joint resolution described above.

Senate

Section 36(b)(2) of the AECA stipulates that Senate consideration of a resolution described above shall be “in accordance with the provisions of Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976” (P.L. 94-329). Those provisions, which supersede the standing rules of the Senate,

- give the committee with jurisdiction [the Senate Foreign Relations Committee] 10 calendar days from the date a resolution of disapproval is referred to it to report back to the Senate its recommendation on any such resolution (certain adjournment periods are excluded from computation of the 10 days);
- make it in order for a Senator favoring a disapproval resolution to move to discharge the committee from further consideration of the matter if the committee fails to report back to the Senate by the end of the 10-day period described above (the AECA expressly permits a discharge motion after 5 calendar days for sales to NATO, NATO countries, Japan, Australia, South Korea, Israel, and New Zealand);
- make the discharge motion privileged, limit floor debate on the motion to one hour, and preclude efforts to amend or to reconsider the vote on such a motion;
- make the motion to proceed to consider a resolution of disapproval privileged and preclude efforts to amend or to reconsider the vote on such a motion;
- limit the overall time for debate on the resolution of disapproval to 10 hours and preclude efforts to amend or recommit the resolution of disapproval;

- limit the time (one hour) to be used in connection with any debatable motion or appeal; and
- provide that a motion to further limit debate on a resolution of disapproval, debatable motion or appeal is not debatable.

House

The AECA directs the House of Representatives to consider a motion to proceed to the consideration of a joint resolution disapproving an arms sale reported to it by the appropriate House committee as “highly privileged.” Generally, this means that the resolution will be given precedence over most other legislative business of the House, and may be called up on the floor without a special rule reported by the Rules Committee. Unlike for the Senate, however, the AECA contains no provision for discharge of the House committee if it does not report on the joint resolution. If reported and called up, the measure will be considered in the Committee of the Whole, meaning that amendments can be offered under the “five-minute rule.” The Rules Committee could set the framework for floor consideration of a joint resolution of disapproval. If the House were to adopt the rule reported by the committee, the rule would govern the manner in which the legislation would be considered.

For additional information, see CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr.

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