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Arms Sales: Congressional Review Process

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SUMMARY

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Arms Sales: Congressional Review Process

This report reviews the process and procedures that apply to congressional consideration of foreign arms sales proposed by the President. This includes consideration of proposals to sell major defense equipment, defense articles and services, or the retransfer to third-party states of such items. Under the Arms Export Control Act (AECA), the President must formally notify Congress 30 calendar days before the Administration can take the final steps to conclude a government-to-government foreign military 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. In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, the President must formally notify Congress 15 calendar days before the Administration can proceed with the transaction. However, the prior notice threshold values are higher for sales to these destinations.

The President must formally notify Congress of commercially licensed arms sales 30 calendar days before Department of State issuance of export licenses for sales of major defense equipment valued at $14 million or more, or defense articles or services valued at $50 million or more. In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, the President must formally notify Congress 15 calendar days before proceeding with the transaction. As with government-to-government sales, the prior notice threshold values are higher for sales to these destinations. The President must formally notify Congress of commercially licensed sales of firearms controlled under category I of the United States Munitions List and valued at $1 million or more 30 days prior to approval of the relevant export license. In the case of proposed licenses for such sales to NATO members, Japan, Australia, South Korea, Israel, or New Zealand, the AECA requires 15 days prior notification.

The AECA contains a mechanism for Congress to adopt a joint resolution of disapproval for arms sales notified by the President; Congress has never successfully blocked a proposed arms sale via such a resolution. Congress may adopt legislation to block or modify an arms sale at any time up to the point of delivery of the items involved.

This report will be updated if notable changes in these review procedures or applicable law occur.

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This report reviews the process and procedures that currently apply to congressional consideration of foreign arms sales proposed by the President. This includes consideration of proposals to sell major defense equipment, defense articles and services, or the retransfer to other states of such military items. In general, the executive branch, after complying with the terms of applicable U.S. law, principally contained in the Arms Export Control Act[1] (AECA) (P.L. 90-629, 82 Stat. 1320), is free to proceed with an arms sales proposal unless Congress passes legislation prohibiting or modifying the proposed sale. The President has the obligation under the law to submit the arms sale proposal to Congress, but only after he has determined that he is prepared to proceed with any such notifiable arms sales transaction.

The AECA also contains the statutory authority for the Foreign Military Sales (FMS) program, under which the U.S. government sells U.S. defense equipment, services, and training on a government-to-government basis. In addition, the law specifies criteria for Direct Commercial Sales (DCS) of U.S.-government licensed defense articles and services directly from U.S. firms to eligible foreign governments and international organizations.[2]

Congressional Review Process

Informal Notifications

The Department of State (on behalf of the President) submits to the Senate Foreign Relations Committee and House Foreign Affairs Committee an informal notification of a prospective major arms sale *20* calendar days before the executive branch takes further formal action. An August 2020 State Department Office of Inspector General report explains that, in addition to the AECA formal notification process,

> the Department has by long-standing practice submitted a preliminary or informal notification of prospective major arms transfers in advance of their formal notification to the congressional committees of jurisdiction.[3]

The informal notification practice began with a February 18, 1976, letter from the Department of Defense making a commitment to give Congress these preliminary classified notifications.[4] Beginning in 2012, the State Department implemented a new informal notification process, which the department calls a "tiered review," in which the relevant committees are notified between 20 and 40 calendar days before receiving formal notification, depending on the system and destination in question.[5]

[1] Originally titled The Foreign Military Sales Act.

[2] For more information, see CRS Report R46337, *Transfer of Defense Articles: Sale and Export of U.S.-Made Arms to Foreign Entities*, by Nathan J. Lucas and Michael J. Vassalotti.

[3] *Review of the Department of State's Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates*, Department of State Office of Inspector General ISP-I-20-19, August 2020.

[4] Letter of February 18, 1976 from Lt. Gen. H.M. Fish, USAF, Director, Defense Security Assistance Agency to Senator Hubert H. Humphrey, Senate Committee on Foreign Relations.

[5] Prior to giving such notice, the State Department transmits to the committees any license applications for commercially licensed arms sales as soon as the department receives them. The State Department does not provide the same notice regarding government-to-government foreign military sales.

During June 2017 testimony, Acting Assistant Secretary of State Tina Kaidanow described this process as a

> review period during which the Committees can ask questions or raise concerns prior to the Department of State initiating formal notification. The purpose is to provide Congress the opportunity to raise concerns, and have these concerns addressed, in a confidential process with the Administration, so that our bilateral relationship with the country in question is protected during this process.[6]

The State Department "generally will not formally notify an arms transfer if a member of Congress raises significant concerns by placing a hold during the informal review stage," the Inspector General report states, noting that "the Department is not precluded from proceeding with an arms transfer subject to a congressional hold."[7]

Formal Notifications

The AEA contains provisions for congressional review and disapproval of arms sales. The President may not proceed with a proposed FMS or DCS transaction if Congress adopts a joint resolution of disapproval within the statutory review periods described below. It is worth noting that a congressional recess or adjournment does not stop these review periods.

Foreign Military Sales

Section 36(b)(1) of the AECA requires the President formally to notify the Speaker of the House, as well as the Senate Foreign Relations Committee and House Foreign Affairs Committee, 30 calendar days before issuing a Letter of Offer and Acceptance (LOA) for an FMS transfer 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.[8] The Defense Security Cooperation Agency transmits the notifications to Congress.[9] In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, the President must formally notify Congress 15 calendar days before proceeding with the sale.[10] The prior notice threshold values for transfers to these recipients are $25 million for the sale, enhancement, or upgrading of major defense equipment; $100 million for the sale, enhancement, or upgrading of defense articles and defense services; and $300 million for the sale, enhancement,

[6] "Foreign Military Sales: Process and Policy," Statement Before the Subcommittee on Terrorism, Nonproliferation and Trade, House Foreign Affairs Committee, June 15, 2017.

[7] Department of State Office of Inspector General, August 2020.

[8] The Letter of Offer and Acceptance is the legal instrument used by the U.S. government for FMS transactions. (See CRS Report R46337, *Transfer of Defense Articles: Sale and Export of U.S.-Made Arms to Foreign Entities*.) The Foreign Assistance Act of 1974 (P.L. 93-559, 88 Stat. 1795) amended the Foreign Military Sales Act to add a $25 million dollar threshold for defense articles and services. The International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329, 90 Stat. 729) added major defense equipment with a $7 million threshold. The International Security and Development Cooperation Act of 1981 (P.L. 97-113, 95 Stat. 1519) changed the $7 million threshold to $14 million and the $25 million threshold to $50 million. The International Security and Development Cooperation Act of 1980 (P.L. 96-533, 94 Stat. 3131) added design and construction services with a $200 million threshold.

[9] See E.O. 13637, "Administration of Reformed Export Controls," March 8, 2013.

[10] For the Senate, these review periods appear to begin when the relevant Congressional notification notice is published in the *Congressional Record*.

or upgrading of design and construction services. Such sales to these countries must not include or involve sales to a country outside of this group of states.[11]

Section 36(i) requires the President to notify both the Senate Foreign Relations Committee and House Foreign Affairs Committee at least 30 days in advance of a pending shipment of defense articles subject to the 36(b) requirements if the chair and ranking member of either committee request such notification. Certain articles or services listed on the Missile Technology Control Regime Annex are subject to a variety of additional reporting requirements.[12]

Section 36(b)(5)(A) contains a reporting requirement for defense articles or equipment items whose technology or capability has, prior to delivery, been "enhanced or upgraded from the level of sensitivity or capability described" in the original congressional notification. For such exports, the President must submit a report to the relevant committees at least 45 days before the exports' delivery that describes the enhancement or upgrade and provides "a detailed justification for such enhancement or upgrade." This requirement applies for 10 years after the Administration has notified Congress of the export.[13] According to Section 36(b)(5)(C), the Administration must, in the case of upgrades or enhancements meeting certain value thresholds, submit a new notification to Congress and the export will be considered "as if it were a separate letter of offer ... subject to all of the requirements, restrictions, and conditions set forth in this subsection." The threshold values are higher for sales to NATO members, Japan, Australia, South Korea, Israel, or New Zealand.

Direct Commercial Sales

Section 36(c)(1) of the AECA requires the President formally to notify the Speaker of the House, as well as the Senate Foreign Relations Committee and House Foreign Affairs Committee, of DCS transactions 30 calendar days before State Department issuance of the relevant export license; the State Department's Bureau of Legislative Affairs submits such notices.[14] The prior notice threshold values for these sales is $14 million for major defense equipment and $50 million for defense articles or services or more.[15] In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, the President must formally notify Congress 15 calendar days before proceeding with such a sale. The prior notice threshold values for transfers to these recipients are $25 million for the sale, enhancement, or upgrading of major defense equipment, and $100 million for the sale, enhancement, or upgrading of defense articles and defense services. Such sales to these countries must not include or involve sales to a country outside of this group of states. The President must notify Congress 30 days prior to issuing a license for exporting firearms listed on category I of the United States Munitions List;[16] the AECA requires 15 days prior notice for such licenses concerning for sales to NATO members, Japan, Australia, South Korea, Israel, or New Zealand.[17]

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[11] The Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228, 116 Stat. 1350), added these thresholds.

[12] For more information about the regime, see CRS Report RL33865, *Arms Control and Nonproliferation: A Catalog of Treaties and Agreements*, by Amy F. Woolf, Paul K. Kerr, and Mary Beth D. Nikitin.

[13] This provision also applies to defense services and design and construction services.

[14] See E.O. 13637.

[15] 22 U.S.C. 2776(c).

[16] On January 23, 2020, the Departments of State and Commerce published rules stipulating that the export of some Category I firearms will be regulated by the Department of Commerce pursuant to the Export Administration Regulations. Such exports will not be subject to a congressional notification requirement.

[17] These notification requirements and reporting thresholds also apply to prospective retransfers of United States-origin

Section 38(f)(6) of the AECA requires that "any major defense equipment" on the 600 series of the Commerce Control List (CCL) "shall continue to be subject to the notification and reporting requirements" contained in AECA Sections 36(b), 36(c), and 36(d). The CCL is the list of specific dual-use commodities, technologies, and software controlled by the Export Administration Regulations.[18] AECA Section 36(c)(4) stipulates that the AECA Section 36(b) provisions concerning enhancements and upgrades to defense articles or equipment also apply to such items sold via the DCS process.

Table 1. Congressional Notification Requirements for Sales of Defense Articles

			Transactions and Value Thresholds			
Destination	**Type of transaction**	**Notification time** *(Cal. days)*	*Major Defense Equipment*	*Defense Articles*	*Design and Construction*	*Firearms*
NATO +5	FMS	15 days	$25 million	$100 million	$300 million	—
	DCS	15 days	$25 million	$100 million	—	$1 million
Other Destinations	FMS	30 days	$14 million	$50 million	$200 million	—
	DCS	30 days	$14 million	$50 million	—	$1 million

Source: Arms Export Control Act (P.L. 94-329).

Notes: All of the transactions include "sale, enhancement, or upgrading" of the relevant items. FMS = Foreign Military Sales; DCS = Direct Commercial Sales.

The AECA and Joint Resolutions of Disapproval[19]

The AECA contains procedures for congressional joint resolutions of disapproval concerning notified FMS and DCS transactions.[20] Section 36(b)(1) of the AECA prohibits the U.S. government from issuing an LOA if Congress "enacts a joint resolution prohibiting the proposed sale." AECA Section 36(c)(2) prohibits the U.S. government from issuing an export license for a commercial transaction if Congress "enacts a joint resolution prohibiting the proposed export." As noted, the President must notify the Speaker of the House, as well as the Senate Foreign Relations Committee and House Foreign Affairs Committee, of potential FMS and DCS transactions subject to congressional review. The AECA does not require that a companion measure be introduced in either chamber.

Congress has never successfully blocked a proposed arms sale via a joint resolution of disapproval. Nevertheless, Congress has, by expressing strong opposition to prospective arms sales, during consultations with the executive branch, affected the timing and the composition of

major defense equipment, defense articles, or defense services as stipulated in Section 3(d) of the Arms Export Control Act (AECA); and leases or loans of defense articles from U.S. Defense Department stocks (see Sections 62 and 63 AECA). Section 36(d) contains similar notification requirements, though not reporting thresholds, for commercial technical assistance or manufacturing licensing agreements. As with arms sales, Congress can block any of these reportable transactions by enacting a joint resolution of disapproval as stipulated in the Arms Export Control Act (AECA) (see 22 U.S.C. 2753, 2776, 2796).

[18] For more information on the dual-use export control system, see CRS Report R41916, *The U.S. Export Control System and the Export Control Reform Initiative*, by Ian F. Fergusson and Paul K. Kerr.

[19] The House and Senate parliamentarians are the authorities with respect to interpreting legislative procedure.

[20] Christina L. Arabia, Analyst in Security Assistance, Security Cooperation and the Global Arms Trade, and Christopher M. Davis, Analyst on Congress and the Legislative Process, contributed to this section.

some arms sales, and may have dissuaded the President from formally proposing certain arms sales (see "AECA Resolutions of Disapproval: Selected Examples").

Senate Procedures

Section 36(b)(2) of the AECA stipulates that Senate consideration of any resolution of disapproval for an FMS transaction 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, 90 Stat. 729). AECA Section 36(c)(3)(A) applies this procedure to resolutions of disapproval concerning DCS transactions. According to the rules specified by Section 601(b), which supersede the standing rules of the Senate, the Senate Foreign Relations Committee must, within 10 calendar days after introduction of a resolution of disapproval, report to the Senate the committee's recommendation on any such resolution (certain adjournment periods are excluded from computation of the 10 days).

These rules also

- 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-calendar-day period described above. Such a motion is to be privileged, with floor debate limited to one hour. The rules also prohibit amendments to the motion, as well as subsequent motions to reconsider the related vote. AECA Section 36(b)(2) expressly permits a discharge motion after five calendar days for FMS transfers to NATO, NATO countries, Japan, Australia, South Korea, Israel, and New Zealand.[21]
- Make the motion to proceed to consider a resolution of disapproval privileged and preclude efforts to amend or to reconsider the vote on such 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; provide that a motion to further limit debate on a resolution of disapproval, debatable motion, or appeal is not debatable.

The Senate may change these provisions in whole or in part by unanimous consent.

House Floor Procedures

With regard to FMS transactions, AECA Section 36(b)(3) requires the House of Representatives to treat as "highly privileged" a motion to proceed to the consideration of a joint resolution of disapproval reported by the House Foreign Affairs Committee. AECA Section 36(c)(3)(B) applies this procedure to resolutions of disapproval concerning DCS transactions. Generally, highly privileged resolutions receive 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.

The AECA does not include a provision for discharging a joint resolution from the House Foreign Affairs Committee. If the committee reports such a resolution and the resolution is called up, the House will consider the measure in the Committee of the Whole, at which time members have the opportunity to offer amendments under the "five-minute rule." In current practice, however, the House would likely consider any disapproval resolution under the terms of a special rule from the

[21] The AECA has no comparable provision governing DCS transactions.

Rules Committee in order to set a time limit for debate, exclude any amendments to the resolution, and waive any points of order against the measure. Such a rule, if adopted by the House, would govern the manner in which the legislation would be considered, superseding the statutory provision.

Presidential Waiver Authority

The President has the authority to waive the AECA statutory review periods. For example, if the President states in the formal notification to Congress under AECA Sections 36(b)(1), 36(c)(2), 36(d)(2) that "an emergency exists" which requires the sale (or export license approval) to be made immediately "in the national security interests of the United States," the President is free to proceed with the sale without further delay. 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 his action and a "discussion of the national security interests involved." AECA Section 3(d) (2)(A) provides similar emergency authority with respect to retransfers of U.S.-origin major defense equipment, defense articles, or defense services.

Section 614(a) of the Foreign Assistance Act of 1961 (FAA), as amended,[22] also allows the President to waive provisions of the AECA, the FAA, and any act authorizing or appropriating funds for use under either the AECA or FAA in order to make available, during each fiscal year, up to $750 million in cash arms sales and up to $250 million in funds. Not more than $50 million of the $250 million limitation on funds use may be made available to any single country in any fiscal year through this waiver authority unless the country is a "victim of active aggression." Not more than $500 million of cash sales (or cash sales and funds made available combined) may be provided under this waiver authority to any one country in any fiscal year. To waive the provisions of these acts related to arms sales, the President must determine and notify Congress in writing that it is "vital" to the "national security interests" of the United States to do so. Before exercising the authority granted in Section 614(a), the President must "consult with" and "provide a written policy justification to" the House Foreign Affairs and the Senate Foreign Relations Committees and House and Senate Appropriations Committees.

2019 Sales to Jordan, Saudi Arabia, and the United Arab Emirates

On May 24, 2019, then-Secretary of State Michael Pompeo stated that he had directed the State Department "to complete immediately the formal notification of 22 pending arms transfers" to Jordan, Saudi Arabia, and the United Arab Emirates (UAE).[23] In a determination to Congress, Pompeo invoked the AECA Section 36 emergency provisions described above. The transfers included a variety of defense articles and services, as well as an agreement to coproduce and manufacture components of Paveway precision-guided munitions in Saudi Arabia. On June 20, 2019, the Senate passed S.J.Res. 36, which prohibited both the Paveway coproduction agreement described above and the transfer of additional such munitions, and S.J.Res. 38, which prohibited transfers of "defense articles, defense services, and technical data to support the manufacture of the Aurora Fuzing System for the Paveway IV Precision Guided Bomb Program." The same day,

[22] 22 U.S.C. 2364(a).

[23] Michael R. Pompeo, Secretary of State, "Emergency Notification of Arms Sales to Jordan, the United Arab Emirates, and Saudi Arabia," Press Statement, May 24, 2019. Exports to Australia, France, Israel, Italy, South Korea, Spain, and United Kingdom were also included in some of the notifications.

the Senate passed en bloc another 20 resolutions of disapproval prohibiting the remaining notified transfers.[24]

The House passed S.J.Res. 36 and S.J.Res. 38 on July 17, 2019. The same day, the House also passed S.J.Res. 37, which prohibited the transfer to the UAE of "defense articles, defense services, and technical data to support the integration, operation, training, testing, repair, and operational level maintenance" of the Maverick AGM-65 air-to-surface guided missile and several Paveway systems for use on a number of Emirati-operated aircraft. The resolution also prohibited the transfer of a number of Paveway munitions to the UAE. President Donald Trump vetoed the three bills on July 24. A July 29 Senate vote failed to override these vetoes.

2022 Sale to Ukraine

On April 24, 2022, the Defense Security Cooperation Agency notified Congress of Secretary of State Antony Blinken's determination that "an emergency exists requiring the sale of non-standard ammunition" to Ukraine "in the national security interest of the United States." Blinken invoked the aforementioned AECA Section 36 emergency waiver provisions.

AECA Resolutions of Disapproval: Selected Examples

On October 14, 1981, the House adopted a resolution (H.Con.Res. 194) 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).

On April 8, 1986, President Ronald Reagan formally proposed the sale to Saudi Arabia of 1,700 Sidewinder missiles, 100 Harpoon missiles, 200 Stinger missile launchers, and 600 Stinger missile reloads. On May 6, 1986, the Senate passed legislation to block these sales (S.J.Res. 316) by a vote of 73-22. The House concurred with the Senate action on May 7, 1986, by passing H.J.Res. 589 by a vote of 356-62. The House then passed S.J.Res. 316 by a voice vote and (in lieu of H.J.Res. 589) sent it to the President. On May 21, 1986, President Reagan vetoed S.J.Res. 316. But, in a letter that day to then-Senate Majority Leader Robert Dole, President Reagan said he would not include the controversial Stinger missiles and launchers in the sales proposal. On June 5, 1986, the Senate, by a 66-34 vote, sustained the President's veto of S.J.Res. 316, and the sale of the Sidewinder and Harpoon missiles to Saudi Arabia proceeded.

More recently, on March 10, 2016, the Senate Foreign Relations Committee rejected a motion to discharge a joint resolution (S.J.Res. 31) prohibiting the sale of several defense articles, particularly eight F-16 Block 52 aircraft.[25] H.J.Res. 82 was the House companion bill. On May 5, 2016, a State Department spokesperson, noting congressional objections to using Foreign Military Financing funds for the aircraft, told reporters that the United States had "told the

[24] S.J.Res. 27, S.J.Res. 28, S.J.Res. 29, S.J.Res. 30, S.J.Res. 31, S.J.Res. 32, S.J.Res. 33, S.J.Res. 34, S.J.Res. 35, S.J.Res. 37, S.J.Res. 39, S.J.Res. 40, S.J.Res. 41, S.J.Res. 42, S.J.Res. 43, S.J.Res. 44, S.J.Res. 45, S.J.Res. 46, S.J.Res. 47, and S.J.Res. 48.

[25] K. Alan Kronstadt, Specialist in South Asian Affairs, contributed to this paragraph.

Pakistanis that they should put forward national funds for the purchase."[26] In late May, the U.S. offer expired after Islamabad failed to submit a letter of acceptance by the required deadline.

On June 13, 2017, the Senate voted to reject a motion to discharge from the Senate Foreign Relations Committee a joint resolution (S.J.Res. 42) prohibiting certain proposed exports of defense articles and related information to Saudi Arabia, such as "technical data, hardware, and defense services" to support the Royal Saudi Air Force's deployment of the Joint Direct Attack Munition and integration of the FMU-152A/B JPB Fuze System into several warhead types. The bill also would have prohibited the transfer of "defense articles, defense services, and technical data to support the assembly, modification, testing, training, operation, maintenance, and integration" of specific precision guided munitions for certain Royal Saudi Air Force planes. H.J.Res. 102 was the House companion bill.

On December 9, 2020, the Senate voted to reject a motion to discharge from the Senate Foreign Relations Committee a joint resolution (S.J.Res. 77) prohibiting certain proposed exports of defense articles, services, and related information to the UAE. The proposed exports include Weapons-Ready MQ–9B Remotely Piloted Aircraft, certain precision-guided munitions, and Anti-Submarine Warfare mission kits and sensors. H.J.Res. 101 was the House companion bill. The same day, the Senate voted to reject a similar motion (S.J.Res. 78) prohibiting the proposed export of the F-35 Joint Strike Fighter and related services and information to the UAE. H.J.Res. 100 was the House companion bill.

On January 15, 2021, Representative Gregory Meeks introduced H.J.Res. 15, a joint resolution prohibiting a transfer of GBU–39/B Small Diameter Bomb I munitions, as well as related parts, components, and support services, to Saudi Arabia. The same day, Representative Meeks also introduced H.J.Res. 16, a joint resolution prohibiting certain transfers of defense articles, defense services, and technical data to support the "[a]ssembly, design, development, intermediate level maintenance, manufacture, modification, operation, repair, testing, and demilitarization of components for and full systems" of specified precision guided munitions for certain Royal Saudi Air Force planes. H.J.Res. 16 also prohibits the transfer of Paveway IV munitions to Saudi Arabia.

On May 20, 2021, Senator Bernard Sanders introduced S.J.Res. 19, a joint resolution prohibiting a transfer of certain air-delivered munitions, as well as related defense services and technical data, to Israel. The same day, Representative Alexandria Ocasio-Cortez introduced a companion bill, H.J.Res. 49.

[26] Mark Toner, State Department Regular News Briefing, May 5, 2016.

Congressional Use of Other Legislation

Congress can use the regular legislative process to prohibit or modify a proposed FMS or DCS transaction; a properly drafted law could block or modify an arms sale transaction if the items have not been delivered to the recipient country. There are potentially important practical advantages to prohibiting or modifying a sale, if Congress seeks to do so, prior to the date when the formal contract with the foreign government is signed—which could occur at any time after the statutory 30-day period. These likely advantages include (1) limiting political damage to bilateral relations that could result from signing a sales contract and later nullifying it with a new law; and (2) avoiding financial liabilities which the U.S. Government might face for breaking a valid sales contract. The legislative vehicle designed to prohibit or modify a specific arms sale can take a variety of forms, ranging from a rider to any appropriation or authorization bill to a freestanding bill or joint resolution. The only essential features that the vehicle must have are (1) that it is legislation passed by both houses of Congress and presented to the President for his signature or veto, and (2) that it contains an express restriction on the sale and/or the delivery of military equipment (whether it applies to specific items or general categories) to a specific country or countries.

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