

Foreign Military Sales Under Congressional Notification Thresholds: Dangers and Solutions

Women for Weapons Trade Transparency

Issue Overview

Under the Arms Export Control Act (AECA), Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) have different congressional reporting requirements based on the type of items being sold, whether the sale is DCS or FMS, the recipient, and the dollar value of the sale. **If the dollar value of a sale is lower than a reporting requirement threshold, Congress does not have to be notified, and information does not have to be made public.** DOS and components of the DOD share responsibility for FMS, including the Defense Security Cooperation Agency (DSCA), which issues public notifications of over threshold FMS. (Source: GAO-20-386). There is an unknown number of FMS cases which have gone unreported. The total dollar value of these sales is unknown, but it is likely to be in the billions (Source: DOS ISP-I-20-19). Failing to counter this growing problem will beget additional issues relating to financial inconsistency, lack of congressional and administrative transparency, and potential involvement of U.S. defense articles and services in human rights violations.

UNDERREPORTED

Under threshold sales pose a serious problem for transparency and public knowledge of US arms sales abroad, as many sales of defense articles and major defense equipment are not reported to Congress or the general public. This incomplete record obfuscates the realities of the weapons trade and denies constituents the right to question and improve their practices.

LACK OF CONGRESSIONAL OVERSIGHT

FMS cases that go unreported preclude Congress's ability to exercise oversight. "Under the AECA, it is the sense of Congress that FMS should only be approved when consistent with U.S. foreign policy and national security interests." (Source: GAO-19-673R). The executive branch's ability to unilaterally approve arms sales creates an unchecked power imbalance.

DISREGARDING HUMAN RIGHTS

Lack of congressional and public knowledge of under threshold sales prevents scrutiny of weapons when they are used in human rights violations and war crimes. While Department of State's Directorate of Defense Trade Control licensing officials may oppose a case for human rights concerns, they "may subsequently approve the case because human rights is only one of five general criteria being considered" (GAO-19-673R). This demonstrates that arms sales undisclosed to Congress may be approved for the sake of diplomatic and financial gain despite human rights concerns.

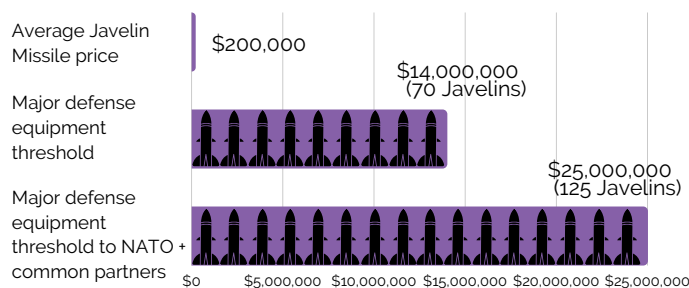
The Solution

We firmly believe that **legislation is needed to fully remove the arbitrary thresholds for military sales reporting.** This would serve to streamline the reporting process, ensure government transparency, and open US arms sales to congressional oversight and scrutiny. This call for reform is not new. The Government Accountability Office recommended that DOS publicly report consolidated defense export data on DCS and FMS in a consistent manner, and make the data available through the Internet (GAO-10-952). Removing FMS reporting thresholds will enable greater constituent engagement on national security, foreign policy, and human rights issues. Our government has a moral imperative to ensure American taxpayers and voters can know how federal funds and resources are being managed. Only Congress can mandate the necessary reforms.

NEGLIGENT MONITORING

Administration of the FMS program has proven to be dangerously negligent. "In March 2008, DOD disclosed that it had mistakenly transferred intercontinental ballistic missile parts to Taiwan through the FMS program" (Source: GAO-09-454). According to its own officials, DOD only investigates the whereabouts of defense articles if a foreign customer notifies the department of missing/incorrect orders, or in some cases, delivery of articles never ordered. This honor system recklessly places responsibility on end users to prevent diversion.

How many weapons can slip through the cracks?



Javelin missiles are commonly transferred through FMS. With notification thresholds of \$14 million and \$25 million, depending on the recipient, approximately **up to 70 or 125 Javelins can be transferred at one time without congressional notification.**

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Congressional Notification Requirements for Sales of Defense Articles

Destination	Type of transaction	Transactions and Value Thresholds			
		Major Defense Equipment	Defense Articles	Design and Construction	Firearms
NATO +5	FMS	\$25 million	\$100 million	\$300 million	—
	DCS	\$25 million	\$100 million	—	\$1 million
Other Destinations	FMS	\$14 million	\$50 million	\$200 million	—
	DCS	\$14 million	\$50 million	—	\$1 million

Retrieved from: Congressional Research Service RL31675. Source: Arms Exports Control Act (P.L. 94-329)

Table of Acronyms	
AECA	Arms Export Control Act
DCS	Direct Commercial Sales
DDTC	Directorate of Defense Trade Controls
DFAS	Defense Finance and Accounting Service
DOD	Department of Defense
DOS	Department of State
DSCA	Defense Security Cooperation Agency
FMS	Foreign Military Sales
FOIA	Freedom of Information Act
GAO	Government Accountability Office
LOA	Letter of Agreement/Authorization
OGIS	Office of Government Information Services

Timeline of the Arms Export Control Act (AECA)



1968

Foreign Military Sales Act of 1968 granted the President wide authority over arms sales. Congress retained authority over financing.



1974

The Nelson-Bingham Amendment required the President to give Congress advance notice of any offer to sell defense items worth \$25 million or more and allowed Congress to disapprove of the sale within 20 days by passage of a concurrent resolution.



1976

The Arms Export Control Act changed the period of time in which the President notified Congress of arms sales from 20 to 30 days. It also added a major defense equipment category with a \$7 million threshold.



1980

The International Security and Development Cooperation Act of 1980 added design and construction services category with a \$200 million threshold.



1981

The International Security and Development Cooperation Act of 1981 increased the defense articles threshold from \$7 million to \$14 million and the \$25 million threshold for sales to NATO and common partners to \$50 million.



2002

The Security Assistance Act raised thresholds for major defense equipment to \$25 million for NATO, Australia, Japan, and New Zealand.



2008

South Korea added to NATO + countries with higher notification thresholds.



2010

Israel added to NATO + countries with higher notification thresholds.