

139920.316

S.L.C.

99th CONGRESS
2d Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. Biden introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require specific congressional authorization for certain sales, exports, leases, and loans of defense articles, and for other purposes.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That
3 this Act may be cited as the "Arms Export Reform Act of
4 1986".

5 Sec. 2. (a) Notwithstanding any other provision of law,
6 in the case of--

7 (1) any letter of offer to sell under the Arms Export
8 Control Act,

9 (2) any application by a person (other than with
10 regard to a sale under section 21 or 22 of the Arms
11 Export Control Act) for a license for the export of, or

S.

Al J/P

ped - legislative vote by both houses disapproved
now - to block - need both to disapprove - bill make
voted so need only 1/3 + 1 in one house to pass
date to go thru
this bill - need majority in both houses to go thru.

1 (3) any agreement involving the lease under chapter 6
2 of the Arms Export Control Act, or the loan under chapter
3 2 of part II of the Foreign Assistance Act of 1961, to
4 any foreign country or international organization for a
5 period of one year or longer of,
6 any item described in subsection (d), before such letter of
7 offer or license is issued or before such agreement is
8 entered into or renewed, the President shall submit to the
9 Speaker of the House of Representatives and to the chairman
10 of the Committee on Foreign Relations of the Senate a
11 numbered certification containing--

12 (A) in the case of a letter of offer to sell, the
13 information described in section 36(b)(1) of the Arms
14 Export Control Act and section 36(b)(2) of such Act, as
15 redesignated by section 3(a)(2) of this Act,

16 (B) in the case of a license for export (other than
17 with regard to a sale under section 21 or 22 of such
18 Act), the information described in section 36(c) of such
19 Act, as amended by section 3(b)(1) of this Act, and

20 (C) in the case of such an agreement, the information
21 described in section 62(a) of such Act unless section
22 62(b) of such Act applies,
23 without regard to the dollar amount of such sale, export,
24 lease, or loan.

25 (b) Notwithstanding any other provision of law and except

1 as provided in subsection (e)--

2 (1) no letter of offer may be issued under the Arms
3 Export Control Act with respect to a proposed sale,

4 (2) no license may be issued under such Act with
5 respect to a proposed export, and

6 (3) no lease may be made under chapter 6 of such Act
7 and no loan may be made under chapter 2 of part II of the
8 Foreign Assistance Act of 1961,

9 of any item described in subsection (d) to a country or
10 international organization (other than a country or
11 international organization described in subsection (c))
12 unless the Congress enacts a joint resolution or other
13 provision of law authorizing such sale, export, lease, or
14 loan, as the case may be.

15 (c) Except as provided in subsection (e), no such letter
16 of offer or license may be issued and no such lease or loan
17 may be made with respect to a proposed sale, export, lease,
18 or loan, as the case may be, of any item described in
19 subsection (d) to the North Atlantic Treaty Organization
20 (NATO), any member country of such organization, Japan,
21 Australia, New Zealand, or any country which is a party to
22 the Camp David Accords or an agreement based on such Accords,
23 if the Congress within fifteen calendar days after receiving
24 the appropriate certification enacts a joint resolution
25 prohibiting the proposed sale, export, lease, or loan, as the

1 case may be.

2 (d) The items referred to in subsections (b) and (c) are
3 those items of types and classes currently used or to be used
4 by the Armed Forces of the United States (other than the Army
5 National Guard or the Air National Guard or a Reserve
6 component of an Armed Force of the United States) or produced
7 solely for export, as follows:

8 (1) turbine-powered military aircraft; rockets;
9 missiles, anti-aircraft artillery and associated control,
10 target acquisition and electronic warfare equipment and
11 software;

12 (2) helicopters designed or equipped for combat
13 operations;

14 (3) main battle tanks and nuclear-capable artillery;
15 and

16 (4) submarines, aircraft carriers, battleships,
17 cruisers, frigates, destroyers, and auxiliary warships.

18 (e) The requirements of subsections (b) and (c) shall not
19 apply if the President states in his certification that an
20 emergency exists which requires the proposed sale, export,
21 lease, or loan, as the case may be, in the vital national
22 security interests of the United States. If the President so
23 states, he shall set forth in the certification a detailed
24 justification for his determination, including a description
25 of the emergency circumstances which necessitate the

1 immediate issuance of the letter of offer or license for
2 export or lease or loan and a discussion of the vital
3 national security interests involved.

4 (f)(1) Except as otherwise provided in this paragraph and
5 paragraph (3), any joint resolution under subsection (b) or
6 (c) shall be considered in the Senate in accordance with the
7 provisions of section 601(b) of the International Security
8 Assistance and Arms Export Control Act of 1976. For purposes
9 of consideration of a joint resolution under subsection
10 (c)(1), the motion to discharge provided for in section
11 601(b)(3)(A) of such Act may be made at the end of 5 calendar
12 days after the resolution is introduced. If a joint
13 resolution under subsection (b) deals with more than one
14 certification, the references in section 601(b)(3)(A) of such
15 Act to a resolution with respect to the same certification
16 shall be deemed to be a reference to a joint resolution which
17 relates to all of those certifications.

18 (2) For the purpose of expediting the consideration and
19 adoption of joint resolutions under subsections (b) and (c),
20 a motion to proceed in the House of Representatives to the
21 consideration of any such resolution after it has been
22 reported by the Committee on Foreign Affairs shall be highly
23 privileged.

24 (3) If the text of a joint resolution under subsection
25 (b) contains more than one section, amendments which would

1 strike out one of these sections shall be in order, but
2 amendments which would add an additional section shall not be
3 in order.

4 (4)(A) The joint resolution required by subsection (b) is
5 a joint resolution the text of which consists only of one or
6 more sections, each of which reads as follows: "The proposed
7 to described in the certification
8 submitted pursuant to section 2(a) of the Arms Export Reform
9 Act of 1986 which was received by the Congress on
10 (Transmittal number) is authorized.", with the
11 appropriate activity, whether sale, export, lease, or loan,
12 and the appropriate country or international organization,
13 date, and transmittal number inserted.

14 (B) The joint resolution required by subsection (c) is a
15 joint resolution the text of which consists of only one
16 section, which reads as follows: "That the proposed
17 to described in the certification submitted
18 pursuant to section 2(a) of the Arms Export Reform Act of
19 1986 which was received by the Congress on
20 (Transmittal number) is not authorized.", with the
21 appropriate activity, whether sale, export, lease, or loan,
22 and the appropriate country or international organization,
23 date, and transmittal number inserted.

24 Sec. 3. (a) Section 36(b) of the Arms Export Control Act
25 is amended--

1 (1) by striking out the last two sentences of
2 paragraph (1) and by striking out paragraphs (2) and (3);
3 and

4 (2) by redesignating paragraphs (4) and (5) as
5 paragraphs (2) and (3), respectively.

6 (b) Section 36(c) of such Act is amended--

7 (1) by striking out "(c)(1)" and inserting in lieu
8 thereof "(c)"; and

9 (2) by striking out paragraphs (2) and (3).

10 (c)(1) section 62(a) of such Act is amended by striking
11 out "Not less than 30 days before" and inserting in lieu
12 thereof "before".

13 (2) Section 63 of such Act is repealed.

14 (3) Section 64 of such Act is redesignated as section 63.

15 Sec. 4. The provisions of this Act shall apply with
16 respect to any letter of offer or license for export issued,
17 or any lease or loan made, after the date of enactment of
18 this Act.

ARMS EXPORT REFORM ACT OF 1986
Statement by Senator Joseph R. Biden, Jr.
July 2_, 1986

Mr. President, only under the rarest circumstances could we expect a decision of the Supreme Court of the United States to have a direct and significant bearing on the conduct of the foreign policy of the United States. But in 1983 precisely that occurred when the Court rendered its famous Chadha decision, which held unconstitutional the legislative veto procedure which had been written into numerous laws of a wide variety.

The Pre-Chadha System

One such statute -- a most significant one -- was the Arms Export Control Act. Under the complex provisions of that law, a procedure had been established enabling Congress to receive advance notification of significant U.S. arms transfers to foreign nations and to disapprove such transfers by the mechanism of a concurrent resolution. The Act stipulated three thresholds beyond which a sale is subject to Congressional disapproval: \$14 million for major defense equipment (meaning sophisticated weapons or hardware); \$50 million for any defense article or service; and \$200 million for design and construction projects.

Disapproval by concurrent resolution meant that if a majority in both chambers opposed a sale, the sale would not transpire. Conversely, a President would prevail in executing a proposed arms

sale if he could win a majority in either chamber -- enough, that is, to prevent the passage of a concurrent resolution.

As it happened, no proposed arms transfer was ever blocked by Congress using that mechanism. But the very existence of the procedure did ensure that any Administration would give careful consideration to the support or opposition a contemplated sale might encounter in Congress. On several occasions, the reality of Congressional authority in the arms sales area has caused proposals to be modified or abandoned, the latter having occurred most recently in the case of a contemplated sale to Jordan.

The Current System

This year, pursuant to an initiative by Senator Cranston, Congress took the necessary legislative steps to adapt the Arms Export Control Act to the ruling in Chadha. The Cranston bill revised the Act to provide that Congress could disapprove a sale by means of joint resolution -- a procedure obviously constitutional, even in view of the Chadha decision, because a joint resolution represents the fresh enactment of a full new law. The continued process of Congressional notification, combined with the expedited legislative procedure stipulated by the Arms Export Control Act, meant that Congress would still be certain of the opportunity to review all proposed sales and, in the event of a controversial sale, to express its will promptly.

Unfortunately, events of recent weeks surrounding a major arms sale to Saudi Arabia have shown the weakness of the

post-Chadha system. Originally envisaged as a multi-billion dollar deal, the sale was whittled down, in anticipation of Congressional opposition, to a level of \$354 million, and then reduced again to a level of \$265 million in deference to Congressional concern about the transfer of Stinger missiles. The final outcome was nonetheless most extraordinary and disturbing: a massive, intensely controversial arms sale to Saudi Arabia survived on the basis of support from one-sixth of the House of Representatives and one-third plus one in the Senate.

A Better System

Mr. President, I believe strongly that the major foreign policy business of the United States must be conducted on the basis of far stronger support from the Congress. If a President's tools of leadership and persuasion cannot prevail -- to the extent of winning majority Congressional support on a fundamental issue -- there is sound reason for reconsideration of the policy. This principle applies to aid to the Nicaraguan contras, and it applies to arms sales to Saudi Arabia.

It is to prevent any recurrence of the sharp deviation from that principle, such as we have just experienced in the case of the Saudi sale, that I am today -- with Senators Boschwitz Pell, and _____ -- introducing "The Arms Export Reform Act of 1986." In the House, companion legislation is being simultaneously introduced by Congressman Mel Levine, joined by

House Foreign Affairs Committee Chairman Dante Fascell and other distinguished cosponsors.

This legislation would build on the Arms Export Control Act, amending the Act in two significant ways, both fully harmonious with -- and indeed designed to uphold -- the Act's original spirit and intent.

(1) Sales Subject to Disapproval: A New Criterion. The first change concerns the definition of sales which shall be subject to Congressional consideration. The Arms Export Control Act, in both its original and current form, has defined such sales according to the monetary thresholds I cited earlier: \$14 million for major defense equipment; \$50 million for any defense article or service; and \$200 million for design and construction projects. Any contemplated sale above these levels has required formal notification to Congress, which may then act to disapprove.

Under the revised system embodied in our bill, Congress would continue to receive notification of all sales above these thresholds and would thereby continue to monitor the overall flow of U.S. arms transfers. What would change, however, is the criterion governing which U.S. sales shall be subject to Congressional action. A decade of experience with the Arms Export Control Act has demonstrated that Congressional concern about a proposed arms deal has never been triggered by the dollar amount per se. Rather, when Congress has become involved in challenging a sale, it has always been because of the sensitivity -- the

quality and technological sophistication -- of the weapons to be transferred. In short, we have been interested in jets, not hangar and runway construction; in AWACS, not routine radar equipment; in tanks, not trucks and jeeps; in warships, not harbor dredging and port facilities.

Accordingly, the revised law would, for all sales of non-sensitive weapons and equipment, completely eliminate the Congressional review process and all attendant delay, leaving in place only the notification requirement for sales above the three thresholds. But, meanwhile, the new law would require that all sales of sensitive weaponry, in any dollar amount, be subject to Congressional review and action.

Weapons and equipment defined as sensitive would be generically identified in law as "those items of types and classes currently used or to be used by the Armed Forces of the United States (other than the Army National Guard or the Air National Guard or a Reserve component of an Armed Force of the United States), or produced solely for export, as follows:

-- turbine-powered military aircraft; rockets; missiles; anti-aircraft artillery; and associated control, target acquisition, and electronic warfare equipment and software;

-- helicopters designed or equipped for combat operations;

-- main battle tanks and nuclear-capable
artillery; and

-- submarines, aircraft carriers, battleships,
cruisers, destroyers, frigates, and auxiliary
warships."

The effect of this change would be to focus the review system where it should be focused, while allowing the executive branch to proceed routinely on matters that experience has shown to be routine.

(2) The Mechanism of Congressional Approval/Disapproval. The second change concerns the mechanism by which Congress may reflect its will on a sale subject to Congressional action. Current law distinguishes two categories of nations. The first consists of NATO member-countries, ANZUS member-countries, and Japan. Because the strong presumption in the case of sales to any of these nations is that Congress will be favorably disposed, the Arms Export Control Act has provided an abbreviated period of Congressional consideration. Sales to all other nations fall into the second category and are subject to regular review and consideration.

The legislation we are introducing today would provide for absolutely no change in the favored standing of sales to nations in the first category. It would, moreover, add to that category any "country which is a party to the Camp David Accords or an agreement based on such Accords," which at this point means Israel

and Egypt. As expanded, this category could be described as consisting of nations with which we are formally allied and those which are the two principal recipients of American military aid. Because a very clear consensus underlies U.S. arms transfers to each and all of these nations, the law would continue to reflect a presumption in favor of such transfers, which would continue to be subject only to a joint resolution of disapproval.

What would change, under this new legislation, is the procedure governing the sale of highly sophisticated weaponry to all other nations. For them, a new procedure would be established, requiring affirmative Congressional action to approve any major sale. This would mean that there would not be -- as there should not be -- a presumption in favor of any such transfer. Instead, the proposed transfer of front-line U.S. arms would have to obtain a majority of support in both houses -- rather than a mere one-third plus one in either house, as in the current system. There would, however, be a stipulation allowing the President to by-pass the need for such Congressional approval if he certified, and detailed the existence of, an emergency requiring a sale in the vital national security interests of the United States.

I can easily anticipate, Mr. President, the objection that such an affirmative-approval mechanism will be laborious to implement and will founder on the complexities and obstacles that characterize the normal workings of Congress. But on examination

this objection proves unpersuasive. First, this legislation completely removes all non-sensitive sales from the system of Congressional control -- meaning that the executive branch will be free to act immediately once it makes the decision to proceed with such a sale. Second, in the case of sensitive weaponry, many sales -- those to countries in the "consensus" category -- will not require affirmative approval. And for sensitive sales where such approval is required, the legislation provides that a joint resolution of approval will enjoy expedited procedure that will ensure prompt and facile Congressional consideration. Additionally, approval will be possible -- where it proves convenient to Congress -- by means of ad hoc amendments to regular legislation.

We -- the cosponsors of the Arms Export Reform Act -- are confident that once such a system is established, the executive branch and Congress will quickly devise a means of packaging non-controversial sales for consideration on a periodic basis with swift approval. Highly controversial sales, however, will have to stand alone and be dealt with as they should be -- by full debate followed by a vote demonstrating the presence or absence of the degree of Congressional support that should underlie any major foreign policy decision.

Comparing the Original, Current, and Proposed Systems

In response to any charge that such legislation would bring Congress into the role of "micro-managing" United States arms

sales policy, let me emphasize that in fact the reverse is true. This legislation would ease present requirements on the legislative and executive branches while focussing energy and attention on those sales that truly should be decided upon jointly -- sales involving sensitive, front-line weapons and equipment.

-- As to Congressional notification, proposed sales above the threshold levels would be subject to the smoothly operating information procedures now in effect, allowing Congress to stay abreast of the flow of U.S. arms transfers.

-- As to the treatment of non-controversial sales, which Congress has heretofore dealt with through inaction, the proposed system would offer substantial improvement. In the case of non-sensitive items, the new law would free the sale to proceed automatically, with neither Congressional review nor delay, regardless of the dollar amount. Similarly, in the case of sensitive equipment going to allies and key arms aid recipients, no Congressional action would be required, since the current mechanism -- a joint resolution of disapproval -- would remain in effect. Only in the case of sensitive equipment going to other nations would the procedure become somewhat more demanding -- but only slightly so for non-controversial sales, since the executive branch and Congress could easily package such sales for routine Congressional approval, either in separate resolutions enjoying expedited procedure or by means of ad hoc amendments to regular legislation. For such non-controversial sales, the procedure

could operate as easily as current procedures for military promotion lists and the confirmation of uncontested political appointments.

-- Finally, as to the treatment of controversial sales, the proposed system would, as always, provide for a vote, but with an approval standard much closer to the original system -- and to what is reasonable -- than the post-Chadha system under which we are now operating.

Whereas the current system allows the President to implement his proposal with the bare support of merely one-third plus one in either house, the original system required that he obtain a full majority of support in at least one house. The proposed system, in only slight contrast to the original pre-Chadha system, would require that the President gain majority support in both houses. Not only is this reasonable; is it not precisely the way in which Congress and the executive branch should interact in the conduct of American foreign policy?

Mr. President, trusting that many of my colleagues will answer that question in the affirmative, I now -- on behalf of my cosponsors -- introduce "The Arms Export Reform Act of 1986" in anticipation that the Foreign Relations Committee will hold hearings on this legislation in the near future. If enacted, this legislation would repair the damage done to the original Arms Export Control Act by the Chadha decision, and would revive and reflect the intent of that Act, both by focusing the arms transfer

review process where it belongs -- on our most sensitive, sophisticated weaponry -- and by establishing an approval standard which the Constitution implies and which time has shown to be wise: affirmative Congressional concurrence in major foreign policy decisions.