

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

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U.S. Arms Sales to Pakistan

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Abstract. This report reviews the issue of U.S. arms sales to Pakistan. It provides background details regarding recent major weapons transactions between the United States and Pakistan, as well as the rationale given for such sales. It also reviews the current statutory framework that governs U.S. weapons sales to Pakistan, including existing authorities that could be used to curtail or terminate existing or prospective sales to that country.

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CRS Report for Congress

U.S. Arms Sales to Pakistan

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Summary

This report briefly reviews the issue of U.S. arms sales to Pakistan. It provides background details regarding recent major weapons transactions between the United States and Pakistan, as well as the rationale given for such sales. It also reviews the current statutory framework that governs U.S. weapons sales to Pakistan, including existing authorities that could be used to curtail or terminate existing or prospective sales to that country. This report will only be updated should events warrant.

In 2006, the United States signed arms transfer agreements with Pakistan in excess of \$3.5 billion, ranking Pakistan first among all arms clients of the United States during that calendar year. The key elements in Pakistan's arms purchases from the United States were 36 F-16C/D Block 50/52 fighter aircraft for \$1.4 billion; a variety of missiles and bombs to be utilized on the F-16 C/D fighter aircraft for over \$640 million; the purchase of Mid-Life Update Modification Kits to upgrade Pakistan's F-16A/B aircraft for \$890 million; and 115 M109A5 155mm Self-propelled howitzers for \$52 million. The rise of Pakistan to its new status as a major arms purchaser from the United States is particularly noteworthy given the difficulties the United States has had with Pakistan since the 1970s over its successful effort to produce nuclear weapons. The total value of Pakistan's 2006 arms purchases from the United States nearly matches the total value of all Foreign Military Sales (FMS) program purchases by Pakistan from the United States for the entire period from FY1950-FY2001 (more than \$3.6 billion in current dollars).¹

In the 1950s and 1960s, at the height of the Cold War, the United States saw Pakistan as a useful ally in the effort to contain the military expansion and political

¹ Data from Fiscal Year Series report of the Defense Security Cooperation Agency (DSCA) of the Department of Defense. Pakistan has contracted for 18 F-16C/D aircraft; it has not exercised its option to purchase the additional 18 aircraft. Descriptions of Pakistan's 2006 arms purchases from the United States are found in CRS Report RL34187, *Conventional Arms Transfers to Developing Nations, 1999-2006*, by Richard F. Grimmett. This report includes data tables showing Pakistan's rank among all developing nations in arms transfer agreements with all weapons suppliers for various time periods.

influence of the Soviet Union. For its part, Pakistan saw its relationship with the United States as a useful counterweight to India's military power and its prospective threat to Pakistan's security. Beginning in the mid-1970s, Pakistan responded to India's 1974 underground nuclear test by seeking its own nuclear weapons capability. These efforts subsequently led the United States to suspend military aid beginning in 1979. Soon thereafter, following the Soviet Union's invasion of Afghanistan, the U.S. waived its sanctions on assistance to Pakistan in an effort to gain its support for the effort to force the withdrawal of the Soviet military from Afghanistan. Early in the Presidency of Ronald Reagan, the United States sold Pakistan 40 F-16 A/B combat fighter aircraft, an indication of the Reagan Administration's view of that country's potential as a supporter against Soviet Union expansionism in South Asia. Yet in spite of the renewal of U.S. aid and the development of closer military ties in the early 1980s, many in Congress remained concerned with Pakistan's developing nuclear weapons program.

In 1985, Congress added Section 620E(e) to the Foreign Assistance Act.² This provision, known as the Pressler amendment, required the President to certify to Congress that Pakistan did not possess a nuclear explosive device during each fiscal year in which the Administration proposed to provide assistance to Pakistan. This placed an important brake on expansion of a defense supply relationship between the United States and Pakistan. With the withdrawal of Soviet military forces from Afghanistan, the nuclear weapons development program of Pakistan came under intensive U.S. examination again. Finally, in October 1990, President George H. W. Bush suspended U.S. military assistance to Pakistan. As a result of this action, the United States stopped the delivery of 28 F-16 fighter aircraft that Pakistan had purchased 1989.³

Throughout the 1990s, the United States essentially ended military cooperation and arms sales to Pakistan. It was only after the terrorist attacks against the United States on September 11, 2001, that the Bush Administration chose to re-engage with Pakistan in the area of defense cooperation, and was willing, once again, to consider and approve major weapons sales to that country. It secured authority from Congress, which has been extended annually as required, to waive restrictions on aid to Pakistan. President Bush has invoked this authority to keep providing aid. The rationale for this change of policy regarding arms sales to Pakistan was to secure its government's support for the U.S. counter-terrorism program. In June 2004, President George W. Bush designated Pakistan a Major Non-NATO ally.⁴

² P.L. 99-83, Title IX, § 902.

³ Subsequently, in 1998, the United States agreed to compensate Pakistan for the funds it had expended to purchase the 28 F-16s through a cash payment and goods, including surplus wheat. For a detailed discussion of the various political and military issues in the U.S.-Pakistan relationship see CRS Report RL33498, *Pakistan-U.S. Relations*, by K. Alan Kronstadt.

⁴ The most recent statute providing the President authority to waive restrictions on assistance to Pakistan is P.L. 110-53, signed August 3, 2007. Section 2042 of this act provides that upon receipt by Congress of a Presidential determination that contains specific stipulations regarding Pakistan, the President may waive provisions in law that would otherwise prevent U.S. military assistance to Pakistan. This authority is valid through FY2008; see CRS Report RL33498, *Pakistan-U.S. Relations*.

After a decade of denying Pakistan the right to purchase advanced military equipment and assistance in purchasing it, a major contract was signed in 2006 for the purchase of 36 new F-16C/D aircraft and associated equipment. The express rationale of the Bush Administration for this specific sale was:

Given its geo-strategic location and partnership in the Global War on Terrorism (GWOT), Pakistan is a vital ally of the United States...This proposed sale will contribute to the foreign policy and national security of the United States by helping an ally meet its legitimate defense requirements. The aircraft also will be used for close air support in ongoing operations contributing to the GWOT.⁵

This statement succinctly summarizes what continues to be the underlying argument by the Bush Administration for arms sales and military assistance to Pakistan. Apart from the 40 F-16A/B aircraft sold to Pakistan during the early years of the Reagan Administration, few other major weapons systems have been sold to Pakistan by the United States until the 2006 F-16 aircraft sale. Other systems sold have primarily been missiles such as the Sidewinder for the F-16 aircraft, and a limited number of Harpoon anti-ship missiles. Since the Bush Administration has announced its willingness to sell major weapons systems to Pakistan, various press accounts have speculated about possible new sales. Apart from the major 2006 F-16 sales and related equipment noted above, no additional major weapon systems have been sold to Pakistan.⁶

The statutory authority governing U.S. arms sales to Pakistan is found in the Arms Export Control Act (AECA).⁷ This statute sets out terms and conditions that must be met before any country can be permitted to purchase any item on the United States Munitions List. An essential requirement is that the country seeking U.S. weapons be “eligible” to purchase them. Thus, if there is no other prohibition in other U.S. law that would preclude the sale of a weapon to Pakistan, then it would be “eligible” to make such a purchase from the United States. Because a country is eligible to purchase a weapon does not mean that the United States is obligated to sell it.⁸

⁵ Transmittal No. 06-09, June 28, 2006, Pakistan — F-16C/D Block 50/52 Aircraft. Defense Security Cooperation Agency. Available on the DSCA website at [<http://www.dscamilitary.com>]. For a detailed discussion of the policy implications of and issues associated with the aircraft sales to Pakistan see CRS Report RL33515, *Combat Aircraft Sales to South Asia: Potential Implications*, by Christopher Bolkcom, Richard F. Grimmett, and K. Alan Kronstadt.

⁶ The United States has provided excess defense systems to Pakistan such as 8 excess P-3C Orion maritime patrol aircraft, and refurbished AH-1F Cobra attack helicopters. The United States has also provided 6 C-130 military transport aircraft, surveillance radars, military radios, and over 2,000 TOW anti-tank missiles. But, as noted above, apart from the F-16 fighter aircraft, the U.S. has not sold Pakistan other major combat systems, such as main battle tanks or naval vessels. Summaries and details of past weapons orders by Pakistan from the United States and from other arms suppliers are found in Forecast International, *Asia, Australia & Pacific Rim*, Pakistan, October 2006.

⁷ P.L. 90-629, as amended. 22 U.S.C.2751 et. seq.

⁸ A discussion of how the AECA can place conditions on the use of U.S. weapons sold to foreign nations is in CRS Report RL30982, *U.S. Defense Articles and Services Supplied to Foreign Recipients: Restrictions on Their Use*, by Richard F. Grimmett.

Should the United States government choose to do so, it can stop the transfer of defense articles and services to Pakistan for which valid contracts exist, without finding it in violation of an applicable agreement with the United States relating to permissible uses of weapons previously sold. The authority for suspension of deliveries or defense items or cancellation of military sales contracts is found in sections 2(b) and 42(e)(1)-(2) of the AECA. Section 2(b) of the Arms Export Control Act permits the Secretary of State, under the President's direction, to, among other things, determine "whether there shall be delivery or other performance" regarding sales or exports under the AECA in order that "the foreign policy of the United States is best served thereby."

Section 42(e)(1)⁹ of the Arms Export Control Act states that:

Each contract for sale entered into under sections 21, 22, 29 and 30 of this Act, and each contract entered into under section 27(d) of the Act, shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

Section 42(e)(2)(A) of the Arms Export Control Act further states that:

Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

Thus, all government-to-government agreements or licensed commercial contracts for the transfer of defense articles or defense services may be halted, modified, or terminated by the executive branch should it determine that it is advisable to do so. In this context, should the Bush Administration decide that actions taken by the government of Pakistan are contrary to the national security interests of the United States, the President can suspend or terminate existing arms sales agreements or prevent the delivery of weapons previously ordered, as he deems appropriate. The Congress can also pass legislation that would suspend, modify, or terminate any arms sale contract should it choose to do so.

⁹ 22 U.S.C. § 2791(e).