

116TH CONGRESS
2D SESSION

H. R. 8707

To require certifications for transfers of certain United States defense articles and defense services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2020

Mr. ENGEL (for himself, Mr. DEUTCH, Ms. SPANBERGER, Mr. MALINOWSKI, Mr. GOTTHEIMER, Mr. SCHNEIDER, Ms. WASSERMAN SCHULTZ, Mrs. MURPHY of Florida, Mr. TRONE, Mr. SHERMAN, and Mr. CONNOLLY) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To require certifications for transfers of certain United States defense articles and defense services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Middle East Advanced
5 Military Technology Protection Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) In June 2017, the Assistant Secretary of
2 State for Political-Military Affairs testified to Con-
3 gress, “Arms transfers are foreign policy. When we
4 transfer a system or a capability to a foreign part-
5 ner, we are affecting regional—or foreign internal—
6 balances of power; we are sending a signal of sup-
7 port; and we are establishing or sustaining relation-
8 ships that may last for generations and provide ben-
9 efits for an extended period of time.”.

10 (2) For more than 50 years, the United States
11 has worked to ensure Israel’s qualitative military
12 edge when considering the sale or export of defense
13 articles and defense services to Israel or to others in
14 the Middle East region.

15 (3) Maintaining a substantial qualitative mili-
16 tary edge is critical to preserving Israel’s safety and
17 security and has been a vital consideration in all
18 previous sales of weapons to the region.

19 (4) Congress codified United States support for
20 Israel’s qualitative military edge as United States
21 policy in 2008 in section 201 of Public Law 110–
22 429 (22 U.S.C. 2776 note), which requires that any
23 proposed U.S. arms sale to “any country in the Mid-
24 dle East other than Israel” must include a notifica-
25 tion to Congress with a “determination that the sale

1 or export of such would not adversely affect Israel’s
2 qualitative military edge over military threats to
3 Israel”.

4 (5) In 2016, the United States and Israel
5 signed a 10-year Memorandum of Understanding, in
6 which the United States committed that “the acqui-
7 sition of additional U.S.-produced capabilities and
8 technology provide the best means to ensure Israel
9 preserves its Qualitative Military Edge (QME)”.

10 (6) In 2015, Vice President Joe Biden an-
11 nounced United States intention to transfer the F-
12 35 Joint Strike Fighter to Israel: “What you may
13 not know is that next year, we will deliver to Israel
14 the F-35 Joint Strike Fighter—our finest—making
15 Israel the only country in the Middle East with a
16 fifth-generation aircraft. No other.”.

17 (7) In 2016, Israel received its first shipment of
18 F-35 Joint Strike Fighter aircraft and on the occa-
19 sion, the Israeli Defense Forces stated, “As the Mid-
20 dle East grows more and more unstable, and as
21 groups that threaten to destroy us race to stockpile
22 weapons, we need to stay a step ahead of the game.
23 The F-35 gives us the edge we need to take on
24 groups and armies with even the most advanced
25 technology.”.

1 **SEC. 3. STATEMENT OF POLICY.**

2 It shall be the policy of the United States that a pro-
3 posed sale or export of defense articles or defense services
4 must be determined not to adversely affect Israel's ability
5 to counter and defeat any credible conventional military
6 threat from any individual state or possible coalition of
7 states or from non-state actors, while sustaining minimal
8 damages and casualties, through the use of superior mili-
9 tary means possessed in sufficient quantity, including
10 weapons, command, control, communication, intelligence,
11 surveillance, and reconnaissance capabilities that in their
12 technical characteristics are superior in capability to those
13 of such other individual state or possible coalition states
14 or non-state actors, consistent with section 36(h) of the
15 Arms Export Control Act (22 U.S.C. 2776(h)).

16 **SEC. 4. CERTIFICATION ON CRITERIA FOR TRANSFER OF**
17 **COVERED DEFENSE ARTICLES AND DEFENSE**
18 **SERVICES.**

19 (a) IN GENERAL.—Subject to subsections (c) and (d),
20 and notwithstanding any other provision of law, the Presi-
21 dent may not transfer covered defense articles or defense
22 services to any country in the Middle East other than
23 Israel until at least 60 days after the date on which the
24 President transmits to the appropriate congressional com-
25 mittees a certification described in subsection (b) with re-
26 spect to the proposed transfer.

1 (b) CERTIFICATION DESCRIBED.—A certification de-
2 scribed in this subsection is a certification in writing of
3 the following:

4 (1) The recipient country has signed an agree-
5 ment of peace or normalization with Israel.

6 (2) The transfer of the covered defense articles
7 or defense services includes a determination pursu-
8 ant to section 36(h) of the Arms Export Control Act
9 (22 U.S.C. 2776(h)).

10 (3) The transfer of the covered defense articles
11 or defense services does not present a significant
12 danger of compromising the critical military and
13 technological military advantage such articles or
14 services provide to the United States Armed Forces.

15 (4) The transfer of the covered defense articles
16 or defense services will not negatively affect Israel's
17 qualitative military edge.

18 (5) The covered defense articles have been
19 modified to ensure that Israel is able to identify, lo-
20 cate, and continually track such articles while in
21 flight at a distance that is satisfactory to Israel, and
22 that the recipient country will not alter such modi-
23 fications.

24 (6) The recipient country has provided specific,
25 reliable, and verifiable assurances to the United

1 States that it will protect the covered defense arti-
2 cles and defense services from theft or diversion of
3 sensitive defense technology to any other country or
4 non-state actor.

5 (7) The recipient country has provided specific,
6 reliable, and verifiable assurances to the United
7 States that it will not use the covered defense arti-
8 cles or defense services to commit, or enable the
9 commission of, a violation of international humani-
10 tarian law or internationally recognized human
11 rights.

12 (8) The recipient country has provided specific,
13 reliable, and verifiable assurances to the United
14 States that it will not make transfers of the covered
15 defense articles or defense services to another coun-
16 try or non-state actor without specific authorization
17 from the United States.

18 (9) Except as provided in subsection (e), the re-
19 cipient country has provided specific, reliable, and
20 verifiable assurances to the United States that it will
21 employ the covered defense articles and defense serv-
22 ices when armed only after consultation with the
23 United States relating to the mission, flight plan,
24 and purpose of use of the articles and services.

1 (10) The President has established procedures
2 to continually monitor and verify the compliance of
3 the recipient country with the requirements de-
4 scribed in paragraphs (1) through (8).

5 (c) EMERGENCY CIRCUMSTANCES.—If the President
6 determines that an emergency exists which requires the
7 proposed transfer of covered defense articles or defense
8 services to any country in the Middle East other than
9 Israel, the President shall provide the certification de-
10 scribed in subsection (a) with respect to the proposed
11 transfer not later than 10 days before the proposed trans-
12 fer.

13 (d) FAILURE TO PROVIDE CERTIFICATION.—If the
14 President is unable to make the certification described in
15 subsection (a) with respect to a proposed transfer of cov-
16 ered defense articles or defense services to any country
17 in the Middle East other than Israel, the President may
18 not transfer the articles or services to such country.

19 (e) EXCEPTION.—The requirements of subsection
20 (b)(9) shall not apply with respect to the use of the cov-
21 ered defense articles and defense services in the airspace
22 of the recipient country.

23 **SEC. 5. ANNUAL CERTIFICATION.**

24 (a) IN GENERAL.—Not later than February 1 of each
25 calendar year following a calendar year in which covered

1 defense articles or defense services have been transferred
2 to any country in the Middle East other than Israel, the
3 President shall provide a certification to the appropriate
4 congressional committees that the country continues to
5 comply with the requirements described in paragraphs (1)
6 through (8) of section 4(b).

7 (b) FAILURE TO PROVIDE CERTIFICATION.—If the
8 President is unable to make the certification described in
9 subsection (a) with respect to a calendar year, the Presi-
10 dent may not provide logistic support, maintenance, or
11 supply replacement parts to the recipient country for the
12 remainder of such calendar year.

13 **SEC. 6. DEFINITIONS.**

14 In this Act:

15 (1) APPROPRIATE CONGRESSIONAL COMMIT-
16 TEES.—The term “appropriate congressional com-
17 mittees” means the Committee on Foreign Affairs of
18 the House of Representatives and the Committee on
19 Foreign Relations of the Senate.

20 (2) COVERED DEFENSE ARTICLES AND DE-
21 FENSE SERVICES.—The term “covered defense arti-
22 cles and defense services” means—

23 (A) the F-35 Joint Strike Fighter aircraft
24 and associated services;

1 (B) any electronic warfare aircraft and as-
2 sociated services; and

3 (C) any armed unmanned aerial systems
4 and associated services.

5 (3) QUALITATIVE MILITARY EDGE.—The term
6 “qualitative military edge” has the meaning given
7 that term in section 36(h)(3) of the Arms Export
8 Control Act (22 U.S.C. 2776(h)(3)).

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