

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable Dante B. Fascell
Chairman, Subcommittee on International
Political and Military Affairs
Committee on International Relations
House of Representatives

Dear Mr. Chairman:

This is in response to your request that we review the circumstances surrounding the sale of a Hawk ground-to-air missile system to the Kingdom of Jordan, to determine whether the President's submissions to Congress regarding the sale served as adequate notice to Congress under the provisions of section 36(b) of the Foreign Military Sales Act (now the Arms Export Control Act), as amended, infra, despite acts by Jordan subsequent to these submissions which might be interpreted as a rejection of the original offer of sale. With respect to the latter, you refer to widely reported press accounts that Jordan found conditions of the sale unacceptable and that they would seek a similar system elsewhere.

The provision in effect at the time of the instant Presidential submission--section 36(b) of the Foreign Military Sales Act, as amended by Pub. L. No. 93-559 (December 30, 1974), § 45(a)(5), 88 Stat. 1814--required that, prior to the issuance of any letter of offer to sell any defense articles or services under the Act for \$25,000,000 or more, the President must submit to the Speaker of the House and the Chairman of the Senate Committee on Foreign Relations a statement containing certain information regarding the offer. Subsection 36(b) further provided that Congress could prevent the issuance of the letter of offer, by adoption of a concurrent resolution objecting to the offer within 20 days after receipt of the Presidential statement, unless the President certified in his statement that an emergency existed requiring the sale in the national security interests of the United States.

The International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329 (June 30, 1976), 90 Stat. 729, redesignated the Foreign Military Sales Act as the "Arms Export Control Act," and generally amended its provisions. Section 36(b) of the redesignated and amended Arms Export Control Act, 90 Stat. 741, 22 U.S.C.A. § 2776(b) (Pam. No. 3, September 1976), retains the requirement for Presidential

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submission of proposed letters of offer to sell defense articles or services for \$25 million or more, and adds a requirement for Presidential submission of letters of offer for the sale of any major defense equipment for \$7 million or more. Various changes have also been made in the information requirements for such submissions and the congressional review procedures. The amendments to section 36(b) apply to letters of offer submitted after June 30, 1976. Pub. L. No. 94-329, § 211(b), 90 Stat. 744.

The original Presidential submission concerning the proposed sale of the Hawk missile system to Jordan was transmitted to Congress on July 10, 1975 (Transmittal No. 75-40), together with a Presidential submission concerning the proposed sale to Jordan of a Vulcan anti-aircraft system (Transmittal No. 75-35). Cong. Rec., July 10, 1975 (daily ed.), H6599. The Hawk missile proposal was resubmitted to Congress on September 3, 1975 (Transmittal No. 75-40c). Cong. Rec., September 4, 1975 (daily ed.), S15265. The September 3 transmittal lists under the heading "Description of Articles or Services Offered": "Batteries with supporting test equipment, current spare parts and Improved Hawk Missiles."

The Congress did not adopt a concurrent resolution objecting to either of the operative proposed letters of offer, i.e., the Vulcan proposal or the Hawk proposal as resubmitted on September 3, 1975. The proposed Hawk missile letter of offer engendered particular congressional concern, but was permitted to go through, on the basis of the September 3 resubmission, in view of assurances by the President that the missiles would only be used for defensive purposes. See, e.g., Cong. Rec., September 17, 1975 (daily ed.), H8780 (remarks of Representative Bingham); id., S16108 (remarks of Senator Case).

With reference to the status of the Hawk missile sale, we have been advised by Lieutenant General H. M. Fish, Director of the Defense Security Assistance Agency, as follows:

"Subsequent to Congressional clearance, the Hawk Letter of Offer was accepted by the Government of Jordan on 7 December 1975. Due to Jordanian difficulties in arranging financing, we suspended performance of the procurement contracts with U.S. companies. The financing problem was resolved last month [i.e., August 1976] and the necessary actions were taken to restart the program.

"Neither the original offer nor the scope of the program, as reviewed by Congress, has changed. As the requirements

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of Section 36(b) of the recently redesignated Arms Export Control Act have already been met with respect to this transaction, it will not be submitted for Congressional review. Should there be additional related cases that are subject to that provision, or changes in scope, they will, of course, be submitted for review."

Thus, according to General Fish, the letter of offer for this sale, based upon the proposal submitted to the Congress in July 1975 and resubmitted in September 1975, was never actually rejected by Jordan.

Newspaper reports indicate that, subsequent to the offer and acceptance, Jordan appeared for a time to be unable to go through with the sale due to financing difficulties, and that Jordan considered a purchase from the Soviet Union in lieu of the agreed upon United States sale. However, these considerations do not alter the fact that the sale is now proceeding under the original letter of offer, as accepted by Jordan on December 7, 1975, within the scope of that offer and acceptance.

Accordingly, we concur in General Fish's conclusion that no additional submission to Congress is required for the Hawk missile sale as now constituted. As General Fish recognizes, additional submissions will be required if the scope of the agreement changes or if related transactions within the purview of the Arms Export Control Act are proposed.

Sincerely yours,

R. F. Keller

Acting Comptroller General
of the United States

FOREIGN GOVERNMENTS

Military assistance

Foreign Military Sales Act

Jordan

Hawk missile system sale

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WORDS AND PHRASES

Hawk missile system