

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY
COOPERATION AGENCY,
Washington, DC.

Hon. ROBERT MENEZES,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(5)(c) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0L. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 21-13 of April 30, 2021.

Sincerely,

JAMES A. HURSCH,
Director.

Enclosure.

TRANSMITTAL NO. 23-0L

Report of Enhancement or Upgrade of Sensitivity of Technology or Capability (Sec. 36(b)(5)(C), AECA)

(i) Purchaser: Government of India.

(ii) Sec. 36(b)(1), AECA Transmittal No.: 21-13; Date: April 30, 2021; Implementing Agency: Navy.

Funding Source: National Funds.

(iii) Description: On April 30, 2021, Congress was notified by congressional certification transmittal number 21-13 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of six (6) P-81 Patrol Aircraft; eight (8) Multifunctional Information Distribution System-Joint Tactical Radio Systems 5 (MIDS-JTRS 5) (6 installed, 2 spares); forty-two (42) AN/AAR-54 Missile Warning Sensors (36 installed, 6 spares); and fourteen (14) LN-251 with Embedded Global Positioning Systems (GPS)/Inertial Navigations Systems (EGIs) (12 installed, 2 spares). Also included were CFM56-7 commercial engines; Tactical Open Mission Software (ITOMS) variant for P-81; Electro-Optical (EO) and Infrared (IR) MX-20HD; AN/AAQ-2(V)1 Acoustic System; ARES-1000 commercial variant Electronic Support Measures; AN/APR-39D Radar Warning Receiver; AN/ALE-47 Counter Measures Dispensing System; support equipment and spares; publications; repair and return; transportation; aircraft ferry; training; U.S. Government and contractor engineering, software, technical, and logistics support services; and other related elements of logistical and program support. The total estimated cost was \$2.42 billion. MDE constituted \$2.05 billion of this total.

This transmittal reports a net value increase in MDE of \$5.55 billion to \$2.6 billion due to price increases. No additional MDE equipment will be included. The following non-MDE will be added: AN/ARC-210 RT-2036(C) UHF/VHF Radio Transceivers; AN/AAR-47 Missile Warning Sensors; Electronic Countermeasure AN/ALQ-213; Advanced Digital Antenna Production (ADAP) Antenna Electronics (AE); and Advanced Digital Antenna Production (ADAP) Controlled Reception Pattern Antenna (CRPA). Also, the non-MDE AN/APR-39D Radar Warning Receiver previously notified will be replaced with the

AN/APR-39D(V)2 Processor Radar. These revisions will result in an increase in estimated non-MDE value of \$2.3 billion to \$6.0 billion. The total case value will increase by \$0.78 billion, resulting in an estimated total case value of \$3.2 billion.

(iv) Significance: The additional non-MDE represents an increase in capability over what was previously notified. The proposed articles and services will improve India's capability to meet current and future threats by providing critical capabilities to India's maritime operations.

(v) Justification: This proposed sale will support the foreign policy and national security objectives of the United States by helping to strengthen the U.S.-Indian strategic relationship and to improve the security of a major defensive partner which continues to be an important force for political stability, peace, and economic progress in the Indo-Pacific and South Asia region.

(vi) Sensitivity of Technology: The Sensitivity of Technology Statement contained in the original notification applies to items reported here with the exceptions of:

(a) Electronic Warfare Self Protection (EWSP). The aircraft EWSP consists of the ALQ-213 Electronic Warfare Management System (EWMS), the AN/ALE-47 Counter Measures Dispensing System (CMDS), and the AN/AAR-47 Missile Warning System.

(b) AN/ARC-210 RT-2036(C) Radios. The RT-2036(C) is the first airborne software-defined radio to have MUOS (Mobile User Objective System) Satellite Communications (SATCOM), Second Generation Anti-Jam Tactical UHF Radio for NATO (SATURN) Electronic Counter-Counter Measures (ECCM) waveform, high-speed mobile ad hoc networked communications, and beyond-line-of-sight connectivity for secure data, voice and imagery.

(c) AN/APR-39D(V)2 Processor Radar. The Radar provides increased Probability of Detection (Sensitivity), corrects ID/Ambiguity Resolution, improves Direction of Arrival (DOA) accuracy versus Circular Polarized (CP) Emitters, and improves DOA Indications versus CID Band Emitters.

(d) Advanced Digital Antenna Production (ADAP) Antenna Electronics (AE). The ADAP Antenna provides digital anti-jam processing and protected GPS L1 and GPS L2 for the majority of Radio-Frequency (RF) and Infrared Frequency (IF) input GPS receivers.

(e) Advanced Digital Antenna Production (ADAP) Controlled Reception Pattern Antenna (CRPA). The CRPA Antenna removes interference based on direction of arrival.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) Date Report Delivered to Congress: June 21, 2023.

TAX CONVENTION WITH CHILE

Mr. CRAPO. Mr. President, I thank Ranking Member RISCH for his leadership in completing the resolution approving the ratification of this tax convention with Chile. And specifically, I am grateful for the opportunity to work together to include the following declaration in this resolution: "In light of substantial changes made to the international provisions of Internal Revenue Code in 2017, the Senate declares that future tax treaties need to reflect such changes appropriately, including in Article 23. Therefore, based on discussions with the U.S. Department of the Treasury, additional work

is required to evaluate the policy of Article 23 in addressing relief of double taxation and to agree on whether further changes to the terms of the Article are necessary for future income tax treaties."

In light of the reservation amending article 23, I yield to the ranking member of the Senate Foreign Relations Committee to elaborate on the importance of this declaration.

Mr. RISCH. I thank the ranking member of the Senate Finance Committee for his work on getting bipartisan agreement on this declaration. This declaration is necessary, given the reservation amending article 23.

The reservation regarding article 23 amends language addressing the scope of double tax relief in connection with income earned by a Chilean subsidiary of a U.S. company. That reservation, which was initiated by the current Treasury Department, calls into question whether article 23 provides sufficient relief for double taxation; specifically, in the case of a U.S. company owning at least 10 percent of a Chilean company, whether the U.S. would provide a credit under the treaty for income taxes paid or accrued to Chile by or on behalf of that U.S. company with respect to earnings that were also subject to U.S. tax under the global intangible low-taxed income, or GILTI, provision enacted in the Tax Cuts and Jobs Act, or TCJA.

Although the Treasury Department did not agree to include a specific clarification in the reservation with respect to that question, the declaration in the resolution confirms that Treasury acknowledges that, in light of TCJA's substantial changes to the international provisions of our Tax Code, additional work is needed to evaluate the policy of article 23 and whether it is sufficient in addressing relief from double taxation. In other words, this declaration helps ensure that outstanding questions regarding the scope of double tax relief provided by article 23 are resolved before similar language is used in future tax treaties.

Ranking Member CRAPO, can you discuss why such a clarification is so important with respect to future income tax treaties to which the U.S. is a party?

Mr. CRAPO. Thank you, Ranking Member RISCH. Without that clarification, article 23 does not describe the primary mechanism that mitigates double taxation for U.S. companies doing business abroad.

Before the Tax Cuts and Jobs Act, TCJA, U.S. companies' foreign earnings were generally not subject to tax in the U.S. until the foreign earnings were distributed as dividends to the U.S., a concept generally referred to as "deferral."

For example, pre-TCJA, if a U.S. company operated in Chile through a subsidiary, the earnings of the Chilean subsidiary were generally not subject to U.S. tax until the subsidiary paid a

dividend to the U.S. parent company. In order to prevent double taxation of the foreign earnings, under section 902 of the Tax Code, the U.S. provided a foreign tax credit for tax paid on those earnings. In this scenario, with respect to tax paid by the foreign subsidiary in Chile, the U.S. company would receive a dollar-for-dollar credit against its U.S. tax liability once the income was distributed, and subject to tax, in the U.S. in order to prevent double taxation of the dividend income.

TCJA made significant changes to these rules. For one, it ended the concept of “deferral.” As a result of TCJA, U.S. companies are now generally subject to current U.S. tax on their foreign earnings, even if they are not immediately distributed to the U.S. parent, under the global intangible low-taxed income, GILTI, which consequently eliminated the need to impose U.S. tax on dividends when ultimately distributed from the foreign subsidiary to the U.S. parent company.

As a result, in order to mitigate double taxation, TCJA modified and expanded section 960 to provide indirect tax credits for taxes paid on GILTI. TCJA also repealed section 902 foreign tax credits because, generally, dividends received by U.S. companies from a foreign subsidiary are no longer subject to U.S. tax. Instead, U.S. companies receiving foreign-source dividends are generally allowed a deduction under section 245A of the Tax Code for those dividends received. Because U.S. companies’ foreign earnings are now largely subject to tax under GILTI, the primary mechanism for relieving double taxation under current law is through an indirect tax credit under section 960. Indeed, recent IRS data confirms that an overwhelming majority of TCJA’s new category of U.S. companies’ foreign earnings subject to current U.S. tax requires a foreign tax credit to mitigate double tax relief.

As Ranking Member RISCH referenced, because Treasury did not agree to include in the reservation a reference to the primary method for alleviating double taxation on a U.S. company’s foreign earnings, it calls into question whether article 23 provides sufficient double tax relief post-TCJA. While I understand this lack of clarification should not result in increased taxation on earnings of a U.S. company’s Chilean subsidiary based on current law, U.S. taxpayers may not have adequate protection from double taxation with respect to future treaties.

In short, this outstanding issue is fundamental to one of the core motives for entering into income tax treaties, to mitigate double taxation to reduce barriers to cross-border investment. Thus, I intend to hold Treasury to its commitment to include language in future income tax treaties to more comprehensively address the post-TCJA foreign tax credit system. And if it fails to do so, I will not support approving ratification of any future U.S. income tax treaty.

Mr. RISCH. I completely agree with the ranking member of the Finance Committee. I will carefully review and consider future U.S. income tax treaties to both ensure we resolve this important issue and to make sure Treasury follows through on its commitment to further address relief from double taxation in our tax treaties. I thank Ranking Member CRAPO for his leadership on this issue, and we will continue to work together to hold Treasury to its commitment.

RWANDA AND THE DEMOCRATIC REPUBLIC OF THE CONGO

Mr. MENENDEZ. Mr. President, I rise to call upon the administration to take urgent action, as we did in 2012–2013, to pressure Rwanda to end its support for United Nations sanctioned M23 rebels and stop destabilizing eastern Democratic Republic of the Congo, DRC, and to stress the need for DRC to hold credible, on-time elections in December 2023.

According to the final report by the U.N. Group of Experts for the DRC, Rwandan support for the M23 extends from the highest levels in Kigali, including the Minister of Defense, an alarming allegation. Rwandan troops now are fighting alongside the M23 inside DRC, and the Rwandan Government is providing the M23 with weapons, uniforms, and equipment. M23 has killed hundreds of Congolese civilians over the past year, including the November 29 massacre of more than 170 men, women, and children in the village of Kishishe. With Rwandan support, M23 downed a U.N. helicopter, killing U.N. peacekeepers, recruited child soldiers, and displaced more than 1 million Congolese in eastern DRC. Incidents of sexual violence targeting internally displaced persons are also skyrocketing. On June 13, Human Rights Watch reported that, “Rwanda-backed M23 rebels in eastern Democratic Republic of Congo have committed unlawful killings, rape, and other apparent war crimes since late 2022.”

There is overwhelming evidence of Rwandan support for M23, and M23 has repeatedly failed to adhere to ceasefire agreements brokered by the East African Community. Despite this, the United States, the United Nations, and other members of the international community have been slow to respond. The last time Rwandan President Paul Kagame supported M23 rebels in eastern DRC, in 2012, the United States suspended Foreign Military Financing—FMF—for Rwanda, a decision that prompted several European donors to also suspend or redirect assistance away from Rwanda. The U.S. also imposed additional security assistance restrictions under the Child Soldiers Prevention Act, CSPA. President Obama, Secretary of State Clinton, Under Secretary of State for Political Affairs Sherman, and Assistant Secretary of State for African Affairs Carson all engaged directly with the leaders of DRC,

Rwanda, and Uganda to end the conflict and pressure Kagame to cease his support for M23.

Our response to the current M23 crisis has been, by comparison, woefully inadequate. Although Secretary of State Blinken travelled to the region in August 2022 to discuss the instability in eastern DRC, the United States did not publicly call on President Kagame to end Rwanda’s support for M23 until October 2022, months after the first U.N. Group of Experts report documented Rwanda’s actions. We have not imposed any new sanctions on M23 leaders or Rwandan officials implicated in gross violations of human rights in eastern DRC, nor have we completely cut security assistance and military-to-military engagement to Rwanda. In fact, as recently as May of this year, Rwanda participated in the African Land Forces Summit sponsored by the U.S. Army Chief of Staff. In February 2023, the United States invited members of the Rwandan Defense Force to participate in a multinational exercise in Kenya called Justified Accord, where the U.S. reportedly provided Rwanda cyber capability training. The decision to provide cyber-related training to Rwanda is particularly difficult to comprehend in light of 2021 reports by Freedom House and Amnesty International. According to the Amnesty report, “Rwanda used NSO Group’s spyware to potentially target more than 3,500 activists, journalists and politicians.” The Freedom House report states that “Rwandans abroad experience digital threats, spyware attacks, family intimidation and harassment, mobility controls, physical intimidation, assault, detention, rendition, and assassination.” The United States cannot continue to support Rwandan efforts to serve as peacekeepers in some parts of Africa while the very same Rwandan military is fomenting violence and instability next door in DRC.

In addition to disrupting the lives of more than 1 million people in eastern DRC, Rwanda’s support for M23 is also undermining efforts to prepare for elections. The last elections were so poorly managed that the United States sanctioned the leadership of the National Independent Electoral Commission—CENI—a precedent that should serve as a warning to future electoral commissions across Africa. While CENI is under new leadership, procurement and management of the voter registry seem as opaque now as they were before. This is a problem. It is important for CENI to be transparent about its spending and its management of the voter registry. Contrary to its actions in 2018, the DRC should welcome international election observers and do everything it can to help, not hinder, domestic election observers.

Even if all of those shortcomings are addressed, violence in the east may disenfranchise voters by preventing them from registering to vote or casting a ballot on election day. Credible and