

United States Lifts Remaining Restrictions on Arms Sales to Vietnam

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Related Authors

- [Mark E. Manyin](#)
 - [Paul K. Kerr](#)
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Mark E. Manyin, Specialist in Asian Affairs (mmanyin@crs.loc.gov, 7-7653)

Paul K. Kerr, Specialist in Nonproliferation (pkerr@crs.loc.gov, 7-8693)

Overview

From May 22 to 25, President Obama is visiting Vietnam, his first trip to that country as President. During his tenure, U.S.-Vietnam relations have expanded, fueled partially by shared concerns about China's increased assertiveness in the South China Sea, where Hanoi and Beijing have competing territorial and exclusive economic zone (EEZ) claims. (See CRS In Focus IF10209, [U.S.-Vietnam Relations](#).) While in Hanoi, the President [announced](#) the removal of remaining U.S. restrictions on sales of lethal weapons and related services to Vietnam. U.S. officials and some observers have [argued](#) that such an action could help improve Vietnam's capacity to respond to China in the South China Sea and solidify the growing strategic partnership between Washington and Hanoi. Others, however, have [called the move premature](#) without improvements in human rights conditions in Vietnam.

Background

During the Vietnam War (1955-1975), the United States imposed a complete embargo on arms sales to North Vietnam, and then expanded it to cover the entire country after Communist forces defeated U.S.-backed South Vietnamese government in 1975. In 2007, the Bush Administration eased the ban by allowing non-lethal defense items and defense services to be exported on a case-by-case basis. In October 2014, as relations continued to deepen, the Obama Administration [partially relaxed](#) U.S. restrictions on the transfer of lethal weapons and articles to Vietnam to permit "future transfer of maritime security-related" defense articles, again on a case-by-case basis. U.S. firms [reportedly are exploring](#) opportunities to export to Vietnam maritime and naval patrol aircraft, coastal radar, and maritime surveillance and communication technology.

Many human rights advocates [criticized the Administration's 2014 decision](#), as well as the May 2016 move, arguing that Hanoi's continued suppression of dissenters and protestors demonstrates the lack of fundamental changes to the country's human rights situation, and that the United States [had given up leverage](#) to convince Vietnam to make

additional improvements. Vietnam is a one-party, authoritarian state ruled by the Vietnamese Communist Party (VCP), which suppresses individuals and organizations that it deems a threat to the party's monopoly on power. In 2015, Secretary of State John Kerry stated that additional relaxation of the arms sales restrictions would be "[tied to further progress](#)" on human rights. Speaking in Hanoi in April 2016, Deputy Secretary of State Antony Blinken commended the Vietnamese government for making "[some progress](#)" in human rights, including agreeing to allow independent labor unions as part of the Trans-Pacific Partnership (TPP) free trade agreement.

The near-term impact of removing the restrictions on Vietnam's military capability is unclear. Since the 2014 easing of the arms export ban, it appears that few, if any, lethal defense articles have been sold or transferred to Vietnam from the United States. Some observers note, however, that removing all restrictions [arguably](#) could help consolidate support within Vietnam's political system for continuing to expand relations with the United States. For years, Vietnamese leaders have [described the restrictions as barriers](#) to achieving a fully normal relationship.

The United States has expanded its military assistance to Vietnam over the past several years. In 2013, for instance, the Administration announced it would provide Vietnam with \$18 million in maritime assistance, including several high-speed patrol boats. In 2015, to help Vietnam's maritime agencies boost their command and control capabilities, the Administration identified Vietnam as one of five recipients of assistance under its \$425 million Southeast Asian [Maritime Security Initiative](#), which is designed to "[increase] the maritime security capacity of our allies and partners."

Congressional Oversight

The President has the authority to lift arms export restrictions without approval from Congress, though Members could pass legislation to prohibit such a move. If the Obama Administration removes the restrictions on Vietnam, Congress will have oversight of some exports of military items pursuant to Section 36(b) of the Arms Export Control Act (AECA; P.L. 90-629). That law requires the executive branch to notify the Speaker of the House, the Senate Foreign Relations Committee, and the House Foreign Affairs Committee before the Administration can take the final steps to conclude either a government-to-government or commercially licensed arms sale. For potential sales to Vietnam, the Administration is required to notify the congressional committees and leadership 30 calendar days before concluding sales of major defense equipment, defense articles, defense services, or design and construction services meeting certain value thresholds. Certain articles or services listed on the Missile Technology Control Regime are subject to a variety of additional reporting requirements. The President has the authority to waive this review period if the President notifies Congress that "an emergency exists," which requires the sale to proceed immediately "in the national security interests of the United States." The President must provide Congress at the time of this notification a "detailed justification for his determination, including a description of the emergency circumstances" that necessitate this action and a "discussion of the national security interests involved." The Department of State submits to the committees an informal notification of prospective arms sales subject to AECA reporting requirements between 20 and 40 days prior to providing formal notification to the committees and leadership.

Section 36(b) of the AECA provides a mechanism for Congress to prohibit a proposed arms sale. Pursuant to that section, the Administration may issue a letter of offer and acceptance (for a proposed government-to-government sale) or an export license (for a proposed commercial sale) unless Congress enacts a joint resolution "prohibiting the proposed sale." Congress must enact such a resolution within 30 calendar days after receiving notification of the proposed sale, depending on the sale's destination. Otherwise, the executive branch is free to proceed with the sale. The AECA provides for expedited congressional consideration of such a resolution. Congress has never prohibited a proposed arms sale by use of a joint resolution of disapproval. Congress also has the option of adopting legislation prohibiting or modifying a sale or delivery of a defense-related item. (For more, see CRS Report RL31675, [Arms Sales: Congressional Review Process](#), by Paul K. Kerr.)