

1 **SEC. \_\_\_\_ . AUTHORITY FOR EXCHANGE WITH UNITED KINGDOM OF**  
2 **SPECIFIED F-35 LIGHTNING II JOINT STRIKE FIGHTER AIRCRAFT.**

3 (a) AUTHORITY.—

4 (1) EXCHANGE AUTHORITY.—In accordance with subsection (c), the Secretary of  
5 Defense may transfer to the United Kingdom of Great Britain and Northern Ireland (in this  
6 section referred to as the “United Kingdom”) all right, title, and interest of the United  
7 States in and to an aircraft described in paragraph (2) in exchange for the transfer by the  
8 United Kingdom to the United States of all right, title, and interest of the United Kingdom  
9 in and to an aircraft described in paragraph (3). The Secretary may execute the exchange  
10 under this section on behalf of the United States only with the concurrence of the Secretary  
11 of State.

12 (2) AIRCRAFT TO BE EXCHANGED BY THE UNITED STATES.—The aircraft authorized  
13 to be transferred by the United States under this subsection is an F-35 Lightning II aircraft  
14 in the Carrier Variant configuration acquired by the United States for the Marine Corps  
15 under a future Joint Strike Fighter program contract referred to as the Low-Rate Initial  
16 Production 6 contract.

17 (3) AIRCRAFT TO BE EXCHANGED BY THE UNITED KINGDOM.—The aircraft for  
18 which the exchange under paragraph (1) may be made is an F-35 Lightning II aircraft in  
19 the Short-Take Off and Vertical Landing configuration that as of November 19, 2010, is  
20 being acquired on behalf of the United Kingdom under an existing Joint Strike Fighter  
21 program contract referred to as the Low-Rate Initial Production 4 contract.

22 (b) FUNDING FOR PRODUCTION OF AIRCRAFT.—

1 (1) FUNDING SOURCES FOR THE AIRCRAFT TO BE EXCHANGED BY THE UNITED  
2 STATES.—(A) Except as provided in subparagraph (B), funds for production of the  
3 aircraft to be transferred by the United States (including the propulsion system, long lead-  
4 time materials, the production build, and deficiency corrections) may be derived from  
5 appropriations for Aircraft Procurement, Navy, for the aircraft under the contract referred  
6 to in subsection (a)(2).

7 (B) Costs for flight test instrumentation of the aircraft to be transferred by the  
8 United States and any other non-recurring and recurring costs for that aircraft associated  
9 with unique requirements of the United Kingdom may not be borne by the United States.

10 (2) FUNDING SOURCES FOR THE AIRCRAFT TO BE EXCHANGED BY THE UNITED  
11 KINGDOM.—Costs for upgrades and modifications of the aircraft to be transferred to the  
12 United States that are necessary to bring that aircraft to the Low-Rate Initial Production 6  
13 configuration under the contract referred to in subsection (a)(2) may not be borne by the  
14 United States.

15 (c) IMPLEMENTATION.—The exchange under this section shall be implemented pursuant  
16 to the memorandum of understanding titled “Joint Strike Fighter Production, Sustainment, and  
17 Follow-on Development Memorandum of Understanding”, which entered into effect among nine  
18 nations including the United States and the United Kingdom on December 31, 2006, consistent  
19 with section 27 of the Arms Export Control Act (22 U.S.C. 2767), and as supplemented as  
20 necessary by the United States and the United Kingdom.

### **Section-by-Section Analysis**

This legislative proposal would enable the United States (U.S.) to effect a mutually beneficial, one-time exchange of one U.S. Carrier Variant (CV) F-35 aircraft for one United Kingdom of Great Britain and Northern Ireland (UK) Short Take-off and Vertical Landing

(STOVL) F-35 aircraft. This proposal is not intended to, nor would it, provide any continuing authority beyond this one-time exchange.

The Governments of the United States and the UK joined seven other Participants in 2006 to sign the Joint Strike Fighter Production, Sustainment, and Follow-On Development Memorandum of Understanding (MOU). The MOU envisions transfers of Project Equipment, including end items such as F-35 aircraft, for purposes of carrying out the MOU. Any Project Equipment transferred is generally returned to the providing Participant, unless the providing Participant authorizes the receiving Participant to expend or otherwise consume the Project Equipment. That said, nothing in the MOU prohibits a long-term, or even permanent, exchange of Project Equipment between willing Participants.

As a result of the UK Strategic Defence and Security Review, the UK decided to acquire CV variants in lieu of STOVL variants. The decision resulted in an excess UK-acquired STOVL asset procured under the Low-Rate Initial Production (LRIP) 4 contract. The UK proposed an exchange of the excess STOVL asset for a CV asset to be procured for the U.S. under the LRIP 6 contract. The proposed exchange would benefit both Participants. The exchange would provide the U.S. with a STOVL aircraft 24 months earlier than planned to support maturity assessments and training needs, would allow the UK to avoid the costs of a CV aircraft for Operational Test, and would increase Operational Test capacity through the use of an instrumented CV aircraft in the LRIP 6 timeframe.

The proposed exchange would be structured so that comparable assets would be exchanged. Accordingly, the UK would bear the costs of upgrading and modifying the LRIP 4 STOVL aircraft to the more advanced LRIP 6 configuration. In addition, the UK would be responsible for bearing the costs of incorporating flight test instrumentation of the CV aircraft as well as any other UK-unique CV aircraft requirements. Thus, from a U.S. perspective, the exchange would not result in any additional non-recurring or recurring costs. The U.S. will bear the costs associated with operating and maintaining the STOVL aircraft when the aircraft is flown in support of U.S. Marine Corps missions. The UK will bear the costs with operating and maintaining the CV aircraft when the aircraft is flown in support of UK missions.

Despite the benefits of the proposed exchange, the U.S. could not agree to the exchange unless Congress were to grant legislative relief from certain restrictions imposed on the use of appropriated funds. Because appropriated Aircraft Procurement, Navy funds are to be used only for the procurement and production of aircraft destined for the U.S. Navy or U.S. Marine Corps, this legislation would directly authorize funding of the LRIP 6 contract, given that the Department intends to transfer one U.S.-funded CV aircraft to the UK. The legislative proposal, if enacted, would authorize the exchange. The Secretary of Defense may execute the exchange under this proposal on behalf of the United States only with the concurrence of the Secretary of State.

The use of UK funds to upgrade and modify the LRIP 4 STOVL aircraft to a configuration on par with the LRIP 6 CV aircraft as well as the use of UK funds for CV flight test instrumentation and other UK-unique CV costs can be implemented pursuant to the JSF Production, Sustainment, and Follow-on Development Memorandum of Understanding

consistent with section 27 of the Arms Export Control Act (22 U.S.C. 2767). The legislative proposal, if enacted, would be contingent upon the UK providing funds for the purposes cited herein.

The statutory authorization provided by this legislative proposal enables the U.S. to structure the proposed exchange agreement to acquire a modified LRIP 4 STOVL aircraft in exchange for an LRIP 6 CV aircraft. Therefore, enactment of the legislation is required for the exchange to occur. The Department plans, following enactment of this proposal, to provide a congressional notification as an update to the October 4, 2006, congressional notification provided under section 27(f) of the Arms Export Control Act in order to reflect that the adjusted numbers of types of aircraft, following the exchange, differ from those shown in the earlier notification.

**Budget Implications:** This legislative proposal is cost neutral in regard to U.S. procurement funding because the UK would be responsible for upgrading and modifying the LRIP 4 STOVL aircraft to the LRIP 6 configuration and for adding flight test instrumentation and other UK-unique changes to the LRIP 6 CV aircraft so that comparable assets would be exchanged. From a U.S. perspective, the exchange would not result in any additional non-recurring or recurring costs. This legislative proposal would result in approximately \$9.95 million in additional operations and maintenance costs for the U.S. Marine Corps due to the additional flight hours for operation of the STOVL aircraft in Fiscal Years 2013 and 2014, as well as additional fuel, depot level repairables/consumables, training expendables, and emergency repairs.

**Changes to Existing Law:** This proposal would not change any existing laws.