

Send Lawyers, Guns and Money: The New Conventional Arms Transfer Policy

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Years ago I witnessed the owner of a Staten Island car dealership talking to his sales staff about their end-of-model-year sale. The dealership owner flogged and lashed about incentives, rebates and financing, but the message was singular: We're here to deal! I was reminded of this on April 19, 2018, when our current President issued National Security Presidential Memorandum No. NSPM-10 (the Memorandum) outlining the new Conventional Arms Transfer (CAT) Policy. While it's incongruous to equate the sale of the F-35 Joint Strike Fighter with a Nissan, the new CAT policy is clear: We're here to deal!

Viewed by some as another prong of the administration's "Buy American, Hire American" edict, the new CAT Policy is one of several National Security Council efforts to streamline international arms sales. To ensure its success, the administration has deputized all government officials as its sales force. What's more, these folks are enthusiastic: "Under this administration, there will be no prouder and more active advocate for U.S. sales than the U.S. government itself," [White House trade chief Peter Navarro said](#).

The message from the top is clear: design for export and ensure sales: "If industry can design systems initially to be exportable, that's great," [said Ellen Lord](#), Under Secretary of Defense for Acquisition, Technology, and Logistics. Endowed with a big budget, the DoD wants to ensure the pipeline is primed: "All of the dollars that we have been given—and Congress has given us a two-year omnibus bill—we have 14 percent more money than last year, ... about a \$700 billion budget that goes up about another \$20 billion for 2019. We have budget certainty that we have not had in a long time," [Lord said](#).

The Theory: Our Policies Have Impeded Arms Transfers. The Facts: We've Sold Arms to Every Country in the World + 5.

The United States has sold [roughly \\$300 billion in arms](#) to 200 countries between 2000 to 2018. There were several stages of my amazement when I wrote and then read the previous sentence. The first was the realization of the sheer dollar volume. The second resulted from the realization that we're, on the whole, discussing sales of advanced weapons systems to countries that are far less stable and democratic than our own. The final stage came with the realization that there are only 193 member states of the United Nations and 2 countries that are non-member observer

states (the Holy See and the State of Palestine). In short, during the aforementioned 18-year period, we've sold arms to more countries than are currently recognized as sovereign nations. In and of itself, this is a stunning achievement.

According to the Stockholm International Peace Research Institute,[1] the United States accounted for 34 percent of total arms exports from 2013-17. The vast majority of the arms we've sold have gone to the Middle East. Russia, accounted for 22 percent of weapon exports; whereas Germany, France and China accounted for approximately 5 percent of global exports each.

The United States [increased arms exports](#) by 25 percent during the last decade. Our arms exports in 2013-17 were 58 percent higher than those of Russia—the second largest arms exporter in that period. The Trend Indicator Values for the United States [from 2013 through 2017](#) have increased each year, at times by a significant amount. In 2017 alone, under the Foreign Military Sales (FMS) program, the U.S. government managed the transfer of some \$40 billion in defense equipment. An additional \$110 billion in sales of defense equipment occurred through the Direct Commercial Sales (DCS) program. See [Fact Sheet](#), Bureau of Political-Military Affairs (April 16, 2018). During the past decade, Russian arms exports decreased by 7.1 percent.

We Compete With Some on a Level Playing Field, and With Others on a Slippery Slope.

If the United States reigns supreme, why the urgency to facilitate arms transfers? The thinking is that what appears to be an insignificant competitor today may become a large competitor in the future simply through its ability to influence future sales and supply chains. This is particularly true if the United States make it difficult for the marketplace to access our commodities. Some cite our loss of supremacy over the satellite and night-vision industries as evidence of how over-regulation is harmful.

The United States is also no longer the only dealership in town. Specifically, France increased its arms exports by 27 percent between 2013-17; Germany increased arms exports to the Middle East [by 109 percent](#); while China's arms exports rose by 38 percent between 2008-12 and 2013-17. In addition to the established arms merchants, Israel and South Korea saw 55 percent and 65 percent gains, respectively, in the same period, whereas Turkey increased sales a whopping [145 percent](#).

Our new CAT policy requires the U.S. government to consider five factors prior to approving any arms transfer. In no particular order, these are: national security, economic security, relationships with allies and partners, human rights and international humanitarian law, and nonproliferation. The five factors used to determine to whom we sell arms are presumably of equal weight. Nevertheless, there is a sense that human rights may take a backseat to closing deals. Such sentiment appears to stem from the divergence in how we evaluate human rights abuses in comparison to our closest allies. The United States and our NATO allies are signatories of the Arms Trade Treaty which includes provisions against selling weapons where they can be expected to be used to commit abuses. The European Parliament adopted resolutions in 2016 and 2017 calling for an arms embargo on Saudi Arabia citing, inter alia, "indiscriminately killing and wounding civilians in violation of the laws of war." As of January 2018, Germany, Norway and Belgium have ceased arms sales to Saudi Arabia. Contemporaneously, the Trump administration issued a notification of a potential \$500 million sale to support Saudi Arabia's Patriot missile defense system.

Conclusion

The Memorandum commits the executive branch to "streamline procedures, clarify regulations, increase contracting predictability and flexibility, and maximize the ability of the United States industry to grow and support allies and partners." This is a bit odd for two reasons: (1) the current regulations governing arms sales would necessitate legislation and

the promulgation of new regulations to implement the spirit of the Memorandum; and (2) arms transfers don't create many jobs stateside because the jobs are shared with the purchasing nation via offset and coproduction agreements. Center for International Policy, Security Assistance Monitor, *Trends in Major U.S. Arms Sales for 2017* (March 2018).

With regard to (1), §36(b) of the Arms Export Control Act (AECA) requires that Congress be formally notified 30 calendar days before the Administration can take the final steps to conclude a government-to-government foreign military sale of:

- major defense equipment valued at \$14 million or more,
- defense articles or services valued at \$50 million or more,
- or design and construction services valued at \$200 million or more.

(Shorter notification periods apply for sales to NATO members, Australia, Japan, or New Zealand.)

Likewise, formal notification for Congressional review must be submitted 30 days prior to the approval of any export license for commercial arms sales cases involving defense articles that are firearms controlled under category I of the United States Munitions List and valued at \$1 million or more. (Again, shorter notification periods apply for sales to NATO members, Australia, Japan, or New Zealand.) Therefore, in order to streamline any of the foregoing, new legislation amending the AECA is necessary. The Memorandum states nothing about new legislation. It simply requires the Secretary of States to provide an action plan to implement the new CAT policy by June 18, 2018. It is difficult to foresee how the agencies, without Congress, can streamline the current procedure.

With regard to (2), we must better understand why folks buy our defense articles. Most assume it's because we make the best delivery systems for unleashing cans of whupass. That's only partly true. Mainly, folks like to buy U.S. arms because we've got the best incentives, rebates and great financing.

The eagerness to sell arms also may be based on an irrational expectation of resulting domestic job growth. Most arms sales involve "offset" or "coproduction"—agreements to steer business to the buyer nation in exchange for their purchase of U.S. weapons. Coproduction involves not only the exchange of manufacturing and technical know-how, but also the provision of defense services in aiding production of part of a system in the recipient nation.

For example, the United States has provided Israel with \$134.7 billion in military aid since that country's inception. CRS Report RL33476, *Israel: Background and U.S. Relations*, by Jim Zanotti. In 2016, the United States and Israel signed a new 10-year Memorandum of Understanding (MOU) on military aid under the terms of which the United States pledges to provide \$38 billion in military aid from covering FY2019 to FY2028. The prior MOU was a pledge for \$30 billion in military aid covering the preceding 10-year period. CRS Report RL33222, *U.S. Foreign Aid to Israel*, by Jeremy M. Sharp. In 2017, the present administration proposed a total of 16 major arms deals that involve foreign manufacturing of U.S. military equipment. These include coproduction agreements with Canada, the Czech Republic, Germany, Italy, Japan, the Netherlands, Poland, Spain, South Korea, Thailand, the United Arab Emirates and the United Kingdom. Id. A total of 79 foreign companies produce major components for the F-35. As a result, many of the major U.S. arms sales will likely create jobs in foreign countries rather than in the United States.

To further incentives customers, the Defense Security Cooperation Agency (DSCA) announced a reduction in surcharge on U.S. arms sold abroad from 3.5 percent to 3.2 percent, thereby lowering the price paid on weapons through the FMS system. The announcement come days after the new CAT policy Memorandum and is seen as part of a broader push to increase arms sales abroad. This reduction amounts to a \$120 million annual loss in revenue using the 2017 FMS figures. Defense News, *U.S. Makes it Cheaper for*

Foreign Nations to Buy American Weapons (April 28, 2018). According to DSCA head Lt. Gen. Charles Hooper, the change “will immediately reduce the cost of doing business for our international partners.”

The memorandum appears to conflate economic policy with national security. On its face, it requires a plan to build up the U.S. Government’s ability to communicate and support weapons transfers in support of national security interests and execute the policy “with minimal increase in the total of otherwise budgeted funds, with offsets identified if necessary.” Said “offsets” are key to supporting U.S. arms transfers. The question is whether the new CAT policy will actually result in more jobs for U.S. workers.

Endnotes:

[1] SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources. The relevant data is available here: <https://www.sipri.org/databases/armstransfers>.

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