

TERMS IN USE ON THE ARMS SALES TOPIC

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Arms Export Control Act (AECA): This 1976 legislation is an amendment to the Foreign Assistance Act of 1961 and remains the primary law governing arms sales. The AECA requires that the executive branch must provide advance notice to Congress of any major arms sale, offering to them the opportunity to block the sale if they should see fit. The AECA also requires quarterly and annual reports to Congress on overall arms sales totals by country and type of equipment. The U.S. Department of State offered the following summary: “The Arms Export Control Act (AECA) is the cornerstone of U.S. munitions export control law. The Department of State implements this statute by the International Traffic in Arms Regulations (ITAR). All persons or entities that engage in the manufacture, export or brokering of defense articles and services must be registered with the U.S. government. The ITAR sets out the requirements for licenses or other authorizations for specific exports of defense articles and services. The AECA requires the State Department to provide an annual and quarterly report of export authorizations to Congress. Certain proposed export approvals and reports of unauthorized re-transfers also require congressional notification.”

Arms Trade Treaty (ATT): The UN General Assembly passed the ATT on April 2, 2013 by a vote of 154 to 3. The Treaty entered into force on December 24, 2014. Though the United States has signed this Treaty, it has not been ratified by the U.S. Senate; accordingly, the ATT does not now apply to the United States. The ATT regulates international trade in conventional weapons of all types, including everything from assault rifles to tanks and fighter jets. Many of the world’s largest arms exporting nations, including France, Germany, Italy, Spain and the United Kingdom, are full members of the ATT along with 95 other member states. Article 6 of the Treaty prohibits arms exports to any government that engages in serious human rights violations: “A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such or other war crimes as defined by international agreements to which it is a Party.”

Bureau of Industry and Security (BIS): This is an agency of the U.S. Commerce Department empowered to enforce Export Administration Regulations for any items listed on the Commerce Control List (CCL). In 2002, this Commerce Department agency officially changed its name from the Bureau of Export Administration (BXA) to the Bureau of Industry and Security. This agency is currently controversial because of a Trump administration proposal to remove small arms exports from the U.S. Munitions List (USML) and list them instead on the CCL. The USML is administered by the U.S. Department of State and items placed on its list are subject to congressional notification and review. The CCL, on the other hand, is administered by the U.S. Commerce Department and items on this list are not normally subject to congressional notification and review.

Bureau of Political-Military Affairs (PM): This is the agency within the U.S. Department of State that manages arms exports. The State Department website offers the following explanation of the mission of this agency: “Arms transfers are a central pillar of America’s international security cooperation, and they are also an important part of the American economy. This dual role as a tool of both foreign policy and economic security – combined with the unique nature of the goods and services involved – makes arms transfer policy uniquely complex. Recognizing these factors, the U.S. government oversees and manages our defense trade unlike any other sector of the export economy. At the heart of this process is the State Department’s Bureau of Political-Military Affairs, supported by the Department of Defense. The bureau vets each potential sale against legal, regulatory and policy standards through the rubric of the president’s Conventional Arms Transfer Policy. The new Conventional Arms Transfer Policy, which President Donald Trump approved in April 2018, lays out a comprehensive set of considerations that must be taken into account in reviewing every potential arms transfer. While the policy is designed as a practical framework for such decisions, it can also be read as an explanation of the potential benefits of these transfers for our national security and global security. Well-considered arms transfers can bolster the security of the United States and our allies and partners” (<https://www.state.gov/t/287972.htm>).

Child Soldiers Prevention Act (CSPA): This is a federal statute signed by President George W. Bush in December of 2008 designed to prohibit assistance to countries engaged in the recruitment of child soldiers. Section 404 of this law prohibits any exports under the Arms Export Control Act to countries “having governmental armed forces or government-supported armed groups, including paramilitaries, militias or civil defense forces, that recruit and use child soldiers” (<https://www.state.gov/documents/organization/135981.pdf>).

Commerce Control List (CCL): This refers to a list maintained by the U.S. Commerce Department of items that should be subject to special export controls under the Export Administration Regulations (EAR). President Trump’s Conventional Arms Transfer Policy proposes, among other things, to remove small arms from the U.S. Munitions List (USML) and have them listed on the CCL. Sales of items on the USML require congressional notification with an opportunity to block the sales, while items listed on the CCL require no congressional notification.

Convention on Cluster Munitions (CCM): This international treaty was adopted in 2008 and entered into force in 2010. Currently, the CCM has 105 nations that have ratified the treaty, not including the United States. According to the website of the CCM, this is “a humanitarian imperative-driven legal instrument which prohibits all use, production, transfer and stockpiling of cluster munitions. In addition, it establishes a framework for cooperation and assistance to ensure adequate assistance to survivors and their communities, clearance of contaminated areas, risk reduction education and destruction of stockpiles” (<http://www.clusterconvention.org/>).

Conventional Arms Transfer (CAT) Policy: This term refers to recently adopted policy of the Trump administration, officially known as National Security Presidential Memorandum NSPM-10. While the policy pays lip service to the human rights conditions built into the Foreign Assistance Act, it essentially announced a “Buy America” strategy that would prioritize the promotion of arms sales. Following is some of the language of the executive order: “When a proposed transfer is in the national security interest, which includes our economic security, and in our foreign policy interest, the executive branch will advocate strongly on behalf of United States companies. The executive branch will also 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” (<https://www.whitehouse.gov/presidential-actions/national-security-presidential-memorandum-regarding-u-s-conventional-arms-transfer-policy/>). One highly controversial change announced in the CAT would remove small arms exports from the necessity of congressional oversight.

Defense Export Loan Guarantee (DELG): This program, created in 1995, guarantees loans for the sales of certain types of military equipment to 39 countries. This supplements other loan programs such as the U.S. Export-Import Bank and the Overseas Private Investment Corporation.

Defense Security Cooperation Agency (DSCA): This is the agency within the U.S. Department of Defense that administers the Foreign Military Sales (FMS) program.

Direct Commercial Sales (DCS): This refers to sales of arms negotiated directly between U.S. companies and foreign buyers without the involvement of the U.S. Department of Defense or the U.S. Department of State. Once the sale has been negotiated, however, it cannot be completed without an export license. If the military equipment is listed on the U.S. Munitions List (USML), the export license must be secured from the State Department’s Office of Defense Trade Controls and such sales are subject to the same congressional notification requirements as Foreign Military Sales. The Trump administration is currently attempting to remove small arms from the USML and to have them listed instead in the Commerce Control List (CCL) administered by the U.S. Commerce Department. Sales of items listed in the CCL would still require an export license from the U.S. Commerce Department but would not require congressional notification or approval.

End-Use Monitoring (EUM): The Arms Export Control Act requires scrutiny of the end uses of U.S. arms sales. Governments receiving U.S. arms sales are asked to provide assurances that the equipment will not be used to violate human rights or re-transferred to other countries or terrorist groups. The U.S. Department of Defense has an End Use Monitoring (EUM) Division which oversees the “Golden Sentry” program. That agency’s website explains its function: “EUM reduces the security risks involved in transfers of equipment and services, and assures that required export controls, physical security and accountability requirements are in place and enforced. The principal components of Golden Sentry’s execution include obtaining pre-delivery end-user assurances from the recipient governments and international organizations regarding authorized end-use, re-transfer restrictions and protection of U.S.-origin defense equipment, Routine and Enhanced end-use monitoring by Security Cooperation Organizations assigned to U.S. Embassies worldwide to verify end-use, accountability and security of defense articles and services and Compliance Assessment Visits performed by the EUM Division personnel, Golden Sentry personnel from DSCA verify compliance with the end-use terms and conditions of sale and other transfer agreements” (<https://www.dsca.mil/about-us/end-use-monitoring-eum>).

Excess Defense Articles (EDA): The U.S. Defense Department website describes this program as follows: “Excess defense articles are DoD and U.S. Coast Guard-owned articles no longer needed and declared excess by the U.S. Armed Forces. This excess equipment may be offered at reduced or no cost to eligible foreign recipients on an ‘as is, where is’ basis in support of U.S. national security and foreign policy objectives. Section 516(b)(1)(e) of the Foreign Assistance Act states that EDA transfers shall not adversely impact the U.S. national technology and industrial base, nor reduce the opportunities of U.S. industry to sell new or used equipment to the proposed recipient. In accordance with Executive Order 12163, as amended, the Director of DSCA makes the determination on the impact to industry” (<https://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/excess-defense-articles-program>).

Export Administration Act (EAA): This 1979 legislation prohibits security assistance to any government that engages in “gross violations of human rights.” The provisions of the EAA are contained in Chapter 22 of the U.S. Code at paragraph 2304: “Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”

Export Administration Regulations (EAR): These regulations are created by the Export Administration Act of 1979 and are administered by the Bureau of Industry and Security at the U.S. Department of Commerce.

Foreign Assistance Act (FAA): This 1961 legislation governs the provision of economic and military assistance to foreign governments, including arms sales. Section 36(b)(1)(D) of the Act specifies that the granting of export licenses must consider whether a proposed sale would “(i) contribute to an arms race; (ii) support international terrorism; (iii) increase the possibility of an outbreak or escalation of conflict; (iv) prejudice the negotiation of any arms controls or (v) adversely affect the arms control policy of the United States.” Section 498A(a)(3) of the Act also says that assistance must “respect internationally recognized human rights, including the rights of minorities and the rights to freedom of religion and emigration.” Section 502B(a)(2) of the Act says “no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights,” though an exception is provided if the President certifies in writing that “extraordinary circumstances exist warranting provision of such assistance and issuance of such [export] licenses.”

Foreign Military Sales (FMS): The website of the U.S. Defense Security Agency provides the following official description of the FMS program: “Purpose: The Foreign Military Sales (FMS) program is a form of security assistance authorized by the Arms Export Control Act (AECA), as amended [22 U.S.C. 2751, et. seq.] and a fundamental tool of U.S. foreign policy. Under Section 3, of the AECA, the U.S. may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the U.S. and promote world peace. Under FMS, the U.S. Government and a foreign government enter into a government-to-government agreement called a Letter of Offer and Acceptance (LOA). Who: Secretary of State determines which countries will have programs. Secretary of Defense executes the program. Funding: May be funded by country national funds or U.S. Government funds” (<https://www.dsca.mil/programs/foreign-military-sales-fms>).

International Traffic in Arms Regulations (ITAR): This refers to the entire set of regulations that govern U.S. arms sales. The U.S. Department of State's Directorate of Defense Trade Controls offers the following description on its website: "The International Traffic in Arms Regulations ("ITAR," 22 CFR 120-130) implements the AECA. These regulations are regularly updated and revised to reflect change in the international political and security climate, as well as technological development" (https://www.pmdctc.state.gov/?id=ddtc_public_portal_itar_landing).

Missile Technology Control Regime (MTCR): The website of the Arms Control Association offers the following explanation: "Established in April 1987, the voluntary Missile Technology Control Regime (MTCR) aims to limit the spread of ballistic missiles and other unmanned delivery systems that could be used for chemical, biological and nuclear attacks. The regime urges its 35 members, which include most of the world's key missile manufacturers, to restrict their exports of missiles and related technologies capable of carrying a 500-kilogram payload at least 300 kilometers or delivering any type of weapon of mass destruction" (<https://www.armscontrol.org/factsheets/mtrc>). The MTCR has been interpreted to prohibit the export of arms drones, though the Trump administration currently disputes that interpretation.

National Defense Authorization Act (NDAA); This 2018 legislation's full name was the John S. McCain National Defense Authorization Act. The Act's main purpose was to appropriate funds for the U.S. Department of Defense, but it contains provisions that are relevant to the 2019-20 arms sales topic. The NDAA extends military assistance to Ukraine by two years and makes continued assistance to Saudi Arabia conditional on the U.S. Secretary of State's certification that efforts are being made to end the civil war in Yemen and reduce the harm to civilians.

National Security Presidential Memorandum (NSPM): See Conventional Arms Transfer Policy.

Office of Defense Trade Controls: This agency, located in the State Department's Bureau of Political Military Affairs, develops and updates the International Traffic in Arms Regulations (ITAR) which implement this law and guide the arms trade activities of government bureaucrats and weapons dealers. The ITAR include a listing of all categories of equipment considered "munitions," which are subject to export controls by the State Department. The arms industry continually seeks to move items off of this list, and on to the control list maintained by the Commerce Department (see below), which has a more lax licensing procedure. The ITAR also name those countries which are ineligible to receive American armaments.

One China Policy: Since 1979 the United States has signed onto the official position of the People's Republic of China (PRC) that there is only one China and that the PRC is the "sole legal government of China." Prior to 1979, the United States had considered the Republic of China based on Taiwan as the legitimate government of China.

Security Assistance: This is a broad term that includes arms sales, but many other types of military assistance as well. The term is officially defined in Chapter 22 of the U.S. Code at paragraph 2304(d)(2): "the term 'security assistance' means— (A) assistance under part II (military assistance) or part IV (economic support fund) or part V (military education and training) or part VI (peacekeeping operations) or part VIII (antiterrorism assistance) of this subchapter; (B) sales of defense articles or services, extensions of credits (including participations in credits) and guaranties of loans under the Arms Export Control Act."

Small Arms and Light Weapons (SALW): This term refers to handguns, machine pistols, shotguns, rifles, carbines, sub-machine guns, assault rifles and light machine guns as opposed to military equipment such as tanks, ships, aircraft or missiles. The UN Programme of Action (PoA) on Small Arms and Light Weapons was adopted unanimously by the General Assembly in 2001. While the Programme of Action is designed to combat and eradicate the illicit trade in small arms and light weapons, it does not have format status as a treaty. When the Programme was created in 2001, the United States declared that the agreement must stay away from the following "red lines:" 1. No constraints on legal trade and manufacturing; 2. No promoting of propaganda by the U.N. or other related organizations; 3. No prohibition of civilian possession; 4. No limitation of the arms trade to governments and 5. No institutionalization of the PoA process.

Taiwan Relations Act (TRA): The TRA states that “It is the policy of the United States: 1. To preserve and promote extensive, close and friendly commercial, cultural and other relations between the people of the United States and the people on Taiwan; 2. To declare that peace and stability in the area are in the political, security and economic interests of the United States, and are matters of international concern; 3. To make clear that the United States decision to establish diplomatic relations with the People’s Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means; 4. To consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States; 5. To provide Taiwan with arms of a defensive character and 6. To maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.”

Terminal High Altitude Area Defense (THAAD) System: This refers to anti-ballistic missile defense system designed to shoot down short-, medium- and intermediate-range ballistic missiles in their terminal phase by intercepting them with another missile. The United States has sold, or agreed to sell, the THAAD system to Japan, Saudi Arabia, Qatar, Kuwait and the United Arab Emirates. The U.S. has also deployed the THAAD system in South Korea, though the Trump administration has agreed not to charge the South Korean government for that installation.

U.S. Munitions List (USML): This list, maintained by the U.S. Department of State, enumerates the particular types of military equipment requiring an export license and special permission from the government. The export of equipment on the USML also requires congressional notification, allowing Congress the opportunity to enact a joint resolution blocking the sale. This process has recently become controversial because of the Trump administration’s new Conventional Arms Transfer proposing to move small arms from the USML to the Commerce Control List (CCL) where no congressional notification or approval is required.