

SAO-Industry Security Assistance Relations

[Editor's note. Official guidance on the relationship between U.S. defense industry representatives and U.S. security assistance personnel stationed abroad has continued to evolve since 1981. In that year, the Reagan Administration replaced the restrictive guidelines of the Carter Administration with a more relaxed, supportive policy disseminated through the Department of State. Additional expanded guidance was issued by the Department of State in 1987. Most recently, in August 1988, the Department of Defense promulgated its own supplementary guidelines regarding Industry-SAO relationships. In an effort to disseminate this cumulative guidance, we have reprinted below the contents of the three most relevant messages on this subject, beginning with the most current one, DSAA-OPS-E message, DTG 131908Z, August 1988, Subject "SAO-Industry Security Assistance Relations.]

1. In 1981 and again in 1987 specific instructions were issued by the Department of State to U.S. missions abroad stating that individuals marketing U.S. defense products should receive the same courtesies and support offered to persons marketing any other U.S. product. The principal point of contact for most U.S. defense industry representatives marketing defense equipment in U.S. missions is normally the Security Assistance Officer (SAO), rather than the commercial attache.
2. If a country intends to purchase a defense article it is in both the U.S. national security and economic interests that the purchase be a U.S. product. Consequently, SAOs should support the marketing efforts of U.S. companies, while maintaining strict neutrality between U.S. competitors. In general and subject to releasability considerations, including export licensing, the SAO should facilitate the flow of information regarding U.S. systems to allow countries to make acquisition decisions, commercially or through FMS, while avoiding advocacy of a program with a specific U.S. producer (also see para 7.)
3. The Defense Security Assistance Agency is working closely with industry representatives to develop a mutually supportive relationship. The following guidance for SAOs is designed to supplement that provided from the State Department and to define the appropriate relationship that the SAOs should have with representatives of U.S. industry.
4. Providing Country Information. An important function of the SAO is to be well informed about, and properly responsive to U.S. defense industry interests in the host country. Upon request, and subject to such factors as availability of resources and country sensitivity to release of specific data, the SAO should be prepared to provide industry representatives with the following kinds of unclassified information.
 - a. Data on the defense budget cycle in the host country including the share of that budget devoted to procurement. Industry representatives may also be made aware of the country's current FMS and MAP budgets.
 - b. Information on the national decision making process, both formal and informal, and on decision makers in the MOD (Ministry of Defense) and military services.
 - c. Information on the national procurement process to include bidding procedures, legal or policy impediments to procurement from U.S. sources, and other information needed for the American commercial competitor to deal effectively with the country.
 - d. Estimates as to the kind of equipment the country currently needs to fill defense requirements and that it is likely to need in the future, as well as procurement plans for this equipment as known and appropriate to reveal.

- e. Information as to the marketing efforts of foreign competitors.
- f. Information on the major in-country defense firms and their products. This can assist U.S. firms when trying to identify possible subcontract support services needed or for exploring teaming, licensing, or other cooperative arrangements.

In providing this information the SAO should attempt to draw on any expertise resident in the Embassy. As an example, it might be useful for industry representatives to be aware of the overall financial position of the country, any International Monetary Fund (IMF) controls/restrictions on credit, and the relationship between the MOD and other branches of the government. This might mean drawing on the expertise of the Commercial, Economic, or Political Officers in the Embassy.

5. Reciprocal Procurement Agreements. The countries that have entered into reciprocal procurement agreements with the DOD (covering mutual cooperation in R&D, production, procurement, and logistics) have agreed to provide equal access by each party to the defense market of the other. Based on these agreements, SAOs should have a working knowledge of the host country's acquisition system and, in conjunction with the Embassy Commercial Attache, have a process for obtaining advance procurement information on bid solicitations which is simultaneous with the bid solicitations provided to in-country suppliers. The information on the reciprocal agreement and on the host country's defense solicitations should be provided to appropriate U.S. industry representatives. The exchange of information between the SAO and the industry representative can be used to monitor host country compliance with the reciprocal agreement. If it is suspected that U.S. companies are not being provided equal access to the defense market of the host country or if U.S. industry representatives can provide information which indicates that the agreement is not being honored, the SAO should work with the Embassy Commercial Attache to resolve the issue as well as advise the host country procurement officials and appropriate OSD activities.

6. Appointments. The SAO should assist industry representatives with appointments elsewhere in the Embassy and, as time and circumstances permit, facilitate appointments in the host country MOD and services. This will normally be accomplished by advising industry representatives of the proper country individuals/offices to contact. In order to avoid the impression of SAO endorsement of a given item or service, making calls for appointments with country officials will normally be done by the industry representatives involved in a marketing effort, unless host country prefers to deal with SAOs for appointments, and the SAO concurs with the approach. If requested by the industry representatives and the host government, the SAO may sit in on key meetings to help assess defense requirements and the extent of U.S. industries' ability to meet those requirements.

7. U.S. Competitors. Unlike most other countries that sell defense equipment, the U.S. is likely to have more than one producer of any given weapons system. An SAO obviously should maintain neutrality between such competitors. When more than one U.S. competitor is involved, the SAO should still be able to explain to host country personnel why the purchase of a U.S. system would be to the country's advantage. If asked by a representative of one U.S. company, the SAO can acknowledge whether and when other U.S. vendors have come through the country, but he should not divulge any marketing strategy or other proprietary information of any U.S. competitor. In cases where it is clear that there is only one U.S. source or producer marketing a system, the SAO may endorse a specific American product to the host government. If it has not already been communicated to the SAO that a specific product or capability is to be supported, the SAO may inquire from DSAA whether DOD can actively participate in supporting a specific sale.

8. Commercial Versus FMS Sales.

- a. DOD policy is that it generally has no preference as to whether a foreign country fills its valid defense needs through FMS or commercial channels. Moreover, DOD policy provides that DOD should try to accommodate a U.S. contractor preference for direct sales if such a preference is indicated by the contractor, unless the host country requests to make the purchase through FMS. DOD policy also provides that price quotes will not normally be provided for comparison of FMS with direct sales.
- b. A particular concern of industry is that SAOs may be requested to provide pricing data on an informal basis, and that the planning data provided may be unfavorable to a commercial sale because the data does not reflect a considered response prepared by a military department procurement activity. All inquiries on pricing should be referred back to the appropriate military department and/or DSAA in accordance with the procedures in the *Security Assistance Management Manual*. This is the only way to assure that an SAO response will provide the most accurate price and availability data possible. Even then it will be noted that a particular sale, either FMS or commercial, may include marked differences in delivery schedules, equipment modifications, spare parts and training packages, and the recipient of the data should exercise considerable caution in comparing FMS and commercial data.

9. Large Versus Small Sales. The SAO should endeavor to be of assistance to a broad spectrum of U.S. defense industry marketing efforts. The SAO should endeavor to see that defense industry representatives marketing less complex, less expensive equipment receive his attention just as do representatives marketing more sophisticated equipment. It is not uncommon for various levels of any Embassy to be involved in promoting particularly large sales of American equipment. While smaller vendors cannot expect this level of support, they should receive as much attention as time and the specific case permits from the SAO and the mission staff.

10. Follow-Up. The SAO should encourage visiting U.S. contractors to debrief him and other relevant members of the mission staff on their experiences in country. The SAO should also be prepared to respond to possible follow-up inquiries from industry representatives with respect to any reactions from host country officials or subsequent marketing efforts by foreign competitors. Embassy staff may also be alerted by the SAO about obtaining reactions from the host country officials and passing these on to industry representatives.

11. Exceptional Circumstances. It is reaffirmed that, in general, industry representatives are to receive assistance for defense materiel or service marketing efforts when requested. In the unusual event that assistance is requested but, in the judgement of the SAO, marketing efforts do not coincide with overall U.S. defense interests (e.g., the product is wrong for the country), or have potential for damaging U.S. credibility and relations with the country, SAO concerns should be relayed to the appropriate military department and/or DSAA along with a request for instructions on how to proceed.

[Department of State Message, DTG 262259Z, JAN 87, Subject: Arms Transfer Policy and Procedures]

REF: A. 81 State 180189
B. 81 State 084780
C. 81 State 206260

1. As noted in REFTELS A, B, and C, the U.S. Government continues to view the transfer of conventional arms and other defense articles and services as an essential element of our global defense posture and an indispensable component of our foreign policy. Thus, proposed arms

transfers are evaluated in terms of their overall consistency with U.S. objectives, on a case-by-case basis.

2. The criteria to be applied in each such evaluation include the degree to which potential recipient and the United States share political/military objectives; the degree to which U.S. security interests can be served and/or supported by improving the military capabilities of the recipient; the degree to which the potential recipient is able to absorb, use effectively, and support the military equipment in question; the degree to which the recipient is able and prepared to safeguard it appropriately against compromise; the recipient's ability to pay for acquisition and operation of the equipment; the appropriateness of the system to the military threats the potential recipient faces; and the potential impact upon regional military balances, and regional stability.

3. The utility of arms transfers in support of U.S. national objectives also results from the fact that transfers of U.S. origin military equipment frequently serve to establish lasting political, military, and economic relationships, based in part upon the provision of spare parts and support, including technical assistance and training, over the operational life of the equipment transferred. Government-to-government and military-to-military relationships are thereby strengthened.

4. In view of the potential importance of arms transfers to U.S. security and foreign policy objectives, it is important for Posts abroad to work closely with representatives of U.S. defense firms who are properly licensed or authorized to discuss their defense products and services with host country officials as outlined in greater detail in paragraphs 7-12 below.

5. Additionally, in a memorandum to all Assistant Secretaries dated November 25, 1986, the Secretary directed that assistance to U.S. firms with export or investment interests abroad remains one of the department's priorities. An important part of your job is to ensure that your bureau is well informed about, and properly responsive, to U.S. business concerns in your area of responsibility. In implementation of the Secretary's instructions, and in further implementation of the Presidential directive dated July 8, 1981, on arms transfer policy which stated that "USG representatives overseas will be expected to provide the same courtesies and assistance to firms that have obtained licenses to market items on the U.S. Munitions List as they would to those marketing other American products," the Department herein repeats and updates guidance sent to Posts in 1981 regarding U.S. conventional arms transfer policy and procedures.

6. Following in paragraphs 7 and 8 are relevant excerpts from REFTEL B dated April 3, 1981 from SECSTATE, Washington, DC. Paragraph 9 contains substance of portions of supplementary guidance to posts dated July 17, 1981. Current additional guidance is contained in paragraphs 10-12.

7. I am providing the following general expression of the new Administration's viewpoint regarding arms transfers as outlined in my testimony before the House on March 19, 1981: Begin Quote:

-- Arms transfers should be viewed as a positive and increasingly important component of our global security posture and a key instrument of our foreign policy;

-- They must be responsive [to] the new security challenges we face in various parts of the world; and

-- We must have a basic policy framework, supported by a managerial structure to ensure that arms transfers directly serve United States security interests. We recognize that neither restraint for its own sake nor a *laissez faire* approach to sales would properly serve these interests.

-- Finally, the diversity of U.S. interests and regional and country security situations in various parts of the world indicates that we need tailored approaches that take this diversity into account rather than attempting to deal with all situations in a single global approach. Our policy must be balanced and reasonable, in accordance with our worldwide responsibilities. End Quote.

8. Consistent with the foregoing, Posts hereafter should treat representatives of U.S. firms selling arms with the same courtesies as other U.S. businessmen, and may supply basic business information and services to them (e.g., access to commercial library, names and addresses, information about local customs regulations and commercial law, etc.). Posts may also provide non-sensitive background information on the organizational structure of the host government and defense forces, its defense budget, funding limitations, and whatever U.S. financial assistance is available. If, repeat, if a U.S. firm has been granted a license to release technical data in support of sales promotions or other marketing efforts in the host country and subject to local conditions, the following additional services may be afforded to representatives of U.S. firms upon request.

- Provide advice on which host government officials to contact.
- General advice on tactics for security sales in the host country.
- Informing the host government that the U.S. G. has approved, in principle, the marketing effort as evidenced by issuance of license.

Requests from U.S. firms or their representatives for special support of any kind which would directly encourage, promote, or influence the purchase by a foreign government beyond the above, or would imply that the U.S. G. is likely to provide financing for such a sale when that fact has not been established, should be cabled to the Department for a ruling. In this connection, Embassies are reminded that Section 515(1) of the Foreign Assistance Act quoted below remains in force:

The President shall continue to instruct United States diplomatic and military personnel in United States Missions abroad that they should not encourage, promote, or influence the purchase by any foreign country of United States-made military equipment unless they are specifically instructed to do so by an appropriate official of the Executive Branch.

9. Posts should avoid any actions that would implicitly or explicitly foreclose options or prejudice the eventual outcome of the arms transfer decision-making process. Any foreign government expression of interest in the procurement of specific U.S. defense articles or services should be promptly reported to Washington. Posts should assure themselves that requests for significant military equipment have the support of the host government. In the course of any exchanges with the host government, the full range of available equipment options should be explored--i.e., those articles and services militarily commensurate with the need of the country and appropriate to the economic and technical capabilities of that country.

Posts should follow previous guidelines in providing consistent and evenhanded assistance and courtesies to representatives of all qualified U.S. defense industries. This is particularly important where more than one U.S. manufacturer has been granted a munitions control license to market similar equipment. At the same time Posts should not discourage host governments from seeking factual data through appropriate channels regarding the suitability of a particular item.

Coproduction or coassembly requests should be forwarded to Washington with Country Team comments on the following points:

- A. The host nation's capability to produce the articles;

- B. The host nation's reasons for desiring coproduction;
- C. The economic impact on the host country of coproduction versus a straight sale;
- D. Whether there is sufficient demand for an economic production run or whether there exists, or are likely to exist, pressures or expectations within the host country for eventual third party sales of the coproduced articles.

All disclosures of U.S. classified defense information will continue to be governed by the National Disclosure Policy and associated procedures.

10. If the Chief of Mission believes that a potential acquisition by the host country could significantly advance USG foreign policy and/or national security objectives, he/she should expeditiously bring this to the attention of the Department and, upon specific authorization from the Department, become personally involved in furthering that acquisition.

11. We additionally bring to your attention the following 1985 amendment to munitions control regulations. Previously, USG regulations required U.S. defense firms to obtain prior approval letters or export licenses for technical data for demonstration purposes before making proposals to sell significant military equipment (SME) of a specified value (formerly \$7 million and presently \$14 million or more), or to enter into manufacturing license or technical assistance agreements for the production or assembly abroad of SME regardless of dollar value. Although the prior approval requirements with respect to agreements for production or assembly of SME remains in effect, since April 1985 prior approval for sales of SME is no longer required for NATO countries, Japan, Australia, and New Zealand, provided no technical data is released. As for other countries, prior approval for sales proposals is no longer mandatory (provided no technical data is released) as long as the identical SME has previously been approved for permanent export to any country under a munitions license or FMS case. In this situation a written notification must be given to the Department at least thirty days in advance of any proposal to sell SME valued at \$14 million or more to another country. Where the identical SME has not been previously exported, prior approval is still required as noted above.

12. In rendering assistance, Posts should not imply to host country officials that USG financing will be available for any potential acquisition or that USG favors one channel of acquisition over another (FMS versus commercial) unless Department has so advised Post.

13. To sum up, Department believes it important that Posts provide the assistance outlined above, as appropriate, and be perceived by host government officials and U.S. defense contractors as doing so. All assistance by embassy and consular personnel should of course take place in accordance with Department's ethical guidelines. Additionally, Post should maintain complete records of its contact with private industry representatives and with foreign officials made on behalf of Industry. SHULTZ

[Department of State Message, DTG 031259Z, APR 81, Subject: Conventional Arms Transfer Policy: Modification of Guidelines re Services to be Provided Representatives of U.S. Firms Selling Defense Articles.]

REF: State 207984, August 1977

1. The Administration is in the process of revising U.S. Conventional Arms Transfer Policy to make it more responsive to the new security challenges we face and more supportive of our military, political, and economic interests. Detailed guidance regarding the new policy will be provided to overseas missions upon completion of the review.

2. In the interim I am providing the following general expression of the new Administration's viewpoint regarding arms transfers as outlined in my testimony before the House on March 19, 1981: Begin quote.

- Arms transfers should be viewed as positive and increasingly important components of our global security posture and key instrument of our foreign policy;
- They must be responsive to the new security challenges we face in various parts of the world, and
- We must have a basic policy framework, supported by a managerial structure to ensure that arms transfers directly serve United States security interests. We recognize that neither restraint for its own sake nor a *laissez faire* approach to sales would properly serve these interests.
- Finally, the diversity of U.S. interests and regional and country security situations in various parts of the world indicates that we need tailored approaches that take this diversity into account rather than attempting to deal with all situations in a single global approach. Our policy must be balanced and reasonable, in accordance with our worldwide responsibilities. End quote.

3. Consistent with the foregoing, we have rescinded the guidance provided in Paras. 6 through 6b reftel regarding contacts with representatives of U.S. commercial firms selling defense articles and the services which can be provided to such representatives by mission personnel. This change reflects the Administration's view that U.S. industry is a valuable partner in promoting U.S. security and that of our friends and allies. Government and industry cooperation can be facilitated by the way in which overseas U.S. personnel provide services to industry. Accordingly, posts hereafter should treat representatives of U.S. firms selling arms with the same courtesies as other U.S. businessmen and may supply basic business information and services to them (e.g., access to commercial library, names and addresses, information about local customs regulations and commercial law, etc.).

Post may also provide non-sensitive background information on the organizational structure of the host government and defense forces, its defense budget, funding limitations, and whatever U.S. financial assistance is available. If, repeat, if a U.S. firm has been granted a license to release technical data in support of sales promotions or other marketing efforts in the host country, and subject to local conditions, the following additional services may be afforded to representatives of U.S. firms upon request:

- Assistance in arranging appointments with host Government officials and guidance on which officials to contact.
- General advice and tactics for securing sales in the host country.
- Informing the host government that the USG has approved in principle the marketing effort as evidenced by issuance of a license. Requests from U.S. firms or their representatives for special support of any kind which would directly encourage, promote, or influence the purchase by a foreign government beyond the above, or which would imply that the USG is likely to provide financing for such a sale when that fact has not been established, should be cabled to the Department for a ruling. In this connection embassies are reminded that section 515 (H) of the Foreign Assistance Act quoted below remains in force:
- The President shall continue to instruct United States diplomatic and military personnel in United States missions abroad that they should not encourage, promote, or influence the purchase by any foreign country of United States made military equipment, unless they are specifically instructed to do so by an appropriate official of the Executive Branch.

4. In carrying out this guidance, posts should insure that the appropriate assistance and courtesies are provided to all qualified U.S. firms in a consistent and even-handed manner.
5. The Department will incorporate aspects of this revised guidance and other requirements of law, policy and standing procedure into an overall guidance statement regarding U.S. Conventional Arms Transfer Policy upon the completion of the current interagency review.