

U.S. Commercial Arms Exports: Policy, Process, and Patterns

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Four points became starkly apparent during the early stages of research for this chapter. First, public information on the subject is sparse. The voluminous literature on international arms transfers contains little from which one can construct a coherent account of commercial arms sales. Whereas the U.S. government's security assistance programs, especially FMS, are relatively well documented and analyzed, not a single substantive study of commercial arms exports has been published in four decades, and the few passing references one encounters tend to be brief, formalistic, simplistic, and often inaccurate.[1] This chapter offers a modest contribution toward a realistic appreciation of an important but long-neglected and widely misunderstood subject.

Second, this dearth of information has historically engendered and perpetuated a public image of commercial arms sales as a sordid business practiced by wheeler-dealers and "merchants of death" engaged in shady deals and venal behavior.[2] To be sure, the history of the international arms trade is littered with examples of questionable and illegal activities and colorful and mysterious figures, but today the bulk of this business is conducted by corporate conglomerates with household names like Bendix, Ford, General Electric, General Motors, McDonnell Douglas, Singer, United Technologies, and Westinghouse.

The third and most salient point is this: the volume of commercial arms sales has grown significantly in both absolute and relative terms in recent years. The annual value of approved export licenses increased sharply from \$3 billion to \$4 billion in the late 1970s to \$8 billion to \$12 billion in the early 1980s. In fact, for 1982-1985, commercial arms export authorizations totaled \$52 billion, or 77 percent of the \$67 billion in FMS cash and credit purchase agreements. The corresponding figures for arms deliveries are much smaller, but the trend is the same. In the late 1970s, recorded commercial exports abruptly trebled, from about \$500 million to \$1.5 billion per annum, and then doubled in the early 1980s to nearly \$3 billion a year. For 1976-1985, commercial exports accounted for more than 20 percent of the total value of U.S. arms transferred, more than twice the figure of the previous decade. It is also of interest to note that some 5,500 U.S. contract personnel are working abroad in implementation of commercial arms exports, about double the number of U.S. government personnel carrying out security assistance functions. Approved export licenses in the first half of FY 1986 alone amounted to \$8 billion, indicating that these trends are likely to accelerate. It is therefore all the more appropriate and timely to examine the commercial side of the arms sales ledger more closely (see Appendix A-C).

Fourth, historical continuity has been the hallmark of the U.S. arms export control system for more than fifty years. Accordingly, the next section of this chapter will provide a historical introduction to subsequent sections on the arms-licensing process, the revision of the arms export

control regulations in 1984-1985, enforcement authorities and activities, and congressional oversight.

HISTORICAL BACKGROUND AND PERSPECTIVE

The remarkable surge of public, congressional, and academic interest in the growth of arms transfers in the 1970s largely overlooked the fact that the United States has been a major arms exporter for nearly a century. During World War I, the United States exported about \$4 billion in munitions to the Allies. This high volume of arms exports dropped off drastically during the interwar years to about \$10 million to \$15 million per year and then exploded again during World War II.[3]

Notwithstanding the involvement of the United States in the arms trade and international efforts to regulate it, the U.S. government did not establish an arms export control regime until 1935. In the early 1930s, U.S. public and congressional opinion was shocked by the sudden outpouring of sensational exposés of the munitions industry and the international traffic in arms. Bearing such lurid titles as *Merchants of Death*, *The Bloody Traffic*, *War for Profits*, and *Iron, Blood and Profits*, these books portrayed the munitions industry and arms sales as unmitigated evils.[4] Beginning in September 1934 and continuing intermittently over a period of seventeen months, Senator Gerald P. Nye's Special Committee of the Senate Investigating the Munitions Industry conducted extensive hearings and investigations, which became the focus of political attention. In June 1935, after a decade of inaction, the United States finally ratified the Geneva Arms Traffic Convention of 1925, and in August 1935 an isolationist Congress, fearing that the country could be dragged into war by arming belligerents, passed the Neutrality Act, which was signed by the President on August 31.

The Neutrality Act of 1935 gave the President for the first time a legal basis for instituting a general system for controlling arms exports. Specifically, it established the interdepartment National Munitions Control Board under the chairmanship of the Secretary of State, who was to administer the arms export control provisions of the act; required all persons engaged in the business of manufacturing, exporting, or importing arms to register with the Secretary of State; authorized the secretary of state to promulgate rules and regulations to administer and enforce the new arms export controls; authorized the President to designate a list of articles subject to these controls; and established universal licensing requirements for all arms imports and exports.

Although the State Department had sought such statutory authority for arms export control independent of neutrality legislation, it moved quickly to establish a control regime under its new mandate. On September 19, 1935, the Secretary established the Office of Arms and Munitions Control to exercise the functions vested in him under the law. Joseph C. Green became chief of the new office and executive secretary of the National Munitions Control Board. On September 25, the President issued a proclamation enumerating the "Arms, Ammunition and Implements of War" that henceforth would be subject to import and export control, and on October 10 the Secretary of State issued the first "International Traffic in Arms" Regulations. Although these regulations did not become effective until November 29, the Office of Arms and Munitions Control began issuing licenses under the authority of the Neutrality Act on November 6 "as a matter of convenience to exporters." In its first year of operation [1935], the office issued 4,205 export licenses valued at \$27.9 million.[5] Between 1936 and 1970, the value of export licenses issued rose sharply each year:[6]

1936	\$ 24.2 million
1937	\$ 46.1 million
1938	\$ 83.6 million
1939	\$143.7 million
1940	\$873.1 million

In retrospect, it is interesting to note both the continuities and changes in this arms export control system. The statutory authorities and related legislation have evolved through subsequent Neutrality Acts of 1937 and 1939, the Mutual Defense Assistance Act of 1949, the Mutual Security Acts of 1951 and 1954, the Foreign Assistance Act of 1961, the Foreign Military Sales Act of 1968, and finally, the International Security Assistance and Arms Export Control Act of 1976. The registration, licensing, and other regulations issued under these statutory authorities, though revised and expanded many times since 1935, are still known (somewhat archaically) as the International Traffic in Arms Regulations (ITAR). And although the National Munitions Control Board no longer exists, the State Department's Office of Munitions Control, the organizational descendant of the Office of Arms and Munitions Control of the 1930s, still administers the ITAR.

Certain peculiar features of the original arms export control regime are worth highlighting. First, the authority of the Secretary of State to deny licenses was severely limited by the Neutrality Acts to those cases in which the proposed export would be in violation of U.S. law or treaty to which the United States was a party. In other words, every license had to be issued if the application was submitted by a duly registered exporter and complied with the regulations, unless it clearly violated U.S. law. However, pursuant to other provisions of the Neutrality Acts, the President was required to issue a proclamation upon the outbreak of war between or among two or more foreign states, or upon the eruption of severe civil strife in any foreign country, which immediately made it illegal to export or transship arms to or for the use of any of the belligerents or the strife-ridden state. By invoking these specific legal authorities and by officially advising exporters from time to time that it was contrary to U.S. policy to export arms to certain countries (though their legal right to a license would be honored), the State Department exercised a great deal of discretion in controlling foreign arms sales.

Second, although the National Defense Act of 1940 authorized the President to deny any license "in the interest of national defense," the denial authority was delegated to the administrator of export control. The Secretary of State was empowered and enjoined by Presidential proclamation "to issue or refuse to issue licenses . . . in accordance with . . . rules and regulations or such specific directives as may be, from time to time, communicated to him by the Administrator of Export Control."

Third, certain organizational problems that materialized in the early 1940s have left an enduring institutional legacy. In November 1938, the Office of Arms and Munitions Control acquired additional functions and was redesignated as the Division of Controls, but within three years this organization went into eclipse. President Roosevelt's new Lend-Lease program soon overshadowed commercial arms exports, and in September 1941, the munitions control function was submerged in larger export control organizations. Along with the loss of Green and its status as a separate division, the munitions control unit suffered a "loss of prestige" and "began a long and apparently never-ending trek from one division to another." [7] Although the unit regained its organizational status as the Munitions Division in the Office of Controls in May 1947, it was housed together with other administrative entities such as Passport, Visa, and Investigations. By this time, the separation of policy and administration was complete, and the fundamental role of the munitions control unit was firmly established as a faithful executor rather than a maker of arms export control policy.

The scope of the arms export control regulations was enlarged significantly during 1953-1955. Prior to 1953, licenses were required only for the export of the specifically enumerated articles or end items, not for "component parts," except in cases "where the exportation . . . of such parts may reasonably be considered as involving, in fact, the exportation . . . of a substantially complete article or unit in unassembled form." However, in an ITAR revision effective January 1, 1954, the term *article* was extended to include "components, parts, accessories, and attachments and related items" for the enumerated "arms, ammunitions and

implements of war." The fact that the bulk of the license applications received today comprise such miscellaneous articles is a measure of both the administrative control and foreign policy leverage inherent in this comprehensive licensing system.

The Mutual Security Act of 1954, which repealed and superseded the Neutrality Act of 1939, was important in several respects. The new legislation reflected the shift in postwar U.S. foreign policy from the isolationism embodied in the Neutrality Acts to an era of globalism based on the concept of mutual security. Specifically Section 414 of the Mutual Security Act authorized the President "to control, *in furtherance of world peace and the security and foreign policy of the United States*, the export and import of arms, ammunitions, and implements of war, *including technical data relating thereto*." This statutory language gave the President, for the first time, authority to regulate exports of technical data and to deny import licenses for reasons of foreign policy or national security. The National Munitions Control Board was also abolished, and President Eisenhower delegated to the Secretary of State the exercise of the munitions control function. On August 26, 1955, the ITAR was revised again to implement the new authorities. The control of technical data exports was a far-reaching provision because it gave the State Department the ability to regulate both foreign sales promotion and, more important, the export of military technology embodied in design, development, and production know-how.

One of the anomalies of the ITAR for nearly a quarter-century was that it included all aircraft and airborne equipment among the enumerated "arms, ammunition, and implements of war" subject to export control by the Office of Munitions Control (OMC). The original rationale for treating civil aircraft and civil aviation equipment as Munitions List articles became increasingly less viable with the expansion of the commercial aerospace industry and worldwide civil aviation in the 1950s. This anomaly was eliminated on June 1, 1959, when civil aircraft and avionics such as commercial radar, communications, and navigation equipment were removed from the Munitions List and placed under the export control regulations administered by the Department of Commerce. Henceforth, only "military aircraft and military aircraft equipment" (including experimental aircraft and inertial navigation systems) remained on the Munitions List.

Further ITAR revisions in 1969 strengthened controls on exports of "significant combat equipment" and technology transfers under manufacturing license agreements. Specifically, exporters of "significant combat equipment" (now called "significant military equipment") were required to furnish a State Department end-use certificate (Form DSP-83), signed by the foreign purchaser, stating that these articles would not be retransferred to any other country without the prior written approval of the Department of State. Furthermore, the regulatory provisions on manufacturing license and technical assistance agreements were elaborated in much greater detail to include the submission of more specific information concerning the equipment, technology, and rights to be transferred and to incorporate certain statements in such agreements. These statements entailed explicit acceptance of the requirement for State Department approval of the agreement; subjected the agreement "to all the laws and regulations, and other administrative acts, now or hereafter in effect, of the U.S. Government and its departments and agencies"; prohibited retransfers of licensed articles and related technical data to any other country without prior written approval of the U.S. government; and required foreign licensees to insert a reexport control statement in their contracts for the sale of significant combat equipment to authorized end users.

Coincidentally, another major ITAR amendment effected in 1969 involved the transfer of the State Department's *import* control functions to the Department of the Treasury. The Gun Control Act of 1968 and coincidental congressional concern that foreign firearms imports were detrimental to the U.S. firearms market led the Department of State to reconsider its regulatory functions. Whereas the regulation of arms exports has direct foreign policy and national security implications, the control of arms imports is not so clearly related to the State Department's overall responsibility for the conduct of foreign relations. Since gun control and firearms sales were primarily domestic issues and since the bulk of the import licenses issued by OMC were for firearms, State proposed

to transfer all its import control functions to Treasury, which had acquired new regulatory authority under the Gun Control Act.

After the necessary interagency and White House coordination, Executive Order 11432 was amended on October 22, 1968, to delegate the President's authority for controlling imports of "arms, ammunition and implements of war, including technical data relating thereto" to the Secretary of the Treasury. The executive order also directed that "on matters affecting world peace, the external security and foreign policy of the United States," the Secretary of the Treasury "shall be guided by the views of the Secretary of State" and shall obtain the concurrence of both the Secretaries of State and Defense for designations and changes in designations of articles subject to import control. In July 1969 the ITAR was amended to reflect this change; however, State retained jurisdiction over temporary imports and in-transit shipments of Munitions List articles because such transactions ultimately entailed exports. For OMC, this meant relief from another anomalous function and a considerable administrative burden that had grown rapidly in the preceding five years from about 2,000 import licenses to 7,600.

The last significant change to the ITAR before the comprehensive 1985 revision of the regulations was an August 1977 amendment requiring prior Department of State approval for "major sales proposals" involving the sale, production, or assembly of "significant combat equipment" abroad for end use by foreign armed forces. This amendment, which put into effect one of the specific controls prescribed by President Jimmy Carter's arms transfer policy statement of May 1977, augmented the ability of the department to turn off undesirable arms transfers at the precontract negotiating stage. This requirement was substantially modified in 1985.

ARMS LICENSING PROCESS

The U.S. government transfers a wide range of defense articles and defense services to foreign governments and international organizations under a variety of official security assistance programs managed by the Department of Defense under the policy guidance of the Department of State. Whereas the government itself plans and administers the security assistance programs under complex legal and procedural arrangements, it is a regulator but not a party to commercial arms sales. The government-to-government programs account for the bulk of U.S. arms transfers and have been widely described and analyzed elsewhere. This section will discuss the legal, policy, regulatory, and administrative structure of the commercial arms export control system.[8]

The current statutory authority for regulating commercial arms exports derives from Section 38 of the Arms Export Control Act (AECA) of 1976, which continued and refined the president's authorities originally granted in the Neutrality Acts of the 1930s and later by the Mutual Security Act of 1954. Specifically, Section 38 authorizes the President,

in furtherance of world peace and the security and foreign policy of the United States, . . . to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is [also] authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services.

By Executive Order 11958, the President has delegated these authorities to the Secretaries of State and Treasury. The Secretary of the Treasury is responsible for the control of the import of defense articles and defense services and for the designation of items or categories of items that shall be subject to import control. These items, designated with the concurrence of the secretaries of state and defense, constitute the *U.S. Munitions Import List* under Title 22, Code of Federal Regulations, part 47. On the other hand, the Secretary of State, with the concurrence of the

Secretary of Defense, is responsible for designating the *U.S. Munitions List*--that is, identifying those items or categories of items considered as defense articles and defense services subject to export control.

The Director of the State Department's Office of Munitions Control (OMC), by internal delegation of functions and authority within the department, through the Under Secretary for Security Assistance, Science and Technology and the Assistant Secretary for Politico-Military Affairs, is responsible for discharging the functions of the Secretary of State in controlling the commercial export of defense articles and defense services. OMC prescribes the ITAR in Title 22, Code of Federal Regulations, parts 120-130, which defines the U.S. Munitions List and the requirements that must be met in order to export the designated articles and services.

OMC administers the ITAR by means of a licensing process. There are eight types of licenses or other requests, each of which it treats as a munitions case:

1. Application/license for the permanent export of unclassified defense articles and related unclassified technical data (Form DSP-5).
2. Application/license for the temporary import of unclassified defense articles (Form DSP-61).
3. Application/license for the temporary export of unclassified defense articles (Form DSP-73).
4. Application/license for the permanent or temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).
5. Technical assistance agreements, under which U.S. persons are authorized to export technical data and perform defense services over an extended period, usually related to the design, engineering, development, assembly, manufacture, use, repair, and maintenance of defense articles.
6. Manufacturing license agreements, by which a foreign person is granted a license, right, or other authorization to manufacture defense articles abroad, usually by means of a technical data package furnished by the exporter and sometimes including associated training and technical assistance.
7. General correspondence (GC) cases, which include a variety of requests that require an official response, such as requests for advisory opinions as to whether proposed export transactions would be approved, requests for interpretations of the ITAR and licensing procedures, and requests to approve retransfers of defense articles previously licensed or otherwise approved for export.
8. Commodity jurisdiction (CJ) cases, which OMC is requested to determine whether a particular item or service is deemed to be a defense article or defense service subject to export control under the ITAR or to the Export Administration Regulations administered by the Department of Commerce. Such requests are generally decided by an interagency (State-Defense-Commerce) review.

Approved licenses are valid for two years or until all authorized exports have been completed, whichever occurs first. Technical assistance and manufacturing license agreements are usually approved for the duration of the contractual term, although OMC policy is to limit such agreements to twenty years, after which an extension must be approved. Furthermore, as required by Section 42(e)(2)(A) of the AECA, every license or other approval granted under Section 38 is

subject to revocation, suspension, or amendment "by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable."

Upon receipt, each license application or other request is assigned a case number and referred for action to one of OMC's licensing officers, each of whom is responsible for one or more Munitions List categories. Unlike their foreign service colleagues who rotate every two or three years between assignments in Washington and diplomatic posts abroad, OMC's licensing officers are career civil service employees, most of whom have several years' experience in arms licensing. They are primarily administrators rather than experts in military systems and technology or the nuances of foreign policy and arms control. Their functions are to examine each case assigned to them to determine if all applicable legal, policy, security, regulatory, and procedural requirements have been satisfied and to dispose of the case accordingly. Final disposition takes one of three forms: approval (often with conditions), denial, or return without action. The last is an administrative rejection, usually because the application is deficient in some respect or does not fully comply with the ITAR, although it is sometimes used in lieu of a denial if such negative action would have adverse diplomatic consequences.

Approximately 80 percent of these munitions cases are routine and are decided by licensing officers on the basis of established policy guidelines and precedents. These consist largely of applications for licenses to export defense articles and technical data for which a licensing history already exists; to export spare parts, components, and support equipment for defense articles previously exported under license or the official security assistance programs; unshipped balances of previously approved licenses; handguns and sporting firearms and ammunition for personal use or commercial resale abroad; and to import temporarily for repair defense articles that had been exported earlier.

Whenever technical, security, or policy issues beyond their competence arise, licensing officers refer the case to appropriate offices within the department and to other agencies for export review and recommendation. Licensing officers operate on the principle, "When in doubt, staff it out." About 20 percent of the cases require extensive review by policy offices in the Department of State, the Department of Defense, the Arms Control and Disarmament Agency (ACDA), the National Aeronautics and Space Agency, the Department of Energy, and others with a functional interest in the proposed export transaction. There is no standard staffing pattern. Each case that requires external review is referred only to the specific offices and agencies responsible for deciding the particular issues at hand. For example, an application to export unclassified technical data to market a newly developed fire control system to NATO governments would be staffed to Defense but not necessarily to ACDA or the State Department's European bureau. A proposed export of tear gas or small arms to countries where human rights conditions are of concern would be referred to the appropriate regional bureau in State and the Bureau of Human Rights and Humanitarian Affairs. Despite published reports to the contrary, the Department of Commerce does not participate in interagency reviews of munitions cases except for commodity jurisdiction requests.

OMC makes final disposition of these cases on the basis of the recommendations of the reviewing offices and agencies. Although there may be several reviewing entities, a recommendation by any one of them to deny the case is generally sufficient to result in a formal denial. If the veto is cast by the cognizant regional bureau in State, it will be denied on foreign policy grounds even though the other reviewing parties may have expressed no objections. If, however, the recommended denial stems from one of the functional bureaus or ACDA, OMC will consult the regional bureau concerned to see if it will concur in the denial or attempt to resolve the difference by escalating the decision to the policy level if necessary. Generally all but the most contentious cases are resolved at the level of the Under Secretary for Security Assistance, Science and Technology.

State usually accedes to Defense's recommendations to deny if they are adequately justified on national security grounds. In recent years, Defense has recommended denial of about 7 percent of the 7,000-9,000 cases referred there for review. Among the most frequent reasons for such denials are that the export of the equipment in question would entail the disclosure of classified information for which the country is not eligible; the system is still undergoing development for the cognizant military department, and overseas marketing and sales would result in premature release of a new military capability; the equipment or technology concerned represents advanced state-of-the-art capabilities that should be shared only with close allies; and that foreign acquisition of certain technologies would undermine U.S. military industrial production base requirements. However, Defense recommendations to deny that are not believed to be fully justified will be appealed by State to the appropriate Assistant or Under Secretary of Defense if the difference cannot be resolved at lower levels. Only a handful of munitions cases are referred to the Secretaries or to the White House to break a State-Defense deadlock.

As required by Section 38(a)(2) of the AECA, OMC refers to ACDA any proposed exports that conceivably "will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements." In addition, ACDA reviews all significant technology transfer cases, cases requiring Congressional certification, and others involving selected Munitions List articles in which the agency has expressed particular interest. Between 1981 and 1985, OMC requested ACDA's recommendation on about 1,000-1,500 cases annually.

The magnitude of OMC's work load has increased considerably, to about 45,000 cases a year in the mid-1980s, reflecting an average annual growth rate of 10 percent (see Appendix D). In the average year, DSP-5 applications for the export of unclassified defense articles and related technical data constitute 75 to 80 percent of cases received. By contrast, the number of manufacturing license and technical assistance agreements processed annually has more than trebled, from 300 to 400 per year in the mid-1970s to about 1,100 per year in the mid-1980s, a telling measure of the increasing trend toward technology transfers in the international arms trade.

It is also interesting to note the remarkable consistency in the disposition of this ever-growing volume of cases, even during the last decade spanning two administrations with radically different arms transfer policies. Indeed, since 1971, in the typical year, 90 to 92 percent of munitions cases were approved, 1 to 2 percent were denied, and about 7 percent were returned without action. However, the steady decline in the approval rate since the mid-1960s level of from 96 to 97 percent is a clear trend, especially remarkable in view of the impressive growth in commercial arms exports. In other words, commercial sales have experienced their greatest expansion despite the apparent tightening of administrative and policy controls.

Although OMC's personnel complement has remained relatively stable at about thirty over this period of steadily growing caseload, the office has adopted a number of technical, management, procedural, and regulatory changes to accommodate the increased volume of work. Standard forms, form letters, and word processing equipment have facilitated and expedited paperwork management. Since FY 1982, case processing and statistical reporting have been simplified by an in-house computer, which tracks each case from day of receipt to final action. Moreover, effective January 1, 1982, the validity period of all licenses was extended from one to two years, effectively eliminating the need to review most licenses for unshipped balances. In December 1982, OMC announced in Newsletter 98 that it would henceforth interpret the exemption in ITAR Section 125.11(a)(8) as a continuing authority to export unclassified technical data previously licensed to the same recipient, thus obviating renewals, to include classified technical data by Section 125.4(b)(4) of the revised ITAR that became effective on January 1, 1985, as explained in OMC Newsletter 100 in April 1985. Finally, effective July 1, 1985, OMC implemented a new procedure for the permanent export of unclassified defense articles and defense services sold under the official FMS program by authorizing such shipments under a new form,

DSP-94, in lieu of a license. These changes, particularly the new exemptions, are estimated to have resulted in a caseload reduction of at least 10 percent and in FY 1985 accounted for the first decline in work load since 1972.

REVISED ITAR OF 1985

On December 6, 1984, after an extensive interagency review and consideration of public comments, the Department of State published a comprehensive revision of the ITAR. This final rule, which entered into force on January 1, 1985, was the first substantial revision of the ITAR since 1969. In addition to improving the structure of the regulations and clarifying terminology, the new ITAR codified numerous changes in OMC's licensing policies and procedures; introduced several new exemptions from licensing requirements; established procedures for distribution agreements; relaxed certain prior approval requirements; and strengthened controls by closing loopholes and improving enforceability.[9]

Several significant changes in policy and practice deserve particular attention. First, the concept of defense service was explicated for the first time and defined as an export, despite the fact that this term was given statutory meaning in the AECA of 1976. Furthermore, the ITAR now requires that U.S. persons who engage in the business of furnishing defense services to foreign persons must register with OMC as do manufacturers and exporters of defense articles. Finally, the regulations establish a clear requirement for licensing or approval for the provision of defense services to, on behalf of, or for the benefit of foreign persons, whether in the United States or abroad, and whether technical data are used, disclosed, or otherwise exported. These new provisions have far-reaching implications for the ability of the U.S. government to regulate certain activities of U.S. soldiers of fortune abroad, and to regulate private camps in the United States where paramilitary training is provided to foreign persons.

Second, there was a relaxation and partial elimination of the requirement that U.S. persons obtain prior Department of State approval before making a proposal or presentation to foreign persons for the sale, production, or assembly of "significant military equipment" (SME) abroad. Such equipment consists of specifically designated categories of the Munitions List "for which special export controls are warranted because of their capacity for substantial military utility or capability." In August 1977, the ITAR had been amended to implement certain elements of President Jimmy Carter's announced policy of arms export restraint. Specifically, these amendments required prior State Department approval for "any proposal or presentation designed to constitute a basis for a decision to purchase, either through commercial or Foreign Military Sales procedures, made to any foreign government or foreign national," any SME valued at \$7 million or more, or any manufacturing license or technical assistance agreement for the production or assembly of SME regardless of dollar value. By subjecting so-called major sales proposals to approval or denial at the precontract stage, the department achieved effective policy control over such sales promotions.

But in July 1981, President Ronald Reagan set aside his predecessor's restrictive policy on arms sales in favor of one that declared arms transfers an essential element of the United States's "global defense posture and an indispensable component of its foreign policy." The prior approval requirement, dating from 1977, the last of the Carter era controls, was finally amended on January 1, 1985, by eliminating it altogether for proposed sales of SME to members of NATO, Australia, New Zealand, and Japan, and by increasing the monetary level from \$7 million to \$14 million for proposed sales to all other countries for which prior approval was still required. The regulations regarding proposed manufacturing license or technical assistance agreements for the production or assembly of SME were not relaxed, however. Shortly after, Under Secretary William Schneider, Jr., decided to limit the requirement for prior approval for proposals to sell SME only to those items of SME that had not previously been approved for export and to institute instead a

requirement that the seller give OMC written notice thirty days in advance of the proposal or presentation.

The amended regulation, as published in the Federal Register on April 1, 1985, retained the prior approval requirement for all proposed technical assistance or manufacturing licensing agreements for the assembly or production of SME in any country; narrowed the scope of the prior approval regime for sales of SME to those articles of SME that have not been previously approved for export, if the proposed contract is valued at \$14 million or more and the sale would be to a country other than a NATO member, Australia, New Zealand, or Japan; and required a thirty-day prior written notice to OMC for all presentations or proposals for the sale of SME to countries other than the exempted allies if the same SME had previously been approved for export either by license or FMS procedures. Looking at the new regulation in reverse, there are now no prior approval requirements for proposals or presentations to sell SME to any country if the value of the proposed contract is less than \$14 million or for any proposals or presentations to sell SME at any value to Australia, New Zealand, Japan, or members of the NATO alliance.

A third important change was the incorporation of a new provision to regularize arrangements for the warehousing and distribution of defense articles abroad. Although the ITAR had previously recognized the possibility for such arrangements, and OMC had in fact approved a number of distribution agreements for personal and sporting firearms and for data encryption devices used in banking and other commercial applications, the 1985 revision established specific criteria, conditions, and requirements for such agreements. Since then OMC has encouraged exporters to consider utilizing this procedure to facilitate the delivery of spare parts for previously licensed equipment to authorized end users, thereby eliminating the unnecessary administrative burden on both industry and OMC of multiple license applications.

Fourth, a number of important changes were made to the provisions on manufacturing licenses and technical assistance agreements to strengthen regulatory control and enforcement. The new requirements specify that (1) certain conditions regarding the use and transfer of the licensed defense articles and services will remain binding on the parties even after termination of the agreement; (2) sales or other transfers of licensed articles must be limited to foreign governments and government contractors; (3) an annual report of sales or other transfers of the licensed articles pursuant to the agreement must be filed with OMC; (4) a distribution control statement must be incorporated into the licensee's contracts or invoices notifying end users that the licensed items are subject to U.S. export control; and (5) in the case of agreements for production of SME, a nontransfer and use certificate (DSP-83) must be executed by the end user and submitted to OMC before any transfer to that end user may take place.

Fifth, the exemptions for the export of both classified and unclassified technical data were broadened to allow other U.S. government agencies, particularly the Department of Defense, to authorize certain exports in furtherance of defense technology sharing with allied and other security partners. These exemptions will enable Defense to implement its various international agreements such as cooperative defense procurement, Strategic Defense Initiative (DSI) contracts, and other such arrangements.

The sixth, and final, change to be discussed here introduced a new procedure (Form DSP-94) to be used in lieu of a license for the permanent export of unclassified defense articles and defense services sold under the FMS program. Effective July 1, 1985, DSP-94 officially superseded the DSP-5 license as the authority for such exports shipped through commercial channels. Unlike the DSP-5, which had to be administratively processed and approved by OMC, the DSP-94, when properly completed and documented by the authorized exporter and submitted directly to U.S. Customs at the port of exit, is the authority to export the designated defense articles and services already approved under FMS procedures. A copy of the executed DSP-94 is

merely filed by the exporter at OMC. This innovation effectively eliminated a redundant licensing requirement that accounted for 2,000 to 3,000 cases a year.

ENFORCEMENT OPERATIONS

Enforcement is an essential element in any regulatory scheme. OMC's resources dedicated to enforcement are relatively sparse: a three-person staff (before 1985 it was only two), which since 1982 has been augmented by a Customs Service officer detailed to the office to provide liaison and support to Operation EXODUS (see below).

Enforcement efforts are both preventive and reactive and can be either administrative or judicial. For example, if a license application contains questionable information or statements, OMC may return it without action or request the U.S. embassy in the country concerned to verify the bona fides of the transaction and to recommend issuance or denial. Moreover, under authority of ITAR Section 126.7(a), any license or other approval may be suspended, revoked, denied, or amended without prior notice whenever OMC believes that applicable laws and regulations have been violated.

On the other hand, reported and attempted violations of the ITAR are investigated in coordination with the appropriate offices and agencies. By long-standing interdepartmental agreement, the U.S. Customs Service is OMC's enforcement agency that conducts actual investigations of alleged wrongdoings. Reports of violations come from many different sources, including U.S. embassies abroad, other governments, industry representatives, intelligence channels, customs, and law enforcement agencies. OMC coordinates with and assists Customs and other law enforcement authorities in conducting their investigations and, in consultation with the Department of Justice, may assist in preparing and prosecuting cases in the criminal justice system.

On October 1, 1985, Section 38(c) of the AECA was amended to increase the maximum penalty, upon conviction for each willful violation of any provision of law or the ITAR, to a \$1 million fine or imprisonment of up to ten years, or both; the previous limits were \$100,000 and two years. Moreover, under Part 127 of the ITAR, the Assistant Secretary for Politico-Military Affairs may "debar [prohibit] any person from participating directly or indirectly in the export of defense articles or technical data or in the furnishing of defense services for which a license or approval is required" and may also impose civil penalties in lieu of, or in addition to, any criminal penalties that may be imposed for violations. In addition, the director of OMC is authorized under Section 127.7,

to order the interim suspension of any person when the Director believes that grounds for debarment . . . exist and where and to the extent the Director finds that the interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States, pending the final disposition of debarment proceedings. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article for which a license or approval is required.

Although the department and the Customs Service have extensive enforcement authorities, the actual exercise of these authorities has shifted drastically from sporadic efforts in the 1970s to a systematic high-priority interagency program in the 1980s. In 1972, after the Department of Commerce withdrew the commodities over which it exercised export control jurisdiction from the Customs Service export inspection program, Customs virtually ceased conducting physical inspections of exports. Not surprisingly, a GAO report published in 1979 found that the administration and enforcement of the munitions export control system was "seriously weakened by the lack of an export inspection program" to ensure compliance with law, regulations, and

export license conditions. Furthermore, Customs documentation procedures and OMC's data management and reporting system were found to have serious deficiencies.[10]

In the early 1980s, however, under impetus of the Reagan Administration's emphasis on export control, the Customs Service mounted a major enforcement program, Operation EXODUS. Scores of inspectors and special agents were hired to staff this greatly expanded program of inspection of exports and investigation of apparent violations, which is coordinated through a national command center established at Customs Headquarters in Washington D.C. The extent and impact of the EXODUS program are indicated by the number of detentions and seizures of suspect shipments, listed in Table 1.

Table 1
Detentions and Seizures of Suspect Shipments, 1982-1985

Fiscal Year	Total Detentions	Total Seizures	Value of Seizures	ITAR Detentions	ITAR Seizures
1982	2,481	794	\$55 million	127	42
1983	3,620	1,444	86 million	1,138	383
1984	2,391	1,458	86 million	518	274
1985	946	755	75 million	176	139

Several interesting conclusions and inferences may be drawn from these statistics. The fact that the number of detentions increased during 1982-1983 and decreased drastically after suggests that EXODUS has achieved its goal of improving awareness and compliance by exporters. Moreover, the sharp increase in the ratio of seizures to detentions from about 1:3 in 1982-1983 to 4:5 in 1985, for both total and ITAR-related actions, is an impressive measure of the greater accuracy and efficiency of Customs inspections. In other words, a much higher proportion of suspected violations have been determined to be actual violations. It should be noted too that the ITAR-related statistics include only those detentions referred to OMC for licensing determinations; they do not reflect field seizures in which Customs inspector discovered clear ITAR violations and ordered seizures without reference to OMC.

The number of investigations that have led to judicial proceedings and prosecutions is also impressive. Table 2 shows the number of cases accepted by the Department of Justice for prosecution for violations of the AECA and the Export Administration Act (EAA) during fiscal years 1984-1985, as well as the number of arrests, indictments, and convictions for export control law violations.

CONGRESSIONAL OVERSIGHT

Congressional interest in and oversight of the security assistance programs is more intensive and extensive than in the case of commercial arms sales. There are at least two reasons for this apparent anomaly. First, since the former depend at least in part on legislative authorizations and appropriations, they are subject to regular and detailed review during the annual budget process. By contrast, congressional interest in commercial sales tends to be episodic rather than sustained. Aside from an infrequent hearing or GAO review, congressional involvement in the licensing process is limited to an occasional intervention by individual senators or representatives seeking prompt action on a constituent's application.[11] Second, since most major weapons transfers are conducted under the FMS program, it is these government-sponsored sales rather than commercial exports that sometimes arouse controversy on the Hill. Examples are the sale of AWACS aircraft

and AIM-9L missiles to Saudi Arabia, the sale of F-16 aircraft to Pakistan, the deferred sale to Jordan of F-16s or F-20s and advanced air defense systems, and the aborted sale of additional F-15 aircraft to Saudi Arabia, which led to the Saudi procurement of Tornado aircraft from the United Kingdom.

Table 2

Cases Accepted for Prosecution of AECA and EAA

Enforcement Action Taken	Fiscal Year 1984			Fiscal Year 1985		
	AECA	EAA	Total	AECA	EAA	Total
Cases accepted	131	97	228	134	111	245
Arrests	89	34	123	99	86	185
Indictments	78	97	175	194	231	425
Convictions	54	37	91	45	22	67

Note: These statistics are independent of one another. Thus, for example, in FY 1984, there were 123 total arrests but not necessarily in connection with the 228 cases accepted. Similarly, the 91 convictions were not all among the 175 indictments.

In fact, it is clear that the intent of the drafters of the AECA was to increase government control and congressional oversight of arms transfers by limiting direct commercial sales.[12] Hence, Section 38(b)(3) of the original AECA imposed a ceiling of \$25 million on the commercial sale of "major defense equipment" to countries other than NATO members, Australia, New Zealand, and Japan, thus forcing sales of such designated equipment in excess of \$25 million into government-to-government FMS channels. However, the ceiling was short-lived: it was raised to \$35 million by Section 21 of the International Security Assistance Act of 1979, raised again to \$100 million by Section 107(a) of the International Security and Development Cooperation Act of 1980, and finally was repealed by Section 106 of the International Security and Development Cooperation Act of 1981.

The principal means of legislative oversight of licensed arms exports are the several periodic reports and prior notifications to Congress mandated by the AECA. The current statutory periodic reporting requirements include the following:

A quarterly listing of all licenses and approvals for the export of major defense equipment sold for \$1 million or more, and the total value of all defense articles and defense services licensed to each country [Section 36(a)(4)]

A quarterly estimate of the number of U.S. civilian contract personnel present in each foreign country at the end of that quarter for assignments in implementation of sales and commercial exports [Section 36(a)(7)].

An annual estimate of licensed commercial exports of "major weapons or weapons-related defense equipment for \$7,000,000 or more, or of any other weapons or weapons-related defense equipment for \$25,000,000 or more, which are considered eligible for approval during the current calendar year" [Section 25(a)(1)].

An annual estimate of total licensed commercial exports expected to be made to each foreign country [Section 25(a)(2)].

A notification and economic impact statement concerning any approval of a manufacturing license agreement for production abroad of any U.S.-origin defense article involving use of FMS credits or loan guarantees [Section 42(b)].

In addition, the AECA provides for thirty-day prior notifications or certifications to be given to Congress on major commercial arms sales. Section 36(c) requires a thirty-day notification before issuance of any license for the export of major defense equipment sold under a commercial contract in the amount of \$14 million or more or any defense articles and/or defense services valued at \$50 million or more, and Section 36(d) calls for a similar certification before approval of a technical assistance or manufacturing license agreement that involves the manufacture abroad of significant military equipment in any country except for NATO members. Furthermore, Section 101(a) of the International Security and Development Cooperation Act of 1980 added Section 3(d)(3) to the AECA, requiring a thirty-day notification before approval of any third-country transfer of major defense equipment valued at \$14 million or more, or any defense articles or services valued at \$50 million or more.

After 1979, commercial exports notified under Section 36(c) were subject to possible legislative veto if Congress adopted a concurrent resolution objecting to the proposed sale to any country except NATO members, Australia, New Zealand, and Japan. However, the legislative veto provisions of the AECA and other statutes have generally been considered unconstitutional since the Supreme Court's 1983 rulings in *Immigration and Naturalization Service v. Chadha* (462 U.S. 1216) and related cases. To remedy this deficiency, the Congress passed Public Law 99-247 in February 1986. The new law provides for a *joint* resolution of disapproval of arms sales in lieu of the unconstitutional *concurrent* resolution procedure. Whereas concurrent resolutions are not normally legislative in character, joint resolutions become law by the full legislative process, including presidential signature or congressional override of a presidential veto. This new procedure appears to satisfy the constitutional requirements of separation of powers and presentation to the President for approval.[13] Interestingly, proposed commercial exports or retransfers of defense articles and services certified under Sections 36(d) and 3(d)(3) requirements have never been subject to congressional veto.

The number of congressional certifications transmitted by OMC pursuant to Sections 3(d)(3) and 36(c) and (d) for each year since passage of the AECA is as follows:

<u>Fiscal Year</u>	<u>Congressional Certifications</u>
1977	59
1978	34
1979	25
1980	27
1981	27
1982	18
1983	20
1984	37
1985	27

Two points are relevant concerning these figures. First, it is difficult to ascertain any trends since they are functions of changing legislative, policy, and commercial conditions. The original Section 36(c) reporting levels of \$7 million for major defense equipment and \$25 million for other defense articles and services were raised to \$14 million and \$50 million, respectively, by Section 101 of the International Security and Development Cooperation Act of 1981; Section 3(d)(3) certification requirements were added in 1980; and commercial sales of major defense equipment to countries other than NATO members, Australia, New Zealand, and Japan were subject to variable ceilings until 1981. Furthermore, President Carter's arms transfer policy specifically prohibited

(except for NATO, Australia, New Zealand, and Japan) the introduction of new and advanced weapons or coproduction agreements for significant weapons and their major components, the development or substantial modification of advanced weapons solely for export, and the sale or coproduction of advanced weapons until after their operational deployment with U.S. forces, but President Reagan rescinded these policy restrictions. Within these changing statutory and policy parameters, commercial marketing and sales negotiations were undertaken, often over a period of years before major contracts were signed. And second, it is interesting to note that only one of the 274 certifications made during this nine-year period ever sparked controversy on the Hill, and even that was a false alarm that was quickly turned off when additional information and explanations were furnished.

CONCLUSIONS AND IMPLICATIONS

In the mid-1980s commercial arms sales began to rival the long-dominant security assistance program. Licensed export authorizations approached the value of FMS agreements, commercial arms exports were conservatively reported at more than 30 percent of FMS deliveries, and the number of U.S. contract personnel implementing commercial arms exports abroad was about double the security assistance personnel contingent overseas. If these trends continue, commercial arms exports will overtake the FMS program as the main channel of U.S. arms transfers in the 1990s.

The most remarkable feature of this growth of commercial arms sales has been its steadiness, notwithstanding the major shifts in legislative and policy directions since the 1970s. Neither the new and changing legal regime of the AECA nor the abrupt arms transfer policy shifts of the Carter and Reagan Administrations has had discernible effect on this historical trend. Even more striking is the fact that this unprecedented expansion of commercial arms exports has occurred during a period characterized by more complex and comprehensive regulations, intensified enforcement of export controls, and declining license approval rates.

The implications of these trends and patterns are evident. As commercial sales assume even greater prominence, the State Department's munitions control function will require greater policy attention. Increased public, congressional, and interagency interest is also likely to accompany this continued shift from government-controlled to commercial arms sales. It is incumbent on the department to keep pace with these developments to preserve and carry out properly its statutory and institutional roles in the regulation of arms exports. A three-fold strategy seems to be in order to address this emerging policy and managerial challenge: sustained and determined interest in arms export control by department principals; continued investment of resources as needed to fulfill the department's administrative and leadership functions; and a strong and responsive organizational structure for policy direction and management.

Notes

1. There are two means by which the United States exports arms: the government-to-government security assistance program and private or direct commercial arms exports licensed by the Department of State. This chapter is concerned solely with commercial arms exports. Security assistance encompasses a number of discrete programs: FMS cash or credit, the latter extended by the Department of Defense as loans that may be used to procure defense articles, defense services, and design and construction services from the military departments or directly from U.S. commercial suppliers; MAP, or grant aid in the form of defense articles and services; Excess Defense Articles, under which defense articles declared excess to the Department of Defense are sold to foreign governments at original acquisition cost; and International Military Education and Training (IMET), a grant program for training foreign military students in the United States or abroad. Statistical data on FMS, MAP, and Excess Defense articles are reported for comparison with commercial sales data. Two other nonmilitary security assistance programs, Peacekeeping Operations and Economic Support Fund, are not discussed or referenced further because neither results in transfers of defense articles or services.

It has been forty years since anything substantial has been published on commercial arms sales. An early compilation of excerpted writings on various issues related to arms sales, including an extensive bibliography, is Julia Emily Johnsen, *International Traffic in Arms and Munitions* (New York: H.W. Wilson, 1934). The introduction of arms export controls in the United States is reviewed in an anonymous article by "J," "Arms Manufacturers and the Public," *Foreign Affairs*, 12, no. 4 (July 1934):639-653, and in another article by the first director of munitions control, Joseph C. Green, "Supervising the American Arms Traffic," *Foreign Affairs* 15, no. 4 (July 1937):729-744. Two thorough studies of the arms export control regime during its first decade are Elton Atwater, *American Regulation of Arms Exports* (Washington, D.C.: Carnegie Endowment for International Peace, 1941), and Murray Stedman, *Exporting Arms: The Federal Arms Exports Administration, 1935-1945* (Morningside Heights, N.Y.: Kings Crown Press, 1947). Nothing comparable to these works has appeared since. Other essential sources for this early period are the six annual reports of the National Munitions Control Board issued between 1937 and 1941 by the House Committee on Foreign Affairs: House Document No. 10, 75th Congress, 1st session; House Document No. 465, 75th Congress, 3d session; House Document No. 92, 76th Congress, 1st session; no document number assigned to fourth annual report, published 1940; House Document No. 876, 76th Congress, 3d session; and House Document No. 127, 77th Congress, 1st session. These reports were suspended during the war and never resumed afterward.

The origins of the postwar government-to-government MAP are examined by Chester J. Pach, Jr., "Arming the Free World: The Origins of the United States Military Assistance Program, 1945-1949" (Ph.D. diss., Northwestern University, June 1981), and Roderick A. Stamey, Jr., "The Origin of the United States Military Assistance Program" (Ph.D. diss., University of North Carolina, 1972), and an excellent overview of the MAP program during its heyday is provided by Harold A. Hovey, *United States Military Assistance: A Study of Policies and Practices* (New York: Praeger, 1965).

The literature on U.S. arms transfers has proliferated since the 1970s along with the growth of the arms trade itself. Among the most useful recent studies, reports, and critiques are Richard K. Betts, "The Tragicomedy of Arms Trade Control," *International Security* 5, no. 1 (Summer 1980):80-110; Anne Hessing Cahn et al., *Controlling Future Arms Trade* (New York: McGraw-Hill, 1977); *The Commission on Security and Economic Assistance: A Report to the Secretary of State* (Washington, D.C.: The commission, 1983); Alvin J. Cottrell et al., *Arms Transfers and U.S. Foreign and Military Policy* (Washington, D.C.: Center for Strategic and International Studies, Georgetown University, 1980); Philip J. Farley et al., *Arms across the Sea* (Washington, D.C.: Brookings Institution, July 1978); Earnest Graves and Steven A. Hildreth, eds., *U.S. Security Assistance: The Political Process* (Lexington, Mass.: Lexington Books, 1985); Paul Y. Hammond, David J. Louscher, Michael D. Salomone, "Controlling U.S. Arms Transfers: The Emerging System," *Orbis* 23, no. 2 (Summer 1979):317-352; Paul Y. Hammond, David J. Louscher, Michael D. Salomone, Norman A. Graham, *The Reluctant Supplier: U.S. Decisionmaking for Arms Sales* (Cambridge, Mass.: Oelgeschlager, Gunn & Hain, 1983); Jo L. Husbands, "The Arms Connection: Jimmy Carter and the Politics of Military Exports," in Cindy Cannizzo, ed., *The Gun Merchants* (New York: Pergamon Press, 1980), pp. 18-48; Husbands, "How the United States Makes Foreign Military Exports," in Stephanie G. Newman and Robert E. Harkavy, eds., *Arms Transfers in the Modern World* (New York: Praeger, 1980), pp. 152-172; Michael T. Klare, *American Arms Supermarket* (Austin: University of Texas Press, 1984); Roger P. Labrie et al., *U.S. Arms Sales Policy: Background and Issues* (Washington, D.C.: American Enterprise Institute, 1982); R.D. McKinlay and A. Mughan, *Aid and Arms to the Third World: An Analysis of the Distribution and Impact of U.S. Official Transfers* (New York: St. Martin's Press, 1984); Andrew J. Pierre, ed., *Arms Transfers and American Foreign Policy* (New York: New York University Press, 1979); Robert J. Pranger and Dale R. Tahtinen, *Toward a Realistic Military Assistance Program* (Washington, D.C.: American Enterprise Institute, 1974); Harry J. Shaw, "U.S. Security Assistance: Debts and Dependency," *Foreign Policy*, no. 50 (Spring 1983):149-158; M.T. Smith, "U.S. Foreign Military Sales: Its Legal Requirements, Procedures, and Problems," in Uri Ra'anan et al., eds. *Arms Transfers to the Third World* (Boulder, Colo.: Westview Press, 1978), pp. 345-388; and Lewis Sorley, *Arms Transfers under Nixon: A Policy Analysis* (Lexington: University Press of Kentucky, 1983).

Among these works, only a few touch upon commercial arms exports. Government publications, including the numerous congressional reports and hearings on arms transfers issued since the 1970s, ignore commercial military sales entirely except for the short chapters in two reports prepared by the Congressional Research Service (House Committee on International Relations, *United States Arms Transfer and Security Assistance Programs*, Committee Print, 95th Congress, 2d session, March 21, 1978, and House Committee on Foreign Affairs, *U.S. Military Sales and Assistance Programs: Laws, Regulations, and Procedures*, Committee Print, 99th Congress, 1st session, July 23, 1985) and a section in U.S. General Accounting Office, *U.S. Security and Military Assistance:*

Programs and Related Activities, Report No. ID-82-40 (Washington D.C.: U.S. General Accounting Office, June 1, 1982). Finally, the Defense Security Assistance Agency's recent pamphlet, *A Comparison of Direct Commercial Sales and Foreign Military Sales for the Acquisition of U.S. Defense Articles and Services* (Washington, D.C.: DSAA, October 15, 1985) is the only systematic treatment of the factors, considerations, and relative advantages of commercial versus FMS procurement, although some in industry have alleged that it is biased toward FMS.

Statistical information on U.S. arms transfers is available in DSAA's annual *Fiscal Year Series and Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts* (title varies); U.S. Agency for International Development, *U.S. Overseas Loans and Grants and Assistance from International Organizations: Obligations and Loan Authorizations* (annual); U.S. Arms Control and Disarmament Agency, *World Military Expenditures and Arms Transfers* (annual since 1966, title varies); and, for commercial arms exports, the Office of Munitions Control's annual reports to Congress for fiscal years 1972-1980, generally entitled *Report Required by Section 657, Foreign Assistance Act* (title varies 1979 and 1980; no further reports have been prepared since Section 657 was repealed in 1981).

2. See, for example, Patrick Brogan and Albert Zarca, *Deadly Business: Sam Cummings, Inter Arms and the Arms Trade* (New York: W.W. Norton, 1983); Joseph C. Goulden *The Death Merchant: The Rise and Fall of Edwin P. Wilson* (New York: Simon and Schuster, 1984); Russell Warren Howe, *Weapons: The International Game of Arms, Money and Diplomacy* (Garden City, N.Y.: Doubleday, 1980); Mary Kaldor, *The Baroque Arsenal* (New York: Hill and Wang, 1981); Anthony Sampson, *The Arms Bazaar: From Lebanon to Lockheed* (New York: Viking Press, 1977); and George Thayer, *The War Business: The International Trade in Armaments* (New York: Simon and Schuster, 1969).

3. Helmuth C. Engelbrecht and F.C. Hanighen, *Merchants of Death: A Study of the International Armaments Industry* (New York: Dodd, Mead, 1934).

4. *Ibid.*; Fenner Brockway, *The Bloody Traffic* (London: Victor Gollancz, 1933); and George Seldes, *Iron, Blood and Profits: An Exposure of the World-wide Munitions Racket* (New York and London: Harper & Brothers, 1934).

5. U.S. Congress, House of Representatives, Committee on Foreign Affairs, *First Annual Report of the National Munitions Control Board for the Year Ending November 30, 1936*, House Document No. 10, 75th Congress, 1st session, 1937, p. 50.

6. U.S. Congress, House of Representatives, Committee on Foreign Affairs, *Sixth Report of the National Munitions Control Board for the Year Ended December 31, 1940*, House Document No. 127, 77th Congress, 1st session, 1941, p.73.

7. Stedman, *Exporting Arms*, *loc. cit.*, pp. 25-26.

8. See, in addition to the reports by the Congressional Research Service, General Accounting Office, and Defense Security Assistance Agency cited in note 1, the prepared statement of William B. Robinson, Director, Office of Munitions Control, in U.S. Congress, House of Representatives, Committee on Foreign Affairs, Subcommittee on Africa, *Enforcement of the United States Arms Embargo against South Africa*, Hearing, 97th Congress, 2d session, March 30, 1982, pp. 3-11. This section on the arms licensing process is an elaboration of the brief description provided in Robinson's statement.

9. *Federal Register*, December 6, 1984, pp. 47683-47712. See also corrections and further amendments of December 13, 1984, and April 1, 1985. For a bureaucratic perspective on this rulemaking procedure, see Mark L. Wiznitzer, "Life in the Foreign Service: The Story of an Assignment in Politico-Military Affairs--An Inside Look at State's Control of the Commercial Arms Traffic," *State*, no. 276 (March 1985):20-23. A summary of the significant provisions and changes of the new ITAR is provided by Eric L. Hirschhorn, "The Revised Arms Export Control Regulations," *International Lawyer* 19, no. 2 (Spring 1985):675-687.

10. General Accounting Office, *U.S. Munitions Export Controls Need Improvement*, Report No. ID-78-62 (Washington, D.C.: U.S. General Accounting Office, April 25, 1979).

11. For example, see *ibid.*, and General Accounting Office, *Cost Recovery: Collecting Research and Development Costs on Commercial Military Sales*, Report No. NSIAD-86-44 (Washington D.C.: U.S. General Accounting Office, February 1986).

12. For background on the passage of the AECA, see Christopher J. Deering, "Arms Transfers and Congressional Policy Making: Where Porkbarrel and Foreign Policy Meet" (Ph.D. diss., University of California, 1979), and S. Scott Morrison, "The Arms Export Control Act: An Evaluation of the Role of Congress in Policing Arms Sales," *Stanford Journal of International Studies* 14 (Spring 1979).

13. See Larry A. Mortsof, "Revisiting the Legislative Veto Issue: A Recent Amendment to the Arms Export Control Act," *DISAM Journal*, 8, no. 4 (Summer 1986):10-19.

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APPENDIX A

U.S. SECURITY ASSISTANCE PROGRAM AND COMMERCIAL ARMS EXPORT AUTHORIZATIONS, 1977-1985

Fiscal Year	Security Assistance (billions)	Commercial Sales (billions)
1977	\$ 5.945	\$ 3.343
1978	7.015	4.447
1979	11.601	4.594
1980	13.429	6.696
1981	7.121	8.024
1982	18.639	12.389
1983	15.990	8.726
1984	14.096	12.704
<u>1985</u>	<u>11.677</u>	<u>9.870</u>
Totals	\$105.513	\$70.793

Source: U.S. Department of Defense, Defense Security Assistance Agency, *Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts as of September 30, 1985* (Washington, D.C.: Data Management Division, Comptroller, DSAA, 1985). Commercial sales statistics are compiled by the Office of Munitions Control.

Note: These figures represent agreements, authorizations, or approvals rather than actual deliveries or expenditures. The security assistance data include the aggregate value of FMS cash and credit purchase agreements, MAP funds programmed, and Excess Defense Articles authorized for delivery. FMS agreements account for \$103.764 billion, or 98.3 percent of security assistance agreements. Excluded are FMS Construction Sales Agreements and International Military Education and Training (IMET) funds programmed. The commercial sales authorizations data reflect the value of DSP-5 and DSP-85 license approvals; for FY 1977-1980, they also include the prorated value of manufacturing license and technical assistance agreements approved, but since FY 1981, such agreements have not been included. Also excluded is the value of services (repair, maintenance, overhaul, modification, and so forth) authorized under DSP-61 licenses and sales or other transfers of defense articles pursuant to manufacturing license agreements or third-country transfer requests. On the other hand, the commercial figures represent some double counting of licenses for long-term contracts that were renewed (annually before 1982, biennially thereafter) until all authorized exports had been completed. Although the security assistance agreement and commercial sales authorizations data are not completely consistent in several respects, they are roughly comparable. Even if the respective annual figures are not perfectly comparable, trends over time can be usefully analyzed. It is important to keep in mind that figures are reported in current dollar values and have not been standardized to remove the effect of inflation.

APPENDIX B

U.S. SECURITY ASSISTANCE AND COMMERCIAL ARMS SALES DELIVERIES, FISCAL YEARS 1965-1985

Fiscal Year	Security Assistance (billions)	Commercial Sales**	Total Deliveries (billions)	Percentage Commercial
1965	\$ 2.21	\$ 155.8	\$ 2.366	7
1966	2.09	196.4	2.286	9
1967	2.73	237.9	2.968	8
1968	3.22	257.1	3.477	7
1969	3.59	250.8	3.641	7
1970	4.13	437.6	4.568	10
1971	4.51	427.5	4.937	9
1972	4.87	480.6	5.351	9
1973	6.51	362.1	6.872	5
1974	5.19	502.2	5.692	9
1975	5.27	546.6	5.817	9
1976*	5.71	1.40	7.110	20
1977	6.73	1.52	8.250	18
1978	6.595	1.68	8.270	20
1979	6.713	1.53	8.240	19
1980	6.22	1.97	8.190	24
1981	8.04	2.20	10.240	21
1982	9.246	1.80	11.050	16
1983	11.17	4.02	15.190	26
1984	8.47	3.82	12.290	31
1985	8.68	2.28	10.960	21

* Data for FY 1976 include the transitional quarter FY 7T.

** Data for 1965 through 1975 are in millions. Data for 1976 through 1985 are in billions.

Source: U.S. Department of Defense, Defense Security Assistance Agency, *Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts as of September 30, 1985* (Washington, D.C. Data Management Division, Comptroller, DSAA, 1985) and previous annual reports in this series with varying titles.

Note: These figures represent actual deliveries or exports of defense articles and services, in current dollars. The security assistance data include the aggregate value of FMS, MAP, and Excess Defense Articles delivered; excluded are FMS construction sales deliveries and IMET funds expended. The commercial sales data reflect only the value of permanent exports of both unclassified and classified defense articles and services under approved DSP-5 and DSP-85 licenses. They do not include the value of services furnished pursuant to approved manufacturing license and technical assistance agreements or services (repair, maintenance, overhaul, repair, and so forth) performed under temporary import (DSP-61) licenses. The commercial export figures are further understated because they are based solely on shipper's export declarations and licenses returned to OMC by Customs inspectors (for DSP-5s) and Defense Investigative Service transmittal authorities (for DSP-85s) and exporters upon expiration of the licenses or upon completion of all authorized shipments. Exports against licenses and shipper's export declarations that are never received by OMC due to loss, administrative oversight, or other reasons are not accounted for. The value of these licensed but invisible exports is uncertain.

Allowing for the understated commercial export figures, the security assistance and commercial deliveries data compiled here are conceptually more comparable than the authorization data provided in appendix A.

APPENDIX C

U.S. GOVERNMENT AND PRIVATE CONTRACT PERSONNEL ABROAD IN IMPLEMENTATION OF SECURITY ASSISTANCE AND COMMERCIAL ARMS EXPORTS

Year	U.S. Government Personnel	Contract Personnel
1976	3,444	8,973
1977	3,364	9,327
1978	3,377	8,907
1979	2,110	3,834
1980	2,234	4,670
1981	2,619	4,639
1982	2,914	5,282
1983	3,414	6,112
1984	2,842	5,434
1985	2,764	5,558

Source: Quarterly estimates of the number of officers and employees of the U.S. government and U.S. contract personnel in foreign countries for assignments in implementation of sales and commercial exports under the AECA, submitted to Congress pursuant to Section 36(a)(7) of the AECA. Data provided courtesy of the Defense Security Assistance Agency and the Office of Security Assistance and Sales, U.S. Department of State.

Note: Data for 1976 are as of September 30, for 1977 as of March 31, and for all other years of December 31. The sudden decline between 1978 and 1979 is due to the removal of U.S. personnel from Iran after the revolution. The figures for contract personnel are somewhat underestimated because they are compiled from reports by the contractors themselves, which are neither completely consistent nor universally submitted.

APPENDIX D

OMC CASELOAD STATISTICS, FISCAL YEARS 1960-1985

Fiscal Year	Total Cases	Number of Agreements	Final Disposition (Percent)		
			Approved	Denied	RWA*
1960	15,300				
1961	15,900				
1962	17,300	179	96	4	
1963	18,300	234	97	3	
1964	20,700	251	96	4	
1965	24,400	255	97	3	
1966	27,700	525	97	3	
1967	30,100	708	96	4	
1968	30,500	602	94	6	
1969	22,400	228	95	5	
1970	20,800	699	94	6	
1971	19,400	446	92	4	4
1972	17,200	292	89	2	9
1973	18,900	372	91	1	8
1974	21,100	309	93	1	6
1975	23,500	347	90	1	9
1976	24,300	432	86	2	12
1977	25,700	565	90	3	7
1978	28,700	532	91	2	7
1979	30,700	675	92	2	6
1980	33,700	585	94	2	4
1981	36,000	627	93	1	6
1982	39,300	594	92	1	7
1983	40,500	880	89	1	10
1984	46,400	953	92	1	7
1985	44,800	1,142	91	1	8

* Return(ed) without action.

Source: Office of Munitions Control.

Note: Total cases (rounded to the nearest hundred) are cases received or input figures, and for FY 1970-1985 include DSP-5, DSP-61, DPS-73, DSP-85, manufacturing license and technical assistance agreements, general correspondence (GC), and commodity jurisdiction cases. For FY 1960-1966, total cases are applications received and thus probably exclude the small number of general correspondence and commodity jurisdiction requests that may have been received. There are no available statistics on the number of cases received FY 1967-1969 so the figures shown are actions taken (cases approved and denied); for FY 1969 this represents approvals and denials of export cases, including agreements. The decrease in caseload after FY 1969 reflects the transfer of import licensing functions to the Department of the Treasury.

Figures on agreements for FY 1962-1966 indicate approvals only; for FY 1967-1969, they include cases approved and denied, not received; and for FY 1970-1985, they represent cases received. Prior to 1972, agreements included what later became separate licensing procedures for exports of classified equipment and technical data (DSP-85) and certain GC procedures. The number of agreements encompasses not only new cases but amendments to existing agreements to change the scope of work, to add new articles or technologies, to extend the duration, and so forth.

Final dispositions are expressed as the percentage of cases approved, denied, and returned without action on the output side. For FY 1962-1970 denials include RWAs, which were not separately counted. Figures for 1962-1978 refer to export licenses only and for FY 1967-1968 to export and intransit cases only, and thus include import licenses, few of which were denied anyway. Data for FY 1971-1972 reflect dispositions of all export licenses applications and agreements but exclude GC cases, which were few. Finally, for FY 1973-1985, the statistics include DSP-5, DSP-61, DSP-73, DSP-85, manufacturing license and technical assistance agreements (and amendments), and GC cases. Since commodity jurisdiction cases involve questions of export control jurisdiction rather than export transactions to be approved or denied, they are not included among the final disposition figures.

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