

“Proposed Small Arms Transfers: Big Implications for U.S. Foreign Policy”

Authored by Jeff Abramson on Tue, 2019-03-26 15:19

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**The House Foreign Affairs Subcommittee on Oversight and Investigations
“Proposed Small Arms Transfers: Big Implications for U.S. Foreign Policy”
March 26, 2019**

Good morning, Chair Bera and Ranking Member Zeldin. It is a privilege to testify before this Committee and discuss concerns about how the United States exports some of the weapons most used in violence around the world and proposed changes that I fear could lead to greater human suffering.¹

To sum up my forthcoming remarks in just a few lines: The weapons and ammunition that are currently controlled under U.S. Munition List Categories I-III belong there and should stay there. There are many concerns about the administration’s proposal to move semiautomatic and select other weapons to the Commerce Control List, from arms control, human rights, and gun safety groups, to mention a few. The best way to move forward is to strengthen the State Department’s capacity and for Congress to better use its authority, not to transfer responsibility to an arm of the executive branch whose mission is to promote sales and for Congress to abdicate oversight.

Where we are today

Under the current system, the State Department regulates the export of military equipment and the Commerce Department controls so-called dual use items. The State Department employs more vigorous oversight powers than the Commerce Department, including a registration regime that provides insight into the manufacturing of weapons.

The Export Control Reform Initiative, begun under the Obama administration, upended this arrangement, transferring licensing authority for a significant percentage of military equipment to the Commerce Department. The rationale for the shift was that the State Department should focus on weapons that provide the United States with a critical military or intelligence advantage or are inherently for military end use. Most Commerce-licensed items, however, are not subject to Congressional notification requirements or the prohibition on further transfers to governments that misuse U.S. weapons. Such misuse appears to have recently occurred with Saudi Arabia and the United Arab Emirates, who reportedly transferred U.S. weapons to al Qaeda -linked militias in Yemen.²

During the previous administration, however, the first three categories of the U.S. Munitions List, addressing firearms and their ammunition, were not changed, perhaps because those leaders correctly understood the unique dangers these weapons posed and that the logic behind the reform initiative did not apply well to them.

Last year, the government’s approach changed. The Trump administration proposed new rules that would move semi-automatic and certain nonautomatic weapons and their ammunition, as well as some other weapons to Commerce Department control. This generated thousands of public comments, the majority of which were negative.³ Early last month, the administration presented revised versions of those rules that that mostly ignored expressed concerns and started a 30-day Congressional review before the rules could be officially published. In late February, Senator Robert Menendez sent a letter to Secretary of State Mike Pompeo placing a hold on the proposed rules

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change, giving Congress time to act.

We commend Representative Norma Torres, and co-sponsor Chairman Eliot Engel for introducing H.R. 1134, the "Prevent Crime and Terrorism Act," which would keep the control lists from changing.

In the Senate, Menendez, Ranking Member of the Senate Foreign Relations Committee, introduced S.459, the "Stopping the Traffic in Overseas Proliferation of Ghost Guns Act," which also prohibits the changes.

These legislative efforts have the backing of a wide range of civil society organizations, including Amnesty International USA, Brady, Giffords, Global Exchange, the Violence Policy Center, and the Arms Control Association.

Dangers of the new approach

The proposed regulatory changes are problematic for several reasons.

First, the types of weapons the administration wants to remove from State Department review and Congressional notification actually merit the tightest export control because of their real and potential role in fueling violence, including violence against U.S. military and law enforcement personnel. Research indicates that the types of weapons being transferred to Commerce control—AR- and AK-type rifles and their ammunition—are “weapons of choice” of drug trafficking organizations in Mexico and other Central American countries.⁴ Many can also be easily converted to fully automatic weapons.⁵ Many sniper rifles that would be moved to Commerce control are currently in U.S. military use, again undermining the core distinction between these weapons.

Second, the fact that these weapons may be widely available in the United States does not mean they should be widely exported. In many of the countries where these weapons are likely to be marketed, they are considered military weapons and are tightly controlled.⁶ As Kristen Rand of the Violence Policy Center argued in a press briefing earlier this month, "...the fact is that many of these guns and other weapons are identical or virtually identical to military firearms. The fact is that anyone can build their own army with guns you can buy retail in the United States."⁷

Third, by shifting licensing authority to the Commerce Department, these weapons will be removed from the statutory regime devised by Congress for these weapons. This has significant implications because there are a number of counterterrorism, humanitarian, and human rights provisions of the Foreign Assistance Act and the Arms Export Control Act that are all tied to the State Department’s control list. It would also undermine statutory prohibitions on transfers to specific countries, such as the Tiananmen Square sanctions.⁸

To begin with, Congress will not be notified of the sale of these weapons. In 2002, Congress amended notification requirements so it would be informed of sales authorized by the State Department for firearms valued at \$1 million or more. No such notification requirements exist if these weapons are transferred to Commerce control. In recent years, Congressional involvement has helped forestall firearms transfers to repressive forces in Turkey and the Philippines, but it is difficult to imagine how Congress could do that moving forward if never provided the information that such sales were under consideration.

When items controlled by the State Department are misused or re-transferred without permission, the State Department is required by Section 3 of the Arms Export Control Act to notify the Congress. That Act conditions the sale of weapons on compliance with end-use agreements. Any use of the weapons for anything other than legitimate defense purposes is not permitted. Section 3 requires the suspension of further sales and deliveries to any recipient that violates the end-use agreements. The Commerce Department typically does not require such end-use agreements, without which there are significant legal hurdles to suspending deliveries once sales are approved if the recipients prove to be untrustworthy.

If licensing authority shifts to the Commerce Department, then these statutory requirements will no longer apply. Therefore, if foreign security personnel misuse U.S. weapons or transfer weapons to

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organized crime networks, the Congress would not be notified and there would be no statutory requirement to suspend further sales or deliveries to the same security forces. Unfortunately, this is all too common. For example, in Guatemala, the government used U.S. military vehicles to surround the U.S. Embassy when it was displeased with the United States stance on anti-corruption investigations.⁹

The proposed shift of jurisdiction to Commerce would also undermine key components of the Foreign Assistance Act. The Secretary of State is required by that Act to suspend the sale of weapons to countries that consistently violate human rights. No such requirement would exist for the Commerce Department under the proposed rule. While the Commerce Department has stated that it would consult with State Department, there is no statutory requirement that the Secretary of State consent to any transfers. Under the current system, if the State Department fails to implement these human rights provisions, there is a procedure for expedited Congressional review. So, the proposed rule would undermine both this Committee’s jurisdiction over a major component of U.S. foreign policy and the authority of the Secretary of State.

Fourth, the Commerce-led approach is different than that of the State Department and creates new risks. A recent Government Accountability Office report provides a detailed look at the differences between the two departments, identifying many of the following:¹⁰

- The State Department requires more information as part of export license requests, which gives a better understanding of company ownership and location, as well as those individuals involved in an arms transfer, making anti-corruption efforts and prosecution for misdeeds easier.
- State's approach on end-use monitoring puts a much greater emphasis on pre-license checks rather than post-delivery verification. State's approach is a better way to prevent misuse and diversion.
- The Commerce Department has no enforcement personnel for end-use controls of weapons exports in the entire Western Hemisphere and Africa, regions where diversion of these weapons is particularly harmful.
- The State Department and Commerce Department have not established a way to share State’s internal watch list, which contains derogatory information from past screening of licenses for firearms, artillery, and ammunition exports.
- The Commerce Department has no database of allegations of human rights abuses similar to the State Department’s database for implementing the Leahy Law, which is a critical tool for screening weapons export applications to state forces.
- The proposed rule change has broad implications for the proliferation of untraceable ghost guns and 3D-printed guns, including homemade AR- and AK-type rifles. The Obama-era State Department characterized the online publication of 3D-printed gun code as a violation of restrictions on exporting weapons. A court case currently prevents the Trump administration's State Department from abandoning these restrictions, which the Commerce Department is expected to do if control were transferred to it.
- The new proposal would allow for license exemptions under certain circumstances and would allow for multiple exports pursuant to a single license. Both of these changes could well fuel the grey market, where small arms and spare parts are in high demand.

Finally, the new approach threatens to undermine an already challenged international system that is striving to make the arms trade more responsible via an array of treaties, regional agreements, and political commitments. The United States is far and away the world's largest arms exporter¹¹ and as such can and should uphold the highest standards.

While we certainly have concerns about decisions made by prior administrations, we fear that this President, in his stated Conventional Arms Transfer Policy and in his willingness to arm repressive regimes, prioritizes commercial considerations over human rights concerns and even some U.S. national security objectives. Functionally making these weapons easier to export and less subject to review would constitute a dangerous erosion of long-standing, proven practices designed to support U.S. national security objectives and human rights values.

A more responsible approach

Congress, and an informed American public, can play a significant role in making sure U.S. weapons exports are made as responsibly as possible. That is critically important given the decades-long lifespan of many types of small arms.¹²

That begins with Congress continuing to receive arms sales notifications so that they are informed and able to act. The loss of that critical initial notification is unwise and should be rejected. Of course, Congress must also pay close attention in order to act on these notifications, and this committee needs to closely monitor these notifications and set aside the time necessary to engage in the informal and formal notification processes.

Congress can also play a role in helping the public be aware of these potential sales. The majority of small arms sales are notified through the Direct Commercial Sales (DCS) process, rather than the Foreign Military Sales (FMS) process. FMS notifications are announced on a public website. Congress should endeavor to find ways to make DCS sales more accessible.

According to data analysis by the Security Assistance Monitor, in 2018 the Trump administration requested Congress to approve at least \$746 million in firearms sales to a total of 14 countries in 2018, with more than \$575 million for Saudi Arabia, another nearly \$100 million to the Philippines, and more than \$21 million to the United Arab Emirates.¹³ These countries are some of the ones most watched for human rights and security concerns, especially after the murder of Jamal Khashoggi by Saudi Arabia and revelations that the UAE may be providing arms to militia in Yemen that are fighting against U.S. efforts.

While the notification period garners the most attention, Congress also can block a sale up until weapons are delivered. Given how security, geopolitical, and humanitarian realities can change between the time of notifications and often years-later deliveries, it is important that Congress scrupulously monitor the entire process.

In 2014, Congress gave itself the authority to receive from the State Department notification of an arms shipment at least 30 days before its delivery. It is currently limited to joint requests by the chair and ranking members of this committee or the Senate Foreign Relations Committee. We encourage those leaders to be even more diligent in their oversight and would recommend that Congress consider allowing any member of these committees the opportunity to request pre-delivery notifications.

In general, transparency concerning arms deliveries is limited. Under the current system, the State Department reports publicly the annual value of exports by category of weapon and recipient country. The Commerce Department only provides such information on around 20 countries. Even with that limited insight into how the Commerce Department is using its new authority over the export of military equipment, it is clear that a number of countries of significant concern—including Vietnam and Uzbekistan—have been authorized by the Commerce Department to receive military equipment previously controlled by the State Department. I find it disturbing that such delicate decisions concerning U.S. foreign relations are no longer the subject of this Committee’s jurisdiction. More broadly, Congress should mandate a change demanding much greater transparency on the specifics of what is in U.S. weapons deliveries.

Finally, this Committee, with its oversight over the State Department, should consider looking into the hollowing out of this critical part of the executive branch.

An alarming Office of the Inspector General report last month found that the Directorate of Defense Trade Control (DDTC) did not implement sufficient internal controls when examining export license applications.¹⁴ While proponents of the rules change argue that Commerce is better staffed, the State Department has the most appropriate expertise to consider the human rights, security, and political implications of arms transfers. If further investment is needed to improve State's capabilities, that is the correct path to explore.

We must be mindful that we are not talking about benign trade commodities, but rather the types of

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killing machines that are arguably the ones most responsible for death and injury in conflict worldwide. Export of small arms deserve the highest level of oversight and attention from the executive branch and the Congress.

In closing, I urge you to keep in your minds and hearts the impact on human suffering of weapons that fall into the wrong hands. In the words of Maria Herrera of Mexico, four of whose sons were forcibly disappeared by heavily armed men: “They have their gun factories and they send them here, as if they were pears or apples. They should think about the damage and destruction these weapons bring.”¹⁵

Thank you again for the opportunity to testify before you today. I look forward to your questions.

ENDNOTES

¹ The views expressed in this testimony are the author’s own and do not necessarily reflect the views of the members or the Board of Directors of the Arms Control Association. I am grateful to my community colleagues Brittany Benowitz, Colby Goodman, Daryl Kimball, John Lindsay-Poland, Kristen Rand, and Adzi Vokhiwa for their insights and suggestions on this testimony.

² See "[Exclusive Report: Sold to an ally, lost to an enemy](#)," CNN, February 5, 2019

³ A wide range of resources is compiled on the Forum on the Arms Trade [website](#), including the [public comments](#) published by the State Department that were uploaded to the DDTC website on July 25, 2018.

⁴ AR and AK-type rifles have consistently been identified by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as the “weapons of choice” of cross border gun traffickers. For a recent example in the context of a federal prosecution of traffickers see, *United States v. Soto, et al*, No. 6:18mj173, U.S District Court, S. D. Tex., December 5, 2018 (ATF agent noting that AK- and AR-style rifles are “weapons of choice” for Mexican cartels). In addition, the Violence Policy Center tracks the specific types of firearms involved in federal cross-border trafficking prosecutions and finds that AK- and AR-type rifles are the firearms most preferred by traffickers at - resource page "[Cross-Border Gun Trafficking](#)."

⁵ See "[Examples of Firearms Transferred to Commerce Under New Export Rules](#)," Violence Policy Center, and two submitted images, one from Middle East Eye of weapons that would be "easier to export" and another from Sig Sauer of the P320 M17 advertised as an Army weapon in civilian version.

⁶ See John Lindsay-Poland, Global Exchange, public comments submitted to proposed rule as part of public comment period in 2018 addressing retail availability in other countries ([pdf](#)),

⁷ "Press Briefing on Firearms Export Reform," March 5, 2019, audio and other resources available at the Forum on the Arms Trade [website](#).

⁸ See "[Five dangers of giving the Commerce Department oversight of firearms exports \[commentary\]](#)," Colby Goodman and Rachel Stohl, *DefenseNews*, Sept 25, 2017, and "[Proposed Firearms Export Changes: Key Challenges for U.S. Oversight](#)," Center for International Policy: Colby Goodman, Christina Arabia, and William Hartung, July 9, 2018.

⁹ See "[US suspends some military aid to Guatemala over vehicle use](#)," Associated Press, March 14, 2019 and submitted photos of Guatemalan forces using Jeep outside the U.S. Embassy.

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¹⁰ ["EXPORT CONTROLS: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms Are Finalized,"](#) Government Accountability Office, GAO-19307, March 1, 2019. For more information on a number of these concerns, see also ["Proposed Firearms Export Changes: Key Challenges for U.S. Oversight,"](#) Center for International Policy: Colby Goodman, Christina Arabia, and William Hartung, July 9, 2018, ["Key Questions about the U.S. 'Export Control Reform Initiative',"](#) Security Assistance Monitor, April 16, 2016, Key Questions, Security Assistance Monitor, and ["White Paper: Proposals to Relax Export Controls for Significant Military Equipment,"](#) American Bar Association (ABA) Center for Human Rights, Jan. 14, 2013.

¹¹ See ["Trends in international arms transfers, 2018,"](#) SIPRI, March 2019.

¹² See ["How Congress Can Exert Responsible Oversight on Trump’s Dangerous Approach to Arms Sales,"](#) Arms Control Association issue brief, January 15, 2019, for elaboration on these suggestions.

¹³ ["Congressional Notifications for Proposed U.S. Commercial Firearms Exports in 2018,"](#) Security Assistance Monitor, February 12, 2019.

¹⁴ ["Audit of Department of State Directorate of Defense Trade Controls Export Licensing Processes,"](#) AUD-SI-19-07, Office of Inspector General, February 2019.

¹⁵ For additional insights from Maria Herrera and others on the human impact, see [“Where the Guns Go: U.S. Policy and Human Rights in Mexico,”](#) film produced by Encinal, 2017.

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