

ALERT

Biden Administration Seeks to Promote U.S. Foreign Policy and National Security Objectives Through its Revised Conventional Arms Transfer Policy

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WHAT: On February 23, 2023, the same day three major defense industry trade associations publicly released their report to the U.S. Department of Defense's (DOD) Foreign Military Sales (FMS) Tiger Team on modernizing the FMS process, the Biden Administration released a memorandum on the U.S. Conventional Arms Transfer (CAT) Policy. The CAT Policy provides a framework under which agencies review and evaluate potential arms transfers. As the transfer of U.S. defense articles and services helps to achieve foreign policy and national security objectives and shape the international security environment in a way that furthers those objectives, the CAT Policy's purpose is to facilitate the promotion and security of U.S. interests in the face of complex international challenges.

Superseding National Security Presidential Memorandum 10 from the Trump Administration, the Biden Administration aims to better align its CAT Policy with U.S. foreign policy and national security objectives such as protecting human rights, supporting nonproliferation, and strengthening global stability. According to the memorandum, these objectives are best advanced by facilitating arms transfers to recipients who share interests with the United States. Like the FMS Tiger Team, the revised CAT Policy was triggered by the growing influence and technological advancement of strategic competitors, namely China and Russia. The following provides a summary of the CAT Policy's administration, objectives, and scope. The full CAT Policy memorandum can be viewed [here](#).

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Practice Areas

Government Contracts
National Security

Alignment of CAT Policy With Foreign Policy and National Security Objectives

The CAT Policy applies to all arms transfers to a foreign user, regardless of the agency or department facilitating the transfer. The policy is intended to support several foreign policy and national security objectives including strengthening the security of the United States and its allies and partners, promoting global security, ensuring the U.S. military maintains technological and comparative advantages over adversaries and strategic competitors, and strengthening the U.S. manufacturing and defense industrial bases.

Considerations of Arms Transfer Decisions

All arms transfer decisions must meet the requirements of all applicable statutes, including the Arms Export Control Act of 1976, the Export Control Reform Act of 2018, the Foreign Assistance Act, the International Emergency Economic Powers Act, and annual National Defense Authorization Acts (NDAAs). Additionally, arms transfer decisions will be made on a case-by-case basis following numerous considerations including the degree to which the transfer supports U.S. strategic and foreign policy interests; the stability of the recipient country and the risk the transfer will cause adverse political, social, economic, or human rights effects; the degree to which the recipient country is, has, or could face armed aggression from U.S. adversaries or strategic competitors; and the recipient country's ability and willingness to protect sensitive equipment and technology.

Arms Transfer and Human Rights

Because the legitimacy of and public support for arms transfers depends on protecting civilians, U.S. human rights, and security sector governance standards for arms transfers, such as end-use monitoring and human rights training, the policy encourages recipient governments to respect international humanitarian law and human rights. To further prevent violations of human rights and international humanitarian laws, the CAT Policy prevents arms transfers where it is more likely than not the arms would be used to commit or facilitate genocide, crimes against humanity, grave breaches of the Geneva Convention of 1949, or other violations including gender-based violations or serious acts of violence against children. The assessment of such risks will be based on the recipient's current and past actions, credible reports of such violations, and other related information.

Promotion of Responsible Defense Trade

Recognizing good security governance to be an integral part of responsible possession and use of U.S. origin defense material, the United States will exercise restraint in international arms transfers that may be destabilizing or threaten international peace and security, encourage recipients to demonstrate effective security governance, and continue participation in multilateral, regional, and sub-regional arrangements that promote common national policies of restraint against arms transfers to states whose conduct causes serious concern.

Supporting Arms Transfer Decisions

Considering the increasingly competitive arms transfer market, the United States will pursue policies, processes, and regulatory changes to create efficiencies in the security cooperation field and seek to address impediments to bilateral defense trade relations that may preclude arms transfers from proceeding.

Transfer of Emerging Technologies

The CAT Policy applies to arms transfers that include emerging technologies, and the Government, as necessary, will review and develop additional policy guidance for arms transfers involving emerging technologies with national security implications.

WHAT IT MEANS FOR INDUSTRY: This CAT Policy identifies decision-making considerations that are largely congruent to long-standing U.S. foreign relations, geopolitical, humanitarian, and security interests and related policies, and thus does not break a great deal of new ground. Nevertheless, the defense industry should take it as a sign that, for this administration at least, these factors will assume greater significance in determining to whom U.S. conventional arms will be sold. This may help contractors to better forecast who their customers will be.

And as mentioned in our related alert on the FMS modernization report, the U.S. Government is taking steps to improve its processes and programs for transferring defense articles to allies and partners due to strategic pressures from China and Russia. Such steps are reflected in this CAT Policy's aim to create efficiencies and eliminate impediments to arms transfers. Because some of these steps seek increased efficiency in arms transfers, contractors already involved in the U.S. arms transfer programs should keep an eye out for changes that make arms transfers less cumbersome. And because other steps seek to strengthen U.S. manufacturing and the defense industrial base, contractors wanting to participate in the arms transfer program should keep an eye out for new or revised rules that lower or eliminate previous barriers to entry, as well as increased contracting opportunities.