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INTRODUCTION

In July 2010, states began the process of negotiating a legally binding treaty to govern the trade in conventional arms. This effort is the culmination of over 15 years of attempts to regulate the conventional arms trade, which, though subject to myriad national standards and regulations, and some multilateral agreements, has thus far eluded global standardization. The impetus for an arms trade treaty has been the desire by states to prevent legally traded conventional arms from making their way into the hands of human rights abusers and terrorists, and also from being used to perpetuate conflicts and undermine development. However, because the global trade in conventional arms is a necessary, legal and integral part of global security and international commerce, the effort to develop conditions on, and criteria for, the transfer of conventional arms is far from simple. The development of an Arms Trade Treaty (ATT) would therefore establish globally accepted international criteria and standards governing the conventional arms trade, which would be applied by states as part of their national export control systems.

Since July 2010, the United Nations has met for three weeks of preparatory negotiations to address specific topics related to the development of the ATT. States have discussed the elements that could be contained in the ATT as well as the guiding principles, goals and objectives of the treaty. Most recently, they met to consider the scope of the treaty (i.e. what weapons and systems could be included) as well as potential criteria for states to consider when making transfer decisions. At the July 2011 final substantive meeting of states before the final negotiating conference begins in 2012, states will take up aspects of implementation and the final provisions of the treaty. Throughout these pre-negotiation discussions, to highlight areas of global consensus and areas that will require serious negotiation. Although the treaty specifics are unclear, it is certain that arms transfer decisions will continue to be sovereign decisions at the national level. The ATT will be used to help states develop and operate their national systems under common standards and clear principles.

To help clarify national views and positions, a variety of stakeholders have thus far engaged in the ATT process and are providing input for state positions on the ATT. Most active have been the NGOs, for the most part, while the principal participants in the aerospace and defence industry have been relatively disengaged from the process. This is particularly true for the US industry, which is the largest in the world. As the negotiation of the ATT builds momentum and delves further into specifics, it is essential for the
transatlantic defence industry to be involved in the treaty's development. Without the specific expertise and experience of the defence industry, it will be harder for the negotiators to ensure that in the end the ATT is practical, workable, useful and potentially beneficial for a global industry engaged in global trade in conventional arms.
INDUSTRY INVOLVEMENT IS IMPORTANT

Without industry involvement, the ATT could turn out to be a missed opportunity to improve the arms transfer process globally, and could potentially harm the way in which industry does business in the future. Industry has several motivations for getting involved in the ATT process before the treaty is negotiated.

1. Harmonize regulatory approaches

If the ATT can promote convergence among defence trade control systems, this can provide two significant benefits to the transatlantic defence industry. First, such convergence could make it easier for industry to comply with the various national systems that may apply to a given transaction. Today’s defence industry is not national in nature. It relies on a global supply chain to manufacture, develop and transfer its goods. Yet the different regulations in each country can make it difficult and expensive for industry to conduct business. The increasing globalization of the defence industry means that it would benefit if international standards were harmonized within realistic limits that do not require any government to reduce its desired level of control.

Moreover, the ATT could help clarify the obligations and responsibilities of industry around the world, and thereby allow it and governments to validate the extension of the global supply chain. For instance, the ATT could promote stronger governmental and industry controls among current and potential partners of the transatlantic industry, facilitating cooperation with companies in these countries.

2. Level the playing field

The transatlantic defence industry generally seeks to achieve international sales through cooperative arrangements supported by exporting governments that seek to develop bilateral defence relationships that are consistent with regional and international stability. It is not in the interests of the national security of countries on either side of the Atlantic or of responsible exporters to see other exporters, through irresponsible transfers, promote instability and disrupt long-term relationships. The US/European defence industry accepts that its export opportunities must be guided by the current international security framework. When less well-regulated suppliers enter markets that are problematic, or transfer advanced technology to such markets, this causes regional destabilisation and adversely affects the transatlantic industry, which complies with the current international security framework.
With clearly defined rules, all manufacturers would operate under a broadly similar framework.

3. Enhance corporate responsibility

Reputational risk is a significant driver for industry in making its business decisions. Many companies now find themselves regularly examined by bodies representing investors, specifically to examine risk and corporate responsibility. These questions now include specific reference to promoting responsible trade and involvement in measures to mitigate the potential for inappropriate transfers, seen most recently in the latest Dow Jones Sustainability Index questionnaire. More broadly, external criticism may come from NGOs and other members of civil society concerning the desirability of a transfer. For example, these groups may allege that a transfer perpetuates potential human rights abuses, facilitates organized crime, violence or terrorism, or diverts resources from other crucial development needs.

The ATT could help establish a valid international framework for arms transfers that would insulate the defence trade from these concerns to some degree. The ATT is based on the moral arguments of human security, social and economic development, and international peace and security. All of these are compatible with good business practice. The defence industry operates in an ethical and responsible way to serve the national security interests of governments. Under the ATT, governments will have clearly delineated criteria about whether or not arms sales should go forward after having considered many of these contentious factors. The fact that governments and national regulatory bodies will have explicitly considered such factors against internationally agreed standards would provide some protection for industry against accusations of irresponsible behaviour.

4. Keep it simple

The issues regarding transfers of technology, collaborative R&D, manufacturing equipment, parts and components for major conventional arms are complex. Early engagement by industry in the ATT development process is essential in order to avoid potential unintended consequences for legitimate arms trade stemming from an over-broad or poorly worded treaty. Such a treaty could include export evaluation criteria that subject transactions to multiple, inconsistent export control regimes. Especially alarming is the potential multiplicity of international rules in the already complex areas of (1) re-exports and re-transfers, particularly if the ATT applies to parts or
components, (2) technology transfers and (3) brokering. An array of divergent rules governing these areas could disrupt defence trade. Negotiations often lead to compromise text that is opaque or, worse, inconsistent with existing practice.

5. Avoid disruption to existing arms sales relationships and regulatory exemptions

First, it is important for the transatlantic industry to ensure that the ATT does not create a process that materially affects the ability of governments to continue arms sales to key allies around the world. Indeed, this is an important national security interest of the relevant governments as well. There is, accordingly, a strong intention by these governments to ensure that the ATT cannot be used to question the suitability of arms sales decisions and develop an environment of international disapproval for major arms sales. Nonetheless, as a major purpose of the ATT is to enable the global community to bring pressure against inappropriate arms sales, it is a delicate task to craft treaty language that will achieve this goal without adversely affecting existing arms trade relationships of the United States and Europe.

Further, the transatlantic industry benefits from existing and forthcoming defence trade control exemptions, such as the ‘Canadian exemption’ and the new United Kingdom and Australia defence trade cooperation treaties. Such exemptions also promote international cooperation among close allies. Accordingly, it is important that they be fully preserved under an ATT. Yet it will be challenging for the ATT negotiators to preserve these exemptions without creating loopholes that allow other countries to undermine the core goals of the ATT. Thoughtful industry engagement can assist the negotiators to achieve this objective.
CONCLUSION

The strategic importance of the defence and aerospace industry for many major arms-producing states allows industry to have a strong voice in the development and negotiation of the ATT. But, to date, industry has largely been outside the UN and unengaged in national discussions. While in some countries, such as the United Kingdom, industry has been engaged as an important stakeholder, the global defence and aerospace industry cannot rely on governments to seek input alone. Industry needs to put its ideas in front of governments and outline positions and questions that the ATT negotiation will have to consider. If the treaty goes forward without industry involvement, it will be very difficult for industry to provide input and change the treaty further down the road.

More generally, the transatlantic defence industry would be a beneficiary of a strong and effective ATT. Global commerce benefits from equal treatment and clearly understood rules of the game, and the defence industry is no exception. Industry involvement in the ATT process will ensure that such a framework for the global trade in conventional arms is established. As governments get ready to consult the global defence and aerospace industry, industry in turn needs to be ready to respond as informed interlocutors. To that end, the global defence and aerospace industry needs to develop its understanding of the ATT, the nature of the debate, the risks and opportunities, and the ways in which it can make an impact on treaty negotiations.
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