

'Security Exception' & Arms Trade

By Steven Staples and Miriam Pemberton

In February 1999, Defense Secretary William Cohen went to Redmond, Washington to meet with two hundred Microsoft workers and deliver a simple message: For all of the domestic prosperity produced by the high tech-firms of the "information age," U.S. economic power is still dependent on military strength and a strong defense industry. As *New York Times* columnist Thomas Friedman aptly put it, behind the hidden hand of the market is a hidden fist. It is an article of faith among U.S. policymakers like Cohen that America's projection of military power around the world both guarantees U.S. prosperity at home and protects the economic benefits to be gained for all by globalized trade. In reality, as the global "leader" in both military spending at home and the arms trade abroad, the U.S. is both diverting resources from such national needs as healthcare, education, and environmental protection to a cold war-sized military and seeding the world with the tools of conflict that disrupt economies around the globe.

Indeed, economic globalization and the financial architecture which sets the rules of play are proving beneficial to those invested in a war economy. Broadly stated, economic globalization, while generating incredible wealth for a small elite and expanding the economic and political arena of transnational corporations, is also both widening the gap between rich and poor and weakening and circumscribing the power of governments. Increasing depletion of natural resources (timber, oil, water, etc.), environmental degradation, and worsening labor conditions set up the preconditions for conflict and war and the rationale for a muscular military.

THE NATIONAL SECURITY EXCEPTION

Arms manufacturers are also deriving special protection and benefits from the World Trade Organization (WTO), the international organization created in 1995 to develop and enforce uniform trade rules. The WTO allows countries to challenge each other's laws and regulations on labor, environment, human rights and consumer protection as "non-tariff trade barriers" which limit corporate profits. WTO rulings have undermined health, environment and labor protections—forcing, for instance, the European Union to open its markets to hormone treated beef from the U.S. and declaring that the U.S. Clean Air Act which required gas refineries to produce cleaner gas was an unfair barrier to Venezuela's gas trade.

However, activities in the military sphere—including massive government research and export subsidies—are

exempt from challenge under WTO rules. A little known but highly significant provision—Article XXI of the General Agreement on Tariffs and Trade (GATT), the WTO's main governing document—states that a country cannot be prevented from taking any action that

"it considers necessary for the protection of its essential security interests...relating to the traffic in arms, ammunition, and implements of war and such traffic in other goods and materials as is carried out directly for the purpose of supplying a military establishment (or) taken in time of war or other emergency in international relations."

When governments first negotiated the GATT in 1947, they insisted that the treaty include a "national security exception" allowing them to control the means to protect themselves from internal and external threats to their sovereignty. Today this security exception is part of the WTO, NAFTA and other international trade agreements. It provides a blanket exception for military spending for any reason related to national security, based on the premise that the fundamental role of government is to provide for a military to protect the country, and a police force to ensure order within it. Article XXI is the most powerful exception in the WTO because it permits governments to define for themselves their "essential security interests" and to protect what they want by couching it in these terms.

The World Bank and the IMF have adopted the same general view that military issues are specially protected domains of national sovereignty. They believe that this special status prevents them from conditioning their loans on the recipients' willingness to limit military spending. The World Bank and IMF are at least on record *urging* the recipients to do so, on the grounds that high levels of military spending drain resources from economic development. The WTO national security exception, however, is likely to have the opposite effect: steering their members *toward* military production and trade—since this is the one realm where the WTO gives them free reign.

Since 62 percent of global military spending is concentrated in the economies of the "Quad" countries of the United States, Canada, Japan and the European Union, the security exception gives them a competitive advantage over developing countries who have much smaller military budgets and must abide by the trade rules in all other areas. These countries—which spend collectively \$495

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Foreign Policy In Focus Special Report April 2000

Foreign Policy in Focus is a joint project of the Interhemispheric Resource Center (IRC) and the Institute for Policy Studies (IPS). The project depends on sales and subscription income, individual donors, and grants from The John D. and Catherine T. MacArthur Foundation, General Service Foundation, and various church organizations. *In Focus* internships are available.

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billion, of which \$276 billion, or 55 percent, is U.S. military spending—give tremendous subsidies to their weapons corporations. According to a 1999 Canadian government study of the aerospace and defense electronics, "[M]any countries use national security exceptions to provide direct financial assistance to their domestic industry."

Since the late 1940s, this national security exception has only been officially invoked a few times because, typically, countries have been reluctant to challenge each other in this realm. In 1996, for instance, the European Union complained to the WTO that the Helms-Burton law under which the U.S. can punish third party companies trading with Cuba, violates WTO agreements. After U.S. officials indicated they might invoke the security exception, the issue was finally resolved outside the WTO.

In the last few years, however, several WTO rulings have touched on the security exception:

- In 1999, a WTO dispute panel ruled against Canada and its Technology Partnership Canada program—a program that subsidizes the aerospace and defense industry. The program was being used by Bombardier Aerospace, a company manufacturing for both civilian and military markets, to build and export regional passenger jets. The WTO ruled that these subsidies for non-military production were unfair and struck them down. The Canadian government quickly redesigned the program to make it WTO-compliant and then in October, the Department of National Defense announced a \$30 million annual subsidy program for weapons corporations. This new program won't be challenged because it falls within the WTO's national security exception. It can be used to enhance Bombardier's military production. The lesson from this is that if governments want to play a role in the economy—creating jobs, regional development or high-tech research—the safe way to do it is through underwriting the military.

- In 1999, European military manufacturers sweetened their multi-billion dollar deal to sell helicopters, aircraft, ships and submarines to the South African government by negotiating an agreement to move some of the production for these contracts to South Africa, thereby creating short-term jobs. Such subsidies, known as "offsets," could be challenged in the WTO if done to procure civilian goods, but they are allowed under the WTO's security exception.

- At the end of February 2000, the WTO

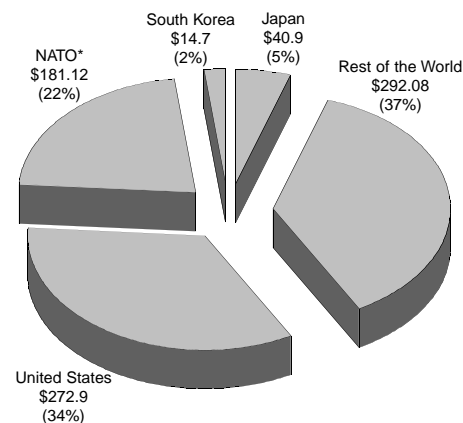
struck down one of the U.S.' main tools for subsidizing its exports. U.S. companies have routinely set up Foreign Sales Corporations—often only offshore shell companies—through which they have been able to export their wares without paying tax on the profits. The WTO correctly declared that this mechanism constituted a subsidy, and disallowed it. According to Treasury Department officials, the U.S. is now trying to figure out an alternative system of export support. The WTO's decision to disallow Foreign Sales Corporations is commendable if it is part of a broad-based and evenhanded effort to eliminate export subsidies among developed countries. But the danger remains that any new U.S. system, whatever it is, will increase the already-generous array of supports for U.S. weapons sales—since such subsidies are legal.

In 1976, Congress took the sensible step of limiting to 50 percent the amount of arms sales profits that could be sheltered from tax through Foreign Sales Corporations. The U.S. arms industry has been complaining about this ever since, and trying to remove the ceiling legislatively. Despite the arms industry's laments about increased competition, the U.S. has actually *increased* its dominance over the world arms market.

According to the Arms Control and Disarmament Agency, this share has more than doubled since the ceiling was created: from 25 percent in 1976 to more than 55 percent in 1996. The U.S. arms industry enjoys an array of support offered to no other

Global Military Budget, 1997

(\$ billions and % of world total)



* The figure for NATO does not include the U.S.

Source: International Institute for Strategic Studies, *The Military Balance*, 1998/99.

industry, beginning with the fact that the government pays most of its research and development costs. The WTO military exception is a further perk for this already privileged industry.

These three recent cases foreshadow what is likely to become a trend: to be WTO-compliant, governments will expand military spending and subsidies in part because they are blocked from protecting and promoting any other industries.

On the other hand, the WTO dramatically curtails the right and ability of governments and communities to oppose military spending and purchases and to work for peace and human rights. By the mid-1990s, citizen groups in Massachusetts and some twenty U.S. municipalities and counties had passed laws preventing government contracts from being issued to companies doing business with Burma, in order to put pressure on that country's illegal and brutal military junta. This legislation was similar to laws many governments passed in the 1980s to support the anti-apartheid movement in South Africa.

However, in 1996, both the European Union and Japan challenged the Massachusetts' law as a violation of the WTO's Agreement on Government Procurement, on the grounds that it unfairly discriminated against Burma and companies doing business with Burma. Before the WTO could convene a dispute panel, a U.S. corporate lobby group—supported by the E.U. and Japan—stepped in and sued Massachusetts in domestic courts, under the pretext that the state had exceeded its authority. The corporate lobby group won its case and the country overturned the law and all similar laws in the U.S. Massachusetts is appealing the ruling to the Supreme Court.

The lesson is clear: under the WTO's rules, local communities and even national governments have lost the right to condition their purchases, investments and other economic activities to peace, social justice or human rights principles. Because the security exception shields the war industry from challenges to the WTO, it works to spur military spending by governments. Governments can use the military to promote jobs, new emerging industries, and high-tech manufacturing. It allows governments—most importantly the U.S. and other NATO countries and Japan—to provide protection and subsidies for both their national arms industries and military exports.

A REFORM AGENDA

The security exceptions in trade agreements must be reinterpreted, or removed altogether. First, trade organizations and national governments must acknowledge that national security is not simply based upon military power, but what the citizens around the world are beginning to define as "human security." This includes for instance, good governance; food security; the provision of health, education and other social programs; environmental standards; and protection of workers' rights.

Second, governments need to work multilaterally to end subsidies for the arms trade and the weapons corporations, and instead, to assist these corporations in conversion to civilian production. Specifically, the U.S. Treasury should eliminate all together the arms export tax shelter or at a minimum preserve the current limit.

Third, rules governing international weapons companies should be more restrictive than the regulations that apply to trade and investment by civilian companies. This includes supporting a Code of Conduct that would restrict arms sales to dictators and human rights abusers. While Congress has recently taken a small step to curb U.S. arms exports, the Clinton administration and Congress should support the more comprehensive Code that states that no government should receive U.S. arms and training unless it is

democratic, respects basic human rights, is non-aggressive against other states, and participates fully in the U.N. Register of Conventional Arms.

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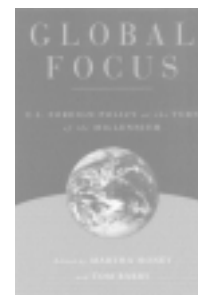
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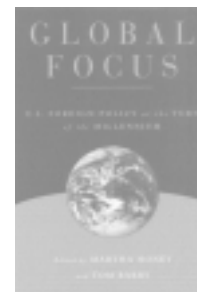
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