# Topicality Starter File

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**Resolved: The United States federal government should substantially reduce Direct Commercial Sales and/or Foreign Military Sales of arms from the United States.**

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| Summary: There are a variety of T arguments that negative teams can read, but many of them are probably bad for dictating what kind of ground is actually lost in the debate or why the research burden for negatives explodes due to excessive affirmatives. This starter file gives you the tools to interact with squirrely affirmatives that do one of the following “shady” things:   * Inserts conditions into their plan text * Temporarily suspends sales * Bans future sales * Limits sales of small monetary amounts (under 14 million) |

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## 1NC Violations

### T-Resolved—No Conditions

#### A. Definition—Resolved means to take a definite course of action.

Merriam-Webster, No Date (<https://www.merriam-webster.com/dictionary/resolve>)

: to find an answer or solution to (something) : to settle or solve (something)

: to make a definite and serious decision to do something

: to make a formal decision about something usually by a vote

#### B. Violation-The affirmative conditions their reduction of arms sales on whether or not the target country changes a behavior.

#### C. Standards

#### 1. Limits. Voting affirmative justifies adding an infinite number of conditions to the topic which are not researchable on an already broad topic. Limits are key to predictable case debates which are key to education.

#### 2. Precision. The intention of the resolution is to reduce the net number of sales if the affirmative wins that the target country changes their behavior and arms sales don’t change, the aff literally does nothing to the status quo, meaning you vote negative on presumption.

#### 3. Ground. Conditional affirmatives justify the aff no linking out of all of the major topic disadvantages like the Defense Industrial Base or Russia/China fill-in. If we cannot access generic resolution ground, it will amplify what is already a large affirmative side-bias. Ground is key to competitive equity in this debate.

#### 4. Extra Topicality. Inserting the condition is not based in any affirmative resolutional ground. Extra-topical plan planks justify the aff spiking out of all of our arguments, which is a voting issue for fairness and ground.

#### D. Topicality is a jurisdictional voting issue for ground, competitive equity, and education.

### T-USFG Means All 3 Branches

#### A. Interpretation—The US Federal Government is all 3 branches

Black’s Law Dictionary 90 (6th Edition, p. 695)

In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

#### B. Violation—The affirmative isn’t the full USFG, they use only (insert agent of action)

#### C. Standards

#### 1. Ground—Use of the entire Federal Government is key to process disadvantages like politics, or agency tradeoff disadvantages. Using only one branch allows the affirmative to spike out of disadvantage links, which is a voting issue for education.

#### 2. Limits—Allowing the affirmative to pick a single agent of action makes hundreds of individual government agencies topical, making it impossible for the affirmative to access agency-specific solvency mechanisms. Limits are key to predictable case debates, which is key to education.

#### D. Topicality is a jurisdictional voting issue for ground, competitive equity, and education.

### T-Reduce Means Permanent

#### A. Interpretation the affirmative must permanently reduce sales from the status quo amount.

Montesani v Levitt 59 [MATTER OF MONTESANI v. Levitt, 9 A.D.2d 51, 189 N.Y.S.2d 695 (App. Div. 1959), 8-13-1959, https://scholar.google.com/scholar\_case?case=1402552157078234696&q=Montesani+v.+Levitt&hl=en&as\_sdt=2006

Under his retirement contract deceased agreed that in return for a plan that would insure payment of the remainder of his initial fund to his beneficiary after his death he would accept a lower rate of lifetime compensation. Implicit in this agreement were various statutory provisions governing the rights of both parties. One of these provisions was section 83 which provided that if deceased were able to return to a gainful occupation or actually did so his pension would accordingly be reduced. This reduction would be governed by the amount he actually earned or was capable of earning. We now reach one of the major issues in the case, to wit: Is section 83 to be considered as a binding factor in his contract and if so does "reduce" mean "forfeit" or "temporarily suspended"? It seems obvious that section 83 was in the law to protect the System against disability retirees who might, in truth, be capable of providing for themselves without being on dole (albeit a "contractural" dole). See Matter of Stewart v. O'Dwyer (271 App. Div. 485, 490 [1st Dept., 1946]), where such a purpose is ascribed to section 83's counterpart in the New York City retirement statute. Deceased quit his work here because of his physical defect and elected the plan of retirement he fancied most suitable. He impliedly agreed to all the terms of the contract which included section 83. When he became employed in California at a considerable salary section 83 came into play and cut off his monthly pension payments although his annuity payments were not affected (thus he was not being deprived of anything he had contributed). There is no persuasive 56\*56 argument that this was not proper. When the California employment ceased, assuming deceased to be still living, should he then be entitled to the withheld payments? Section 83's counterpart with regard to nondisability pensioners, section 84, prescribes a reduction only if the pensioner should again take a public job. The disability pensioner is penalized if he takes any type of employment. The reason for the difference, of course, is that in one case the only reason pension benefits are available is because the pensioner is considered incapable of gainful employment, while in the other he has fully completed his "tour" and is considered as having earned his reward with almost no strings attached. It would be manifestly unfair to the ordinary retiree to accord the disability retiree the benefits of the System to which they both belong when the latter is otherwise capable of earning a living and had not fulfilled his service obligation. If it were to be held that withholdings under section 83 were payable whenever the pensioner died or stopped his other employment the whole purpose of the provision would be defeated, i.e., the System might just as well have continued payments during the other employment since it must later pay it anyway. The section says "reduced", does not say that monthly payments shall be temporarily suspended; it says that the pension itself shall be reduced. The plain dictionary meaning of the word is to diminish, lower or degrade. The word "reduce" seems adequately to indicate permanency.

#### B. The aff is not a reduction, it is just a temporary suspension, these are distinctly different

Montesani v Levitt 59 [MATTER OF MONTESANI v. Levitt, 9 A.D.2d 51, 189 N.Y.S.2d 695 (App. Div. 1959), 8-13-1959, https://scholar.google.com/scholar\_case?case=1402552157078234696&q=Montesani+v.+Levitt&hl=en&as\_sdt=2006

Section 64 of the Retirement and Social Security Law (§ 85 under the 1947 act) provides that any disability pension must be reduced by the amount payable pursuant to the Workmen's Compensation Law if applicable. In Matter of Dalton v. City of Yonkers (262 App. Div. 321, 323 [1941]) this court interpreted "reduce" to mean "offset" in holding that under then section 67 (relating to Workmen's Compensation benefits as do its successors sections 85 and 64), pensions were to be offset by compensation benefits. This is merely another indication that "reduce" means a diminishing of the pension pursuant to a given formula rather than a mere recoverable, temporary suspension during the time other benefits or salaries are being received by the pensioner. (Also, cf., Retirement and Social Security Law, § 101 [§ 84 under the 1947 act].)

#### 1. Limits. Voting affirmative justifies adding an infinite number of conditions to the topic which are not researchable on an already broad topic. Limits are key to predictable case debates which are key to education.

#### 2. Precision. The intention of the resolution is to reduce the net number of sales if the affirmative wins that the target country changes their behavior and arms sales don’t change, the aff literally does nothing to the status quo, meaning you vote negative on presumption.

#### 3. Ground. Conditional affirmatives justify the aff no linking out of all of the major topic disadvantages like the Defense Industrial Base or Russia/China fill-in. If we cannot access generic resolution ground, it will amplify what is already a large affirmative side-bias. Ground is key to competitive equity in this debate.

#### 4. Extra Topicality. Inserting the condition is not based in any affirmative resolutional ground. Extra-topical plan planks justify the aff spiking out of all of our arguments, which is a voting issue for fairness and ground.

#### D. Topicality is a jurisdictional voting issue for ground, competitive equity, and education.

### T-Reduce—Excludes Future Sales

#### A. Interpretation—Reductions are from present amounts, preventions stop future actions, they are legally distinct.

Naporn Popattanachai, Doctoral Candidate at Nottingham Trent University, March 2018, “Regional cooperation addressing marine pollution from land-based activities: an interpretation of Article 207 of the Law of the Sea Convention focusing on monitoring, assessment, and surveillance of the pollution,” Nottingham Trent University, http://irep.ntu.ac.uk/id/eprint/33374/1/Naporn%20Popattanachai%202018.pdf

For the second question, the provision demonstrates that the goal of adoption of such laws and regulations must be to ‘prevent, reduce, and control’ MPLA. In so doing, the 141 LOSC obliges States to ‘taking into account internationally agreed rules, standards, and recommended practices and procedures’.480 Having considered the ordinary meanings of the term ‘prevent, reduce, and control’, ‘prevent’ means ‘to stop something from happening or someone from doing something.’481 The word ‘reduce’ means ‘to make something smaller in size, amount, degree, importance etc.’482 and the word ‘control’ means ‘to order, limit, or rule something or someone's actions or behaviour.’ 483 From the meanings, the term ‘prevent’ suggests an action to stop the future occurrence of something, whereas the terms ‘reduce’ and ‘control’, noting their difference, point to an action dealing with something that has already happened and continues to occur, but needs to be made smaller, limited or regulated. Also, control also applies to future pollution in the sense that it limits the future pollution to be created or emitted not to exceed the specified level. Therefore, the preliminary reading of these terms suggests that laws and regulations adopted to deal with MPLA must yield the result that conforms with these terms. In so doing, the adoption of laws and regulations to prevent, reduce, and control MPLA can be done by legislating primary or secondary regulations with the use of various legal techniques and procedures and are underpinned by some rules and principles of international law discussed in the previous chapter. These legal techniques and procedures can be used to achieve the prevention, reduction and control of MPLA depending on the design and use of them. Noting that the measures outlined below are not exhaustive and not exclusively limited to implement any specific obligation, these are typical legal techniques and procedures used to prevent, reduce, and control pollution and therefore protect the environment. They can be categorised into two groups, that is, (1) substantive and (2) procedural legal techniques and measures. They can be discussed hereunder.

#### B. Violation—The affirmative prevents future arms sales from occurring, which is not a reduction.

#### C. Standards

#### 1. Limits. Voting affirmative justifies adding an infinite number of sales in the future to the topic which are not researchable on an already broad topic. Limits are key to predictable case debates which are key to education.

#### 2. Precision. The intention of the resolution is to reduce the net number of sales in the status quo if the affirmative wins that they can prevent sales from happening in the future, it is not a net-reduction the aff literally does nothing to the status quo, meaning you vote negative on presumption.

#### 3. Ground. Future affirmatives justify the aff no linking out of all of the major topic disadvantages like the Defense Industrial Base or Russia/China fill-in because they are not reducing arms sales they are simply preventing new contracts. If we cannot access generic resolution ground, it will amplify what is already a large affirmative side-bias. Ground is key to competitive equity in this debate.

#### D. Topicality is a jurisdictional voting issue for ground, competitive equity, and education.

### T-FMS/DCS—$14 Million Cap

#### A. Interpretation: Either Foreign Military or Direct Commercial Sales require Congressional notification if a sale is valued at greater than $14 million dollars

Congressional Research Service, 4-01-2019, “Arms Sales: Congressional Review Process,” Congressional Research Service, <https://fas.org/sgp/crs/weapons/RL31675.pdf>

This report reviews the process and procedures that currently apply to congressional consideration of foreign arms sales proposed by the President. This includes consideration of proposals to sell major defense equipment, defense articles and services, or the retransfer to thirdparty states of such military items. Under Section 36(b) of the Arms Export Control Act (AECA), Congress must be formally notified 30 calendar days before the Administration can take the final steps to conclude a government-to-government foreign military sale of major defense equipment valued at $14 million or more, defense articles or services valued at $50 million or more, or design and construction services valued at $200 million or more. In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, Congress must be formally notified 15 calendar days before the Administration can proceed with the sale. However, the prior notice threshold values are higher for sales to NATO members, Japan, Australia, South Korea, Israel, or New Zealand. Commercially licensed arms sales also must be formally notified to Congress 30 calendar days before the export license is issued if they involve the sale of major defense equipment valued at $14 million or more, or defense articles or services valued at $50 million or more (Section 36(c) AECA). In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, Congress must be formally notified 15 calendar days before the Administration is authorized to proceed with a given sale. As with government-to-government sales, the prior notice threshold values are higher for sales to NATO members, Japan, Australia, South Korea, Israel, or New Zealand.

#### Therefore any country receiving less than $14 million in sales should be excluded from the topic, here is a list from Statistia

Erin Duffin,, 5-13-2019, "U.S. arms exports, by country 2018," Statista, https://www.statista.com/statistics/248552/us-arms-exports-by-country/

|  |  |
| --- | --- |
| Exports to | Export value in TIV in millions constant (1990) U.S. dollar |

|  |  |
| --- | --- |
| Jamaica | 13 |
| Romania | 13 |
| Pakistan | 12 |
| Ukraine | 12 |
| Latvia | 11 |
| Panama | 11 |
| Ethiopia | 10 |
| NATO | 8 |
| Philippines | 8 |
| Argentina | 7 |
| New Zealand | 6 |
| Portugal | 6 |
| Georgia | 4 |
| Nigeria | 4 |
| Algeria | 3 |
| Colombia | 3 |
| Guatemala | 3 |
| Botswana | 2 |
| Cameroon | 2 |
| Croatia | 2 |
| Czech Republic | 2 |
| Germany | 2 |
| Senegal | 2 |
| Uzbekistan | 2 |
| Belgium | 1 |
| Honduras | 1 |

#### B. Violation-The affirmative is a reduction in sales to (insert country from the list).

#### C. Standards

#### 1. Limits. Voting affirmative justifies adding 20+ more countries or international organizations to the list on an already broad topic. This gets worse when the aff could pick individual weapons systems within each country, making the topic even broader. Limits are key to predictable case debates which are key to education.

#### 2. Ground. Affirmatives dealing with less than $14 million in sales justifies the aff no linking out of all of the major topic disadvantages like the Defense Industrial Base or Russia/China fill-in. If we cannot access generic resolution ground, it will amplify what is already a large affirmative side-bias. Ground is key to competitive equity in this debate.

#### 3. Brightline. Prefer our definition as it sets a clear, reasonable limit at $14 million or more.

#### D. Topicality is a jurisdictional voting issue for ground, competitive equity, and education.

### Resolution-Specific Definitions

#### Definitions of Foreign Military Sales

US State Department, April 16, 2018, "U.S. Arms Sales and Defense Trade," U.S. Department of State, <https://www.state.gov/t/pm/rls/fs/2018/280506.htm>

FOREIGN MILITARY SALES (FMS) Under FMS, the United States government manages the transfer of approximately $40 billion per year in defense equipment purchased by foreign allies and partners. PM’s Office of Regional Security and Arms Transfers (PM/RSAT) manages the FMS process, in close partnership with the Department of Defense’s Defense Security Cooperation Agency (DSCA), which implements FMS cases by working through the military services to negotiate with U.S. defense contractors. PM/RSAT further manages the FMS process by providing the customer with training, sustainment, and contractor logistics support for the lifetime of the sale. The FMS sales process begins when a country submits a formal Letter of Request that specifies a desired military capability and a rough price. Sales are approved following U.S. government review and, when required, after Congressional notification. After the sale is approved, the DSCA issues a Letter of Offer and Acceptance (LOA) that specifies the exact defense articles, training, and support to be delivered. Processing time for FMS cases may vary; they can take months to negotiate, especially for major defense articles that require modifications to standard U.S. systems. Due primarily to the time required for construction of sophisticated defense systems such as fighter aircraft, countries often do not receive delivery of the full package until years after the LOA is finalized. Major FMS sales that have been formally notified to Congress are publicly announced on the DSCA website: <http://www.dsca.mil/major-arms-sales>.

Defense Security Cooperation Agency, No Date, "Foreign Military Sales (FMS)," No Publication, <http://www.dsca.mil/programs/foreign-military-sales-fms>

Purpose: The Foreign Military Sales (FMS) program is a form of security assistance authorized by the Arms Export Control Act (AECA), as amended [22 U.S.C. 2751, et. seq.] and a fundamental tool of U.S. foreign policy. Under Section 3, of the AECA, the U.S. may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the U.S. and promote world peace. Under FMS, the U.S. Government and a foreign government enter into a government-to-government agreement called a Letter of Offer and Acceptance (LOA). Who: Secretary of State determines which countries will have programs. Secretary of Defense executes the program. Funding: May be funded by country national funds or U.S. Government funds.

Defense Security Cooperation Agency, No Date, "FAQ," No Publication, http://www.dsca.mil/resources/faq

What Is FMS? Foreign Military Sales (FMS) is the U.S. Government’s program for transferring defense articles, services, and training to our international partners and international organizations. The FMS program is funded by administrative charges to foreign purchasers and is operated at no cost to taxpayers. The Defense Security Cooperation Agency (DSCA) administers the FMS program for the Department of Defense (DoD). Under FMS, the U.S. government uses DoD’s acquisition system to procure defense articles and services on behalf of its partners. Eligible countries may purchase defense articles and services with their own funds or with funds provided through U.S. government-sponsored assistance programs. In certain cases, defense articles may be obtained through grants or leases. Who can participate in the FMS program? The President designates countries and international organizations eligible to participate in FMS. The Department of State approves individual programs on a case-by-case basis. Currently, some 179 countries and international organizationsparticipate in FMS.

#### Definition of Direct Commercial Sales

US State Department, April 16, 2018, "U.S. Arms Sales and Defense Trade," U.S. Department of State, <https://www.state.gov/t/pm/rls/fs/2018/280506.htm>

DIRECT COMMERCIAL SALES (DCS): Under DCS, PM’s Directorate of Defense Trade Controls provides regulatory approvals for more than $110 billion per year in sales of defense equipment, services, and related manufacturing technologies controlled under the 21 categories of the U.S. Munitions List (USML). These sales are negotiated privately between foreign end-users and U.S. companies. Under U.S. law, any U.S. company or individual involved in certain activities involving the items enumerated on the USML is required to receive an approved export license or other approval before providing any USML regulated item, technical data, or service to a foreign end-user. As with FMS, export licenses approved under DCS are approved following an intensive U.S. government review and, as required, after Congressional notification. Export licenses are valid up to four years. Authorizations for defense services are also required and may last for longer timeframes. Licenses and authorizations may be extended or amended as needed. DCS cases are considered to be proprietary agreements between the foreign governments or companies and the U.S. defense contractor. However, certain information about cases notified to Congress is published quarterly in the Federal Register, in fulfillment of requirements in the Arms Export Control Act.

Defense Acquisition University, No Date, "Direct Commercial Sales (DCS)-Defense Acquisition Glossary[DAP]," No Publication, <https://www.dau.mil/glossary/pages/3674.aspx>

Commercial exports of defense articles, services, and training licensed under the Arms Export Control Act (AECA), made by U.S. defense industry directly to a foreign government. Direct Commercial Sales transactions are not administered by DoD and do not normally include a government-to-government agreement. The required U.S. Government controls are implemented through licensing by the Department of State.

Defense Technology Security Administration, No Date, "Direct Commercial Sales Reviews," No Publication, <http://www.dtsa.mil/SitePages/assessing-and-managing-risk/direct-commercial-sales-export-license-reviews.aspx>

The United States Government benefits directly and indirectly from transfers of military technologies or systems to foreign governments or end users. Defense technology transfers equip our international friends and allies with capabilities needed to address regional and global security concerns. Foreign sales bolster the U.S. industrial base by maintaining productivity, lowering overall defense systems’ costs and providing capital for innovation. The Department of State’s [Directorate of Defense Trade Controls (DDTC)](http://pmddtc.state.gov/) issues and administers licenses permitting U.S. vendors to sell defense items to foreign end users. The Department of Commerce’s [Bureau of Industry and Security (BIS)](http://www.bis.doc.gov/) issues export licenses for sales of dual-use and certain defense items. The Department of Defense’s role in the export approval process is to review proposed transfers for national security concerns and recommend one of the following: Approval, Approval with additional measures that manage the risk of diversion or misuse by foreign parties, Return for more information, or Denial. The Department’s recommendation is forwarded back to the licensing agency and is one of many USG Interagency positions State and Commerce consider when determining whether to issue the license. DTSA, as Department of Defense’s lead agency for export license reviews, conducts in-depth national security reviews of export license requests for transfers of defense-related items referred from both State and Commerce. DTSA also works closely with Industry and International counterparts before licenses are requested to identify potential technology security or foreign disclosure issues. The national security review gathers assessments of operational impacts from offices throughout the Department (Intra-Agency), including the Military Department (MILDEPs) - Army, Air Force, Navy - Joint Staff, Acquisition, Technology & Logistics and Policy. In addition, DTSA has its own in-house technologists (engineers and scientists), foreign affairs specialists, and information security specialists provide technology security focused recommendations. DTSA Licensing Specialists assimilate, and often arbitrate between, diverse and sometimes opposing positions into the final DoD position with the security provisions necessary and appropriate to protect the U.S. military technological edge.

#### FMS vs DCS Comparison

Defense Security Cooperation Agency, No Date, "FAQ," No Publication, http://www.dsca.mil/resources/faq

Does FMS Compete with DCS? FMS and DCS are not in competition. Unless an item has been designated as “FMS only,” DoD is generally neutral as to whether countries purchase U.S. defense articles or services commercially or through FMS. If a purchaser requests FMS data after soliciting bids from contractors, the purchaser must demonstrate that commercial acquisition efforts have ceased before any FMS data will be provided. If the purchaser obtains FMS data and later determines to request a commercial price quote, the FMS offer may be withdrawn.

LMDefense, No Date, "Foreign Military Sales vs. Direct Commercial Sales," <http://lmdefense.com/foreign-military-sales/fms-vs-dcs/>

U.S. Defense companies have two main avenues for selling on the international market: Direct Commercial Sales (DCS) and Foreign Military Sales (FMS).

This chart explains the main differences between Foreign Military Sales (FMS) and Direct Commercial Sales (DCS).  Both are viable options for U.S. defense companies seeking to do business overseas.

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| --- | --- | --- |
|  | Foreign Military Sales | Direct Commercial Sales |
| Nature of Relationship | The US DOD will negotiate with the Customer on behalf of the Vendor. | Customer negotiates directly with the Vendor. |
| United States Government Involvement | The US DOD assumes contracting risk and is responsible for ensuring that the Vendor meets cost, schedule, and performance requirements.  The US DOD guarantees payment by the Customer. | U.S. Government (USG) is not involved in the transaction, and does not act on behalf of the Customer or Vendor should complications arise. |
| Export Licenses | This is a government-to-government transfer, so the export process is managed the US DOD. No involvement by the Vendor is required. | The Vendor must obtain export approval from the U.S. State Department. The Vendor is responsible for submitting a completed DSP-83. |
| Congress notification | Any required notifications to Congress are jointly sponsored by the US DOD and the State Department. | Congress must be notified by the State Department of a decision to issue an export license if the sale includes significant defense equipment valued at $14 million or more.  (Basically, both DCS and FMS require the same type of notification) |
| Contract Issues | US DOD procures the defense articles under the same contractual provisions used for all DOD procurement. The Customer pays an additional 3.5% of the total price to cover the contracting and administrative services provided by US DOD. | The Vendor negotiates with the Customer.  The Customer assumes management responsibility. These activities represent overhead management costs to the Customer. The size and skill of the Customer contracting staff may be a limiting factor during procurement. |
| Cash Flow Requirements | The initial deposit required is usually somewhat lower than commercial contract down payments.  This facilitates payment by the Customer. | Direct commercial contracts generally require a relatively large down payment, payable at the time of contract signature.  This may create difficulties for the Customer. |
| Availability of Foreign Military Financing Program (FMF) Funding | U.S. financial assistance, through the Foreign Military Financing Program (FMF) may be available to the Customer.  If FMF funds are available, they must be processed through FMS (except for the ten countries granted an exception). | If the Customer wishes to use FMF funding, DCS is not an option.  Ten countries are granted an exception that allows them to use FMF funding to pay for DCS contracts: Israel, Egypt, Jordan, Morocco, Tunisia, Turkey, Portugal, Pakistan, Yemen, and Greece. |