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Security of Supply Arrangements (SOSAs): Background and Issues

The U.S. defense industrial base (DIB) sources goods, services, and raw materials from the global marketplace to support national security and defense requirements. To facilitate the unhindered access to some key supplies, the Department of Defense (DOD) has entered into bilateral Security of Supply Arrangements (SOSAs) with selected foreign governments to secure the mutual timely provision of defense-related goods and services during peacetime, emergency, and armed conflict. SOSAs allow DOD to request prioritized performance of contracts from companies in SOSA-signatory nations, and for SOSA signatories to request the same from U.S. firms.

This In Focus considers the background of SOSAs in the context of a globally integrated defense industrial base, as well as potential policy considerations for Congress to advance national security and homeland defense.

Background

SOSAs are nonbinding international agreements that provide a framework for the U.S. to receive and provide priority support for defense-related goods and services with signatory nations. SOSAs are conducted under bilateral “Declarations of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry,” that establish a framework for the signatories to follow in order to assure supply. SOSAs are the practical extension of these principles and are negotiated by DOD (in coordination with other executive branch agencies, particularly the State and Commerce Departments) with a counterpart foreign government agency—usually the defense ministry (MoD). Currently, the U.S. has active SOSAs with: Australia (signed in 2011); Finland (2007); Italy (2003); the Netherlands (1978); Norway (2018); Spain (2015); Sweden (1987); and the United Kingdom (UK, 2017). Although Canada does not have a SOSA, the Department of Commerce has a Memorandum of Understanding (MOU) with Public Services and Procurement Canada to mutually prioritize defense purchases (signed in 1998). This MOU operates like a SOSA.

SOSAs represent one of many potential mechanisms for multinational DIB cooperation. In addition to SOSAs, these mechanisms can include broad defense cooperation agreements (which provide the framework for SOSAs), as well as more targeted agreements known as Reciprocal Defense Procurement and Acquisition Policy (RDP) MOUs, which allow DOD to exempt designated countries from procurement constraints under the Buy American statute (see 41 U.S.C. §§83, et seq.).

Canada may be the United States’ closest international defense partner, due in part to interdependencies that grew

from the Second World War and the Cold War. International treaties and integration policies provide Canada with various benefits and export control exemptions, notably including some exemptions to the International Traffic in Arms Regulations (ITAR). The U.S., meanwhile, has special access to supply chains and productive capacity based in Canada. In some respects, SOSAs may be seen as intermediate DIB cooperation arrangements more specific and intensive than RDP MOUs or broader defense cooperation agreements, but less exclusive compared to the U.S.-Canada relationship primarily, or the National Technology and Industrial Base (NTIB)—a statutorily established designation that includes the U.S., Australia, Canada, and the UK.

DPA Regulations and SOSAs

Under Title I of the Defense Production Act (DPA), the President has the authority to prioritize the performance of a contract for the promotion of the national defense, broadly defined. Title I authorities are governed under Executive Order (E.O.) 13603, which delegates DPA authorities to certain Cabinet secretaries across multiple sectors of the civilian economy. Those delegations are

1. the Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;
2. the Secretary of Energy with respect to all forms of energy;
3. the Secretary of Health and Human Services (HHS) with respect to health resources;
4. the Secretary of Transportation with respect to all forms of civil transportation;
5. the Secretary of Defense with respect to water resources; and
6. the Secretary of Commerce with all other materials, services, and facilities, including construction materials.

Under the same E.O., each Secretary is required to develop regulations to prioritize and allocate resources and establish standards and procedures to promote the national defense. Although E.O. 13603 governs these standing designations, they may be amended or superseded at the President’s discretion. Six such regulations exist, which in totality are known as the *Federal Priorities and Allocations System* (FPAS) and encompass: (1) the Agriculture Priorities and Allocation System, by the Department of Agriculture (7

C.F.R. §789); (2) the Energy Priorities and Allocations System, by the Department of Energy (10 C.F.R. §217); (3) the Health Resources Priorities and Allocations System, by the Department of Health and Human Services (45 C.F.R. §101); (4) the Transportation Priorities and Allocations System by the Department of Transportation (49 C.F.R. §33); (5) the Defense Priorities and Allocations System (DPAS) by the Department of Commerce (15 C.F.R. §700); and (6) the Emergency Management Priorities and Allocations System (EMPAS) by the Federal Emergency Management Agency under E.O. 13911 (44 C.F.R. §333).

DOD has not issued a priorities and allocations system with respect to water resources. DOD, by far the most historically frequent user of DPA authorities, has received sub-delegated Title I authorities from the Department of Commerce's Bureau of Industry and Security (BIS), which issues and oversees DPAS implementation. SOSAs are implemented through the DPAS, which is the most frequently used and broadest regulatory framework among the FPAS.

SOSAs and the DPAS

Although the DPAS and DPA have no legal authority outside of the United States, DPAS also includes guidance for exercising nonbinding assistance for selected foreign partners. The DPA priorities authority applies to the prioritization of contracts to support an approved national defense and/or energy program. Under the DPAS, the BIS—or its designated delegate, like DOD—may place priority ratings on certain contracts. The DPAS allows for requests for priority assistance from any foreign entity, but it provides special preferences for countries with which DOD has a SOSA.

SOSAs allow DOD to request priority delivery of goods, via contracts, subcontracts, or orders, from companies in the signatory country, and vice versa. The DPAS also provides guidance to signatory countries making requests for priority delivery from U.S. companies or a SOSA partner country, indicating that they should contact the DOD DPAS lead, which currently resides within the DOD Industrial Policy office. Although SOSAs provide priority assistance preferences to the U.S. and the partner country, they are nonbinding and confer no legal obligations.

Individual SOSAs provide more detailed guidance for requesting priority assistance. The most recent SOSA, signed in 2018 between DOD and Norway's MoD, includes language to communicate intent behind the SOSA; actions for the SOSA's implementation; designated points of contact and review (DOD and Norway's MoD); and the effective date and terms of the SOSA. Several SOSAs, including the one with Norway, provide for the issuance of a code of conduct to govern SOSA implementation for priority assistance. Four SOSA partner countries—Finland, Italy, Sweden, and the UK—have promulgated codes of conduct and published lists of participating companies.

Policy Considerations

Currently, SOSAs may be considered part of a broader overlapping array of international mechanisms for DIB cooperation and integration (e.g., U.S.-Canada; NTIB;

SOSAs, etc.). While they represent a spectrum of graduated DIB integration, their relationship to each other—and to other international agreements (such as alliances, strategic partnerships, and various other special agreements or designations) is less clear. As such, Congress may consider elaborating in statute how such agreements, including SOSAs, fit into U.S. national security and defense policy, and provide statutory authorization for their development.

Relatedly, given interest among allies and partners to integrate more closely with the U.S. DIB, Congress may consider establishing principles to create mutual defense industry integration pathways that support U.S. defense and national security requirements and take a broader view of international and national security cooperation. This could potentially privilege treaty allies (e.g., NATO members, Japan, and Australia) primarily, and Major Non-NATO Ally designees (e.g., Argentina, Israel, New Zealand, etc.) and strategic partners (e.g., Bahrain, Georgia, Mexico, etc.) secondarily.

In addition, because SOSAs are nonbinding, they are potentially more vulnerable to contravention, including during emergencies or other contingencies. As a result, it is conceivable that a company within a SOSA partner country could benefit from preferred access to the U.S. DIB, but may fail to fulfill U.S. requests later. As such, Congress may consider developing statutory mechanisms to better incentivize cooperation and discourage noncompliance—such as the termination of a SOSA for a designated period after a determination of improper noncompliance.

Related Reading

The following CRS reports and products may provide additional context:

- CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress*, by Michael H. Cecire and Heidi M. Peters;
- CRS In Focus IF10548, *Defense Primer: U.S. Defense Industrial Base*, by Heidi M. Peters;
- CRS In Focus IF11311, *Defense Primer: The National Technology and Industrial Base*, by Heidi M. Peters;
- CRS Report R46814, *The U.S. Export Control System and the Export Control Reform Act of 2018*, coordinated by Ian F. Fergusson;
- CRS Report R46628, *COVID-19 and Domestic PPE Production and Distribution: Issues and Policy Options*, coordinated by Michael H. Cecire; and
- CRS In Focus IF11767, *The Defense Production Act Committee (DPAC): A Primer*, by Michael H. Cecire.

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