FMS Modernization

U.S. Industry Feedback to the Department of Defense Foreign Military Sales (FMS) Tiger Team

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Executive Summary

The U.S. needs a modernized, strategic Foreign Military Sales (FMS) system capable of addressing the current and future threat environment – one built to deliver critical capabilities to international partners as quickly and concurrently as the U.S. armed forces.

A Strategic FMS System

A strategic FMS system, one that can tie each transfer to the National Security Strategy (NSS) and National Defense Strategy (NDS), is vital to addressing current systematic challenges and meeting U.S. cooperation goals with allies and partners. An operational culture aligned with its strategic documents, based on common purpose, intent, and outcomes across the DoD enterprise, is central to meaningful and lasting reform. Today, the FMS system is frequently misaligned against these strategies, is transactional in execution, and competes both with itself and with other national security priorities, resulting in a cumbersome and complicated bureaucratic system that often creates significant barriers to entry internationally for the U.S. and its defense industry.

Defense Trade, Not Just FMS, Supports Integrated Deterrence

While industry commenters focused on the FMS process, industry and foreign partners do view defense trade beyond FMS; defense trade also includes Direct Commercial Sales (DCS) and industrial participation. The U.S. Government (USG) must leverage all elements of defense trade to realize the Administration's Integrated Deterrence concept, as defense trade is more representative of the current global arms transfer market. For example, the three-year rolling average of FMS and DCS cases as reported by the State Department in FY2021 amounted to $161.1B; of that total, $114.1B (71%) was DCS and the remaining $47B (29%) was FMS.[1]

Modernizing a Cold War (and post-Cold War) System

The current U.S. defense trade's legal, regulatory, and technology security framework was built around the notion of preventing rogue or unintended transfers of critical technologies, rather than encouraging technological integration and interoperability with allies and partners. Integrated Deterrence requires a U.S. defense trade framework that is flexible and able to deliver critical capabilities to international partners at pace with the current and foreseeable threat environment. Holistically, Integrated Deterrence must include FMS, DCS, industrial participation, and all stakeholders to achieve success.

Additionally, the FMS system was developed to enable procurement of Programs of Record (POR) and large platforms and continues to expect foreign partners to buy legacy POR. Like DoD, our foreign partners are looking for high-end equipment to meet the current threat environment and expect a modern FMS system that can respond accordingly.

The DoD structures, processes and practices that address FMS, security cooperation, and technology security have evolved over time, each being created and assigned to a specific office to address a past, future, or perceived risk of rogue or unintended transfers. This created a patchwork system. Previous efforts to reform streamline or restructure those processes and practices have not succeeded in large part due to various bureaucratic hurdles.

(Re)Commit to FMS

There was a common theme among industry feedback – *the DoD must fully commit itself to using FMS as a primary foreign policy tool to support U.S. interests, warfighters, and partners and allies.* FMS cannot be

[1] https://www.state.gov/fiscal-year-2021-u-s-arms-transfers-and-defense-trade/

treated as an afterthought, byproduct, or late add-on to DoD-only capabilities. It must be integrated into the larger warfighting construct of the Combatant Commanders and the acquisition requirements of the military departments. This commitment to FMS must come from the highest levels in OSD and include the service secretaries and the supporting military department bureaucracy that is largely responsible for executing the FMS process.

A Lived, Shared Experience

Most of the individuals that provided input are former USG officials who sympathize with the intricate nature of the security cooperation and technology security framework, and the organizations and professionals that participate in it. The following observations and recommendations are based on significant professional experience and are intended to enhance U.S., allied, and partner security.

The recommendations range from ground-breaking organizational change to incremental process initiatives. We believe that implementing the latter (process improvements) will be more successful and better facilitate Integrated Deterrence if organizational changes are made in tandem.

Elements of Modernization

After a comprehensive data collection by the three trade associations, seven core themes emerged from the industry feedback. Those themes, highlighted below, are:

1. Accessible and Transparent Communication
2. A Strategic and Creative FMS Process
3. Resourced and Flexible Acquisition Process
4. Defense Export Financing and Expansion of DoD's Special Defense Acquisition Fund
5. Modern Technology Release Process
6. Improving Exportability
7. Enhance Support of Non- Program of Record (NPOR) Systems

In the subsequent pages, each theme is briefly discussed, and broad industry recommendations are offered. While individual companies may offer additional, proprietary feedback that can be communicated on a one-on-one basis, what follows is general agreement on both the challenge and promise of FMS modernization.

As the major trade associations representing nearly all aspects of the U.S. aerospace and defense industry, the Aerospace Industries Association (AIA), the National Defense Industrial Association (NDIA), and the Professional Services Council (PSC) are grateful for the opportunity to provide comprehensive input to the Department of Defense's (DoD) Foreign Military Sales (FMS) "Tiger Team". The U.S. defense industrial base is a critical component to the execution of the foreign policy and national security objectives of the United States, and remains a steadfast partner with the U.S. Government, as well as allied governments around the world.

Elements of Modernization: Industry Feedback

1. Accessible and Transparent Communication

Access: The FMS process is widely regarded by both industry and foreign partners as opaque, inconsistent, and lengthy. Restricted access to working-level officials limits accountability as cases sit in the system for considerable periods without action. Due to a perceived culture of distrust among government officials, it is standard practice for industry representatives to elevate issues, large or small, to the highest political levels – which degrades working-level relationships and slows the case approval process and timeline.

Recommendations:

- *Establish a formal, senior DoD-industry advisory group on FMS. Much like State Department's Defense Trade Advisory Group (DTAG) or the Commerce Department's Industry Trade Advisory Committees (ITACs), the group would focus on DoD's role in the FMS process. Notably, DoD –the largest FMS supporting organizational infrastructure across the USG – has no formal process to regularly solicit and receive industry input on FMS.*
- *Reimagine DSCA's Security Cooperation Industry Group (SCIG). Convene quarterly meetings, first among DoD stakeholders followed by the interagency, to discuss the FMS system - providing a forum to share experiences, expertise, and resources among all stakeholders.*
- *Encourage engagement between working-level officials and industry representatives across the FMS enterprise to support case development and execution. Establish monthly or quarterly "office calls" to promote accountability and provide a private forum to raise and discuss issues with relevant action officers - creating and fostering regular communication channels to enhance the government's relationship with industry and preserve senior leaders' time.*
- *Promote increased engagement between Security Cooperation Officers (SCOs) and industry representatives on customer requirements and issues. Encouraging frequent communication between international partners and SCOs would ensure foreign users have realistic expectations of the FMS process and delivery timelines; promote economies of scale and bundling opportunities; and address exportability costs early.*

Transparency: Due to the complicated nature of FMS, it is often difficult to track the progress of current cases – information that is vital to both industry and international partners for resource allocation and planning. Additionally, the organizational structure and points of contact (POCs) for key offices across the DoD FMS infrastructure are often incomplete and difficult to find.

Recommendations:

- *Establish a central FMS tracking system with standard operating procedures (SOPs) for DoD organizations that is then integrated with the interagency. The system would display simple information at key gates in the FMS case development process (i.e., Letter of Request (LOR) Price & Availability (P&A) to LOR/Letter of Acceptance (LOA) submission, the status of interagency staffing when a case goes from State to Congressional Notification, etc.) The tracking system could be a public-facing site like ELISA that can provide high-level status updates of FMS cases and the DoD process owner for industry and international partners.*
- *Publish public organizational charts for FMS organizations (Air Force, Army, Navy) including a list of offices, program officers, and other POCs that industry and contractors could contact directly with questions on exportability, technology transfer and release, Letter of Request, or Letter or Offer & Acceptance development and implementation, etc.*

2. A Strategic and Creative FMS Process

DoD has significant authority to execute FMS with many tools to be creative in its approach. However, the plethora of options require space to maneuver to avoid pigeonholing the USG-industry team and partner into a less favorable option or obscuring the case execution. Without this flexibility, the process is opaque and challenging to navigate for FMS experts and newcomers alike. Moreover, lack of accountability and stakeholder clarity on organizational responsibilities often results in cases lodged in the process for lengthy (or even indefinite) periods of time. Ultimately, these result in detrimental impacts to the price and availability of capabilities and U.S. partnership objectives.

Strategic Alignment: There is broad industry agreement that the exorbitant focus on executing the transactional FMS process leaves the strategic policy objectives on the margins as opposed to the center of decision-making. DoD FMS acquisition program decisions must be aligned with U.S. strategic priorities as laid out in the National Security Strategy (NSS) and National Defense Strategy (NDS). Robust guidance at senior-levels should encourage communication and cross-collaboration, timely case execution, reasonable risk attribution, and facilitate the entire FMS chain of command to incorporate the strategic importance of action - or inaction - made on a given program in the review process.

Recommendations:

- *Replace the Arms Transfer Technology Release Senior Steering Group (ATTRSSG) with a Senior Acquisition Executive (SAE) and OSD Policy co-led recurring interagency working group that tracks the status of major arms transfers to NDS and NSS objectives. These cases would have considerable impact on foreign policy or national security, such as those valued at over $500 million, predetermined transfer of strategic capabilities, or Letters of Request (LORs) from heads of states from priority international partners.*
- *Led by SAE and OSD Policy, formally include Combatant Command (COCOM) feedback in the evaluation of proposed sales, both for evaluation of the impact on the warfighter in the COCOMs Area of Operations and for the impact on foreign partner capability to contribute to the COCOMs warfighter objectives. Feedback should set global priorities and strategize for future conflict.*
    - *Additionally, issue semi-annual guidance from the MILDEPs to the acquisition community relaying the services global priorities and incentivizing the acquisition community to seek innovative approaches to expediting programs. Promote expedited processing for trusted partners and allies.*
- *Proactive USG-industry planning for security cooperation and FMS cases tied to space systems, space-based capabilities, and emerging technologies; specifically, how technology release, transfer policy (i.e., FMS-only), disclosure, and exportability will be handled.*

Timeline: Time has the most impact on U.S. competitiveness, sales, production schedules, and defense partnership objectives. The U.S. government and industry would benefit from a timebound FMS process with the responsible parties clearly designated.

Recommendations:

- *Establish a clear escalatory process led by OSD to eliminate indefinite policy reviews. FMS stakeholders, including industry, must be accountable for providing accurate and timely responses to the given requirements of an FMS case, including an initial policy and transfer review – even if the answer to industry and the foreign partner is "not at this time" or a denial. Failure to reach*

consensus at one level by a deadline should result in automatic elevation to the next level for decision.

- *Comprehensively review current processes and eliminate ineffectual ones that purely add time, such as the Non-Recurring Cost (NRC) waiver.*
- *Reevaluate necessary requirements to make available tools more effective such as the limited use of Pre-Letters of Request (PARs).*
- *For sole source (LORs), provide opportunities for the contractor to be involved in Letter of Offer & Acceptance (LOA) development to coordinate and ensure the scope accounts for all unique aspects of a transfer, such as logistics or Maintenance, Repair, and Overhaul (MRO).*
- *Accelerate LOA signatures to approximately 30 days to maintain accurate supply data and active production capacity.*
- *Allow funding to apply to pre-LOA activities broadly, including, USG integrated product team resources and case-specific non-recurring engineering activities.*

3. Resourced and Flexible DoD Acquisition Process

A standard contract for an FMS program takes on average eighteen months to award, with complex FMS programs taking longer. Given the strategic importance of FMS, the USG must evaluate the overall process – from LOA approval to contract award – to deliver the best capability to partners on an accelerated timeline. The speed of the contracting process and delivery schedule should be informed by the global threat environment, U.S. national security and foreign policy objectives, and the customer's defense and budgetary needs – not opaque processes.

Strategic Misalignment: There is misalignment between the acquisition community (responsible for prioritizing current programs of record), next generation research and development contracts, and partner and ally FMS needs compared to that of the NSS and NDS – both of which prioritize partner and ally cooperation. Program offices responsible for FMS contracting may view their role as indirectly related to the NSS and NDS and may not grasp the critical importance they play in the strategic environment or the essential role they play in the partner's own defense strategy.

Recommendations:

- *Issue semi-annual guidance from the MILDEPs to the acquisition community relaying DoD global priorities and incentivizing U.S. officials to seek innovative approaches to expediting programs.*
- *For countries identified as a strategic priority, establish a requirement to identify multiple acquisition strategies at program inception that document (a) the fastest acquisition path and (b) a standard acquisition path. In both instances, risk, risk mitigation, and risk cost should be measured. The goal would be to highlight the fastest path to capability for strategic partners and allow Service leadership, with OSD Policy participation, to make decisions based on military requirements, urgency, and risk tolerance.*

Resourcing and Procedure: The DoD contracting community is understaffed and resources are naturally prioritized for contracts that support the current and future needs of U.S. service personnel at the expense of FMS programs. For example, a company reported significant delays in surging capabilities to a close foreign partner when the only contract specialist supporting its multi-billion-dollar indefinite delivery, indefinite quantity (IDIQ) contract went on training or annual leave.

Recommendations:

- *Use FMS administrative funds to hire contracting officers dedicated to negotiating and awarding FMS contracts. Additional contracting staff could ameliorate the backlog of work on FMS contracts. Request additional resources if available FMS administrative funds are insufficient to meet the need.*
- *Task OSD A&S (Defense Pricing and Contracting) to review each services' FMS contracting SOPs to identify and implement best practices.*
- *Led by A&S, establish realistic, actionable, and measurable goals for contracting actions for international partners with that include performance metrics.*
- *Develop and utilize a Research & Development (R&D) Letter of Request (LOR) to bring partners and allies into the fold of U.S.-origin capabilities as early as possible. Funding for R&D LORs should be applied to anticipatory policy development, technology release reviews, exportability, and industrial participation.*

Acquisition Regulation and Contracting Policy: DoD acquisition professionals may assume that partners value lower cost over lower schedule. FMS contracts lead to protracted negotiations at the expense of delivering much-needed capability in a timely manner. Several sophisticated foreign partners are willing to accept more risk acquiring capability than is typically permitted by program offices under current FMS SOPs.

Recommendations:

- *Review major DoD directives, including the DoD Directive 5000.01 (The Defense Acquisition System) and the Adaptive Acquisition Framework to determine whether current guidance available to the acquisition community properly accounts for the needs of critical foreign partners.*
- *Create a new and improved contracting process for FMS, with additional flexibility to account for the risk a partner is willing to accept for earlier capability delivery. This could include formalizing a non-Program of Record acquisition pathway specifically for FMS.*
- *Reassign foreign partner contracting authority from the military services to DSCA by developing a DSCA-led FMS-specific contracting entity.*
- *Routinely engage with the foreign partner to determine acquisition priorities – cost, schedule, or performance – and calibrate the contracting process accordingly for nationally-funded FMS cases. Engagement should occur before the contracting process starts, preferably in parallel to requirements generation to better inform LOA development.*
- *Leverage the full range of U.S. contracting authorities available to address FMS partner needs, priorities, funding availability, and time constraints: increased use of IDIQ contracts for FMS; enhanced use of undefinitized contract actions (UCAs) to reduce timing of an award and consistent monitoring to ensure timely definitization; use of letter contracts, OTAs, leases, etc., to meet FMS needs.*
- *Leverage cost and pricing information available from previous buys to assist in faster FMS pricing, when appropriate, to avoid a prolonged proposal and audit process. Review TINA requirements for FMS contracts.*

- *Review procedures and implement fixes to ensure funding can flow between the MILDEPs. One company identified the inability of certain military services to accept Military Interdepartmental Purchase Request (MIPR) requirements as a bottleneck.*

4. Defense Export Financing and Expansion of DoD's Special Defense Acquisition Fund

The United States needs a comprehensive, global defense export financing mechanism that can be used by all international partners and allies to acquire U.S.-origin defense articles and services on favorable financing terms. While some progress has been made on pilot programs for Ukraine and broader NATO access to U.S. defense export financing, a comprehensive, global program allowing all U.S. partners to finance U.S. defense exports would give U.S. policymakers an additional foreign policy tool and U.S. industry reasonable certainty when forecasting future production needs. Except for the pilot programs, there is currently no ability for U.S. partners and allies to easily finance U.S. defense products in support of their national defense. The DoD should expand the use of the Special Defense Acquisition Fund (SDAF) in anticipation of future partner needs.

Recommendations:

- *Implement, with immediate effect, the defense export financing authority provided to the Department of State for Ukraine and NATO. This includes outlining the specific procedures to obtain funding, associated timelines, the process for approval, etc.*
- *Develop and mandate an education program for Security Cooperation Officers (SCOs) on the Ukraine/NATO financing program – including best practices applicable for other foreign partners.*
- *Seek feedback from industry and U.S. allies and partners on the best way to structure a comprehensive defense export financing program. Recent examples, such as South Korean sales to Poland (which involved Korean-backed national financing) and a rescinded Australian FMS case (since Australia had to ask a country of concern for financing due to non-availability of U.S. financing) indicate a need to consult with outside stakeholders.*
- *While the Ukraine and NATO pilot programs are good progress, a comprehensive export financing program that can provide financing for all regions is needed. Establishing separate programs for separate regions is ill-advised.*
- *Expand use of the Special Defense Acquisition Fund (SDAF). An enhanced and expanded SDAF would allow for DoD to anticipate and address future industry base production challenges in support of partners and allies. Some the needed capabilities SDAF could ameliorate include air and missile defense, night vision, and long-range fires.*

Export-Import Bank (Ex-Im Bank): The U.S. national export credit agency (ECA), also known as the Ex-Im Bank, is the only major ECA in the world to prohibit defense-related transactions. There has been much discussion about the possible role of the Ex-Im Bank in defense transactions, and while that discussion continues in the Administration and in Congress, what is clear is there is an immediate, urgent need for a financing mechanism *either through the Ex-Im Bank or like the Ex-Im Bank*.

Recommendation:

- *Conclude the ongoing review of defense export financing options and seek authorization from Congress to either expand Ex-Im Bank authority to provide for financing of defense equipment or establish a financing program that functions like the Ex-Im Bank in another agency.*

5. Modern Technology Release Process

DoD has addressed technology security risks by establishing new processes, offices, or assigning responsibilities with defined authorities to address that specific risk. Each stakeholder developed its own internal processes with differing decision-making mechanisms, rather than DoD conducting a coordinated technology transfer decision aligned to the National Defense Strategy. Now significant differences exist among DoD offices, and there is no single office to resolve internal disagreements in a timely fashion. Specifically, the Arms Transfer and Technology Release Senior Steering Group (ATTR SSG) has proven ineffective.

Unsustainable "sprints": Industry applauds the release community's extraordinary efforts to accelerate release approvals for Ukraine, but believes they are unsustainable. The technology release system must be modernized to deal with the current threat environment and be able to quickly surge in times of conflict.

Under-resourcing: DoD (and State, separately) is under-resourced for release actions. Industry posits that there are inherent redundancy and inefficiencies, for example 1) all MILDEPs, DSCA and DTSA have "Policy" organizations; and 2) many offices or personnel either knowingly or inadvertently assess risk beyond their remits, overlapping the responsibilities of other offices.

Inconsistent cross-DoD "horizontal" guidelines: The MILDEPs all establish "policy" or "positions" for export, but there is no formal mechanism between the MILDEPs to align their internal policies. The MILDEPs also have different structures, responsibilities, and staffing for their implementing agencies that have evolved over time through culture or previous practice. Some bodies (e.g., LO/CLO Tri-Service Committee, Anti-Tamper Executive Agent, National Disclosure Policy Committee) are intended to provide cross-DoD coordination, however, each group has differing remits, memberships, and decision documents. "Horizontal" guidance documents (e.g., DoD Instructions, LO/CLO EXCOM directives, ATEA Horizontal Protection Guidelines) also have no coordinated schedule for updates and are regularly past need. Even when all release actions may be complete, the same respective DoD stakeholders can block an export in the licensing process via Return Without Action or proviso. Recordkeeping of release decisions is scattered, and the positions often applied on cases or licenses inaccurate.

FMS-only: Approvals for DCS are considered on a case-by-case basis only and can become a proprietary advantage to an individual company rather than an aspect of U.S. competitiveness. Also, there are numerous DoD offices that believe they can require a MILDEP program office be the exporter of record which has not been formally delegated authority.

Communication: There is no standard for communicating justifications for release concerns to industry, the feedback is often opaque. Industry must then contact various government agencies to re-engage on release. An effective USG technology release framework would seamlessly and expeditiously coordinate, balance, and adjudicate integrated deterrence, security cooperation and technology security considerations. It would also 1) ensure technology transfer decisions for allies and partners are aligned to the National Defense Strategy, including to address the growing requirements from partners for industrial participation; and 2) align and track capability requirements to release determinations throughout the process, from Combatant Command identified in-theater shortfalls, to LOAs, licenses, and deliveries.

Structural Recommendations for Technology Release:

- *Assign a single DoD office at the Assistant Secretary level part of the Under Secretary for Acquisition and Sustainment to be responsible for all technology release decisions, and to align all DoD release offices under it. This would include DTSA / NDPC, the LO/CLO Tri-Service Committee, the Anti-Tamper Executive Agent, and the current MILDEP release organizations*

- *"Core up" MILDEP release offices into a Joint (OSD or Joint Staff) office, reassigning appropriate assignment of MILDEP uniformed and civilian representatives, to develop coordinated "policy" on the export of capabilities*
- *No longer would MILDEPs be required to "request" adjudication by the TSC, ATEA, NDPC, etc.*

- *DoD retain security cooperation offices and staff within the Under Secretary for Policy and align those within a single office.*
  - *Therefore, an organizational balance would be ensured – capability requirements established and managed by OSD Policy, and technology security requirements managed by OSD A&S. This would be more predictable and streamlined for partners and industry.*
  - *Establish a similar "cored up" or aligned structure for FMS implementation among the MILDEPs as they are currently all very different.*
- *Establish an official forum by which industry may appeal technology release outcomes or decisions to senior-level DoD officials.*

Recommendations for Streamlining Specific Technology Release Processes:

In the absence of structural reform, which industry believes is the better path to success, we recommend these specific process changes.

- ***Align Service Release Policies (Baseline, TTSARB, etc.)****: Establish a DoD oversight mechanism among the three MILDEPs to align release policy development and document them in similar ways.*
- ***Consistent "Horizontal" Cross-technology Reviews:*** *When approving a release, direct DoD bodies to concurrently evaluate reducing restrictions on similar or less-capable systems, rather than requiring industry to submit another case-by-case review.*
- ***More Anticipatory Release Policy through Tiered Partners****: Designate country groupings for all DoD release offices, along with broad technology categories for release, then specific release can be addressed under those overarching guidelines.*
- ***National Disclosure Policy****: Apply "anticipatory policy" more broadly, and default to general disclosure release to groups of countries and similar capabilities across platforms, rather than case-by-case only.*
- ***Streamlined Release for Close Allies:*** *Whether for the U.S. National Technology and Industrial Base (U.S. NTIB; Australia, Canada, and the United Kingdom) or AUKUS, create a "fast lane" for these countries through strategic policy statements and/or process directives for standard policy decisions.*
- ***Develop Formal Channels for USG-Industry Dialogue:*** *Establish an A&S Industrial Base Policy-led "Technology Release Industry Group" or TRIG, as a corollary to the Security Cooperation Industry Group.*
- ***Rationalize "FMS Only":*** *Comprehensively evaluate the current process for designating defense equipment "FMS-only". Review regularly all capabilities on the list in a more transparent way to designate lower-risk technologies eligible for DCS.*
- ***Caveats for "False Impressions" and Partner Budgetary Decisions:*** *To make potential U.S. offerings timelier and more competitive as partners consider foreign options, establish standard*

language stating that "The pricing and availability provided is subject to USG technology release and is not a guarantee of release."

- ***COMSEC / Crypto – "6510 process"**: COMSEC routinely lags other release processes and drives delays in export timelines. Improve integration of the entire process, as well as NSA work within the DoD release framework. Place a reasonable and equivalent deadline for COMSEC decisions as for other parts of the FMS process.*
- ***Streamlining Country Team Assessments:** This is another release process that frequently becomes the driver for overall delays due to variability in the Embassies or COCOMs. Streamline it by accomplishing these only at the COCOM or DoD level.*
- ***Co-Production and Co-Development:** Establish guidelines that would enable U.S. exporters to support already approved U.S. cooperative programs (i.e., "program licensing") without seeking authorization for individual export/imports.*

6. Improving Exportability

For 10 years, DoD has promoted policies to "build in" the ability to export new weapons systems to U.S. partners and allies. JROCM 025-19 and DoDI 5000.85 guidance to program managers represent a potential sea change in "designing for export". However, implementation results have been mixed.

There is no centralized method for DoD to track the lifecycle of exportability from acquisition milestones through security cooperation requirements to Anti-Tamper (AT) plans and costs.

Previous efforts to establish designated funds, including the Defense Exportability Fund, have fallen short of the need. DEF funding has in many times gone unspent, or although implemented, had little effect on the exportability of the item or system.

Costs for exportability vary widely across systems, MILDEPs, and program offices. Often reaching hundreds of millions of dollars, these costs have stymied the export of numerous legacy systems.

Critical Program Information (CPI) Identification (ID) often is not accurate or consistent. Exportability roles are highly decentralized among the MILDEPs and program offices, leading to differing interpretations of responsibilities and program protection requirements. The DoD Horizontal Protection Guidance (HPG) is helpful but, to date, insufficient.

There is no formalized dispute process to adjudicate a final exportability determination.

Structural Recommendations for Exportability:

Industry believes that realigning the responsible offices under a single authority will result in the greatest improvements. Given that Exportability begins with the acquisition process and follows through in release actions, industry recommends this consolidation within USD (A&S).

- *Align all exportability-related functions, including acquisition, exportability funding, program protection and verification and validation under OSD A&S.*
    - *For example, the ATEA could report through Defense Special Programs or Industrial Base Policy.*
    - *In this way, all exportability requirements and solutions can be tracked effectively throughout the program life cycle.*

- *Establish, including through legislation, a permanent revolving exportability fund.*
- *Establish a prioritization mechanism for exportability funding requests.*
- *Before waiving exportability feature requirements for acquisition programs, establish a structured review of projected future exports, protection requirements, and costs.*
- *Establish a mechanism to develop equitable cost-sharing and create incentives for effective exportability features including partners, industry, and the USG.*

Recommendations for Streamlining Specific Exportability Processes

To accompany structural reforms or to implement in their absence:

- ***Up-Front Agreement on the Cost-Sharing:*** *DoD, potential partners, and industry could allocate resources to exportability.*
- ***Rationalize Anti-Tamper for Key Allies:*** *Whether via AUKUS or NTIB, consider requirements for, or approval of, U.S. Programs of Record for close allies during the Critical Design Review (CDR) or other early milestone to avoid additional reviews and Validation and Verification (V&V) testing.*
- ***End Use Monitoring:*** *Assess USG's end use monitoring program to ensure it meets program objectives as efficiently as possible. Consider the opportunity to align U.S. EUMs among the Departmental programs (i.e., Golden Sentry, Blue Lantern) to standardize monitoring and protection of FMS and DCS shipments.*
- ***Establish Standard Configurations:*** *Determine certain platforms or systems that can be offered to partners and incorporate pre-negotiated unique modifications into the current and future contract(s).*
- ***Track Outcomes:*** *Promote design for exportability in performance metrics for OSD (A&S) and program executive offices to drive organizations towards these goals*
- ***Establish Critical Program Information (CPI) Expiration:*** *USG regularly assess whether AT requirements are still required when military intelligence, or business intelligence demonstrates that the same capability/technology is available internationally.*
- ***DoD Guidance Follow Through:*** *Fully implement and enforce clear top-down guidance on CPI ID and mitigation best practices with MILDEPs and program offices.*
- ***Adopt an Escalation Process:*** *Early cross walk of program protection and security cooperation requirements disagreements among stakeholders at senior levels would avoid end-game conflicts in deciding an export.*
- ***Comprehensive Outreach:*** *Establish regular updates among the DoD acquisition community, relevant program offices, and industry.*

7. Enhance Support of Non- Program of Record (NPOR) Systems

The existing FMS system strongly favors Programs of Record (POR) while the NPOR system faces barriers to entry when integrating into the system, hindering flexibility for the foreign partner, and limiting offerings industry can provide.

U.S. government support for NPOR equivalent to POR products fosters foreign partner choice and industrial innovation, particularly if industry can provide capabilities at the target price point. Moreover,

for more seamless integration of NPOR systems to the FMS system, industry must be aware of the general requirements it will face to add its product to an FMS case. This requires a 1) clear entry point for industry to submit its product for technology security reviews as early in the development process as possible, 2) the State Department and Department of Defense to conduct anticipatory policy reviews, and 3) subsequently issue clear policy for the product. The better industry understands the export requirements of its NPOR product, and the security cooperation enterprise becomes aware of the available options, the greater fidelity of information the USG-industry team will be able to provide partners as they select products for their requirements. Once a NPOR product is selected, allocating resources, providing accountability, and determining priority are the elements for successful case execution.

Recommendations:

- *Formally and clearly articulate that NPOR systems are key components of U.S. policy that supports the best capability to our foreign partners and fosters innovation in the industrial base.*
- *Expand the remit of DSCA's Community of Interest (CoI) office to establish a mechanism for industry to understand what export policy reviews may be required for its NPOR products prior to a Letter of Request (LOR) or Letter of Intent (LOI).*
- *Allow funding to be applied to pre-Letter of Request (LOR) work for NPOR products.*
- *Create an interagency accessible inventory of available NPOR product options and institute a transparent review process by the USG security cooperation enterprise, including those eligible for Security Assistance funds, as the options are considered for partner requirements.*
- *For FMS cases featuring a NPOR product, integrate the expertise of industry more directly to meet certification and system security requirements to diminish reticence of NPOR products at military service Program Offices.*
- *Consider establishing more specific NPOR program office(s) with MILDEPs allocating adequate resources; broadly consider USG resources for exports, such as a designated Export Program Office.*
- *Create a formal acquisition pathway for non-POR and related acquisition guidance.*