

Volume II: Defense Trade Modernization

Background

In response to the U.S. government's review of the Foreign Military Sales (FMS) system, the Aerospace Industries Association (AIA), Professional Services Council (PSC), and National Defense Industrial Association (NDIA) solicited feedback from their collective membership bases representing the aerospace and defense (A&D) industry, and drafted a paper entitled, "FMS Modernization". The first paper was presented to the Department of Defense (DoD) Tiger Team tasked with assessing DoD FMS policies and practices. In consideration of the U.S. Department of State's (DoS) key role in managing the government-to-government transfer of military equipment, this follow-up paper recommends policy, regulatory, and process changes related to DoS, or that may require changes to the Arms Export Control Act or Foreign Affairs Act from the three associations.

The State Department's Bureau of Political Military Affairs will be the primary audience for many of these suggestions, though some will require coordination with or action from other parts of DoS (e.g., Bureau of Foreign Assistance, Undersecretary for Management) and DoD (e.g., Defense Security Cooperation Agency, Defense Technology Security Administration, etc.).

Introduction

The COVID-19 pandemic stressed the U.S. defense trade system and global supply chains. The conflict in Ukraine stressed the system further. Meanwhile, a possible conflict in the Indo-Pacific could completely overwhelm it. The global response to these major events and trajectory of U.S. national security policy highlights an urgent need to modernize and increase alignment between the U.S. interagency and the A&D industry on defense trade matters.

The U.S. National Security Strategy (NSS) and the Conventional Arms Transfer (CAT) Policy prioritize maintaining the United States' competitive advantage through enhancing cooperation with allies and partners, continuing security assistance to Ukraine, and reducing reliance on adversaries' equipment. The 2023 Annual Threat Assessment reinforced that the U.S. and its allies and partners, "will confront [in the coming year] a complex and pivotal international security environment", citing continued focus on strategic competition with Russia and China. Industry is an integral partner and core component to confronting these global challenges and achieving U.S. national security objectives.

Following Russia's invasion of Ukraine, DoS in coordination with DoD, provided an unprecedented volume of security assistance and aid using existing authorities, such as Presidential Drawdown, to pull from and export existing stocks. This endeavor was successful because it leveraged the current government workforce, which, notably, is already understaffed. As this wartime pace persists and the urgency of exports to Ukraine endures, the government workforce will have to manage competing priorities and balance urgent security assistance to Ukraine, existing caseloads, and broader strategic initiatives (e.g., Australia-United Kingdom- United State (AUKUS) Security Arrangement) in an already resource constrained environment. The current approach will eventually overwhelm and exhaust an already stressed arms transfer system. Today's international security environment necessitates a modern and nimble arms transfer process designed to surge and sustain high-volume operations in addition to peacetime requirements. Therefore, the U.S. must reexamine its defense trade processes to prepare for and meet future threats.

Government stakeholders and industry professionals agree that the defense trade process is resource intensive due to the number of steps and stakeholders involved in the review process. Both acknowledge that the federal workforce and industry are operating in a resource constrained environment. The current case-by-case review process, articulated in the CAT Policy, will continue to exacerbate challenges in the arms transfer system and extend review timelines. In structure, policy, processes, and resources, DoS must institutionalize efficiency and capability to surge operations. This need becomes greater when considering the expectations of foreign partners and allies engaging in security cooperation and defense trade with the U.S. Such partnerships have expanded beyond the mere transfer of arms and equipment, but include deep, long-term security, industrial, and economic participation, placing greater pressure collectively on the U.S. government (USG) and industry to deliver more. A thorough assessment of the resources and responsibilities required through a modernization lens is needed to sharpen the interagency defense trade apparatus.

Meeting the demands of today's global security landscape requires innovative ways of thinking about U.S. leadership in defense trade that must permeate throughout the interagency process and culture. AIA, PSC, and NDIA respectfully submit the following recommendations for DoS to consider when evaluating changes to the current defense trade system.

Defense Trade Leadership and Resourcing

1. **Strengthen Defense Trade equities within State Department decision-making, including through organizational leadership.** The CAT Policy highlights defense trade as an important tool for achieving U.S. foreign policy objectives. Therefore, the DoS needs an advocacy body for U.S. arms transfers embedded in the department's organizational structure.
 - a. DoS should elevate and reemphasize defense trade as a critical mission area for the Department – and commit the necessary resources to its success. As a critical regulator of defense trade, through the Deputy Assistant Secretary for Defense Trade and the Assistant Secretary for Political-Military Affairs, defense trade must receive greater attention, focus, and prioritization.
 - b. The Directorate of Defense Trade Controls (DDTC) should be led by a career civil servant due to the technical expertise required to meet DDTC's mission. At a minimum, the Deputy Assistant Secretary for Defense Trade billet should be filled with haste and prioritized given its critical role in overseeing the regulatory process that directly impacts foreign policy priorities, including relationships with partners and allies.

2. **Creatively invest in defense trade workforce development.**
 - a. Establish special hiring authorities, to grow quickly and sustainably the number and expertise of defense trade professionals at DoS, especially at DDTC. In times of need, DDTC should have the authority to pull detailees from the interagency to fill demand, including establishing dedicated defense trade and security assistance task forces to draw from the full range of authorities, as needed (e.g., Ukraine surge).
 - b. Prioritize and incentivize career growth for current and future defense trade specialists, including Licensing Officers, Country Desk Officers, U.S. embassy employees, and others by establishing training programs, fellowships or details, and workshops for civil servants internal to DoS, the interagency, and possibly available to industry. These training programs would infuse the values of a modern defense trade environment into the broader national security community, including creativity, flexibility, and speed. Promoting continued education and workforce retention for the defense trade community would facilitate consistency in cooperation and communication between industry and USG.

3. **Optimize the use of DDTC licensing talent and outsourcing while implementing a modern process for routine procedural licenses.** DDTC is continually hampered by staffing challenges with the current workforce down from optimal levels. DoS must look closely at several workforce touchpoints to optimize the strengths of its dedicated talent.
 - a. DoS should review the Human Resources (HR) job code attributed to licensing officers and ensure it reflects the skills and expectations necessary for the role. DoS should also increase connectivity to the HR team located outside of the D.C. area.
 - b. Alternatively, DoS could consider outsourcing and/or bringing on additional contractor support to handle routine license business. To enable this, DoS must define criteria for an outsourced management of purely procedural cases that do not require staffing to the interagency, such as routine “in furtherance of” cases, U.S. Munitions List (USML) category corrections, value increases within certain ranges, addresses or name changes, and reasonable extensions. DoS can broaden the scope of its “do not staff” list, particularly considering rapidly responding to export authorization requests for U.S. allies (e.g., AUKUS) and other key partners.
 - c. Implement a modern framework for routine procedural licenses such as the “inform, pause, and export” silence procedure model like certain exemptions. In such a model, for defined procedural cases the company submits (inform) the request, which is then approved within a certain time (pause), and then, by default, if DoS does not object, the company can proceed (export). The USG can revoke the authority at any time. Professional licensing officers are thus able to focus on requests most pertinent to foreign policy and national security. The metrics by which DoS evaluates its operations will then reflect the work invested in not only routine business, but also the complex cases it supports daily.
4. **Assess annual registration and licensing fees to reflect strategic needs and invest accordingly.**
 - a. Review and revise DDTC’s annual registration fee structure and license fees, with consideration paid to small – and medium-sized companies, and the authorized uses, as outlined in 22 U.S. Code § 2717. Maximize the use of funding sources from registration fees, including potentially raising fees, to fully resource priority areas, including personnel, data management, and process efficiencies.

- b. Industry sees significant areas of opportunity for such funds to better leverage data management tools like the Defense Export Controls and Compliance System (DECCS) or USEXPORTS to improve how DDTC, and the interagency broadly, is tracking cases, precedence, and provisos. Ensure these key systems are reliable. Explore moving unclassified license processing in USEXPORTS off this classified component of the interagency information systems network, SIPR, to improve accessibility and allow for more regular system updates.
- c. Modern Software as a Service (SAAS) platforms should support the tailored needs of DDTC, such as alerts when a case has been held at a point in the process too long, a direct escalatory path within DoS for reviews and approvals or monitoring compliance and enforcement with terms of export authorizations. Utilizing SAAS options may necessitate migrating or porting aspects of USEXPORTS to the unclassified components of the interagency information systems network, i.e., NIPR/OPENET platforms.

Foreign Military Sales / Direct Commercial Sales Authorities and Management

1. **Accelerate policy decision-making and establish timelines to eliminate indefinite processing of export authorization requests.** Export authorization requests that leave industry in limbo due to long policy reviews or licensing timelines have a significant impact on industry's role in FMS and Direct Commercial Sales (DCS) cases. This is particularly burdensome for small and medium-sized companies.
 - a. Establish clear escalation procedures within State and the interagency to promote speed in export policy decisions so that prolonged deliberations do not reduce U.S. global competitiveness. These procedures should also include the ability to pause the escalation process as needed for complex situations and require providing feedback to industry.
 - b. Prioritize transparency with U.S. industry by committing to timelines for consideration of International Traffic in Arms Regulations (ITAR) licenses (i.e., 90 – 120 days). If a request clearly does not meet U.S. policy require it be returned immediately (max. 30 days).
 - c. Establish criteria for when such licenses may need to exceed defined timelines due to procedural issues or other reasons (e.g., end-use check of a foreign party or consignee), and provide direct feedback to the company. For agreements, companies most often have already signed contracts with foreign governments, and therefore benefit from understanding as soon as possible if the contract is executable in alignment with USG policy.

2. **Reserve FMS for sensitive and critical capabilities.** Recalling the “FMS Modernization” white paper developed by AIA, PSC, and NDIA for the DoD FMS Tiger Team, we urge the interagency to review and standardize the process for the designation of certain technologies and systems “as FMS-only”.
 - a. Review the interagency criteria for FMS-only transfer requirements. In addition to creating a more favorable international sales environment for U.S. industry, a clear process that designates only the most sensitive technology “FMS-only” would free USG resources to focus on the capabilities in need of direct USG oversight or requested by foreign partners, while ensuring that DDTC resources can support the additional DCS licensing actions.
 - b. Reframe regional security and arms transfers reviews to lead with a presumption that all items can be transferred via DCS, and that FMS-only designations are intended to achieve specific security cooperation or technology security objectives.
 - c. Establish a transparent and standard process across DoS and DoD for designating items as FMS-only and a process for reviewing such designations. Review semi-annually the FMS-only list with an eye towards reducing the list overall and narrowing the types of items captured, especially for U.S. closest allies and partners.
3. **Prioritize Regular USML Review.** Consistent with delegated authority provided by the President to uphold 22 U.S. Code § 2778(j) - Periodic Review of Items on Munitions List; Exemptions, prioritize the review of USML Categories every two years with the aim of focusing interagency resources to address the threats we face today and the changing technological landscape.
4. **Strengthen authorities for dual-use items initially sold via FMS.** When dual-use items traditionally controlled for export under the Export Administration Regulations (EAR) are added to a Letter of Offer and Acceptance (LOA) under an FMS case, those items are subject to the provisions of the Arms Export Control Act (AECA). This creates several challenges and barriers for industry to support the partner when fast-paced activities, such as repair and replacement, must be executed outside of government-to-government channels. The ITAR 126.6 exemption poses risk to use as industry does not have access to the LOA, and in the Bureau of Industry & Security (BIS) Frequently Asked Questions (FAQs) that these items are “not subject to licensing” applies to smaller components as opposed to items like fuselages or higher assemblies. Fundamentally, these items are captured under process constraints given the original modality of transfer yet fall under commercial trade regulations.

- a. Reduce process burden on the government, industry, and allies and partners by strengthening authorities that make dual use items, even if transferred initially under FMS, eligible for more authorization options, such as the ITAR Open General License (OGL) pilot programs.
5. **Better inform allies and partners, as well as industry, of the State Department's unique authorities.** The State Department holds unique responsibilities for FMS cases and security assistance.
- a. Establish a comprehensive information campaign with enhanced guidance and public information for U.S. embassies, Defense Security Cooperation University (DSCU), allies and partners, and industry on the requirements, implementation and procedures, and limitations of DoS FMS responsibilities. This information campaign will reinforce U.S. leadership in defense trade through greater transparency. Areas where clarity and united U.S. posture would be beneficial to U.S. foreign policy interests include, Third Party Transfers, management of hybrid DCS/FMS cases, Foreign Military Financing (FMF), security assistance, and dealing with deviations from and compliance with FMS processes.

Export Authorization Simplification and Streamlining

1. Pre-decisional marketing approvals.

- a. Establish relevant criteria to approve marketing licensing to proceed without full policy and release and disclosure determinations with appropriate anticipatory release policy and/or caveats to avoid false impressions. Such licensing would elicit a formal Letter of Request (LoR) or Letter of Intent (LOI) from the foreign partner to trigger the technology security and foreign disclosure reviews. In this way, LoRs and LOIs would therefore be better informed and more actionable, saving the USG time and accelerating capability to partners. This approach would be enabled by DoS and DoD aligning on proviso language for Limited Technical Data Licenses (i.e., DSP-5) that approves marketing efforts while a) indicating technology security and foreign disclosure reviews are required before additional licensing, and b) not committing the USG to approve final exports under the marketing request.

2. Support and solicit industry input on technology security and control during pre-transfer reviews. Technology security, control, and transfer policy should acknowledge that achieving foreign policy objectives is shared between DoS, DoD, and industry.

- a. DoS and interagency policy should support a mechanism for industry to submit proposals for technological and operational improvements to security and control requirements during early pre-transfer reviews, reducing the need for costly implementation of current programs like End-Use Monitoring.

3. **Promote license processing predictability.** When applying for an export authorization with DDTTC, industry relies on its Guidelines for Preparing Agreements to address all necessary requirements in the application effectively. However, not all government licensing officers apply uniform practices in evaluating the applications.
 - a. Industry seeks predictability and consistency in administrative aspects of the export authorization process. It is recommended to create a Guidelines for Processing Licenses and Agreements for Licensing Officers that is understandable, if not entirely predictable, but provides greater consistency while also allowing flexibility for DDTTC to maneuver when policy is in flux, where case-by-case decisions must be made, or circumstances otherwise warrant.
4. **Revamp the handling of classified export authorizations and provisos.** Handling classified authorizations and provisos has always required unique resources and specific security procedures on the part of both the USG and industry. Prior to the COVID-19 pandemic, the State Department authorized in-person pick-up of export authorizations that incorporated classified provisos or were classified themselves. Since the pandemic, to limit human-to-human interaction, this is no longer an option for industry. Now the process to receive classified provisos electronically is ad hoc and the default option is via mail, inherently adding notable time and resources to industry operations. Moreover, these options are particularly difficult for small to medium-sized companies with limited resources.
 - a. Reinststitute or update the process for delivery and receipt of classified export authorizations and provisos, particularly for cleared facilities.
 - b. Beyond reinstituting in-person receipt, industry recommends formal USG support for electronic transmission of classified export authorizations, including support for SIPR accounts to be made available to company Empowered Officials.
5. **Create Proviso Rectification Process.** The current proviso reconsideration process under the ITAR is intended to support in-depth, substantive requests by industry for a reevaluation of a particular limitation placed on the export. This includes re-staffing to the interagency and thorough policy reviews to ensure alignment with U.S. foreign policy and national security interests, resulting in adding considerable time to the overall request.
 - a. Industry recommends an option for industry to address purely administrative proviso errors applied to export authorization and license requests. This could be used, for instance, in the event a proviso no longer applies because policy has changed and was inaccurately applied to a request and therefore should be completely removed, or if an outdated proviso were applied to the request and must be updated to reflect a new position. Proviso rectification to correct errors should fall under procedural cases requiring limited review and no staffing, rather than the current requirement for in-depth substantive proviso reconsideration.

Congressional Notifications and Appropriations

1. **Review Congressional Notification (CN) processes and align tiered review.** The Congressional Notification process ensures requisite Congressional oversight of major DCS and FMS cases. The process consists of an informal tiered review phase followed by a formal, statutory review in both chambers of Congress. The CN tiered review is a consensus-based system of informal review intended to address Congressional concerns prior to formal notification in a non-public forum.
 - a. Thresholds and formal notification timelines for CNs for both DCS and FMS cases were originally established in Section 36 of the Arms Export Control Act (AECA) and have not been significantly altered in recent decades. Moreover, notional informal timelines for tiered review were established more than a decade ago through negotiations between the DoS and House Foreign Affairs and Senate Foreign Relations Committees. Stakeholders should review whether current thresholds and timelines remain appropriate and make recommendations for potential changes to the requirements. This could include the creation of an escalatory inflation clause to ensure that CN thresholds keep pace with inflation.
 - b. Given the importance of defense trade to our closest partners and allies, Congress is increasingly concerned about programmatic details, milestones, and delivery timelines associated with key FMS and DCS activities. With this demand for information, industry should be part of the tiered review consultation process. This will help avoid prolonged delays in the form of insufficient information at the time of exchange or follow-on queries. Industry recommends that DoS and DoD develop best practices to engage industry as FMS and DCS cases move to the Hill to ensure rapid flows of accurate information. This could include pre-notification coordination calls.
 - c. For transparency, industry recommends, beyond what is currently reflected, an update to the DoD computing system (ELISA) with more details regarding the status of export authorization requests and the CN process, including tiered review statuses.
2. **Clarify Foreign Military Financing (FMF) Loan Authority.**
 - a. Industry commends the DoS and Congress for establishing a robust FMF loan authority to assist certain international partners supporting Ukraine and Taiwan. Given the newness of the program – and its importance as a demonstration program that could be expanded around the world, we urge DoS to provide continued updated guidance to foreign partners and U.S. embassy personnel, including DoD security cooperation officers, on the scope, criteria, and process for administering FMF-backed loan authority. FMF loan authority training could also

be incorporated into standard training from the Defense Security Cooperation University (DSCU) and made a part of annual combatant command security cooperation planning efforts. We also urge transparency and clarity regarding priorities and processes with industry, so we are positioned to direct customer queries to the appropriate government channels.

3. **Support and new applications for the Special Defense Acquisition Fund (SDAF).**
 - a. Industry supports DoS efforts to raise the cap on SDAF to support procurement of urgently needed munitions for Ukraine. We support DoS directly requesting appropriations to enable expansion and recapitalization of SDAF for munitions and other urgently needed defense equipment, as needed. Moreover, industry urges DoD to work with DoS to consider the use of SDAF as a mechanism to overcome exportability challenges.

Establishing Mechanisms for Enhanced Government – Industry Information Sharing

1. **Industry input to modernization efforts.** For all relevant recommendations above, industry recommends seeking input on implementation from trusted industry experts, including associations.
2. **Continuation of dialogue with industry.** The Defense Trade Advisory Group (DTAG) is an official Federal Advisory Committee (FACA) that provides input and support to DDTC.
 - a. Industry supports the continuation of such a FACA and the implementation of the DTAG recommendations. In other areas, beyond the specific regulatory requirements of the ITAR, industry is keen to engage even in informal fora, such as technology security practices, impacts of the CAT Policy, supply chains, etc. As an overarching measure, industry suggests releasing internal DoS guidance, in coordination with key DoD and Commerce Department stakeholders, to encourage USG stakeholders to conduct more engagement and dialogue with U.S. industry.
 - b. As DoS, and the interagency, improves its information systems infrastructure, the Defense Export Controls and Compliance System (DECCS) User Group (DUG) volunteers can serve as an incubator for recommendations, test and trial runs, and user experience.