

June 12, 2025

Chairman Ryan Zinke
Foreign Arm Sales Task Force
Foreign Affairs Committee
U.S. House of Representatives

Ranking Member Madeleine Dean
Foreign Arm Sales Task Force
Foreign Affairs Committee
U.S. House of Representatives

Dear Chairman Zinke and Ranking Member Dean,

On behalf of the members of the National Defense Industrial Association (NDIA), we thank you and the House Foreign Affairs Committee for your continued leadership to strengthen the U.S. defense industrial base (U.S. DIB) and our cooperation with our international allies and partners. We also appreciate the opportunity to provide feedback to the Foreign Arms Sales Task Force following the industry roundtable in April.

NDIA is the nation's largest defense industry association, representing over 1,700 corporate and over 65,500 individual members from small, medium, and large contractors, a majority of which are small businesses. NDIA members design, manufacture, apply, and maintain the cutting-edge technologies, systems, and platforms that our armed forces rely upon to deter aggression and defend our nation and its interests. As such, our members' professional and informed views on foreign defense trade reflect the complexity and nuance of the issues under discussion. Although there are several areas within defense trade in need of reform, NDIA will focus its comments on three main areas where changes will have a large, positive impact on defense trade: (1) moving to a single licensing agency, (2) modernizing the FMS-only lists, and (3) removing and streamlining barriers and processes.

The Need to Reform Defense Trade:

The strong network of global and regional alliances and partnerships the U.S. has built and maintained since the end of World War II serves as the diplomatic and military operational center of gravity in national deterrence and, should conflict erupt, will help provide the U.S. with a decisive advantage in ultimately prevailing in conflict. To keep them strong, the U.S. must focus on updating the policy, legal, regulatory, and technology security framework governing U.S. defense trade. This includes modernizing our Foreign Military Sales (FMS) and direct commercial sales (DCS) processes, deepening our technological cooperation and integration with our closest allies and partners, and having clear parameters around technology releasability and export controls.

Many of the laws and regulations for defense trade, including the International Traffic in Arms Regulations (ITAR), were designed and written in an era when the nation enjoyed technological dominance. However, over the last several decades, U.S. allies and partners — as well as competitors around the world focused on building their own indigenous defense industrial sectors — have become competitive centers of innovation and cutting-edge technology. Globalization, the

migration of innovation to the commercial sector, and the proliferation of dual-use technologies incentivized them to explore new and innovative ways of doing business.

In the current strategic environment, the U.S. approach to defense trade is more of a roadblock to industry than an effective safeguard of technology. In NDIA's *Vital Signs 2025 Survey*, private sector respondents were asked to identify the biggest barriers to selling products and services to foreign customers. The top four barriers include: (1) ITAR (55%), (2) Slow timelines for Letter of Request (LOR) and Letter of Acceptance (LOA) and contracting/award process (41%), (3) Transparency with and communication from the U.S. federal government (39%), and (4) Export Administration Regulations (EAR) (38%). It is notable that in the *Vital Signs 2024* report, private sector respondents also listed ITAR as the biggest barrier to selling products to foreign customers at 45%.

Additionally, in the *Vital Signs 2025 Survey*, 55% of respondents whose companies engage in DCS or FMS identified these sales as either extremely or very important. Reforming and modernizing FMS is critical to strengthening the resiliency of the U.S. DIB in an era of great power competition, to enhancing diplomatic ties by strengthening our network of alliances and partnerships, and to improving the effectiveness of those relationships by enhancing military interoperability at the operational level.

Modernizing the FMS-only Lists:

National policymakers and geographic combatant commanders are continuously searching for innovative ways to reduce the current time required — measured in years, not months — under the FMS process to get definitized contracts for key capabilities required to optimize interoperability between the U.S. military and its allies. As noted in NDIA's *Vital Signs 2025* report, U.S. industry usually lacks visibility into where the FMS case is in the process, if the case is being prioritized, or even if the case should be prioritized from a U.S. national policy perspective.

As noted during the Committee roundtable, as the Task Force Members examine timelines, companies encourage the Committee to examine legislative solutions to improve the time required for allies and partners to find a program office to discuss a LoR and to track the time between when a program office receives a LoR to a LoA. In addition, from the original request for pricing and availability process to starting to make deliveries under a contract award — which requires a request for proposal, Truth in Negotiations Act review, and contract negotiations — each step in this process can take years. Finally, many FMS cases have long-lead parts, some of which require 18 to 36 months to acquire, which means that without careful management of the timelines, there can be significant gaps in the production schedules.

The uncertainty and lack of predictability does not incentivize industry to invest in additional capacity to support FMS. In many high-profile cases, this has created a demand backlog that can also be measured in years. The rational solution — to invest in additional capacity — can only be implemented if there is a business case to do so.

Conversely, DCS timelines are normally measured in months and have the added benefit of permitting foreign countries to make their own commercial investments to increase production rates. These timelines also improve the business case for U.S. companies to make additional investments in production facilities and to improve the planning around long-lead parts and components.

One solution is to revisit the U.S. government's FMS-only policy described in the Security Assistance Management Manual (SAMM) to provide more flexibility for direct commercial sales. The *Vital Signs 2025* report recommends the Pentagon update the manual to provide more opportunities for commercial sales.

Modernizing the FMS-only list to allow for more DCS opportunities can accelerate sales to allies and partners and increase the number of U.S. jobs while maintaining important safeguards. There is also the added benefit of foreign countries making their own commercial investments to increase production rates, which can be supplemented by the potential U.S. private capital interest in nontraditional commercial companies. These policy changes include weighing whether a particular country has established end-user processes, operational understanding of the technology, and track records of securing U.S. technology. Finally, nontraditional companies note that to fully optimize the DCS process, it will be important to modernize follow-on authorities, specifically Building Partnership Capacity (BPC) and Foreign Military Financing (FMF), to allow for DCS. In addition, companies encourage the Committee to expand the current list of 10 countries eligible for FMF – Israel, Egypt, Jordan, Morocco, Tunisia, Turkey, Portugal, Pakistan, Yemen, and Greece – to allies and partners in the Indo-Pacific region and Eastern Europe.

Removing and Streamlining Barriers and Processes:

AUKUS

The Section 126.7 AUKUS ITAR exemption for the trilateral security partnership between Australia, the United Kingdom, and the United States, put in place in 2024, was an important, but incomplete, first step in a larger discussion regarding defense trade that needs to occur. Industry is concerned that the Excluded Technology List (ETL) in the final rule is too broad, includes technology essential to trade with Australia and the UK, and cannot identify the reason behind some technologies being listed on the ETL. As such, industry supports further review of the ETL, especially examining restrictions without a statutory basis.

Congressional Notification

Additionally, within AUKUS and defense trade more broadly, the congressional notification and certification process can trigger additional wait times for both FMS and DCS transactions. The dollar threshold for congressional notification under the Arms Export Control Act has not been updated to account for inflation since 2003. Updating this threshold would contribute to speeding up the FMS process without diminishing Congress's important oversight role. Congress should also

review the need for congressional review for AUKUS transactions, which is intended to efficiently increase defense trade with our closest allies and partners.

Technology Security and Foreign Disclosure

Another important area to address in defense trade is the technology security and foreign disclosure (TSFD) process, which is a set of guidelines and procedures that govern the sharing of sensitive technologies with foreign entities. It is intended to balance the need for technological advancement with the need to protect national security, but the process has been identified as one of the key drivers for delays in defense trade. Congress took note and included Section 918 of the fiscal year 2024 National Defense Authorization Act to direct the Secretary of Defense to carry out an initiative to reform and improve policies, processes, and procedures applicable to technology release and foreign disclosure decisions by the Department.

The reform initiative is meant to include the development of recommendations to increase efficiency and reduce timelines for the processing of foreign disclosure decisions, to standardize applicable processing and information-sharing systems, and to continually improve these processes within the Defense Department and across the interagency. The reform initiative is also intended to include the development of metrics for the management of the technology release and foreign disclosure process to provide objective and subjective measures of performance to improve senior leader decision-making.

In late December 2024, the Department provided a report to Congress responding to Section 918. While the report itself includes controlled unclassified information, key takeaways from the executive summary make it clear that it will take senior leader engagement across the interagency to streamline the authorities, simplify the amalgamation of processes across the government and enable the technology security and foreign disclosure process to operate at speed and scale across multiple priority areas simultaneously.

Moving forward, the Committee is encouraged to examine whether there should be a primary lead for TSFD. Under this construct, the lead official should be an individual with the authority to act and who understands policy, military operations, and the Administration's strategic intent. One model for the Committee to examine would be to review the National Disclosure Policy Committee. NDIA would also encourage the Committee to examine modernizing the FMS-only list by: (1) making the list publicly accessible to promote transparency and industry alignment; and (2) ensuring that FMS-only designations are based solely on clearly defined and publicly available DoD acquisition requirements or on Enhanced End Use Monitoring (EEUM) determinations. Finally, since the Section 918 report was labeled as CUI, it has been more difficult for industry to review and provide substantive feedback. The Defense Technology Security Administration (DTSA) should release the full Section 918 report to organizations capable of handling CUI.

Non-Program of Record Sales

Whereas a Program of Record (POR) weapons system is a line item in the U.S. Department of Defense's (DoD's) annual budget, a non-Program of Record (NPOR) is an item not under the purview of DoD's planning and budgetary process. This can make the FMS process even more difficult for these defense articles, as there is no clear program office owner to manage the LOR and drive the process forward. In line with the 2023 DoD FMS Tiger Team recommendations, it would be beneficial to assess the utility of a dedicated FMS contracting construct for NPORs.

Moving to a Single Licensing Agency for Dual-Use Export Controls:

Dating back to the aftermath of World War II, federal government controls on U.S.-developed technology and capabilities have been viewed as a powerful tool in U.S. national security strategies. In addition to U.S. unilateral controls, the U.S. also participates in four major multilateral control regimes: the Australia Group (chemical and biological weapons), the Missile Technology Control Regime (MTCR) (missiles and missile technology), the Nuclear Suppliers Group (NSG) (nuclear weapons), and the Wassenaar Arrangement (conventional arms and dual-use goods and technologies).

After the Cold War, the U.S. government prioritized U.S. export control policies on limiting the proliferation of weapons of mass destruction (WMD) and missile technology. However, with the public emphasis, including in both the 2018 and 2022 National Defense Strategies, on the re-emergence of great power competition, U.S. export control policy debates are broadening in scope as both the executive branch and Congress consider export controls a central pillar in preserving U.S. technological leadership. Additionally, given the pace of technological innovation and the People's Republic of China's aggressive blending of civil-military fusion of technology, policy conversations have resurfaced in Washington about the potential utility in moving to a single licensing system.

Currently, there are multiple federal departments and agencies with responsibility for export controls, and it can be confusing for industry to navigate the byzantine system. For instance, in its Fiscal Year 2022 annual report – its most recent published report – the Bureau of Industry and Security stated it worked with the U.S. Department of State (DoS) on 248 requests to determine whether a particular item was subject to DoS's ITAR or the U.S. Department of Commerce's EAR. In many cases, those adjudications took months to complete. To help streamline the process and avoid unnecessary confusion and delays, NDIA would recommend that the Task Force re-evaluate the merits of moving to a single licensing agency for dual-use items and munitions, a single control list, and a single agency for export control enforcement.

Closing

Thank you again for your continued leadership to help strengthen the U.S. DIB and our cooperation with our international allies and partners. NDIA appreciates the opportunity to present our comments and recommendations to the Foreign Arm Sales Task Force, and we look forward to continuing to work with the Task Force and Committee to advance much-needed defense trade reforms.

Sincerely,

National Defense Industrial Association