

ALERT

# House Foreign Affairs Committee's TIGER Task Force Releases Report on Recommendations to Improve the FMS Process

February 29, 2024

**WHAT:** The House Foreign Affairs Committee's Technical, Industrial, and Governmental Engagement for Readiness (TIGER) Task Force has released a report identifying problems with the Foreign Military Sales (FMS) process and providing recommendations to improve the process. The following provides a summary of the problems identified and solutions offered in the TIGER Task Force's report. For a complete explanation of the problems and recommendations, view the report [here](#).

## *Problems with the FMS Process*

- **Lengthy Congressional Review:** Because threshold values for congressional review of FMS cases have not been adjusted for inflation in over two decades, more FMS cases are subject to congressional review today than originally intended when the Arms Export Control Act was enacted in 1976.
- **Lack of Accountability for Senior Officials:** As senior U.S. Department of Defense (DOD) and U.S. Department of State (DOS) officials are not directly accountable for delays in the FMS process, there is no urgency in processing FMS cases.
- **Inconsistent DOD Values:** Inconsistency in how DOD values the strategic benefit of sharing major defense articles with allies results in deprioritizing exportability and insufficiently prioritizing getting FMS cases on contract.
- **FMS Decisions Lack Context:** FMS decisions are not consistently made in the context of a global security assessment, and key players in the FMS process lack a common understanding,

## Authors

W. Benjamin Phillips, III  
Associate  
202.719.4376  
bphillips@wiley.law

## Practice Areas

Export Controls and Economic Sanctions  
Government Contracts  
National Security

resulting in inefficiency.

Additionally, the report noted that the FMS process can take years from start to finish, and that these delays in completing FMS cases can threaten U.S. national interests as strategic partners turn elsewhere for equipment. This creates uncertainty in the U.S. defense industrial base and reduces interoperability between the United States and its foreign partners. The report attributed the delays to antiquated bureaucracy, a decline in American manufacturing, and shortfalls in the U.S. defense industrial base.

#### *Recommendations to Improve the FMS Process*

- **Adjust Thresholds for Congressional Review:** Increase the threshold notification amounts to account for the 69% total DOD inflation rate over the past 20 years. Increase threshold notification amounts for NATO-plus countries to \$42 million for major defense equipment (MDE), \$166 million for defense articles and services, and \$500 million for design and construction services. For non-NATO countries, increase to \$23 million for MDE, \$83 million for defense articles and services, and \$332 million for design and construction services.
- **Accountability for Senior DOD and DOS Policy Officials:** Hold senior officials accountable for long-running and high-value FMS cases and require certification of not using Presidential Drawdown Authority (PDA), which allows the President to authorize immediate transfer of defense equipment and support from U.S. stockpiles. Mandate quarterly interagency review of, and biannual certification by the Under Secretary of Defense for Policy that anticipated delivery meets U.S. foreign policy interests for, FMS purchases of \$1 billion or more. Also mandate biannual certification by the Secretary of State that not using PDA serves U.S. interests for FMS cases of three years or longer.
- **Better Protect Exportability in Contracts:** Senior policy officials should provide input on exportability to ensure any decision to remove exportability requirements from a contract considers strategic objectives beyond obtaining a U.S. version of a defense item. The Under Secretary of Defense for Policy must certify that U.S. foreign policy needs are met before exportability can be waived. The Special Defense Acquisition Fund can be used for exportability requirements once production has started.
- **Reform Interagency Communication:** Establish a central repository for tracking FMS cases that is accessible by all stakeholders. DOD should create and enforce a common FMS contracting standard operating procedure. DOD and DOS should develop and maintain an online database where U.S. government stakeholders can track all security cooperation efforts.

**WHAT IT MEANS FOR INDUSTRY:** The report from the House Foreign Affairs Committee's TIGER Task Force continues the trend of FMS stakeholders dissecting the current FMS process, identifying its flaws, and recommending ways to create a more efficient process. Considering the microscope the FMS program has recently been placed under by government and defense industry stakeholders, it seems likely the program and its implementing regulations are set for an overhaul sooner rather than later. Thus, contractors with an interest in the FMS program should be on the lookout for proposed changes to the process.

Indeed, these recommendations follow similar recommendations from DOD's own "Tiger Team" of senior officials tasked with finding ways to streamline the FMS process. Our discussion of the DOD Tiger Team's recommendations can be found [here](#). Relatedly, the Biden Administration revised the Conventional Arms Transfer Policy, which we discussed [here](#). In addition to government stakeholders, defense industry stakeholders have also taken a hard look at improving the FMS process. For example, the Aerospace Industries Association (AIA), National Defense Industrial Association (NDIA), and Professional Services Council (PSC) released two reports on modernizing the FMS system – one report to the DOD Tiger Team and a second report focused on DOS's role. Our discussion of the AIA, NDIA, and PSC reports can be read [here](#) and [here](#).