

ALERT

More on FMS Modernization: Second Industry Report Highlights State Department's Role

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WHAT: In a prior alert, we discussed a report from the Aerospace Industries Association (AIA), National Defense Industrial Association (NDIA), and Professional Services Council (PSC) presented to a U.S. Department of Defense (DOD) Tiger Team on modernizing the Foreign Military Sales (FMS) program. On June 8, the AIA, NDIA, and PSC released a second report on defense trade modernization, this time primarily targeted at the U.S. Department of State's (DOS) Bureau of Political Military Affairs.

According to the second report, the U.S. National Security Strategy (NSS) and the Conventional Arms Transfer (CAT) Policy prioritize maintaining the United States' competitive advantage in the face of strategic competition from Russia and China (our discussion of the Biden Administration's CAT Policy can be read [here](#)), and industry is a vital component to achieving national security objectives. However, both government stakeholders and industry professionals agree that the defense trade process is resource intensive, and that DOS needs to institutionalize efficiency and capability to surge operations to keep up with current demands.

Believing that meeting the demands of today's global security landscape requires innovative ways the United States thinks about its leadership in defense trade, the latest report identifies five additional core themes for modernizing the FMS and defense trade system. We summarize the core themes and highlight key recommendations below. For a complete explanation of the themes and recommendations, view the full report [here](#).

Authors

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

Practice Areas

Government Contracts
National Security

Strengthen Defense Trade Leadership and Resourcing

To give defense trade greater attention, focus, and prioritization, DOS should elevate and reemphasize defense trade as a critical mission area and commit the necessary resources to its success.

DOS needs to invest in defense trade workforce development, and to do so it should consider establishing special hiring authorities to grow the number and expertise of defense trade professionals and establish training programs, fellowships, and workshops that incentivize career growth for trade specialists.

The Directorate of Defense Trade Controls (DDTC) is hampered by staffing issues, so DOS should ensure the job codes attributed to licensing officers reflect the necessary skills, consider outsourcing and/or procuring contractor support to handle routine licensing, and implement a modern framework for routine procedural licensing that allows professional licensing officers to focus on requests relevant to foreign policy and national security.

Streamline FMS and Commercial Sales Authorities and Management

To accelerate policy decision-making and eliminate indefinite processing of export authorization requests, DOS should establish escalation procedures that include the ability to pause the escalation process when needed, commit to 90-120 day timelines for consideration of International Traffic in Arms Regulations (ITAR) licenses, and establish criteria for when licenses may need to exceed timelines.

Citing its first report to the DOD Tiger Team, the report recommends DOS reserve FMS designation for sensitive and critical capabilities. This means designating only the most sensitive technology as FMS-only, reframing regional security and arms transfers review to begin with a Direct Commercial Sales (DCS) presumption, and establishing a transparent standard and process of review for FMS-only designations.

To mitigate the challenges and barriers for supporting dual-use items subject to the Arms Export Control Act (AECA), authorities that make dual-use items eligible for more authorization options should be strengthened to reduce the process burden on government, industry, and allies and partners.

Simplify Export Authorizations

To streamline export authorizations, the report recommends DOS establish criteria for pre-decisional marketing licensing approval that would be enabled by DOS and DOD aligning proviso language that approves marketing efforts while indicating technology security and foreign disclosure review are required before additional licensing and not committing to approve final exports under the marketing request.

Additionally, the report recommends revamping the handling of classified export authorizations and provisos to include formal support for electronic transmission of classified export authorizations and creating a process for industry to address purely administrative proviso errors.

Review Congressional Notifications and Rethink Government Funding

Noting that the thresholds and formal notification timeliness for Congressional Notifications (CN) have not been significantly altered in decades, the report recommends reviewing whether the current thresholds and timelines are appropriate and developing best practices to engage industry as FMS and DCS cases are reviewed. An additional recommendation is to update the DOD computing system ELISA with more details regarding the status of export authorization requests and the CN process.

Enhance Government-Industry Information Sharing

DOS should seek input from industry regarding implementation of the recommendations contained in the report and continue dialogue with industry.

WHAT IT MEANS FOR INDUSTRY: As the AIA, NDIA, and PSC continue to produce defense trade modernization reports for various agencies involved in the FMS and DCS processes, substantial changes to those processes seem more likely considering increased strategic competition from China and Russia. Indeed, on June 13, DOD released comprehensive recommendations to strengthen FMS. Thus, contractors should keep an eye out for DOS to do the same in the near future. Stay tuned for an alert on DOD's FMS recommendations.