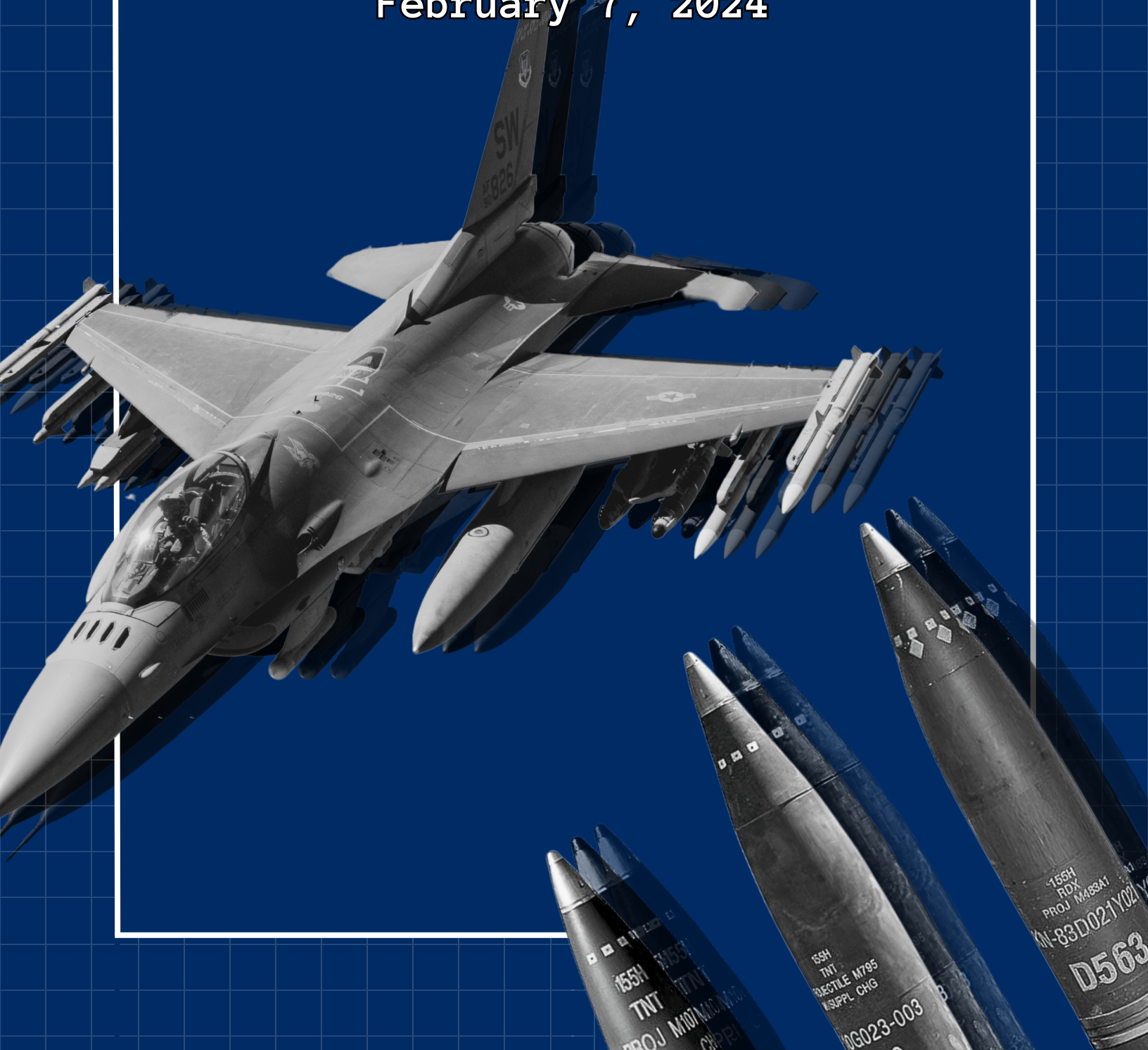




# FOREIGN MILITARY SALES TIGER TASK FORCE: REPORT

February 7, 2024





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## EXECUTIVE SUMMARY

The House Foreign Affairs Committee, led by Chairman Michael T. McCaul, created a bipartisan Foreign Military Sales (FMS) Technical, Industrial, and Governmental Engagement for Readiness (TIGER) Task Force to identify legislative improvements to the State Department-led FMS process.<sup>1</sup> Delays and lack of transparency associated with FMS present increased risk to U.S. national security, as allies and partners must choose between waiting on the U.S. for needed defense capabilities or looking elsewhere at the expense of U.S. influence and domestic defense manufacturing.<sup>2</sup> The U.S. offers a strong value proposition with its approach to FMS, offering not just the equipment but a whole package that includes training and sustainment. As the U.S. seeks to be the partner of choice to nations around the world, it must realize that speed is a key factor for nations choosing their security partners, and the U.S. must compete more effectively. Numerous cases face delays that directly endanger U.S. national security to date, and for Taiwan alone, 19 outstanding weapons purchases totaling \$22 billion dollars have been approved by Congress but await delivery in 2027 or later. Some cases do not even have anticipated delivery dates assigned. Simply put, the FMS process as it functions today fails to meet the challenges posed by the most dangerous national security environment since World War II.

While there have been numerous studies commissioned from the Departments of State and Department of Defense (DoD), as well as the defense industry, no similar congressional effort has sought to specifically identify legislative fixes to the FMS process.

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<sup>1</sup> [McCaul Announces Foreign Military Sales Task Force - Committee on Foreign Affairs \(house.gov\)](#).

<sup>2</sup> [Department of Defense Unveils Comprehensive Recommendations to Strengthen Foreign Military Sales > U.S. Department of Defense > Release.](#)  
[FMS Modernization: U.S. Industry Feedback to the Department of Defense Foreign Military Sales \(FMS\) Tiger Team - Aerospace Industries Association \(aia-aerospace.org\)](#).

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The eight members of the bipartisan Task Force held meetings with representatives from the U.S. government, defense industry, and foreign governments to chart a path forward.<sup>3</sup>

The Task Force found that the FMS process remains oriented towards a prior era when the paramount security concern was preventing the transfer of technology to the Soviet Union, not on maximizing the policy and strategic value of our network of alliances and partnerships. The return of great power competition, marked most acutely by the rise of a technologically advanced China, makes the outdated FMS process an unacceptable security risk.

**Consequently, the Task Force identified four key problems with FMS:**

- 1** Many more arms sales cases are subject to congressional review now than when the *Arms Export Control Act* (AECA) was first signed into law in 1976. Congressional review is one of the longer processes for a complicated FMS case.<sup>4</sup> The threshold values for a sale to require congressional review has not been adjusted for inflation for over two decades.<sup>5</sup>
- 2** Senior Department of State and Department of Defense officials are not directly accountable for significant delays in FMS cases, creating a lack of urgency to speed the process up.
- 3** DoD does not consistently value the strategic benefit of sharing major defense articles with our allies. This produces decisions on contracts that deprioritize exportability and results in insufficient prioritization of getting FMS cases on contract.

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<sup>3</sup> The members of the Congressional Foreign Military Sales TIGER Task Force are: Co-leads Rep. Mike Waltz (R-FL) and Rep. Seth Moulton (D-MA), Rep. French Hill (R-AR), Rep. Mike Garcia (R-CA), Rep. Rich McCormick (R-GA), Rep. Young Kim (R-CA), Rep. Jason Crow (D-CO).

<sup>4</sup> [Transfer of Defense Articles: Foreign Military Sales \(FMS\) \(congress.gov\)](#).

<sup>5</sup> [Arms Sales: Congressional Review Process \(crs.gov\)](#).

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- 4** FMS decisions are not always made in the context of the full global security assessment, and there is no common operating picture for the FMS process across the DoD, State, Congress, defense industry, and our allies and partners, leading to confusion and inefficiency.

### **Recommendations**

Adjust the thresholds of Congressional notification for inflation.

Hold senior policy officials at DoD and State accountable for long-running and high-value FMS cases, including requiring certification about not using Presidential Drawdown Authority (PDA).

Better resource the Special Defense Acquisition Fund (SDAF).

Ensure that partner negotiations for FMS and other arms sales incorporate the U.S. assessment of the regional threat environment.

Ensure that exportability is not eliminated from contracts without review and certification.

Provide information transparency to DoD, State, defense industry, and partners about cases.

Incentive sales of innovative defense technologies, even if an item is not an existing program of record.

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These problems led the Task Force to make recommendations to modernize the FMS process and address concerns of our allies, partners, and defense industrial base.

## INTRODUCTION

The statute that guides the sale of U.S. military equipment, the *Arms Export Control Act of 1976*, lays out a process designed for the Cold War, when the U.S. maintained a clear technological and industrial advantage over adversaries.<sup>6</sup> The primary purpose of the FMS process and associated regulatory regimes like the International Traffic in Arms Regulations (ITAR) were to protect that competitive edge. The world is different today. The return to an era of great power competition means that the U.S. government no longer has a monopoly on new technology. In today's competition with China, America's center of gravity is its global alliance network. New geopolitical realities require a greater emphasis on the speed and ease with which the U.S. shares capabilities with friends, while still maintaining U.S. technological security.

Russia's further invasion of Ukraine in February 2022 demonstrates this shift. High intensity inter-state war in Europe has meant casualty counts and ammunition expenditures not seen since 1945.<sup>7</sup> The U.S. defense industrial base has struggled to produce enough key munitions to support Ukraine – not to mention the high demand to maintain U.S. military readiness. In Ukraine, as elsewhere, the primary problem is not that rogue states might access U.S. technology, but rather that U.S. adversaries' defense production might outpace the United States or its allies in a conventional conflict.

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<sup>6</sup> Arms Export Control Act (AECA) of 1976 (22 U.S.C. §2751 et seq.).

<sup>7</sup> [Ukraine: Conflict at the Crossroads of Europe and Russia | Council on Foreign Relations \(cfr.org\)](#)



## 155mm Artillery Rounds<sup>8</sup>

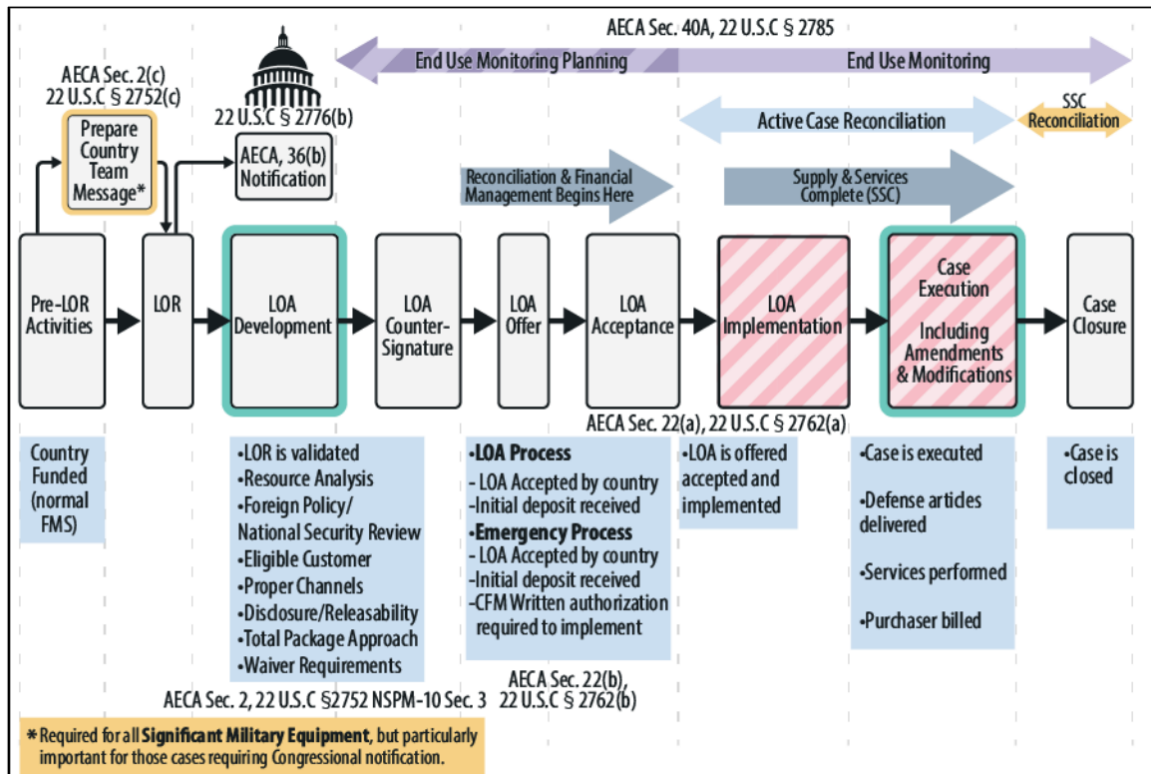
### Monthly Ukrainian Expenditure and U.S. Production Rates in Comparative Perspective

Estimated Ukrainian Usage (monthly)	Current U.S. Production Output (monthly)	Target U.S. Production Output (monthly)
80,000–240,000	28,000 (as of November 2023)	100,000 (by December 2025)

### Foreign Military Sales Process

The entire FMS process provides support to allies and partners along a timeline that can take years from the Letter of Request (LOR) phase to the Letter of Offer and Acceptance (LOA).

**Figure I. Foreign Military Sales (FMS) Process**



**Source:** Defense Security and Cooperation Agency, annotated by CRS.

**Notes:** LOR = Letter of Request; LOA = Letter of Offer and Acceptance; SAMP = Security Assistance Manual.

<sup>8</sup> Data provided by Congressional Research Service.

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Delays to complete a case threaten the U.S. national interest in four critical ways:

- ▶ Strategic partners wait too long for crucially needed defense capabilities that might change the balance of power in our national interest today.
- ▶ Strategic partners turn elsewhere for equipment.
- ▶ The U.S. domestic defense industrial base faces additional uncertainty.
- ▶ Lower interoperability between U.S. and foreign partners.

Delays in FMS cases are not solely the fault of antiquated bureaucracy, but also reflect the decline of American manufacturing and shortfalls in the U.S. defense industrial base. While Ukraine uses between 80,000-240,000 155mm artillery rounds per month, current U.S. monthly production is about 28,000.<sup>9</sup> After nearly two years of war, U.S. support for Ukraine – though vital to national security – has strained American stockpiles. Since the beginning of the war in Ukraine in 2022, the Biden administration used Presidential Drawdown Authority (PDA) to transfer more than \$46 billion worth of arms from the United States to Kyiv.<sup>10</sup> Congress has allocated money to resupply the U.S. military’s own stocks of weapons. In July 2023, the U.S. announced that because it was low on 155mm shells, it would be forced to send Ukraine cluster munitions instead.<sup>11</sup> More orders for 155mm shells, like those of other munitions and weapons systems, have gone unfulfilled.

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<sup>9</sup> Data provided by *Congressional Research Service*.

<sup>10</sup> [How Much Aid Has the U.S. Sent Ukraine? Here Are Six Charts. | Council on Foreign Relations \(cfr.org\)](#).

<sup>11</sup> [U.S. to send cluster bombs to Ukraine: What to know about the weapon \(usatoday.com\)](#).

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Nor is Ukraine the only case study. Taiwan, a critical security partner facing an aggressive China, has 19 outstanding weapons purchases totaling \$22 billion dollars, some of which will not be delivered until 2027 or later. Some of these delays are the result of policy decisions, and the prioritization of other conflicts. Others are the result of manufacturing challenges. The defense industrial base is not optimized for wartime production: surge capacity is not yet built into the system. The defense industry has also undergone consolidation in the past thirty years, transitioning from 51 defense prime contractors to five!<sup>12</sup> These mergers are in part a result of market efficiency as larger suppliers produce at economies of scope and scale and address the complexities of serving a single highly regulated customer. However, consolidation has also lowered competition, which lowers the incentives for companies to invest in production capacity without the certainty of contracts to do so.

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<sup>12</sup> [State-of-Competition-Within-the-Defense-Industrial-Base.](#)

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## RECOMMENDATIONS

The Task Force found that the thresholds for congressional notification have not been adjusted since Fiscal Year 2003 despite a 69 percent DoD total inflation rate since that time.<sup>14</sup> As a result, far more FMS cases are subject to congressional review than originally intended by the AECA, and those cases are often for smaller transactions than would have previously been subject to congressional review. While this process is resolved quickly for most cases, it is the cause of significant delays in a small number of cases. Inflation adjusted thresholds would have eliminated these waiting periods for 14 out of 123 sales (11 percent) in 2023 alone, the overwhelming majority of these were for NATO partners.<sup>15</sup> The Task Force recommends updating the congressional notification thresholds to reflect inflation. Currently, in the FMS process for NATO countries plus South Korea, Australia, Japan, Israel, and New Zealand, Congress is to be notified for sales of major defense equipment (MDE) of \$25 million or more, defense articles or services of \$100 million or more, or design and construction services of \$300 million or more. All of these include a 15-day review period. For all other countries, Congress is to be notified for major defense equipment sales of \$14 million or more, any defense articles and services of \$50 million or more, and design and construction services of \$200 million or more, with a 30-day review period.<sup>16</sup> Adjusting for DoD inflation since FY 2003 (the last time congressional notification requirements were modified) would change the thresholds to \$42 million for MDE, \$166 million for defense articles and services, and \$500 million for design and construction services (for NATO plus) and \$23 million for MDE, \$83 million for defense articles and services, and \$332 million for design and construction services (for all other countries).

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<sup>14</sup> Security Assistance Act of 2002 (division B of the Foreign Relations Authorization Act, Fiscal Year 2003; Public Law 107-228).

<sup>15</sup> Data provided by Congressional Research Service.

<sup>16</sup> Arms Export Control Act (AECA) of 1976 (22 U.S.C. §2751 et seq.).

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A key driver of Ukraine’s strong military performance is the urgency by which the United States and other Western governments acted to provide weapons to Ukraine. These included Javelin anti-tank and Stinger anti-aircraft weapons, electronic warfare and unmanned aerial system (UAS) technology and armored vehicles, like Challenger and Leopard tanks.<sup>17</sup> Very few of the systems provided by the United States were provided through FMS cases.<sup>18</sup> Rather, they were provided through the agile use of PDA, by which the President can authorize the immediate transfer of defense equipment and support from U.S. stocks, up to a funding cap in response to an “unforeseen emergency.”<sup>19</sup> The Biden administration used PDA as a faster alternative to the lengthy FMS process: between August 2021 and January 2024, it authorized 54 PDA drawdowns valued at \$23.9 billion that would not have otherwise delivered the capabilities within a relevant time frame.<sup>20</sup> It did so because of the policy priority of the moment – that is, that the rapid delivery of weapons to Ukraine was judged a pressing national security imperative that necessitated an alternative to the FMS process.

PDA should not be used in all cases, as it accelerates an interagency review that would otherwise allow for more deliberation on strategy and cost. In other cases, the risk incurred by divesting defense articles from U.S. stocks, even temporarily, is too great. Moreover, PDA must draw from existing funding authorities, such as Section 5505 of the FY23 *National Defense Authorization Act (NDAA)*.<sup>21</sup> Nonetheless, the use of PDA in support of Ukraine shows how faster arms transfers can meaningfully advance U.S. national security.

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17 [U.S. Security Cooperation with Ukraine - United States Department of State](#)

18 [Ukraine – National Advanced Surface-to-Air Missile System \(NASAMS\) | Defense Security Cooperation Agency \(dscamill\)](#).

19 [IF12040 \(congress.gov\)](#); (22 U.S.C. §2318(a)(1)).

20 [IF12040 \(congress.gov\) Use of Presidential Drawdown Authority for Military Assistance for Ukraine - United States Department of State](#).

21 Section 5505 of the FY23 NDAA states that “the President may direct the drawdown of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, of an aggregate value of not to exceed \$1,000,000 per fiscal year, to be provided to Taiwan.” [PUBL263.PS \(congress.gov\)](#).

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An ideal end-state for reform preserves the checks and balances of the FMS process while promoting the policy responsiveness of PDA. So long as there are only two speeds that the military sales process can move – a sprint or a walk – the arms transfer process will struggle to be both deliberate and responsive.

Under the reforms proposed here, FMS above a certain dollar threshold – \$1 billion – or beyond a certain delay threshold – three years – would trigger senior-level policy review and certification that the delivery timeline meets U.S. foreign policy interests.<sup>22</sup> A greater than three-year delay would also require certification by the State Department that using PDA to expedite delivery of the capability does not serve U.S. policy interests for high-value FMS cases. An automatic trigger for waivers and certifications by the policy officials at State and DoD would make sure that the Departments' leadership remained actively involved in the FMS process.

Further, it is difficult for both the U.S. government and foreign partners to anticipate future demand. The defense industry will rarely start producing items without a contract, and the government cannot anticipate future demand without a specific contract from a foreign partner. The U.S. needs a better mechanism to anticipate future demand and stockpile high demand, disposable items. The Special Defense Acquisition Fund (SDAF) is resourced to the State Department for this specific purpose, but remains underused.<sup>23</sup> The Departments of State and Defense should utilize a funding-swap mechanism to link the resources and acquisition decisions of the two agencies. Of course, centrally planned acquisitions by the SDAF cannot replace the free market demands of partners. However, certain high-use stocks like night vision devices, long-range fires and ammunition, air and missile defense, and commonly required component parts are consistently in high demand and should receive greater resourcing within SDAF.

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<sup>22</sup> The thresholds specified in this report are derived from a review of completed FMS cases in the past five years to determine the top 24% of cases by dollar value.

<sup>23</sup> [DSCA 16-19 | Defense Security Cooperation Agency.](#)

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Integrating these interagency processes should also begin earlier. While the Departments of State and Defense may agree about the threat environment in a particular region, the FMS process does not necessarily convey this information to the purchasing ally or partner. These countries have a sovereign right to make procurement decisions that best serve their own defense needs. But there is mutual benefit to increased understanding of the threat environment. Better information increases the likelihood that the partner buys the capabilities that best enhance their own security, and it increases the likelihood that their capabilities mutually reinforce those already in the region. Ideally, their acquisition of weapons would help reinforce U.S. posture in theaters abroad. Thus, in practice, the pre-LOR phase of the FMS process requires better communication between client countries and the United States about the threat environment, the defense articles suited to address that threat, and if appropriate, the role a partner could best play in augmenting an existing regional coalition and the capabilities it already possesses. This means bringing combatant commands in for consultation as foreign weapons sales negotiations proceed, to ensure that State and DoD are both clearly communicating the gaps they see in a country's posture and the collective gaps and risks in the military posture of U.S. regional coalitions. In addition, such sustained engagement may help both the U.S. government and the partner make more informed and consistent decisions about whether FMS is indeed preferable to PDA or Direct Commercial Sales (DCS), where those options are available to meet partner needs.

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24 Congressional Research Service defines Direct Commercial Sales (DCS) as transactions involving defense articles and services “for which the U.S. government issues export licenses to U.S. firms through a process that includes a review for adherence to U.S. law and policy. DCS is distinct from Foreign Military Sales (FMS), in which the U.S. government procures U.S. defense articles as an intermediary for foreign partners.” [Transfer of Defense Articles: Direct Commercial Sales \(DCS\)](https://www.congress.gov/transfer-of-defense-articles-direct-commercial-sales-dcs) (congress.gov)

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Another feature of the FMS system that contributes to lengthy delays is that an exportable version of a system must often be designed after the U.S. version is designed and produced. Exportability is often one of the first features of a contract to be dropped by the military services if their program budget is constrained, because it is lower priority than acquiring the systems for the U.S. Instead of allowing the services' budgets alone to drive these decisions, senior policy officials should have responsibility for preserving a system's exportability – and should be able to access funds from the SDAF to do. Ensuring sufficient policy input into these acquisition decisions will increase transparency for a process that is otherwise not tied to strategic objectives beyond U.S. requirements.<sup>25</sup>

Security Cooperation Organizations (SCO) should also be incentivized to tap into the wealth of burgeoning defense technology start-ups within the U.S. by steering partners towards defense acquisitions that meet their needs – even if delivered from a non-program of record by an innovative U.S. firm – rather than those that meet contracting requirements.

Additionally, the services should assess contracting officers specifically on their FMS contracting performance, both to incentivize action and create common FMS contracting processes and procedures across services to the greatest extent possible. This has the added benefit of minimizing stakeholder confusion and incorporating best practices. The Task Force learned that allies, the DoD, State, and the specific embassy in touch with the partner nation do not have access to the same information, whether it be contracting or host nation requirements, leading to confusion and frustration from all parties.

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<sup>25</sup> Security Cooperation Organizations (SCO) are “all DoD elements located in a foreign country with assigned responsibilities for carrying out security assistance/cooperation management functions.” One of the primary roles SCOs fulfill is conducting FMS contracting with U.S. partners. <https://www.dscu.edu/documents/publications/greenbook/04-Chapter.pdf?id=1#:~:text=Joint%20Publication%201%2D02%20defines,as%20the%20generic%20title%20for>.



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Lastly, FMS reform must address interagency communication. One of the main challenges for the FMS process is the multitude of stakeholders throughout the lifecycle of a sale. The many different agencies and individuals involved create silos that limit effective communication and information gathering by clients and stakeholders. A central repository should be created that is accessible to all parties to track cases through the process, with particular attention to making the information available to State Department personnel in the field and the U.S. defense industry.

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## Legislative Recommendations

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### Adjust arms sales notifications for inflation

- ▶ For NATO plus countries: \$42 million for MDE, \$166 million for defense articles and services, and \$500 million for design and construction services.
- ▶ For non-NATO countries: \$23 million for MDE, \$83 million for defense articles and services, and \$332 million for design and construction services.
- ▶ Cumulative thresholds for sales to non-NATO countries over several years could help ensure that Congress retains sufficient oversight of the FMS process under these revised limits.

### Increase policy responsibility for FMS

- ▶ Mandate quarterly review in the interagency for high-value (\$1 billion) FMS purchases
- ▶ Biannual certification by Under Secretary of Defense for Policy for high-value (\$1 billion) FMS purchases that the current anticipated delivery time meets U.S. foreign policy interests.
- ▶ Biannual certification by Secretary of State for long-delay (3-year) items that not using PDA drawing from funds available in Section 5505 of the FY23 NDAA serves U.S interests.

### Resource SDAF with supplemental funding

- ▶ Authorize the swap of existing funding from DoD of up to \$1 billion.

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## Integrated risk pictures

- ▶ The Security Cooperation Organization (SCO) will solicit input from Combatant Commands (COCOMs) during pre-LOR discussions with foreign military partners on FMS issues and ahead of any engagement with the partner on their force posture.

## Enhanced exportability

- ▶ Pre-LOR discussions should consider the pros and cons of multiple acquisition paths at the inception of each case (FMS, DCS, PDA).
- ▶ Non-program of record (NPOR) review and approval should begin during negotiation to identify possible constraints or issues with the approval.
- ▶ Where possible, NPOR concepts should be pre-cleared (e.g. if a system can safely integrate with any radar, for example, individual NPORs for a radar should not require review). Clearance of concepts should happen on an ongoing basis.
- ▶ OSD-P must certify U.S. foreign policy needs are met before a service or program office can waive exportability for a program.
- ▶ SDAF may be used to cover exportability shortfalls after production line has started.
- ▶ SCOs should be incentivized to tap into the wealth of burgeoning defense technology start-ups within the U.S. by steering partners towards defense acquisitions that meet their needs – even if delivered from a NPOR by an innovative U.S. firm – rather than those that meet contracting requirements.
- ▶ Services must evaluate contracting officers in FMS specifically as part of their evaluation and promotion standards.

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## Communication

- ▶ DoD must create and enforce a common FMS contracting standard operation procedure across all the services. Office of the Secretary of Defense Acquisition and Sustainment should review each services' FMS contracting SOPs to identify and implement best practices in the creation of this architecture.
- ▶ The State and Defense Departments must develop and maintain an online database to track all security cooperation efforts where U.S. government stakeholders would have appropriate permissions and access to the data, including through contracting steps. SCOs and Embassy personnel who interact with clients should be able to identify where a program is at each stage of the purchase, including within the military departments' acquisitions communities.

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## List of Acronyms

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AECA	<i>Arms Export Control Act</i>
COCOM	Combatant Command
DCS	Direct Commercial Sales
DoD	Department of Defense
FMS	Foreign Military Sales
ITAR	International Traffic in Arms Regulations
LOR	Letter of Request
MDE	Major Defense Equipment
NATO	North Atlantic Treaty Organization
NDAA	<i>National Defense Authorization Act</i>
NPOR	Non-program of record
OSD	Office of the Secretary of Defense
USD-P	Under Secretary of Defense for Policy
PDA	Presidential Drawdown Authority
SCO	Security Cooperation Organization
SOP	Standard Operating Procedure
SDAF	Special Defense Acquisition Fund
TERA	<i>Taiwan Enhanced Resilience Act</i>
TIGER	Technical, Industrial, & Governmental Engagement for Readiness

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## Appendix: Dissenting View

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The Foreign Military Sales (FMS) TIGER Task Force was established to be a bipartisan effort to identify potential legislative improvements to the FMS process, which is overly bureaucratic, lengthy, and in need of reform. While the Task Force received input from a limited number of stakeholders, the process was non-inclusive. The Task Force did not receive needed input from leaders in civil society, arms control experts, or the human rights community. The U.S. and our allies enforce important sanctions against malign actors, and significant security threats confront democracies around the world. While the report notes the significance of U.S. assistance to Ukraine in defending itself against the unprovoked invasion launched by Putin in 2022, it fails to call for additional U.S. assistance to aid in Ukraine's defense, and it fails to fully recognize the significant role of Presidential Drawdown Authority, including in the possible defense of Taiwan. The U.S. defense industrial base must be capable of responding quickly to these threats, and this requires an FMS process that is transparent and effective.

The task force noted a failure of the FMS process to fully account for exportability within the context of U.S. procurement and subsequent impact on the defense industrial base. Any article, technology, or service in contravention of our values and international obligations, however, can never be exported. The task force further recognized the longstanding defense trade relationship with the NATO+ allies, but the report failed to recognize that the international obligations of foreign allies and partners are essential to an efficient and effective FMS process. The U.S. role as a partner of choice is directly linked to our ability to not only provide a given capability but to also provide services and training that ensure compliance with international law and the human rights obligations of the U.S. and our partners and allies.

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Reform of the FMS process must remain fully rooted in the context of international nonproliferation efforts and the application of export controls to protect human rights. Congress should ensure that improvements to the system facilitate compliance with international law and human rights obligations as well as our own commitments and values. This must extend beyond traditional partner vetting as currently enshrined in statute, but - from the very beginning of the FMS process - be coupled with more transparent policies, training requirements, conditions of sale, and strengthened end use monitoring. This is not only consistent with our national security needs and the needs of our defense industrial base, it is a critical component thereof. The absence of additional checks on our assistance risks losing credibility as we engage with abusive emerging authoritarian governments.

Statutory changes to the FMS process require bipartisan consensus built on extensive review and ongoing Congressional oversight. While the Task Force included half a dozen members of the majority, it only included two members from the minority, myself as the single member from the committee of jurisdiction – the Committee of Foreign Affairs – over such matters. There is bipartisan consensus on many of the challenges; however, a more comprehensive approach is needed that fully incorporates the perspectives of the bureaus and agencies charged with enforcing the export control system, nonproliferation experts, the human rights community, NGOs, and industry, as well as a diversity of member views and those of our partners and allies.

Sincerely,



**JASON CROW**

Member of Congress

