Statement before the Senate Committee on Armed Services on “Department of Defense responsibilities related to the Foreign Military Sales system and international armaments cooperation”

Retooling U.S Arms Cooperation for a More Dangerous World

The Need for a Time-Based and Differentiated Approach

Dr. William Greenwalt
Senior Fellow

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Chairman Wicker, Ranking Member Reed, and other distinguished members of the Committee, I would like to thank you for the opportunity to testify this morning on the Department of Defense's responsibilities related to Foreign Military Sales (FMS) and international armaments cooperation in general. How the US decides whether to share technology or work together with other countries on new approaches to meet defense missions is a vital component of our national security.

Unfortunately, the U.S. international arms cooperation system is even more challenged than the U.S. defense acquisition system. This should come as no surprise as at its foundation are incorporated all of the pathologies found in DOD's procurement, budgeting, and security processes, and then layered on top of that are reams of opaque State Department required foreign policy related bureaucracy, paperwork, and procedures. This system can (and has) limped along during peacetime with relatively few consequences, but acquires more serious implications in a period of rising tension and conflict.

FMS is one of several tools available to enhance cooperation with our allies and partners. It is a government-to-government sales approach to transferring arms technology to our allies and is distinct from U.S. contractor to foreign government sales of US military items known as Direct Commercial Sales (DCS) or in any joint development and collaboration with our allies that creates new capabilities.[1] Each of these approaches is fundamentally broken in its own way.

Proposed reforms such as those contained in the recent Executive Order on "Improving Defense Sales to Improve Speed and Accountability" are a good first start, but barely scratch the surface on what is really needed. If we want to enhance our own capabilities as well as those of our allies, we need to take a hard look at all of our arms export and technology transfer processes. Just as has been done in domestic defense acquisition with non-traditional contractors there is a need to create a series of authorities and pathways around this system for a targeted group in the industrial base – in this case our closest allies. These pathways should also limit the time it takes to conduct the arms transfer process similar to what has been done in acquisition with Rapid Acquisition, Middle Tier Acquisition, and Software Acquisition authorities and pathways.[2]

These types of reforms would not mean a wholesale elimination of current controls and deliberate processes for the vast majority of the 223 countries and international organizations that the US has deemed eligible to participate in FMS. The decisions on whether to transfer weapons capabilities to these countries can still be based on a less than urgent, step-by-step

[1] The Foreign Military Financing (FMF) program is another tool that is funding mechanism using grants or loans to enable the purchase by foreign entities of military items or services through FMS or DCS.

[2] Rapid acquisition is limited to capabilities that can be delivered to the warfighter in less than two years' time while MTA targets a 3–5-year timeframe. The software acquisition pathway will likely evolve into time limits measured in days, weeks or months.

approach shaped by a debate on our foreign policy goals and ideals. But for a critical segment of our closest allies who already share our values and interests there should be a series of segmented fast lanes backed by incentives and the means to jointly develop the next generation of capabilities that are vitally needed to deter our adversaries. For this select group of allies there is a need for process differentiation and a time-based approach to deliver capability.

Building up the capacity of our closest allies and partners to share the burden of defense and deterrence in an era of great power competition will require a much different strategy than the present and the creation of a set of tools that we currently do not have. FMS, the International Traffic in Arms Regulations (ITAR) that governs both DCS and joint collaboration and development, and other tools of our cooperative defense trade relationships with our closest allies should also reflect a greater sense of urgency and be based on certainty and predictiveness, guided by time constraints rather than the current one-size fits all, time consuming, deliberate approach.

How would this work? For close allies, there should be an upfront agreement within DOD and in the interagency that leads to a pre-approval on the specific types of US systems that these countries can buy. A contracting vehicle should be established with pre-negotiated prices that allies can buy from and a stockpile established of US weapons available for immediate export. This stockpile could be funded either through an expanded Special Defense Acquisition Fund (SDAF) or a defense export loan guarantee that could be created by using and modifying existing Title 10 authority under the Defense Export Loan Guarantee program (DELG). Next, a broad-based ITAR waiver is needed (beyond the limited waiver that has been provided under AUKUS and the Canadian ITAR exemption) that incentivizes and enables American and allied engineers and scientists to quickly work together on new military capabilities. In addition, greater opportunities for co-producing weapon systems with close allies should be authorized where the US industrial base is not capable of increasing production. Finally, leadership at DOD needs to be aligned to enable these changes. This could be done by creating a Defense War Production Board chaired by the Deputy Secretary of Defense and staffed by two Assistant Secretaries – one for industrial production and supply chain and another for international cooperation and production -- to provide a formal senior decision making and oversight mechanism over the disparate stovepipes that govern international arms cooperation in DOD as well as for guiding defense industrial production.

In the remainder of my written testimony, I will outline why there is the need to adopt a more time-based arms cooperation approach that positively differentiates between select groups of allies and partners. Next, FMS will be assessed in greater detail as requested by the Committee, but it is just one aspect or symptom of what is wrong with our arms cooperative approach. Still, much can be learned from this example. I will address the barriers to working together and the need to bring allied technology to the US. Finally, I will outline policy recommendations that could be implemented that could better achieve US objectives in international arms cooperation.

The Current Arms Cooperation Regime is an Anachronism: Why is change needed now? Quite simply because the world has changed and the tools of arms cooperation created in the mid-1970s no longer make sense in this new world. These tools were designed around an era of US defense technological dominance that now no longer exists. New national security threats are fundamentally different and of such a scale that the US needs to leverage the resources and capabilities of a larger allied force. Breaking down the barriers to such cooperation is vital.

At the foundation of the US arms cooperation regime is the Arms Export Control Act of 1976. This Act was passed at the height of the Cold War with the Soviet Union during the arms control era of détente. It split jurisdiction between the Departments of State and Defense and that has hampered cooperative efforts ever since. That was really not an issue at first as the primary goal of arms cooperation in US policy at the time was not augmentation of US capabilities but to limit cooperation and delay as long as possible the transfer of potentially disruptive defense technologies around the globe.

Perhaps, most importantly the 1970s was still a period where the US could realistically do that. This was an era of U.S. technological domination that at least on the miliary side was built up over the previous decades where DOD and the US government were the predominate drivers of scientific research and development in the world.[3] The problem to be solved at the time was how to keep this technology from falling in the hands of the Soviet Union. No other nation had developed so many new military capabilities as the US had by this time. The US approached its technology control process from a position of strength and could afford to be linear and deliberate in how it shared it. Our allies were essentially treated as supplicants and the US government could spend the time to determine not only what they would get, but also unilaterally determine what they really needed.

Our current industrial relationship with our allies is still grounded in this Cold War experience, culture, and division of responsibilities between DOD and the State Department. A technologically dominant U.S. decided whether to grant the privilege of industrial cooperation in exchange for everlasting political control over whatever evolved from that relationship. This is achieved through a labyrinthian technology transfer system of the ITAR or within controls of an original FMS agreement. As the world fundamentally changed through technology proliferation and the decline of DOD technology dominance, our processes did not change and in practice got even more stringent and bureaucratic as the decades passed.

DOD's technological decline began even before the end of the Cold War. This is symbolized when in 1980 US commercial research and development (R&D) exceeded US government R&D for the first time. Over the succeeding decades almost 95% of global R&D is now conducted by commercial and global actors, rather than by the American government. As a result, the DOD

[3] In 1960, the U.S. share of global R&D was 69%, the majority of which was funded by the U.S. government. Today, that share of global R&D is about 30% with almost 80% funded in the private sector. These two trends – the privatization and globalization of research and development -- are at the heart of DOD's technological decline.

first lost its technological edge to Silicon Valley beginning in the 1980s and 1990s, and then through adversarial asymmetric developments and better adoption of commercial advances through, for example, Chinese Military-Civil Fusion policies. Of the 1970s origin set of technologies, many of which still serve as the basic foundation of US military systems, these capabilities have proliferated around the globe or are within the competencies of most advanced technological powers.

Thus, while US arms cooperation policy did disincentivize and slow advances in defense innovation over the last five decades, the global proliferation of legacy defense technologies married with advances in commercial technology allowed China and others to overcome the United States' historical military-technology advantages. Indeed, it is not only Beijing that has caught up: US allies, once largely recipients of US military technologies, are increasingly capable of developing these sorts of capabilities, as well as emerging ones, on their own. As allied defense budgets increase these gains should multiple even faster.

Much has been written about the return of great power competition and the rise of Chinese manufacturing dominance. China is a profoundly different potential adversary than the old Soviet Union and will require a different approach than what was successful in the Cold War. Compounding this equation is the recent growing industrial cooperation from an axis of powers – Russia, China, North Korea, and Iran – that is pursuing massive arms cooperation efforts that are not limited by time or bureaucratic constraints.

This threat has had a positive effect in spurring on the types of defense expenditures that have been lacking in our allies for decades. This funding should awaken the defense industrial potential of a set of allies (EU/NATO plus Japan, South Korea, and Australia) that combined make up 125% of the GDP and two and a half times the population of the United States. Together, the US and these allies are not far from equaling China in population and are 3.5 times as rich. There is a playbook here for winning the global competition for innovation, but only if the US changes its arms cooperation processes to leverage this wealth and innovation potential residing in its allies.

In the future the U.S. will need to tap into a larger base of scientists and engineers to compete against the innovation potential of an adversary like China, which has four times our population, graduates seven times the number of scientists and engineers than the US, has embraced civil-military integration of its defense market, and achieved manufacturing dominance. Our allies so far have stood ready to contribute to this goal, but we have mostly shut them out.

A larger industrial base exists in the commercial marketplace and within our closest allies, but the obstacles to accessing this innovation are formidable. Unfortunately, the US is not taking advantage of these circumstances and working together with our allies and with commercial companies are hindered because of 1970s era control systems. Our allies now have money to spend and technology to bring to the table but US arms cooperation regimes will deter the types of cooperation that are necessary and lead to a lot of wasted and duplicative efforts

across the alliance.

The Time and Lack of Urgency Problem within FMS: Under FMS, the US government transfers and sells US defense systems to foreign countries. FMS can be used to further foreign policy goals, strengthen the military capability of our allies, augment US capability when operating with our allies through greater interoperability, and support the US defense industrial base through increased throughput. Allies and partners have historically used FMS because they lacked the budgets to produce their own capabilities and either because they prefer the benefits of the US government negotiating with US industry on their behalf, or they are forced into the system through U.S. requirements to only sell certain capabilities through FMS-only channels.

Since the end of the Cold War, FMS has operated in a peacetime mode that takes years to get to a decision and even longer to deliver capabilities. It has become a primarily foreign policy tool that lacks a sense of urgency. As such it has increasingly lost its relative ability to be a factor in increasing allied military capability or to support the US defense industrial base. This lack of a sense of urgency perhaps really didn't matter much in past decades as most allies (with the exception of Israel) were not under an existential threat. It must also be said that many allied customers may have been playing a foreign policy game of their own by buying US weapon systems through FMS to take the political sting out of their historic low defense expenditures. This has all changed with Chinese, Russian, and Iranian proxy aggression. The world has changed, but the way the US sells weapon systems and cooperates with its allies has not.[4]

FMS is a transactional step-by-step approach that lacks discrimination, prioritization, and learning in the process, something also seen in the export control licensing process under ITAR. Moving through the Letter of Request (LOR), Letter of Acceptance (LOA), and Congressional Notification gateways is a year's long process that foreign customers have to face each time they want to buy something. Each case stands on its own and past determinations do not appear to have any merit or consideration when approving something new. This transactional process is no different for a Zambia or Ecuador than it is for a NATO or Five-Eyes country.

The impact of the long decision process was aptly pointed out last year by the House Foreign Affairs Committee that: "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

[4] As was seen in recent transfers to Ukraine and Israel, in an emergency the FMS process can be overtaken by the use of Presidential Drawdown Authority (PDA) out of existing US stocks. While this may speed up the delivery of systems it takes away from US capabilities and then requires the US to wait on the industrial base to gear up to replace these transferred systems. It also has the effect of putting existing FMS customers even further in the back of the line. Through the use of PDA there is the opportunity for a suboptimal sprint to move weapon systems faster capability versus the very deliberate slow walk of the FMS process.

additional uncertainty. Lower interoperability between U.S. and foreign partners."[5]

DOD acquisition requirements are also overburdening the system and there is a workforce challenge at DOD to be able to comply with all of the requirements for FMS in addition to contracting for underlying US defense needs. In this case either three things can happen or a combination of the three – DOD must hire more people, reduce its requirements, or spread out the time to do things. The latter is what has traditionally happened.

The slow pace of the process exacerbates US industrial base shortfalls. The uncertainty of whether an FMS case will actually be approved, let alone be executed, incentivizes the industrial base to not plan for increased production. Industry answers to shareholders who do not take kindly to subsidizing the government to build capacity that may or may not be used. While the defense industry does wants to sell more through FMS, there is a lack of demand signals and other incentives to make the necessary investment to expand capacity. In the best circumstances, once an FMS decision is made it may well take 18-24 months to gear up the industrial base to begin expanded production. As a result, there is now a year's long production backlog for US systems.

Finally, FMS comes with strings attached for our foreign customers. These are limitations on how, when, and why they can use their purchased systems and further limitations on who can maintain them. In peacetime these limitations may not matter, but now countries are vitally aware of them and concerned about their impact. Combined with the slowness of the FMS decision process and the uncertainty about when arms will be delivered, there is a greater incentive to Buy European or Buy Asian to not only get capability faster, but to have greater sovereign flexibility to use their military equipment. This has created opportunities for countries like South Korea who have recently increased sales to Poland because their systems can be delivered faster and do not have the same restrictions attached to their sale. Even within AUKUS where many of the limitations on arms transfers and re-transfers were supposedly worked out, the UK and Australian have found out that an ITAR waiver does not impact the strings attached to an FMS sale which has different requirements than those under ITAR.

The Problem with DCS and ITAR: The industrial base incentives surrounding FMS are similar to those found in direct commercial sales but the vagaries of ITAR create a different set of problems that result in many of the same effects for DCS but more negatively impact the development of new innovation. As in FMS, DCS is hampered by a transactional process that increases decision time. I have written elsewhere about the "Eight Deadly Sins of ITAR"[6] that have stymied the ability of the DOD to access commercial and allied innovation. These include

[5] House Foreign Affairs Committee, Foreign Military Sales Technical, Industrial, and Governmental Engagement for Readiness Task Force Report, February 7, 2024

[6] *William Greenwalt and Tom Corbin "Breaking the Barriers: Reforming U.S. Export Controls to Realize the Potential of AUKUS", United States Studies Centre, University of Sydney, May 2023 p.11-16*

an outdated mindset of control, universality and non-materiality or a focus on the unimportant, extraterritoriality, non-discrimination, transactional process compliance, export contamination or the "ITAR taint", non-reciprocity, and unwarranted predictability. For DCS, US contractors must navigate through this ITAR minefield merely to have discussions of what a foreign customer may need.

To overcome these barriers to cooperation, first the National Technology Industrial Base (NTIB) was expanded by Congress to encourage ITAR reform and then an ITAR waiver was granted in the 2024 NDAA for the AUKUS nations of the UK and Australia.[7] Neither of these reforms have led to the easing of barriers for US and allied companies to work together on joint capability developments. The AUKUS ITAR waiver has made it easier to transfer older or less important US technologies and systems not on the so-called AUKUS Excluded Technology List. This is at least progress but is wholly inadequate for today's national security threat environment.

U.S. export controls continue to incentivize countries and companies to hold back their best technologies so as to not limit their ability to use or sell solutions based on that technology in the future. Cooperation with the U.S. triggers the so-called ITAR "taint," and the extraterritorial application of American export controls. To avoid these constraints, the rational solution is just not to cooperate with the US. Increasingly, DoD will be forced into replicating needed technologies already available on the global market. The ITAR is unsuited to the contemporary strategic imperative of building or preserving US — let alone collective — military technological advantages over capable adversaries like China.

Options to Fix FMS, DCS and ITAR: Fixing the arms cooperation system requires creating tools that can speed decision and delivery times to our closest allies. Speeding decision times should focus on the elimination of the transactional nature of the process. We know what systems are in the US inventory and should be able to make an up-front determination about what systems we would be willing to sell to an allied country if they asked for it. DOD should thus have a mechanism to make those upfront determination on systems and technologies, differentiated by country. These determinations should be clearly made to the State Department in order to lead to a transparent system of pre-approvals for our closest allies.

It has been almost two decades since DOD attempted to go down the path of a pre-approval process through the creation of the Arms Transfer Technology Release Senior Steering Group (ATTR-SSG) to do so. A change in Administration and priorities eventually derailed this project but a restoration of the ATTR-SSG's focus on proactive export and technology release determinations is still a good idea. Another option to streamline decision time would be to rather than increase congressional arms sales notification thresholds is to for a select group of

[7] I have written extensively on the potential to use AUKUS and the NTIB as a test case for arms cooperation reform: See William Greenwalt "Leveraging the National Technology Industrial Base to Address Great-Power Competition: The Imperative to Integrate Industrial Capabilities of Close Allies" Atlantic Council, April 2019; "*Breaking the Barriers" and "AUKUS Enablers? Assessing Defence Trade Control Reforms in Australia and the United States" United States Studies Centre, University of Sydney, August 2024.*

allies replace that notification process with a reporting requirement.

Next, decision speed to contract can be enhanced by establishing a multi-award indefinite delivery indefinite quantity contracting vehicle with pre-negotiated prices that allies could buy from. This would be similar to a GSA multiple award schedule but for military items and services. Establishing up-front prices would not only eliminate long acquisition negotiation times but would provide potential pre-approved customers some budget certainty that better align with their budgets. This could potentially lead to greater sales and greater certainty in industrial base planning. In addition to the more traditional sales of US program of record systems a process for non-program of record capabilities and emerging technologies and services could be established to rapidly get these capabilities on the arms export schedule contract and offer them for sale to our closest allies.

Once decision time as measured by approval and contracting time have been reduced the next step is to address delivery time. The establishment of an FMS/DSC arms schedule contract and getting companies to agree to up-front pricing should force greater planning and commitment to produce and deliver exports by industry, but more can be done. Ideally, these systems should already be produced and be on the shelf waiting to be delivered. This could be done by establishing a stockpile of US weapons that are available for immediate export. This stockpile could be funded either through an expanded Special Defense Acquisition Fund (SDAF) appropriation or a defense export loan guarantee to either the purchaser or builder. The Committee could consider modifying an existing authority in title 10 called the Defense Export Loan Guarantee (DELG) program that was established almost 30 years ago. This DELG authority could potentially be used to provide finance for expanded production to supply an arms export stockpile for certain weapon systems. Defense Production Act grants and loans could also be considered to expand these existing production lines.

Designing exportability up front into weapons acquisition has been a long-standing challenge. As weapons production becomes more modular and open, export tailoring becomes possible. Still, this will continue to be an issue with legacy weapon systems although perhaps less so with closer allies. Any weapons stockpile would need to consist of or be able to be quickly adapted to export versions.

Finally, arms cooperation is more than just about transferring existing technology to our allies. It needs to embrace joint development and joint production. To do this will require broad-based ITAR waivers that are beyond the limited waiver that has been provided under AUKUS and the Canadian ITAR exemption – although similar waivers and wide-ranging program licenses could be used for non-NTIB countries. This expanded ITAR waiver/exemption for initially the AUKUS nations would incentivize and enable American and allied engineers and scientists to quickly work together on new military capabilities. This waiver would need to address the concepts of extraterritoriality and the ITAR taint as US, allied, and commercial capabilities co-mingle technologies and knowledge in new emerging military systems. In addition, greater opportunities for co-producing weapon systems with close allies should be authorized where the US industrial base is not capable of increasing production.

Options for Binning the Allies: All of these proposals are geared to developing a greater differentiation of our allies from the rest of the world. Any such carve out from the existing process would need to be deliberated and authorized by Congress and the executive branch. Our allies would need to be sorted for purposes of defense cooperation and within each "bin" a different rule set of authorities, procedures, and exemptions could be applied.

There are currently several ways to do this. Canada has a historically robust set of international arms cooperation agreements with the US and a modest ITAR exemption in place. It was established as an original part of the legislative definition of the NTIB in the 1990s. Through Congressional action, the NTIB has grown to now encompass the Five-Eyes nations. This appears to conform to Congress equating the trust needed to share sensitive intelligence information as being the same as what is needed to share arms technology. AUKUS is essentially a subset of the NTIB that now has a limited ITAR waiver.

DOD has 28 reciprocal procurement agreements with different nations negotiated by DOD under various Memorandum of Understandings, and a further six reciprocal quality assurance agreements. The nations covered under these agreements would likely comprise the definitional whole set of what are the US' closest allies beyond the NTIB nations. Further sub-classifications could cover those countries where we have intelligence sharing regimes set up and referred to as various X-Eyes formats or with those countries that DOD has negotiated Security of Supply Agreements. Finally, a different construct could be created around those countries that are able to build and produce exquisite new capabilities similar to what the US is capable of doing and have taken measures to secure this technology.

Improving Management and Oversight of International Arms Cooperation: The interagency approach to risk management is challenging. The mid-1970s diffusion of responsibilities between State and Defense has led to a transactional, one-size fits all processes that meet transactional rather than strategic foreign policy, operational, or industrial base goals. Defense goals of enhancing allied firepower, interoperability, augmenting our DIB and advancing defense innovation are oftentimes sacrificed to a well-intended desire to limit proliferation and the means for conflict. Still, if the State Department is downsized even necessary discussions and decisions may become harder to have and obtain and the timelines for both FMS and DCS will inevitably slow down, just at the moment they need to speed up.

In addition to challenges at the State Department, DOD's organization and approach is not working well either. There is a need for a single source of responsibility and decision making on international cooperation issues. Leadership at DOD needs to be aligned to enable reform and better management and oversight. This could be done by creating a Defense War Production Board chaired by the Deputy Secretary of Defense and staffed by two Assistant Secretaries – one for industrial production and supply chain (the existing ASD for industrial base policy) and another for international cooperation and production. This could provide a formal senior decision making and oversight mechanism over the disparate stovepipes that govern international cooperation in DOD.

This proposal would create a new position for arms cooperation but would elevate that position along with the ASD for industrial policy and make them both direct reports to the Deputy Secretary of Defense and placing both in that office. When the Undersecretary of Defense for Acquisition, Technology and Logistics (ATL) was broken up something was lost in the two cross cutting functions of industrial policy and arms cooperation. Still, even under ATL there were difficult organizational issues with USD Policy and the services on these issues that required a higher adjudication authority and champion. International cooperation still needs a higher level of focus and decision-making authority and that can only come from either the Secretary or Deputy Secretary. A new Assistant Secretary for international cooperation should chair a newly revitalized ATTR-SSG and should control the DELG, the arms export stockpiles, and have decision making authority delegated from the Deputy Secretary over the entire DOD international cooperation apparatus.

Finally, from a DOD perspective, the arms cooperation system could be improved through a process of differentiating between different classes and capabilities of our allies, establishing pre-approvals of export available systems, creating an arms export contracting vehicle backed up by a robust stockpile, and putting the Deputy Secretary of Defense in charge of the process. Still, Congress may find that the ability to make these changes could be stymied by the bureaucracy and meet the same fate as the past reforms of the last two decades have had. It may be that the system is not reformable under the current legal framework of a rather complicated and byzantine 90-page Arms Export Control Act. If so, a more comprehensive reform and streamlining of the underlying statute may need to be considered and an even greater culling of underlying regulations, guidance and practices.