

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

Keith B. Webster
President
Defense and Aerospace Export Council

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June 8, 2018

Dr. Peter Navarro
Assistant to the President
Director of Trade and Industrial Policy

Honorable Andrea Thompson
Under Secretary of State for Arms Control and International Security Affairs
Department of State

Dear Dr. Navarro, Honorable Thompson:

The U.S. Chamber of Commerce's Defense and Aerospace Export Council supports the administration's goals articulated in the April 19, 2018 National Security Presidential Memorandum Regarding U.S. Conventional Arms Transfer (CAT) Policy. We agree with Dr. Navarro's subsequent statement that the updated CAT policy represents a "first step" towards prioritizing economic security and industrial base considerations in U.S. export policies.

This submission provides recommended near-term actions we believe are necessary to achieve the goals articulated in the CAT policy, the National Security Strategy and the National Defense Strategy. Goals like "economic security" need to be transformed into bureaucratic and organizational imperatives in order to produce significant and near-term impact. This paper lays out a series of actionable items capable of producing practical and prudent policy outcomes.

Our specific recommendations are:

I. Institutionalize Focus on Economic Implications of Export Policy

Many of the U.S. government's institutional arrangements and decision-making procedures for defense and aerospace export policy were established when American industry exercised far more control over global markets than it does today. A consequence of this economic and technical power was that the U.S. government was

able to prevent or substantially delay the proliferation of a wide range of defense technologies by restricting American exports. Today, there are significant competitors in these markets challenging U.S. dominance of defense and aerospace exports. As a result, although their principal purposes include counter-proliferation and ensuring lawful use of defense articles, U.S. export restrictions now accelerate the establishment of more non-U.S. manufacturing and thereby indirectly promote the transfer abroad of defense industrial base capabilities.

This transfer is deleterious to vital American interests, including sustaining the technology, human talent and industrial capabilities necessary to maintain the United States military's advantages; sustaining and expanding American jobs; enabling political-military partnerships with foreign countries that reduce the burden on American soldiers deployed abroad; preventing the illegal use of conventional weapons; and reducing the dangers of weapons of mass destruction (WMD). Further, one notable irony is that counter-proliferation policies aimed at preventing the spread of WMD delivery systems are now encouraging some foreign countries to turn to non-U.S. capabilities that do not come with the end-use monitoring requirements or interoperability exercises that provide the U.S. government opportunities to positively shape foreign industrial security arrangements and the tactics, techniques and procedures that foreign militaries use to employ systems potentially capable of delivering WMDs.

1a. Recommended Action: The Secretary of State shall direct the Department of State's (DoS) Undersecretary for Arms Control and International Security Affairs and its Bureau of Political Military Affairs, in coordination with the Bureau of International Security and Nonproliferation, the Undersecretary of State for Political Affairs, the Undersecretary of State for Economic Growth, Energy and Environment, and the Office of Policy Planning, when presented with an export license request, including Letter of Requests from foreign governments for Significant Military Equipment (SME) or Major Defense Equipment (MDE) and/or engaged in a policy deliberation over export policy for SME or MDE, to report to the Secretary of State and the House Foreign Affairs Committee, and the Senate Foreign Relations Committee; (a) any denial, whether a Foreign Military Sale (FMS) or Direct Commercial Sale (DCS), of an SME/MDE sale to a foreign government; b) an assessment that the denial of the export item in question will or will not result in the denial of the military capability or a near equivalent capability to the end user in question. That is, if the U.S. denies the request, will the end user at issue get the same or similar equipment from a foreign supplier; c) an assessment of the economic impact with respect to job creation/job destruction and revenue loss or deferred revenue; d) the economic

impact (i.e. lost per unit price reduction) to the U.S. Military Department that manages the defense item denied for such transfer and; (e) notable implications for U.S. national security industrial base health including for the development of emerging technologies and for U.S. global market share. These assessments shall be available to the original equipment manufacturers (OEMs) and Congress upon request, restricted or classified if required.

1b. Recommended Action: Export Authorization Decisions to Return Without Action or deny/LOR non-response or decline to offer an LOA will include written acknowledgement of the economic impact of this action. The prime contractor will be notified prior to issuance of final action in order to ensure that all economic factors have been taken into account in the decision-making process.

These actions will provide a transparent, reviewable record of key questions to ensure that the economic implications of denials are taken into account. To assist in preparing such assessments, it is also recommended that:

1c. Recommended Action: The Secretary of Defense shall direct the Department of Defense's Defense Technology Security Administration (DTSA), when presented with an export authorization request and/or engaged in a policy deliberation over defense technology release of an SME/MDE program to (a) produce in writing that DTSA assesses a license denial will or will not result in the denial of the military capability or a near equivalent capability to the end user in question; (b) produce in writing an assessment of the economic impact of the export authorization denial and/or provisos with respect to job creation/job destruction and revenue loss or deferred revenue and cost savings to the U.S. military departments; and (c) provide companies an opportunity to submit information for these assessments within their license request. The Defense Security Cooperation Agency (DSCA) will do the same for FMS. Both organizations are encouraged to work with their Service counterparts and the Department of Commerce to employ best practices in determining the economic impact of sales or the denial of sales to the U.S. military industrial complex. The Secretary of Defense shall direct the Military Departments (MILDEPs) to incorporate these economic factors into their technology release baseline policies which will inform subsequent, specific sales requests.

1d. Recommended Action: The Office of the Director of National Intelligence shall modify those frameworks that govern national intelligence and military intelligence resource allocation to increase prioritization on monitoring and evaluating foreign defense trade relationships and analyzing the impact on the U.S. defense industrial base through competition in the global defense export market.

1e. Recommended Action: The Secretary of Defense shall direct the Defense Intelligence Agency to develop the capability to contribute to industry assessments regarding foreign availability of similar or near equivalent SME and MDE under review for export by U.S. licensing authorities.

1f. Recommended Action: The Secretary of State shall direct the Department of State's Under Secretary for Arms Control and International Security Affairs and its Bureau of Political Military Affairs, in coordination with the Bureau of International Security and Nonproliferation, the Office of Policy Planning and DoD's DTSA, to jointly develop a list of military or dual-use capabilities and technologies, matched to foreign countries, reflective of all key transfer criteria, including economic implications, indicating a presumption of approval to enable expedited decision making within the U.S. government. This list will be updated annually.

II. Institutionalize Focus on U.S. Dominance in Emergent Technologies

The U.S. government's non-proliferation offices have traditionally focused on monitoring and maintaining U.S. obligations under non-proliferation treaties and non-proliferation regimes, but this model of non-proliferation is no longer sufficient to prevent proliferation and the transfer abroad of defense industrial and technological base capabilities.

2a. Recommended Action: The Secretary of State shall direct the Department of State's International Security Advisory Board, in coordination with the Undersecretaries for Political Affairs, Economic Growth, Energy and Environment, Arms Control and International Security Affairs, Office of Policy Planning, in coordination with the Defense Department, to provide a written assessment on necessary policies and investments to maintain and expand U.S. dominance in key sectors of the global defense and aerospace market. The Bureau of International Security and Nonproliferation shall then provide an action plan to update their policies and procedures reflecting the assessment. This plan shall address issues, including aging technologies that could be exported more liberally, current technologies that either do or do not require protection, and the control and proliferation of emergent technologies.

2b. Recommended Action: The Secretary of Defense shall direct the Under Secretary of Defense for Research and Engineering (USD R&E) to determine annually in writing the emergent technologies vital to national security, which shall be controlled and reevaluate controlled legacy technologies with the purpose of loosening controls

where there is evidence of emerging global competitors who have the potential to dominate key market segments that can undermine the health of the U.S. military industrial complex.

2c. Recommended Action: On a rolling basis, the Directorate of Defense Trade Controls (DDTC) and the Bureau of Industry and Security (BIS), after consultation with their respective industry advisory committees, the Defense Trade Advisory Group (DTAG) and the Technical Advisory Committees (TACs), shall publish Federal Register Notices of Proposed Rulemaking for public comment to proposed U.S. Munitions List (USML) category and their corresponding Commerce Control List (CCL) categories. The U.S. proposed rules shall account for commercialization of former military technologies, changes in sensitivity assessments of listed items, mistakes, foreign availability, and suggestions for how to describe the controls more clearly. After consideration of these comments and similar internal interagency input on these topics, as well as whether emerging technologies of concern shall be added to the lists, updated proposed rules shall be published describing changes to the relevant categories. After consideration of industry comments on such notices, the agencies shall publish final rules. The end goal of such efforts is that the jurisdictional status of items on the USML that no longer provide the United States with a critical military or intelligence advantage shall be changed so that they are controlled appropriately on the CCL. In particular, the agencies shall ensure that items that are in normal or reasonably anticipated commercial applications shall not be on the USML. If such items are nonetheless sensitive, they shall be controlled accordingly on the CCL. No more than two years shall elapse between a material change to a category and the initiation of this process.

III. Modernize Defense Department Technology Security Foreign Disclosure (TSFD) Policy Procedure

The Department of Defense's policy position on arms trade and transfer is shaped in the Arms Transfer and Technology Release Senior Steering Group (ATTR SSG) and supported by the Technology Security Foreign Disclosure Office (TSFDO). The TSFD process impacts both pending and potential future transfers through a DCS export authorization, FMS Letter of Offer and Acceptance (LOA) or combination of both. The ATTR SSG primarily serves as a forum to balance the protection of critical technologies with building military capacities of foreign partners. Policy recommendations for the ATTR SSG are developed by the TSFDO, which is the DoD's advocate for priority technology security and foreign disclosure review and a

forum currently co-chaired by the Director of DTSA with the Director of International Cooperation. The TSFD process considers factors associated with National Disclosure Policy, Low Observable / Counter Low Observable, Anti-Tamper, Positioning, Navigation and Timing/GPS, Communications Security, and Data links/Waveforms.

The TSFD process, as currently managed with a primary focus on case-by-case reviews, lacks sufficient transparency to allow American industry to efficiently develop products for export in a timely and cost competitive manner. For example, the TSFD process develops recommendations based on the opinions of the DoD's MILDEPs that are not always consistent amongst the three services. One Service may recommend release of a technology that is restricted by another Service. The lack of a standardized and predictable determination process that addresses broad categories of technologies and capabilities causes uncertainty that retards private sector investment, wastes time and resources, and stifles efficient business planning by American exporters. It also adds significant cost to U.S. products.

3a. Recommended Action: The Secretary of Defense shall direct that the ATTR SSG and its TSFDO shall be realigned under and become the independent advisor to the Under Secretary of Defense for Acquisition and Sustainment (USD A&S) and work in concert with the Military Industrial Base Policy (MIBP) office to evaluate the impact to the military industrial base of all export transfer denials of SME and MDE. In pursuit of this goal, the ATTR SSG shall convene industry representatives in discussions with the Services, DTSA, Special Programs, Under Secretary of Defense for Policy (OUSDP), MIBP, etc., to evaluate the national security and economic implications of DoD policies. These discussions shall produce determinations that will be implemented by the MILDEPs and TSFD components under predictable and consistent timelines.

3b. Recommended Action: The Combatant Commands (COCOMs) shall provide input to the TSFDO through an annual classified report on (a) key MDE and SME capabilities and (b) interoperability mechanisms, including cross domain integration, required by U.S. allies and partners to decrease risk to U.S. military missions and risk to U.S. forces party to those missions. This report will be based on COCOM wartime planning and reflect SME/MDE capabilities required by partner and allied militaries to prevail in future military contingencies. The TSFDO will utilize the reports to drive anticipatory DoD policies for the key capabilities applicable to coalition operations across the COCOMs.

3c. Recommended Action: For MDE/SME sales, the COCOMs shall be informed of any intent to deny and/or heavily proviso export authorizations or to deny or frustrate an FMS sale to potential buyers of U.S. systems, which would affect the requirements identified in the COCOM classified annual report.

3d. Recommended Action: All denials or returns without action of MDE/SME, whether FMS, DCS or a combination of both, will require a TSFDO assessment in writing that an export authorization or FMS denial will or will not result in the denial of the military capability or a near equivalent capability to the end user in question leveraging intel assessments regarding foreign availability.

IV. Promote Industrial Security Mechanisms of Foreign Partners to Allow Increased Defense Technology Release

American industry's ability to export defense materials is dependent in significant part on the ability and readiness of foreign buyers to protect sensitive defense technologies through industrial security mechanisms validated by the U.S. government. It is therefore increasingly important for the U.S. government to prioritize and effectively partner with foreign governments and industries to bolster their industrial security capabilities.

4a. Recommended Action: The Secretary of Defense shall direct the Director of DTSA, in coordination with USD A&S and the Department of State, to (a) develop a list of countries that are seeking advanced U.S. defense technologies but currently lack the industrial security mechanisms necessary to ensure those technologies are not vulnerable to diversion or theft by third parties; (b) develop an action plan to advertise, promote, and offer U.S. government assistance to those countries in upgrading their industrial security mechanisms; (c) develop an action plan with a timeline to achieve sufficient industrial security standards to allow advanced defense technology release to those countries willing to cooperate with the U.S. in this endeavor; and (d) provide an annual classified report on these activities to inform the interagency, COCOMs, Office of the Secretary of Defense, the Services, and U.S. industry.

V. Assess & Adapt to the Impact of Russian and Chinese Exports on Israel's QME

The Middle East remains a major market for American defense and aerospace exporters and the U.S. government is also committed to help Israel sustain a qualitative military edge (QME). These two factors significantly shape the parameters of export opportunities in the region. Russian and Chinese exporters, which are not influenced by QME considerations, are increasingly influencing this market in a way that requires the United States to adapt its own policies in order to achieve its regional economic and national security goals.

5a. Recommended Action: The Office of the Director of National Intelligence shall collaborate with U.S. defense industry analysts to monitor and assess the impact of increased Russian and Chinese defense exports to the Middle East. This assessment will describe current and projected defense trade, explain the impact of U.S. export policies and export restrictions on these trends, and provide opportunity analysis that presents options for the U.S. government to support Israel's QME, while sustaining and expanding America's traditional defense trade relationships in the region.

VI. Address Workforce Deficiencies

American exporters not only face competition over price, quality, and value with foreign manufacturers, but they also compete in the area of ease, timeliness and effectiveness by which the U.S. government collaborates with industry to meet foreign buyer needs. To compete effectively in this domain, the U.S. government requires a knowledgeable, motivated, and sufficiently sized staff across the relevant departments and agencies. In its origin, the "Foreign Military Sale-only" (FMS-only) designation was limited to a select few strategic military platforms under the premise that FMS provided the most comprehensive control over sensitive technologies. Over time this designation expanded to capture a much larger number of platforms and technology categories without consideration or a corresponding increase in work force size. The stress upon the FMS community and the contracting officers who support FMS programs has been compounded by the significant growth in FMS broadly, the significant growth in FMS only programs, urgent contracting to sustain U.S. and Allied Forces in the current fight, as well as a diminished workforce within DoD.

Our ability to effectively compete is further exacerbated by the recent hiring freeze within DoS that produced an estimated 30% or greater vacancy rate at State

Department's Directorate of Defense Trade Controls (DDTC), which is and will continue to threaten DCS export authorization processing cycle times.

6a. Recommended Action: The Secretary of State, who recently lifted the hiring freeze, shall support the DDTC's efforts to fill the vacant positions and direct an assessment to determine if staff levels need to increase in order to meet the requirements/tasks articulated in this document.

6b. Recommended Action: The Secretary of Defense shall support DoD components who need to grow their staff to manage FMS program activity more effectively.

VII. Institutionalize Competitive Standards for Overcoming “Strong Presumption of Denial” for MTCR CAT I UAS Exports

Militaries around the globe are keen to acquire advanced unmanned aerial system (UAS) technology and will eventually do so in one of three ways: by developing them indigenously, by acquiring them from non-U.S. suppliers, or by purchasing them from the United States. The United States cannot stop this technological proliferation, but it can influence how UASs are safeguarded and employed. The United States also has a vital interest in preventing UASs from being used to deliver weapons of mass destruction (WMDs). Today, U.S. policy aims to do this through a cautious interpretation of the Missile Technology Control Regime (MTCR)—a non-proliferation arrangement established in 1987 to restrict the export of WMD-capable missiles. In 1992, MTCR members decided to treat UASs (whether for military, civil or commercial use) with a 500kg payload and 300km range like ballistic missiles, based on the premise that UASs require these features to deliver nuclear weapons.

These technical parameters are arbitrary. The 500kg payload is supposed to be the minimum size of a viable nuclear weapon. Yet, Harvard's Belfer Center reports that the minimum weight for a nuclear device is as little as 30 kg. The range restriction is also capricious considering that basic aircrafts, like blimps, can travel beyond 300 km. Whatever merit this policy had in 1992, it is illogical and self-defeating in today's world of proliferated UASs. Nor can the MTCR guidelines credibly claim to prevent WMD employment when the regime does not restrict other methods of WMD delivery. These include all manned aircraft and artillery, as well as unconventional mechanisms, like delivery by truck or container ship, or through improvised nuclear devices. It may have been reasonable in 1987 to assume that WMDs would be delivered by missiles and similar systems, but that is not the case today, where unconventional, terrorist violence is a prevalent form of warfare.

Rather than restricting UAS sales, WMD threats would be better addressed by promoting a consensus against utilizing UASs for WMD employment. The best way to ensure that this view becomes the policy of foreign governments is by having the U.S. military cooperate with foreign militaries on UAS tactics, techniques, procedures and doctrine. Such cooperation would encourage end-use monitoring arrangements that prevent diversion of sensitive technology, along with other safeguards. Moreover, ensuring that the United States is the UAS partner of choice is an essential means of maintaining a global balance of military power that promotes peace and stability.

The United States also has a clear National Security Industrial Base and commercial imperative for expanding its UAS partnerships. As noted by the Congressional Research Service, “much new business is likely to be generated in the [UAS] market, and if U.S. companies fail to capture this market share, European, Russian, Israeli, Chinese or South African companies will.” Chinese officials publicly acknowledge they are “taking advantage of the hole in the market” created by America’s restrictive export policy. China is now able to fill that hole with UASs that look remarkably similar to America’s MQ-1B Predator, MQ-9 Reaper and Global Hawk. Today, the United States is the undisputed leader in UAS design and production, but that status will not last if U.S. industry is not permitted to compete on CAT I systems with foreign manufacturers who are not subject to MTCR restrictions and are steadily increasing global market share.

Urgency is required to sustain U.S. leadership in this market. If the MTCR could be amended in a reasonable period of time to remove UASs or UASs with speed parameters within the range of most American UAS systems, it would be reasonable to do so. However, this approach is both time-consuming (time that is used by foreign competitors to capture market share) and vulnerable to obstruction by foreign countries that would suffer relative competitive losses if the amendments are made (e.g., Russia, which has little incentive to allow the sale of advanced UASs that they cannot produce without similar relief for missiles that they produce in abundance).

7a. Recommended Action: Establish a new policy for “overcoming a strong presumption of denial” in the case of export authorization requests for the export of MTCR CAT I UASs that facilitate American exporters of such UASs and allows American companies to effectively compete in the global market. This policy shall (1) direct the Department of State and the Department of Defense to evaluate UAS export authorization requests like they would manned aerial defense platforms that are capable of deploying similar payloads (e.g. fighter aircraft); (2) permit CAT I UAVs to be exported to non-MTCR members. The MTCR imposes no obligation that prevents the U.S. from overcoming the strong presumption of denial on national

security grounds, and as noted in the CAT Policy - economic security is an element of national security; and (3) the U.S. Secretary of State shall direct the Department of State to provide a classified brief on the Administration's UAS policy to industry.

7b. Recommended Action: The White House UAS policy shall include detailed parameters and criteria to govern and enable co-development/co-production of UAS systems with allies and partners through incorporating indigenous capabilities and/or a broader focus on advancing autonomous system capability through facilitating innovation and shared investment.

IIIX. Streamline Contracting and Modernize Pricing Structure for Foreign Military Sales to Increase American Competitiveness

The Security Assistance Management Manual (SAMM) and the Financial Management Regulation (FMR) direct U.S. Military Departments and others to price military equipment and services provided via the FMS program for foreign customers. The FMR aims to ensure that the U.S. government is compliant with the Arms Export Control Act, ensuring that the U.S. government operates the FMS program at no loss. DoD 7000.14-R FMR Vol 15 Chapter 7 states that “on the Letter of Acceptance (LOA), the estimated price is to be a reasonable approximation of the amount which will ultimately be billed, to include the Office of the Under Secretary of Defense (Comptroller) (OUSD (C)) inflation indices and other factors.” The end result is often an inflated FMS offer, not socialized with industry, not aligned with industry estimating, and often not competitive with foreign offers. This situation is compounded by a formal Congressional notification total program value that is inflated even further beyond the FMS LOA total case value. These are long standing practices that historically have served us well, but now disadvantage American industry in the competitive acquisition process most foreign governments have adopted.

8a. Recommended Action: The DoD shall work with U.S. defense industry representatives to revisit the pricing policies and develop pricing options when an FMS LOA is used in a foreign government competitive acquisition, including hybrid FMS/DCS cases. In such scenarios, DoD shall revisit FMS-only transfer policies for the end item being sold (with the intent to allow a DCS) or invoke an FMR exception on price computation that reduces the per unit price consistent with what would have been offered under a DCS arrangement while ensuring the fundamental indemnities legally available to the U.S. government, under an FMS LOA arrangement, are addressed within the offer other than as an element of the per unit price.

Furthermore, DoD will share with the U.S. company the LOA draft pricing to ensure they are informed prior to the delivery of the LOA to the foreign government in accordance with Section 1297(b) of the Fiscal Year 2017 (FY17) National Defense Authorization Act (NDAA).

FMS contract definitization and award timelines are too long impacting the price and availability of critical military capability for foreign allies and partners. The following shall be considered to improve FMS contracting:

8b. Recommended Action: Through regulation, DoD shall implement NDAA reforms to FMS contracting. Section 811 of the FY17 NDAA, Congress required DoD to definitize FMS contracts within 180 days of receiving a qualifying proposal. Section 811 also revised the definition of a qualifying proposal to reduce the amount of information required to be submitted and considered. Both of these reforms will streamline the contract negotiation process and reduce administrative burdens on the government and the contractor, if implemented in the Department of Defense Federal Acquisition Regulations Supplement (DFARS).

8c. Recommended Action: DoD shall work with Congress and industry to tailor other recent statutory reforms to provide greater flexibility. For example, Section 830 of the FY17 NDAA created a new requirement that all FMS contracts be awarded as a firm fixed price contract unless a waiver is granted as an exception on a case-by-case basis. Working together, DoD and industry representatives shall consider requesting that Congress amend Section 830 to provide authority to use a cost-reimbursement type contract vehicle for any development work provided via an FMS case without seeking a waiver.

8d. Recommended Action: The Administration shall convene a working group tasked with drafting a new model Federal Acquisition Regulation (FAR) or DFARS Part (or modifying an existing Part such as DFARS Subpart 225.73) to be titled, "Foreign Military Sales Expedited Contracting." The objective is to develop and implement FMS specific contracting procedures that will greatly reduce the time required to award a contract. This working group shall be empowered to engage directly with those representing industry or individual companies to receive input for this new regulation. This working group shall look at regulatory changes that do not require additional legislative action by Congress.

8e. Recommended Action: The working group shall consider drafting regulatory changes specific to level of cost or pricing data required for FMS contracts so that such data requirements are commensurate with what is already required for domestic contracts. Given the substantial data already required to support pricing the program of record,

the working group shall consider reducing the data required for pricing subsequent FMS contracts, absent a request to the contrary from the foreign customer. Current FMS pricing pilot programs that go beyond what is reasonable and compliant delay contract award and undermine the goal of reducing FMS program cycle times.

IX. Modernize FMS Congressional Notification Process to Keep Track with Inflation & Technology Evolution

Under Section 36(b) of the Arms Export Control Act (AECA) Congress exercises an essential oversight function through notification requirements for significant defense exports, but the financial and technological parameters governing such notifications have not been revised since 1981. They require modernization to facilitate timely responses to foreign customers that allow American companies to compete with foreign manufactures.

Congress must be formally notified 30 calendar days before the Administration can take the final steps to conclude a government-to-government foreign military sale of major defense equipment valued at \$14 million or more, defense articles or services valued at \$50 million or more, or design and construction services valued at \$200 million or more. In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel or New Zealand, Congress must be formally notified 15 calendar days before the Administration can proceed with the sale. However, the prior notice threshold values are higher for sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand. Commercially export authorized arms sales also must be formally notified to Congress 30 calendar days before the export authorization is issued if they involve the sale of major defense equipment valued at \$14 million or more, or defense articles or services valued at \$50 million or more. In the case of such sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand, Congress must be formally notified 15 calendar days before the Administration can proceed with the sale. As with government-to-government sales, the prior notice threshold values are higher for sales to NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand. These higher thresholds are \$25 million for the sale, enhancement, or upgrading of major defense equipment; \$100 million for the sale, enhancement, or upgrading of defense articles and defense services; and \$300 million for the sale, enhancement, or upgrading of design and construction service.

9a. Recommend Action: The Administration shall develop and submit a legislative change allowing the use of an OPM accepted inflation index to inflate the 1981 thresholds to contemporary nominal dollar values and to do so annually.

X. FMS Non-Program of Record/Non-Standard Acquisition/FMS Only Programs

Over the past two decades, U.S. allies and partner nations are increasingly seeking customized capabilities for their unique military formations and associated operational requirements. This results in the designation of a requested system by the U.S. DoD as non-standard—meaning that the configuration being considered for sale is not consistent with the same platform being used by the U.S. Armed Forces. When a non-standard system is requested, depending on the extent of the changes being sought, the U.S. DoD may not have a system program manager qualified to develop the foreign program and associated system sustainment and training. Therefore, non-standard sales create challenges within the U.S. government’s FMS community with respect to who will manage the program within a Service and how best to contract for such an acquisition.

10a. Recommended Action: OSD and the MILDEPs shall issue joint, transparent guidelines detailing the evaluation process related to what they will and will not support as a non-program of record FMS sale. A coordinated approach to supporting non-programs of record shall be managed by DSCA to include appropriately funding program development and management at the Service level. If the Services and OSD will not provide program management support to a non-standard program, the U.S. government policy shall be modified to allow a DCS transfer.

10b. Recommended Action: OSD and DoS’ Bureau of Political-Military Affairs (PM) shall (a) issue transparent and consistent criteria for differentiating SME and MDE that are restricted to FMS only and those permitted under DCS; and (b) provide a formal procedure to allow companies to contest FMS only designations based on the established criteria. DoS and DoD will ensure consistent application of FMS-only determinations within Departments and Services.

XI. ITAR Exceptions for Australia, UK, and Axiom NTIB & Trade Treaty Implementation of Legislation

The U.S. concluded and ratified “Defense Trade Cooperation” treaties with the United Kingdom and Australia that aimed to improve the efficiency of eligible two-way transfers of controlled goods without the need for an export authorization. Implementing legislation was passed in June 2012, which unfortunately diluted the effectiveness of both treaties.

10a. Recommended Action: The Administration shall seek to expand the Canadian ITAR exemption, specifically, Title 22, Chapter I, Subchapter M, Part 126, Sec 126.5, “Canadian Exemptions”- broadly allowing the export authorization free export and return to Canada of defense articles by developing a legislative proposal to amend this authority adding the United Kingdom, Australia and New Zealand. This approach will achieve the desired objective in a transparent manner without requiring amendment to the treaty-implementing legislation or the treaties.

XII. Offset Policy Engagement

The U.S. government has legislative constraints specific to participation in offset negotiations, but government officials can take lawful actions to positively affect offset related decisions by foreign customers. Allied and friendly nations place increasing importance on offset/industrial participation when making decisions to procure non-indigenous defense equipment/capability because of domestic political imperatives to demonstrate the economic benefits of acquisitions. Affectively managing this reality is essential to increase U.S. and allied security cooperation and promote U.S. global sales.

Recommendation 12a. The Department of State and the Department of Defense shall include topics related to country offset policies within U.S./country bi-lateral discussions. Specifically, the U.S. government shall engage on a case by case basis when allied/friendly nation offset policy is particularly onerous and contrary to U.S. practice in order to shape partner nation expectations, message the risk to security cooperation capability and interoperability, and recommend actions the partner nation can take to modify their offset policy.

Recommendation 12b. The Secretary of Defense shall direct MILDEP program offices to review potential direct offset/industrial participation with prime/major subs as part of MILDEP assessments and briefings to the DoD release committees. This will ensure communication and coordination with U.S. industry, Offices of Defense

Cooperation, DSCA, etc. to ensure all parties understand what can be proposed for offset/industrial participation and minimize the risk of contractor costs exceeding estimates furnished for the LOA and out of bounds negotiations.

XIII. Track Progress of USG Initiatives Undertaken to Implement Conventional Arms Transfer Policy:

The Department of State shall produce a status report to the President on implementation of these recommendations no later than 365 days after the completion of the administration's Conventional Arms Transfer Policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Webster". The signature is fluid and cursive, with a long horizontal stroke at the end.

Keith Webster
President, Defense and Aerospace Export Council
U.S. Chamber of Commerce

cc: Honorable Daniel Coats
Director of National Intelligence

Honorable Richard Ashooh
Assistant Secretary of Commerce for Export Administration
Department of Commerce