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[H.A.S.C. No. 114–123]

# ASSESSING THE DEPARTMENT OF DEFENSE'S EXECUTION OF RESPONSIBILITIES IN THE U.S FOREIGN MILITARY SALES PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

HEARING HELD
MAY 17, 2016

U.S. GOVERNMENT PUBLISHING OFFICE
20–791 WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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# ASSESSING THE DEPARTMENT OF DEFENSE'S EXECUTION OF RESPONSIBILITIES IN THE U.S. FOREIGN MILITARY SALES PROGRAM

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HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
*Washington, DC, Tuesday, May 17, 2016.*

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2212, Rayburn House Office Building, Hon. Vicky Hartzler (chairwoman of the subcommittee) presiding.

## OPENING STATEMENT OF HON. VICKY HARTZLER, A REPRESENTATIVE FROM MISSOURI, CHAIRWOMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Mrs. HARTZLER. Welcome and good morning. Before we begin, I would like to note that members of the full committee plan on attending today who may not be part of this committee. And so, therefore, I ask unanimous consent that these committee members be permitted to participate in this hearing, with the understanding that all sitting subcommittee members will be recognized for questions prior to those assigned to the subcommittee.

Without objection, so ordered.

This is the subcommittee's third event to review and assess the Department of Defense's [DOD's] role in the U.S. Foreign Military Sales program. As I noted at our hearing last week with representatives of the defense industry, foreign military sales, or FMS, is one component of the partnership-building tools the United States utilizes. It is a vital instrument of U.S. national security policy and is watched closely by our allies, partner nations, and adversaries alike.

This subcommittee understands that FMS is a complex program. It is executed by many Federal agencies and policy stakeholders. All are dedicated professionals who strive to further U.S. national security. They recognize that building critical relationships and military capacities of our foreign partners and allies strengthens American security. It also aids our vital defense industrial base and in many ways eases the task of equipping our forces with the best equipment.

But as with many large and multifaceted programs, FMS also comes with an inherent set of bureaucratic challenges. Some observers think the process is needlessly delayed and hinders the ability to deliver military capabilities to our partners engaged in many of the same conflicts or confronting the same threats we are.

In recent weeks, our subcommittee has learned, through various avenues, about lengthy policy reviews that occur regarding some

FMS cases. For example, it is my understanding that FMS cases for fighter aircraft that began well over 2 years ago have been delayed due to opaque and bureaucratic deliberations at the National Security Council. This is very unfortunate. And I wholeheartedly agree with Chairman Thornberry's recent assessment that the NSC has become an organization making military operational decisions, building misinformation campaigns, and absorbing most national security functions from within the White House.

I also strongly support the amendments filed by both Chairman Thornberry and Representative Jackie Walorski during floor consideration of the fiscal year 2017 NDAA [National Defense Authorization Act] this week, and I am glad that they were made in order so that we can vote to implement overdue accountability and congressional oversight to the processes and deliberations of the NSC.

We have also heard of delays stemming from the need to ensure technology embedded in U.S. products is properly protected. It is important to note that as we seek to streamline this process, the foundational basis of the FMS program is to support and preserve the national security interests of the United States.

Concerns have also been expressed about initial requirements or final design configurations which have been poorly developed. We have heard that the Defense Department does not always efficiently collaborate with industry in appropriately determining and developing end-item configurations based on the defined requirements. We have been told the Department also sometimes insists on undesirable contractual vehicles and upfront financial requirements that may dissuade allies from coming to the U.S. for their military equipment and support service needs. I also am concerned about the size and alignment of the Department's acquisition workforce and how the workforce is trained in prioritizing of FMS cases.

The goal of our FMS oversight activities has been to gain a better understanding of the strengths, weaknesses, opportunities, and challenges associated with DOD's role in the FMS program, how this committee can help streamline the process without sacrificing technology, security, and support the dedicated and hardworking people of our defense industrial base.

It is essential that the program is executed effectively and efficiently, and results in timelier acquisition and delivery of military capability where and when it is needed, both for the security of the United States and our reputation as an international partner.

But before I introduce the witnesses, I turn to the Oversight and Investigations Subcommittee ranking member for any opening remarks she wishes to make.

[The prepared statement of Mrs. Hartzler can be found in the Appendix on page 31.]

**STATEMENT OF HON. JACKIE SPEIER, A REPRESENTATIVE FROM CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

Ms. SPEIER. Madam Chair, thank you. And thank you to our witnesses who are here today.

Last week, the subcommittee heard industry's perspective on the process for U.S. foreign military sales. We heard suggestions for

improving the process, but we also heard about delays, including assertions that delays led to lost sales.

I think it is important for us to dig deeper. How many sales have actually been lost? Let's get specific. Is the process slow because foreign countries are unwilling to sign agreements with the United States not to share technology with other countries who are not our allies? Last week's industry witnesses were unable to provide specific examples where foreign governments have walked away from an FMS sale because the process was too slow.

The quality, prestige, and servicing agreements involved in purchasing U.S. weapons systems cannot be matched by foreign competitors. So I want to get a better sense of how much of an issue this really is.

At the last hearing, industry also complained that the technology transfer review was slowing down the process. But I want to reiterate that we need reassurance that these weapons do not fall into the wrong hands. Obtaining these assurances is a necessary part of the process.

Despite these potential challenges, based on current sales this year, foreign military sales are robust. Let me repeat: they are robust. A recent Defense Security Cooperation Agency announcement indicated about $29 billion in FMS sales through the end of April, which is on track with last year, so the demand is still clearly there.

Regardless, there are always improvements that can be made, and I look forward to hearing about several ongoing initiatives across the DOD to make the process more efficient. I also look forward to better understanding about benefits and potential pitfalls of the program.

Foreign military sales support the U.S. defense manufacturing base and strengthen our international partnerships. Through FMS, our interoperability with other international partners increases as does their capability to respond to shared global security challenges.

One issue where we are failing to maximize the benefits from this program is in recouping the hundreds of billions of dollars of taxpayer money that has gone to research and development for these weapons systems. Historically, we used to recoup a portion of these investments when we sold weapons to foreign governments. However, due to a policy change, DOD now waives all research and development fees. As a result, we are leaving nearly $800 million, and I suggest even more, of taxpayer money on the table each and every year and allowing industry and foreign governments to benefit at the American taxpayer's expense. Given the high demand for these sales, we need to do a better job of getting a return on our investment.

In our oversight role of the DOD and its part in the FMS process, the subcommittee continues to learn more about whether the FMS process is suitably efficient, effective, and timely. Yet I will reiterate what I said last week: We must not forget that FMS is an instrument of U.S. foreign policy. As we sell weapons systems and services to foreign countries, we must ensure they are used appropriately, responsibly, and are in our best interests. Although that may delay the process, it is a policy we must always keep in mind.

With that, I yield back, Madam Chair.

Mrs. HARTZLER. Sure. Thank you, Ms. Speier.

So I am pleased to recognize our witnesses today, and I want to thank them for taking time to be with us. We have today Vice Admiral Joseph Rixey, director of the Defense Security Cooperation Agency [DSCA] for the Department of Defense. Thank you for coming back. We have Ms. Claire Grady, director of Defense Procurement and Acquisition Policy from the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. And Ms. Beth McCormick, director of the Defense Technology Security Administration [DTSA], also from the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics.

Thank you all for being with us here today. And so now we will begin with your opening statements.

So, Vice Admiral Rixey, we will begin with you.

**STATEMENT OF VADM JOSEPH RIXEY, USN, DIRECTOR, DEFENSE SECURITY COOPERATION AGENCY, DEPARTMENT OF DEFENSE**

Admiral RIXEY. Thank you, Chairwoman Hartzler, Ranking Member Speier, and members of the subcommittee. I am pleased to be here today to share with you my thoughts on the overall health and well-being of the foreign military sales process and the Department of Defense's role in the program from my vantage point as the director of the Defense Security Cooperation Agency.

FMS is a longstanding foreign policy and national security program that supports partner and regional security, enhances military-to-military cooperation, enables interoperability, and develops and maintains international relationships. The system is performing very well, and the United States remains the provider of choice for our international partners with over 1,700 new FMS cases implemented in fiscal year 2015 worth more than $47 billion.

FMS is operated under the title 22 authority in which direction and guidance is delegated to DOD from both the President and from the Department of State. DOD manages the FMS life cycle, overseen by DSCA; conducts technology transfer reviews overseen by the Defense Technology Security Administration; and manages the defense acquisition and logistics systems which are overseen by DOD Acquisition, Technology and Logistics, and the military departments.

The FMS process is executed through a system designed to fulfill requirements of the Arms Export Control Act, ensuring three fundamental and critical validations occur before a capability can be offered: that the sale is of mutual benefit to the partner nation and the U.S. government, that the technology will be protected, and that the transfer is consistent with U.S. conventional arms transfer policies.

Criticism of the alleged slow approval timelines is largely associated with a few high profile cases, and this criticism is actually misplaced. These delays are the natural outcomes of the required validations rather than a negative reflection of the performance of the FMS system itself.

The FMS system is burdened, but it is not broken, and we have made important strides, not only within the Department of De-

fense, but across the interagency in mapping out and beginning to develop and implement important initiatives that target areas for improvement to keep the FMS system responsive to our partner needs and agile to support national security objectives.

We have identified approximately 40 interagency initiatives to better enable the United States to remain the provider of choice for our foreign partners, providing them with the full spectrum of required capability to receive, maintain, and sustain the products they receive through the FMS program.

Initiatives range from professionalizing of the Security Cooperation workforce, providing ways in which we can better understand and help define partner requirements earlier, and surely we are properly resourced for FMS contracting manpower and establishing ways we can more effectively respond to the requirements, such as our ability to buy ahead of need with the Special Defense Acquisition Fund.

And that is a broad overview. My written statement has greater detail that I am happy to discuss in response to your questions.

Distinguished committee members, I want to thank you again for the opportunity to sit before you today, and I look forward to your questions.

[The prepared statement of Admiral Rixey can be found in the Appendix on page 33.]

Mrs. HARTZLER. Thank you.

Ms. Grady.

**STATEMENT OF CLAIRE GRADY, DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY, UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY AND LOGISTICS**

Ms. GRADY. Thank you.

Good morning, Chairman Hartzler, Ranking Member Speier, and distinguished members of the subcommittee and committee. Thank you for the opportunity to appear before you to discuss the role the defense acquisition community plays in supporting foreign military sales.

In acquiring goods and services on behalf of FMS customers, we employ the same rigorous policies and procedures that we use to meet our own requirements. When an FMS customer seeks to acquire major weapons systems, whenever possible, the same acquisition program management office that oversees the DOD acquisition and sustainment of that system is also responsible for delivering the FMS requirements. In this way, the Department and the FMS customers enjoy the benefits of synergy, not only from the perspective of staffing, but also in realizing efficiencies in achieving economies of scale, which results in lowered negotiated prices from industry.

To increase the efficiency and effectiveness of the overall acquisition system, the Under Secretary of Defense for Acquisition, Technology and Logistics, Frank Kendall, has advanced a series of continuous improvement initiatives we refer to as Better Buying Power. One of the central elements of Better Buying Power is our focus on the people who comprise our acquisition workforce and ensure we provide the training and tools to enable them to secure the

best possible value for our warfighters, the American taxpayer, and our FMS customers.

The Department has invested significant resources, with the support of Congress, to ensure that our acquisition workforce is properly sized, with the right skills, experience, and training to execute the responsibilities entrusted to us. Last year, DOD's talented contracting officers obligated over $274 billion on contract actions, of which about $26 billion were for foreign military sales.

DOD training and certification programs for the defense acquisition workforce are considered to be the gold standard within the Federal Government. The professionalism and capability of our acquisition workforce is a significant contributing factor in our international partners' choice to acquire goods and services through the U.S. FMS program.

Another pillar of Better Buying Power is to incentivize productivity and innovation in industry and the government. A key tenet of that is the need to employ appropriate contract types and to properly align incentives. There is no one preferred contract type. The contract type that is employed should reflect the balance of risk between the government and the contractor and provide the contractor with the greatest incentive to achieve the outcomes necessary to make the program successful. If the Department were precluded from using the appropriate type contract in any particular environment, it would effectively constrain our ability to deliver best value to the FMS customer and eliminate opportunities to achieve efficiencies by combining U.S. and FMS requirements on the same contract.

As detailed in the tables I included in my written statement, the Department's contracting officers employ a variety of contract types that will best support the FMS customer's needs, with the predominant contract type being firm fixed price.

Recognizing the importance of being responsive to customers' needs, we are continuing to work with Vice Admiral Rixey, DSCA, and the implementing agencies to shorten the times involved in the portion of the process that the acquisition community can influence. For example, as is the case with U.S. requirements, sole source foreign military sales contracts for military items require the contractor to submit certified cost or pricing data in accordance with the Truth in Negotiations Act. We are exploring opportunities to reduce procurement lead time and realize efficiencies by extrapolating from prior cost history to price future requirements and reduce the administrative costs for contractors to submit and certify proposals for FMS requirements.

Another area where we are looking to improve is in the final pricing of undefinitized contract actions [UCAs]. The preferred practice is to finalize the terms and conditions and negotiate the price prior to award of a contract. However, due to urgent needs of FMS customers, it is often necessary to authorize the contractor to begin work prior to reaching final agreement on price and other terms. Although the statute exempts undefinitized contract actions awarded for FMS customers from restrictions and procedures otherwise required for UCAs, by policy, the Department has mandated that these management procedures be employed whenever practicable. And if it is not possible to improve those—if it is not

possible to apply those management techniques, they're required to notify their acquisition chain of command as well as my office.

We also have instituted internal reporting procedures to provide management and attention and visibility on our use of UCAs and provide semiannual reports to the Congress. In these reports, we identified a number of UCAs that have remained undefinitized for extended periods of time. Definitizing UCAs in a timely manner is important to both the government and industry and requires the mutual cooperation of both to achieve. We are committed to doing better in that area.

Responsive to your hearing invitation letter, I have included in my written statement information about DOD's technology security and foreign disclosure process and the Defense Exportability Features Pilot Program. For acquisition, these initiatives are led by my colleague in the Office of the Under Secretary for Acquisition, Technology and Logistics, the director of International Cooperation.

I thank you for the opportunity to address the acquisition perspective of this important element of the Security Cooperation program, and I look forward to your questions.

[The prepared statement of Ms. Grady can be found in the Appendix on page 43.]

Mrs. HARTZLER. Thank you, Ms. Grady.

Ms. McCormick.

## STATEMENT OF BETH McCORMICK, DIRECTOR, DEFENSE TECHNOLOGY SECURITY ADMINISTRATION, OFFICE OF THE SECRETARY OF DEFENSE

Ms. MCCORMICK. Thank you, Chairman Hartzler, Ranking Member Speier, and members of the subcommittee. I appreciate the opportunity to discuss the Department of Defense ongoing technology, security, and foreign disclosure process improvements.

As part of the Office of the Under Secretary of Defense for Policy, my agency, the Defense Technology Security Administration, collaborates with our sister agency, the Defense Technology Cooperation Agency, to build the capacities and capabilities of international allies and partners through the transfer of defense articles. Whether through the foreign military sales or direct commercial sales, providing the right equipment to match the security requirements of partners is a must.

My agency also partners with several organizations in the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. The Arms Transfer and Technology Release Senior Steering Group, which I co-chair with Keith Webster, Director of International Cooperation, in the Office of the Acquisition, Technology and Logistics, brings together all of the key DOD stakeholders and process owners, breaking down longstanding stovepipes and focusing attention on the considerable factors so we can get capability to our global partners effectively and efficiently.

We recognize that in some complex export transactions, if we wait for a formal letter of request from the international partner, we will be behind the power curve in the technology security and foreign disclosure review process. As a result, for select high-demand or sensitive systems, we seek to develop anticipatory policies addressing several of the technology security and foreign disclosure

reviews in advance of a request or export license authored submission. Also, we are able to avoid false impressions when the answer will be "no" and, in some cases, address challenges early enough in order to get to a quick "yes" decision.

Partnership between the U.S. Government and U.S. defense industry is also imperative, and I would note that last week this committee had several presentations by those key industry associations. Last October, I had the privilege of co-hosting a U.S. DOD-industry partnership forum with Keith Webster. As co-chairs of the Arms Transfer and Technology Release Senior Steering Group, we thought it was high time to have a dialogue about ways industry and government can work together to facilitate defense exports. While we developed the initial concept for the event, the forum became a reality only through collaboration with the Aerospace Industries Association and the National Defense Industrial Association.

This was a great opportunity to foster communication between the Department of Defense and our industry partners on how we can work together to ensure our industry remains competitive internationally. Industry is counting on increased exports of defense technology to new and emerging markets. We had industry and DOD panels addressing a variety of defense export-related topics, with a healthy exchange of perspectives. We took stock of the many reforms undertaken, including the administration's Export Control Reform Initiative, improvement to the foreign military sales process, DOD participation in many international trade shows, and thinking about exportability capabilities to partners and allies from the start.

Again, thank you for the opportunity to share our technology security and foreign disclosure-related process improvements with you today. I look forward to additional questions from the committee. Thank you.

[The prepared statement of Ms. McCormick can be found in the Appendix on page 61.]

Mrs. HARTZLER. Thank you, Ms. McCormick.

General Rixey, I would like to start asking questions of you. You said in your testimony that your written statement will provide more information on the different initiatives, over 40 initiatives, that you shared with us two hearings ago, the list here of all these initiatives.

Admiral RIXEY. Yes.

Mrs. HARTZLER. And I was very much looking forward to you coming and sharing details about some of these——

Admiral RIXEY. Sure.

Mrs. HARTZLER [continuing]. But in your written—in your oral testimony, you just mentioned a couple of them and you said to look at the written testimony. We did not receive this till 8:30 last night. I was at that time reading Ms. Grady and Ms. McCormick's testimony, which didn't arrive 48 hours, either, before.

Do you realize there is a requirement that the testimony be here 48 hours before, and how come you didn't meet that deadline?

Admiral RIXEY. Yes, ma'am, I do realize. And I apologize. I wanted to make sure that my chop went through the interagency prop-

erly. And I admit that it was my fault and I should have had it to you sooner.

Mrs. HARTZLER. So there is no way that I have had a chance to read this and nobody else on this committee has, so can you outline some of the things in the written testimony, some of the initiatives that you are doing to help speed up the process?

Admiral RIXEY. Yes, ma'am.

Mrs. HARTZLER. Thank you.

Admiral RIXEY. I will talk about three or four specifically that I think are critically important. The first is we are working very closely with the services to ensure that we have adequate manpower to execute our programs. As I have shown earlier, it is a system of systems that has many artisans involved with ensuring that we get a good requirement from our customer, that we are able to process the case in a timely manner, that we are able to do the technology review, we can do the foreign policy review, and then, finally, to ensure that we have enough artisans to get the acquisition process moving forward.

We want to ensure that the services realize that it is in a critical mission area and that they support staffing of these key positions, as well as we are working with the services and the comptrollers to find a way to fund these personnel with nonappropriated funds to ensure that we can meet the demands of a very robust FMS system. So that is the very first initiative, is to ensure that we have adequate manpower to execute these programs.

Mrs. HARTZLER. Can I stop you just a second?

Now, in Ms. Grady's testimony, you say you have oversight of over 30,000.

Ms. GRADY. I am sorry. To clarify, the 30,000 that I have——

Mrs. HARTZLER. You want to——

Ms. GRADY. Good point. Thank you. Sorry.

The 30,000 that I highlighted I have personal oversight of is the contracting professionals. The acquisition workforce writ large is just over 150,000, about 153,000 to 156,000.

Mrs. HARTZLER. So how many of those, Admiral Rixey, are you speaking of that you are making sure you have adequate manpower of?

Admiral RIXEY. Well, we fund—overall, the whole system, I fund about 10,000. And I would—I would say roughly about 7,000 of the majority of those are in the acquisition community. So——

Mrs. HARTZLER. Do you feel like you need to hire more to meet the needs?

Admiral RIXEY. I do believe that we will, if the demand continues. And there are three items that our international partners tend to purchase. If they purchase an item that is from our program of record or something that we are already developing, I can leverage, for the most part, the program offices that exist for those types of equipment. For example, the F–18 Hornet. I would go to the F–18 program office and say—and they actually have a contingent that do international sales, and we can facilitate that.

Sometimes our international partners want to buy an item from us, but they want to add capability that is unique to their country. Well, then I have to go to the same program office and ask them for engineers and technicians to help me understand how we are

going to integrate these capabilities in, and that is usually supported very well.

Where we run into some difficulties is when a country asks us for nonprogram of record-type procurements, for example, a patrol boat that is not in our inventory. Then I have to go find—there is no program office. We have to establish a program office. And that sometimes is a challenge finding those artisans, because we are always running up against manpower constraints or caps in manpower.

The way we fund our personnel right now is through reimbursable accounts, which at this point count against their caps. We are working with the comptrollers to figure out how to pay direct site and establish these types of program offices and this type of support without counting against the service's manpower. And that is one of the initiatives that we are working on, is to be able to both expand and contract with sales.

Mrs. HARTZLER. To have the flexibility.

Admiral RIXEY. Have the flexibility, yes, ma'am.

Mrs. HARTZLER. So how many people are you planning on hiring in the next 6 months to help meet——

Admiral RIXEY. In the next 6 months?

Mrs. HARTZLER. Uh-huh.

Admiral RIXEY. I think we have a lot of work to do in determining—understanding anticipated demand, and I still have to go through the mechanisms of how to hire. So not many in the next 6 months. I will be able to project, over the life of these cases, what we think we are going to need in terms of as contracts start to become required for case execution. In the 6 months, I don't have enough time right now to change the policies.

Mrs. HARTZLER. Okay. So the adequate workforce is one of the things that you are trying to get ahold of and——

Admiral RIXEY. Yes.

Mrs. HARTZLER [continuing]. Figure out manning.

Admiral RIXEY. Yes.

Mrs. HARTZLER. Why don't you go ahead and give another example? Then we will go to the questions of other——

Admiral RIXEY. So the next one, I think, is probably the most important and it is within our control, is we need to certify and train our Security Cooperation workforce almost in the same manner that we did a couple decades back with the acquisition community.

Right now Security Cooperation, I would say, is basically an ad hoc operation. We do train our folks, we send them to school at Wright-Patterson called DISAM [Defense Institute of Security Assistance Management]. I would say that that would probably be like a level one certification. We need to expand upon that. We need to make sure that the 800-plus Security Cooperation officers that I am responsible for in the embassies down in these particular countries are fully trained. And in some of these countries, we may need a level of certification above an entry level certification.

So we need to professionalize the Security Cooperation workforce, from the Security Cooperation and also within the services, and we also need to reach out to the acquisition community—which I think you will explain—Claire will explain how we are training our acquisition professionals to be savvy in acquisition for foreign part-

ners. And so this is what I think we need to embark on and is very important.

Mrs. HARTZLER. I was going to go, but since you mentioned Ms. Grady, there is something in her testimony—which I very much enjoyed your testimony. It was getting right at the heart of the changes that you are making to try to address and expedite FMSes. So I very much appreciate that.

But you mentioned that there is now an international acquisition billeting that you are doing to train people in this specific area. Can you expound on that and tell how many people, how many billets you have that deals just with foreign military sales?

Ms. GRADY. Absolutely. And, first of all, as part of our standard acquisition training, we apply the same processes to foreign military sales as we do to U.S. So one of the important elements of that training is addressing foreign military sales early in all of our acquisition training so that when our program managers are embarking on a new program, they are considering the full spectrum of potential requirements, including partner or allied sales in the future when they are standing up programs.

So we want people to have, acquisition professionals to have awareness of the full scope of the acquisition responsibilities they have, including the foreign military sales.

In addition to what is included as part of the standard certification training for functional communities, we also have subspecialties in international acquisition where we have identified positions that are predominantly or have a need to have greater knowledge of the international acquisition. We—that as a subspecialty emerged in 2007 exclusively for program managers. It wasn't until 2014 that we looked and said, it is much broader than just the program manager who needs awareness associated with that.

We have put through about 7,500 students in training, and we have recently put a lot of emphasis on two foundational courses, Acquisition 120 and Acquisition 130. Acquisition 120 deals predominantly with the Security Cooperation enterprise and what the acquisition role is in that. Acquisition 130 focuses on technical rights and disclosure of technology. And we have had about 6,000 people take those courses just since they have stood up in 2014.

So it has been an area of emphasis. And when we look at our acquisition workforce and our planning for the future, we look not just for the U.S. requirements, but the total capabilities that we need to deliver and make sure that we are working with the service acquisition executives to forecast their workforce needs for the full body of work we are going to ask them to perform.

Mrs. HARTZLER. It sounds like it certainly makes a lot of sense to me that you would train people and give them the specialty background that they need to deal with that.

Okay. Ranking Member Speier.

Ms. SPEIER. Thank you, Madam Chair. And thank you again to the witnesses for your testimony.

Vice Admiral Rixey, when you refer to non-program-of-record cases, you are talking about designer products, are you not, for specific countries?

Admiral RIXEY. Yes, ma'am. They will be unique.

Ms. SPEIER. So, I mean, I think it is really important for us to appreciate that when a country comes to us and says, "We don't want something off the shelf. We want you to build us something special," that is a designer product, that is a one of a kind. And, frankly, they should pay for that and they should pay, in my view, the R&D [research and development] for that as well, because we are building them something unique.

Now, let's get to the crux of this. How many cases do you have in any given year——

Admiral RIXEY. Well, in fiscal year 2015——

Ms. SPEIER [continuing]. In sales?

Admiral RIXEY [continuing]. We had 1,774.

Ms. SPEIER. Okay. 1,774 sales that actually went through the process?

Admiral RIXEY. That were implemented. Cases that were implemented.

Ms. SPEIER. And how many of those were for weapons?

Admiral RIXEY. I would say roughly—we broke that out, and the rough order of magnitude is about 75 percent goes to end items and 25 percent to things like training and services.

Ms. SPEIER. So 75 percent of all of those were for weapons systems?

Admiral RIXEY. Yes.

Ms. SPEIER. If you were to chart that year to year, how would that compare?

Admiral RIXEY. I will have to take that for the record, but if I were to guess, that would be consistent, but——

[The information referred to can be found in the Appendix on page 71.]

Ms. SPEIER. Do you expect sales to increase?

Admiral RIXEY. I expect sales to be steady this year to match what we did in 2016—or 2015.

Ms. SPEIER. Okay. There has been a lot of talk in this committee about lost sales. And the witnesses that testified last week, I specifically asked them, give me some examples, and they were hard pressed to do it.

Could you tell us, how many sales have we lost because of the slowness of the process?

Admiral RIXEY. I cannot. I would have to take that back for the record as well. There has been—industry has told me that they have lost sales, but I don't have any proof, and so I will have to go back and do more research on that.

I know that the fact that we do get delayed in certain items, the international partners do convey to me that they will look elsewhere for products. But I will have to take that question back for the record to get you an exact answer.

[The information referred to can be found in the Appendix on page 71.]

Ms. SPEIER. But when all is said and done, if they want an F–16, they are probably not going to go somewhere else to get it.

Admiral RIXEY. Well, they can. They can go to the French, they can go for a Mirage, they can go to Saab, and occasionally they do, but that is not the—they don't tell me the reason. It could be for their competitive advantage within their country, and so—they can

go to other places. There are other opportunities to buy generation 4, generation 4.5 fighters from other countries.

Ms. SPEIER. But if they are allies of ours, do we—is that a bad thing?

Admiral RIXEY. Not necessarily. If it is a NATO-compliant solution and it is interoperable, it is a capability. And, again, the business of DSCA is to provide capability. And if they find that through, like I said, a NATO-compliant solution, that is a capability.

What we strive for in foreign military sales is building our partnership capacity and interoperability. That is what we—that is what our mission statement is for. And the reason we encourage foreign military sales is that we are involved with the contracting, we can design the contract itself and the specifications, and to ensure maximum interoperability. That is an extension of our warfighting capability if they are interoperable. And——

Ms. SPEIER. So where does the slowness start to be seen? Where is the logjam?

Admiral RIXEY. Ma'am, we have actually tried to look at that in terms of—I built a Gantt chart that shows from, again, when the customer makes a requirement down through all the different lanes that have to—we have to go through, where we have to discuss a mutual benefit, is it a technology transfer issue, is it a foreign policy concern, and is it available in our acquisition community?

We are seeing holdups throughout various places, whether it is foreign policy review or going from once we have approval to contract award. It is everywhere. And it is a complex system of systems. I would like to think that the front end of it, where we have that deliberate conversation, goes at a pace that is required to make sure that we have a deliberative conversation.

Ms. SPEIER. Well, in a private conversation that I had with you yesterday, you seemed to indicate to me that the delays start to occur in the foreign policy area when the purchaser is unwilling to sign the agreements relative to retaining the technology and not sharing it with third parties that are not our friends.

Admiral RIXEY. I would argue that of the 1,774 cases that we had go through the system, the ones that gain a lot of attention are those very few high profile cases that are hung up in policy review. And for the most part, most of what we have goes through the system relatively quickly.

Some of these major defense articles that get these headlines, the few happen to have huge production lines and have huge workforces depend on the sales of these end items. But when I look at the system as a whole writ large, I think fundamentally we get through the system quickly.

I am worried and concerned about, with $47 billion of sales this year and matching next year, the sheer number of contracts going through our acquisition community could cause the major delay. And I think if you ask industry where they focus, their concerns are, is getting to contractor award once we have had approval, and we are working very hard on these things. And I think Claire will talk about some of the initiatives that are in place.

The foreign policy issue that I see really are on high profile cases and really not that many when you look at the 1,774 cases that we push through. So—and why are they hung up? Well, things tend to get hung up when some of the countries don't sign security agreements with us. So when we come to technology transfer and technology review, we pause on whether or not we are going to provide that capability from a technology transfer perspective.

Ms. SPEIER. Okay. On the issues of research and development, historically we were reimbursed for the research and development that we have provided for all these complicated weapons systems. You had indicated to me that if we were to receive the R&D licensing fee, so to speak, we would be talking about, I think the figure you said was over $800 billion a year.

Admiral RIXEY. Yes.

Ms. SPEIER. So when did we stop receiving those funds? What year was it?

Admiral RIXEY. I don't know the exact date. I understand it was in the 1990s. I know that just—I—when it comes to waiving nonrecurring—or nonrecurring costs, I execute that in accordance with the Arms Export Control Act. That authority has been delegated from the President down to the Secretary of Defense and down to me.

Ms. SPEIER. Well, at one point, as I understand it, there was an amendment to just get rid of the R&D——

Admiral RIXEY. Yes.

Ms. SPEIER [continuing]. Reimbursement, and Congress said, no, that what we will give you instead is a waiver.

Admiral RIXEY. Is a waiver.

Ms. SPEIER. But as I understand it from you, you have waived every single request.

Admiral RIXEY. Almost every single. There has been one or two exceptions, but for the most part, yes. And the criteria that we use is—so in the last 3½ years, we waived for not—for NATO standards. So a NATO country, Australia, New Zealand, and a few others, we waived; 38 percent of the waives associated with that.

The other two reasons that we are authorized to waive is there is a likely loss of a sale, or if there is economies of scale to be gained by selling, for example, more jets on a line, incorporating it into our contract, our unit costs come significantly down, then we won't——

Ms. SPEIER. But, Vice Admiral, those three potential reasons to do it basically cover the waterfront, right?

Admiral RIXEY. Yes, they do.

Ms. SPEIER. You can basically make that argument for everything, and that is what you've done.

Admiral RIXEY. Yes, ma'am.

Ms. SPEIER. So we have received, the taxpayers have received zero, basically zero back for all the R&D that we invest in these various weapons systems.

Now, the F–35, as I understand it, can only be purchased through FMS. Is that correct?

Admiral RIXEY. That is not correct. We have—we have FMS customers as well.

Ms. SPEIER. No.

Admiral RIXEY. Of the F–35.

Ms. SPEIER. From direct military sales? I thought——

Admiral RIXEY. Oh. Oh, only through FMS. I am sorry. I was confused whether it is a cooperative program, and we have FMS customers. You are absolutely correct.

Ms. SPEIER. So in that kind of situation, they are not buying it from anyone else.

Admiral RIXEY. Yes, ma'am.

Ms. SPEIER. They want that particular weapon. And why wouldn't we recoup the R&D that we have invested in that particular weapons system?

Admiral RIXEY. Well, again, I apply the logic of likely loss of——

Ms. SPEIER. Well, but you are not going to lose it because they are not going to get it through direct military sales, and they specifically want that airplane and not someone else's airplane.

Admiral RIXEY. Not in all cases. They can—they have alternatives. There are other generation 4, 4.5 fighters that they can go to if they find it too costly. And so, again, I apply the waiver criteria that has been provided.

Ms. SPEIER. Okay. I am just going to say for the record, Madam Chair, we are talking about taxpayer money. And historically the R&D was recouped. It has morphed into a situation where it is waived unilaterally and ubiquitously, and the result is the taxpayer is just fronting this R&D money without any benefit. And we wouldn't expect that from a license that a university was providing to a pharmaceutical company. They get recoupment. And I think the Federal taxpayer should get recoupment as well.

With that, I yield back.

Mrs. HARTZLER. Thank you.

Representative Scott.

Mr. SCOTT. Thank you, Madam Chair.

Admiral, you mentioned patrol boats. And just as an example, a country like Australia, if they wanted to buy a patrol boat from a U.S. company, would they have to go through the foreign military sales?

Admiral RIXEY. No, sir. They could go direct commercial.

Mr. SCOTT. Because they are a NATO ally?

Admiral RIXEY. I think when we look at the technology, we would do an evaluation based on technology. But a patrol craft, if it didn't have any sensitive technologies that were of concern for our technology release, they could go direct commercial sale.

Mr. SCOTT. Okay. So it is really—it is not the vessel; it is the weapons systems and the technology that is on the vessel where foreign military sales comes in?

Admiral RIXEY. There are two reasons. If we designated—and Ms. McCormick can talk about it. If it is designated as FMS only, then it has to go through the FMS system. There are some countries that don't have mature enough procurement officials to buy anything, and they come to us to purchase it for them.

Mr. SCOTT. Okay. Well, that answers one question. There are smaller countries who don't have the ability to do this, to negotiate the contracts for themselves is one of the reasons they would come through foreign military sales.

Admiral RIXEY. Yes, sir.

Mr. SCOTT. But a country like Australia, who is a friend, if they want to buy a patrol craft, they can just negotiate directly with U.S. manufacturers. And if there are any questions about the technology or the weapons systems that might be on that patrol craft, then they would get either a waiver from foreign military sales or——

Admiral RIXEY. Well, we would—what we would do is we would call it a hybrid. They could buy 95 percent of it via direct commercial sale and then maybe, for example, if it is a system that is so classified for even Australia, we would deem that FMS, and that piece would be—just that piece would be FMS and then it would be provided to the vendor.

Mr. SCOTT. Okay. So of the thousands of contracts that you have, if you broke them down by the dollar volume, is it 10 percent of the contracts that would make up 90 percent of the dollar volume? Do we have a——

Admiral RIXEY. Oh.

Mr. SCOTT. Are there several supersized contracts that make up the vast majority of the volume——

Admiral RIXEY. There are some supersized cases that make up the majority of the volume. And I can—if you want to in a closed session, I could walk you through the specific countries and those contracts themselves.

Mr. SCOTT. Well, certainly, to me, if we can simplify the process, I think that would be better for everybody. It would be better for the three of you and it would be better for the industry that is trying to sell the weapons and it would be better for the consumer as well. And so some of the stuff that is not sensitive, getting it out of the backlog sooner rather than later, I think probably helps everybody.

But for all of you, and I hope you will be specific with this, if there are any Federal acquisition regulations or statutory policy requirements that could be altered or eliminated, what would make DOD's force of the FMS program more efficient or effective? And just pick one thing, if you would. What is the one thing you would do you if could—if you had control that would make the system better?

Admiral RIXEY. Well, I would support DASD [Deputy Assistant Secretary of Defense for] Security Cooperation's initiative consolidating some of these title 10 authorities down to be a little bit more flexible than they are. And so we do also run title 10 authorities through the FMS system, and they come with some restrictions, like time, region, and there is about 20 authorities. So anything we can do to streamline those title 10 authorities, I think, would be—would help alleviate a lot of the strain on our contracting commands because of the restrictions associated with them, and that is to support that initiative.

Ms. GRADY. From an acquisition and procurement perspective, we largely follow the identical regulations for both foreign military sales and U.S. sales. There is maybe less than five pages of unique requirements associated with foreign military sales in our procurement and acquisition regulations.

Most recently, though, last year in the National Defense Authorization Act, we got specific guidance—or authority from the Hill

relative to treatment of offset costs, and that has been one of the areas that has historically slowed us down significantly from foreign military sales. We are in the process of implementing that from a regulation perspective, and that should expedite the contracting process.

It is one of the unique aspects of a foreign military sale that would not have been—that is not applicable to U.S., which because it is foreign, it is different and, therefore, it takes some time—or added time to the process. The treatment of indirect offset costs that we got the authorization for last year will help us in terms of speeding up our timeline.

Mr. SCOTT. All right. I am down to 10 seconds, so hurry. Please.

Ms. MCCORMICK. Congressman, I don't really have any specifics, because I think the role in my process is one that has to be a fairly deliberate one, and so it takes some time to make the decisions that we need to make. But I would echo Admiral Rixey's comments that some of the authorities that we have under title 10 should be looked at and streamlined.

Mr. SCOTT. Thank you.

Mrs. HARTZLER. Thank you.

Ms. Graham.

Ms. GRAHAM. Thank you, Madam Chairwoman. And thank you all for being here today.

Admiral, following up on Congressman Scott's question, so there are FMS contracts and there are commercial contracts. Do we keep track of those that are getting FMS contracts, what they are doing commercially as well?

Admiral RIXEY. Yes. And that is the State Department program. So we handle FMS; and then the license requirements, they go through State. And State manages and tracks the direct commercial sales.

Ms. GRAHAM. Is there somewhere where you can go where you can see what foreign governments have in terms of commercial contracts as well?

Admiral RIXEY. Well, I would defer that to State, but we track, obviously, the FMS cases that come through DSCA.

Ms. GRAHAM. So they do have a tracking system where they keep track of that?

Admiral RIXEY. Yeah, definitely.

Ms. MCCORMICK. Maybe I could—maybe I could——

Ms. GRAHAM. Okay.

Ms. MCCORMICK [continuing]. Handle the question, since I get—my agency actually is in a situation that we get the licenses referred to us by the Department of State.

So in this particular case, under the title 22 authorities of the State Department, the Directorate of Defense Trade Controls actually receives license authorizations from our industry directly to sell basically some of the same products through the direct commercial sale process. And the State Department Bureau of Political-Military Affairs also oversees the foreign military sales process. So all of defense trade is under their authorities and under the title 22.

So—but my agency actually gets to review those direct commercial sale licenses. So we provide that technology security input into the Department of State on those matters as well.

Ms. GRAHAM. And how is a decision made if—I am assuming we have countries that have both commercial and FMS contracts. How is the decision made whether it is required FMS or whether it can be done commercially?

Ms. MCCORMICK. I will go ahead and take that one again.

The decision basically is really a choice by the recipient country, unless we have made a decision between the Department of Defense and the Department of State that a particular item must go through the foreign military sales process. And that decision is normally made, what we were just answering Congressman Scott's question, it is normally because that technology is so sensitive that we want to put in place the various agreements between ourselves and the other government for the protection of that technology. Otherwise, it is really driven by the international partner, the international customer's decision.

Ms. SPEIER. Will the gentlelady yield?

Ms. GRAHAM. Absolutely.

Ms. SPEIER. Isn't it also, the difference is with direct military sales, you don't have the support provided in terms of maintenance? Isn't that the distinction between the two?

Admiral RIXEY. It is not that it's not provided. It is that we aren't ensuring that it is provided. So if the partner nation is, like, Australia, who wants to go direct commercial sale, they are strong enough and capable enough that they are going to build in a logistic support plan and they have the absorption capability. So that is dependent upon the nation that is procuring.

So going direct commercial sale doesn't mean they are not going to get the logistic support or the—or will they be able to absorb it.

When they go foreign military sales, we ensure full-spectrum capability, so we will deliver the end product, 2 years of initial support, we will encourage them to have a follow-on technical support case so that it is being supported properly, and we ensure that they can absorb it through our conversations with the COCOMs [combatant commands] and our country teams.

So the difference between a foreign military sale and a direct commercial sale is we feel it is necessary, again, as the mission of Defense Security Cooperation, to deliver full-spectrum capability. And so we have to have very candid conversations, deliberate conversations, which also slow down the process, to assure that they get the product, they have the support, and they can absorb it.

DCS [direct commercial sale] is between the country and the contractor. We have no idea about the configuration, we have no idea about supportability. The times that we recommend DCS is when the technology is mature and the procuring officials are mature. Any time you deviate from that, they are setting themselves up for a nonsupportable system.

Ms. SPEIER. I thank the gentlelady for yielding.

Ms. GRAHAM. Of course. Thank you.

In the two processes, is there—if a country—is there an advantage in terms of timing or challenges that the countries face to choose one over the other, other than what Congresswoman Speier

just pointed out, that one has more of a support system attached to it than the other?

Admiral RIXEY. Well, I will tell you what I am told is the advantage of going direct commercial sales. First of all, they can go direct to the international—or they can go direct to the vendor. In their minds, they think they are saving on the 3.5 percent administrative fee that we charge them to manage these cases. However, they are still going to go through the technology review. They are not going to skip that. There is this thought out there that they won't have to go through the technology review process. They do. But in terms of going direct to the vendor, they can negotiate their fee, they can negotiate the contract.

An FMS case, when they come to us, we go through our entire processes to get there. And I think they are necessary processes. Because sometimes some of these countries that don't have mature contracting offices get themselves into bad contracting vehicles or—and so we are providing a service and we are charging for a service. We also make sure, in our terms and conditions of a foreign military sale, that they can't do third-party transfers and that they are subject to our end-use monitoring processes.

So they think that when they go direct, they are skipping this. They are not. And they are also putting themselves at risk of dealing with our industry.

Now, again, when they have very mature contracting offices, that is not a problem.

Ms. GRAHAM. We sell F–35s to international——

Admiral RIXEY. Correct.

Ms. GRAHAM [continuing]. Obviously. Would that be considered something—that goes through FMS every time?

Admiral RIXEY. That does.

Ms. GRAHAM. Okay.

Admiral RIXEY. And I would highly recommend a major end item, especially that is involved with still completing its phases of development, to go foreign military sales. It is a huge risk if they do otherwise.

Ms. GRAHAM. Okay. Thank you.

I yield back, Madam Chairwoman.

Mrs. HARTZLER. Thank you.

Madam Bordallo.

Ms. BORDALLO. Thank you, Madam Chairman.

Admiral Rixey, I think many of us see the FMS process as integral to our Asia-Pacific rebalance strategy in terms of reassuring allies and partners, as well as building capacity in that region. Now, in recent years, we have made progress with regard to South Korea, and I am hopeful that efforts will continue to streamline sales to our partners in the South China Sea.

You touched very briefly on this in your testimony, but to what extent is DSCA, in coordination with the Department of State, working to prioritize FMS, particularly related to maritime capabilities for countries in the Asia-Pacific region?

Admiral RIXEY. Well, yes, ma'am. We work very closely with our combatant commanders, with OSD Policy, and with State to ensure that we understand our priorities writ large. I think once you understand that FMS, I told you, is a burdened process. We have to

have some mechanism for prioritizing this finite workforce. We actually reorganized at DSCA along regional lines, and so I now have an integrated regional team lead at DSCA that has a relationship with the combatant command and the specific SCO [Security Cooperation Officer] that does foreign—does security cooperation, has a relationship with OSD Policy to ensure that we are, in fact, executing those priorities. And those folks in the Pacific are very much tied in to these initiatives that you are talking about.

Ms. BORDALLO. Very good. Now, from the DSCA perspective, what tools can Congress provide to enhance and facilitate internal as well as external processes with regards to the South China Sea FMS? Is there anything that——

Admiral RIXEY. I can't think of anything on hand, but let me take that back for the record, I will get you a response.

[The information referred to can be found in the Appendix on page 71.]

Ms. BORDALLO. Okay. And though this hearing isn't an evaluation of the Excess Defense Articles or Foreign Military Financing programs, they do fall under a similar purview. And I welcome any additional relevant comments that you may have.

Admiral RIXEY. Yes, ma'am. Again, I will follow up, take that for the record, and provide that for you.

[The information referred to can be found in the Appendix on page 71.]

Ms. BORDALLO. Very good.

Admiral RIXEY. But we are executing those programs as diligently as possible so——

Ms. BORDALLO. Well, I am pleased to hear that.

Admiral RIXEY. Yes, ma'am.

Ms. BORDALLO. And I yield back, Madam Chair.

Mrs. HARTZLER. Thank you very much.

Vice Admiral Rixey, I have had a chance to look just briefly at your testimony as others have been talking here. You say I will not address each of the initiatives that you outlined, but you do cover a few of them. I was wondering if you and your office could take each one of these and write a summary of what you are doing in each of these initiative areas for us. That would be very helpful.

Admiral RIXEY. Yes, ma'am. We will forward you the—we actually have built PowerPoint quad charts that talk about those specifically, and I have them and I will provide those to you.

[The information referred to can be found in the Appendix on page 71.]

Mrs. HARTZLER. Great. Well, we appreciate your efforts there.

Ms. Grady, last week at our hearing with the industry, they indicated and were talking about how when a project comes through, it is mixed together with a domestic sale project at the same time and sometimes might be put on the back burner until the domestic program goes through first.

And I was just wondering, so how are acquisition programs prioritized within the DOD for interagency acquisition programs and FMS case acquisition programs?

Ms. GRADY. Certainly. We look collectively at our total requirements, both U.S. and foreign allies, and coalition partners. And when I say "we," that begins at the highest levels. We have war-

fighter senior integration groups where you look at emerging needs from COCOMs and from the Joint Staff, working in conjunction with Acquisition, Technology and Logistics, Admiral Rixey's staff in DSCA, DTSA, as well as all the implementing agencies to ensure we have visibility on the highest priority needs across the Department.

Those obviously, particularly where you impact warfighter, are going to get the highest priority across the Department from an acquisition perspective. When you come to more routine recapitalization, that is balanced as part of a total workload of a particular implementing agency. And when we do forecast our requirements, we forecast both what we need for U.S. and what we need for FMS, and make sure that we track and—we track and get the management attention across the board, including looking at acquisition milestones to make sure we continue to progress.

Wherever possible, we combine U.S. and foreign military requirements. That is where we find the greatest efficiencies so we can put everything on one contract. Budget cycles or needs don't always align that way, in which case then we would enter into a separate procurement action associated with that. But, again, using the same program office to the greatest extent possible so you have the sustaining engineering benefits, as well as production efficiencies, as well as management of the vendor's efforts.

So we look at it as a collective workload management perspective. And in some cases, a U.S. requirement will be a higher priority; in some cases, an FMS requirement will be a higher priority. That is coming from the customers, and we make sure that is reflected in how we execute the workload.

Mrs. HARTZLER. Great. Thank you.

Ms. McCormick, so to put this question in context, industry expressed frustration to the subcommittee last week in their testimony that they would—kind of generalities—say, show up to DOD with, say, a certain rock and DOD would, in turn, tell them to bring us a different rock without providing much detail on why the first rock wasn't sufficient. And it related to understanding technology, exportability, and configuration management of end items.

So, therefore, what processes do you use to collaborate with the defense industry to provide predictability and policy guidance about which U.S. defense technologies are exportable and which are not?

Ms. MCCORMICK. Well, thank you, Chairwoman. That is interesting that they say that because, actually, they bring me a lot of rocks and I help to shape the rocks that they bring us usually. I do it really through a couple of different ways. The first thing is, I have a very open-door policy with industry where I actually encourage industry to come in and talk to us, actually, even before they submit their export licenses. We also do deep-dive sessions. In fact, Admiral Rixey and I just did one a couple of weeks ago with one of the major defense companies where we spent over 3 hours talking about all of their international projects.

In fact, I really encourage companies now, particularly as companies are increasing the amount or looking to increase their international sales and, particularly, doing sales in countries, perhaps, where we don't have a lot of experience, don't have a lot of track

record, to come in and really share with us, you know, their plans. And that gives us a great opportunity, I believe, to talk about sort of what is the art of the possible and to give them a clear sense of it.

The final area, I think, that has been very helpful in this regard to clarify sort of what is in the art of the possible has been the significant changes that we have made as part of the administration's Export Control Reform Initiative where we have gone through a comprehensive review of our export control regulations, both the Commerce Department's and the Department of State. My agency has played a very key role in the technical review of those regulations in actually determining what type of technology we believe should stay in the jurisdiction of the Department of State.

And we have moved a variety of items, many items, actually, over from the Department of State over to the Department of Commerce, including items, to be honest with you, that are military items. And now they are over in the Commerce's jurisdiction and they are allowed to go to our friends and allies more easily, in fact, in a very—oftentimes, without any additional authorization by the United States Government.

So I think those bright-line exercises we have done as part of export control where we have published those regulations and industry has had a chance to comment on them, I think through all of those vehicles they have a very good opportunity to know exactly where the sensitive technologies are and what type of technology they would be able to sell internationally.

Mrs. HARTZLER. Okay, good. Do you believe that the Department is sufficiently staffed with the necessary skills to adequately perform end-use monitoring and enhanced end-use monitoring activities for those U.S. technologies that are exported to foreign customers?

Ms. MCCORMICK. I will tell you what I am going to do, I am going to leave the staffing answer to Admiral Rixey, but I will give you my piece of the puzzle. So what my agency is very much involved in is working with Admiral Rixey, as well as the Department of State, to determine what types of technology, first off, as we have talked previously, need to go through that FMS process and which technology needs to have certain levels of either end-use monitoring or enhanced end-use monitoring.

And so a lot of that is driven by that technology level. So I am—my staff and I are very involved in actually setting the determination of the frequency with which that end-use monitoring needs to be done. But in terms of the staffing level, I will leave that to Admiral Rixey since it is usually the workforce that he actually helps to fund that do that work.

Mrs. HARTZLER. Okay. Thank you.

Admiral RIXEY. Yes, ma'am. Well, first of all, staffing concerns with end-use monitoring is the same as staffing concerns with contracting and everything else. So as the foreign military sales increase, we will need to staff to meet that demand. I am responsible for the Golden Sentry program. That is for foreign military sale. The State is responsible for Blue Lantern.

Under the Golden Sentry program, we have our staff that are in the embassies in each country, so we are working very closely with

the services to identify those needs. Also, how they are allocated, working with the Joint Staff and then how those folks are allocated. Again, we are going to have to look at staffing mechanisms that don't count against manpower counts. And then I also have a team at DSCA that is responsible for assessing. We do assessment visits with each country to determine, are they managing their end-use monitoring programs carefully?

With that assessment, we rate them, and if satisfactory, they can continue. We have rated some unsatisfactory when they are not meeting the requirements associated with that. And that is the team that I have that do those assessments and do those courtesy visits back at DSCA. We are staffed for that, but I will be concerned with the folks that we have in the embassies in terms of numbers if these sales continue to rise.

Mrs. HARTZLER. Okay. Very good.

Ms. Grady, in your testimony you talk a little bit about the different types of contracts, and that was also brought up last week with industry. And you make a case there for enabling the fixed price incentive to continue. And you say that you require a lot of customers of FMS to participate in this at times—let's see. It says, "Simply put, sufficient funding needs to be in place to ensure that the FMS customer pays the final bill, no more, no less." And this is alluding to the 3.5 percent fee that is——

Ms. GRADY. Actually, ma'am, that was in reference to a point that industry had raised last week——

Mrs. HARTZLER. Right.

Ms. GRADY [continuing]. About the length of time that we need to hold on to excess funds before we can close out the contract. So it was specifically to contract type, not to the fee that is payable for the FMS process.

Mrs. HARTZLER. Yes. Right. We are talking about the same thing.

Ms. GRADY. Okay.

Mrs. HARTZLER. Let me get around to my question here. Because they did raise that concern that sometimes it could be 7 to 10 years that the money is held up by the country until the contract is completely filled. So I just wondered, has there been examples of a country not having enough money to pay their final bill, and when did that happen?

Ms. GRADY. I am not aware of a specific example. We can go back and look associated with that. We monitor throughout the contract performance to ensure that there are adequate funds in the case to pay all of the costs associated with that.

When we talk about cases versus contracts, cases are usually a compilation of support that we are providing to a particular country. And it is usually typically more than just one specific contract. So it is the broader package of support that we are delivering to that foreign government.

So we monitor both the estimate up front of what we think it will cost to complete the contract and then we monitor contract performance throughout the entire life of the contract to ensure that we have adequate funds.

In the event the funds are different than what we anticipated, we would either notify the customer that we are—through DSCA, that we have excess funds or notify them that we need to poten-

tially amend the case to add additional funding associated with that. We track that throughout the process. That is part of the case management function, and we want to be as transparent and as timely as possible in terms of notifying them where we are relative to the expenditure of their money.

Mrs. HARTZLER. Would you be supportive of allowing the country to choose which type of contract that they enter into?

Ms. GRADY. So what is somewhat unique about the FMS process is the letter of offer and agreement is a contract between the country and DSCA. The contract that we are entering into itself is actually between the U.S. Government and U.S. industry. So while we are doing that on behalf of the FMS customer, they are not actually a party to the legal contract that we enter into. What we look at and we apply the same rigor and discipline associated with selection of contract type for our FMS customers as we do for our U.S. customers.

In a mature production environment, it would be fairly typical to see a firm fixed price contract type. Where we have seen uses of fixed price incentive has been instances where when we look at what we negotiated versus what the actual costs incurred were and there was a significant variation. And when I say significant variation, we define that back in 2008 in our acquisition regulations as greater than 4 percent.

So, basically, there is some factor that is driving uncertainty into the cost of performance that we didn't account for when we negotiated with industry. Using a fixed price incentive contract allows for sharing between either the overrun or underrun associated with those excess or surplus funds to be shared between the customer, ultimately, the customer and industry.

So our preference is to use firm fixed price, but only if we have cost certainty that allows us to fairly price those contracts.

Mrs. HARTZLER. Got you. Thank you very much.

I just have a couple more here for Ms. McCormick. Can you tell me anything about what internal benchmarks DTSA has in place to guide decision timelines, and how are DTSA and DSCA communicating decision timelines to our country's partners to ensure that they are making the best decisions in their national security interests and not seeking goods/services from alternative sources, such as China or Russia?

Ms. MCCORMICK. Thank you for that question. So the first one, as I alluded in my—I mentioned in my opening statement, and it is also in my written statement about the Arms Transfer and Technology Release Senior Steering Group that we use. I think this is a very good forum that we use really as a benchmark because that is a forum where we get the DOD stakeholders together and we identify priority release decisions that were working across the different processes.

I also, every week, get together with my staff, and I am constantly looking at the timelines associated with our review of export licenses. Obviously, we do provide the technical input, particularly to the Department of State, on those direct commercial sale munitions licenses. And I certainly—we don't have a statutory timeline in that case, but I try to move very quickly. I try to do that in sort of the 60-day timeframe. On the dual-use side with the

Commerce license, we actually have statutory requirements that we have to meet. Those licenses have to be reviewed in a 30-day period.

And so I think through the last couple of years, the processes that we have used to really track this are really trying to, again, be anticipatory with these release decisions. And as I indicated in my testimony, to actually do that in release of—basically, before a country actually asks for that capability.

Admiral Rixey and I also work very closely together where the whole issue of defense trade is a constant discussion point that we have with international partners. We both work for Under Secretary Christine Wormuth, the Under Secretary of Defense for Policy, and she has many bilateral dialogues with countries. And I can tell you that the defense trade portion, including foreign military sales, is always a key part of those dialogues.

And so I think that keeps our feet to the fire where we are working very closely with those international partners and they realize that the capability—we want to provide that capability to them and we certainly want to do it in a timely manner and be a provider of choice.

Mrs. HARTZLER. Very good. So given the constraints on the U.S. budgets and foreign military sales are increasingly important to ensuring that the U.S. defense companies are able to remain competitive and provide for a more robust industrial base. So how are DTSA and DSCA communicating with industry to ensure that they have visibility on expected timelines in order to plan and ensure that they meet critical FMS needs and what can we be doing better here?

Admiral RIXEY. Well, ma'am, first of all, we have a very robust industry engagement. And I meet with them regularly, unilaterally—or bilaterally, sorry. And sometimes I meet with Ms. McCormick. She joins me, and we have discussions with our industry partners.

I have an entire team called my weapons group that is really an ombudsman to our industry partners to have as much dialogue as they are willing to have on those particular cases. In addition to that, I sit with Mr. Kendall and when he meets with the significant primes of industry to discuss foreign military sales. So we have what I consider an extraordinarily robust industry engagement across all three fronts to make sure that we are managing their expectations.

Mrs. HARTZLER. Great. All right. Looks like Ms. Speier had to leave, so I think we are done with the questions from our end. But I wanted to give each one of you an opportunity to make any closing statements or anything else you would like to share on this topic that you haven't had a chance to cover yet.

So Vice Admiral.

Admiral RIXEY. Well, I would like to close by saying, first of all, thanks for this opportunity. I do want to emphasize that we are defending the foreign military sales system. We think it is—you know, the Arms Export Control Act and all it entails is critically important to ensure that it is, as a foreign policy too, we are doing it the right way.

An FMS case as opposed to direct commercial sale case really establishes a mil-to-mil relationship for 25 to 40 years. It is a very effective foreign policy tool, for building that relationship, for interoperability, for building out our capacity. And so, anyway, ma'am, thanks for the opportunity to speak today.

Mrs. HARTZLER. You bet. Thank you.

Ms. Grady.

Ms. GRADY. Good morning. Thank you for the opportunity. And I think I have emphasized this repeatedly, but also I just wanted to make one more reiteration. One of the strengths of the acquisition system and our ability to support the foreign military sales agilely, when you have potentially large swings in customer requirements and don't always have the ability to anticipate as well as we would like what those requirements are, keeping the processes as consistent as possible, and providing the full range of acquisition tools we have available are the best way we can support our foreign military sale customers.

Mrs. HARTZLER. Great.

Ms. GRADY. Thank you.

Mrs. HARTZLER. Thank you.

Ms. MCCORMICK. And I appreciated the opportunity to join this panel today. I was sort of a late add, I believe, last week, but I was very pleased to be asked because, obviously, it is very important. We do want to share advanced technology with international partners, but we also have to strike that balance to make sure that that technology is going to be used in the manner in which it should be used and for which we have authorized it. So I hope you have gotten the impression this morning, we have a great collaboration within the Department of Defense to work these issues, and we also have a very strong partnership with industry as well. So thank you.

Mrs. HARTZLER. You bet. Well, thank you for all that you are doing for our country. This is a very important process, not only for our national security, but for our allies as well. And it is not an easy process. So I appreciate all of your efforts. Thank you for being here today.

This hearing is now done.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned.]

# A P P E N D I X

MAY 17, 2016

**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

MAY 17, 2016

**Opening Remarks for Chairwoman Hartzler**
**Hearing on**
**"Assessing the Department of Defense's Execution of Responsibilities in the U.S. Foreign Military Sales Program"**
**May 17, 2016**

Welcome.

Before I begin, I would like to note, and of course welcome, Members of the full committee attending the hearing with us today that are not permanent Members of the subcommittee. Therefore, I ask unanimous consent that these committee members be permitted to participate in this hearing with the understanding that all sitting subcommittee members will be recognized for questions prior to those not assigned to the subcommittee. Without objection, so ordered.

This is this subcommittee's third event to review and assess the Department of Defense's role in the U.S. foreign military sales program.

As I noted at our hearing last week with representatives of the defense industry, Foreign Military Sales, or FMS, is one component of the partnership-building tools the United States utilizes. It is a vital instrument of U.S. national security policy, and is watched closely by our allies, partner nations, and adversaries alike.

This subcommittee understands that FMS it is a complex program. It is executed by many federal agencies and policy stakeholders. All are dedicated professionals who strive to further U.S. national security. They recognize that building critical relationships and military capacities of our foreign partners and allies strengthens American security. It also aids our vital defense industrial base and in many ways eases the task of equipping our forces with the best equipment.

But, as with many large and multifaceted programs, FMS also comes with an inherent set of bureaucratic challenges. Some observers think the process is needlessly delayed, and hinders the ability to deliver military capabilities to our partners engaged in many of the same conflicts or confronting the same threats we do.

In recent weeks, our subcommittee has learned through various avenues about lengthy policy reviews that occur regarding some FMS cases. For example, it's my understanding that FMS cases for fighter aircraft that began well-over two years ago have been delayed due to opaque and bureaucratic deliberations at the National Security Council. This is very unfortunate, and I wholeheartedly agree with Chairman Thornberry's recent assessment that the NSC has become an organization making military operational decisions, building misinformation campaigns, and absorbing most national security functions from within the White House. I also strongly support the amendments filed by both Chairman Thornberry and Representative Jackie Walorski during Floor consideration of the fiscal year seventeen NDAA this week, and I am glad

that they were made in order so that we can vote to implement overdue accountability and Congressional oversight to the processes and deliberations of the NSC.

We have also heard of delays stemming from the need to ensure technology embedded in U.S. products is properly protected. It is important to note that as we seek to streamline this process, the foundational basis of the FMS program is to support and preserve the national security interests of the United States.

Concerns have also been expressed about initial requirements or final design configurations which have been poorly developed. We have heard that the Defense Department does not always efficiently collaborate with industry in appropriately determining and developing end-item configurations based on the defined requirements. We have been told the Department also sometimes insists on undesirable contractual vehicles and upfront financial requirements that may dissuade allies from coming to the U.S. for their military equipment and support service needs. I also am concerned about the size and alignment of the Department's acquisition workforce, and how the workforce is trained in prioritizing of FMS cases.

The goal of our FMS oversight activities has been to gain a better understanding of the strengths, weaknesses, opportunities, and challenges associated with DOD's role in the FMS program, how this committee can help streamline the process without sacrificing technology security, and support the dedicated and hardworking people of our defense industrial base. It is essential that the program is executed effectively and efficiently and results in timelier acquisition and delivery of military capability where and when it is needed – both for the security of the United States and our reputation as an international partner.

But before I introduce the witnesses, I turn to the Oversight and Investigations Subcommittee Ranking Member for any opening remarks she wishes to make.

**OPENING STATEMENT TO THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE HOUSE ARMED SERVICES COMMITTEE**

VICE ADMIRAL JOSEPH RIXEY

Director, Defense Security Cooperation Agency

17 May 2016

Thank you Chairwoman Hartzler, Ranking Member Speier, Members of the subcommittee. I am pleased to be here today to share with you my thoughts on the overall health and wellbeing of the Foreign Military Sales (FMS) process and the Department of Defense's (DOD) role in the program – from my vantage point as the Director of the Defense Security Cooperation Agency (DSCA). As I said when I first briefed you several weeks ago, the FMS system is burdened but not broken, and we've made important strides not only within the DOD, but across the Interagency, in mapping out – and beginning to develop and implement – important initiatives that can further benefit the Security Cooperation mission area.

Context

Building partnerships, supporting allies, and protecting national interests are essential elements of U.S. foreign policy and national security. These activities require a careful balancing of short- and long-term considerations and a deliberate decision-making process to ensure our programs and strategies reflect our values and serve our interests.

FMS system is the government-to-government process through which the U.S. Government purchases defense articles, training, and services on behalf of foreign governments. Authorized in the Arms Export Control Act (AECA) of 1976, as amended, FMS process is a long-standing foreign policy and national security program that supports partner and regional security, enhances military-to-military cooperation, enables interoperability, and develops and maintains international relationships. Foreign Military Sales are key Security Cooperation tools, enabling a full spectrum of capability the Department seeks to provide its foreign partners.

The FMS process begins with a discussion with partner nations to determine their requirements, referred to as the Pre-Letter of Request, or Pre-LOR, phase. That determination is laid out in the LOR which the partner nation submits to the U.S. Government. Upon receipt, the U.S. Government begins a process of interagency and, depending on whether the case crosses certain thresholds, Congressional consultation and agreement that can lead to a Letter of Offer and Acceptance, or LOA, which is a contractual agreement for the partner's signature. Fundamentally, through this process the U.S. Government must determine whether or not the sale is of mutual benefit to us and the partner, whether the technology can and will be protected, and whether the partner nation adheres to U.S. foreign policy standards. This is a simplified characterization of the process -- and I'll provide more detail later -- but upon positive validation of these principles, and subsequent signing of the LOA by the partner, an FMS case flows into the DOD procurement process beginning with the Department negotiating a contract on behalf of the partner nation or making requisitions from DOD stock.

The Department uses the same acquisition process to procure systems under our FMS program as we do for U.S. programs. Hardware can come off the same production lines, so the same facilities that produce the weapon systems and platforms that support U.S. forces and operations also support our partner nations. I believe this is a strength of our FMS system and one reason among many for our status as "supplier of choice" for the international community.

Before going further, I want to review DSCA's role in FMS. Under the authority and direction of the Under Secretary of Defense for Policy, DSCA is responsible for directing, administering, and providing Defense-wide guidance for the execution of many of the Department's security cooperation activities including defense institution building, international education and training, humanitarian assistance and disaster relief, and defense trade and arms transfers. FMS is actually a Title 22 authority, and DSCA operates on the basis of authorities delegated from the President as well as in consultation and coordination with Secretary of State. DSCA:

- Provides policy guidance, oversight and funding for the Defense Implementing Agencies that execute FMS and other Security Cooperation programs

- Manages foreign partner and U.S. Government funds used to finance the transfer of defense articles and services; that is, DSCA exercises financial management and fiduciary responsibility for those funds used to purchase defense articles and services
- Determines training requirements necessary for the Security Cooperation Workforce to carry out its FMS responsibilities. The workforce includes approximately 12,000 civilian, military, and contractor personnel both in the United States performing FMS related responsibilities, as well as security cooperation office personnel located in U.S. missions overseas.

There has been a great deal of press over the past six months regarding FMS – some of it quite negative. I want to say clearly that -- while I can understand where some of the issues that have been raised stem from, particularly those that may be associated with specific cases – overall the system is performing very well.

The United States continues to remain the provider of choice for our international partners, with over 1,700 new FMS cases implemented in FY2015 worth more than $47 billion. This included $35 billion in cases funded by partner nations' own funds and approximately $12 billion in cases funded by DOD or Department of State appropriations. These numbers are consistent with the U.S. retaining, according to a December 2015 study released by the Congressional Research Service, the number one ranking in worldwide arms sales.

FMS system is effectively achieving its critical role supporting our foreign policy and national security objectives. For example:

- In the Gulf, previously procured major weapons systems, such as aircraft to Kuwait and Qatar, and armor/vehicle fleets to the United Arab Emirates and Saudi Arabia, are sustained through FMS cases for support services, spare parts, and weapons and munitions replenishment.
- In Europe, partners continue to purchase unmanned aerial vehicles and transport aircraft to support counterterrorism operations.
- In the Pacific, FMS provides significant capabilities to Indo-Pacific allies and partners- for example, advanced warfighting capabilities, transportation capabilities and logistics

support, and humanitarian assistance capabilities, leveraging the system to provide grant aid items to critical partners in the South China Sea region.

It is important to note that the FMS process is conducted at no cost to the U.S. taxpayer. Each sale has an associated surcharge that collects funding from partner nations into the FMS Trust Fund Administrative Surcharge Account. DSCA provides funds from this account to the military services and defense agencies over the entire life of FMS cases to execute the FMS process and deliver the equipment, services, and training to our international partners.

Broadly speaking, the FMS system currently has over $460 billion in total program value on over 13,500 cases. In turn, very strong sales over the past few years has led to growth in the FMS Administrative Surcharge Account that aligns to the corresponding growth in value of the yet-to-be-delivered equipment, services, and training that partners have paid for, either in whole or in part.

In addition to operating a three-year budget cycle to plan for the future use of these funds, DSCA conducts frequent assessments on the overall health of this account to ensure that we have sufficient funds to deliver the very significant and growing undelivered value of current FMS agreements.

The Process and DOD's Role

As I already noted, the FMS process is executed through a system designed to consider several factors and fulfills requirements of the AECA, ensuring three fundamental and critical validations before a capability can be offered:

- that the sale is of mutual benefit to the partner nation and U.S. Government,
- that the technology will be protected, and
- that the transfer is consistent with U.S. conventional arms transfer policies.

The FMS system is actually a set of systems overseen primarily by three organizations: Congress plays a critical role. Under the AECA, cases that meet specific monetary thresholds must be notified to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate for a period of time during which an LOA may not be offered to the foreign partner. During this period, Congress may seek to prohibit the sale through the joint resolution process. The State Department reviews each case through application of the Administration's Conventional Arms Transfer policy, and also considers industrial base concerns and U.S. warfighter needs. The Department of Defense executes a number of different processes in support of FMS, including:

- Management of the FMS case lifecycle, overseen by DSCA;
- Technology transfer reviews, overseen by the Defense Technology Security Administration (DTSA), to validate that our critical technologies will be protected, and
- Management of the defense acquisition and logistics systems, which are overseen by AT&L and the Military Departments as they acquire the partner nation capability.

I want to be clear that both DOD and the Department of State have extensive interaction and engagement with Capitol Hill counterparts throughout the year to ensure that information is shared to support the timely and comprehensive review of notified cases.

Criticism of the alleged slow approval timelines in the FMS program is largely associated with a few high-profile cases that are the focus of press and congressional attention. I believe this criticism – while understandable, depending on where you sit in this process – is actually misplaced. In almost all instances, the FMS process is acting as designed in considering foreign policy, technology transfer, and industrial base concerns. These delays are natural outcomes of the validations required by the Arms Export Control Act, rather than a negative reflection on the performance of the FMS program, itself. It should be noted that the validations required by the Arms Export Control Act -- such as national security or technology transfer reviews -- occur regardless of whether a sale is conducted via FMS or Direct Commercial Sales (DCS). When foreign partners choose FMS, however, they are assured that their procurements are executed with the same level of confidence as ours and they will be receiving a total package approach that includes associated capabilities such as training, logistics, and maintenance.

Initiatives

As I have mentioned to members of the committee before, DSCA is working with DOD and interagency partners, as well as our U.S. industry partners, to continuously analyze the FMS process and target areas for improvement to keep the FMS system responsive to partner needs and agile to support national security objectives. We have identified approximately 40 interagency initiatives to better enable the United States to remain the provider of choice for our foreign partners -- providing them the full spectrum of required capabilities to receive, maintain, and sustain the products they receive through the FMS program.

I will not address each of them, but will highlight a few that hold particular promise for positively impacting our work in the FMS area.

We are developing options to provide more transparency of the process, as it occurs, to the FMS customer. Part of this initiative is the development of ways, by both using lessons learned and developing new innovations to best work with the FMS customer early to define and understand their requirements. This will enable the United States to better align our partners' needs with U.S. stakeholder priorities up front, both within the U.S. Government and with U.S. defense industries, as well as to manage partner expectations.

Another important focus of our attention has been contracting for FMS. DSCA has been working with AT&L on improving the responsiveness and effectiveness of contracting for FMS. The FMS program uses the same contracting and procurement system used by our Department of Defense. Foreign Military Sales are subject to the Federal acquisition regulations, which are in-place to ensure that the U.S. Government gets the best value for taxpayer money. We look to provide the same value for our partners. Our greatest challenge in the area of contracting is manpower, both ensuring there are sufficient billets in place to support both FMS and domestic contracting requirements and to ensure that there are trained and certified professionals available to fill the contracting officer billets.

I want to note that AT&L has a number of initiatives underway to improve acquisition writ large, which will also benefit FMS.

DSCA is also working on initiatives that enable us to help posture the system to respond more effectively to requirements. One example relates to risk transparency that will better define technical risk early on as a case is in development, especially for sales that involve new equipment being developed, modified, or integrated for the first time.

Additionally, to support urgent requests from our partners, DSCA has been working closely with the Department of State on the Special Defense Acquisition Fund. This authority enables us to purchase selected items and services ahead of a request from a partner country. By purchasing the items and services in advance, we are better able to meet the urgent needs of our international partners. Over the past four years, we have used the Fund to purchase more than $400 million worth of items and services which, on average, have been delivered to our partners 6 to 12 months sooner than would have otherwise been possible. During this time, the items and services purchased by the Fund have been transferred to more than 30 countries worldwide, to include Afghanistan, Iraq, Tunisia, Ukraine, Jordan, and Lebanon, among others.

Since the 2011 directive from the Deputy Secretary of Defense to "streamline and harmonize" the various Technology Security and Foreign Disclosure (TSFD) processes, we have made significant improvements for both FMS and DCS processes. As part of this focused effort, the Arms Transfer and Technology Release Senior Steering Group (ATTRSSG), consisting of senior representatives across DOD and the State Department, was established to guide and direct TSFD processes in support of U.S. foreign policy and national security objectives. The ATTRSSG is co-chaired by the senior representatives of the Undersecretaries for Policy and Acquisition, Technology, and Logistics.

The improved TSFD functions include:

- overseeing urgent Priority TSFD Reviews (PTRs), for high-profile cases and trying to be more anticipatory in our processes;
- establishing interagency working groups which include the Departments of Defense, State and Commerce, as well as industry representatives; and
- improving coordination between the various TSFD processes.

Overall, TSFD process improvements combined with Export Control Reform, Security Cooperation Reform, DSCA's Vision 2020 initiatives, and enhanced U.S. Government-to-industry engagement are better preparing us to support partner requirements through FMS, DCS and/or cooperative agreements.

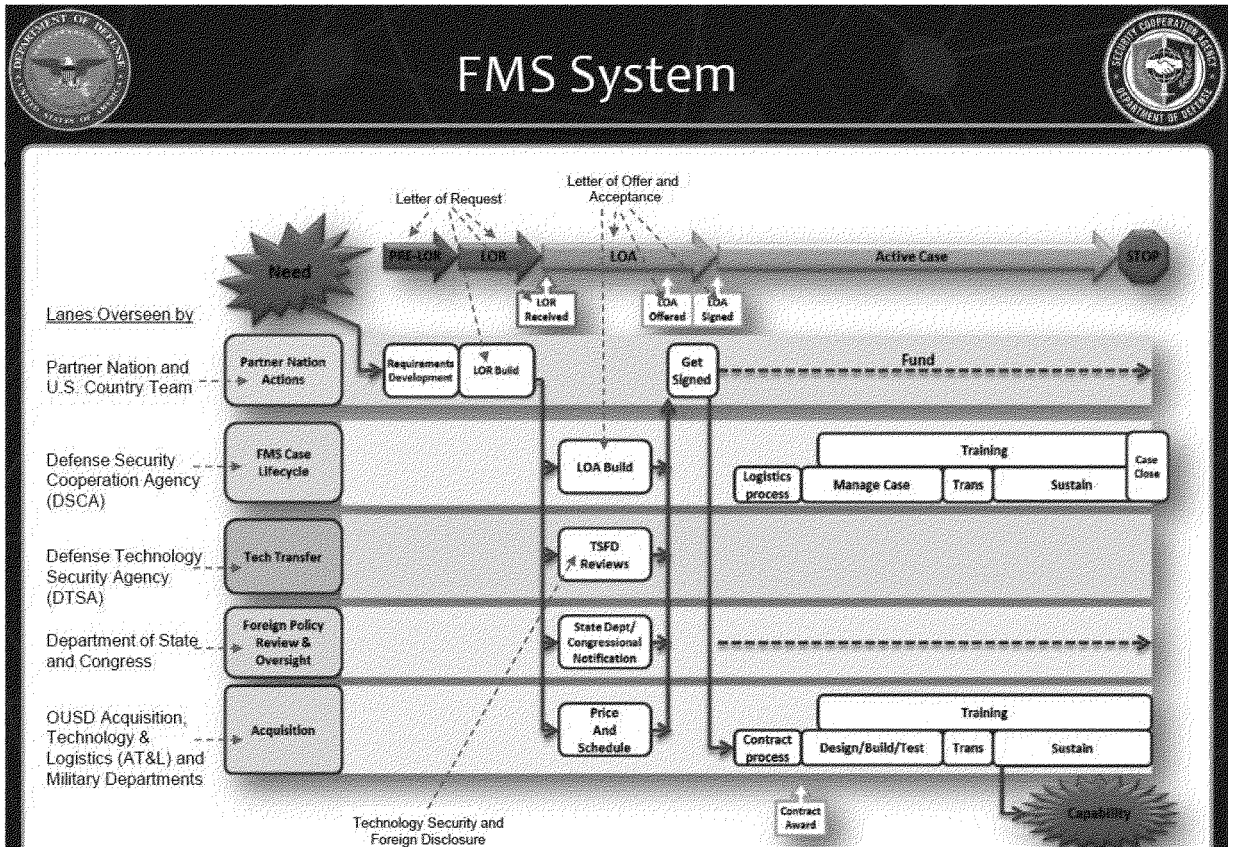
Finally, an initiative that will have broad impact on our efforts is the professionalization of the Security Cooperation Workforce. DSCA is taking several steps to improve training and education for the over 12,000 members of the workforce, from personnel working at our embassies, at the implementing agencies and supporting components, and at our own headquarters. For example we are working to:

- define training, education, and experience standards for the workforce, in particular the specialized training required for personnel deployed to Security Cooperation Offices, as well as ensuring these offices are appropriately resourced according to the volume and complexity of the workload,
- conduct a complete review of our security cooperation schoolhouse – in terms of the curriculum content and the teaching methods and media, and
- ensure that -- in conjunction with AT&L – we are including FMS planning and execution in the range of the acquisition training offerings

Conclusion

As I've noted, DSCA plays a key role – but we are only one element of the broader U.S. Government system for FMS. In addition to other elements of the Department of Defense, the Department of State, the interagency, and the U.S. Congress play important roles. My intent today was to comment specifically on DSCA's contribution to this important mission – both in terms of the programs we execute and the initiatives we are championing – and at the same time demonstrate the linkages and close coordination between us and the larger FMS enterprise. Distinguished committee members, I want to thank you again for the opportunity to sit before you today, and I look forward to your questions.

# FMS System


Letter of Request
Letter of Offer and Acceptance
Need
PRE-LOR
LOR
LOA
Active Case
STOP
LOR Received
LOA Offered
LOA Signed
Lanes Overseen by
Partner Nation and U.S. Country Team
Partner Nation Actions
Requirements Development
LOR Build
Get Signed
Fund
Defense Security Cooperation Agency (DSCA)
FMS Case Lifecycle
LOA Build
Training
Logistics process
Manage Case
Trans
Sustain
Case Close
Defense Technology Security Agency (DTSA)
Tech Transfer
TSFD Reviews
Department of State and Congress
Foreign Policy Review & Oversight
State Dept/ Congressional Notification
OUSD Acquisition, Technology & Logistics (AT&L) and Military Departments
Acquisition
Price And Schedule
Training
Contract process
Design/Build/Test
Trans
Sustain
Technology Security and Foreign Disclosure
Contract Award
Capability

**Vice Admiral Joseph W. Rixey**
**Director of the Defense Security Cooperation Agency (DSCA)**

Vice Admiral Joseph Rixey is the director of the Defense Security Cooperation Agency (DSCA). Born in Monterey, California, Rixey started his naval career in August 1978 with enlistment and assignment to the Naval Academy Preparatory School leading to graduation from the United States Naval Academy in 1983. He was designated as a naval aviator in August 1986.

His operational tours include: Patrol Squadron 17, Naval Air Station (NAS) Barbers Point, Hawaii; USS Constellation (CV 64) as a catapult and arresting gear officer and assistant air officer; Patrol Squadron 40, Whidbey Island, Washington; and commanding officer Patrol Squadron 2, Kaneohe Bay, Hawaii.

His previous shore assignments included earning a Master of Science in Aeronautical Engineering and Engineer's Degree in Aeronautics at the Naval Post Graduate School, Monterey, California; Naval Air Systems Command as the P-3 Training Systems program manager, NAS Patuxent River, Maryland; P-8A Poseidon team lead; Maritime atrol and Reconnaissance Aircraft Program Manager; deputy program executive officer, Air Anti-Submarine Warfare and Advanced Sensors Programs; and as vice commander, Space and Naval Warfare Systems Command. Rixey most recently served as the deputy assistant secretary of the Navy for International Programs and as the director for the Navy International Programs Office.

Personal decorations include the Distinguished Service Medal, Legion of Merit (three), Bronze Star, Meritorious Service Medal (three), Air Medal S/F, Navy and Marine Corps Commendation Medal (four) with combat "V" (one), and the Navy and Marine Corps Achievement Medal (one).

Updated: 20 November 2014

HOLD UNTIL RELEASED BY THE
U.S. HOUSE OF REPRESENTATIVES

WRITTEN STATEMENT OF

MS. CLAIRE M. GRADY
DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY

BEFORE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ARMED SERVICES
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

ON

# ASSESSING THE DEPARTMENT OF DEFENSE'S EXECUTION OF RESPONSIBILITIES IN THE U.S. FOREIGN MILITARY SALES PROGRAM

MAY 17, 2016

HOLD UNTIL RELEASED BY THE
U.S. HOUSE OF REPRESENTATIVES

Chairwoman Hartzler, Ranking Member Speier, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you to discuss our responsibilities in executing the U.S. Foreign Military Sales program. I am Claire Grady, Director, Defense Procurement and Acquisition Policy (DPAP). In that capacity, I serve as the principal advisor on procurement matters to the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) and as the functional leader for the more than 30,000 military and civilian contracting professionals across the Department of Defense (DoD). I am a career civil servant, with more than 20 years' experience in procurement and acquisition.

The defense acquisition community plays an important role supporting Foreign Military Sales (FMS) and in doing so we contribute in advancing both national security and foreign policy goals of the U.S. Government. We recognize that foreign military sales strengthen the relationship with our international partners, equip them with defense capabilities to provide for their own national defense, increase interoperability with our allies, and support the U.S industrial base.

In acquiring goods and services on behalf of FMS customers, the Department's acquisition workforce employs the same rigorous policies and procedures that we use to meet our own requirements. DoD Instruction 5000.02, "Operation of the Defense Acquisition System," provides the framework and detailed procedures that govern the operation of the Defense Acquisition System. This Instruction directs DoD program managers to consider the potential demand and likelihood of Foreign Military Sales early in the acquisition planning process for our own requirements, considering U.S. export control laws, regulations, and DoD policy.

The Military Departments employ Program Management (PM) offices to develop and acquire major weapon systems. A PM team typically consists of a program manager, supported by professionals from several functional disciplines including engineering, contracting, logistics, financial management, and testing. When an FMS customer seeks to acquire a major weapon system, the same PM office that oversees the DoD acquisition of that system, also is responsible for delivering the FMS requirements. The PM office may acquire FMS end items under stand-alone contracts, or by merging FMS requirements with DoD's requirements on the same DoD contract. In this way, the Department enjoys the benefits of synergy, not only from the perspective of staffing, but also in realizing efficiencies in achieving economies of scale which results in lower negotiated prices from industry.

To increase the efficiency and effectiveness of the acquisition system for the benefit of both U.S. and foreign military sales requirements, the Under Secretary of Defense for Acquisition, Technology and Logistics has advanced a series of incremental, continuous improvement initiatives under the moniker, Better Buying Power (BBP). One of the central elements of BBP is the recognition that the most important factor in the performance of the Defense Acquisition System is the professionalism of our acquisition workforce. Our focus is on ensuring we provide the training and tools for our people to enable them to secure the best possible value for our warfighters, the American taxpayer, and for our FMS customers. The Department has invested significant resources, with the support of Congress, to ensure that our acquisition workforce is properly sized with the right skills, experience and training to execute the U.S. taxpayer and FMS customer dollars entrusted to us. Last year, DoD's talented contracting officers obligated over

$274 billion on contract actions, of which about $26 billion was for Foreign Military Sales. DoD training and certification programs for the Defense Acquisition Workforce are considered to be the "gold standard" within the Federal government and the professionalism and capability of our acquisition workforce is a significant contributing factor in our international partners' choice to acquire goods and services through the FMS program.

In addition to the rigorous acquisition training for the functional career fields, such as program management, systems engineering and logisticians, DoD also established an International Acquisition Career Path in 2007 for Program Managers and expanded the coding to all communities in 2014. The Director, International Cooperation provided workforce guidance in late 2015 to identify and code billets for those engaged in International Acquisition. Individuals serving in those positions receive specialized training. The staff at Defense Acquisition University (DAU) developed and now offers seven "school house" courses covering the core information for International Acquisition and Foreign Military Sales. DAU has also added a number of online continuous learning courses in International Acquisition such as the most recent, "Export Controls for the Contract Specialist." In addition, the International Acquisition Department will provide specialized, ad hoc training as requested to meet operational needs and to provide specialized training in International Acquisition that are designed to benefit both the acquisition and the security cooperation communities engaged in the FMS process. To date, a total of 7,489 students have completed International Acquisition DAU courses. Additionally, DAU continues to work closely with the Defense Institute of Security Assistance Management (DISAM) to ensure that the FMS training provided to U.S.

security cooperation personnel and representatives of foreign government, FMS customers, is consistent with and compliments that provided to DoD acquisition personnel. My staff has worked with the DAU staff and DISAM to publish training materials relating to FMS contracting on their websites, and DAU is working to integrate and keep current key aspects of these training materials into the formal international contracting training courses.

Another pillar of BBP is to incentivize productivity and innovation in industry and in Government. A key tenant of that is the need to employ appropriate contract types and to properly align incentives. Last month, I issued a document entitled, "Guidance on Using Incentive and Other Contract Types." This guidance is intended to provide a comprehensive set of considerations that DoD contracting and acquisition professionals should take into account when selecting and negotiating the appropriate contract type for a given requirement. The guidance does not indicate a preference for any particular contract type that should be considered as uniquely appropriate to satisfy either U.S. or FMS requirements. Rather, the guidance emphasizes the need to assess the cost, schedule and performance risk inherent in the business arrangement and select the appropriate contract type to balance risk between the government and industry and motivate successful performance under the contract. Contract type is just one element of the overall contractor compensation arrangement, which includes contract financing, profit or fee, incentives, and contract terms and conditions.

Since the contract type and the negotiated contract pricing are interrelated, they must be considered together. Ultimately, the contract type that is negotiated should result in a reasonable degree and balance of risk between the Government and the contractor;

and provide the contractor with the greatest incentive for efficient and economical performance. The decision about which contract type to use to fulfill a U.S. or FMS requirement is typically made by the contracting officer and the program manager and approved as part of the acquisition plan.

Frequently, we combine DoD requirements with FMS requirements on a single contract, or have contractors concurrently producing weapon systems for our requirements and FMS requirements under separate contracts. In either case, these systems are typically being produced at the same production facility and coming off of the same production line, and the contracts we negotiate have similar, if not virtually identical, terms and conditions. For programs in production, with stable designs, proven manufacturing techniques, and predictable costs, firm fixed price contracts are typically chosen. However, for production efforts where on prior contracts the difference between the anticipated cost to produce the item and the actual incurred costs exceeds four percent, since 2006, we have required contracting officers to consider the use of a Fixed Price Incentive (FPI) contract when negotiating future contracts. Under a Fixed Price Incentive contract, the difference between the forecasted and the actual costs is split between the government and the prime contractor using pre-established ratios. In a sole source production environment for a mature system, an FPI contract is indicative of cost uncertainty that can come from a number of factors, including difficulties in accurately pricing prime, subcontractor or vendor costs, estimating system limitations, inadequate historical pricing data, or unreliable estimating techniques. The use of an FPI contract in a sole source, mature production environment signals that we lack confidence in the ability to forecast costs that will ultimately reflect the actual cost outcome.

We have reviewed proposals from industry associations that have advanced the notion that the Department should be constrained in our selection of contract type for FMS contracts. While there are some administrative costs associated with using FPI type contracts, those costs are small in comparison to the benefits received; the appropriate use of an FPI contract will result in a lower overall cost to the customer. Under an FPI contract, when the contractor performs below the target cost, a portion of that underrun is returned to the customer and a portion is kept by industry. Under a firm fixed price contract, when the contractor performs below the target cost, 100% of that underrun is kept by the contractor. Responsibility for costs that exceed the target are similarly distributed based on the contract type. For mature sole source production efforts, it is highly unusual for costs to exceed the negotiated target. If the Department were precluded from using the appropriate type contract in any particular environment, it would effectively constrain our ability to deliver best value to the FMS customer, and eliminate opportunities to achieve efficiencies by combining U.S. and FMS requirements on the same contract. As is shown in the tables below of dollars obligated over the past two fiscal years, the Department has employed a variety of contract types that will best support the FMS customer's needs, with the predominant contract type being Firm Fixed Price:

**Total DoD Contract Obligations for FMS in FY2015**

| Type of Contract | Actions | Action Obligation | % of Total |
|---|---|---|---|
| COMBINATION | 9 | -$216,197.73 | 0.00% |
| COST NO FEE | 678 | $273,868,160.24 | 1.06% |
| COST PLUS AWARD FEE | 513 | $954,999,173.64 | 3.70% |
| COST PLUS FIXED FEE | 2,689 | $2,087,150,964.87 | 8.10% |
| COST PLUS INCENTIVE FEE | 309 | $1,604,348,185.65 | 6.22% |
| FIRM FIXED PRICE | 38,441 | $15,496,732,834.10 | 60.12% |
| FIXED PRICE AWARD FEE | 2 | $1,263,878.54 | 0.00% |
| FIXED PRICE INCENTIVE | 118 | $4,924,682,074.73 | 19.11% |
| FIXED PRICE LEVEL OF EFFORT | 20 | $155,210,186.67 | 0.60% |
| FIXED PRICE REDETERMINATION | 1 | -$377.16 | 0.00% |
| FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT | 1,085 | $226,432,936.21 | 0.88% |
| LABOR HOURS | 57 | $10,866,132.91 | 0.04% |
| ORDER DEPENDENT (DETERMINED SEPARATELY FOR EACH TASK ORDER) | 27 | $0.00 | 0.00% |
| TIME AND MATERIALS | 214 | $41,356,557.59 | 0.16% |
| | **44,163** | **$25,776,694,510.26** | 100.00% |

**Total DoD Contract Obligations for FMS in FY2016**

| Type of Contract | Actions | Action Obligation | % of Total |
|---|---|---|---|
| COST NO FEE | 425 | $477,450,994.50 | 2.86% |
| COST PLUS AWARD FEE | 259 | $273,978,927.94 | 1.64% |
| COST PLUS FIXED FEE | 1,155 | $851,916,018.25 | 5.10% |
| COST PLUS INCENTIVE FEE | 172 | $284,463,711.37 | 1.70% |
| COST SHARING | 1 | $14,500.00 | 0.00% |
| FIRM FIXED PRICE | 22,633 | $10,097,532,827.70 | 60.47% |
| FIXED PRICE AWARD FEE | 7 | $2,534,552.43 | 0.02% |
| FIXED PRICE INCENTIVE | 107 | $4,493,754,667.63 | 26.91% |
| FIXED PRICE LEVEL OF EFFORT | 15 | $60,878,281.51 | 0.36% |
| FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT | 1,386 | $124,674,419.54 | 0.75% |
| LABOR HOURS | 14 | $895,809.77 | 0.01% |
| ORDER DEPENDENT (IDV ALLOWS PRICING ARRANGEMENT TO BE DETERM | 21 | $0.00 | 0.00% |
| TIME AND MATERIALS | 100 | $30,820,492.15 | 0.18% |
| NULL | 1 | -$7,462.59 | 0.00% |
| | **26,296** | **$16,698,907,740.20** | 100.00% |

Advocates for firm fixed price (FFP) contracts suggested that FPI contracts require customers to commit an average of 5-10% in excess funds for 5-10 years even when those funds are rarely used. The actual requirement is to ensure that sufficient funds are available to pay for the final cost of the contract. This amount is adjusted over the course of the contract based on actual performance. Simply put, sufficient funding needs to be in place to ensure that the FMS customer can pay the final bill, no more, no less. While FPI contracts may require additional time to closeout (beyond that which

may be required for a FFP contract) due to the time needed for Defense Contract Audit Agency (DCAA) to conduct incurred cost audits, the costs of performance are largely known as assets near delivery, allowing return of any excess funds. Additionally, our policies and procedures allow for the subsequent conversion of FPI contracts to FFP at a point in which the Government and the contractor have confidence in the cost estimate.

Recognizing that the deliberative process to ensure an FMS sale is consistent with and will further U.S. security cooperation interests, uncertainty of requirements and timing of FMS customers' needs, differing budget cycles, and the time required to procure and deliver the needed capability to the FMS customer, we are continuing to work with VADM Rixey and DSCA to shorten the time involved in the portion of the process that USD(AT&L) can influence, principally the acquisition cycle time. As is the case with U.S. requirements, sole source FMS contracts for military items require the contractor to submit certified cost and pricing data in accordance with the Truth in Negotiations Act. We recognize there are opportunities to reduce procurement lead time and realize efficiencies by reducing the administrative cost for contractors to submit and certify to proposals FMS requirements. Under the FY 2016 National Defense Authorization Act (NDAA), we were granted a limited pilot authority to explore what efficiencies can be gained by waiving the requirements for certified cost or pricing data for low risk contract actions. Similarly, we are examining how we might tailor certified cost and data requirements in situations where we have recently concluded negotiations or where there is good insight into actual cost performance, in concert with employing FPI contracts to balance risk of future cost variations fairly between Government and industry. This methodology could significantly speed up the procurement cycle;

however, the ability to use FPI contracts for FMS production requirements is the cornerstone of this initiative.

Another area we are looking to improve is in the final pricing of undefinitized contract actions. The preferred practice is to finalize the terms and conditions of a contract and negotiate the price prior to award of a contract. However, due to urgent needs of the FMS customer and the timelines associated with establishing an FMS case, it is often necessary to authorize the contractor to begin work prior to reaching final agreement on price and other terms. Thus, the Department frequently employs the technique of initiating FMS contracts using an undefinitized contract action (UCA). We selectively use this technique to satisfy our own requirements as well, but on a less frequent basis due to greater insight and ability to forecast future requirements.

To ensure proper use and management of undefinitized contract actions, regulation, policy and procedures are already in place for DoD. Section 2326, title 10, United States Code, requires that when we employ UCAs, we establish limitations on the obligation of funds and a prescribed timeline to definitize. By law, UCAs for FMS are exempt from compliance with 10 U.S.C. § 2326, but by policy, the Department has mandated these UCA management procedures be applied "to the maximum extent practicable" and to notify both their acquisition leadership and my office when that won't be possible. Both 10 U.S.C. § 2326 and the DFARS provide additional requirements for the approval, definitization, obligation of funds, and determination of allowable contractor profit. DFARS requires UCAs to be definitized within 180 days after issuance of the action (though this date may be extended to 180 days after the contractor submits a qualifying proposal). Since 2009 when the Congress enacted Section 809 of the FY 2008

NDAA, the Department has placed additional management attention on our use of UCAs. We instituted internal reporting procedures to provide management attention and visibility on our use of UCAs and we provide semi-annual reports to the Congress. In our most recent submission, we reported that the Department had a total of 347 UCAs valued at over $5 million dollars each for the Reporting period April 1, 2015 through September 30, 2015. FMS UCAs account for 25% (87 of 347) of all reported UCA actions and 62% of reported UCA Not-to-Exceed dollar amounts. There were a total of 11 UCAs reported during period that remained undefinitized for a period in excess of 730 days. Two years is too long, we can and will do better and are working to address this problem. Definitizing UCAs in a timely manner requires the mutual cooperation of both parties—Government and contractor. In the past, one of the contributing factors in delays in definitization has been the quality of contractor proposals. When a contractor submits a proposal that is incomplete or insufficient for our auditors to assess, we ask the contractor to re-submit or provide additional data. This takes time. To address this aspect, the Department published a standard proposal review checklist to convey to industry the specific elements that a proposal must contain in order to be deemed sufficient. In addition, we have instituted the practice of having all stakeholders (Government and contractor) meet at the outset to establish expectations and timelines for proposal submission.

Another challenge that can slow pricing of FMS good and services is while DoD contracting officers negotiate contracts for FMS requirements using the same statutory, regulatory, and procedural requirements as those that apply to DoD requirements, there are some variations in terms of allowable costs. For example, the DFARS recognizes that

defense contractors that fulfill FMS contract requirements may incur legitimate additional business expenses they would not normally incur in DoD-only contracts. In pricing FMS contracts, DoD contracting officers may recognize reasonable and allocable costs such as sales promotions, demonstrations, and related travel for sales to foreign governments, and offset costs. Through training and policy we are exploring ways to expedite the negotiation of these costs in order to arrive at a fair and reasonable price for FMS requirements.

Offset requirements, which are agreements between the purchasing country and the contractor on contracts solely funded with FMS customer money, have been identified by both industry and government personnel as a significant source of delay. The U.S. Government does not encourage, enter into or enforce offset agreements entered into between a foreign government and any U.S. firm. The U.S. Government is not a party to offset agreements and does not have any obligation to enforce the contractor's performance of the offset agreement. However, a contractor may recover costs incurred for offset agreements with a foreign government or international organization if the agreement between the U.S. Government and that entity is financed wholly with customer cash or repayable foreign military finance credits. In the past, our contracting officers were not provided sufficient substantiating information necessary to render a determination that contractor-proposed costs associated with offsets were fair and reasonable. Contractors were challenged to provide accurate estimates given the uncertain nature of such costs. As a result, there were a number of contract negotiations that were protracted over a significant length of time. On June 2, 2015, DoD issued an interim DFARS rule to clarify that industry is responsible for establishing the

requirements and corresponding cost for indirect offsets with the FMS customer and consequently, the contracting officer would not subject those indirect offset costs to additional scrutiny. Subsequent to the issuance of the interim DFARS rule, the Congress enacted Section 812 of the FY 2016 NDAA which exempts contractors from having to submit certified cost and pricing data for certain offset costs under FMS contracts. The Department intends to issue a proposed DFARS rule to implement Section 812 to seek public/industry inputs in rulemaking while the aforementioned interim rule remains in effect. These actions are expected to address one of the most difficult elements to price in an FMS contract.

I would also like to update you on our progress on improvements to Technology Security and Foreign Disclosure (TSFD) process, and to the Defense Exportability Features (DEF) Pilot Program. From a strategic perspective, DoD leadership has taken steps to improve the U.S. Government and industry's ability to promote defense exports in support of our foreign policy and national security objectives. Through this cooperation we seek to increase interoperability with partners; reduce our own costs through economies of scale in production and partner contributions to research and development; enhance the military capability of allied forces; and build strategic relationships.

Technology Security and Foreign Disclosure

One such example of process improvements is the on-going DoD implementation of the TSFD Reform initiative launched by the Deputy Secretary of Defense in July 2010, to consolidate and improve existing DoD-led TSFD policies and processes. Following an

extensive review, on October 14, 2014, the Deputy Secretary signed DoD Directive 5111.21, Arms Transfer and Technology Release Senior Steering Group and Technology Security and Foreign Disclosure Office. This directive establishes policy, assigns responsibilities and describes authorities for the Arms Transfer and Technology Release Senior Steering Group (ATTR SSG). The ATTR SSG, co-chaired by the Office of the Under Secretary of Defense (Acquisition, Technology & Logistics and the Office of the Under Secretary of Defense (Policy), leads the continued reform of TSFD processes in order to synchronize efforts, minimize complexities, and to help implement holistic DoD-wide TSFD release review procedures. The ATTR SSG oversees the DoD's pre-vetting of technology transfers in anticipation of partner requirements, thus greatly reducing decision times on technology releases.

As a result of TSFD reform, the DoD, with oversight and leadership by ATTR SSG, manages priority TSFD Reviews for critical transfer issues for several countries, including Poland and India.

The ATTR SSG established the Poland Integrated Air and Missile Defense (IAMD) TSFD Working Group, which has worked to anticipate TSFD issues to ensure that U.S. industry could be competitive in competing for approximately $9 to $12B in funds that Poland earmarked for IAMD.

In addition, in support of interagency defense advocacy efforts, the DoD recommended establishment of an interagency Poland "Deal Team." The Department of Commerce's Advocacy Center chairs regular sessions of the deal team; DoD has been an active participant in working group meetings, contributing DoD insights to "whole-of-government" messaging.

The DoD has made the Defense Technology and Trade Initiative (DTTI) with India a key focus. With the DoD playing a lead role, the U.S. Government interagency process has put unprecedented effort into looking for ways to streamline our processes and to identify significant opportunities for co-production and co-development with India. Through partnership among the Office of the Under Secretary of Defense for Policy, the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, the Military Departments, and DoD agencies, the Department has succeeded in completing expedited TSFD reviews to support the Administration's policy objectives for engagement with India. The DTTI model and the fundamentals of making tough TSFD decisions are serving our efforts on multiple fronts in support of US industry and key allies.

The DoD is committed to continuing these TSFD process improvements by making export controls and related transfer processes more transparent, efficient and effective. As part of these efforts, the DoD continues to work very closely with U.S. industry as well as the Departments of Commerce and State, and other agencies.

Defense Exportability

The export of defense products to our friends and allies provides opportunities for economies of scale, greater commonality and interoperability with global partners, and strengthened relationships. An important element of Under Secretary Kendall's Better Buying Power 2.0 initiatives is the Defense Exportability Features (DEF) initiative, which focuses on the opportunity for DoD program management and contractor teams to work together to assess, design, develop, and incorporate defense exportability features in

their systems during the early development phases. In support of this initiative, acquisition leaders in the Military Departments and OSD have been asked to consider defense exportability in their acquisition planning efforts, including during early acquisition milestone reviews.

Authorized by section 243 of the FY 2011 NDAA, as amended, the Defense Exportability Features Pilot Program further facilitates efforts to change the exportability paradigm. The Pilot Program enables the Department to offer supplemental funding, with industry co-sharing expenses, the assessment, design, and incorporation of exportability features early in the acquisition process. The authority for the Pilot Program is temporary and currently extends through October 1, 2020.

Since its inception, the DEF Pilot Program has selected a total of 18 programs to participate from Service Acquisition Executive nominations. Five selected programs are currently conducting DEF feasibility studies or design activities during FY 2016.

Although it is a relatively new business model, reports from several programs show promising signs of success. Thus far, the DEF initiative suggests that early exportability planning can save money, improve system security, save time and has the potential to make our industries more competitive globally.

Across these reform efforts, the DoD remains focused on ensuring that process improvements remain in line with U.S. export control laws, TSFD equities, weapon certifications, and other U.S. requirements. The DoD will continue to work with our partners and industries involved to identify what level of support is appropriate and to assist their navigation through the system.

Finally, the acquisition community recognizes that while we employ the same rigor and thought process in structuring terms and negotiating FMS contracts as we do for our own requirements, there will be instances where, in consultation the Director of DSCA, the Department must tailor our approach to account for and advance the objectives of the FMS program. We are committed to ensuring that our processes and our workforce have the capability and capacity to deliver the needed goods and services to our FMS customers in a timely manner and at a fair price.

In conclusion, I wish to reiterate the Department's appreciation for your continued commitment to our nation's warfighters and your support to our professional acquisition workforce that efficiently and cost effectively provide the goods and services essential to our national defense. I thank you for the opportunity to provide you with the Department's view about the FMS program from an acquisition perspective.

**Ms. Claire M. Grady**
**Director, Defense Procurement and Acquisition Policy**
**OUSD(Acquisition, Technology & Logistics)**

Ms. Claire M. Grady assumed the position of the Director, Defense Procurement and Acquisition Policy (DPAP) in June 2015. She serves as the principal advisor to the Under Secretary of Defense for Acquisition, Technology and Logistics (USD AT&L) and the Defense Acquisition Board on acquisition and procurement strategies for all major weapon systems programs and major automated information systems programs. She also leads policy for Department of Defense services acquisition. Ms. Grady is responsible for domestic, international, and contingency contract policy for the Department of Defense, including competition, source selection, multiyear contracting, warranties, leasing and associated e-business solutions.

From February 2013 thru May 2015, she was the Coast Guard's Deputy Assistant Commandant for Acquisition and Director of Acquisition Services. Ms. Grady served as the Coast Guard's Head of the Contracting Activity from 2007-2013, where she led the development and implementation of procurement policy and operations supporting the diverse portfolio of Coast Guard missions. She was the principal business advisor to Coast Guard senior leadership and the community leader for the Coast Guard's civilian and military procurement professionals.

Ms. Grady previously served as the director of strategic initiatives in the Office of the Chief Procurement Officer for the Department of Homeland Security (DHS). There she provided strategic direction impacting DHS's multibillion-dollar contracting and financial assistance programs through a broad portfolio of initiatives, including contracting policy, grants policy and oversight, strategic sourcing, competitive sourcing and acquisition systems.

Ms. Grady has more than 20 years' experience in major systems acquisition, having begun her professional career with the Department of the Navy as a contracting career intern. She progressed to a number of significant positions at the Naval Sea Systems Command (NAVSEA). Her accomplishments include serving as the contracting officer for the San Antonio-class amphibious transport dock ship and for the Standard Missile program. Ms. Grady also was the program manager for the multibillion-dollar, Navy- wide acquisition of contractor support services (SeaPort), the director of strategic initiatives for NAVSEA's Contracts Directorate and the deputy division director for Surface Weapon Systems.

Ms. Grady received a Bachelor of Arts from Trinity University, a Master of Business Administration from the University of Maryland and a Master of Science in national resource strategy from National Defense University's Industrial College of the Armed Forces. She holds Level III acquisition professional certifications in contracting and program management. In 2010, Ms. Grady was recognized with the Presidential Rank Award of meritorious executive.

**OPENING STATEMENT TO THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE HOUSE ARMED SERVICES COMMITTEE**

BETH M. McCORMICK

Director, Defense Technology Security Administration

17 May 2016

Thank you Chairwoman Hartzler, Ranking Member Speier, Members of the subcommittee for the opportunity to discuss the Department of Defense's ongoing technology security and foreign disclosure process improvements. I specifically state "ongoing" because we in the technology security and foreign disclosure, or as we refer to it "TSFD", community, have found it to be an evolutionary process. As technologies, policies, and partners change, so must our technology security and foreign disclosure considerations to ensure our warfighters retain the edge we have promised them and they so much deserve.

Since 2011, when the Deputy Secretary directed TSFD process improvements in order to "streamline and harmonize" the various TSFD processes, significant improvement has been realized in TSFD considerations for both FMS and DCS considerations. I would like to highlight a few of these improvements. But before I do, let me make one important observation. Each year, the Department of Defense makes approximately 80,000 plus technology security and foreign disclosure decisions, most of which are in support of foreign military sales, direct commercial sales and/or international armaments cooperation. The vast majority of these decisions are made routinely in a timely, efficient and transparent fashion. That said, we do recognize no system that must attempt to stay abreast in an ever changing world can be perfect and that there is always room for improvement.

Much of the improvements made since 2011 can be attributed directly to the OUSD Policy and AT&L co-chaired Arms Transfer and Technology Release Senior Steering Group, or "ATTR SSG". In essence, the monthly ATTR SSG meetings, consisting of Senior Executive (SES), General Officer and Flag Officer-level members from 16 DoD organizations as well as two SES observers from the Department of State, have fostered a culture of comity, transparency, examination and improvement to guide and direct TSFD processes in support of U.S. policy and national security objectives. At each meeting, we discuss priority issues associated with the arms transfer process. One of the key ATTR SSG roles is to ensure cross talk between the various technology security and foreign disclosure process owners and senior policy makers from OSD Policy, AT&L, the Joint Staff, the military departments, members of the intelligence community, and the Department of State. These discussions involve specific transactions, country-specific



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issues, regional considerations, as well as process improvements. Key ATTR SSG accomplishments and objectives include:

- Developing anticipatory technology security and foreign disclosure polices, vice being solely reactive;
- Overseeing urgent priority technology security and foreign disclosure reviews, for high-profile/urgent cases ;
- Establishing interagency working groups (WG) which include representatives from Defense, State and Commerce as well as participants from industry.

We recognize that in some complex export transactions, if we wait for a formal Letter of Request, we will be behind the power-curve in the technology security and foreign disclosure review process. As a result, for select high-demand or sensitive systems, we seek to develop anticipatory policies that address several of the technology security and foreign disclosure reviews in advance of a Letter of Request or export license submission. This allows us to respond quicker to a Letter Of Request by identifying challenges early in the process. In addition, we are able to avoid false impressions when the answer is "no" and in some cases address challenges early enough in order to get to a "yes" decision.

Although it is impractical to implement for all 80,000 plus technology security and foreign disclosure reviews done each year, for high priority or urgent export cases, we have created a data base that enables us to track cases as they move through the technology security and foreign disclosure processes. These cases can be tracked real-time by ATTR SSG members and are published to support our monthly ATTR SSG meetings. This new procedure allows greater insight into and oversight of the technology security and foreign disclosure review process and enables us to take immediate action if the transaction release review is not moving as expeditiously as needed to support our national security interests.

Lastly, the ATTR SSG has chartered several interagency working groups to provide a synchronized whole-of-government "win team." These working groups have included Defense, State and Commerce representatives as well as participants from industry. They have addressed everything from technology security and foreign disclosure reviews to synchronizing talking points of senior government officials and advocacy engagements. Because these efforts tend to be resource intensive, we cannot do this for every transaction, but the model has been highly successful for the cases we believe merit the attention.

We have also made a concerted effort to partner with industry. I would like to highlight two examples of this partnership. Last year, the ATTR SSG, in cooperation with AIA and NDIA, held an "industry day" on Facilitating Defense Cooperation. This industry day provided industry insight into the ATTR SSG and the TSFD processes. In addition, industry served on several panels so we could hear their thoughts, perspectives and issues as well. The second partnership



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area deals with anticipatory policies. One policy we are currently working on addresses Software Defined Radios. One of the first steps we took in this policy development was to solicit industries views on a software defined radio military unique capability list. After adjudicating all of industries comments, we are now working with AIA and NDIA to set up a follow-on meeting with our industry partners to solicit their views on key software defined radio capabilities and operating parameters that should be considered in the releasability reviews.

Another very important aspect of timely transfers to partners that relates to TSFD is the willingness and ability of the partner to protect our sensitive information. To better ensure we, that is both the U.S. and our partners, are prepared for robust transfers, I have created the Cooperative Technology Security Program (CTSP) at DTSA which establishes dialogue between U.S. and foreign partners to exchange ideas and confirm or assist in our partners' development of appropriate technology security measures such as legislation, policies, procedures, and infrastructure. CTSP establishes a regularized bilateral consultative process with national officials responsible for technology security or establishment of organizations dedicated to technology security. This program facilitates security cooperation by providing partners with specific areas of technology security focus that align with specific US technology security concerns. Ultimately, as countries improve their own technology security program and infrastructure; this will enhance our ability to share more sensitive technology with them.

In summary, TSFD process improvements combined with Export Control Reform, Security Cooperation Reform, DSCA's Vision 2020 initiatives, and enhanced DoD-industry engagement are better preparing us to support partner requirements through FMS, DCS and/or cooperative agreements.

Again, thank you for the opportunity to share our TSFD-related process improvements with you today. I'm standing by for any questions you may have.



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**Beth M. McCormick**
**Director, Defense Technology Security Administration**

Beth M. McCormick, a member of the Senior Executive Service, was appointed as the Director for the Defense Technology Security Administration on October 1, 2013. In her current capacity, she is responsible for developing and implementing DoD technology security policies for international transfer of defense-related goods, services, and technologies. She manages a staff of 220 including policy analysts, engineers, and licensing officers.

Ms. McCormick began her career in government service in 1983 as a Presidential Management Intern with the Office of the Secretary of Defense. She became an Assistant for Strategic Defense and Space Arms Control Policy in 1985, where her primary responsibility was support to the Defense and Space Negotiations in Geneva, Switzerland. From August 1990 to June 1994, she served in several positions in OSD Policy focused on the formulation of policy related to ballistic missile defense and military space capabilities. From July 1994 to October 2001, she served in several executive positions with the National Aeronautics and Space Administration, including Director of International Relations and Deputy Associate Administrator for Life and Microgravity Sciences. In November 2001, she returned to the Defense Department as the Director of Policy, U.S. Air Force International Affairs, a position she held until January 2005. Following her tour with the U.S. Air Force, Ms. McCormick served as Deputy Director of the Defense Technology Security Administration. She assumed the position of Director in August 2005 and that October was appointed as the Acting Deputy Under Secretary of Defense for Technology Security Policy and National Disclosure Policy. From October 2008 to February 2010, Ms. McCormick served as the Deputy Director of the Defense Security Cooperation Agency, the Defense agency responsible for security cooperation and partner capacity building programs worldwide. In February 2010, Ms. McCormick was assigned as the Deputy Assistant Secretary of State for Defense Trade and Regional Security in the Bureau of Political-Military Affairs. She managed two organizations, the Directorate of Defense Trade Controls and the Office of Regional Security and Arms Transfers, providing overall policy guidance regarding the transfer of defense articles and services to other countries through foreign military sales and direct commercial sales.

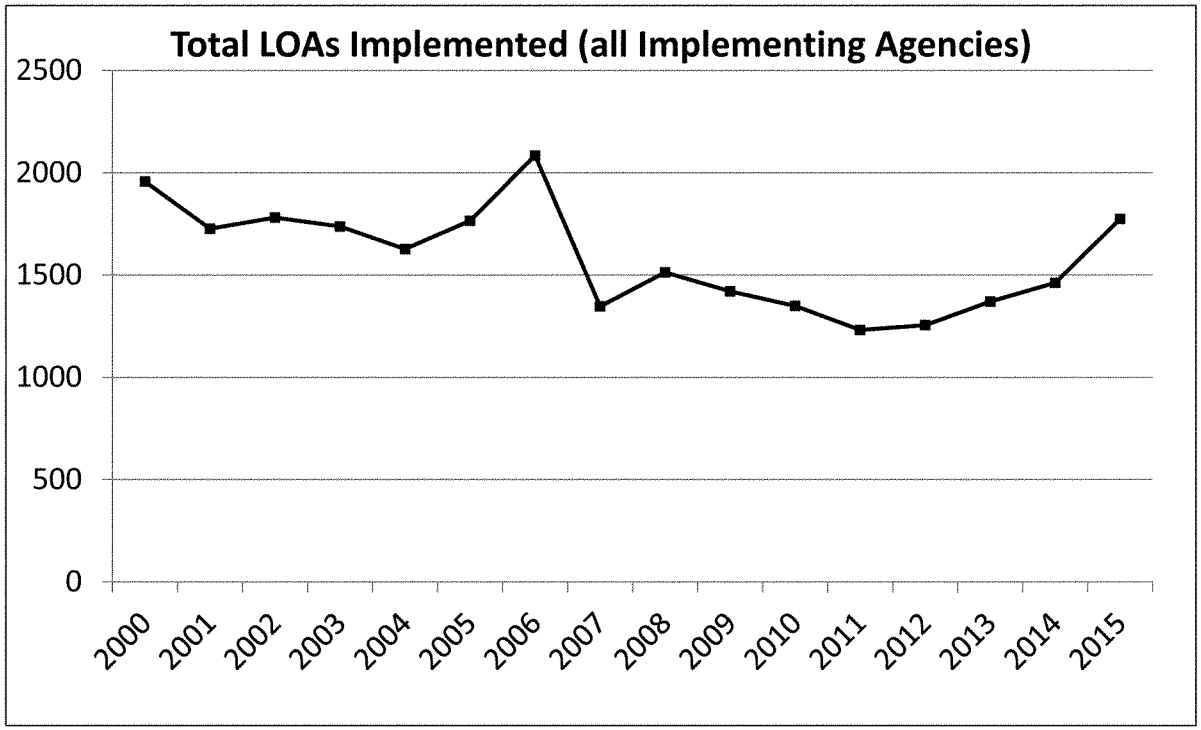
Ms. McCormick received her B.A. from Dickinson College, Carlisle, Pennsylvania in Political Science, Russian and Soviet Area Studies in 1981. She received her M.A. in Security Policy Studies from George Washington University in 1983. She has received several awards for her exemplary federal service including the Meritorious Presidential Rank Award, Secretary of Defense Medal for Meritorious Civilian Service (with Silver Palm), the NASA Exceptional Service Medal, the Air Force Medal for Exceptional Civilian Service, the Defense Security Cooperation Agency Exceptional Civilian Service Award, and the State Department Superior Honor Award.

## DOCUMENTS SUBMITTED FOR THE RECORD

MAY 17, 2016

**Letters of Offer and Acceptance (LOAs)**

Total Number By Fiscal Year Implemented




**Data Source:** DSAMS 2015

## Letters of Offer and Acceptance (LOAs)

By Fiscal Year (Implemented)

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | 1,957 | 1,726 | 1,781 | 1,737 | 1,627 | 1,765 | 2,084 | 1,347 | 1,513 | 1,420 | 1,349 | 1,231 | 1,255 | 1,370 | 1,462 | 1,774 | 25,398 |



**Data Source:** DSAMS 2015

**WITNESS RESPONSES TO QUESTIONS ASKED DURING THE HEARING**

MAY 17, 2016

## RESPONSE TO QUESTION SUBMITTED BY MRS. HARTZLER

Admiral RIXEY. These initiatives were developed with stakeholders across the enterprise and are led by different offices within the Department of Defense, as well as Department of State—as depicted by "lane owners" in the FMS System chart (slide 1). The initiatives are organized to align to the FMS System Grid chart (slide 2) that segments the process into coordinates, major milestones/validation points of the process. The first group of initiatives, "Phase 0", are considered shaping, enterprise activities—that is, they affect multiple lanes and benefit the process in the broadest sense. Subsequent initiatives are focused on specific activities within the different lanes—whether the FMS case development process, the technology release and foreign disclosure review process, foreign policy oversight, or acquisition. Taken together, these initiatives endeavor to fundamentally and comprehensively improve the performance of the FMS enterprise. [See page 20.]

[The slides referred to are retained in the subcommittee files and can be viewed upon request.]

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## RESPONSES TO QUESTIONS SUBMITTED BY MS. SPEIER

Admiral RIXEY. DSCA does not have any data points or documentation indicating numbers of FMS cases that might have been lost due to slowness (or perceived slowness) of the system. We noted in industry testimony on May 11 that the industry witnesses did not provide specific examples supporting this concern. If industry representatives do provide specific examples of FMS cases lost due to slowness in the FMS system, DSCA could research the specifics of the individual case(s) and perhaps provide more information. [See page 12.]

Admiral RIXEY. This chart and graph include numbers of FMS cases newly implemented each year from Fiscal Year 2000–2015. [See page 12.]

[The information referred to can be found in the Appendix on pages 67 and 68.]

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## RESPONSES TO QUESTIONS SUBMITTED BY MS. BORDALLO

Admiral RIXEY. At the Shangri-La Dialogue on May 30, 2015, Secretary Carter announced the Department of Defense's (DOD) Southeast Asia Maritime Security Initiative (MSI), a comprehensive, multi-year effort that will reinforce our partners' and allies' maritime security efforts and address shared challenges. This initiative is made possible through a new authority focused on building partner capacity in the maritime domain—Section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016.

DOD is using MSI to provide training, equipment, supplies, and small-scale construction to eligible countries—the Philippines, Vietnam, Indonesia, Malaysia, and Thailand—in an effort to enhance their ability to "sense, share, and contribute" to maritime security and maritime domain awareness.

To carry out the authority, DOD provided $50 million in funding for MSI in FY 2016 and has requested an additional $60 million in FY 2017. The Department has also programmed an additional $315 million through FY 2020 for an initial total of $425 million over the duration of the existing authority. However, the lack of cross fiscal year authority in Section 1263 makes it more difficult for our planners and acquisition professionals to implement comprehensive programs that ensure we maximize the use of resources to deliver full and sustainable capability.

For fiscal year 2017 and beyond, we recommend Section 1263 include provisions for cross-fiscal year authority and the achievement of full operational capability. Specifically, we would like to see the same language in NDAA Section 1263 that currently exists in 10 U.S.C. 2282 to allow for the availability of funds across fiscal years:

Cross Fiscal Year Authority—Amounts made available in a fiscal year to carry out the authority may be used for programs under that authority that begin in the fiscal year such amounts are made available but end in the next fiscal year.

Achievement of Full Operational Capability—If equipment is delivered under a program under the authority in the fiscal year after the fiscal year in which the program begins, amounts for supplies, training, defense services, and small-scale military construction associated with such equipment and necessary to ensure that the recipient unit achieves full operational capability for such equipment may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next fiscal year.

Finally, we recommend Congress rename the Section 1263 authority the "Southeast Asia Maritime Security Initiative" (versus "South China Sea Initiative"). The current name inadvertently discourages partners in the region from participating in a program that, to some, appears politically charged. [See page 20.]

Admiral RIXEY. The U.S. Foreign Military Financing (FMF) and the Excess Defense Articles (EDA) programs continue to be essential tools for the Department of Defense (DOD) in building the capacity of partner nations. We find that the best results are achieved when these programs are used in tandem, or when we combine them with other available authorities such that we can provide a full-spectrum capability, to include platform, enhancements, training, and sustainment.

All countries in the South China Sea region are eligible to receive EDA through either sale or grant and, in FY16 alone, $75 million in bilateral FMF is available for partner nations. To build capacity in the Southeast Asian region, DOD is working closely with the Department of State and regional partners to co-invest and integrate partner nation funds, EDA, and FMF. An example of this can be found in the Philippines where EDA grant assistance provided two high endurance cutters and investment from FMF and Philippine national funds refurbished the cutters to operational capability. In addition to FMF and EDA, the U.S. Government is also integrating a new security assistance program as part of the rebalance to Asia—the Department of Defense's (DOD) Southeast Asia Maritime Security Initiative (MSI), which is a comprehensive, multi-year effort that will reinforce our partners' and allies' maritime security efforts and address shared challenges. This initiative is made possible through a new authority focused on building partner capacity in the maritime domain—Section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016. MSI will complement other ongoing U.S., partner, and allied efforts. Fundamental to our vision, MSI views maritime capacity building through a regional lens that prioritizes building multi-mission capabilities and fosters interoperability, not just with the United States, but among key Southeast Asian countries. [See page 20.]

## QUESTIONS SUBMITTED BY MEMBERS POST HEARING

MAY 17, 2016

## QUESTIONS SUBMITTED BY MS. SPEIER

Ms. SPEIER. To what extent are foreign military sales driven by U.S. defense manufacturing companies courting foreign countries? How sizable and influential is their role upon other countries in their deliberation of the military purchasing process? Are there instances in which defense companies created a need for FMS abroad when it may not exist?

Admiral RIXEY and Ms. GRADY. Foreign military sales arise from foreign partner requirements. Ultimately, the decision to procure defense articles and services from the U.S. defense industrial base lies with the foreign partner country. U.S. DOD security cooperation offices, under the direction of the Geographic Combatant Commander and supported by the Defense Security Cooperation Agency (DSCA), are positioned overseas at our embassies and consulates as the principal DOD points of contact to respond to our foreign partners and to help them to identify and define requirements for defense capabilities. Procurement of defense capabilities can be satisfied through Foreign Military Sales (FMS), Direct Commercial Sales (DCS), a combination of both, or other arrangements such as coproduction agreements. U.S. defense industry participate in all of these alternatives. They market the capabilities of their companies' products and services and help DOD inform our foreign partners on the price and availability of defense goods and services available to meet their requirements. Prior to any discussions of systems that involve the provision of International Traffic in Arms Regulations (ITAR)-controlled information, U.S. industry is required to submit an export license for U.S. Government approval to do so. This allows the U.S. Government to conduct due diligence review to ensure that a potential resulting sale is in line with these three fundamental and critical validations:

- The sale is of mutual benefit to the partner nation and the U.S. Government;
- The technology will be protected; and
- The transfer is consistent with U.S. Conventional Arms Transfer policy

In addition, the Department of Commerce's Advocacy Center coordinates U.S. Government interagency advocacy efforts on behalf of U.S. exporters bidding on public-sector contracts with overseas governments and government agencies. The degree to which both DOD and U.S. industry work together to help influence this outcome, while ensuring that efforts are coordinated and in line with U.S. foreign policy and technology transfer limitations, should be viewed as a positive national defense priority.

Ms. SPEIER. To what extent are foreign military sales driven by U.S. defense manufacturing companies courting foreign countries? How sizable and influential is their role upon other countries in their deliberation of the military purchasing process? Are there instances in which defense companies created a need for FMS abroad when it may not exist?

Ms. MCCORMICK. DTSA has a limited role in the execution of FMS programs and, as a result, has little insight into the specific impact of industry on FMS cases. We defer to DSCA, who in response to the same question from Representative Speier, provided the following: [see answer above from Admiral Rixey and Ms. Grady].