

**OPENING STATEMENT TO THE SUBCOMMITTEE
ON TERRORISM, NONPROLIFERATION AND TRADE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
“FOREIGN MILITARY SALES: PROCESS AND POLICY”**

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15 June 2017

Thank you Chairman Poe, Ranking Member Keating, 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 (FMS) process – from my vantage point as the Director of the Defense Security Cooperation Agency (DSCA). The FMS system is burdened but not broken, and we’ve made important strides not only within the Department of Defense (DoD), but across the interagency, in mapping out and implementing – 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 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 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. FMS is a key Security Cooperation tool, 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 that can lead to a Letter of Offer and Acceptance, or LOA. The LOA is a contract-like agreement to be signed by both the foreign government and the U.S. Government. Fundamentally, through this process the U.S. Government determines 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 transfer is consistent with the U.S. Conventional Arms Transfer Policy. This is a simplified characterization of the process -- and I'll provide more detail later -- but upon positive validation of national security interests, 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.

I want to note that this FMS process -- or a version of it -- serves us well in the DoD Title 10 building partner capacity (BPC) arena. While the requirements are generated in a different way and the source of funds is not the partner nation but a Congressional Appropriation, the fundamental process of building a BPC 'case', validating a requirement, and exercising our U.S. acquisition system to deliver a capability, is modeled on our LOA process.

I want to say clearly that -- while I can understand where some of the concerns regarding the timeliness of the process come from, overall the system performs very well. Most FMS cases move through the process relatively quickly, but some may move more slowly as we engage in deliberate review to ensure that the necessary arms transfer criteria are met.

The United States continues to remain the provider of choice for our international partners, with 1,700 new cases implemented in Fiscal Year 2016. These new cases, combined with

adjustments to existing programs, resulted in more than \$33 billion dollars in sales last year. This included over \$25 billion in cases funded by partner nations' own funds and approximately \$8 billion in cases funded by DoD's Title 10 programs or Department of State appropriations.

DSCA's Role

Under the authority and direction of the Under Secretary of Defense for Policy, DSCA is responsible for the execution and administration of all Security Cooperation programs and activities of the Department involving the provision of defense articles, military training, and other defense related services by grant, loan, cash sale, or lease. FMS is a Title 22 U.S. Code authority, and DSCA operates the program, in consultation and coordination with the Department of State, on the basis of authorities delegated from the President. 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; and
- determines training requirements necessary for the Security Cooperation Workforce to carry out its FMS and Title 10 Security Cooperation responsibilities. This includes approximately 14,000 FMS program supported civilian, military and contractor personnel in the United States, as well as Security Cooperation Office personnel located in U.S. missions overseas.

It is important to note that by law 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 Departments 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.

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

DoD executes FMS through delegated authorities, and subject to the authorities of the Department of State. Our transfers are subject to the requirements of the Arms Export Control Act and the U.S. Conventional Arms Transfer Policy (Presidential Policy Directive 27). Before we make any transfer we must validate:

- that the sale is of mutual benefit to the partner nation and the U.S. Government,
- that the partner is willing and able to protect the technology according to our requirements, and
- that the transfer is consistent with our foreign policy objectives.

The FMS system is actually a set of systems which primarily involves three organizations which play critical roles – the Department of State, the Department of Defense, and the Congress. The Departments of State and Defense 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.

Under the AECA, cases that meet specific monetary thresholds must be notified to the Speaker of the House of Representatives, the Chairman of the Committee on Foreign Affairs of the House, 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 Conventional Arms Transfer Policy, and also considers industrial base concerns and U.S. warfighter needs. The Department of Defense, in particular, 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 the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics and

the Military Departments as they oversee the procurement of defense articles for the partner nation.

Criticism of the alleged slow approval timelines in the FMS program is largely associated with a few high-profile cases that have been the focus of the media 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 foreign policy 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.

Also, the Fiscal Year 2017 National Defense Authorization Act (NDAA) builds upon our work and empowers our efforts. Specifically, it:

- consolidates policy oversight and resource allocation within the Office of the Secretary of Defense and it consolidates execution and administration of Title 10 Security Cooperation programs within DSCA,
- requires DoD to provide a consolidated budget justification and establish an assessment, monitoring and evaluation framework to allow a more rigorous, data driven assessment of program effectiveness, and
- mandates DoD to establish a Security Cooperation workforce development program to ensure the approximately 14,000 Security Cooperation professionals all over the world have the appropriate training, education and experience to execute the mission.

Excess Defense Articles

The Defense Security Cooperation Agency is also responsible for administering the Excess Defense Articles (EDA) program. Working under the authorities of the Foreign Assistance Act

of 1961 and the Arms Export Control Act, defense articles declared as excess by the Military Departments can be granted or sold to foreign governments or international organizations in support of U.S. national security and foreign policy objectives.

The Military Departments determine what is or is not excess. Equipment which has been transferred from the Military Departments to the Defense Logistics Agency, Disposition Services, is also available for transfer through the EDA program if an eligible foreign government makes known its requirements for the equipment.

The Department of Defense is authorized by law to transfer Excess Defense Articles to foreign governments under the following authorities:

- Section 516 of the Foreign Assistance Act (FAA) of 1961, as amended, authorizes grant transfers of lethal and non-lethal EDA to countries for which receipt of such articles was justified to Congress for the fiscal year in which the transfer is authorized. Among other factors, these transfers must consider the impact on the national technology and industrial base to sell new or used articles.
- EDA may also be sold to foreign countries under the normal FMS system authorized by the Arms Export Control Act (AECA). When EDA is sold, the price is a percentage of the original acquisition value, based on age and condition, and ranges from 5% to 50% of the original acquisition cost.

Initiatives

DSCA is working with DoD and interagency 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 foreign policy and national security objectives. We have a continuous improvement culture and have identified 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 train for, maintain, and sustain the products they receive through the FMS program. The FMS process itself – the activities ranging from a partner submitting a Letter of Request through case closure – has been the subject of multiple assessments, process improvements, and Lean Six Sigma projects. Currently, we have efforts underway to improve

the FMS process, founded initially in DSCA's strategic plan, Vision 2020, that address improvements to FMS process partnership, FMS process improvements, FMS process enablers, and integrating Title 10 transactions into the FMS work stream. In particular, efforts focus on activities in five distinct process areas in the FMS system: partner nation actions, the FMS case lifecycle, technology transfer, foreign policy review and oversight, and acquisition.

We are developing options to provide more transparency of the process, as it occurs, to the FMS customer. The Transparency Initiative was started to facilitate the improvement of timeliness and quality in the execution of FMS through greater transparency and communication with regard to pre-LOR, case development, and contracting processes.

DSCA just published a Transparency Handbook that lays out milestones and tools to improve the timeliness and quality in the execution of FMS. Specifically, it provides guidance to:

- Structure effective information exchanges,
- Encourage productive dialogue,
- Align partner needs with those systems and services that the United States has available, and
- Our ability to openly communicate with our partners across the continuum of FMS activities will foster better understanding as we work to achieve common goals going forward.

Another important focus of our attention has been contracting for FMS. DSCA has been working with the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics 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 Regulation including the Defense Federal Acquisition Regulation Supplement, 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

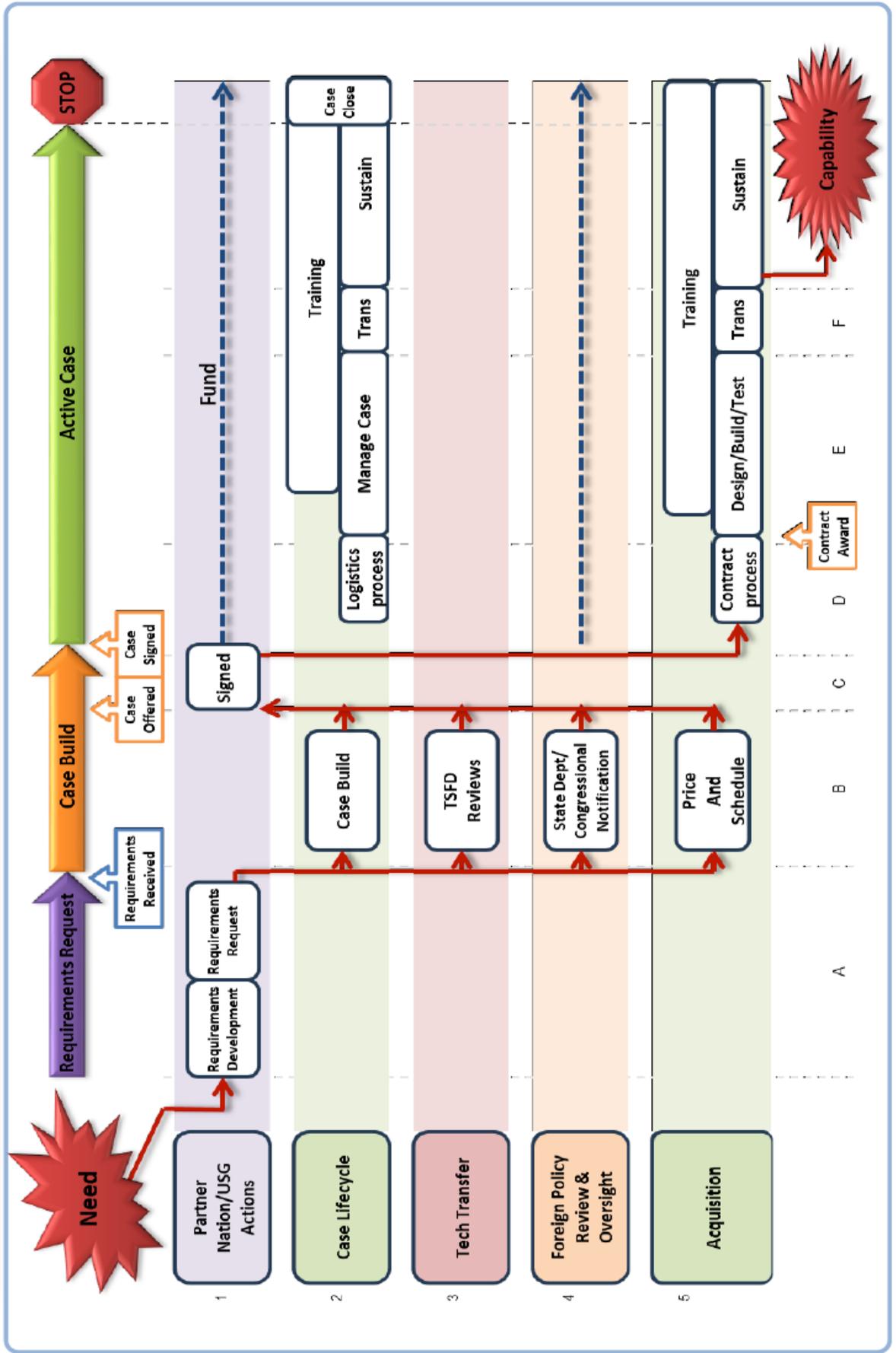
ensure that there are trained and certified professionals available to fill the contracting officer billets.

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 and other interagency stakeholders, as well as 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 subcommittee members, I want to thank you again for the opportunity to sit before you today, and I look forward to your questions.

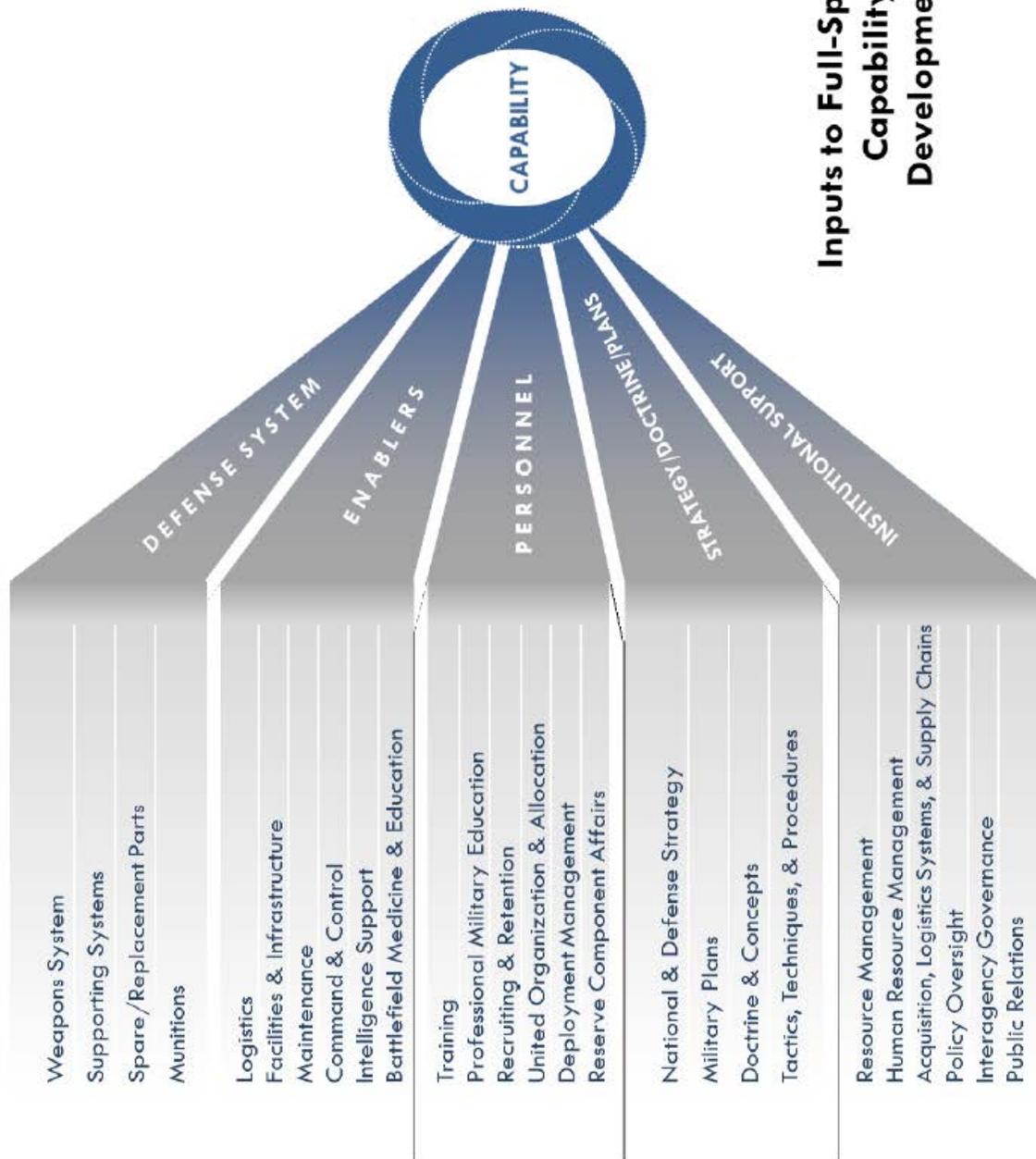


Security Cooperation Execution





Full-Spectrum Capability



**Inputs to Full-Spectrum
Capability
Development**