
Foreign Military Sales Operations and DOD Relations with Industry

By

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INTRODUCTION

Good afternoon. I will be discussing the ways DOD has interfaced with industry in the recent past and how we see DOD's relations with industry evolving in the immediate future.

THE FOUNDATION FOR FMS-INDUSTRY EXPORT SALES INTERFACE

In order to set the stage, I would like to make a few general comments.

First, let me recognize the de facto partnership that exists between DOD and the defense industry. From an operational perspective, high quality defense articles and services, delivered on time and at a reasonable cost, are the core of the FMS program. This may seem obvious but it must be reinforced periodically since we might otherwise tend to become enmeshed in legislative, policy, financial, or other aspects of the program and allow ourselves to take for granted that the articles and services we sell will be delivered on time and without problems.

Second, while the partnership with industry should be nurtured, we must recognize that commercial marketers do not have the same interests or responsibilities as do those within the Security Assistance community who represent both the United States as a whole and the country or international organization which is relying on us for defense assistance. We must work toward objectives which are more permanent than even the largest, most forward planning, and most responsible U.S. corporation. For this reason, a mildly adversarial relationship with industry does not necessarily indicate malice or even disrespect; it is the inevitable and, overall, healthy result of our different roles in the FMS process. These are philosophical concepts which may be easier to recognize and evaluate when related to their application. For example:

- We emphasize that DOD is not a defense marketer. Sales under FMS must best serve U.S. foreign policy interests, with U.S. trade or other economic considerations secondary to this primary objective. Both the Foreign Assistance Act and Arms Export Control Act stress that defense sales and leases must be integrated with other U.S. activities, that arms control consequences must be taken into consideration for each sale, and that due regard must be given to the impact of such sales on social and economic development.

- Our Security Assistance Offices overseas have been instructed not to get out in front of Department of State decisions by discussing U.S. military hardware or services with their host countries before proper clearances have been received.

And finally, even though the reduction of unnecessary actions, greater automation, and other efforts to make it more responsive are continuous and intensive, the FMS process is complex and will stay that way.

- When comparing U.S. security assistance programs with those of other nations, it is often found that we are guided by more laws, policies, procedures, and checks and balances than our counterparts around the world. U.S. commercial industry representatives are also caught up in this and they frequently express concern, and sometimes dismay, at the process necessary to clear technology for release and to obtain export licenses.

- FMS complexity is partially shaped by the size and intricacy of U.S. worldwide commitments. More important perhaps are the political forces which bear on the U.S. Congress and reflect the U.S. citizenry's conflicting desires demonstrated in the omnipresent guns versus butter, foreign versus domestic, U.S. versus allied burdensharing, and other debates. These factors ensure that the form of the program may change, but its complexity will continue.

INTERFACE WITH INDUSTRY FROM AN OPERATIONAL PERSPECTIVE

Because U.S. legislation largely dictates this, DOD relies to a great degree on commercial marketers to get the word out regarding U.S. articles and services that may meet the defense needs of allied or friendly countries. In supporting this, DOD's policy is to be forthright, factual, and to avoid any connotation of favoritism toward one commercial firm over another. Overseas, representatives of U.S. firms selling defense articles or services are treated with the same courtesies as other U.S. businessmen.

Except in a few situations where the U.S. Government wishes to exercise the closer control possible under FMS, DOD has no preference for a country's acquisition of items through direct commercial rather than FMS procedures. We have published a number of documents designed to clarify this; the best are the booklet *A Comparison of Direct Commercial Sales and Foreign Military Sales for the Acquisition of U.S. Defense Articles and Services*, and Chapter 6 of the *Security Assistance Management Manual*, DOD 5105.38-M. A recently published brochure, *United States Security Assistance*, also has a short summary on FMS and commercial sales.

We try to avoid, in concept and in practice, direct competition between FMS and commercial firms. The most effective means for accomplishing this, described in Section 601 of the SAMM, lies in commercial marketers notifying DSAA at specific points when commercial acquisition is preferred over sale under FMS.

- For items shown as Significant Military Equipment on the United States Munitions List, when the item meets certain criteria, DSAA will consider granting commercial sales preference for the particular item for a period of three years, or for possible sale to one country for one year. This preference then involves asking the DOD item manager to clarify any Letter of Request with the requesting country when a direct sale preference item is sought under FMS, and clearance of any release of price and availability data through DSAA.

- Direct commercial sale preference is not always recognized; for example, some countries prefer to make their purchases under FMS as a matter of national policy and those preferences are normally honored; some items are produced by more than one manufacturer and direct commercial preference for one manufacturer might tend to exclude others from competition; and some items are

supplied under dollar line cases, which makes the matching of FMS orders and commercial preference lists too cumbersome to be effective.

- Although we will consider withdrawing an LOA based on a notification of commercial preference, this would be unusual since the objective is to avoid competing offers. The effectiveness of the process is lessened, and potential conflict with customer countries is increased, when a government FMS offer is made which is then found to be in competition with a commercial invitation for bid (IFB) response.

In addition to the clarification of commercial-FMS competition rules, I would like to highlight several areas where we have made progress concerning FMS interface with industry.

- New MAP and Credit guidelines were published in February 1989. Those guidelines were implemented after major industry associations provided comments. The majority of those comments were incorporated into the guidelines, which were provided to industry associations following publication. Representatives of each country with a substantial grant or credit program attended a briefing on the new guidelines in March 1989. The guidelines are to be included in Change 1 to the *Security Assistance Management Manual* to be issued shortly.

- In recognition of their considerable interest, the impact of their input, and the importance of all principal players participating at the key stages, industry representatives are increasingly consulted during the various stages of major cooperative programs.

- Greater efforts are being made to expand the information base for FMS and commercial sales, including enhancement of customer ability to determine which approach is best in a given situation. Examples of this are:

- Publication, in 1985, of the booklet, *A Comparison of Direct Commercial Sales and Foreign Military Sales*;

- Publication in June, 1989, of the brochure, *United States Security Assistance*, to help show the relationships within the security assistance program, including those between FMS and the commercial marketer;

- An addition to Section 602 of the 1 October 1988 edition of the *SAMM*, to clarify the role of the SAO in supporting commercial marketing;

- A planned addition to Section 602 of the *SAMM* (Change 1), which will provide basic information regarding what commercial marketers can do to help ensure a successful marketing effort in the SAO's host country.

- The Defense Policy Advisory Committee on Trade (DPACT) has been chartered under executive order to advise the Secretary of Defense and the U.S. Trade Representative.

- This group, made up of representatives at the Chief Executive Officer level from over 30 major defense corporations and industry organizations, meets formally approximately every six months to discuss a variety of issues of common interest to the government and industry. These meetings have covered such topics as offset policy, export surcharges not specifically required by law, foreign ownership of U.S. defense plants, technology transfer policy, impediments to defense cooperation, effects on the United States anticipated changes resulting from the formation of the 1992 European Economic Community, and the implications of decreasing compliance with the rules for the international protection of intellectual property rights.

•• The DPACT developed a November 1988 report which highlighted 21 issues where the Bush administration was encouraged to concentrate its trade-enhancement efforts. The report is directed toward increasing governmental support for trade, cooperation, and participation in global markets while strengthening the U.S. industrial base, preserving U.S. technological leadership, and maintaining the economic health of the U.S. defense industry.

DOD-INDUSTRY EXPORT SALES INTERFACE IN THE FUTURE

A number of initiatives are underway that will affect the way we interact with industry in the future. The general theme of these changes is toward moving away from FMS as a purely foreign policy tool toward greater recognition of trade and other implications of the program in order that overall U.S. interests are best served. While there is still a very definite need for FMS and the military-to-military relationship it fosters, FMS for purely political and military reasons may be a luxury that we can no longer afford. We may need to look at FMS more in terms of the U.S. industrial base and economic issues.

In February, a House Foreign Affairs Committee Task Force chaired by Representatives Lee Hamilton (D-IN) and Ben Gilman (R-NY) issued the Hamilton-Gilman report. The results of that report are expected to shape our legislation for the next several years.

- The Task Force found that foreign assistance is vital to promoting U.S. foreign policy and domestic interests, but that the program is hamstrung by conflicting objectives, legislative conditions, earmarks, and bureaucratic red tape.

- Several recommendations were made to preserve the program while reducing the problems found, such as creation of a defense trade and export control act to replace the AECA, enactment of an international economic cooperation act to replace the existing FAA and amendments, and provision of more flexibility in the implementation of economic assistance programs.

- Earmarking debates will intensify. The present earmarking levels, where up to 98 percent of the FMS account and two-thirds of the MAP account are earmarked, should decline somewhat. Relatively low value regional contingency funds, perhaps consisting of only a few million dollars each, may be approved, primarily for Africa and Latin America.

The November 1988 DPACT "Report Outlining U.S. Government Policy Options Affecting Defense Trade and the U.S. Industrial Base" nonsurprisingly offered recommendations to the Secretary of Defense that blazed part of the path traveled in the Hamilton-Gilman report. The DPACT recommended:

- Increasing Government support and improving the international environment for trade and cooperation while responding to globalization of the defense industry.

- Strengthening the U.S. industrial base and preserving U.S. technological leadership.

Within DOD, the project to streamline the Security Assistance process is being revitalized. Previous streamlining efforts were quite limited in that they concentrated on changes which could be made within the DOD security assistance community. A new initiative is underway which will look at changes needed without regard to legislative or other obstacles in order to determine which changes will be pursued. Working groups have been established for Streamlining the SA Process, Management Information Systems, and Resources. These working groups are now examining a variety of proposals in each area, and the results are expected to affect how we do business, including the ways in which we interact with industry.

Revisions to simplify both the SAMM and the DD Form 1513, Letter of Offer and Acceptance, are also under development. A primary goal is to make both documents more straightforward and easier to use.

Additionally, a concept has been approved for a standardized format "catalog" of commercially marketed items. The "catalog" would consist of a short summary for each item which a U.S. manufacturer might want to bring to the attention of a country's defense establishment. A looseleaf bound format for such a catalog would allow easy replacement of information by overseas SAOs, where the document would be maintained. At present, this initiative is only in a conceptual stage, and it requires a great deal of discussion with industry and industry associations, SAO's, and others who would be directly involved.

CONCLUSION

As you see, we interface with industry in a variety of areas, and we expect our interaction to grow as more emphasis is placed on trade and the economy as a foreign policy consideration. I am always pleased to invite you to help make this interaction as efficient and constructive as possible.