



February 21, 2020

Transfer of Defense Articles: Foreign Military Sales (FMS)

The United States sells more than \$55 billion worth of defense articles and services annually to foreign governments to advance U.S. security and economic interests. Such purchases are managed primarily through the Foreign Military Sales program (FMS), through which the U.S. government procures defense articles as an intermediary for foreign partners. This adds value for customers by ensuring that they have the same contract benefits and protections that apply to the U.S. military’s acquisition of its own defense articles and services. In turn, the U.S. benefits from a government-to-government relationship in the sale intended to comply with U.S. foreign and security policy, as well as to help ensure militarily interoperable weapons systems among allies and partners.

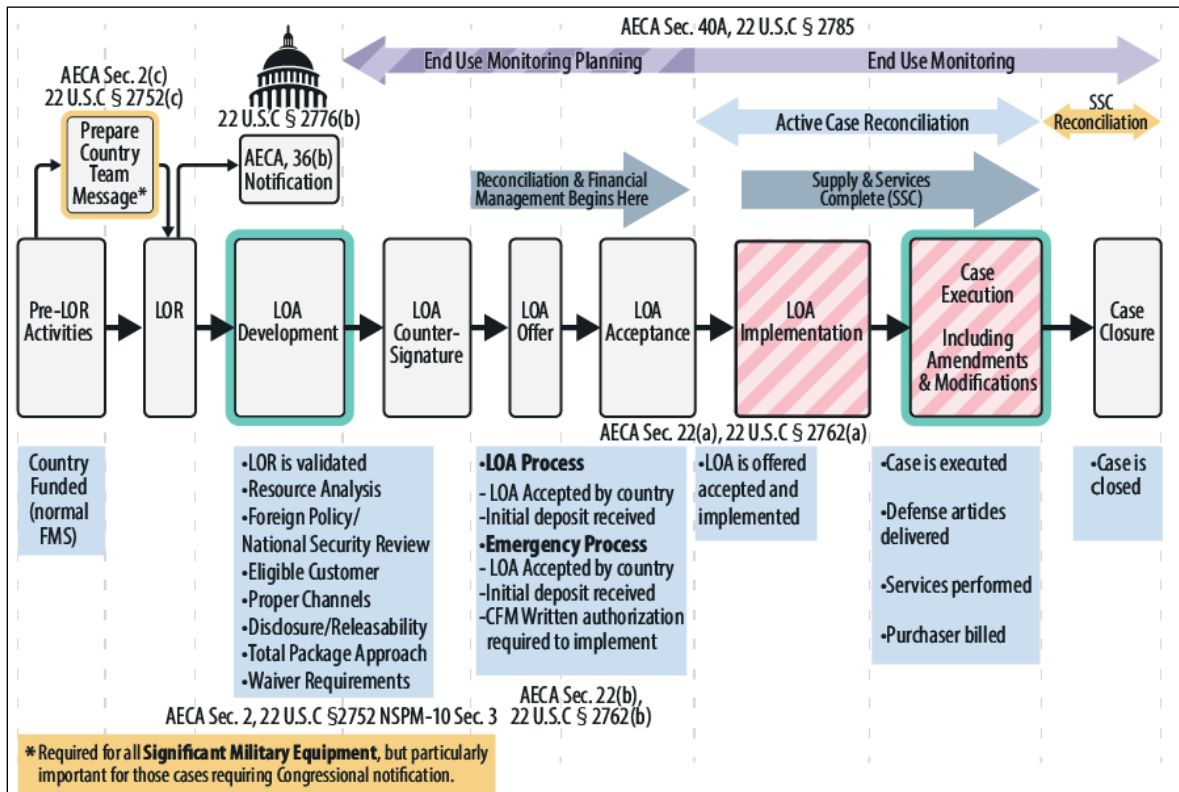
Congress authorized the FMS program in the Arms Export Control Act (AECA) of 1976 (22 U.S.C. §2751 et seq.) and provides active oversight of the program through annual

Department of State and Foreign Operations Appropriations Acts and the National Defense Authorization Acts. Such oversight is also seen in the congressional response to executive branch notifications of foreign arms sales. Through these mechanisms, Congress may limit or prohibit FMS to certain countries, or encourage the use of FMS in other cases.

The sale of defense articles to Taiwan is not formally subject to the AECA. Rather, FMS-like transfers to Taiwan are authorized pursuant to the Taiwan Relations Act of 1979, P.L. 96-8, 22 U.S.C. §3301 et seq.

The Department of Defense (DOD) uses the FMS infrastructure for defense articles procured and transferred to foreign partners through the Foreign Military Financing (FMF) program. It also uses the infrastructure under other Title 10 authorities (e.g., 10 U.S.C §333), though these are not considered FMS cases.

Figure 1. Foreign Military Sales (FMS) Process



Source: Defense Security Cooperation Agency (DSCA), annotated by CRS.

Notes: LOR: Letter of Request. LOA: Letter of Offer and Acceptance. NSPM: CFM: Country Financial Management Division, DSCA.

FMS Process (Figure 1)

Pursuant to Title 22, *United States Code*, all security assistance programs are subject to the continuous supervision and general direction of the Secretary of State,

to serve U.S. foreign policy interests. The State Department’s Bureau of Political-Military Affairs (PM) administers FMS, and DOD is the implementing agency, through the Defense Security Cooperation Agency (DSCA).

DSCA manages and coordinates FMS cases, submitting the proposed sale to the PM Bureau for review and consultation with Congress in order to receive approval to make a formal agreement with the eligible foreign purchaser.

Letters of Request (LOR) Start the Process

U.S. officials often consult with foreign partners considering purchases or otherwise seeking U.S. defense articles or services. To initiate transfer consideration, a partner must submit an official request to DOD, known as a letter of request (LOR). The letter may take nearly any form, from a handwritten request to a formal letter, but it must be in writing. The potential purchaser submits the LOR to a U.S. security cooperation organization (SCO), normally an Office of Defense Cooperation in the country or directly to DSCA or an implementing agency (IA), usually a military department or DOD agency. This can occur in-country or through the country's military and diplomatic personnel stationed in the United States. Unless an item requiring greater government security measures has been designated as "FMS Only," DOD is generally neutral as to whether a country purchases U.S. defense articles or services commercially or through the FMS program.

When the SCO receives a LOR, it transmits the request to the relevant agencies for consideration and export licensing. U.S. government (USG) preliminary responses to LORs include price and availability (P&A) data, and respond to purchasers' requests. The executive branch conducts its internal reviews, and, if considering approval of certain transfers, the State Department begins consultations with congressional committees of jurisdiction. If during executive branch review the IA or the State Department recommends (for a number of potential reasons) that the purchaser's request be disapproved, the IA or State notifies DSCA, which formally notifies the customer.

Letters of Offer and Acceptance (LOA) Set Terms

After executive branch policy reviews and any required congressional notifications are complete, the USG responds with a Letter of Offer and Acceptance (LOA). The LOA is the legal instrument used by the USG to sell defense articles, defense services including training, and design and construction services to an eligible purchaser. The LOA itemizes the defense articles and services offered and when implemented by DSCA becomes an official tender by the USG. Signed LOAs and their subsequent Amendments and Modifications are also referred to as "FMS cases." The time required to prepare LOAs varies with the complexity of the sale.

Case Executions Deliver the Articles

Case execution is the longest phase of the FMS case life cycle. It includes acquisition, logistics, transportation, maintenance, training, financial management, oversight, coordination, documentation, case amendment or modification, case reconciliation, and case reporting. Case managers, normally assigned to the IAs, track FMS delivery status in coordination with SCOs. All case transactions, financial and logistical, must be recorded as part of the official case file. Cost statements and accounting must be supported by source documents.

U.S. government and purchaser advanced planning for transportation of materiel is critical for case development and execution. DOD policy states that the purchaser is responsible for transportation and delivery of its purchased materiel. Purchasers can use DOD distribution capabilities on a reimbursable basis at DOD reimbursable rates via the Defense Transportation System (DTS). Alternatively, it could employ an agent, known as a Foreign Military Sales freight forwarder, to manage transportation and delivery from the point of origin (typically continental United States) to the purchaser's desired destination. Ultimately, the purchaser is responsible for obtaining overseas customs clearances and for all actions and costs associated with customs clearances for deliveries of FMS materiel, including any intermediate stops or transfer points. In most FMS cases, firms ship defense articles to the foreign partner via a third-party freight forwarding company. The security cooperation organization, part of the U.S. Embassy Country Team, may receive the item and hand it over to the purchaser, or the purchaser may receive it directly.

Generally, title to FMS materiel is transferred to the purchaser upon release from its point of origin, normally a DOD supply activity. However, USG security responsibility does not cease until the recipient's designated government representative assumes control of the consignment. U.S. officials then implement end-use monitoring of U.S. defense articles as required by U.S. law and specified in LOA terms.

Congressional Notification Requirements for FMS

The AECA, Section 36(b) (22 U.S.C. §2776(b)), specifies that the executive branch must report to Congress

- 30 calendar days before issuing a Letter of Offer and Acceptance (LOA) for major defense equipment valued at \$14 million or more, defense articles or services valued at \$50 million or more, or design and construction services valued at \$200 million or more; and
- 15 calendar days before issuing an LOA for NATO member states, NATO, Japan, Australia, South Korea, Israel, or New Zealand for sale, enhancement, or upgrading of major defense equipment valued at \$25 million or more, defense articles or services at \$100 million or more, or design and construction services of \$300 million or more.

Congress reviews formal notifications pursuant to procedures in the AECA and has the authority to block a sale. See CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr.

Nathan J. Lucas, Section Research Manager
Michael J. Vassalotti, Section Research Manager

IFI1437

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.