Lesson Summary
International Acquisition and Exportability

Learning Objectives

The following learning objectives are covered in this lesson:

- Recognize the conceptual framework used to plan and implement DoD’s International Acquisition and Exportability (IA&E) activities.
- Identify the characteristics of a program-level IA&E planning and analysis assessment used to develop the program’s acquisition strategy (or equivalent).
- Identify characteristics and benefits of DoD International Cooperative Programs (ICPs).
- Identify characteristics and benefits of DoD Sales and Transfers activities.
- Identify program-level Defense Exportability policies and responsibilities.
- Identify U.S. Government and DoD Technology Security and Foreign Disclosure (TSFD) and export control policies and organizational responsibilities.
- Identify program-level International Contracting policies and responsibilities.
- Identify “International Considerations” section characteristics that address the IA&E-related legal and policy requirements in a program’s acquisition strategy (or equivalent).
- Identify how the “International Considerations” section influences the program’s overall acquisition strategy.

IA&E Framework

There are six key IA&E elements. The first, IA&E Planning & Analysis, provides the overall framework for the other five elements. International Cooperative Programs (ICPs), Sales & Transfers, Defense Exportability, and Technology Security & Foreign Disclosure (TSFD) should all be considered, as appropriate, throughout the life cycle of each DoD acquisition program, project, or activity.

IA&E-related requirements and other considerations pertaining these elements should also be incorporated into DoD contracts or other similar arrangements with private sector entities, as appropriate, in accordance with U.S. Government and DoD International Contracting policies.

IA&E Planning & Analysis

Programs should conduct an IA&E Assessment as early as possible in the lifecycle of new or modified DoD acquisition programs to collect information and assess factors that affect international considerations and potential foreign involvement including:

- Interoperability requirements
- Program protection considerations
• Cooperative opportunities
• International markets

IA&E Assessment results should be used to establish the international involvement aspects of a program’s initial Acquisition Strategy and provide a foundation for future IA&E efforts.

For IA&E planning and analysis guidance, visit the IA&E Assessment Job Support Tool (JST).

International Cooperative Programs (ICPs)

An International Cooperative Program (ICP) is any acquisition program or technology project that includes participation by DoD on behalf of the U.S. Government and foreign nations or international organizations, through an international agreement, during any phase of a system’s life cycle.

ICPs are jointly funded, managed, and executed by U.S. and partner nation(s) on either a bilateral or multilateral basis as described in the international agreement. The risks and benefits are shared equitably.

The results from the IA&E Assessment’s Cooperative Opportunities section should be used establish the foundation for a program’s cooperative opportunities engagement and identification efforts. The Acquisition Strategy should be used to provide context to the evaluation of potential ICP efforts with allied/friendly nations or international organizations. Key activities in the ICP process include:

• Identification and Assessment of ICP Opportunities by DoD Component Program Management Offices (PMOs) and International Program Organizations
• Conducting ICP Exploratory Discussions with allied/friendly nations or international organizations
• Initiating and successfully completing the OUSD(A&S) International Agreements Process
• Executing the ICP in accordance with signed international agreements

Benefits of ICPs

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<thead>
<tr>
<th>Overall IA&amp;E Benefits</th>
<th>Specific ICP Advantages</th>
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<tbody>
<tr>
<td>• Improve coalition interoperability</td>
<td>• Improved defense exportability integration early in the program</td>
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<tr>
<td>• Achieve acquisition economies of scale</td>
<td>• Mutual and equitable sharing of effort, cost, and risk in all acquisition life cycle phases</td>
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<tr>
<td>• Maintain a viable production base</td>
<td>• Equitable sharing of the resulting acquisition program benefits</td>
</tr>
<tr>
<td>• Share production line non-recurring costs</td>
<td>• Access to/use of leading-edge foreign technology and industrial capabilities throughout the life cycle</td>
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<tr>
<td>• Enhanced political-military relationships</td>
<td>• Enhanced overall affordability of the system throughout the life cycle</td>
</tr>
<tr>
<td>• Enhanced global competitiveness</td>
<td>• Enhanced political-military relationships resulting from long term acquisition partnership arrangements</td>
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Sales & Transfers

DoD Sales and Transfers include several types of Security Cooperation equipment and financing activities including:

- Foreign Military Sales (FMS)
- Building Partnership Capacity (BPC) (often referred to as pseudo-FMS)
- Direct Commercial Sales (DCS)
- FMS Hybrid Programs
- Acquisition and Cross Servicing Agreements (ACSAs)

Foreign Military Sales

Foreign Military Sales (FMS) is a non-appropriated U.S. Government program administered by the DoD through which eligible foreign governments or international organizations can purchase defense articles, services, and training. Foreign nation or U.S. Foreign Military Financing (FMF) funds are used to pay all costs.

DoD acts as an “agent” to acquire defense articles/services for the foreign nation or international organization. The Defense Security Cooperation Agency (DSCA) provides overall guidance and direction regarding DoD FMS activities. FMS acquisition efforts are normally performed by Military Department (MILDEP) and other DoD Component acquisition organizations collectively referred to as Security Assistance or FMS Implementing Agencies.

The key steps in the FMS process include:

- A formal Letter of Request (LOR) from the foreign government or organization for defense articles or services to DSCA or one of the DoD FMS Implementing Agencies.
- Establishment of a Government-to-Government agreement—known as a Letter of Offer and Acceptance (LOA) between the U.S. Government and foreign country or international organization—to sell the desired defense articles and services.
- DoD FMS Implementing Agency management and implementation of FMS-related acquisition efforts to acquire, deliver, and support defense articles and services in accordance with signed FMS LOAs (or other similar FMS arrangements).
Building Partner Capacity

Building Partner Capacity (BPC) programs are used by the DoD and other U.S. Government agencies to provide defense articles and/or services to selected foreign nations involved in coalition operations based on Memoranda of Requirements (MORs) submitted by DoD Combatant Commanders or other similar organizations.

BPC programs are funded with U.S. Government Title 10 appropriations and administered as transactions within the FMS infrastructure, hence why they are referred to as “Pseudo FMS” cases.

Direct Commercial Sales

Direct Commercial Sales (DCS) are exports of defense articles and services approved by the U.S. State Department under the Arms Export Control Act (AECA) or U.S. Commerce Department under the Export Administration Act (EAA). These sales are made by U.S. defense companies directly to a foreign entity, which could be a foreign government, international organization, company, or other private sector entity.

DCS transactions are not administered by DoD and do not normally include any direct government-to-government agreement unless they are an element of a “hybrid” program (see next paragraph).

Acquisition and Cross Servicing Agreements

Acquisition and Cross Servicing Agreements (ACSA) provide the U.S. and partner nations with the ability to provide each other with operational logistics support during wartime, combined exercises, training, deployments, contingency operations, humanitarian or foreign disaster relief operations, certain peace operations under the UN Charter, or for unforeseen or exigent circumstances.

ACSA authority is typically exercised by the Unified Combatant Commands (COCOMs) and their allied/friendly nation counterparts through establishment of ACSA Implementing Arrangements.
Hybrid Programs
ICPs, FMS, and DCS can be used in combined forms in a single program or during a specific program phase, effort, or activity.

- **FMS/DCS Hybrid.** Typically result from a foreign government preference for this approach, U.S. Government security cooperation or TSFD policy decisions that specify FMS as a required transaction mechanism for part of the transaction, or a combination of both of these considerations.

- **ICP/FMS Hybrid.** Typically result from successful ICP programs between U.S. and partner nations that develop exportable version U.S. systems which are subsequently sold via FMS to other allied/friendly nations.

- **ICP/FMS/DCS Hybrid.** Typically established between or among U.S. and allied/friendly nations that have acquired a U.S. system via FMS or DCS who then subsequently decide to cooperatively develop system upgrades, acquire system logistics support, or both through a bilateral or multilateral ICP.

Benefits of Sales & Transfers

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<tr>
<th>Overall IA&amp;E Benefits</th>
<th>Specific Sales &amp; Transfers Advantages</th>
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<tbody>
<tr>
<td>Improve coalition interoperability</td>
<td>Achieving economic order quantities in upgrade &quot;kit&quot; and sustainment procurements</td>
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<tr>
<td>Achieve acquisition economies of scale</td>
<td>Benefiting from foreign investment in non-program of record systems</td>
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<tr>
<td>Maintain a viable production base</td>
<td>Extending the service life of mature and aging DoD systems as a result of allied/friendly nation production and logistics support investment and procurement</td>
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<td>Share production line non-recurring costs</td>
<td>Selling or transferring DoD inventory spare parts that are no longer needed to allied/friendly nations to maintain coalition interoperability</td>
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<tr>
<td>Enhanced political-military relationships</td>
<td>Enhancing political-military relationships through long-term FMS, BPC, ACSA, or Excess Defense Article (EDA) transfer arrangements</td>
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<tr>
<td>Enhanced global competitiveness</td>
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Defense Exportability

Adequate program protection measures must be incorporated for DoD systems and equipment that are proposed for partnership, sale, or transfer to allied/friendly nations and international organizations. The Program Protection Plan (or equivalent) must address exportable program protection in Sensitive Information (including Cybersecurity), Critical Program Information (CPI), and Trusted Systems and Networks (TSN) areas. CPI must be protected by either differential capability, anti-tamper (AT) protection measures, or some combination of both.

- **Differential Capability**: modifying or removing technologies and/or capabilities from DoD systems or equipment that are prohibited for export to produce exportable versions, incorporating unique capabilities desired by the foreign partner, or both.

- **Anti-Tamper**: engineering activities intended to prevent or delay exploitation of CPI in DoD systems, thereby impeding countermeasure development, unintended technology transfer, and reverse engineering.

Policies and guidance driving early consideration and integration of defense exportability features (DEF) to achieve the desired exportability outcome include:

- **Joint Requirements Oversight Council Memorandum (JROCM) 025-19**: requires that DoD Components incorporate interoperability and defense exportability aspects into early JCIDS requirements documents (ICD, CDD) to ensure it's addressed in initial planning and design

- **National Defense Authorization Act (NDAA) 2019**: requires programs to develop and incorporate technology protection features into a system or subsystem during research and development

- **DoD Instruction (DoDI) 5000.02 E2:7. International Acquisition and Exportability**: requires the PM to integrate international acquisition and exportability considerations into the program's Acquisition Strategy

- **DAG, CH 1-S1–4. Defense Exportability Integration**: Provides general guidance (activities, processes, practices) for integrating defense exportability features into a system design to produce one or more exportable system configurations for ICPs or foreign sales.

For defense exportability and program protection policies and guidance, visit the [DEI Job Support Tool (JST)](https://example.com).

TSFD and Export Control

Technology Security and Foreign Disclosure (TSFD) and export control are major factors in any program with international aspects. The U.S. seeks to achieve a careful, deliberate balance between the risks of transferring controlled technology and information that provide U.S. warfighters an advantage in combat against the benefits of international participation and coalition warfare capability.

Navigating the TSFD Pipes

When navigating the applicable TSFD pipes (i.e., technology areas) the PMO/IPT, supported by its local foreign disclosure office and DoD Component International Program Organization, should use the following steps to obtain TSFD policy guidance and (if required) approvals pertaining to their system.
**Step 1: Assess and Identify TSFD Pipes.** Identify applicable TSFD pipes that pertain to the program as early as possible in the acquisition process.

**Step 2: Consult and Engage.** Pursue engagement with relevant TSFD pipe owners for guidance and approvals, if required, on export configurations. Complex programs may require engagement with multiple TSFD pipes. Successful TSFD engagement with relevant TSFD pipes will result in issuance of required TSFD guidance/approvals from each relevant pipe.

**Step 3: Integrate TSFD Authorizations.** Implement guidance/approvals to develop exportable configurations. If necessary, obtain adjustments to any conflicting multi-pipe guidance/decisions.

**Export Control**

In addition to the USG/DoD TSFD process, PMOs should also be aware of USG Export Control considerations pertaining to their program. USG/DoD TSFD and USG export control review and approval systems are separate, but related.

PMO-related responsibilities pertaining to export control include:

- Working with the program prime contractor(s) to develop Technology Release Roadmaps (TRRs).
- Facilitating DoS/DoC export approvals, as appropriate, for key TRR export license requests.
- Ensuring contractors, including program support contractors, register with DoS as International Traffic in Arms Regulations (ITAR) exporters.

For guidance on TSFD and Export Control processes, visit the [DEI Job Support Tool (JST)](https://jst.dei.mil).

**International Contracting**

DoD international contracting efforts generally use the same contracting policies and practices employed in domestic programs; however, there are additional international acquisition-specific requirements, criteria, and contract clauses that should be considered and used, as applicable, depending on the nature of the international acquisition effort being pursued. Contracting officers support PMs/IPTs on both domestic and international programs by planning and implementing international contracting activities throughout the acquisition life cycle.

The following describes typical international contracting situations and associated considerations, provisions/ clauses, and requirements pertaining to each.
### ACQ 202 Intermediate Systems Acquisition Course (ISAC)

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<th>Situation</th>
<th>Description</th>
<th>Considerations, Provisions/Clauses, and Requirements</th>
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| Domestic  | DoD contracting for U.S. domestic systems involves foreign contractors, subcontractors, or suppliers | - International acquisition requirements written into the Request for Proposal (RFP) and contract to describe the scope of work and corresponding Contract Data Requirements List (CDRLs) for all deliverable items.  
- Provisions/clauses associated with Title 10 and defense appropriations product or material restrictions listed under DFARS 225.70 (includes Barry Amendment)  
- FAR clause 52.204-2, Security Requirements  
- FAR clause 52.204-21, Basic Safeguarding of Covered Contractor Information Systems  
- DFARS clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting  
- DFARS clause 252.227-7013, Rights in Technical Data – Noncommercial Items  
- DFARS clause 252.227-7015, Technical Data – Commercial Items  
- DFARS clause 252.227-7037, Validation of Restrictive Markings on Technical Data |
| Hybrid    | DoD contracting for a combination of U.S. domestic and foreign partner/customer ICP/FMS/BPC requirements in the same contracts or contract modifications | All the above listed for domestic, plus evaluating and addressing the following, as appropriate:  
- Exceptions to full and open competition in accordance with the Competition in Contracting Act (CICA)—requirements specified in FAR 6.302-4; DFARS 260.302, International Agreement added to solicitations and contracts.  
- FAR 6.3 and DFARS 225.7300 provide guidance regarding non-competitive contracting for FMS LOAs when single or limited source/competition requested in LOR.  
- Directed source subcontracting is addressed in an ICP international agreement with NATO—use DFARS 225.871-5, Directed subcontracting in solicitations and contracts. |
| International | DoD contracting for foreign-unique "non-program of record" acquisition programs in response to FMS LOAs or BPC Pseudo-LOAs | - Work with customer nation and/or U.S. Combatant Commander to define system capability requirements as well as cost/schedule parameters  
- Translate requirements and parameters into RFP scope of work provisions and CDRLs  
- Include appropriate clauses and provisions; although end product will be an international capability, the same clauses that apply to domestic and hybrid acquisition will also typically apply |

For on international contracting policies and guidance, visit the International Acquisition Management Community of Practice (ICoP) and Defense Pricing and Contracting (DPC) International Contracting.
International Considerations in the Acquisition Strategy

U.S. law and DoD policy require PMO and DoD Component consideration and documentation of the international acquisition aspects of a program during the development and coordination of a program's Acquisition Strategy. The Acquisition Strategy, in its various iterations, should address the relevant IA&E aspects of the program throughout its life cycle.

### Acquisition Strategy—Section 10. International Involvement (Sample Outline)

10. International Involvement

10.1. Indicate any limitations on foreign contractors being allowed to participate at the prime contractor level (e.g., FAR clause 52.204-2, FAR clause 52.204-21, DFARS 252.204-7012)

10.2. International Cooperation.

- Summarize plans for cooperative programs
- Summarize/list any exiting/projected international agreements (e.g., MOAs, treaties, ICPs, MOUs)
- Provide coalition interoperability details required by 10 USC 2350a
  - Identify interoperability requirements
  - Identify any similar projects in development or production by friendly nations, partners, or organizations
  - Identify advantages and disadvantages with regard to program timing, developmental and life cycle costs, and technology sharing
  - Provide recommendations on whether to pursue cooperative development based on available system details

10.3. Sales and Transfers.

- Specify the potential or plans for foreign sales and transfers, the likelihood of these sales (high, medium, low), and the countries involved.
- Include whether previous generations of the system have been sold and to which countries they were sold.
- For those programs with existing or potential foreign sales and transfers, specify the projected impact (risk and benefits) to the program's cost, schedule, and performance of these foreign sales.

10.4. Defense Exportability.

- Describe whether the program is planning or conducting an OUSD (AT&L)-funded or acquisition program-funded DEF feasibility study of the foreign market, technical feasibility, and costs associated with designing in defense exportability.
- Summarize the interim or final results of any such study and plans to incorporate DEF into final designs.

For further Acquisition Strategy guidance and templates, visit the Acquisition Strategy—International Considerations Job Support Tool (JST).
Impacts on Acquisition Programs

IA&E efforts can impact various aspects of DoD acquisition programs, including system performance characteristics, cost, and schedule. PMs and IPTs should assess potential IA&E impacts and address how their systems will be designed and developed to enable future export to and operation by allied and friendly nations in support of USG/DoD national security and defense objectives. Areas that should be assessed include:

- PM and IPT resources required to develop and implement program-specific IA&E plans
- IA&E-related system design activities (studies and options)
- IA&E-related system development efforts (risks and tradeoffs)
- Overall IA&E-related program-level cost-risk-benefit impact analyses (e.g., export version(s) cost, schedule and performance characteristics)
- TSFD/EC guidance & approvals (TSFD/EC)
- International Contracting (solicitations/international suppliers and teaming arrangements)
- IA&E-related O&S planning
- International cooperation/sale/transfer of future system product improvements and upgrades

Version 2.0 (September 2019)