



Headquarters
New Zealand Defence Force
Defence House
Private Bag 39997
Wellington Mail Centre
Lower Hutt 5045
New Zealand

OIA-2026-5926

8th September 2026

[REDACTED]

[REDACTED]

Dear [REDACTED]

I refer to your email of 8 August 2026 to the New Zealand Defence Force (NZDF) and the Ministry of Defence (MoD) requesting, under the Official Information Act 1982 (OIA), information regarding *the effect of United States defence export controls on Defence procurement and sustainment*.

(1) Please provide a list or table with the following:

(1.A) For each current major Defence capability project, the project name where United States ITAR, Foreign Military Sales third-party transfer/retransfer requirements, or another United States export-control approval has been identified as a material dependency for acquisition, integration, maintenance, repair, modification or sustainment.

(1.B) For each identified/named project, please provide:

- the type of US approval or control involved;
- whether an approval has been sought or obtained; and
- whether the requirement has caused, or is assessed as potentially causing, additional cost, delay or restrictions on supplier participation.

(2) Please also provide the titles and dates of any briefings, reports, aide-mémoires or other substantive advice since 1 January 2024 concerning:

- the effect of US defence export controls on New Zealand defence procurement or New Zealand industry participation;
- US third-party approvals for New Zealand companies working on FMS-acquired equipment; or
- the implications for New Zealand of the ITAR §126.7 exemption applying to Australia and the United Kingdom.

(3) Please also advise whether Defence has a policy, guidance document or standard business-case criterion requiring projects to consider US export-control dependency, sovereign modification/sustainment rights, or ITAR restrictions when comparing procurement options. If so, please provide a copy of said document.

The MoD is responsible for the procurement and purchase of major equipment to be used as capability by the NZDF. Further to the MoD's response to you of 4 September 2026 in response to the above questions, enclosed is the NZDF's Foreign Military Sales and

Controlled Technology Handbook. This handbook provides guidance for NZDF staff and personnel.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

GA Motley

Brigadier

Chief of Staff HQNZDF

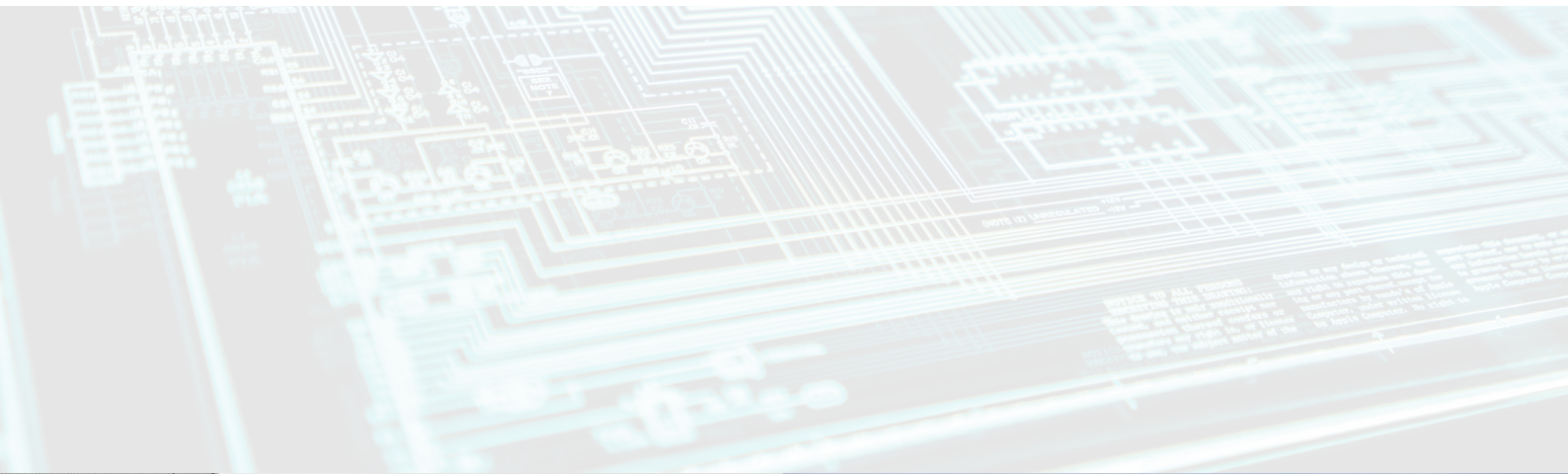
Enclosure:

1. Foreign Military Sales and Controlled Technology Handbook

FOREIGN MILITARY SALES AND CONTROLLED TECHNOLOGY HANDBOOK

FIRST EDITION

PUBLISHED BY DEFENCE LOGISTICS COMMAND
FOREIGN MILITARY SALES AND CONTROLLED TECHNOLOGY OFFICE





FOREWORD

The management of Controlled Technology obligations is a core part of the NZDF Capability Life Cycle. Foreign governments, suppliers and OEMs have an expectation that the NZDF will safeguard all items of Controlled Technology to ensure compliance with international regulations (such as ITAR, The Wassenaar Agreement and many others). Controlled Technology obligations endure for the whole of life of the military articles and services procured by the NZDF, and at times these obligations also extend well beyond disposal of the item.

I encourage all personnel engaged in capability procurement and management to read this handbook as an introduction to the logistics of Controlled Technology obligations. I further encourage members of NZ Defence to enrol on, and complete FMS and Controlled Technology training courses from the many available through the NZDF Learning Management System.

Successfully managing our Controlled Technology obligations enhances our reputation with our allies and critical suppliers. This first edition of this handbook is released to increase our awareness of, and professional expertise in, the area of Controlled Technology management.

Commander Logistics

The aim of this handbook is to generate a high level of Controlled Technology knowledge and understanding across NZ Defence and to provide a useful source of reference.

The aim is also to promote the Foreign Military Sales and Controlled Technology Office within HQNZDF and the Defence Logistics Engagement Office within the NZ Embassy in Washington DC, and the various Controlled Technology services available to NZ Defence programmes and projects.

CONTENTS

Foreword	3
Introduction to Controlled Technology	9
Background	9
Definition	10
Part 1 – Understanding CT	11
The CT Management Framework	11
Types of Controlled Technology	12
US Sourced	12
Foreign Military Sales (FMS).....	12
Background	12
Organisations involved in the FMS Programme	12
United States Parties.....	12
New Zealand Parties	13
FMS Concepts	13
Direct Commercial Sales (DCS)	14
Non-US Sourced	14
Legislation and Policy.....	15
Hierarchy of Documents	15
New Zealand Legislation and Policy.....	16
Collective Organisations Legislation and Policy.....	16
Other Nations Legislation and Policy.....	16
Controlled Technology (CT) Controls	16
Introduction to CT Controls.....	16
Export Controls	17
Export Terminology.....	17
New Zealand Trade Controls	17
United States Government Regulatory Requirements and Trade Controls	17
Export Control Classifications	17
International Regulatory Requirements and Trade Controls.....	18

Transfer Controls	18
The Concept of Transfer	18
Third Party Transfers	19
Technical Assistance Agreements (TAA)	19
Management Controls	20
End-Use Management and Monitoring	20
End-Use Certificates (EUC)	20
US Management Controls	20
Other Nations Management Controls	21
Monitoring	21
Part 2 – Managing CT in NZ Defence	22
Significance of CT within the Capability Management Framework	22
Military Capability	22
Capability Life Cycle	22
Controlled Technology and Capability	23
The Mission System – PRICIE	24
The Support System – ILS	25
CT Management Processes	26
Direct Commercial Sales	26
Establishing an FMS Case	26
Types of FMS Cases	26
FMS Case Process	27
Pre-Case Development (Letter of Request – (LOR))	27
Case Development (the Offer)	27
Establishing the LOA (Acceptance)	27
Implementing and Execution	27
Review and Reconciliation	27
Managing an FMS Case	28
Contract Terms	28
Amendment and Modification	28
Amendments	28
Modifications	28

Transportation.....	29
Discrepancy Reporting.....	29
Financial Discrepancies	29
Case Closure.....	30
FMS Financial Management.....	30
Financial Obligations.....	30
New Zealand and United States Billing Processes.....	30
NZDF FMS Case Financial Obligations.....	31
US Based Training.....	31
Background	31
Administration.....	32
Third Party Transfer (TPT) Processes.....	32
Types of TPT.....	32
Government to Government	32
Government to Private Entity	32
Blanket End-Use, Re-transfer, and Security Assurance Programme.....	32
Blanket Country Over Private Entity Assurance Programme.....	32
NZDF Transfer Obligations.....	33
NZDF Transfer Processes.....	33
End-use Monitoring (EUM)	34
US-Sourced	34
Non-US Sourced.....	34
FMS – End-use Monitoring	35
The Golden Sentry Programme.....	35
The Golden Sentry Programme Process.....	35
DCS – End-use Monitoring	35
The Blue Lantern Programme	35
The Blue Lantern Programme Process	36
EUM by the Department of Commerce.....	36

Supporting Information..... 38

 The FMS and CT Office.....38

 Training 38

 Glossary 39

 References..... 40

 References Used in this Handbook 40

 Other Supporting Information 41



INTRODUCTION TO CONTROLLED TECHNOLOGY

BACKGROUND

In international terms, New Zealand is a small state with a small domestic defence industry. To enable the NZDF to operate effectively within NZ and its wider region, and alongside international partners, it is required to source a significant proportion of its military equipment and associated support services from overseas.

When sourcing items from any foreign nation, there are country-specific regulatory compliance obligations that govern both the eligibility for obtaining the articles through export controls, and for the use of those articles by the NZDF as the receiving party. Regardless of country of origin, the NZDF is subject to controls which govern access to the articles, and regulations about management of any changes to access or end-use. The chain of custody of the articles must be preserved, and control systems must be in place to ensure the NZDF meets its obligations to foreign governmental controls.

Over the past decades, the NZ Government has invested significantly in major defence programmes with increasingly sophisticated and complex capability technology, supporting systems, and sustainment services for the capabilities. The dollar value of this capability investment has increased exponentially. The associated controls required for the acquisition, introduction to service, operation, management, sustainment and disposal of these capabilities form the basis of the NZDF's Controlled Technology (CT) management policies and processes. In regard to Foreign Military Sales (FMS) acquisition and sustainment contracts these processes are enacted on behalf of the NZ Government and are in place to ensure compliance with FMS specific controlled technology obligations.

Irrespective of country of origin, CT will have defined requirements for who can use it, how it is to be used, and how it is to be disposed of.



DEFINITION

The principal terms used in the definition of CT included below, derived from New Zealand regulations are as follows:

- **Strategic Goods.** Those items listed on the Ministry of Foreign Affairs and Trade (MFAT) Strategic Goods List¹. This includes:
 - **Military Goods and Technologies** which are defence and related goods or technology adapted for military purposes including parts and accessories
 - **Non-Military Lethal Goods** which are inherently lethal, incapacitating or destructive such as non-military firearms, non-military ammunition and commercial explosives and initiators
- **Dual-Use Goods.** Goods and technologies developed for commercial purposes, but which may be used as military components or for the development or production of military systems or weapons of mass destruction. This includes:
 - Nuclear materials, facilities and equipment
 - Materials, chemicals, micro-organisms and toxins
 - Materials processing
 - Electronics
 - Computers
 - Telecommunications and information security
 - Sensors and lasers
 - Navigation and avionics
 - Marine
 - Aerospace and propulsion
- **Technology.** Specific information or software necessary for the development, production or use of a product. Information can take the form of technical data or technical assistance.²
- **Technical Assistance.** Technical assistance may take the form of instruction, skills, training, working knowledge, and consulting services and may involve the transfer of 'technical data'.
- **Technical Data.** Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defence articles and software.³
 - **Forms of Technical Data and Technology.** These forms may be blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, downloaded files, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

Within the NZDF, CT is defined as "goods, equipment, publications, services, intellectual property, technical support and conversations relating to any item placed on a control list by the country of origin or any special end-use considerations put in place by the country of origin or original equipment manufacturer (OEM)."⁴

1 New Zealand Strategic Goods List 2024 Ministry of Foreign Affairs and Trade
 2 Export Administration Regulations
 3 International Traffic in Arms Regulations
 4 Defence Force Instruction 40.1 Material and Equipment Management

PART 1

UNDERSTANDING CT

THE CT MANAGEMENT FRAMEWORK

All CT is subject to a range of controls and monitoring regimes irrespective of the country or origin or OEM. The key distinction is between CT items sourced from the United States (US) and CT sourced from outside the US. The CT management framework is shown in Figure 1.

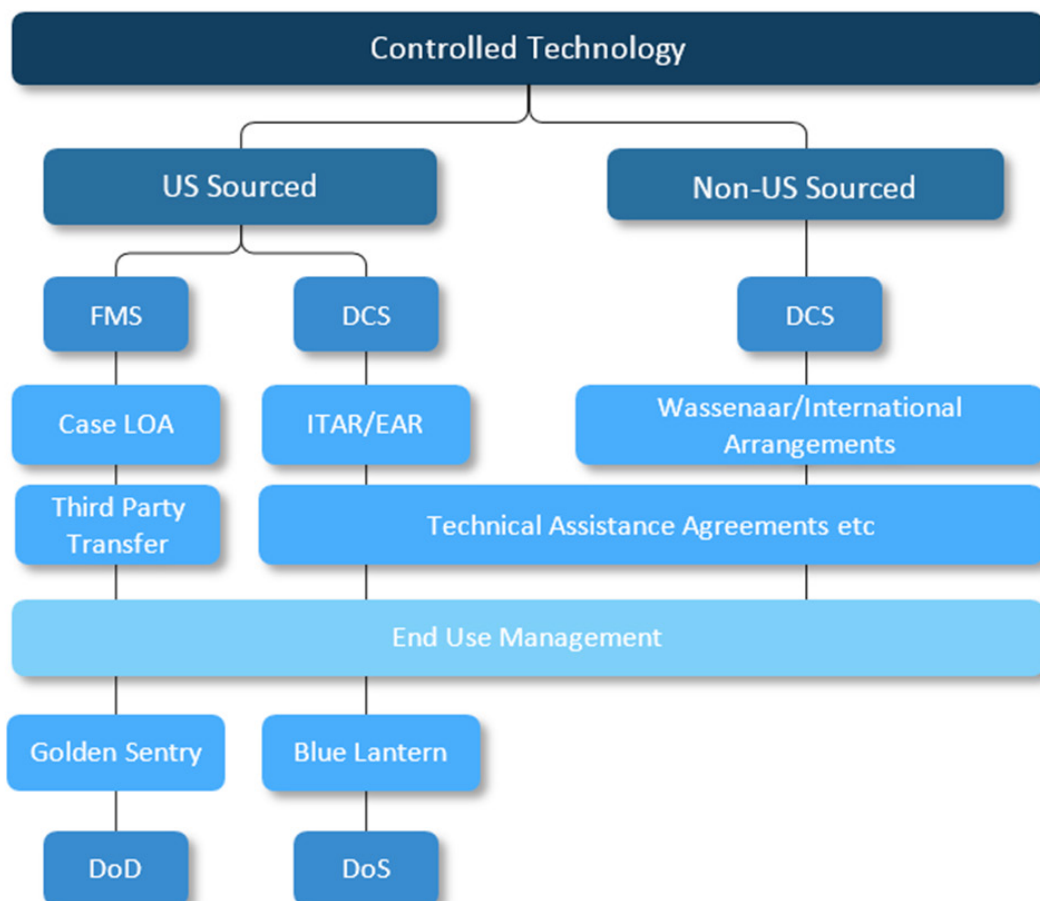


FIGURE 1:
THE CONTROLLED TECHNOLOGY MANAGEMENT FRAMEWORK

TYPES OF CONTROLLED TECHNOLOGY

US SOURCED

FOREIGN MILITARY SALES (FMS)

Background

FMS is a government-to-government procurement activity with the US. Under FMS, the US Department of Defense (DoD) procures materiel for foreign governments using the same acquisition process from industry it applies for its own needs. The FMS programme is a part of the US Government Security Assistance (SA) programme authorised through the Arms Export Control Act (AECA).⁵ The overall management of FMS in the US is through the Defense Security Cooperation Agency (DSCA).

FMS is the foundation of any US Government sponsored sale of US defence articles or services. FMS is not a stand-alone arrangement, but rather one which utilises the existing structure of the DoD.

Organisations involved in the FMS Programme

There are obligations and accountabilities across NZ Defence and the NZ Government, and US Government agencies that can be involved in the process of establishing and implementing the procurement of CT through the FMS Programme. The various agencies involved in the creation and management of an FMS Case, also known as a Letter of Offer and Acceptance (LOA), are as follows:

United States Parties

- Defense Security Cooperation Agency (DSCA) within the Department of Defense (DoD)
 - Lead agency for FMS
- Department of State (DoS)
 - US Embassy involvement, Security Cooperation Office (SCO) teams
 - Export Licence exemption for Military articles and services acquired via FMS
 - Management of the US Munitions List (USML)
- Department of Defense (DoD)
 - Determination of significant military equipment (SME), and supervision of item end-use in recipient countries
 - Training and training supervision for foreign military and civilian personnel
 - The movement and delivery of military specification (MILSPEC) items
 - Procurement, delivery, allocation priorities
 - Furnishing military assistance, education, training, sales and guarantees
- Department of Commerce (DoC)
 - Dual use items on Commerce Control List (CCL) and commercial export control
- Defense Institute of Security Assistance Management
 - Security assistance policy, training, and research
- Military Department (MILDEPs)
 - Implementing Agencies (IA) (Army, Navy, Air (and others))
- Defense Finance and Accounting Service – Security Cooperation Accounting (DFAS – SCA)

⁵ Arms Export Control Act 1976

New Zealand Parties

- New Zealand Defence
 - Capability Branch
 - Service users
 - Foreign Military Sales and Controlled Technology Office (FMSCTO)
 - Defence Logistics Engagement Office (DLEO - NZ Embassy, Washington DC)
 - Defence Executive Purchasing Delegation holders
 - Defence Finance
 - Defence Commercial Services
- Ministry of Defence
- Treasury
- GCSB
- Accredited freight forwarder

From the perspective of the US, the only New Zealand parties who are granted access, care, control and custody of FMS sourced CT articles are employees of the NZDF, MoD and GCSB, and accredited agent (freight forwarder)

FMS Concepts

FMS is the foundation of any US Government sponsored sale of US defence articles or services. FMS is not a stand-alone arrangement, but rather one which utilises the existing structure of the DoD. The FMS process itself is complex, and for a major weapons system may last many years. Key points are:

- Agreements are contracts called Letters of Offer and Acceptance (LOA) or also known as an 'FMS Case'
- Each LOA is assigned a unique case identifier
- Processes required by the US DoD are outlined in the Defense Security Assistance Management Manual (e-SAMM)⁶, support is available through FMSCTO
- Policy and guidance are compliant with the US Foreign Assistance Act (FAA)
- FMS is a binding contract between the US Government and NZ Government for procurement and transfer of defence articles and services
- FMS includes the sale of defence articles or services, (including training) from the US DoD
- The FMS agreement includes management obligations for the equipment or service that endure through the life of type of the equipment or service, up to and including its disposal
- FMS can provide a 'total package approach' which ensures that international partners receive all support articles and services required to introduce, operate and maintain the equipment
 - This includes initial spares, support equipment, training, publications, technical assistance, munitions, repairs and follow-on support

Figure 2 shows the direct Government to Government relationship of FMS procurement and highlights that the contractual relationship is between the US Government and industry.

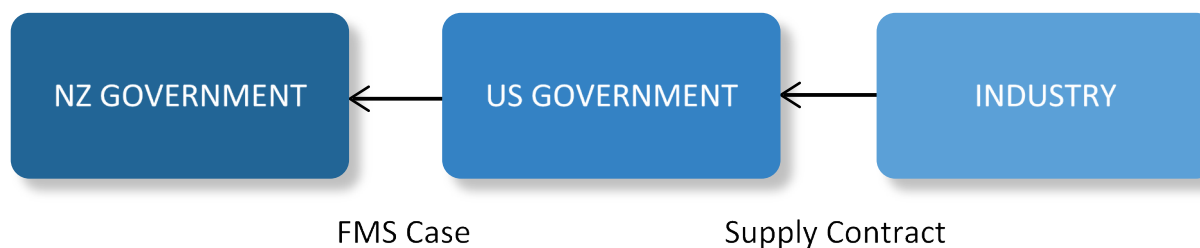


FIGURE 2:
THE CONCEPT OF FMS

DIRECT COMMERCIAL SALES (DCS)

US-Sourced. Acquisition and/or sustainment contracts licensed under the US Arms Export Control Act (AECA), directly to a foreign government from the US defence industry. Unlike the procedures employed for FMS, the DoD does not administer DCS transactions, and a DCS sale does not typically include a government-to-government agreement. Instead, the Department of State (DoS) implements the required governmental controls through export licensing including provision of a Technical Assistance Agreement (TAA). The US International Traffic in Arms Regulations (ITAR) contain the applicable rules and procedures for DCS of articles and services included in the USML. Dual Use Items under the export control of the CCL purchased directly from US OEMs are controlled by the Export Administration Regulations (EAR). Figure 3 shows the direct contractual relationship between the NZDF and industry for DCS procurement.

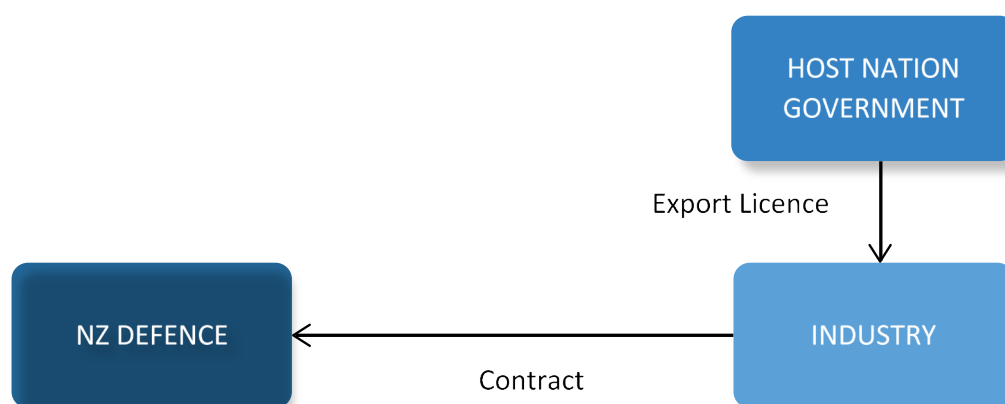


FIGURE 3:
THE CONCEPT OF DCS

NON-US SOURCED

Non-US Sourced. DCS processes are also applicable to CT sourced from any nation, other than the US, where the purchase authority is a commercial contract. Under the Wassenaar Arrangement, a range of 'best practice' documents provide guidance regarding the issuing of Export Licences to host nation domestic industry based on the proposed recipient destination. Export Licences will vary depending on the duration of validity, type of goods, point of origin and destination. While details will vary between countries, the overarching principles of relevant international legislation and country specific legislation and regulations apply.

FMS AND DCS COMPARISONS

The NZDF takes no policy position on favouring FMS over any other US sources of supply. The only exception is where, for security and technical reasons, the DoD deems that FMS is the only source of supply permitted; or the NZDF already has an existing FMS Case established for the materiel and/or services.

For both FMS and DCS, the complexities of through life management compliance obligations, business and management considerations, and working within the applicable Acts, Legislation, Agreements, and Regulations are all decision trade-offs. The key differences between FMS and DCS are summarised in Table 1.

	FMS	DCS
Relationship	With US DoD (Government to Government)	With OEM
Interoperability	Close DoD alignment	Depends on OEM market
Lead time	Some lack of control risk	Contract determined
Contract structure and management	Some unilateral elements, limited negotiation or non-negotiable	Negotiated terms and conditions
Contract administration	Standard across the US DoD	Varies with supplier terms
Financial comparison	Pre-payment	Negotiated terms
Pricing basis	Estimate	Quote
Management fee	Fixed terms and conditions; no profit or loss to the DoD	Negotiated, plus OEM margin
Technical support	Ex-military	Ex-OEM
Production priority	Determined by DoD priorities	Negotiated
Integrated Logistics Support	Utilises US inventory	OEM supply chain dependent
Non-standard items	Limited access	OEM sourcing

**TABLE 1:
COMPARISON OF FMS AND DCS**

LEGISLATION AND POLICY

HIERARCHY OF DOCUMENTS

The acquisition, management, control and movement of CT across international borders is regulated by the applicable legislation of the exporting nation. The purchase, use, through life control and management of CT within New Zealand must also comply with NZ legislation. The typical hierarchy consideration flows through legislation, regulation and item classification.

NEW ZEALAND LEGISLATION AND POLICY

The Government and thereby the NZDF is required to conform to national Acts and other legislation when sourcing and procuring defence articles from foreign sources. The relevant New Zealand legislative regulations include:

- Customs and Excise Act 2018
- Customs Export Prohibition (Strategic Goods) Order (CEP(SG)O) 2021
- Arms Act 1983
- New Zealand Strategic Goods List
- Government Procurement Rules

COLLECTIVE ORGANISATIONS LEGISLATION AND POLICY

To realise the national requirements, the Government of New Zealand is also a signatory to a range of international arrangements with respect to CT, including:

- Wassenaar Arrangement
- Missile Technology Control Regime (MTCR)
- Australia Group
- Nuclear Suppliers Group
- Arms Trade Treaty

For New Zealand, meeting the obligations of each of these is achieved through the application of the (CEP(SG)O) 2021 and the New Zealand Strategic Goods List.

OTHER NATIONS LEGISLATION AND POLICY

The New Zealand Government is also bound by regulations adopted by other countries which control the export, use, disposal of arms, dual-use goods and technologies. These include specific controls on the movement, verification, acceptable end-use and disposal. Of specific significance are the regulations applying to the export and movement of CT and dual use goods from, to or through the US:

- International Traffic in Arms Regulations (ITAR)
- Arms Export Control Act 1976.(AECA)
- United States Munitions List. (USML)
- United States Export Administration Regulations. (EAR)
- Commerce Control List. (CCL)
- Foreign Assistance Act of 1961 (FAA).

CONTROLLED TECHNOLOGY (CT) CONTROLS

Introduction to CT Controls

Controlled Technology is subject to a range of limitations, restrictions and monitoring processes imposed by the originator to ensure the CT articles are used for their intended purpose by the intended end-user. Controls may be imposed prior to, or post-export, through the enduring life of type of the articles or services.

EXPORT CONTROLS

Moving military articles across borders requires compliance and export-import approval from the impacted nation. This is normally done by way of imposing regulations on exporters before being able to transfer the items to a third party, including a foreign government. These restrictions apply to FMS items throughout the life of the capability.

EXPORT TERMINOLOGY

New Zealand Trade Controls

Defence must meet the administration provisions of the (CEP(SG)O) 2021 and comply with New Zealand Customs active control of the physical movement of arms, dual use goods and technologies at the border.

The export of goods, software and technologies which are not listed in the New Zealand Strategic Goods List, but which may be intended for use relating, directly or indirectly, to any or all of the provisions outlined below is prohibited unless a permit to export is obtained from the Secretary of Foreign Affairs and Trade.

United States Government Regulatory Requirements and Trade Controls

NZ Defence makes considerable use of arms, dual-use goods and related technologies manufactured in the United States. The NZDF is routinely obligated as a condition of purchase to comply with United States Government regulations governing the control of defence items. These contractual obligations are in addition to those imposed by the Arms Trade Treaty and the duties under the arrangements.

Under ITAR. All exports and temporary imports (repair and return exercises) require authorisation. This can be in the form of a licence or an exemption from the requirement to apply for a licence. The export exemption is explicit where the item is included in a current FMS case, but must be applied for by the exporter in the case of a DCS purchase.

Under EAR. Licensing requirement depends on commodity, country / destination, end-use and end-user restrictions, and general prohibitions, where licences are generally required. Under EAR there are a range of export licence exceptions.

Export Control Classifications

Controlled. All items in the US or of US origin have a degree of controlled status. This control can include the EAR99, which means a licence is not required for most destinations.

Requires a Licence. Under ITAR, the permanent export is the Department of State Publication (DSP) DSP-5. Subsequent re-export provisions are additional to this initial approval with various licences required including authorisations, agreements, exemptions and General Classification (GC) re-export requests.

Temporary Import. Items returned for repair and re-export require a temporary-import notification, with no licence required for ITAR items acquired FMS. If the item is deemed beyond economic repair, then there is a need to change the temporary-import to a permanent one, and apply for change in end-use prior to destruction.

Re-Export. Under the EAR a re-export may require a licence, may be able to use a licence exception, or have no requirement for a licence. This decision is based on the EAR classification from the CCL, but may also be based on the country of destination of the re-transfer, intended end-use and end-user.

Foreign Military Sales. When items are sold under the FMS programme, there is an over-arching licence exemption. All FMS procurements on acceptance of the LOA have an explicit export licencing exemption authorised by ITAR.



International Regulatory Requirements and Trade Controls

There is generally no equivalent of the FMS programme in the export control of military goods from countries other than the US. There are, however, significant classification, legislative and regulatory compliance obligations with respect to the export and import of military items, as evidenced in country specific legislation, international trade treaties and arrangements.

Most transactions where NZ Defence sources equipment, support and services from outside the US are covered by specific supplier contracts. These in turn will include compliance with the specific export control regulations of the supplying nation stipulated in the commercial contract.

The wider requirements of capability procurement and sustainment from other nations, the implications of country specific legislation, the Arms Trade Treaty and the Wassenaar Arrangement all exist to regulate and to define individual nations' requirements in support of regulating the trade in arms between member states.

TRANSFER CONTROLS

The Concept of Transfer

The US Government requires the recipients of defence articles to obtain written consent from the US DoS before any transfer of title, care, custody or access is executed through a Third Party Transfer (TPT). If there is a change in end-use (including disposal), then a change in end-use application must be preapproved. This approval is required for all transfers, change in end-use or transfer to a destination (person, country, legal entity) not previously included within the original acquisition. It applies to all contractors and their sub-contractors requiring approval and the constraint includes articles and technical data obtained through the FMS Programme.

For CT sourced from any other nations, the principle of transfer still applies. Transfer of access, care, control and custody of the CT to a party, or for a purpose not specified in the DCS contract requires the prior approval of the OEM.

Table 2 identifies the parties involved in FMS procurement and indicates where Third Party Transfer compliance is required during through-life management of FMS sourced military goods and services.

FIRST PARTY	SECOND PARTY	THIRD PARTY
- The supplying entity to the contract - FMS – The US Government (DoD) - DCS – the OEMs	- NZDF - MoD - GCSB - NZDF and MoD freight forwarders	- Any other party engaged by the Second party - Prime systems integrators - Maintenance organisations - Intermediaries - Other transport providers - Technical support advisors - Cleaners / garrison support contractors - Original OEM (for FMS TAA access to IP provided through DoD) - Other NZ Government agencies

TABLE 2:
PARTIES TO A CT CONTRACT

Third Party Transfers

Under the AECA, the US President can approve the transfer of US origin defence articles from the original recipient to a third party. ITAR also operates to prohibit re-transfer (also known as re-export) of USML items beyond the initial transfer.

Third Party Transfer. A TPT is defined as any re-transfer of title, physical possession or control of defence articles, training or technical data acquired under authorised US Government transfer programmes from the original authorised recipient to any person or organisation not an employee, officer or agent of that recipient country (or international organisation). A change in end-use is considered a TPT.

Change in End-Use. Change in end-use is defined as any change in the usage of the transferred defence articles, services or technology that deviates from the original purpose for which they were provided. For an FMS Case, this is as set out in the LOA. Disposal constitutes a change in end-use and requires prior consent (from the DoS) for non-consumable items.

Technical Assistance Agreements (TAA)

The establishment of a TAA authorises a US OEM to supply manufacturing information and / or data related to CT articles to a foreign entity. Where the procurement is a mix of FMS and DCS, the establishment of a TAA is essential to gain approval for the OEM to supply support services through the life of the capability with the NZDF outside of the initial FMS purchase.

A TAA is not necessarily required within an FMS case, but the sustainment plan for the capability will require the US exporter and the NZDF to have access to the technical data.

When purchasing items through FMS, there is no direct contractual access to the OEM within the FMS case, as they are a third party to the Government-to-Government agreement. A TAA is essential where access to the OEM intellectual property (IP) is required for sustainment requirements through life.

A TAA is required under ITAR in advance of the technology transfer. The prospective US exporter supplying the defence articles to the NZDF either directly or through an FMS Case, applies to also provide technology and technical data associated with that export.

The existence of a TAA enables the US export entity to provide both classified and unclassified technical data to the NZDF without the requirement of further approval or a specific export licence, as these requirements are included within the TAA.

A TAA typically has a 10-year life.

MANAGEMENT CONTROLS

End-Use Management and Monitoring

The underlying intent of the various international regulations relating to the control of military equipment is to ensure the non-proliferation of arms and to prevent the diversion of military equipment to third parties. This is generally achieved by clearly stipulating regulations, terms and conditions, and then by conducting checks and monitoring activities.

End-Use Certificates (EUC)

Issuing an End-Use Certificate (EUC) is one means by which nations discharge these obligations. An EUC is a government-to-government document whereby the receiving nation (in our case New Zealand) certifies that it will comply with the terms and conditions specified.

The obligations on both the issuing supplier (OEM) and recipient are clearly stipulated in the contract for supply. For FMS it is unusual for FMS Agreement to require an additional EUC as the end-use is specifically detailed in the terms and conditions of the FMS LOA. A change in end-use of an FMS item may require a case amendment if the FMS case is live. Otherwise, a Change In End-Use (CIEU) general correspondence letter to the US DoS is required.

US Management Controls

The US Arms Export Control Act (AECA) requires the US Government to conduct End-Use Monitoring (EUM) to ensure those foreign entities acquiring defence articles are compliant with the conditions of purchase relating to use, transfer and security.

For FMS cases the EUM requirements are set out in the standard terms and conditions in the LOA. These requirements require the partner nation to agree to:

- Use US provided defence articles, training and services only for their intended purpose
- Not transfer the title, or possession of any defence article or training without prior US Government written consent
- Maintain the security of the articles with the same degree of protection afforded by the US Government
- Permit US Government observation and review
- Provide necessary information of such articles to the US Government

An EUC may be required for FMS procurements, where the article is an input to a US capability being acquired, but in turn is supplied to the US from another country. That country and / or OEM may insist on an EUC being agreed and defined for the specific components supplied by that OEM within the US higher assembly being acquired.

EUC requirements are however almost always required on DCS procurements to provide assurance through the DoS, that the goods being exported are:

- being destined for an approved / appropriate recipient
- that the intended use meets the obligations of the legislations and regulations of the US
- in accordance with the international obligations with respect to the movement and transfer of military articles

The EUC is often an input requirement to the Export Licence application of the OEM.

Other Nations Management Controls

The European Union and Wassenaar Arrangement signatories provide a reference guide to member states. This covers the information authorising agencies should apply when considering the export licence applications from exporters of military equipment, with the aim of ensuring the appropriateness of the recipient and the end-use of the CT.

Monitoring

End-Use Monitoring (EUM) is a specific requirement of both FMS and DCS procurements. It covers a range of physical auditing, matching EUC and other transfer documents with equipment and serial numbers, and also validating physical security required or any other terms and conditions specified by the originating government.

It is NZDF policy to support the requirements for EUM and to facilitate any audit requirements specified by foreign governments in relation to arms dual-use goods and related technologies originating from their countries.

While largely a US requirement, New Zealand also has obligations under international treaties and arms agreements such as the Wassenaar Arrangement that require the declaration of any changes to holding of strategic weapons and capabilities. When reports are due, MFAT will request this information from the NZDF through the FMSCTO.

PART 2

MANAGING CT IN NZ DEFENCE

SIGNIFICANCE OF CT WITHIN THE CAPABILITY MANAGEMENT FRAMEWORK

MILITARY CAPABILITY

“Military capability is the ability to achieve a desired operational objective in a selected environment, and to sustain that level of effort for a designated period”⁷

The acquisition, introduction, operation, sustainment and disposal of all forms of military capability are likely to include elements of CT. This is not limited to major platforms and equipment, but many also include through life support packages, training, technical support and services, data, and the provision of maintenance, repair and overhaul.

CAPABILITY LIFE CYCLE

Military capability has a life cycle, whereby Government policy and defence strategy are established and distilled into viable capability options, a solution is selected, procured and operated, before finally being disposed of. The Capability Life Cycle is defined in the Capability Management Framework (CMF) as a five-phase continuum, as shown in Figure 4. The Capability Life Cycle is a continuous and recurring sequence, where acquired information is used throughout subsequent stages. Each component of the life cycle has differing requirements and characteristics, with the considerations and obligations for CT relevant to each phase.⁸



⁷ NZDDP 4.0 Defence Logistics, p.29.

⁸ NZDDP 4.0 Defence Logistics, p.77. Further information on the Capability Life Cycle can be found on-line via the CMF 'Life Cycle' page.

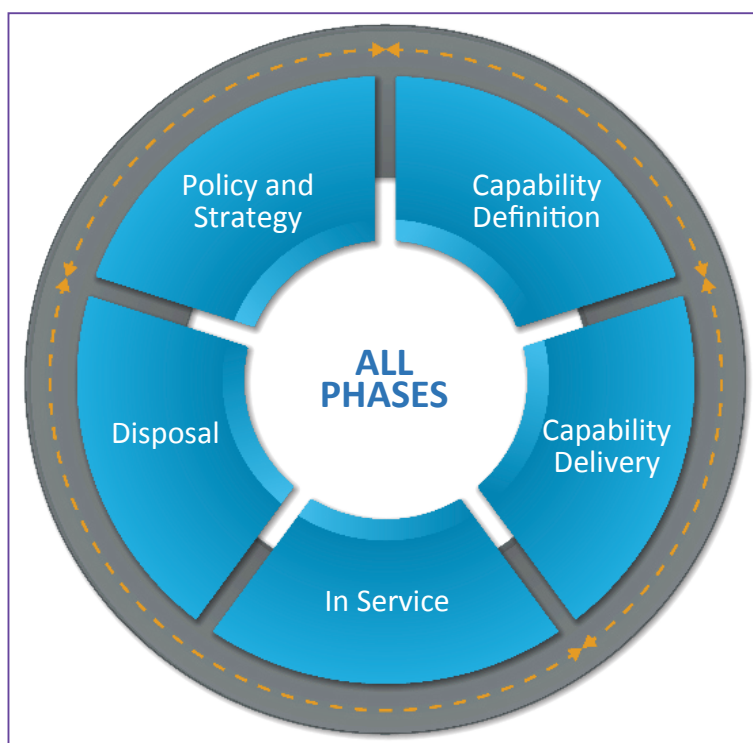


FIGURE 4:
THE CAPABILITY LIFE CYCLE

CONTROLLED TECHNOLOGY AND CAPABILITY

Capability is viewed as the combination of a Mission System and a Support System, as shown in Figure 5.

The **Mission System** is made up of the capability components which directly perform the operational function.

The **Support System** is the totality of the support infrastructure, including Crown, contractor and subcontractor elements, which enable the **Mission System** to be fully supported so the operational objectives can be achieved.

- 'PRICIE' is the construct that is used to conceptualise, design and optimise the Mission System.
- Integrated Logistics Support (ILS) is the toolbox that is used to conceptualise, design and optimise the Support System.

Each element or component within the Mission System or Support System will have implications from a CT perspective. The access, use, care, custody or possession of any CT article within the PRICIE or ILS constructs must be assessed to meet the necessary user and use controls placed on it by the country of origin or OEM.

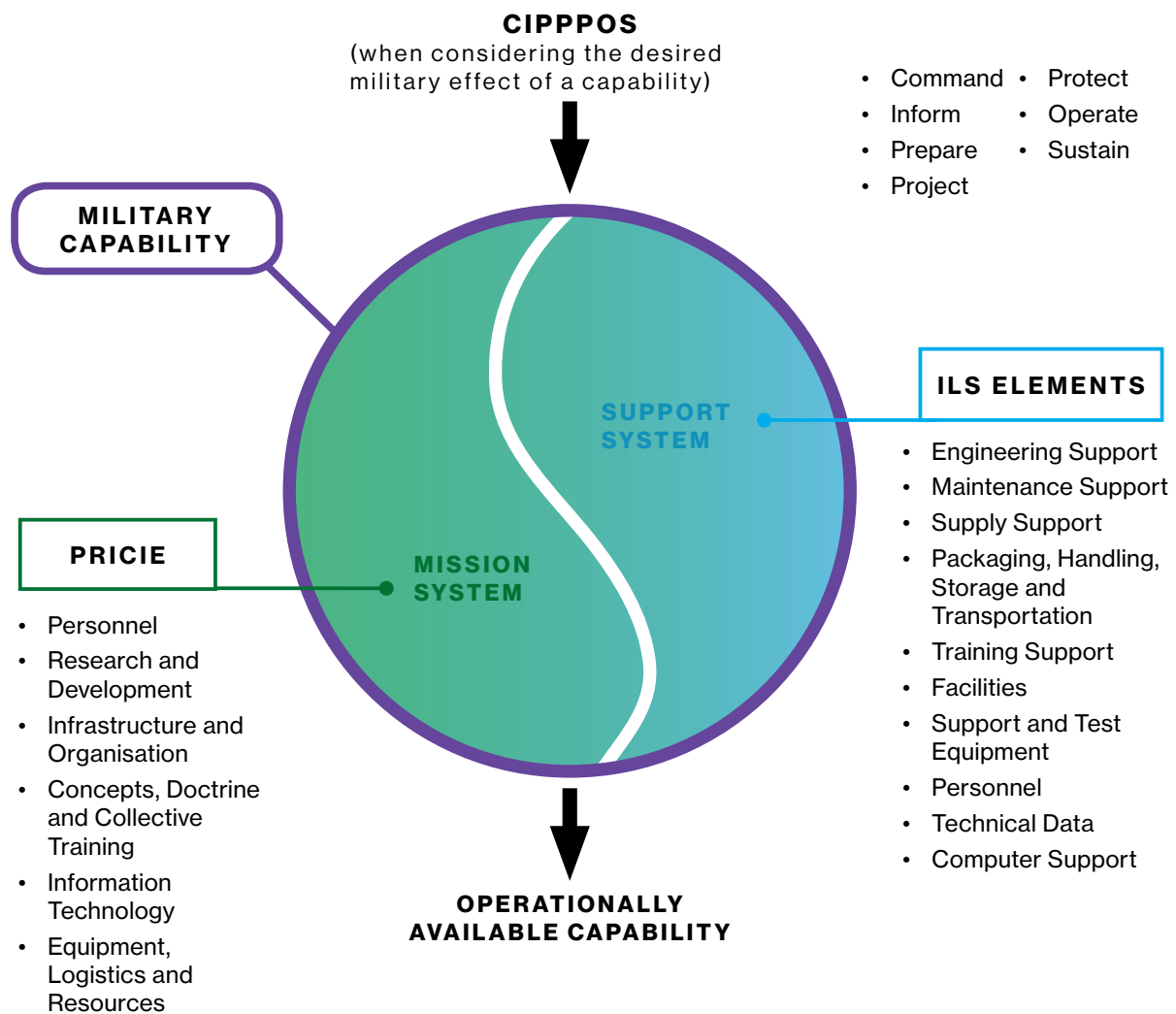


FIGURE 5:
THE PRICIE AND ILS CONTRIBUTIONS TO CAPABILITY

THE MISSION SYSTEM – PRICIE

From a holistic capability perspective, NZDF capability systems are comprised of fundamental inputs, which are annotated by the PRICIE⁹ acronym as shown below. Each of these inputs will have CT implications.

- **Personnel.** A forecast of personnel required to meet the developing capability goal. Training and recruiting implications will be drawn from this
- **Research and Development.** Identifying new technologies and materials that are likely to be a factor in the future
 - This will allow the NZDF to be an informed consumer of capability and appropriate support
- **Infrastructure and Organisation.** Infrastructure trends and likely developments of future platforms will be anticipated in infrastructure planning
- **Concepts, Doctrine and Collective Training.** Reviewed to ensure capabilities remain relevant to the context in which they are employed over time.

- **Information Technology.** Although major platforms may have a lifespan of up to 40 years, many systems and components will require updating more frequently.
- **Equipment, Logistics, and Resources.** Likely changes in major equipment/systems may be indicated well into the future
 - Equipment/systems developments may significantly change force structure and operating methods within Functional Capability Areas
 - Trends in the way that capabilities are maintained logistically will be considered for future force planning

THE SUPPORT SYSTEM – ILS

ILS includes all the support elements necessary to ensure that the capability can be adequately and economically supported throughout its life ¹⁰. CT implications for access, care, control, custody and disposal are applicable to each of these elements:

- **Engineering Support.** All considerations necessary to provide input into the design process to minimise identified risks associated with the life cycle supportability requirements of the capability
- **Maintenance Support.** Develops, establishes and integrates into the existing infrastructure, a maintenance support system capable of sustaining the capability system throughout its life at minimum overall cost commensurate with meeting the required levels of preparedness
- **Supply Support.** Includes all spares (units, assemblies, modules, etc.), repair parts, consumables, special supplies, and related inventories needed to support the system
- **Training Support.** All the considerations necessary to provide service, civilian, and/or contractor personnel with the resources, skills and competencies necessary to acquire, operate, support and dispose of a capability system
- **Packaging, Handling, Storage and Transportation (PHS&T).** All considerations necessary to ensure that capability elements are designed or chosen to optimise preservation, packaging, handling, storing and transportation requirements
- **Facilities.** All considerations necessary to establish permanent and semi-permanent capital works, modification to existing facilities and associated machinery and plant to operate and support a capability system throughout its life cycle
- **Support and Test Equipment (S&TE).** Includes all tools, special condition monitoring equipment, diagnostic and check-out equipment, metrology and calibration equipment, maintenance stands, and servicing and handling equipment required to support scheduled and unscheduled maintenance actions associated with the system
- **Personnel.** Includes identification and provision of service, civilian and/or contractor human resources who have pre-requisite training, skills and competencies necessary to acquire, install, test, train, operate and support a capability system throughout its life cycle
- **Technical Data.** Identification, acquisition, storage and utilisation of all forms of data necessary for ILS throughout the materiel life cycle
- **Computer Support.** Identification, acquisition and management of communication systems, computer systems, information systems, documentation and other resources necessary to provide data processing or information support to the operational, maintenance, supply, training and administrative requirements of a capability system

All inputs to PRICIE, and all ILS elements will have CT implications.
Identifying, planning and managing the access, care, control or custody of
CT at all stages in the Capability Life Cycle is paramount to meeting New
Zealand's CT obligations

CT MANAGEMENT PROCESSES

DIRECT COMMERCIAL SALES

Direct Commercial Sales contracts for CT are largely managed as for any commercial contract. The additional management obligations relate to the access, care, control or custody of the CT articles stipulated in the contract. These considerations may include, but are not limited to:

- **Intellectual Property.** Intellectual property (IP) in its own right can be CT. In addition to commercial sensitivities, management controls are required for the holding, transfer and conversations around IP
- **Technical Assistance Agreements.** The disclosure of technical data held by the OEM pertaining to a LOA under the FMS programme will require a TAA to be instigated by the OEM to enable the data to be shared directly between the OEM and the NZDF
- **End-Use.** DCS contracts may identify the end user and end-use
 - The applicable controls and restrictions stipulated within an End-Use Certificate will direct workplace management processes
 - Any planned change to the parties or purposes detailed for end-use must receive prior OEM approval

ESTABLISHING AN FMS CASE

Under the FMS programme, the establishment, management and closure of an FMS Case are heavily regulated. At the early stages within the Capability Life Cycle, FMS process will apply in order for US-sourced CT acquired through FMS to be identified, acquired and introduced.

Types of FMS Cases

FMS Cases are broadly categorised to aid application of the different process management requirements:

Defined Order. A Defined Order LOA specifically identifies and quantifies the item and/or service required by the customer (NZ Defence). These are identified in the initial Letter of Request (LOR) and refined through the Case development and Case offer response.

Blanket Order. A Blanket Order LOA is where NZ Defence seeks to purchase a category of defence articles and/or services (including training) to a fixed value amount, without specifically identifying the exact timing and/or quantity. Blanket orders typically relate to follow-on support for initial Defined Order LOAs.

Cooperative Logistics Supply Support Arrangement (CLSSA). A CLSSA LOA is established to provide a more responsive Through Life Supply Support access for follow-on sparing requirements. A CLSSA LOA is established in two parts:

- **CLSSA Part I:** (also known as a Foreign Military Sales Order (FMSO) I Case)
 - These are Blanket FMS Cases to establish an initial funds injection by the procuring country (NZDF) providing an equipment list to increase the US DoD stock holding in that supply support inventory range.
 - Essentially the DoD increases their inventory by the value paid by NZ Defence, across the relevant inventory pool holdings for anticipated increased demand.
- **CLSSA Part II:** (also known as an FMSO II Case)
 - As required spares within the FMSO I Case coverage are identified, the NZDF user raises an order to requisition the equipment held as stock within the FMSO I Case.
 - These are valued purchases, with the value applied by the US DoD to replenish and retain their inventory pool to the level required in the FMSO I.

FMS Case Process

Pre-Case Development (Letter of Request – (LOR))

Defence initiates the enquiry to meet a capability requirement through the Capability Life Cycle. This can include a price and availability enquiry as input to option evaluation for WoLC determination. A LOR can be for one of two types of response: both are estimates:

- **Price and Availability.** A rough order of magnitude (ROM) estimate based on current information available to the IA / DoD
- **Letter of Offer.** The request for a letter of offer seeks a bona fide offer from the US Government to supply the articles / services requested, based on the specific customer requirements of the LOR

Case Development (the Offer)

The development of the offer requires input and evaluation within the US, which may include notification to Congress if the offer is:

- US\$25M major defence equipment (MDE)
- US\$100M total case value or above
- US\$300M design and construction services

From NZ's perspective NZ Defence will seek Ministerial indemnity. The response times are dependent on the FMS Case complexity and scale.

Establishing the LOA (Acceptance)

Once issued, every LOA has an offer expiry date. Official acceptance includes returning the signed LOA, (completed by the authorised FMS purchasing delegation holder). To initiate the FMS case, the US Government requires:

- Risk assurance from the NZ Government through Ministerial indemnity
- LOA acceptance is not officially confirmed until the initial deposit is received into the New Zealand Federal Reserve New York bank account

Implementing and Execution

Once the LOA is confirmed as accepted the US Defense Finance Accounting Services (DFAS) Security Cooperation Accounting (SCA) team releases the formal Obligation Authority to the relevant IA. Implementation ends with this advice and Case Execution is initiated with transaction orders now able to be placed against the Case. The FMS Case Manager is a nominated US DoD role within the IA, assigned to the FMS Case, and is accountable for managing the US transactional detail.

Review and Reconciliation

FMS Case reviews are required to be completed at least annually. Financial Management Review (FMR) is required annually of the FMS portfolio which includes NZDF, MoD and GCSB cases. The NZDF is the lead agency for the FMS portfolio and along with a representative from MoD, supports the DLEO for the FMR. While mandatory for annual review, it is desirable for quarterly reviews to be completed to monitor and progressively reconcile Case lines through the life of the FMS Case so reducing the Case Closure work burden.

MANAGING AN FMS CASE

Contract Terms

The LOA establishes the Contract, an Offer and Acceptance agreement between the US and NZ Governments. While the FMS Case is not with the NZDF, it represents the NZ Government as “the customer” regardless of the FMS Case being held by the NZDF, MoD or GCSB.

The LOA specifies standard terms which New Zealand is obligated to meet. While there are a range of standard terms, there are key considerations for FMS Case management:

- **US Government Accountabilities:**
 - **Standard Items.** i.e. they should be the same as those currently in use by the US DoD
 - **Update to Standard Terms.** The standard terms issued with the specific LOA, will endure through the life of that LOA, regardless of whether US DSCA updates the general terms subsequently
 - **NZ Official Information Act (OIA).** (The US equivalent legislation is the Freedom of Information act)
 - Information within the FMS Case may be exempt from disclosure under the OIA
 - Enquiries should be escalated to the appropriate NZDF authority and release including redacted section decisions must be coordinated with DSCA
- **NZDF/MoD Accountabilities:**
 - **Cancellation.** Can cancel, but all costs the IA have incurred to date may be required to be met by the NZDF / MoD as appropriate
 - **Use.** The end-use is defined in the terms and conditions, variation only by written mutual agreement
 - **Transfer of Ownership/Title.** Transfer of title to the NZDF occurs when the goods leave the manufacturing facility
 - The title cannot be further transferred, without the written consent of the US Government
 - **Security.** The NZDF must create substantially the same security and storage conditions as that of the US DoD
 - **Third Party.** Any transfer of access, care, control or custody of FMS items to a third party requires prior approval from the US DoS by a TPT

Amendment and Modification

Amendments

Different approaches for changing an FMS Case can be used depending on the scope changes.

Major changes require a formal amendment to the FMS Case. A request for amendment is managed through the FMSCTO.

Modifications

Modifications are unilateral FMS Case changes imposed by the US. Modifications are applied without the need for acceptance requirements by New Zealand and cover such elements as confirmation of final price, delivery timelines, case duration, changes in payment schedule, and adjustments for administration errors.

The US DoD is regulated to not make a profit or loss on FMS transactions, so price modifications apply when there are changes to the US DoD input prices from their US OEM. An administration margin is applied to cover the US MILDEP security cooperation overheads.

Transportation

The movement and transportation of CT articles through the manufacturing and distribution processes to the point of departure and transfer of accountability are all defined in the LOA terms and conditions that establish the FMS Case. It is important to note the change in accountabilities, ownership, custody, movement through the transportation flow, including defining the transition points.

- Importantly, the title transfer of FMS articles occurs at “factory gate” for OEM sourced items or at the point of departure for items sourced from a US DoD facility
 - Thus NZ owns items in transit within the US from title transfer through to the point of export
- It is important to distinguish ownership (title) transfer from delivery
- Normally NZ Defence has responsibility for shipment of articles acquired through FMS beyond the point of title transfer through our Freight Forwarding partner in the US
 - The freight forwarder, on behalf of NZ Defence, completes the receipt, processing, export and import of materiel acquired.
 - On behalf of NZ Defence, the freight forwarder exercises the application for export based on the authority of the LOA
- The LOA sets out the anticipated delivery schedule, and various transportation blocks identifying shipment consolidation
- For purchase of significant military items, some munitions and specific CT items the US DoD requires use of their Defense Transportation System (DTS) notwithstanding that the point of title transfer to NZ precedes the point of delivery
- Policy on receipting into SAP is to await the physical receipt of articles and services by NZDF, not by the Freight Forwarder
 - Items with the Freight Forwarder are considered in-transit, which results in the discrepancy between the delivery listing and billings with the goods received reconciliation

Discrepancy Reporting

Under the standard terms and conditions of the LOA the US Government has no liability for damage or loss from the transfer of title of CT articles. Shipment is defined as having left the US DoD or manufacturer’s premises.

Discrepancies arise through a range of reasons and are captured in the Supply Discrepancy Report (SDR) issued by the NZDF. Checks are required prior to lodging any SDR for goods in transit, as these are classed as being supplied. Submission of an SDR for consideration, must be within 12 months of the date of title transfer unless otherwise specified in the LOR. Examples of elements that contribute to discrepancies between the LOA and receipt include:

- Unordered items and substitutes:
 - There are specific policies and processes for return of unordered CT items, delivered in error
 - Substitute items may not be acceptable but this needs to be stipulated in the originating LOA / FMS Case documentation
- Product quality issues can arise through manufacture / material / workmanship defect, residual shelf life, or damage due to poor packaging

Financial Discrepancies

Financial discrepancies arise where the material and documentation are received, but with incorrect charges. Price discrepancy reporting is monitored through the reconciliation processes of NZDF Finance, noting that while LOA pricing is based on estimates the NZDF needs to confirm acceptance of actual pricing as agreed or accepted.

Case Closure

Active lines and eventually the whole FMS Case will achieve Supply Service complete (SSC) status, which is all items have been delivered and service performed. Case closure is triggered once all the required verification steps for SSC are completed.

The NZDF follows the Accelerated Case Closure Procedures; this allows for Case closure on completion of SSC status, even though there may be remaining unliquidated obligations (on the case). The US Government typically aims for closure within 24 months of SSC.

FMS FINANCIAL MANAGEMENT

FINANCIAL OBLIGATIONS

NZ Defence through the FMSCTO and DLEO, deal directly with the US DFAS - SCA team members allocated to management of the NZ FMS Cases and overall programme.

Funding for FMS Cases is held in the NZDF's Federal Reserve Bank of New York (FRBNY) account.

Key to understanding the financial management complexity is awareness of the difference between the US DoD and the NZDF / MoD accounting systems:

- The US DoD is cash based compared to the NZDF / MoD systems, which are accrual based
- The US is paid in advance, funds are appropriated through the establishment of the FMS Case approval and the FMSCTO manages and maintains the payment schedule
- Individual FMS Cases are paid at the New Zealand level (Treasury funds), Cost Centres do not incur charges until goods / services are received and invoiced
- Funding History Delivery listings are available monthly on the FMSCTO DDMS pages
- The Cost Centre must maintain awareness of services received, (GR) but not invoiced (NI) and maintain the appropriate accounting accruals until the item is included in the Delivery Listing, thus triggering internal billing to the Cost Centre
- When working with FMS all values are in US dollars

NEW ZEALAND AND UNITED STATES BILLING PROCESSES

The NZ Treasury appropriates FMS Case funding commitments and payments are requested in accordance with the quarterly payment schedules on each FMS Case. These payments are administered by the FMSCTO and have no affect on Cost Centre budgets. Cost Centre budgets are only affected when goods / materials are received and the NZDF is billed (charged) for those deliverables. It should be noted for budgeting purposes that:

- **Item price.** Items are billed to the NZDF / MoD at the supplied cost to the US DoD
 - For items supplied from US DoD inventory the pricing basis varies depending on the inventory replenishment strategy associated with the fulfilment requirement

- Prices in the LOA are best estimates, meaning the NZDF pays the actual cost incurred by the US to supply
- The LOA agreement is at no-profit / no-loss to the USG with a service fee added to each quarterly payment to cover US DoD overheads
- **Payment.** Treasury funded payment is quarterly cash in advance, and covers the projected payment schedule for US DoD purchases against the FMS Case
- **Account Balance Minimum.** There is a requirement for NZDF to retain at least six-months forward payment cover of historical FMS spend value in the FRBNY account balance
 - This minimum forward balance is regularly monitored by the DSCA at the individual Case level and across the total value of the New Zealand FMS portfolio

NZDF FMS CASE FINANCIAL OBLIGATIONS

Under the terms and conditions of the FMS Case, the NZ Government agrees to:

- Pay the initial deposit on acceptance of the LOA
- Payment is prior to delivery
- The NZDF must retain “Dependable Undertaking” status as an eligibility criterion to participate in FMS and receive the current payment term eligibility
 - This entails meeting the financial, and other obligations included in each Case, and this status cannot be assumed as circumstances may change
- The DLEO receives a monthly delivery listing (FK History) report and quarterly billing statement (DD645)
 - These reports may also include reporting on each outstanding Supply Discrepancy Report
 - These are available on the FMSCTO DDMS site
- The US DFAS keeps a record of all FMS transactions for NZ’s interactions with the IAs supporting the FMS Cases

US BASED TRAINING

BACKGROUND

US based training requirements are supported by specific Foreign Military Sales Training Cases, administered by the Foreign Military Sales Training Case Manager within the FMSCTO.

The United States Government trains on average 78,000 foreign military students per year, of which 22,000 receive training in the US. FMS provide both skill-focused training as well as college and graduate-level professional military education to US allies and partners around the world. The various training and education programmes have several objectives from the US perspective:

- to build the capacity of partners to provide for their own defence; professionalise partner nation forces
- increase partner nations capabilities to deploy to peacekeeping operations
- improve relations and interoperability with the US military and its partners
- provide US forces with exposure to foreign policy and cultures
- advance US values and ethics such as understanding of and respect for the laws of armed conflict and human rights

ADMINISTRATION

The FMSCTO Training Case Manager liaises with the Office of Defense Cooperation (ODC). The ODC is a US DoD agency located at the US Embassy in Wellington. All FMS supported training is coordinated between the ODC, NZDF and the US DoD Country Program Managers. Each year the NZDF individual Services identify their FMS course requirements for the next year and three years in advance.

Students attend FMS-sourced training on US issued Invitational Travel Orders (ITOs). The ITO is the control document for authorised training. When all administrative requirements are met, the ODC will issue the ITO. The standard ITO is the only authorised document that is used for international students entering US training. The ITO is used for identification, provides the training itinerary, medical services, approved leave, etc. No amendments can be made to change training unless this has been approved by the US Military Department in conjunction with the NZDF, and the ITO is amended by the US Embassy accordingly.

THIRD PARTY TRANSFER (TPT) PROCESSES

The US has specific requirements on recipients of US sourced defence articles, services or technical data that recipients must obtain permission from the US DoS prior to transfer, disposal or change of end-use or destination not previously advised in the original acquisition or subsequent amendments. The requirement for TPTs to be established is to enable non-directly contracted parties access to the CT.

TYPES OF TPT

Government to Government

The direct Government-to-Government transfer initially is through the FMS programme. If the NZDF then seeks to dispose of the FMS-acquired capability to another nation state, then that requires Presidential approval through the DoS transfer application process and a Government-to-Government TPT.

Government to Private Entity

Should disposal or transfer be required to a private entity, then there is a requirement for the NZDF to complete a Country Over Private Entity (COPE) TPT application, with associated assurances (i.e. the NZDF representing the NZ Government seeks to transfer the defence articles to a third party). Such circumstances arise when a US defence article acquired by the NZDF requires such support as maintenance, service upgrades, software updates etc where these are provided by a third party.

Blanket End-Use, Re-transfer, and Security Assurance Programme

The Blanket End-Use, Re-transfer, and Security Assurance Programme offers selected foreign nations (including New Zealand) comprehensive cover for end-use, re-transfer and security assurances for Government-to-Government transactions. Under the programme, the US must still approve individual transfers of defence articles from these countries, but they are pre-approved to receive defence articles. Note that Australia is not a signatory to this arrangement and currently requires individual approvals for receiving transferred defence articles.

Blanket Country Over Private Entity Assurance Programme

The COPE Assurance Programme was established to assist with streamlining the TPT processes. COPE assurances provide customer country protection for US origin technology and equipment.

NZ Defence manages the COPE requirement through the TPT process for each FMS Case. Each requirement is considered on a case-by-case basis.

NZDF TRANSFER OBLIGATIONS

“The President will not give consent ... to the transfer unless the US would itself transfer the defense articles under consideration for transfer to that country.”¹¹

Where transfer to a third party is required, each application is in relation to a specific FMS Case. A standard TPT questionnaire is included in the eSAMM and available from the FMSCTO DDMS templates library. The following requirements apply:

- TPT approvals are required for all US sourced defence articles acquired through the FMS programme
- For any transfer of controlled technology, prior written approval is required
- The timeline can be protracted from the US DoD, so plan for these well in advance
- Approval is also required for disposal (considered a change in end-use)
- TPT applications are submitted through the FMSCTO to the DLEO who manage the submission to DoS on behalf of NZ
- Requests for change in end-use for US origin defence articles procured via FMS follow the same procedures as for TPTs

For non-US sourced defence articles, the requirements controlling third party access will be included in the terms and conditions of the procurement and sustainment support agreements.

NZDF TRANSFER PROCESSES

All NZDF applications are made through the FMSCTO, for consistency, process and compliance assurance, then progressed through the DLEO to the US DoS. The local US Embassy SCO can assist with re-transfer request processing but only for items acquired through FMS. For DCS procured items, under ITAR the original exporter may apply to the DoS or the NZDF may apply directly via the FMSCTO to the DoS.

Transfer applications are made and evaluated in accordance with the requirements of the AECA and the Foreign Assistance Act.

- Approval is considered on a case-by-case basis in accordance with the general criteria and specific third party transfer requirements of arms transfer law, regulations and policies
- The US will not agree to transfer articles of SME on the USML unless those articles are demilitarised prior to transfer
- Demilitarisation is itself a change in end-use, so requires additional approval for the end-use change, prior to the transfer approval
- The demilitarisation provision can be over-ruled by the DoS, if the recipient nation commits to the appropriate security, transfer and end-use obligations in a third party transfer application
- For items on the CCL requiring prior export approval, some may be transferred within country with no US approval required; there are also circumstances where these can be exported with no US involvement required
- In all circumstances, advice should be sought initially through the FMSCTO

END-USE MONITORING (EUM)

In agreeing to acquire defence articles (items, training, services, etc), the NZDF agrees that these will be used solely for the purposes set out in both the original procurement contract and the sustainment supply support agreements. End-use monitoring (EUM) and specific NZDF management regimes provide verification that the end-use and management processes for the CT are in accordance with the originating contract (FMS or DCS).

US-Sourced

To provide assurance and increase end-use compliance accountability on recipients of US defence articles with the agreed contractual requirement, the US operates the EUM inspectorates. There are two distinct EUM inspectorate programmes established by the US for EUM that align to the procurement process for the specific articles depending on whether the articles are acquired by FMS or DCS:

- **The Golden Sentry Programme.** For articles acquired through the FMS programme
- **The Blue Lantern Programme.** For articles acquired through a DCS procurement from a US commercial entity

Non-US Sourced

There is generally no equivalent of the FMS programme in the export or formal end-use control of military goods from other nations. Most transactions where the NZDF sources equipment, support and services from outside the US are covered by specific supplier contracts which will include the detailed end-use stipulated in the commercial contract.

The wider requirements of capability procurement and sustainment from other nations, the implications of country specific legislation, the Arms Trade Treaty and the Wassenaar Arrangement all exist to regulate and define individual nations requirements in support of regulating the trade in arms between member nations.

Whether controls should focus on the end-use or end-user is an individual nation's decision, but in many national systems, both types of controls are used but in different situations.

- **End-User.** The end-user may be a government, military force or other national authority, such as police, customs or paramilitary forces
 - Some types of equipment may also be exported to private entities, and industrial end-users are increasingly common when components or subsystems are exported
- **End-Use.** End-use could be an integration of a component or sub system into a larger end product
 - Where an item is a component of a larger system, an assurance specifying the end-use of the system may be required
 - An agreed list of acceptable export destinations could be made as part of the end-use
 - End-use controls may also be put in place to restrict the actual end-use of an exported final product, either geographically or in some other manner

End-use monitoring is focused on prevention of arms proliferation, access to arms by non-nation entities and in protecting the design intellectual property held by the supplying entity.

FMS – END-USE MONITORING

The Golden Sentry Programme

The Golden Sentry monitoring programme applies to all FMS procurements and is administered by the US DoD, primarily through the Defense Security Cooperation Agency (DSCA) and Security Cooperation Office (SCO).

- **Routine End-Use Monitoring (REUM)** is required for all defence articles and services provided to the NZDF through the government-to-government programmes, (i.e. all FMS procurements made by NZDF)
- **Enhanced End-Use Monitoring (EEUM)** applies to those articles, information and services that have, by their nature and application, more sensitive end-use compliance restrictions, including physical security and accountability
 - EEUM requires physical security assessment of the storage facility and serial number inventories of designated defence articles to verify compliance with the transfer conditions of the LOA (FMS Case) and other transfer agreements

The Golden Sentry Programme Process

The US has their own requirement to ensure compliance with the programme, both with their local SCO processes and in inspection assurance of the host nation EUM programme and performance.

There are three phases to EUM assurance monitoring included in the US DoD Golden Sentry regime with respect to EUM for FMS transfers to foreign nations:

- **Pre-transfer.** The assessment of NZDF's willingness and ability to protect US technologies and to comply with the use and transfer regulations
- **During transfer.** When equipment or services are being supplied to fulfill the FMS Case requirement, the NZDF can provide assurance that the terms and conditions of the LOA are being met
- **Post-transfer.** The Golden Sentry inspection programme maintains the REUM and EEUM assurance monitoring throughout the life of the capability system

There are three types of visit:

- **Familiarisation Visits (FAV).** This visit is to assist the host nation (NZDF/MoD), the SCO and the relevant US Military Department (MILDEP) to develop an effective EUM compliance programme. The visit can be initiated by either party
- **Compliance Assessment Visits (CAV).** A visit from the DSCA representatives to conduct EEUM compliance checks
- **Investigation Visits (IV).** These must be conducted if a breach of the AECA and / or the FAA is suspected
- The costs of FAV and CAV are included in the original LOA
- Investigation visit costs are an additional charge to the LOA for the NZDF

DCS – END-USE MONITORING

The Blue Lantern Programme

The Blue Lantern monitoring programme applies to DCS purchased articles, technology, services and brokering, and is administered by the Directorate of Defense Trade Controls Policy within the US DoS.

The Blue Lantern Programme is aimed at addressing:

- Understanding of the US defence trade controls among foreign partners
- Building mutual confidence among US Government, partner nations and industry in the defence trade relationship and supply chain



- Mitigating the risk of diversion and unauthorised access and / or use of US defence articles, and
- Combatting 'gray arms' trafficking and uncovering violations of the AECA

The Blue Lantern Programme Process

The focus of the Blue Lantern inspectorate is to actively monitor, report and address unauthorised arms transfers. For all DCS sales of defence articles and services the Blue Lantern Programme conducts:

- Pre-licence inspections, assuring the commercial exporter and intended client meet the requirements of the AECA
- Pre-shipment / post licence checks, and
- Post shipment checks

Unlike Golden Sentry which applies to all FMS Cases, the Blue Lantern programme inspections are more targeted and conducted on the basis of potential risk. While all items acquired by DCS are subject to prior export approval, only a sample of the DCS exports (currently estimated at approximately 5%) have post-shipment compliance inspections.

EUM by the Department of Commerce

In addition to the DoD FMS processes through Golden Sentry and the DoS Blue Lantern inspectorate, there is an end-use assessment process administered by the Department of Commerce (DoC). The DoC focus is on those items that are on the Commerce Control List (CCL) and particularly items that have moved off the USML to the CCL, including items classified as Dual-Use goods where US industry transfers these to a foreign entity via the Export Administration Regulations (EAR).

Where the Blue Lantern Programme addresses the end-use monitoring of commercially sourced defence articles and includes pre and post license and in-country assessments, the DoC end-use monitoring regime approves the export licences and is mainly focused on pre-delivery controls. Occasionally there are post-delivery inspection requirements included in the approval, which are completed in liaison with the SCO.

The NZDF needs to be aware of all dual-use articles and services and monitor these through internal processes as controlled technology, to ensure traceability and compliance with the end-use requirements as stipulated in the export licence approval. Internal EUM should be an established process and practice within all units that have accountability for any CT items.

SUPPORTING INFORMATION

THE FMS AND CT OFFICE

The FMSCTO within Defence Logistics Command in Wellington is responsible for managing the FMS&CT frameworks, facilitating processes for new cases and amendments, advice and guidance, maintaining records, developing internal control processes for evaluation and audit, and for FMS&CT training.

FMSCTO staff also provide local support and are accountable for the overall NZDF management support and oversight. For MoD staff, support is also available from the MoD FMS Principal Advisor.

The FMSCTO also has a role in

- providing governance reporting of NZDF FMS compliance
- collating and submitting TPT requests to the DLEO, NZ Embassy in Washington DC
 - The DLEO lodges this application with the US DoS for approval of a new third party, change in end-use, or disposal

TRAINING

Training Courses are available for understanding FMS and specific areas of CT application:

D67022 FMS and CT Overview. On-line. To provide learners with a broad understanding of high-level processes for Foreign Military Sales and Controlled Technologies management considerations, accountabilities and compliance obligations

D67023 FMS and CT Fundamentals. Two days. To provide learners with an understanding of FMS and CT legislative and regulatory requirements, and NZDF workplace compliance obligations

D67024 FMS and CT Intermediate. Two days. To provide learners with the ability to manage NZDF FMS Cases in accordance with compliance obligations, systems and processes of the US Department of Defense (DoD), Defense Security Cooperation Agency (DSCA) and NZDF Defence Force Instructions (DFI) 40.1.

D67025 NZDF FMS Financial Process Competency. One day. To provide learners with the understanding of US Department of Defense (DoD) FMS financial processes, the aligned NZDF processing requirements, and the ability to manage and transact these in accordance with compliance obligations, systems and processes of the US DoD Defense Finance and Accounting Services (DFAS) and NZDF FMS process management.

D67026 Third Party Transfer and End-Use Monitoring. Two days. To provide learners with an understanding of legislative, regulatory and contract compliance obligations for Foreign Military Sales (FMS) and Controlled Technology (CT) articles and services with respect to Third Party Transfers, (TPT) and End-Use Monitoring (EUM).

D67027 FMS and CT Export Control Requirements. One day. To provide learners with an understanding of legislative and regulatory requirements for the movement of Controlled Technologies across nation state borders.

D67028 FMS and CT Governance. On-line. To provide learners with a broad understanding of Foreign Military Sales and Controlled Technologies objectives, policies, governance and obligations

Further information regarding Training Courses is available on the NZDF Learning Management System (LMS) or through the FMSCTO.

GLOSSARY

Terms and abbreviations used in this Handbook.

ACRONYM	EXPLANATION
AECA	Arms Export Control Act (US)
CAV	Compliance Assessment Visit
CCL	Commerce Control List
(CEP(SG)O) 2021	Customs Export Prohibition (Strategic Goods) Order 2021
CLSSA	Cooperative Logistics Supply Support Arrangement
CMF	Capability Management Framework
COPE	Country Over Private Entity
CT	Controlled Technology (ies)
DCS	Direct Commercial Sales (ex US through Department of State) (note in this context it does not refer to the NZDF Defence Commercial Services)
DDTC	Defense Directorate of Trade Controls (US)
Defence	Spelling explanation – Refers to NZ spelling, unless the US proper noun
Defense	Spelling explanation - Refers to the US proper noun in the title of organisations
DFAS - SCA	Defense Finance and Accounting Service – Security Cooperation Accounting (US)
DFI	Defence Force Instructions
DLEO	Defence Logistics Engagement Office (NZ roles in Washington DC)
DoC	Department of Commerce (US)
DoD	Department of Defense (US)
DoS	Department of State (US)
DSCA	Defense Security Cooperation Agency (US)
DSCU	Defense Security Cooperation University (US)
DSP	Department of State Publication (US)
DTS	Defense Transport System (US)
EAR	Export Administration Regulations (US)
EEUM	Enhanced End-Use Monitoring
eSAMM	(electronic) Security Assistance Management Manual
EUC	End-Use Certificate
EUM	End-Use Monitoring
FAA	Foreign Assistance Act (US)
FAV	Familiarisation and Assistance Visit
FMR	Financial Management Review
FMS	Foreign Military Sales (programme of the USG through the Department of Defense)
FMSCTO	Foreign Military Sales and Controlled Technology Office (in NZDF DSCM Wellington)
FMSO	Foreign Military Sales Order
FRBNY	Federal Reserve Bank of New York
GC	General Classification
GCSB	Government Communications Security Bureau
GRNI	Goods received but not invoiced
IA	Implementing Agency
ILS	Integrated Logistics Support
IP	Intellectual Property
ITAR	International Traffic in Arms Regulations
ITO	Invitational Travel Order
LOA	Letter of Offer and Acceptance
LoR	Letter of Request
MDE	Major Defense Equipment (US)

ACRONYM	EXPLANATION
MFAT	Ministry of Foreign Affairs and Trade
MILDEP	Military Department(s) (US)
MILSPEC	Military Specification
MoD	Ministry of Defence
MTCR	Missile Technology Control Regime
NZ Defence	Both the NZDF and MoD
NZDF	New Zealand Defence Force
ODC	Office of Defense Cooperation (US)
OEM	Original Equipment Manufacturer
OIA	Official Information Act
PHS&T	Packaging, Handling, Storage and Transportation
PRICIE	Personnel; Research and Development; Infrastructure and Organisation; Concepts, Doctrine and Collective Training; Information Technology; and Equipment, Logistics, and Resources
REUM	Routine End-Use Monitoring
RSAT	Office of Regional Security and Arms Transfer (US DoS)
S&TE	Support and Test Equipment
SA	Security Assistance
SCO	Security Cooperation Office (US Embassy Staff in Wellington)
SDR	Supply Discrepancy Report
SME	Significant Military Equipment
SSC	Supply Service Complete
TAA	Technical Assistance Agreement
TPT	Third Party Transfer
US	United States (of America)
USML	US Munitions List

REFERENCES

References Used in this Handbook

New Zealand Strategic Goods List [NZ-Strategic-Goods-List-November-2024.pdf \(mfat.govt.nz\)](#)

Export Administration Regulations <https://www.bis.gov/ear>

International Traffic in Arms Regulations [Understand The ITAR - DDTC Public Portal \(state.gov\)](#)

DFI 40.1 Chapter 8 – Controlled Technology Management Control of Arms, Dual-Use Goods and Technologies <http://ddms-r/ds/D4-0138/06/Forms/AllItems.aspx>

Arms Export Control Act 1976 [Article - DDTC Public Portal \(state.gov\)](#)

Security Assistance Management Manual (e-SAMM) <https://samm/dsca.mil/listing/esamm>

NZDDP 4.0 Defence Logistics <http://doctrine/desc/nzddp/4.0.html>

Other Supporting Information

DSCU: Security Cooperation Management (Green Book) <https://www.dscu.edu/greenbook>

DFO 52 Volume 2 Defence Force Orders for Procurement http://pub-r/ps/p0-0001/016/dfo_52_v2.pdf

DFI 40.5 Operational Movements http://pub-r/ps/p0-0001/017/dfi_40_5.pdf

DM 40.5-1 Operational Movements http://pub-r/ps/p0-0001/017/dm_40_5-1.pdf

Capability Management Framework <http://pub-r/ps/p8-002/Pages/Home.aspx>

Integrated Logistics Support in Capability Management Handbook <http://ddms-r/ds/D4-0135/21/Forms/AllItems.aspx>

FMSCTO publications (NZDF, DDMS site: DLC, DSCM, FMS) <http://ddms-r/ds/D4-0138/06/Forms/AllItems.aspx>

NZ Trade and Enterprise: [What are the rules for exporting goods from NZ? - myNZTE](#)

