

7 May 2012

## **AmCham EU welcomes the European Commission's initiative to set up a Defence Task Force**

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the initiative of the European Commissioners Michel Barnier and Antonio Tajani to set up a Defence Task Force, focusing on four main issues: (1) monitoring the application of the two European Union defence-related Directives (2009/43/EC on transfers and 2009/81/EC on procurement); (2) catalysing debate on the development of a European defence industrial policy; (3) ensuring research and development synergies between the security and defence sectors; and (4) ensuring security of supply of defence equipment for Europe's armed forces.<sup>1</sup>

### **1. Executive summary**

The transatlantic security and defence economy is intertwined. The EU and the US are facing similar challenges – decreased domestic demand and declining competitiveness compared to emerging economies. Closer transatlantic relations have many opportunities to offer in today's context of the economic crisis, challenged competitiveness and new rising powers.

Standardisation in the transatlantic security and defence domain will make an essential contribution, dealing with issues such as interoperability, supporting innovation and competitiveness, and making markets more open.

A key difficulty the EU and US still face, however, is the culture of national defence-industrial protectionism. Trust, cooperation and an acknowledgment of shared interests will be required for change to become reality.

The US and the EU Member States will also have to provide each other more mutual transparency on their medium to long-term defence planning in order to stimulate the efficiency of a transatlantic security and defence technological and industrial base.

The following issues negatively impact the transatlantic security and defence market and should be limited:

- The adverse impacts of offsets;
- The adverse impact of technology control policies;
- Restrictions on foreign/transatlantic investment into each other's foreign security and defence markets.

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<sup>1</sup> [http://ec.europa.eu/commission\\_2010-2014/barnier/docs/speeches/20111109/speech\\_fr.pdf](http://ec.europa.eu/commission_2010-2014/barnier/docs/speeches/20111109/speech_fr.pdf)

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In the very long term, transatlantic industrial duplication must be tackled to significantly reduce equipment costs. This can be achieved if the combination of more cooperative/multinational programmes and further austerity measures fosters an environment of shared interests and trust with regard to defence procurement on both sides of the Atlantic.

The regulatory system is improving, but organisational and cultural changes are hard. It should be a balance between protectionism and enabling collaboration, as well as risk management rather than total risk control.

At AmCham EU, we view transparency, participation and collaboration as vital to the success of our mission to ensure a growth-orientated business and investment climate in Europe and to create better understanding of EU and US positions on business matters. We are committed to strong and productive cooperation between the US and Europe. That is one of the reasons why we welcome and will continue to support European Commissioners Michel Barnier's and Antonio Tajani's initiative to set up a Defence Task Force.

## 2. Introduction

The year 2012 is a critical moment for security and defence budgets and for the transatlantic security and defence industry. Despite the significant current security and defence cuts in national budgets, the security threats facing nations, the EU and the US remain. AmCham EU notes that the present financial situation validates the importance of cooperation, creates an opportunity for its expansion and, more broadly, underscores an imperative for international and transatlantic industrial cooperation. Security and defence industries are 'globalising', with emerging markets investing significantly in their security and defence industrial base. AmCham EU believes that both the EU and the US stand to gain from aligned public policies in security and defence.

The EU's Single Market has arguably been the greatest success of the European Union; the free movement of people, goods, services and capital has led to lower prices and a significant increase in trade.<sup>2</sup> AmCham EU supports the European Commission in its work to impose these basic economic freedoms on the EU defence industry, which remains highly fragmented along national lines – In 2010, 77% of defence equipment in the EU was procured within national boundaries.<sup>3</sup>

The European security and defence markets consist of three key elements: (a) the national defence and security budgets; (b) the European security and defence acquisition and export regulatory environment; and (c) the European Security and Defence Technological and Industrial Base (EDTIB).

AmCham EU shares the Commission's view that free-market principles in the European security and defence sector will result in less duplication, larger

<sup>2</sup> 'Safeguarding the free movement of goods', *Enterprise & Industry Online Magazine*, 10 January 2011, [http://ec.europa.eu/enterprise/e\\_i/news/article\\_10863\\_en.htm](http://ec.europa.eu/enterprise/e_i/news/article_10863_en.htm).

<sup>3</sup> 'Defence Data 2010', European Defence Agency, 2011, [http://www.eda.europa.eu/Libraries/Documents/Defence\\_Data\\_2010.sflb.ashx](http://www.eda.europa.eu/Libraries/Documents/Defence_Data_2010.sflb.ashx)

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economies of scale and increased industrial competition, resulting in lower prices.

This paper addresses issues relevant to all these key elements and sets out some recommendations and conclusions, which will provide the EU Defence Task Force with a stronger framework in which to act and address the establishment of a European Defence Technological and Industrial Base (EDTIB) as part of a balanced transatlantic partnership.

### 3. Recommendations

#### a. Standardisation

Standardisation of defence equipment is an important basis for the opening of national markets and the gradual creation of a single European defence market. AmCham EU supports the European Commission's sponsorship of the 'CEN Workshop 10 on Standardisation for Defence Procurement' project, managed by the European Committee for Standardisation (CEN), through which a European Handbook for Defence Procurement (EHDP) has been produced, containing references to standards and standard-like specifications commonly used to support defence procurement contracts, as well as guidance on the selection of standards and standard-like specifications to optimise effectiveness, efficiency and interoperability.<sup>4</sup> Recently, the EHDP has been replaced by the European Defence Standards Reference System (EDSTAR).<sup>5</sup>

AmCham EU also believes that it would be mutually beneficial for the US and Europe to move toward a more harmonised transatlantic approach to the certification and standardisation of security and defence equipment and services in order to nurture a healthy transatlantic security and defence industrial base. Rather than looking for protections through national specificity, the US and Europe should be in favour of common transatlantic standards that promote allied interoperability. Therefore, we promote the wider use of open standards and, where appropriate, we recommend close coordination between the European Defence Agency and the NATO Standardization Agency in order to harmonise European defence standards with the NATO Standardization Agreements for procedures and systems and equipment components, known as STANAGs.

#### b. Protect against discrimination

The new EU Defence Procurement Directive allows a contracting authority to impose on the bidder requirements related to 'security of supply'. In particular, the contracting authority can impose requirements to ensure reliable and on-time delivery of sufficient quantities of defence and security equipment and services, and to guarantee continued availability of maintenance, repair and upgrade capabilities, especially in crisis situations.

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<sup>4</sup> 'European Handbook for Defence Procurement' - <http://www.defense-handbook.org/>

<sup>5</sup> European Defence Standards Reference System - <http://www.eda.europa.eu/EDSTAR/home.aspx>

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The 'subcontracting' clause in this Directive aims at driving competition into the prime contractor's supply chain.

AmCham EU believes that the principles of the EU treaty and the Defence Procurement Directive should be followed irrespective of the nationality of the supplier, the EU Member State of establishment, domestic industrial interests or the need for transfer licenses.

After national certification in the scope of the EU Defence Transfers Directive, for instance, companies dealing in Europe with non-ITAR/EAR-controlled goods and technology can obtain general licenses instead of individual licenses and become part of a trusted community within the EU. However, companies, transferring ITAR/EAR-controlled products within the EU might lose the benefits of this Directive because they still have to comply with US ITAR rules, which form an obstacle to ensuring security of supply for such products that EU governments may want to procure. A large part of this consideration is linked to the unpredictability of the licensing process, in terms of result and duration.

A common goal of the US and the EU could be to continue improving predictability, transparency and efficiency for industry and governments in the export control regimes across the Atlantic.

c. Defining the scope of an 'essential security interest' in Article 346 TFEU

The legally acceptable interpretations of an 'essential security interest' should be clearly defined in Article 346 TFEU in order to avoid EU Member States considering Article 346 as an automatic exemption.

AmCham EU acknowledges the fact that the final word on the determination of the ambit of Article 346 TFEU lies with the European Court of Justice, but we believe that a revision of the European Commission's 2006 'Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement' might give contract awarding authorities some renewed guidance for their assessment whether the use of the exemption is justified.

d. Creating more mutual transparency on defence planning

AmCham EU acknowledges the fact that the US and the EU Member States should provide each other more mutual transparency on their medium to long-term defence planning, which would allow opportunities to be identified for harmonised military requirements, joint investment projects, pooled acquisitions and coherent role specialisation.

We understand that new defence activities due to changing threats and other operations require new products and services and another technological and industrial base. Therefore, departments of defence on both sides of the Atlantic need to identify to the industry what they want, as far ahead as possible. A common EU/US approach to procurement and articulation of future demands

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will align individual EU Member State and US requirements and stimulate the efficiency of a transatlantic defence technological and industrial base.

A more integrated strategy and defence planning dialogue will help, but both sides need to look for opportunities to shape programmes for which companies on both sides of the Atlantic can bid. This dialogue needs to incorporate multilateral players, such as NATO and OCCAR. Bilateral rules will prove inadequate in what will be an increasingly multilateral rule-making process. The forces of interoperability, limited resources, technology flow and industrial cooperation can expand the security and defence market space across the Atlantic, while retaining and even reinforcing protection against the dissemination of critical technology.

e. Limiting the adverse impact of offsets

Considering that offsets are economically inefficient and trade distorting, the US Government consults regularly with the European Defence Agency on limiting the adverse effects of offsets in defence procurement.

AmCham EU believes that the European Commission should actively contribute to this dialogue in order to achieve multilateral agreement on the creation of principles which will serve to limit the adverse effects of offsets.

The European Commission could also create working groups with European and American industries to understand how this issue can be addressed.

Both sides of the Atlantic will benefit from a level playing field and maximum flexibility in competing for new security and defence procurements when the paradigm is shifted from national/European/American defence industrial policies toward a transatlantic defence industrial policy among a community of trusted friends and allies.

Future collaborations might be based around a small number of partners (two to five) with other nations joining the programme as associates with 'no prior commitment' to receiving specific technology and production work packages; the Joint Strike Fighter F-35 programme is a good example of a transatlantic programme where 'best value' takes precedence over 'offsets'.

f. Limiting the adverse impact of technology control policy

AmCham EU acknowledges the fact that the European and US governments should promote and defend their national security interests by protecting critical technology while building relationships and interoperability with friends and allies.

At the same time, defence contractors are seeking to expand foreign sales as a means of balancing reduced sales at home. They also become increasingly international in scope and operations.



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European and US export controls often restrict trade in products that are readily available in non-US and non-EU regions with few restrictions. In this regard, it may be necessary to tighten controls on some strictly military technologies, and at the same time, establish mechanisms to remove controls that damage the competitiveness of European and US industries.

Therefore, any technology control policy's abusive restrictions should be considered by industry on both sides of the Atlantic as a potential inhibitor to trans-Atlantic Security and Defence industrial cooperation.

g. Allowing transatlantic investment in the security and defence industrial base

An obvious way for European and American companies to become more attractive into each other's foreign security and defence markets would be for European and American companies to establish geographic presence in each other's markets through direct - foreign - investment.

In order to allow European and American companies to 'buy' into each other's foreign security and defence markets through mergers, acquisitions and joint ventures, any restrictions on foreign/transatlantic investment in these markets would pose major political and administrative hurdles and therefore have to be avoided at all times on both sides of the Atlantic.

h. Seeking smart solutions

Given the economic downturn, the EU and the US need to be realistic about what national and EU/NATO budgets will allow. AmCham EU believes that 'doing more with less' means more efforts from the EU and the US in specific areas, such as:

- (1) Pooling resources among groups of nations to increase economies of scale and reduce acquisition, operation, maintenance and training costs. The EU and the US share values/vision but have different security and defence ambitions. Governments however should drive demand consolidation and harmonisation of requirements.
- (2) Many past successful efforts involved a small group of allies pooling resources to acquire technologically mature capabilities (such as the NATO C-17 Strategic Airlift Capability [SAC] initiative in Hungary and the AWACS program). Future cooperation must be emphasised in smaller programs.
- (3) Participation by a larger number of allies would enhance the efficiencies and effectiveness of these pooling arrangements and reduce costs for all participants, but have a negative impact by complicating system design and employment decisions. A larger ally could play a leadership role.
- (4) The EU and the US should not aspire to own technology; rather, they should leave it to industry to supply appropriate solutions. Governments should seek for capabilities, not for products.

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- (5) The overall role of industry has been changing. In the past, governments were deciding and industry followed. Today, industry is encouraged to be involved early on in the process to assist in development of requirements and identification of potential capabilities.
- (6) More research and technology (R&T) investment is needed in Europe with opportunities for transatlantic cooperative R&T.
- (7) There is a need to work together on critical technology protection, linking EU and US efforts. Industry should comment and provide feedback on new lists when available.
- (8) Allies should define, develop and operate capabilities jointly, for reasons of cost effectiveness and as a manifestation of solidarity.

i. Cooperation on a multinational level

AmCham EU sees no contradiction between the broader frameworks (EU, EDA, OCCAR, NATO, etc.) and the more focused bilateral agreements, but notes the imperative of ensuring that they are harmonised and not in competition with one another.

Specialised agreements such as bilateral treaties are practical measures to meet specific bilateral requirements (security of supply, etc.). These efforts must be complementary to broader reform efforts and not 'an exclusive club'. Best practices and lessons learned from bilateral efforts should inform the broader reform efforts and the larger security and defence community.

#### **4. Conclusions**

While applauding the efforts to enhance efficiency and competitiveness in the European security and defence equipment marketplace, AmCham EU wishes to reiterate that market reforms or improvements to procurement practices should be considered in light of the global forces and trends affecting all security and defence markets and companies supplying security and defence equipment.

Governments still act nationally whereas defence companies act globally, particularly at subsystem level. A globalised supply chain needs new policies and processes. Governments must recognise change and adapt processes to meet this new reality.

There is a need to sustain a defence technological and industrial base (DTIB) on both sides of the Atlantic. The transatlantic security and defence industries need to develop new technologies in a collaborative manner. Technology transfer is related to national will, with foreign and technology security policy key factors in technology transfer decisions, particularly in the United States. Governments should review their processes for technology security and foreign disclosure to improve how the US and Europe can share technology. Export control reform initiatives in Europe and in the US should be designed to enhance transatlantic security and strengthen the alliance's ability to counter threats.

There is a need to cross-fertilise. Governments should recognise that there is a mutual benefit in linking rather than opposing the European and US security

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and defence industrial bases in order to strengthen security and defence cooperation at large, in the face of growing common international threats. This recommendation is in line with the European Commission's goal to move towards a more level playing field between the US and Europe in the area of defence trade while promoting a strong and competitive EDTIB.<sup>6</sup>

The regulatory system is improving, but organisational and cultural changes are hard. It should be a balance between protectionism and enabling collaboration, as well as risk management rather than total risk control.

At AmCham EU, we view transparency, participation and collaboration as vital to the success of our mission to ensure a growth-oriented business and investment climate in Europe and to create better understanding of EU and US positions on business matters. We are committed to strong and productive cooperation between the US and Europe. That is one of the reasons why we welcome, and will continue to support, the European Commissioners Michel Barnier's and Antonio Tajani's initiative to set up a Defence Task Force. We hope that the views of AmCham EU and its member companies will be taken into account and look forward to your feedback.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totaled \$2.2 trillion in 2010 and directly supports more than 4.2 million jobs in Europe.*

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<sup>6</sup> 'The Nature and Impacts of Barriers to Trade with the United States for European Defence Industries - Study commissioned by DG Enterprise and Industry' - [http://ec.europa.eu/enterprise/sectors/defence/files/final\\_report\\_trans\\_en.pdf](http://ec.europa.eu/enterprise/sectors/defence/files/final_report_trans_en.pdf)