

Brussels, 13 December 2014

# European Commission's strategy for the EU's security and defence sector – AmCham EU perspective".

AmCham EU welcomes the initiative of the European Council to devote its December 2013 meeting to defence and security matters. During his speech<sup>1</sup> on the occasion of the 50th anniversary of the American Chamber of Commerce to the EU (AmCham EU), President Herman Van Rompuy stated that *"getting ready for the future will be a central theme at the December 2013 European Council meeting"* and stressed the need for *"concrete progress on: (1) making the EU's crisis management tools more rapidly deployable and effective; (2) enhancing the development of our defence capabilities by setting the priorities for future investment and equipment procurement; and (3) and developing a more integrated, innovative and competitive European defence technological and industrial base."*

## 1. Background

On December 13-14, 2012, the European Council adopted ambitious conclusions on the EU Common Security and Defence Policy (CSDP)<sup>2</sup>. One of the key issues, underlined at that time by the European Council was:

*"Strengthen Europe's defence industry by:*

- developing a more integrated, sustainable, innovative and competitive European defence technological and industrial base;*
- developing greater synergies between civilian and military research and development; and*
- promoting a well-functioning defence market, in particular through the effective implementation of the directives on public procurement and on intra-EU transfers, open to SMEs and benefiting from their contributions."*

On July 24, 2013, the European Commission published a Communication on Security and Defence which contains an Action Plan to enhance the efficiency and competitiveness of Europe's defence and security sector. EU heads of state

<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/138082.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/138082.pdf)

and government were invited to discuss this Communication at the European Council meeting in December 2013, together with a report prepared by the High Representative of the Union for Foreign Affairs and Security Policy<sup>2</sup>.

This AmCham EU position paper outlines AmCham EU's position in response to the EC Communication on Security and Defence. 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 U.S. positions on business matters. We are committed to strong and productive cooperation between the U.S. and Europe, including in the field of security and defence. That's one of the reasons why we welcome and support the European Council's initiative to devote its December 2013 meeting to defence and security matters.

## 2. Introduction

AmCham EU strongly values the transatlantic partnership as indispensable in a global environment in which security challenges are growing more complex and demanding. As Europe is currently facing one of the worst economic challenges since many years, there is a need to work together to find tailored solutions to bring growth back to Europe. Therefore, we encourage the policy makers to continue their efforts to create the right policy and regulatory environment for businesses to thrive.

As Europe is attempting to turn a new page in its post-crisis recovery and look towards stable future, AmCham EU will remain strongly committed and ready to help the policy-makers to enable the security and defence sectors to drive innovation that will create the jobs and growth needed for Europe and its citizens.

AmCham EU believes 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 "globalizing" with emerging markets investing significantly in their security and defence industrial base. We believe the EU and the U.S. stand to gain from aligned public policies in Security and Defence.

Given its strong commitment to Europe's growth and reaffirming its previous defence- and export control-related recommendations<sup>3</sup>, AmCham EU is

<sup>2</sup> [http://ec.europa.eu/commission\\_2010-2014/barnier/headlines/news/2013/07/20130724-2\\_en.htm](http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2013/07/20130724-2_en.htm)

<sup>3</sup>

[http://www.amchameu.eu/DesktopModules/Bring2mind/DMX/Download.aspx?TabId=165&Command=Core\\_Download&EntryId=3320&PortalId=0&TabId=165](http://www.amchameu.eu/DesktopModules/Bring2mind/DMX/Download.aspx?TabId=165&Command=Core_Download&EntryId=3320&PortalId=0&TabId=165) +  
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submitting its policy recommendations and conclusions on some of the areas identified in the European Commission's Communication's Action Plan.. We hope this will provide the EU policy-makers 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. Ensure market efficiency

- (1) AmCham EU encourages the EU member states to implement the 2009/81/EC Defence Procurement Directive with a spirit of openness and transparency and to adopt procurement processes consistent with the Directive's intent to promote more competitiveness in the European security defence and equipment market.
- (2) Security of Supply is important for defence procurement. AmCham EU recognises the value of dialogue, consultation, and arrangements that facilitate the supply of defence articles and services. AmCham EU believes that it is particularly important for contracting authorities/entities to ensure that their Security of Supply requirements comply with the principle of non-discrimination between European and U.S. suppliers and fully comply with EU and national law.
- (3) EU member states are responsible for their own sovereign defence and security. AmCham EU recognises the essential contribution defence industries contribute in this regard and that collaborative research and development can help ensure this commitment is met. AmCham EU believes defence industries must remain viable to deliver capabilities that are called upon to meet the demands of defence and security.
- (4) AmChamEU also believes national procurement documents (contract notices, requests for proposal, requests for information, etc.) should be published not only in the national language, but also in English (or English summary). This would be mutually beneficial for European and US suppliers alike.
- (5) In the Chicago May 2012 Summit Declaration on "Defence Capabilities: Toward NATO Forces 2020", NATO heads of state and government confirmed that "*Maintaining a strong defence industry in Europe and making the fullest possible use of the potential of defence industrial cooperation across the Alliance remain an essential condition for delivering the capabilities needed for 2020 and beyond.*" AmCham EU fully supports the importance of Transatlantic Defence Industrial Cooperation (TADIC).

#### b. Tackle market distortions

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

AmCham EU believes the European Commission should actively contribute to this dialogue to achieve multilateral agreement on principles to limit the adverse effects of offsets.

In addition, the goal and advocacy of exposing competitive trade between countries and companies should include the benefits derived from an initiative that includes small, medium enterprise activity as well as research activities with a variety of companies and/or institutes. Since offset carries the perception of market distortion, the discussions should provide opportunities to introduce new innovative approaches to grow economic benefits in new defence markets as well as dual use potentials.

The European Commission could also create working groups with European and U.S. 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/U.S. defence industrial policies toward a transatlantic defence industrial policy that encourages a community of trusted friends and allies.

c. Improve security of supply

AmCham EU acknowledges the fact that the European and U.S. governments should promote and defend their national security interests by protecting critical technology and at the same time, building relationships and ensuring interoperability with friends and allies.

An obvious way for European and U.S. companies to become more attractive into each other's foreign security and defence markets would be for European and U.S. companies to establish a geographic presence in each other's markets through direct foreign investment. In order to allow European and U.S. 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 must be avoided on both sides of the Atlantic. Protectionist practices must also be avoided. In order to seriously reduce equipment prices, industrial fragmentation must be tackled on a transatlantic basis. In the very long term, sharing more projects to reduce costs may create an environment in which Europe and the U.S. invest in shared capability clusters, allowing them again to focus investment in certain areas and buy off-the-shelf from other clusters within the transatlantic community. Foreign investment, through partial or full ownership of a local company with connectivity to the customer, can lead to more interoperability with coalition partners and to competition in consolidating defence markets. Effective TADIC requires reciprocal market opening to Foreign Direct Investment (FDI) in national defence industries.

# POSITION STATEMENT



Language that encourages a preference to buy either EU or US products should be avoided. The US does have Buy American and related domestic content rules. However, the most onerous of these rules are waived for many European countries with Reciprocal Defence Procurement Memoranda of Understanding (RDP MOUs).

A common goal of the U.S. and Europe should be to improve predictability, transparency and efficiency for industry and governments in the acquisition and export control regimes across the Atlantic. This should stem from recognition at the political level that there is a mutual benefit in linking rather than opposing the European and U.S. defence industrial bases, in order to strengthen defence cooperation at large in today's context of the economic crisis, challenged competitiveness, new rising powers and growing common international threats.

d. Standardisation and Certification

Standardisation of defence equipment is an important basis for opening national markets and gradually creating a single European defence market.

AmCham EU also believes that it would be mutually beneficial for the U.S. and Europe to move towards a more harmonised transatlantic approach to the certification and standardisation of security and defence equipment and services to nurture a healthy transatlantic security and defence industrial base. Rather than looking to protect their own markets by creating separate standards, the U.S. and Europe should be working towards 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.

e. Competitiveness on third markets

In its 24 July 2013 Communication on Security and Defence, the European Commission states that *“the U.S. market is basically closed for imports from Europe.”* One should not only look to U.S. Department of Defense purchases from European companies in the EU, but also, for instance, take into account U.S. Department of Defense purchases from European companies in the U.S. and U.S. Industry purchases from European companies.

Understanding and interpreting data from arms and defence technology sales is a highly complex and monumental task. The international nature of the flow of capital within the arms industry makes it difficult to identify a company's “nationality”- an important consideration in the





defence procurement world. Information can be difficult to extrapolate when researching various data sources from the U.S. Government, European Union, and non-governmental organizations, and dissecting shareholder ownership<sup>4</sup>.

The last few years, a number of significant developments have occurred which illustrate the growing interconnectedness of the transatlantic defence marketplace. Examples include:

- (1) International teams have been formed to pursue opportunities at NATO and within member countries, often with the European company as lead partner with U.S. companies.
- (2) European firms are buying companies and investing in the U.S. at a high level, and European participation in the U.S. marketplace is growing. Indeed, EU companies (BAE Systems, Finmeccanica, Eurocopter, Turbomeca) won major contracts with the U.S. Department of Defence.
- (3) The supply chains for both European and North American companies are increasingly globalised.
- (4) Transatlantic cooperative programs are growing in number and importance.
- (5) The U.S. Army purchased 400 light utility helicopters from an EU aeronautical group.
- (6) North American defence companies have important investments in research and development and manufacturing in EU Member States.

f. Dual use export controls

Several members of AmCham EU are both importing dual-use technologies into and exporting from the European single market.

We would like to note in this context that the U.S. is currently undertaking a reform of its export control regime - the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). The objectives of the reform are to update the system to meet 21st century challenges, improve U.S. competitiveness and international trade efficiencies, and adequately protect national security. Regarding the review of the EU dual-use export control system, we strongly encourage the EU to exchange and coordinate with the U.S. in view of the latter's reforms, to ensure improved efficiency of both systems and increased competitiveness in both regimes.

Today, there is a common EU dual-use control list. However the EU regime permits each Member State to choose whether they want to supplement it with additional controls. As a result, the market remains strongly fragmented, harming operators' competitiveness both internally and vis-à-vis third countries. Moving forward, we believe Member

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<sup>4</sup> <http://www.disamjournal.org/m/articles/french-defense-exports-towards-the-united-states-understanding-the-environment-858>

States' discretionary authority should be limited. Going even further, true market integration is desirable. to avoid the most restrictive national regimes in existence today.

Member states have great flexibility in extending catch-all controls in their territory, without coordinating their decisions with other Member States. This both fragments the internal market and causes legal uncertainty, which is time and resource-consuming for business operators to investigate and lift. Thereby, the existence of uncoordinated catch-all controls in the various Member States multiplies the negative impact of market fragmentation on EU operators' global competitiveness. A realistic approach needs to take into account that Member States may neither wish to renounce their existing right to impose catch-all controls, nor welcome legal or procedural means of circumventing them. That being the case, a pragmatic first step could be to foster better coordination and information exchange between Member States. This could, in the near future, provide greater clarity and legal certainty to operators. In the longer term it could help address distortions in the single market.

#### **4. Conclusions**

In conclusion, we would like to highlight the following messages:

- a. AmCham EU supports efforts of policy makers to enhance the efficiency and strengthen the competitiveness of the European defence equipment market place. In doing so, we wish to reiterate that market reforms or improvements to procurement practices should be considered in light of the global forces and trends affecting all defence markets and companies supplying defence equipment.
- b. In a global environment where security and defence challenges are growing more complex and demanding, transatlantic partnerships and cooperation will remain indispensable. AmCham EU strongly supports the EU objective to further develop its Common Security and Defence Policy (CSDP) as a stronger CSDP will reinforce the transatlantic security relationship. On the industrial side, transatlantic cooperation will contribute to the health of the defence industrial base on both sides of the Atlantic.
- c. Given the current economic downturn and the need to “do more with less”, AmCham EU believes pooling resources among groups of nations to increase economies of scale and reduce acquisition, operation, maintenance and training costs is even more urgent. AmCham EU urges the European and U.S. Governments to recognise the potential for a certain degree of mutual interdependence of supplies needed for national security, and calls for the parties to explore solutions for achieving “transatlantic” assurance of supply, whether related to non-dependencies, supply chains or investments in key technological and industrial capabilities.

- d. 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.

We hope that AmCham EU's recommendations will be strongly considered and taken into account. We look forward to your feedback and would be happy to discuss these matters further.

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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 US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.*