

Department of State Bureau of Political Military Affairs



**Nancy Meyer
Directorate of Defense
Trade Controls**



AGENDA

- **U.S. Exports Organizational Structure**
- **Law/Regulations Governing U.S. Exports**
- **Directorate of Defense Trade Controls**
- **U.S. Export Definitions, Policies and Guidelines**
- **Retransfer/Reexport Requirements**
- **Penalties and Violations**

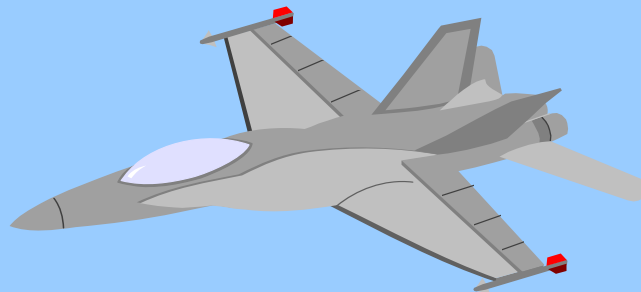


U.S. Exports Organizational Structure

PM: Directorate of Defense Trade Controls (DDTC)

Mission Statement

Advance National Strategic Objectives and U.S. Foreign Policy Goals through timely enforcement of defense trade controls and the formulation of defense trade policy.



DDTC Organization

Gregory Suchan
Deputy Assistant Secretary

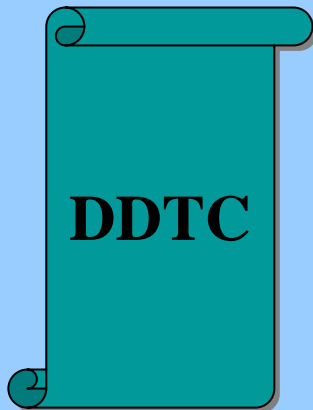
Robert “Turk” Maggi
Managing Director

Management (DTCM)

Licensing (DTCL)

Compliance (DTCC)

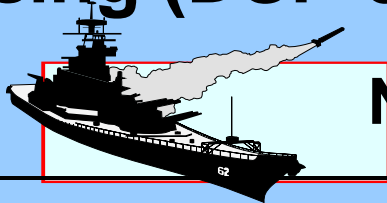
Policy (DTCP)



Licensing Directorate

Licensing (DSP-5/73/etc)

T2C



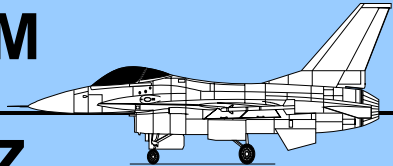
Naval Vessels, Military Vehicles

T3D

Space & Missiles



T4M



Helicopters & Electronics

T5Z

Fixed Wing Aircraft & Engines

T6F

Small Arms



Agreements

All Categories



Law and Regulations Governing U.S. Exports

Arms Export Control Act (AECA)

- **Overall Legislation Governing Arms Sales**
Foundation of Regulatory Process
- **Delegation of Authority**
- **Mandates Registration of Manufacturers**
Exporters and Brokers
- **Licensing Requirement**
- **End-use and Retransfer Assurances**
- **Requires Monitoring/Reporting Fees,**
contributions and Commissions
- **Establishes Fines and Penalties**

International Traffic in Arms Regulations (ITAR)

- **Contains the U.S. Munitions List (USML) ---
Designates Defense Articles/Services
Subject to Department of State Export
Jurisdiction**
- **Licensing Policy and Procedures**
- **Compliance and Enforcement**
 - **Fines and Penalties**

DTC Guidelines

- **Guidelines for Agreements, Oct 03**
 - **Contains Formats and Policies**
- **Guidelines for Licenses**
 - **Contains Submission Information**

Located on DTC Home Page
www.pmdtc.org



Directorate of Defense Trade Controls Responsibilities

DTC Responsibilities

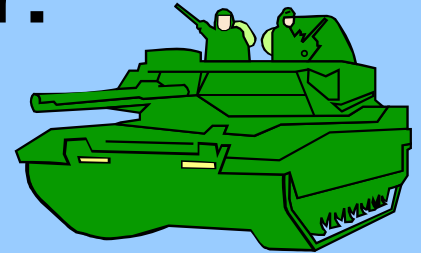
- **Administer and Enforce AECA and ITAR**
- **Control Export and Temporary Import of Defense Articles and Services in Furtherance of U.S. Foreign Policy and National Security**

Purpose of Arms Sales

**Foreign Assistance Act (FAA) & Arms
Export Control Act (AECA)**

**Defense Articles and Services Shall Be
Furnished or Sold Solely For:**

- Internal Security**
- Legitimate Self-Defense**
- To Permit Recipient Country to Participate
in Regional or Collective Arrangements
Consistent With the Charter of the UN**
- In Less Developed Friendly Countries for
Public Works**



U.S. Export Control Concerns

- **Foreign Policy**
- **National Security**
- **Human Rights**
- **Regional Stability**
- **Proliferation**





U.S. Exports Defined and Explained

What is an Export?

- Sending or Taking a **Defense Article** or **Technical Data** Out of the United States
- Disclosing, *by Any Means*, or Transferring a **Defense Article** or **Technical Data** to a Foreign Person *in the United States or Abroad*.
- Performing a **Defense Service** on Behalf of, or for the Benefit of, a Foreign Person *in the United States or Abroad*.

What is Technical Data?

- Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.
- This DOES NOT include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain.

What is a Defense Service?

- **Furnishing of Assistance (Including Training) to Foreign Persons**
 - Encompasses design, development, engineering, manufacture, production, assembly, testing, repair, modification, operation, demilitarization, destruction, processing, installation, integration, training, or use of defense articles
- **Furnishing to Foreign Persons Any Technical Data Controlled Under the USML**
- **Military Training of Foreign Units and Forces**

DDTC Export Mechanisms



LICENSE

Exports Hardware or Technical Data

AGREEMENT

Exports Technical Data, *Defense Services*
with Possible Hardware

EXEMPTIONS

Exports without Department of State
Authorization

Types of Export Licenses

- **DSP-5** ➤ **Permanent Export**
- **DSP-61** ➤ **Temporary Import**
- **DSP-73** ➤ **Temporary Export**
- **DSP-85** ➤ **Classified Exports/Imports**



- **Valid for Maximum of Four Years**
- **A License Expires Whenever:**
 - **Total Value Authorized Has Been Shipped, or**
 - **Total Quantity Authorized Has Been Shipped, or**
 - **Date of Expiration Is Reached**

Types of Agreements

- **Technical Assistance Agreement (TAA)**
 - Discloses Technical Data and Provides **Technical Assistance**
 - Can Include Low-Level Assembly of Defense Articles
 - No Manufacturing or Production Rights Are Provided
- **Manufacturing License Agreement (MLA)**
 - Authorizes Manufacture of Defense Articles Abroad
 - Automatically Includes Technical Assistance
 - Must Provide **Manufacture Know-How** & Result in **Production**

Activities Requiring Agreements

- Marketing Products to Foreign Parties
- Support Sales to Foreign Parties
- Providing Overseas Maintenance or Training Support
- Technical Studies or Evaluations with Foreign Parties
- Release of Manufacturing Data and/or Rights
- Efforts to Import Technology from Abroad
- Supporting a Foreign Military Sales Case
- Supporting USG-Sponsored Contracts

** Exemptions Exist for Some of the Above Examples



U.S. Exports Review Process Policies & Guidelines

What is Reviewed?

- **Applicant Eligibility**
- **Commodity and Quantity**
- **End-Use and End-Users**
- **Value of Exports**
- **Compliance with Procedures and Policies**
- **Retransfer Requests**
- **Shipping Details**
- **Congressional Thresholds/Interests**

How is It Assessed?

◆ Risk Assessment ◆ Conducted Against

- **National Security Issues**
- **Foreign Policy Issues**
 - Regional Stability
 - Human Rights
 - Multilateral Control Regimes
- **Arms Proliferation Concerns**

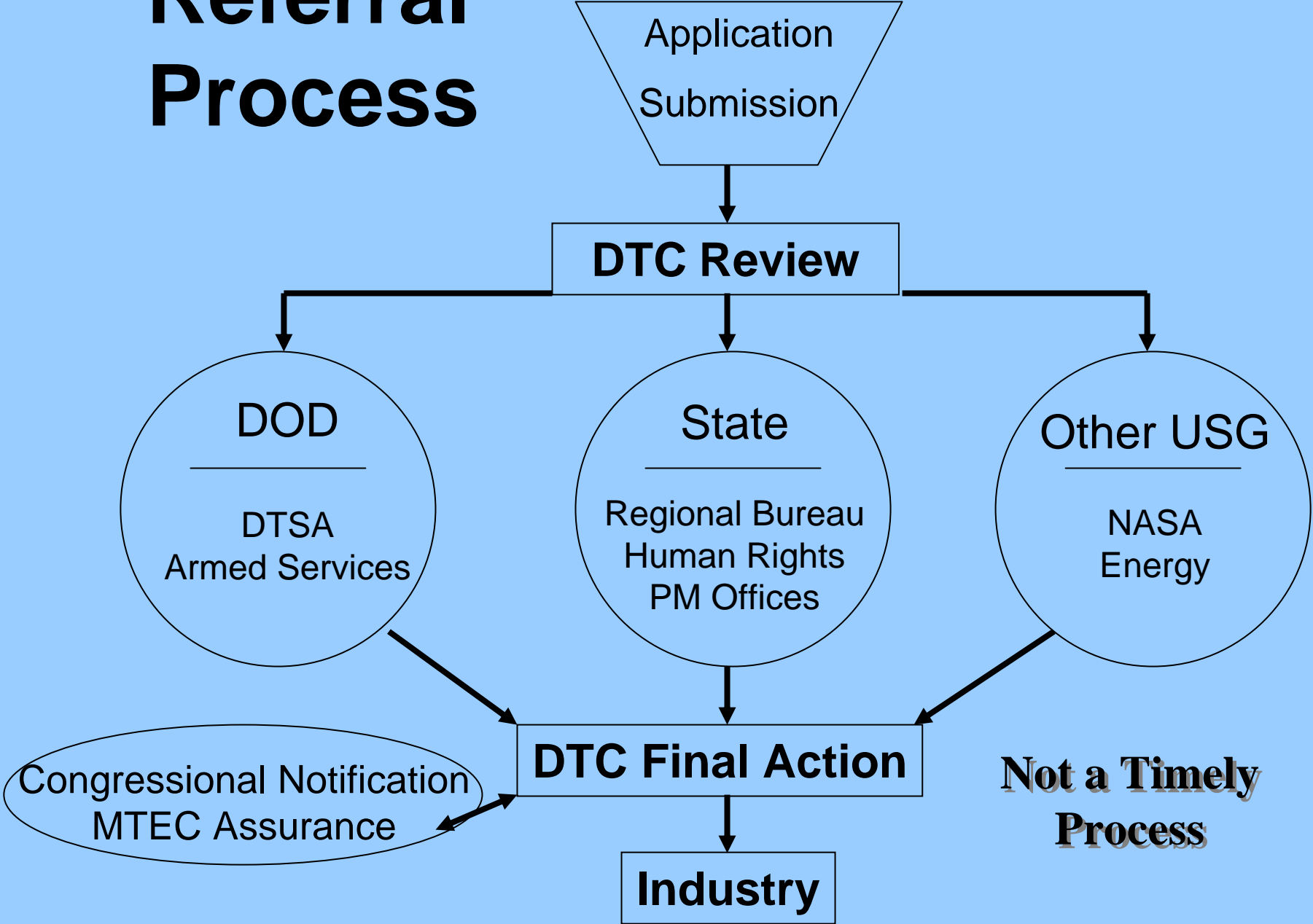
DSP-83 Non-transfer and Use Certificate

DSP-83 Is Required When Exporting:

- **Significant Military Equipment (SME)**
- **Technical Data Related to the Manufacture or Production of SME**
- **U.S. or Foreign Classified Data or Hardware**

**ITAR 124.10 Allows DDTTC to Require a DSP-83
Even If the Transaction Does Not Relate to
SME or Classified**

Referral Process



Subcontracting/Sublicensing

◆ **A Real Concern of DTC** ◆

**Defined as the Retransfer of Exported
U.S. Technology to a Third Party**

**Retransfers Were Recognized as High
Source for Leaked Technology**

**DTC Clamped Down and Began Requiring
More Information Since Summer 2003**

Subcontracting/Sublicensing

When Requested, Agreements Require:

- General Purpose of Sublicensing
- Roles of the Sublicensees / Subcontractors
- Technical Data Expected to be Retr transferred
- Each Sublicensee Must be Identified by Name and Country of Residence and Transfer

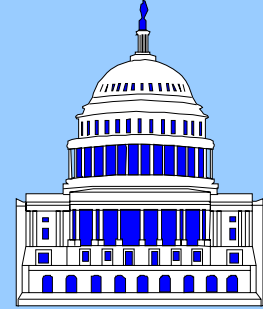
Non-Disclosure Agreements (NDAs) Must Be Executed by All Sublicensees

Third Country Employees

- Non-Disclosure Agreements (NDAs) must be Executed
- Includes DUAL NATIONALS
- Countries of Third Country Employees must be identified in agreements
 - Additional information may be required (name, level of access, job description)

Congressional Oversight

**The Arms Export Control Act
Requires that DDTTC:**



- **Provide Annual and Quarterly Reports of Authorizations to Congress**
- **Obtain Congressional Approval of Certain Proposed Exports**
- **Notify Congress of Unauthorized Transfers**

Process Improvement Efforts

- **Creating an Electronic Submission System (D-TRADE)**
- **Approving More GPAs and MPAs**
- **Providing Detailed Guidelines on Formats and Policies**



Penalties and Violations

- **Reexport/Retransfer Without Prior USG Approval A Violation of the AECA/ITAR**
- **Violators Subject to Fines/Penalties/Debarment**
- **Ineligible To Be Party to Export License Application In Any Manner**



Re-exports and Retransfers

How U.S. Regulations Apply To You

Context of Retransfer Requirements

- AECA/ITAR Requires Accountability and Control of U.S. Origin Defense Articles *Subsequent to Export*
- Challenges of Controlling Technology Transfer
- Scope of U.S. Retransfer Requirements Differ From That of Other Countries
- End Items AND Components
- One of Few Authorizations Foreign Party May Request

DEFINITIONS

- ITAR 120.9: “Reexport Or Retransfer Means the Transfer of Defense Articles or Defense Services To An End Use, End User or Destination Not Previously Authorized”
- Applies to Defense Articles, Technical Data Approved Under License or Articles Produced Under Manufacturing License Agreements

ITAR Retransfer Provisions

- **Country of Ultimate Destination on License Must Be Final Destination**
- **Prior Written Approval Required *Before* Reselling/Transferring/Transshipping**
- **Exporters Must Ascertain End User/Use Prior To Claiming Exemptions**
- **U.S. Origin Defense Articles May Not Be Disposed Of/Incorporated Into Higher Level End Items Without US Government Approval**

How Does Non U.S. Know an Item Is ITAR Controlled?

- **Good Business/Regulatory Practice To Know Source of Imports**
- **123.9(b) Requirement for Statement on Bill of Lading/Invoice: “These Commodities Are Authorized By the USG For Export Only To ___ for End Use By ____. They May Not Be Transferred/Transhipped On Non-Continuous voyage Or Otherwise Disposed Of In Any Other Country Either In original Form or After Incorporation Without Prior Written USG Approval.”**
- **Commerce Destination Control Statement**

Who May Apply For Retransfer/Re-exports?

- **123.9(c): Either U.S. Or Foreign Person May Apply**
- **Written Request/General Correspondence to PM/DTCL (Licensing) – Not A Fax/Email**
- **Agreements Must Be Amended**
- **Data Requirements: Original License Description/Quantity/ Value/New End-Use/End-user**
- **Support Documentation From Foreign Parties**
- **DSP-83/Congressional Notification May Apply**

Re-export Exemption

- **Re-exports/Retransfers of US Origin Components Incorporated Into Foreign Defense Article**
- **NATO/Australia/Japan**
- **Previously Exported Under Authorized License/Exemption**
- **Not Significant Military (120.7) /Major Defense Equipment (120.8)**
- **Not on the Missile Technology Regime Annex**
- **Value Below Congressional Notification Thresholds**
- **Written Notification Certification**

Temporary Import Exemption

- **Repair/Overhaul/Testing One On One Replacement Parts/Components**
- **Excludes Modifications/Upgrades Which Changes Performance *Unless* The Modified Item Has Been Separately Licensed**
- **Return To Original Country On License**
- **Exhibition/Demonstration/Marketing**
- **Rejected For Permanent Import By ATF**
- **NEED TO INFORM US COMPANY IN ADVANCE OR EXEMPTION IS VOID**

License Planning To Include Third Party Activities

- **License Applications May Request Prior Approvals for Some Types of Retransfers**
- **Distribution Agreements Under Part 124 Includes Pre-approved Sales Territories/End Users**
- **Sublicensing Under Part 124**
- **Provide Complete Information On Third Party Nationals To U.S. Applicants**
- **Be Aware of Sanctions**

VIOLATIONS

- ❖ Unlawful to violate any of the terms and conditions of the ITAR**
- ❖ Re-export/Retransfer Without Prior USG Approval A Violation of the AECA/ITAR**

PENALTIES

CRIMINAL –

EACH VIOLATION A FINE OF NOT MORE THAN \$1,000,000
OR IMPRISONMENT OF NOT MORE THAN 10 YEARS

CIVIL –

EACH VIOLATION A FINE OF NOT MORE THAN \$500,000

INELIGIBILITY –

MAY ALSO RESULT IN DEBARMENT OR POLICY OF DENIAL
TO BE A PARTY IN ANY MANNER TO EXPORT LICENSE