



U.S. Export Controls on Defense Trade

Overview:

Arms Export Controls Act

International Traffic in Arms Regulations

Basic Licensing Information

Navigating U.S. Export Controls
U.S. Embassy, London and
The Society for International Affairs
London, England
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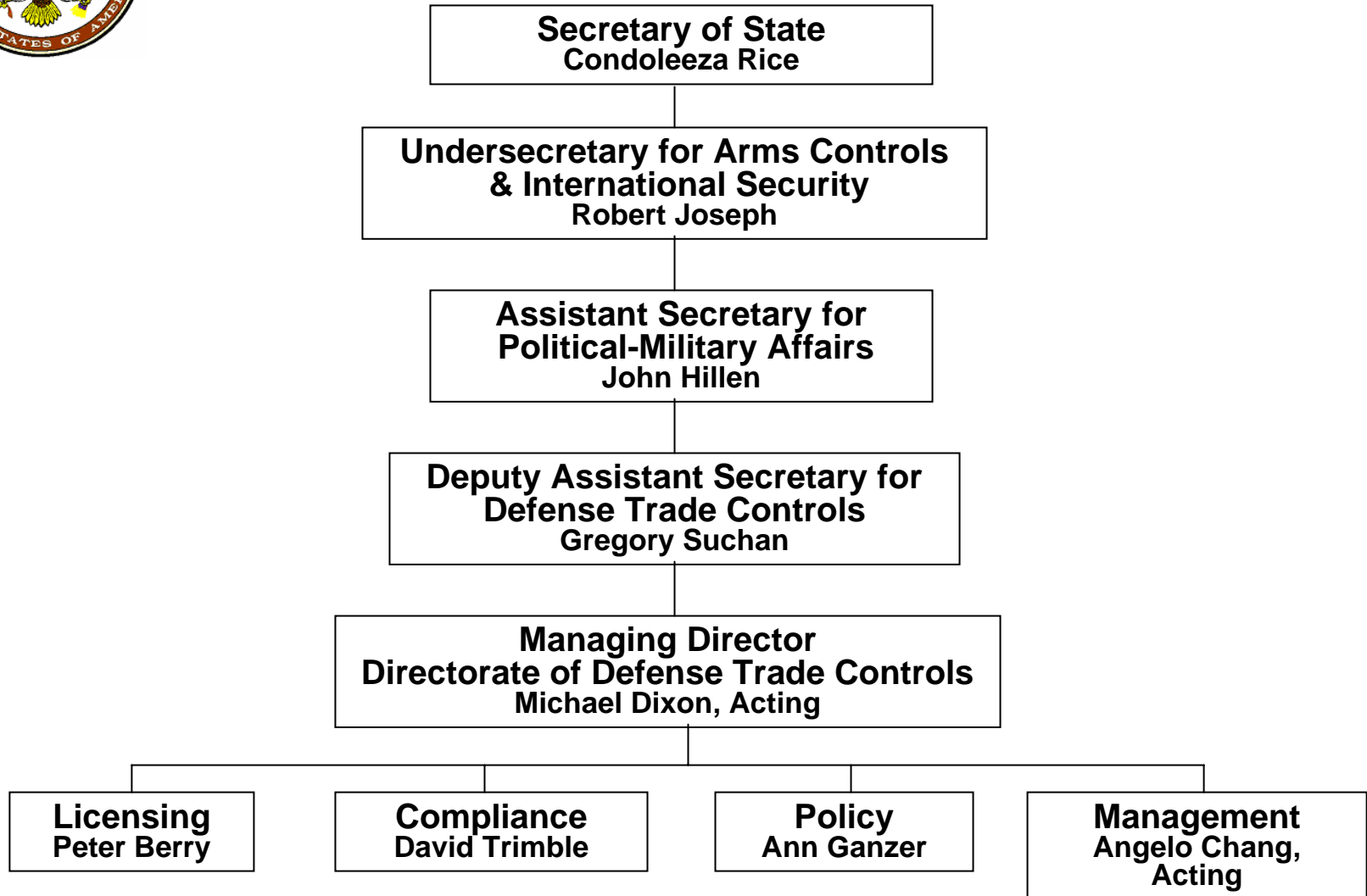
Arms Export Control Act (AECA)

(22 U.S.C. 2778-2780) (P.L. 90-629)

- Federal law whereby the U.S. Congress authorizes the President to control defense trade.
- Under the direction of the President, control is exercised by the Secretary of State.
 - Defense trade via commercial channels controlled by State Department's **Directorate of Defense Trade Controls**.
 - Defense trade via government-to-government channels delegated to the Secretary of Defense and the **Defense Security Cooperation Agency** under the Foreign Military Sales Program.
- U.S. Congress imposes oversight and reporting requirements on the Executive Branch.



Organizational Structure of Export Controls at the Department of State





Purpose of the AECA

Establish International Goals

- Consistent with bilateral and multilateral arms control and non-proliferation agreements or other arrangements.
- Encourage regional arms control & disarmament agreements to reduce defense trade and the danger of war.
- Discourage an arms race.



Purpose of the AECA

Establish U.S. National Goals

- Consistent with U.S. foreign policy.
- Insure U.S. national security.
- Respect for international human rights.
- Prevent proliferation
 - nuclear, chemical, biological **and** conventional
 - means of delivery (missiles or rockets)
- Prevent terrorism.



Purpose of the AECA

Establish Allied or Partner Goals

- Promote self-defense of US allies and friends.
- Establish compatibility and inter-operability for collective action.
- Promote mutual defense relationships to share development costs.



Purpose of the AECA

Industry Requirements

- Registration of any person in the U.S. who manufactures or exports defense articles or provides defense services to foreign persons.
- Registration of U.S. brokers and registration of foreign brokers subject to U.S. law.
- Identify all parties to a defense trade transaction in any license request.



Purpose of the AECA

Executive Branch Requirements

- Create and maintain the U.S. Munitions List of controlled technology - hardware, data, services.
- Obtain end-user and end-use certification.
- Notify U.S. Congress of certain proposed defense trade transactions.
- Report to U.S. Congress on fees, commissions, payments, gifts or political contributions to foreign persons related to defense trade transactions.



Purpose of the AECA

Executive Branch Requirements

- Establish and maintain a “Watchlist.”
- Establish an end-use monitoring program on defense trade transactions - “Blue Lantern Program.”
- Notify U.S. Congress of unauthorized re-exports or re-transfers by foreign persons of U.S. defense articles or technology.



Purpose of the AECA

Establish Authority of Executive Branch

- Approve, deny, revoke or suspend any license or license request.
- Proscribe certain countries and debar or declare ineligible certain U.S. or non-U.S. parties.
- Impose fines and penalties.
- Establish certain definitions further enumerated in the federal regulations.



International Traffic in Arms Regulations (ITAR) (22 CFR 120-130)

- Federal regulations which implement the Arms Export Control Act.
- Establishes the policy, licensing and compliance framework for the trade control function administered by the Departments of State and Defense.
- Details the U.S. Munitions List (USML).



International Traffic in Arms Regulations (ITAR) (22 CFR 120-130)

Divided into 11 sections:

- 120 -- Purpose & Definitions
- 121 -- U.S. Munitions List
- 122 -- Registration
- 123 -- Licenses for Defense Articles & Exemptions
- 124 -- Agreements for Defense Services & Exemptions
- 125 -- Technical Data & Exemptions
- 126 -- Policies & Provisions
- 127 -- Violations & Penalties
- 128 -- Administrative Procedures
- 129 -- Brokers – Registration & Licensing
- 130 -- Political Contributions, Fees & Commissions.



ITAR Definitions

U.S. Person

- U.S. citizen or national
- legal permanent resident alien
- corporation, business association, partnership, society, trust, organization or group incorporated to do business in the U.S.
- U.S. local, state or federal governmental entity.



ITAR Definitions

Foreign Person

- any natural person who is not a U.S. person
- foreign corporation, business association, partnership, society, trust or any other entity that is not incorporated to do business in the U.S.
- foreign governments
- international organizations.



ITAR Definitions

Defense Article

- designated by the Department of State on behalf of the President
- determined after consultation with the Departments of Defense and Commerce
- hardware or technical data
- unclassified or classified
- identified on the U.S. Munitions List.



ITAR Definitions

Defense Service

- assistance or training of foreign persons
- related to design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, destruction, demilitarization, processing or use of a defense article
- may occur in the U.S. or overseas
- occurs even when all associated data is in the public domain.



ITAR Definitions

Policy on Designating Defense Articles and Defense Services

- Specifically designed, developed, configured, adapted or modified for military application.
- No predominant civil application or performance equivalent in civil application.
- Intended use of the article after export is NOT relevant in determining if the item is considered a defense article.



ITAR Definitions

Export

- sending or taking a defense article out of the U.S.
- transferring registration, control or ownership of a defense article to a foreign person abroad or in the U.S.
- disclosing technical data to a foreign person abroad or in the U.S.
- performing a defense service for a foreign person abroad or in the U.S.



ITAR Definitions

Re-export

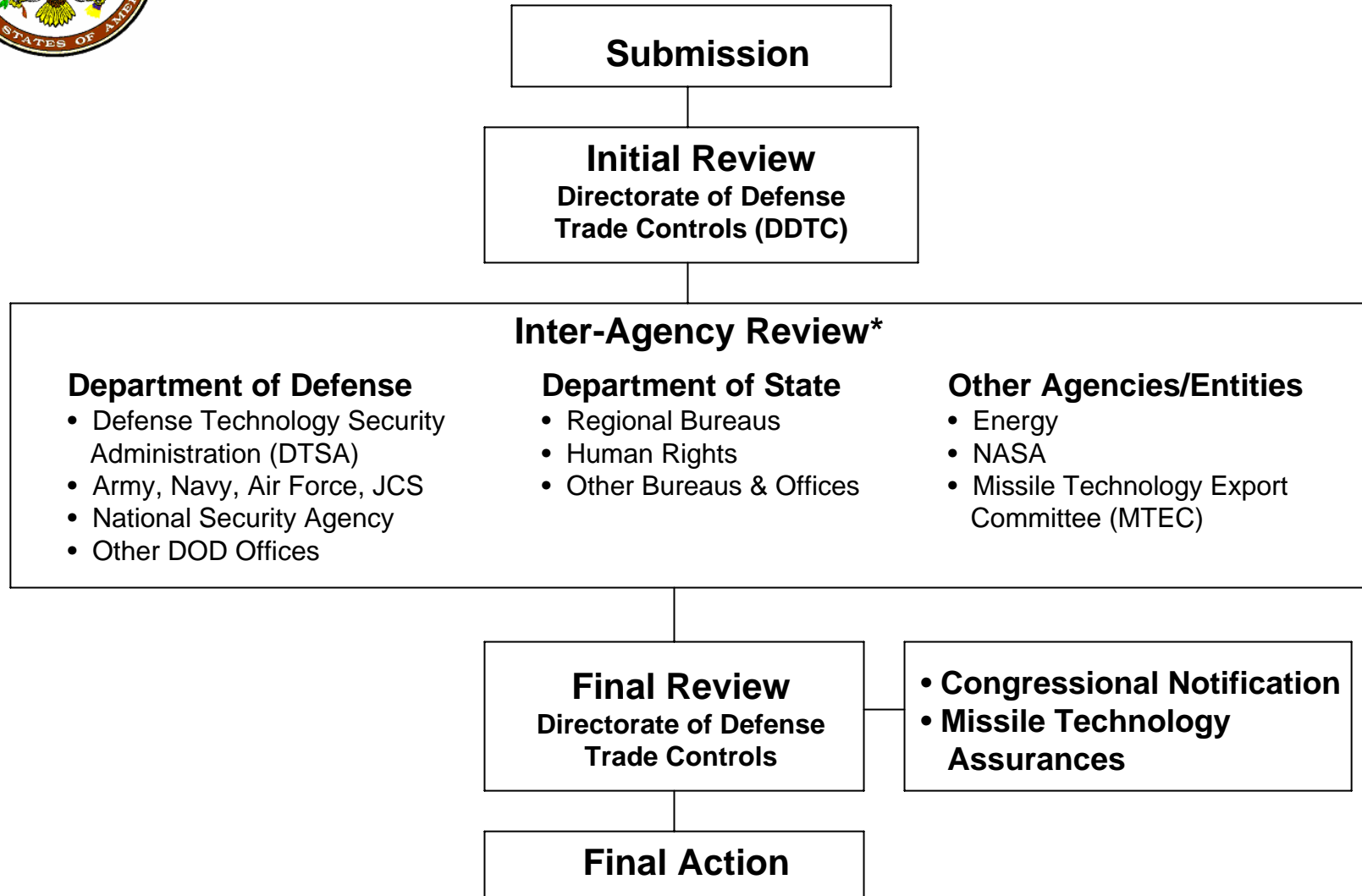
- export of a defense article or defense service from a foreign end-user in one country to a foreign end-user ***in or from*** another country.

Re-transfer

- transfer of a defense article or defense service from one end-use to a different end-use.



Life Cycle of a License Request



*inter-agency review required for approximately 30% of all license requests examined by DDTC.



Federal Agencies Involved in Defense Trade Controls

- State Department
 - Bureau of Political-Military Affairs
 - Regional Bureaus and Country Desks
 - Bureau of Democracy, Human Rights & Labor
 - Bureau for International Security & Non-Proliferation
 - Bureau of Intelligence & Research
 - Legal Advisor
- Defense Department
 - Defense Technology Security Administration (DTSA)
 - Uniformed Military Services (Army, Navy, Air Force & JCS)
 - National Security Agency
 - Defense Intelligence Agency



Federal Agencies Involved in Defense Trade Controls

- Energy
- National Aeronautics & Space Administration
- Commerce - Bureau of Industry & Security (BIS)
- Central Intelligence Agency



Federal Agencies Involved in Defense Trade Controls

- Homeland Security
 - Immigration and Customs Enforcement (ICE)
 - Customs and Border Protection (CBP)
- Justice
 - U.S. Attorneys
 - Federal Bureau of Investigation (FBI)



Types of License Requests

Licenses:

- DSP-5 Permanent Export of Unclassified Hardware & Technical Data
- DSP-61 Temporary Import of Unclassified Hardware
- DSP-73 Temporary Export of Unclassified Hardware
- DSP-85 Permanent/Temporary Export of Classified Hardware & Technical Data and Temporary Import of Classified Hardware & Technical Data.
- DSP-94 Export of Hardware sold under the FMS Program
- DSP-119 Amendment to License
- DSP-83 Non-transfer and Use Certificate (supports license request)



Types of License Requests

Agreements:

Technical Assistance Agreement (TAA)

Manufacturing License Agreement (MLA)

Warehouse & Distribution Agreement

General Correspondence (GC) Letter

Re-export or Re-transfer

Advisory Opinion

Other request for authority



License Requirements

Four critical elements of a license request:

- **COUNTRY** (consistent with US defense trade policy)
- **COMMODITY** (clearly and completely identified)
- **END-USER** (correspond with country)
- **END-USE** (appropriate for the end-user and commodity).

These elements are established in the Arms Export Control Act and further codified as licensing evaluation standards by the Directorate of Defense Trade Controls for all license requests and re-export/re-transfer requests.



License Review Requirements

Four critical documents in a license request:

- **LICENSE REQUEST** (completed in full)
- **U.S. PARTY CERTIFICATIONS**
 - eligibility of all parties
 - fees, commissions, payments, gifts or political contributions.
- **FOREIGN PARTY CERTIFICATIONS**
 - purchase order, signed contract or letter of intent
 - DSP-83 Non-transfer and Use Certificate.
- **DESCRIPTIVE LITERATURE/TECHNICAL DATA**

These elements are established in the Arms Export Control Act and further codified as licensing evaluation standards by the Directorate of Defense Trade Controls for all license requests and re-export/re-transfer requests.



License Statistics

Total of All License Requests Reviewed:

FY2004	56,400
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FY2003	53,600
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FY2002	49,500
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Note:

FY denotes the U.S. Government Fiscal Year (October 1 through September 30).



License Statistics

<u>Type</u>	<u>FY2004</u>	<u>FY2003</u>	<u>FY2002</u>
DSP-5	39,000	34,100	32,000
DSP-61	1,300	1,200	1,200
DSP-73	3,000	2,700	2,700
DSP-85	300	250	250
DSP-119	6,500	8,700	7,800
TAA/amendments	5,400	5,300	4,200
MLA/amendments	600	800	500
W&D	<100	<100	<100



License Time-lines

Median Review Time

Immediate Action

Inter-Agency Review

Conventional Submission
(Paper or *Ellie Net*)

14 days

50 days

D-TRADE Submission

11 days

25 days



Learn more about U.S. defense trade controls by visiting the Department of State's Directorate of Defense Trade Controls on the Internet at:

www.pmdtc.org



Effect of Law & Regulations on non-U.S. Companies

- Registration and licensing consequences from mergers & acquisitions (ITAR 122)
- Registration and licensing of non-U.S. brokers subject to U.S. law or jurisdiction (ITAR 129)
- Re-export and re-transfer controls (ITAR 123.9)
 - U.S. origin hardware, technical data and defense services
 - hardware or technological capability resulting from Technical Assistance or Manufacturing License Agreements



Effect of Law & Regulations on non-U.S. Companies

- U.S. foreign or national security policy or human rights concerns
- U.S. bilateral and multilateral agreements
- Proscribed destinations or countries (ITAR 126.1)
- Political contributions, fees, commissions (ITAR 130)



Effect of Law & Regulations on non-U.S. Companies

- Debarred or ineligible U.S. & non-U.S. parties
- parties identified on the “Watchlist”
- non-U.S. persons from third countries
 - employment or other means of access
 - sub-contracting
- “Blue Lantern” end-use monitoring program



Effect of Law & Regulations on non-U.S. Companies

- Voluntary and Directed Disclosures (ITAR 127)
- Judicial or non-judicial proceedings
 - criminal prosecution
 - civil administrative proceeding (ITAR 128)
- imprisonment, monetary fines & non-financial penalties



Post-Licensing Responsibility for non-U.S. companies

- Record-keeping – receipt and disposition
- Inventory tracking and control
 - internal use
 - incorporation into higher level assembly
 - re-sale to another party
- Control access by non-U.S. persons from a third country to U.S. defense articles, technical data or defense services (i.e., technology)



Post-Licensing Responsibility for non-U.S. Companies

- Re-export or re-transfer (ITAR 123.9)*
 - takes the form of a General Correspondence letter
 - corporate letterhead and original signature
 - addressed to DDTC – Director of Licensing
 - identifies commodity, quantity, dollar value, end-user/use
 - references prior licensing history
 - other documentation (e.g., purchase document, DSP-83)
 - assigned a four digit case number and the year: GC-1234-05
 - may be subject of inter-agency review.

*For a re-export/re-transfer under the terms of a Technical Assistance or Manufacturing License Agreement, the request normally takes the form of an amendment to the agreement.



U.S. Compliance & Enforcement Responsibility

- broad authority exercised by the U.S. Government under the AECA for civil and criminal enforcement
- U.S. corporation assumes legal responsibilities over major elements of every defense trade transaction
- Individual and corporation may be held liable for criminal and civil offenses under the AECA and its enumerated statutes (e.g., Foreign Corrupt Practices Act)



U.S. Compliance & Enforcement Responsibility

- Civil offenses under the AECA impose “strict liability” on individuals and corporations for:
 - exports or imports without a license
 - conspiracy to export or import without a license
 - violation of license terms and conditions
 - aid, abet, counsel, induce, procure in an unauthorized transaction
 - misrepresentation or omission of facts.



U.S. Compliance & Enforcement Responsibility

- non-U.S. individuals or corporations may be directly affected if subject to U.S. law
- non-U.S. individuals or corporations may be indirectly affected through various compliance and licensing measures:
 - eligibility to meet registration or license requirements
 - effect on current licenses
 - effect on foreign subsidiary of U.S. company or U.S. subsidiary of foreign company



U.S. Compliance & Enforcement Responsibility

- Criminal enforcement cases:
 - investigated by the Department of Homeland Security, Immigration & Customs Enforcement
 - prosecuted by the Department of Justice, U.S. Attorney's Office.
- Civil enforcement cases conducted by the Office of Compliance, Directorate of Defense Trade Controls.
- Counter-intelligence cases investigated by the Federal Bureau of Investigation and prosecuted by the Department of Justice, U.S. Attorney's Office.



Monetary Fines & Other Penalties Under the AECA

Criminal charge:

- \$1 million for each violation
- up to 10 years imprisonment
- debarment from licensing.

Civil charge:

- \$500,000 for each violation
- debarment from licensing
- extra-compliance measures.



Recent Criminal Cases

<u>Company/Individual</u>	<u>Action</u>	<u>Comments</u>
Rotair	Guilty Plea	Illegally exported military helicopter parts to China.
Carlos Gamarra-Murillo	Arrested	AK-47 and ammunition for FARC group in Colombia.
Leib Kohn	Guilty Plea	Aircraft and Missile parts to Iran.
Hemant Lakhani	Guilty	MANPAD attempted purchase and export for use by terrorists.
Ziad Jamil Gammoh	Guilty Plea	Conspiracy to export Fighter Aircraft spare parts to China.



Recent Administrative Settlements

	\$ Amount	Year	# Charges
• DirecTV/HNS/Hughes	\$5,000,000	2005	56
• DirecTV (Hughes)	1,500,000	2005	--
• ITT	8,000,000	2004	95
• GM/General Dynamics	20,000,000	2004	248
• Agilent Technologies	225,000	2003	3
• EDO Corporation	2,500,000	2003	47
• Hughes/Boeing	32,000,000	2003	123
• Multigen-Paradigm	2,000,000	2003	24
• Raytheon Company	25,000,000	2003	26



Current Trends in Defense Trade

- Increasing globalization in the development, manufacture, distribution and supply of defense articles and technology.
- Open borders among European Union countries.
- Differences among allied nations in defense spending on research & development and procurement.



Common Compliance Issues

- Transatlantic investment, merger and acquisition under multiple country laws and regulations.
- Fierce competition between domestic and foreign manufacturers highlights concerns with:
 - direct or indirect industrial subsidies
 - offset and counter-trade policy
 - technology transfer
 - foreign direct investment.



Current Compliance Issues

- Human capital mobility and greater foreign person participation in the domestic work force
- Use of Internet and virtual private networks for communication and exchange of controlled technical data.
- Use of license exemptions.
- Adherence to license provisos.
- Creation of paper companies for licensing or financing schemes to avoid liability or accountability.



Brokering and U.S. Defense Articles & Services

- 1996 U.S. Congress amends the AECA to include export controls on brokering. State Department amends its regulations - See ITAR 129.
- Congressional concern that brokering transactions could fuel regional instability, support terrorism or run counter to U.S. policy restrictions on sales.
- Brokering broadly defined as “financing, transportation, freight forwarding or taking of any other action that facilitates the manufacture, export or import of a defense article or defense service.”



Brokering and U.S. Defense Articles & Services

- Brokering does NOT include entities whose ***exclusive*** business is financing, transporting or freight forwarding.
- Law addresses U.S. persons brokering anywhere and foreign persons subject to U.S. law (those brokering in the U.S. or brokering U.S. origin defense articles overseas).
- Registration required for U.S. brokers and foreign brokers subject to U.S. law.



Brokering and U.S. Defense Articles & Services

- Brokering license requirement dependent upon:
 - type of defense article or service
 - dollar value of transaction
 - country of ultimate destination.
- Certain license exemptions may apply.
- Annual reporting requirement to the Office of Compliance, Directorate of Defense Trade Controls.



Recommended Compliance Measure

A Compliance Plan addressing:

- company-wide commitment
- identification and empowerment of sufficient personnel responsible for defense trade controls
- knowledge of U.S. laws and regulations
- training and education.



Recommended Compliance Measure

A Compliance Plan addressing:

- integration of the export controls function into the corporate business strategy for product development, marketing, financing, sale and post sale service
- development of internal policies and procedures that are standardized and automated
 - record-keeping
 - inventory control and access
 - customer eligibility and vetting.



Recommended Compliance Measure

A Compliance Plan addressing:

- facility and electronic (IT/Internet) security
- terms and conditions of the U.S. license approval
- procedures on use of license exemptions
- reporting requirements to the U.S.
- self-assessment or auditing and disclosure.