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Bureau of Politico-Military Affairs

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*Written and Edited by the Center for Defense Trade*

**Secretary of State**  
James A. Baker III

**Assistant Secretary  
of State for  
Politico-Military  
Affairs**  
Richard A. Clarke

**Director of the Center  
for Defense Trade**  
Charles A. Duelfer

**Executive Editor**  
Richard A. Levy

**Managing Editor**  
Marsha F. Filtrante

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### Contacting the Center for Defense Trade

#### Office of Defense Trade Controls

#### Office of Defense Trade Policy

##### Postal Mailing Address

PM/DTC SA-6 Room 228  
Office of Defense Trade Controls  
Bureau of Politico-Military Affairs  
U.S. Department of State  
Washington, D.C. 20522-0602

PM/DTP Room 7815  
Office of Defense Trade Policy  
Bureau of Politico-Military Affairs  
U.S. Department of State  
Washington, D.C. 20520-7815

##### Express Mail and Courier Delivery Address

PM/DTC Room 228  
Office of Defense Trade Controls  
Bureau of Politico-Military Affairs  
U.S. Department of State  
1701 N. Fort Myer Drive  
Arlington, VA 22209-3113

PM/DTP Room 7815  
Office of Defense Trade Policy  
Bureau of Politico-Military Affairs  
U.S. Department of State  
Washington, D.C. 20520-7815

##### Telephone Numbers

General Information: (703) 875-6644  
Commodity Jurisdiction Licensing Team: (703) 875-6644  
License Status Inquiry: (703) 875-6652  
Registration and Compliance Information: (703) 875-6650

General Information: (202) 647-4231

##### Facsimile Numbers

Arms Licensing Division: (703) 875-6647  
Compliance Analysis Division: (703) 875-5663

PM/DTP: (202) 647-1346

# PROJECT ACCELERATE INSTITUTIONALIZED

92 Percent of Cases Issued or Staffed Within 10 Days

In the March edition of Defense Trade News, the Office of Defense Trade Controls (DTC) made a commitment to move beyond its near-term Project Accelerate success of eliminating the December/January backlog by setting as its "long-term aim ... to begin institutionalizing a faster licensing process." We are proud to report that the long-term aim has rapidly become a reality.

**Setting a tough licensing turnaround target ...** By March 5, DTC had completed the first phase of Project Accelerate, eliminating the backlog of license applications while also handling the continuous flow of incoming cases. The office then began establishing internal licensing guidelines and control mechanisms aimed at creating a faster, more responsive licensing process.

For its most important guideline, the Controls Office borrowed from the Congress. In the Conference Report for the Foreign Relations Authorization Act, FY 90-91 (Public Law 101-246), Congress urged the old OMC to set as a target "by the end of FY 1990 being able to determine within 10 days of receipt of a license application whether that application will be referred to other agencies for review...."

Building on this recommendation, the Office of Defense Trade Controls in mid-March set as its goal to "initially review" at least 90 percent of all submissions to the office within 10 business days.

For a license application to meet this "initial review" target, one of two actions must be taken on it within 10 days of receipt: either it must be issued (i.e., decided upon and already mailed back to the applicant) or it must be staffed (i.e., referred to another policy office in State, to DTC's Compliance Division, or to a technical agency for review).

DTC sought to achieve this goal by September 1990. At the time, DTC estimated that exceeding 90 percent might not be possible given the small, yet certain, percentage of cases (such as those for the People's Republic of China) that require a lengthier DTC initial review for foreign policy reasons.

**... and meeting, indeed beating, the goal ahead of schedule.** By April, DTC had already exceeded this objective. In fact, the March statistics were cause for much celebration at the Center. In the second half of March, 87 percent of the cases received were initially reviewed within 10 days of receipt. For the 4,500+ licenses received in April, the 10-day turnaround rate was 91 percent. This figure reached 92 percent for the 4,700+ cases that arrived in May.

Initial Review Statistics  
(Percent of Cases Issued or Staffed  
Within 10 Days of Receipt)

| March | April | May |
|-------|-------|-----|
| 87%   | 91%   | 92% |

**Sixty-six percent of all cases issued within a fortnight.** Broken down, the 92 percent turnaround figure means that roughly two-thirds, exactly 66 percent, of all of the May cases were in-processed by the DTC administrative staff, reviewed and issued by a DTC licensing officer, and then out-processed and mailed back to the applicant within just 10 days. Indeed, many of these issued cases were completed in fewer than 5 days.

The other 26 percent of May's mail handled within 2 weeks represents the cases that were in-processed, reviewed by a licensing officer, and out-processed for staffing. Thus, only 8

*Process of approval / review intent  
is role of DTC ...*

*Have / Had more "dangerous" major  
weapon systems been reported -*

---

percent of the month's casework was not initially acted upon within a fortnight of receipt.

**Stopping delays on the 11th day.** DTC has established an internal control mechanism to ensure that the 8 percent that have not been issued or staffed within 10 days are not delayed any longer (unless appropriate). Specifically, the two Branch Chiefs in the Arms Licensing Division, Mal Zerden and Allan Suchinsky, each day check the status of all pending cases in their 11th day in DTC and move them along as appropriate.

**Preventing unnecessary staffing.** Each day, DTC Director Bill Robinson also checks all of the cases prepared for staffing the previous day to ensure that cases are not referred for review unnecessarily but truly need to be staffed for policy or technical-related reasons. Notably, 1990 staffing to date is running slightly higher than recent years' staffing levels primarily because industry is pursuing more complicated and sensitive sales.

**Enforcing a fast staffing process.** For the roughly one-fourth of DTC's license applications that DTC does need to refer to a policy office elsewhere in State or a technical office in another agency, DTC has established a mechanism for preventing these more difficult cases from getting bogged down.

Namely, DTC has brought on board a licensing officer, Rob Groesbeck, who will be tracking all cases more than 30 days old, ensuring that the staffing offices make prompt decisions. Groesbeck will also see that cases returned from staffing are handled expeditiously in final review in DTC.

**Ending typing delays.** For the nearly 15,000 cases typed each year, most of which are cases requiring a proviso letter attached to the approved license, DTC has also developed a typing tracking system. This system

ensures that cases are handled in chronological order, except for emergency cases, which receive top priority.

**Three-day typing turnaround.** Whereas in the past typing used to be backlogged with weeks worth of pending licenses, the average license in May was in and out of typing within 3 days. With the typing tracking system, DTC immediately knows when a typing backlog is developing. The office then quickly addresses the problem by reallocating personnel resources and using overtime.

**Raising the bar.** Having reached the 10-day initial review target for 90 percent of its cases, the Controls Office is now aiming to reach this target for 95 percent of all cases (assuming that less than 5 percent of its workload must be held longer for policy reasons). Similarly, through various mechanisms, the office is working to ensure that every step of the licensing process is working properly, both in terms of speed and substance. DTC is continuously devising new, tougher targets and mechanisms to track its performance and attain its aims. As stated in the March edition, we welcome industry input in this process.

**Filling the need.** Our bottom line objective remains unchanged: to provide faster, predictable export licensing while enforcing the necessary strict controls imposed by the USML. Such a licensing process permits U.S. defense industry to be more competitive in today's fast-moving, international business environment.

To achieve this, we are striving—at all levels throughout the office—to develop mechanisms for continuously improving the implementation of our statutory and regulatory responsibilities. In so doing, we are confident we will be able to provide the quality work that the nation demands and deserves in the regulation of defense trade. ■

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# WORKLOAD REDUCTIONS MOVING FORWARD

*Ten Initiatives Already in Testing Phase*

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Along with the effort to facilitate munitions export licensing through a responsive licensing process, the Center for Defense Trade is also working to facilitate licensing through workload reduction. At the direction of Deputy Secretary of State Eagleburger, the new Center began a workload reduction initiative immediately upon its creation in January.

**Ten initiatives already agreed on.** Initially, the workload reduction initiative focused on developing specific ideas. Center personnel worked closely with the Defense Technology Security Administration (DTSA) at the Department of Defense (DOD) in this effort. Much progress was made, and quite quickly.

Having developed a package of initiatives, the Center and DTSA began examining the feasibility of implementing these ideas to reduce and simplify licensing while retaining the required export controls. Of this package, 10 initiatives have been specifically defined. (Additional ideas are still being considered.)

**Two types of initiatives.** Broadly defined, the 10 workload reduction initiatives (with the exception of the group CJ) fall into two categories: those that will require specialized International Traffic in Arms Regulations (ITAR) exemptions and those that will ultimately require specialized DTC licenses. The following charts categorize the initiatives and provide a brief explanation of each, including its purpose, what it aims to replace (i.e., how it will reduce workload), and the anticipated requirements and restrictions for its application.

**Reducing workload for you and us.** Each of these initiatives will ultimately eliminate hundreds, and in some cases thousands, of DTC license applications. The specialized ITAR exemptions will do so by eliminating the need for DTC licenses altogether. The specialized DTC licenses will consolidate multiple, current transactions into one license. As they become instituted, the initiatives will thus reduce the licensing burden currently placed on both industry and the Controls Office.

**Looking for test cases.** The Center, working closely with the State Department Legal Adviser's Office and Customs officials, is now starting to test implementation mechanisms for these initiatives. To ensure that this process is effective, the Center will implement the initiatives incrementally.

As part of this program, the Center will use test cases to develop appropriate interagency procedures for these initiatives and work out the bugs that are certain to arise. If you believe you would benefit from one of the initiatives and are interested in submitting a test case, please contact Ken Chard at (202) 647-2558 or 4231. Chard would also welcome any comments and suggestions you might have.

**Note: Just testing.** All of these initiatives are still in the design and testing phase; not all may come to pass. Some aspects of the following charts, such as the "Self-Certification Form," are just conceptual at this stage. The Center will publish the initiatives, as they are finalized, in the *Federal Register* for public comment. ■

# Center for Defense Trade

## Workload Reduction Initiatives

### Specialized Exemptions

| Initiative   | Purpose  | Replaces                | Requirements  | Restrictions   |
|--|--|-------------------------|---|--|
| Application Specific Integrated Circuits (ASICs) and Programmable Read-Only Memories (PROMs) | <p>Eliminates licensing delays in providing ASICs and PROMs for NATO and other USG-approved weapons systems.</p> <p>Provides for entry of technical data and return to the foreign owner in another form or format, such as implementing foreign design instructions into a computer chip.</p> | DSP-5                   | <ul style="list-style-type: none"> <li>• Submit "Self-Certification Form" and SED to Customs.</li> <li>• Send copy of design instructions directly to DTC.</li> </ul> | NATO, Australia, or Japan only, except in support of other USG approval. Board-level chips to Missile Tech signatories only. Unclassified only; no encrypted or GAP chips. No U.S. content added |
| Temporary Export of Hardware and Media for Static Demonstration                              | <p>Eliminates licensing delays for temporary exports of hardware and accompanying demonstration media for trade shows and "open houses."</p>   | DSP-73                  | <ul style="list-style-type: none"> <li>• Submit "Self-Certification Form" to Customs on export and reimport.</li> </ul>   | Static display only. No operational demonstrations. 180 days maximum duration.   |
| Permanent Export of Hardware to USG Installations or for U.S. Projects Overseas              | <p>Eliminates licensing requirements for hardware exported to USG installations or for U.S. only projects.</p>   | DSP-5 & GBL             | <ul style="list-style-type: none"> <li>• Submit Letter of Authorization from cognizant authority in relevant Federal agency along with SED to Customs.</li> </ul>     | Exports to USG installations and U.S. only project.  |
| Export, Temporary Import, or Temporary Export of Specialized Packing Cases                   | <p>Eliminates licensing requirements for empty packing cases specially designated for defense articles.</p>  | DSP-5, DSP-73, & DSP-61 | <ul style="list-style-type: none"> <li>• Submit "Self-Certification Form" to Customs and, in case of permanent export, SED.</li> </ul>                                | Cases must be used pursuant to USG authorization.  |

# Center for Defense Trade

## Workload Reduction Initiatives

### Specialized Licenses

| Initiative                      | Purpose  | Replaces                  | Requirements   | Restrictions   |
|---------------------------------|--|---------------------------|--|--|
| Marketing Project License       | Authorizes exporters to temporarily export specified defense articles, or information on services and technologies, to defined sales territories, to facilitate marketing demos. Valid indefinitely. | Many DSP-73's             | <ul style="list-style-type: none"> <li>• Must specially apply for Marketing Project License. When approved submit "Self-Certification Form" to Customs on temporary export and reimport.</li> </ul>  | Unclassified only. Valid only for authorized destinations. Upgrades subject to new authorization.        |
| Exporter's Distribution License | Authorizes exporters to distribute specified quantities of approved hardware through identified intermediaries, to authorized destinations.  | Many DSP-5's              | <ul style="list-style-type: none"> <li>• Must specially apply. Special submission and reporting requirements for NATO, Australia, and Japan country group. Other countries more stringent. Submit "Self-Certification Form" with SED to Customs.</li> </ul>  | Limited to approved hardware, quantities, intermediaries, and destinations.                              |
| Agreement Hardware License      | Authorizes export, temporary import, and temporary export of hardware pursuant to <u>MLA, TAA</u> , and Distribution Agreements.   | DSP-5's, DSP-73, DSP-61's | <ul style="list-style-type: none"> <li>• You must specially request AG Hardware License as companion to an existing or new Agreement, identifying hardware to be shipped. Submit "Self-Certification Form" for temporary import or export, along with SED for final export, to Customs.</li> </ul> | Limited to unclassified, approved hardware to authorized destinations through approved intermediaries. ? |
| Offshore Procurement Agreement  | Permits the consolidation of all offshore procurement approvals under one document.  | DSP-5's & DSP-73          | <ul style="list-style-type: none"> <li>• Submit request identifying all RFP recipients, technical data, specialized hardware and materials. On approval submit "Self-Certification Form" and (when necessary) SED to Customs.</li> </ul>   | Limited to unclassified "build to print" manufacturing.  |

# Center for Defense Trade

## Workload Reduction Initiatives

### Specialized Licenses

| Initiative                            | Purpose   | Replaces     | Requirements   | Restrictions  |
|---------------------------------------|---|--------------|--|---|
| MLA Direct Export License             | Authorizes U.S. companies holding Manufacturing License Agreements to export the same articles approved for sale under MLA to the same sales territories authorized on the MLA. | Many DSP-5's | <ul style="list-style-type: none"> <li>• Must specially apply for MLA Direct Export License, specifying hardware, quantities, intermediaries, and end-users. On approval, submit "Self-Certification Form" and SED to Customs for exports. Annual reports to DTC.</li> </ul> | Limited only to hardware approved on original MLA and for same destinations. Total value may not exceed actual or estimated value of MLA. |
| Class or Group Commodity Jurisdiction | Facilitates the simultaneous removal of related technologies and similar groups of commodities and components from the USML.  | N/A          | <ul style="list-style-type: none"> <li>• Submit technical analysis paper listing all commodities derived from a particular technology or groups of related commodities, describing commercial provenance or application, and detailing technological history.</li> </ul>     | Must recommend which commodities should be removed and which should remain on USML based on ITAR criteria.                                |



# CJs DECONTROLLING COMMODITIES

87 Items So Far in 1990, 40 Days Average Time

Upon its creation, the Center for Defense Trade set as a key objective using the Commodity Jurisdiction (CJ) procedure to remove as many commodities as appropriate from the U.S. Munitions List (USML). Center Director Charles A. Duelfer emphasized this aim in hearings before the Congress, as detailed in the March Defense Trade News.

**Keeping our promise.** As the March edition stated, "to encourage the submission of more CJ requests and expedite the handling of such requests, DTC has designated two licensing officers full-time as the CJ licensing team." The CJ team is fulfilling Duelfer's promise to the Congress "that as cases arrive, they will get quick attention and that any disagreements will be addressed in a timely fashion at the appropriate levels."

**A brief history.** The CJ procedure, as detailed in the March edition and portrayed in the following flowchart, began as an informal interagency procedure in the early 1960s. It was formalized in the ITAR in 1984, after an industry and interagency (State, Commerce, Defense, and Office of Management and Budget) review agreed upon the current process. The only change made since then was the addition in 1989 of two appeal steps within the Department of State before the final appeal to the President.

**Key features of the CJ process.** The CJ process is headed by the State Department, since a CJ determination is fundamentally a foreign policy/national security decision. The CJ determination decides which goods are mili-

tarily significant and thus—in each case—need to be controlled for export on foreign policy/national security grounds and under the strict USML export control regulations. Moreover, having a single bureaucratic head facilitates the decision-making process.

All CJ requests submitted to DTC are referred interagency, to both Commerce and the appropriate technical agency, for review. DTC's CJ decisions may be readily appealed both within the State Department hierarchy and to the President. Any U.S. citizen, company, or government agency may submit a CJ request; submission of a case does not in any way hinder DTC licensing of the commodity while under CJ review.

**An effective process for decontrolling items.** In the past 3 years alone, State has removed hundreds of items from coverage by the USML through the CJ process. As in recent years, State has determined in the vast majority of 1990 CJ cases to date that the commodities under review should be under the jurisdiction of Commerce's Commodity Control List (CCL)—not State's USML. Of the 143 CJ determinations DTC has made so far this year 87 cases, or 61 percent, were decided in favor of Commerce control.

**An efficient process, too.** CJ decisions are now being made faster than ever before. Whereas just last year, CJ cases were taking several months on average, the average time from receipt to completion of CJ requests submitted so far in 1990 is only 40 business days.

| Year           | # of CJ Determinations | Percent Decided in Favor of Commerce Control | # of Items Moved to Commerce |
|----------------|------------------------|--|------------------------------|
| 1988           | 217                    | 69%  | 149                          |
| 1989           | 223                    | 70%  | 157                          |
| 1990 (to date) | 143                    | 61%  | 87                           |

The vast majority of this time is spent in the interagency referral stage. Upon receipt of a CJ request, DTC ordinarily refers the CJ to the appropriate agencies within 4 days. Upon receipt of the other agencies' recommendations, DTC usually makes its final decision within 10 days.

**Prodding the interagency process.** To prevent CJs from getting bogged down in the interagency review stage, the CJ licensing team makes regular calls about slow cases. Center Director Duelfer also arranges interagency meetings to expedite decisions on delayed cases.

**Self-initiated CJs.** To facilitate the removal of commodities from the USML via the CJ process, DTC is self-initiating CJ requests on items it believes may be removed from the USML at this point in time. DTC has self-initiated 10 CJ cases in the past 3 months. The Center is also encouraging other agencies to do likewise.

**Helping us help you.** You can assist the CJ team in its work, and get CJ determinations

faster, by avoiding a few common problems in CJ submissions. First, clearly identify in the subject line of your letter the specific items being requested for adjudication. Second, provide adequate technical documentation to support claims made in enclosed brochures. Third, identify the specific modifications that make the product under review different from the original or similar products.

**Selected CJ Determinations.** To encourage more CJ submissions, and in response to numerous requests to publicize CJ decisions, we provide the chart (below) of selected 1990 CJs. The commodity descriptions are very general to ensure the confidentiality of all proprietary information related to these cases.

If you think you have an item similar to one of those listed as having been placed under Commerce control, please submit a CJ request (ITAR 120.5). Michael Van Atta or Gary Oncale of the CJ licensing team are available at (703) 875-6644 to answer any questions you may have. ■

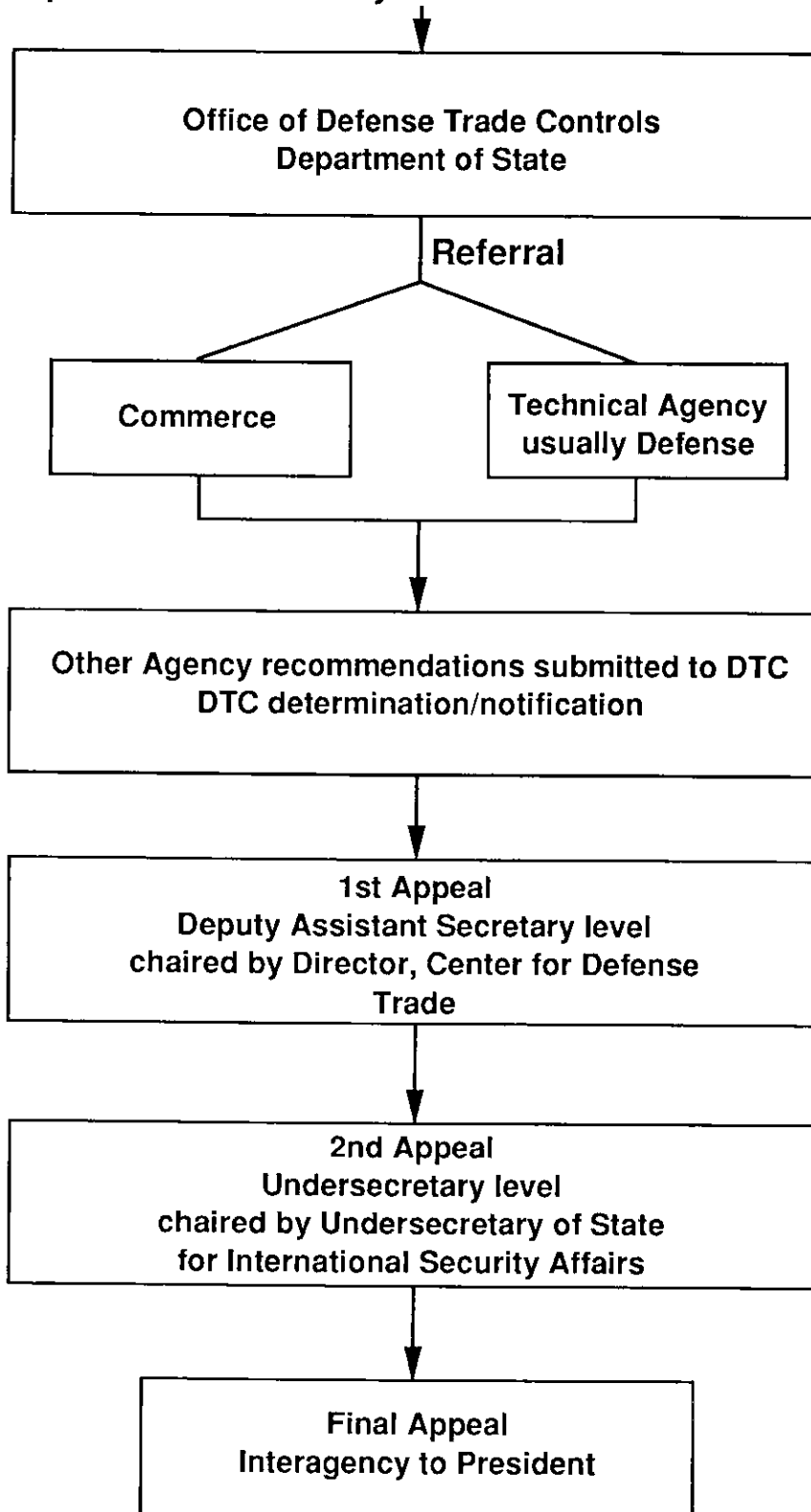
#### COMMODITY JURISDICTION DETERMINATIONS

| COMMODITY   | JURISDICTION | COMMODITY   | JURISDICTION |
|---|--------------|---|--------------|
| Agricultural flame thrower  | Commerce     | Imaging equipment   | Commerce     |
| Aircraft deicing system   | Commerce     | When modified for military use  | State        |
| Automated bullet sizing and lubricating machine                       | State        | Partially assembled semiconductor devices   | Commerce     |
| Ceramic products  | Commerce     | Power amplifiers used by ground-based transmitters                                    | State        |
| When modified or formulated for military application                  | State        | Radio frequency detectors   | Commerce     |
| Channel Multiplier Plates and Intensifier Tubes for image enhancement | State        | Silicone adhesives  | Commerce     |
| Chemical pesticides using 2% or less of chloropicrin                  | Commerce     | Smart Cards   | State        |
| Communications software not using DES                                 | Commerce     | Personalized and issued by financial institutions                                     | Commerce     |
| Computers   | Commerce     | Software, Encryption Devices using DES  | State        |
| When ruggedized, or modified for military application                 | State        | Not using DES   | Commerce     |
| Electronic equipment or components hardened for space                 | State        | Software for design analysis of military equipment                                    | Commerce     |
| Helicopters   | Commerce     | Software for mapping  | Commerce     |
| When modified to accept weapons or electronic equipment               | State        | Software programs used in damage assessment or modeling of building structural design | Commerce     |
|   |              | Stratospheric balloons  | Commerce     |
|   |              | Two-way relief valves   | Commerce     |

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## **Commodity Jurisdiction Procedure**

### **Request for Commodity Jurisdiction Determination**



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# MINIMIZING "RETURNED WITHOUT ACTION" CASES

## *A Six-Step Checklist for Avoiding RWAs*

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Everyone at the Office of Defense Trade Controls (DTC) is working to make the munitions export licensing process as fast and predictable as possible within the necessary confines imposed by the International Traffic in Arms Regulations. As part of this effort, DTC decided early on that making its operation as transparent as possible would benefit both industry and the Controls Office. Articles such as this one are written with this aim.

**The bad news: too many RWAs.** Roughly 5 percent of all submissions to DTC are returned without action (RWA) to the applicant with an accompanying explanation. The vast majority of RWAs are cases DTC was unable to review because the license application lacked specific required documentation. For DTC, this presents a frustrating source of licensing delays.

**The good news: most RWAs easily avoided.** To try to eliminate, or at least minimize, such RWAs, DTC has identified the most common deficiencies that result in RWA cases. Surprisingly, only six "sins of omission" account for some three-fourths of all returned applications.

**The six-step checklist.** The following list represents these six common causes of RWAs. Please help us minimize the number of RWA cases by using this checklist before sending license applications to DTC.

**1. Missing/Inadequate 126.13 Empowerment Letter:** All submissions to DTC must include an original 126.13 letter signed by a U.S. person who is an official empowered by the applicant. If the person signing the

license application differs from the person signing the letter, the letter must also certify that the application signer is a U.S. person and empowered by the applicant. The applicant must accurately complete all required information. DTC must receive the original 126.13; copies are not acceptable.

**2. Missing Part 130 Letter:** Applications valued at or above \$250,000 to foreign military forces or international organizations require a fee, commission, or political contribution letter.

**3. Missing Technical Data or Descriptive Literature:** The ITAR requires seven copies of either technical data or product descriptive literature. Many applicants include only one copy.

**4. Missing DSP-83:** This form must accompany any application for Significant Military Equipment (SME) and all classified transactions. Applicants must also submit the DSP-83 with firearm licenses for 50 or more handguns and/or 100 or more rifles. (See Tips and Tidbits, page 15, for more information on DSP-83s.)

**5. Inadequate Purchase Order/Letter of Intent/Signed Contract:** An order or letter of intent must accompany DSP-5s and DSP-85s, and it must correspond to the items listed in the commodity block of the application. The purchase order must clearly state both the specific ultimate end-user and the specific end-use of the equipment. Should the order not state the specific end-user/end use, a letter from the foreign customer must be submitted.

**6. Inadequate Identification of End-User:** The end-user cited in block 18 of the DSP-5 or block 21 of the DSP-85 must be clearly tied to the Purchase Order or Letter of Intent. Additional documents frequently link these crucial elements. ■

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# CHINA DEFENSE TRADE POLICY

## *An Overview After 1 Year*

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The history of export sanctions to the People's Republic of China (P.R.C.) over the last year is quite complex. The Office of Defense Trade Controls (DTC) would thus like to clarify its policy for handling license applications for exports to China. This policy statement is intended to guide exporters of defense articles and services through applicable laws. This policy remains subject to change by events unfolding in China and elsewhere in the world.

**Presidential Sanctions.** Last June, the President responded to the crackdown on pro-democracy demonstrators in Tiananmen Square by ordering, among other things, a suspension of all weapons exports to the P.R.C. DTC immediately suspended all outstanding licenses and other approvals involving munitions exports to China.

In addition, DTC returned without action nearly 100 license applications then under review. Since then, DTC has lifted suspensions or granted licenses for about 20 exceptional cases. In each such case, the applicant specifically requested review for an exception. DTC found these cases involved items destined for a strictly civilian end use, with no chance of diversion to the military.

**Legislative Sanctions.** In December 1989 and February 1990, Congress passed legislation that had the effect of codifying some of the Presidential sanctions. The December legislation is the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 (Public Law 101-162). This law prohibits the issuance of licenses for export of U.S. satellites for launch on Chinese launch vehicles. However, Congress authorized the President to waive the restriction if the chief executive reported

to Congress that China had executed certain political reforms or that the export was in the national interest. Shortly after the legislation was enacted, the President made the required national interest report with respect to the export of the AsiaSat and AUSSAT satellites.

The sanctions passed in February as part of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246) extended the prohibition to all munitions export licenses. This law also provides for the same type of Presidential waiver as the December legislation. To date, the President has not exercised his waiver authority under this Act.

**Current Licensing Policy.** DTC accepts license applications for China that involve exports intended for a civilian end use. For DTC to process P.R.C. license requests, applicants should include the following documentation:

1. A letter requesting an exception from the various restrictions on munitions exports. Applicants should list all reasons for the request. The applicant must verify and state clearly that only civilians will use the item and only for commercial purposes; and
2. A completed Form DSP-83.

When DTC receives the proper documentation, a DTC licensing officer will forward the application to the proper agencies and offices for review. In addition to the normal foreign policy, national security, and technology transfer concerns, licensing officers will thoroughly examine the item's potential for diversion to military end use.

For additional information regarding P.R.C. trade policy, please call Paul Almeida in the Office of Defense Trade Policy at (202) 647-4231. ■

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# 55 YEARS OF DEFENSE TRADE CONTROLS

## *Munitions List Controls Over The Years*

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The history of U.S. defense trade controls goes back to public concern over profiteering from armaments in the 1930s and the desire to avoid entanglement in European conflicts. The controls regime has been subject to repeated modifications, but exhibits a surprising degree of institutional continuity.

**Increased volume and complexity of commercial defense trade.** The 1970s and 1980s produced considerable growth in U.S. commercial defense trade, despite a tightening of licensing and enforcement measures. This trade growth has meant a continuous increase in licensing burdens, despite periodic prunings of the International Traffic in Arms Regulations (ITAR), which regulate the licensing process. Moreover, the increasing importance of manufacturing license and technical assistance agreements has resulted in increasingly complex licensing arrangements.

**Office of Defense Trade Control's various legal mandates.** The 1935 Neutrality Act empowered the Secretary of State to establish an Office of Arms and Munitions Controls, with authority to register and issue export licenses to all U.S. entities engaged in de-

fense-related trade. This authority was elaborated by the Mutual Security Act of 1954, the Arms Export Control Act (AECA) of 1976, and related executive orders.

**A changing ITAR.** ITAR evolution over the years reflects changes in technology and the composition of defense trade. Civil aircraft and avionics, for example, remained on the U.S. Munitions List (USML) until 1959, when they were placed under Commerce jurisdiction. Today only military and developmental aircraft, as well as inertial navigation systems, remain on the USML.

**Tightened controls.** During the Carter and Reagan administrations, Congress strengthened munitions export controls in several respects. Through amendments to the AECA, the Department of State assumed the right of prior approval on contract proposals for the sale or production of "Significant Military Equipment" over \$14 million. The Department also acquired broad discretionary authority to debar firms from engaging in defense trade. Although many of the most publicized coups of the U.S. Customs Service's Project Exodus involved arrests for diversion of dual-use exports, arrests and convictions for violations of the AECA and the ITAR also rose sharply in the 1980s. ■

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## "EMPOWERED OFFICIAL" GUIDELINES

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Part 120.1 (b) of the International Traffic in Arms Regulations (ITAR) requires that applications for licenses or other approvals submitted to the Office of Defense Trade Controls (DTC) by non-governmental entities must be signed by a "responsible official who is a U.S. person and who has been empowered by the registrant [applicant] to sign such documents"—generally referred to as an "empowered official."

In view of recent changes to the ITAR, the selection of individuals authorized to sign applications, certifications, statements, and other official correspondence for their companies is a matter of considerable importance and one that should not be taken lightly. The issue of who should be permitted to represent their companies in these matters has often been confusing, and in many instances not fully understood. In response to industry requests for a definition of what constitutes an "empowered official," DTC has developed the following guidelines.

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For purposes of the ITAR, an "empowered official" is an individual who is a U.S. person (120.23) and:

- a. Is directly employed by the applicant or its subsidiary in a position having the authority for policy and/or management within the applicant organization; and
- b. Is legally empowered in writing by the applicant to sign a license application or other request for approval on behalf of the applicant; and
- c. Is thoroughly informed and familiar with the provisions of the various export control statutes and regulations (including but not limited to the Arms Export Control Act (AECA), Export Administration Act (EAA), International Traffic in Arms Regulations (ITAR), and Export Administration Regulations (EAR)); and
- d. Understands the criminal liability, civil liability, and administrative penalties for violating the AECA and the ITAR; and
- e. Is knowledgeable about (1) the established procedures and practices of the Office of Defense Trade Controls, (2) the export and

import regulations and procedures of the U.S. Customs Service, and (3) the export practices and procedures of the applicant; and

- f. Has the independent authority, before signing an application, to inquire into any aspect of a proposed export or temporary import transaction by the applicant involving defense articles or defense services, and to verify the legality of the transaction and the accuracy of the information required to be submitted to the U.S. Government; and
- g. Has the independent authority to refuse to sign any license application or other request for approval, without prejudice or other adverse recourse, having presented justification to the appropriate corporate official(s).

Applicants who have questions or unique circumstances in these matters should direct their queries to either Rose Biancaniello, Chief, Arms Licensing Division, or Clyde Bryant, Chief, Compliance Analysis Division. ■

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## DEPARTMENTS

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### PERSONNEL UPDATES

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**DTC Growth Continues: More employees on board at DTC.** When the March edition went to press, the Office of Defense Trade Controls had added 12 new, full-time people to its staff, including seven licensing officers, two secretaries, two data entry contractors, and one Deputy Office Director. Since then, six more full-time employees have joined the ranks.

This second group comprises four licensing officers (Carol Basden, Peter Dade, Rob Groesbeck, and Nelson Hines), one compliance special agent (Michelle Becker), and one registration clerk (Susanne Mackie). In addition, six part-time clerk/typists have joined DTC, greatly boosting the office's

capacity to handle the millions of sheets of paper and hundreds of thousands of phone calls DTC receives annually.

**Licensing staff more than doubled since January.** Since established January 8, DTC has seen substantial growth throughout the office. The most notable growth, however, has been in the Arms Licensing Division (ALD). In ALD, the working-level licensing staff has grown from nine licensing officers on January 8 to the current staff of 20.

**Personnel profiles.** As a regular feature in each newsletter, the Center profiles several employees. For this edition, we have selected three civilian licensing officers, three military licensing officers, and one registration clerk.

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**Carol B. Basden** arrived at the Center March 26 following a 5-year assignment in the Bureau of Export Administration at the Department of Commerce. At Commerce, Basden served as an export administration specialist and licensing officer, reviewing export applications for computers and related equipment. After spending the first 2 months at DTC rotating through the Licensing Division, Basden is now settling into her job as the licensing officer for specific Category VIII items. In this post, Basden will exercise licensing authority for helicopters, non-expansive balloons, drones, cartridge-activated devices, and inertial navigation systems.

**Peter L. Dade** joined the Center June 4 to fill a licensing officer position. Dade previously spent 5 years in the Office of Freedom of Information as a paralegal specialist. His experience in Freedom of Information Act case processing, especially the extensive coordination with other bureaus and government agencies, will transfer directly to his new duties. After completing an initial familiarization period, Dade is scheduled to handle Categories I, Firearms, and III, Ammunition and Ammunition Producing Equipment.

**Terry L. Davis** came to the Center March 15. He brings with him 9 years of experience as an analyst in Defense and International Affairs for the U.S. General Accounting Office (GAO). At GAO, Davis specialized in reviewing both Department of State programs and U.S. Navy tactical and strategic missile programs. He is also a 1988 graduate of the Naval War College. At DTC, Davis exercises licensing authority for two categories: Category IV, Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines; and Category XIV, Chemical and Biological Agents.

**MAJ Mike Van Atta** reported to the Center February 23 after serving as an independent Army evaluator at the Operational Test and Evaluation Agency (OTEA). Van Atta has

one of the broadest backgrounds possible for an Army officer. He served as an enlisted Marine during the Vietnam war, completed a bachelors degree after discharge, and received his commission in 1974. He has held both command and staff positions in Infantry, Armor, and Engineer units. He is also a qualified acquisition program manager and graduate of the Military Acquisition Manager's course. Van Atta possesses direct operator knowledge of most currently-fielded Army systems and is the Center's technical expert for such systems. He currently acts as half of the two-man Commodity Jurisdiction licensing team.

**MAJ Marsha F. Filtrante** came to the Center February 28 from a 4-year tour with the U.S. Army Aviation Systems Command (AVSCOM). There, she served in assistant program manager positions for both the UH-60 Black Hawk Office and the Light Helicopter Program (LHX). Filtrante served in the U.S. Navy from 1967-1970 and completed her bachelors degree prior to commissioning in 1976. She has direct experience in training centers, and positions in Transportation and Aviation units. Like Van Atta, Filtrante is a qualified acquisition program manager and graduate of the Military Acquisition Manager's course. A 1979 graduate of the Rotary Wing Officer Course, she is rated in UH-1H, CH-47 A-C, and OH-58 A-C military helicopters. At DTC, she currently works as a public affairs licensing officer, formulating ideas for Defense Trade News, as well as organizing, editing, and overseeing publication and distribution of the newsletter. Filtrante also provides DTC with in-house rotary wing technical expertise.

**LCDR Nelson R. Hines** reported to DTC March 27 as the last of six military officers detailed to the Center. His most recent assignment was as the combat systems officer onboard the USS King (DDG-41), a guided missile destroyer homeported at Norfolk, VA. During that tour, Hines qualified for command of surface ships at sea. Other tours include: weapons officer on the USS Edson



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(DD-946), main propulsion assistant onboard USS Dahlgren (DDG-43), and ordnance/fire control officer of the USS Estocin (FFG-15). During his 10 years of consecutive sea duty, he gained hands-on expertise in all facets of anti-air, anti-surface and anti-submarine warfare. LCDR Hines served in the U.S. Marine Corps 1970-1974, and completed his bachelors degree in 1977. He currently serves as a licensing officer, handling Technical Assistance Agreements (TAAs) and Manufacturing License Agreements (MLAs).

**Susanne Blanchette Mackie** started work at DTC May 7 as a registration clerk. A Bethesda, MD native, she is in her senior year as an undergraduate at George Washington University (GWU). She will be entering medical school at GWU in the fall of 1991. Mackie previously worked for the National Institute of Health (NIH). ■

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## TIPS AND TIDBITS

### ***DSP-83 Requirements***

An original, signed Nontransfer and Use Certificate, Form DSP-83 is required with submissions to DTC of DSP-5s, DSP-85s (permanent export), Agreements (AGs), and Advisory Opinions (GCs) for:

- unclassified Significant Military Equipment (SME) as defined in ITAR 120.19 (identified throughout the ITAR by an asterisk);
- any classified defense articles or technical data;
- transfer of technical assistance or manufacturing know-how, which relates to SME, classified technical data, or classified defense articles;
- permanent retention or retransfer of SME or classified articles, which were previously approved for export on a DSP-73, DSP-5, or an agreement.

In addition, a DSP-83 may be required at the discretion of a DTC licensing officer for the export of any other defense article or service. A DSP-83 may follow the initial submission to DTC if the applicant includes a statement outlining the reasons for separate DSP-83 submission, and the reason is acceptable to the licensing officer. When appropriate, DSP-83s should be signed by the foreign con-

signee, foreign end-user, or foreign government. In all cases, the DSP-83 must be signed on the reverse by the applicant.

### ***Mailing Point of Contact***

Unfortunately, the Center for Defense Trade cannot afford to mail separate copies of Defense Trade News to different parts of the same company. Starting with the September issue, we will mail the newsletter to only the registered point of contact (POC) at each company, allowing this POC to determine distribution within the organization. Thank you in advance for your understanding and assistance.

### ***Clearing Academic Materials for Public Release***

The Departments of State and Defense agreed in 1986 on procedures to publicly release ITAR-controlled technical data. The Office of Assistant Secretary of Defense, Public Affairs, Directorate for Freedom of Information and Security Review (DFOISR) will accept and review technical data that was generated under other than DOD

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contract. DFOISR will conduct those reviews and make its determinations in accordance with the same criteria applied to proposed public releases of technical data under Section 1217 of Public Law 98-94 and appropriate DOD directives.

U.S. persons who propose to present a paper or make an oral presentation that includes ITAR-controlled technical data, at either an open international society meeting abroad or at an open conference in the United States, should submit those papers/presentations to DFOISR.

If DFOISR approves the material for public release, DTC will consider the material to be exempt from licensing requirements pursuant to ITAR Section 125.4(b) (13). Submit formal requests and five legible copies of all materials to: OASD (PA)/DFOISR, Room 2C757, The Pentagon, Washington, D.C. 20301-1400.

### ***SSNs and DOBs***

The Office of Defense Trade Controls has amended its instructions to those individuals, companies, or other legal persons registering with DTC as manufacturers or exporters of defense articles or services per ITAR Part 122.

Effective immediately, information in block 7 of the "Application for Registration" (Form DSP-9) should include the dates of birth and Social Security numbers of principal execu-

tive officers, partners, and owners in addition to their names, home addresses, positions, and whether or not the officer is a U.S. person as defined in 120.23.

**Note:** This applies only to new DSP-9 submissions; current registrants will supply this information during registration renewal.

### ***Offices of Defense Cooperation***

If your company is contemplating entering into a joint venture with a foreign company, bidding on a foreign procurement, or doing any foreign defense business abroad, remember to consult the U.S. Embassy in that country first. The Offices of Defense Cooperation (ODC) and the economic and commercial officers in most embassies can provide information that could make your goal much easier to achieve. During a recent trip to Europe, Defense Trade Policy personnel found the ODCs and embassy officers ready, willing, and able to help you avoid pitfalls. Take advantage of these valuable resources.

### ***New DTC ZIP Code: 20522-0602***

Please use ZIP code 20522-0602 when mailing to the Office of Defense Trade Controls (DTC). Using the new ZIP code allows faster sorting and automated handling by newly installed postal equipment. See the inside cover, for additional addresses and other information. ■

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# READER QUESTIONNAIRE

Dear Reader,

Please give us your opinion. We'd like to know if you find Defense Trade News interesting and informative. Complete this survey and return as soon as possible.

1. My interest in defense trade is:      \_\_\_ manufacturing      \_\_\_ exporting      \_\_\_ attorney  
     \_\_\_ embassy      \_\_\_ customs      \_\_\_ armed forces      \_\_\_ other U.S. Government  
     \_\_\_ consultant      \_\_\_ other (specify) \_\_\_\_\_

2. How many articles do you read in each issue?  
     \_\_\_ All      \_\_\_ Almost All      \_\_\_ More than Half      \_\_\_ Less than Half      \_\_\_ None

3. Rank the following article topics according to your interest:

1 Much Interest   2 Some Interest   3 Slight Interest   4 No Interest

|                           |                           |                            |
|---------------------------|---------------------------|----------------------------|
| ___ DEFENSE TRADE POLICY  | ___ TRADE LEGISLATION     | ___ CALENDAR OF EVENTS     |
| ___ CUSTOMS NEWS          | ___ PERSONNEL INFO        | ___ COMMODITY JURISDICTION |
| ___ COMPLIANCE CASES/TIPS | ___ LETTERS TO THE EDITOR | ___ OTHER _____            |
| ___ DTC DEVELOPMENTS      | ___ WORKLOAD REDUCTION    | _____                      |
| ___ LICENSING TIPS        |                           | _____                      |

(Specify)

4. Articles are generally:    \_\_\_ too long    \_\_\_ too short    \_\_\_ about right

5. I have an article idea: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Rate Defense Trade News on each of the following categories:

|                            | Excellent | Good | Fair | Poor |
|----------------------------|-----------|------|------|------|
| Your Overall Opinion       | ___       | ___  | ___  | ___  |
| Writing Style/Reading Ease | ___       | ___  | ___  | ___  |
| Content                    | ___       | ___  | ___  | ___  |
| Appearance                 | ___       | ___  | ___  | ___  |
| Usefulness                 | ___       | ___  | ___  | ___  |

7. This is a quarterly publication (Mar, Jun, Sept, Dec).

This is:      \_\_\_ too frequent      \_\_\_ about right      \_\_\_ too infrequent

8. If Defense Trade News became available by subscription through the Government Printing Office, I would subscribe.    \_\_\_ Yes    \_\_\_ No

COMMENTS:

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