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U.S. Moves Against Weapons of Mass Destruction

New Proliferation Control Regulations Issued

In his March 6, 1991 address to a joint session of Congress announcing the end of the Gulf War, President Bush cited the need to control the proliferation of weapons of mass destruction as one of four post-war challenges. Reflecting longstanding Administration concerns about this threat, three new regulations designed to control the goods, technology, and services that can contribute to foreign countries' chemical and biological weapons (CBW) and missile programs were recently published in the *Federal Register*.

These regulations amend the Export Administration Regulations (EAR) of the Department of Commerce; they do not affect the Department of State's International Traffic in Arms Regulations (ITAR) or U.S. Munitions List (USML) commodities or controls. The regulations were published in the Wednesday, March 13, 1991 *Federal Register* (Vol. 56, No. 49, Page 10,756).

Why the need? In the past, foreign help—provided by companies in industrialized nations in the form of whole chemical plants, equipment for creating chemical and biological weapons, and technical expertise—was critical in enabling Iraq and other countries to obtain weapons of mass destruction much faster and easier than they otherwise could.

Despite the defeat of Iraq, the threat of chemical and biological weapons and missiles is growing. Iraq is only the tip of the iceberg. At least 20 countries have or are seeking chemical weapons capabilities. Ten countries have or are trying to create biological weapons. New conflicts, especially in the Middle East, could raise again the specter of lethal missile, chemical and biological attacks on civilian populations or American soldiers.

The response: The Enhanced Proliferation Control Initiative. Last December, the Enhanced Proliferation Control Initiative (EPCI) was officially launched by the White House, with the aim of improving U.S. and international ability to control keystone goods and technologies for weapons of mass destruction. Until these regulations, U.S. controls had been limited—even in comparison with many other Western countries. The U.S. controlled only about one-fifth of the known chemical weapons precursors, and no CBW-related equipment.

On March 13, three new regulations implementing EPCI were published. They impose new export controls on 39 additional chemical weapons precursors, on equipment usable for chemical and biological weapons purposes, and on whole chemical plants for producing chemical weapons precursors. They also require licenses for U.S. persons assisting foreign chemical or biological weapons or missile projects and for exports in which the exporter knows or is informed by the U.S. Government that the item is destined for a foreign chemical or biological weapons or missile project.

U.S. multilateral efforts. Recognizing that the most effective export controls are those applied multilaterally, the Administration has initiated vigorous efforts to obtain foreign support for proliferation controls comparable to those being imposed by the U.S. These efforts will build on the growing international consensus for strong action to stem the spread of weapons of mass destruction.

Initial discussions indicate that many U.S. friends and allies are already working to adopt similar controls or are willing to do so. Over half of the "Australia Group" members now control all 50 chemical weapons precursors, and several are now controlling equipment. (The "Australia Group" is an informal grouping of 20 industrialized countries committed to combatting chemical and biological weapons proliferation.)

Industry's role. The cooperation of U.S. industry is needed to make the new regulations work effectively. The regulations were developed with substantial input from industry.

The Administration believes that the regulations are sensitive to the importance of U.S. exports to U.S. economic vitality. In many cases, they have been refined or restricted in scope to meet industry concerns and minimize the burden on legitimate commerce. Public comment on the new regulations is welcome.

Export controls not the only tool. The U.S. Government is also using other means to deal with the threat of weapons of mass destruction. Executive Order 12735, issued on November 16, 1990, gives the U.S. Government authority, under specified circumstances, to impose sanctions on foreign countries that use, or make substantial preparations to use, chemical or biological weapons, and on foreign companies that aid their CBW programs.

The President has made the early conclusion of a comprehensive global ban on chemical weapons a top foreign policy priority. In addition, the U.S. will also seek to strengthen the 1972 Convention on Biological and Toxin Weapons at the September 1991 Review Conference.

Points of contact. Within the U.S. Government, the primary players on the Enhanced Proliferation Control Initiative (EPCI) and the resultant EAR regulations are the Bureau of Export Administration (BXA) at the Department of Commerce and the Bureau of Politico-Military Affairs (PM) at the Department of State.

The best points of contact for further information on these new proliferation control regulations would be the two offices, one in each of these bureaus, that have primary responsibility for this initiative: the BXA Office of Technology and Policy Analysis (BXA/OTPA) and the PM Office of Weapons Proliferation Policy (PM/PRO). You can contact James Seevaratnam of BXA/OTPA at (202) 377-5695 or Jim Davis of PM/PRO at (202) 647-1129. ◆

A Summary of the New Regulations

- A Department of Commerce individual validated license (IVL) is now required for 39 additional chemical weapons precursors to all destinations but NATO and the Australia Group. The U.S. previously controlled 11 precursors to these destinations. (This regulation is effective immediately.)
- An IVL is also now required for exports of 11 types of chemical and biological weapons-related equipment to the Middle East and Southwest Asia, and to 10 other specified countries and destinations. (This regulation is effective immediately as well.)
- The third regulation is more complicated, and was published in proposed form.

— An IVL will be required for the export of whole chemical plants that manufacture any of the 50 chemical weapons precursors. Assistance in designing such a plant is also licensable. This regulation applies to all destinations outside of NATO and the Australia Group.

— An IVL will be required where an exporter knows that a proposed export is destined for CBW or missile activities in designated regions, countries, projects, and other destinations.

— An IVL will be required where an exporter is informed by the U.S. Government that a proposed export or transaction is destined for CBW or missile activities anywhere in the world.

— An IVL will be required where a U.S. person knowingly assists a foreign CBW or missile project at designated sites or in designated regions or countries.

* **Note:** This is only a summary of the new regulations. For authoritative guidance, you should consult the full regulations, published in the Wednesday, March 13, 1991 *Federal Register* (Vol. 56, No. 49, Page 10,756).

DEFENSE TRADE WITH CZECHOSLOVAKIA, HUNGARY, AND POLAND

Some Exceptions for USML Exports Now Being Made

Throughout the Cold War era, it was U.S. policy to deny license applications for the export of U.S. Munitions List (USML) items to the member countries of the Warsaw Pact, each of which is listed in the "prohibited country list" in Section 126.1 of the International Traffic in Arms Regulations (ITAR). More recently, the collapse of the Warsaw Pact and the coming to power of democratic governments in Czechoslovakia, Hungary, and Poland have brought about some changes in U.S. defense trade policy toward these three countries in particular.

Establishing export control regimes. Over the past year, the U.S. has helped Czechoslovakia, Hungary, and Poland establish effective export control regimes to prevent unauthorized transfers of USML and CoCom controlled items.

The new governments in these three countries have reacted favorably to this initiative, and continue to welcome U.S. assistance in implementing their technology transfer controls. The U.S. and other CoCom members are authorized to conduct pre-license and post-shipment verifications to ensure that the new export control regimes are operating effectively.

State granting some USML exceptions. For the time being, Czechoslovakia, Hungary, and Poland remain prohibited destinations for USML items under ITAR Section 126.1. However, the Office of Defense Trade Controls (DTC) is now reviewing munitions license applications for these three countries on a case-by-case basis, rather than immediately denying them as in previous years.

Such license requests are subject to intensive review, given the evolving nature of these governments' export control capabilities, and ordinarily take longer in the license review process than most cases. Nevertheless, DTC is now, when appropriate, granting some exceptions to the general policy of denial for USML exports to these countries. The types of exports for which exceptions are most often granted are USML articles or services destined for civil end-users for civil end-uses.

The situation in CoCom. Multilateral export controls for these three countries are currently under review in CoCom. At this time, all three countries remain "proscribed destinations" in CoCom, but CoCom intends to approve the export for civil end-uses of most "dual-use" Industrial List items to these countries. However, like the U.S., CoCom is granting only occasional exceptions for items covered by the International Munitions List.

As a member of CoCom, the U.S. sends all proposed USML hardware exceptions for proscribed destinations to CoCom where they must also be approved prior to DTC granting the export license. ◆

THE CONGRESSIONAL NOTIFICATION PROCESS

Special Handling of All "Hill" Cases

The Arms Export Control Act (AECA) of 1976 provides that the President must notify certain commercial defense trade applications to the Congress for 30 days prior to approval. The President's authority has been delegated to the Secretary of State. Sections 36(c) and 36(d) of the AECA specifically delineate which cases submitted to the Office of Defense Trade Controls (DTC) require Congressional notification.

36(c) cases. Section 36(c) generally covers the following two types of license applications:

- All exports of defense articles or services sold under a contract in the amount of $50 million or more; and,
- All exports of "Major Defense Equipment" (MDE) sold under a contract in the amount of $14 million or more.

AECA Section 47(6) defines MDE as "Significant Military Equipment" (SME) having a one-time research and development cost to the U.S. Government of $50 million or more, or a total U.S. Government procurement cost of $200 million or more. (The Defense Security Assistance Agency (DSAA) at the Department of Defense maintains the list of defense articles categorized as MDE. The July edition will contain information on how to get copies of the MDE List.)

(For completeness, it should be noted that retransfers—e.g., sale of U.S. defense articles by the licensed recipient country to another country—of goods notified to the Congress under Section 36(c) must also be notified to the Congress for 30 calendar days prior to DTC approval, pursuant to AECA Section 3(d)(3). Such notifications, however, are extremely infrequent.)

36(d) cases. Section 36(d) covers the following cases received by DTC:

- All Technical Assistance (AG-TAA) and Manufacturing Licensing Agreement (AG-MLA) applications for non-NATO countries involving the production of "Significant Military Equipment" (SME).

Significant Military Equipment (SME) is defined in Section 120.19 of the International Traffic in Arms Regulations (ITAR) as articles for which special export controls are warranted because of their capacity for substantial military utility or capability. Articles designated as SME are preceded by an asterisk in the U.S. Munitions List (USML, ITAR Section 121.1). In addition, all classified articles are designated as SME.

Congress' role. The Arms Export Control Act requires DTC to notify Congress at least 30 calendar days before issuing any license or approval covered by Section 36(c), thereby providing Congress with an opportunity to review these specific commercial defense transactions.

The AECA provides that licenses covered by Section 36(c) may generally not be issued if a law prohibiting the proposed export is enacted within the 30-day period. No such laws have been enacted in response to Section 36(c) notifications.

Few in number, high in value. Of the 135,000 license applications that DTC reviewed in FY89, FY90, and FY91 to date, only 89 cases required Congressional notification. Nonetheless, these 89 "Hill" cases represented $11.8B in U.S. defense trade. Moreover, although only 37 companies submitted these 89 Hill cases, these cases affect hundreds of U.S. subcontractors and vendors.

Lengthy review process for Hill cases. Exporters need to plan on a lengthy review process for sales requiring Congressional notification. License applications that need to be notified to the Congress represent some of DTC's lengthiest cases for three main reasons.

First, they are often very complicated or controversial cases that require extensive interagency review. Second, these cases are sometimes submitted before the final signed contract is completed, resulting in DTC having to hold the case after interagency review until the contract is provided. And third, the review process itself for these cases involves two additional review stages not included in the review process for other DTC cases.

Namely, Congressional notification cases move through three stages in the license review process. The first stage involves DTC and interagency review of the case; the second stage involves interagency review of the Congressional notification letter; and the third stage involves Congressional notification and related handling.

Stage one: DTC and interagency case review. The first stage is identical to that for all "staffed" cases that DTC handles (i.e., cases referred outside of DTC for more detailed technical or policy review). Basically, this stage involves a) initial review in DTC, b) staffing and interagency review, with recommendations sent to DTC by all staffing offices, and c) final review in DTC, including making a final decision based on the interagency recommendations and preparing the final decision letter.

For the 25% of DTC's cases that are staffed, the license review process ordinarily ends at this point with the issuance of the final decision and license. For Hill cases, however, the review process is only one-third complete.

Stage two: Interagency notification review. In the second stage of the review process, DTC prepares the Congressional notification letter and gains interagency approval of the text of this letter. To save time, DTC drafts the notification letter while the case is in interagency review in stage one. However, since the letter is dependent on the outcome of stage one, DTC does not begin seeking interagency approval of this letter until a final decision has been made in stage one.

DTC seeks interagency approval on the draft notification letter from three offices: the National Security Council (NSC) and the Office of Management and Budget (OMB) at the White House, and the Office of the Legal Advisor (L/PM) in the State Department. After gaining interagency approval of the Congressional notification letter, DTC prepares the final package to be sent to the Congress.

Stage three: Congressional notification. In the third stage of the review process, DTC forwards the Congressional notification package to the Bureau of Legislative Affairs (H) in the State Department, which is responsible for sending the package to the appropriate Members of Congress. Once the package is sent to the Congress, DTC waits 30 calendar days and then—assuming a joint resolution prohibiting the export has not been adopted by Congress and enacted into law—DTC issues the export license.

Special tracking of Hill cases. In August 1990, DTC created a special tracking system for all Hill cases. Upon arrival in DTC and receipt by the appropriate licensing officer, all license applications are immediately examined to see if they require Congressional notification. If so, a copy of the case is given to Rob Groesbeck, the Special Projects Licensing Officer in DTC's Arms Licensing Division (DTC/ALD) responsible for tracking Hill cases (as identified in the September edition of *Defense Trade News* in "Personnel Updates").

Notional Timeline

(Business days)

Day of Receipt			Day of Issuance
0	35	50	85

35 days	15 days	35 days
(7 weeks)	(3 weeks)	(7 weeks)
Stage 1:	**Stage 2:**	**Stage 3:**
DTC & Interagency Case Review	Interagency Notification Review	Congressional Notification

Throughout all three stages of the review process, Groesbeck tracks the progress of each case to ensure it does not get unnecessarily delayed at any point. As necessary, he undertakes actions to facilitate the handling of these cases.

Timeframes for each review stage. For each stage in the review process, DTC has set time guidelines. For the first stage, DTC seeks to adhere to the timeframes established for all staffed cases, whether Hill cases or not. That is, 10 business days for initial DTC review, 15 days for interagency review, and 10 days for final DTC review.

In stage two, DTC has set a deadline of 10 days for interagency review of the draft Congressional notification letter, and 5 days for preparation of the final Hill package. In stage three, H handles each case as quickly as the individual case and the legislative environment permits, usually within 15 days. DTC then ordinarily issues the export license on the first business day after completion of the 30 (calendar) day notification period.

Hill cases now reviewed faster. Since the creation of the special tracking system, the average licensing time for Hill cases—although still lengthy—has been reduced 39%. For the 13 Hill cases received and issued since August 1, 1990, the average licensing time was 88 business days, or four months. (Of these 13 cases, two were held for 1-4 weeks per request of the applicant.) By comparison, the average licensing time for the 25 Hill cases received in FY89 was 143 business days, or seven months.

A joint effort for further gains. In an effort to further reduce the licensing time, DTC is identifying areas in each stage where it can expedite the handling of Hill cases.

Likewise, industry can also help facilitate the review of Hill cases. In addition to providing the required information normally submitted with any application, it is recommended that applicants provide a cover letter stating that they believe the attached case requires Congressional notification and why. This letter should also explain the scope of the entire program involved, even if the application is

Average Licensing Times for Hill Cases

	Oct. 1, 1988-Sept. 31, 1989	Aug. 1, 1990-Mar. 15, 1991
Number of Cases	25	13
Business Days	143	88
	39% reduction	

only for Phase 1. Moreover, it should note delivery schedules, relevant contractual obligations, and any other information that might be useful in the DTC and interagency review process.

Point of contact. If you have any questions concerning the progress of your Congressional license application, call Rob Groesbeck in the Arms Licensing Division at (703) 875-5658. If your question, however, pertains to specific details in the case itself, please contact the licensing officer handling the case. ◆

A GUIDE TO AMENDMENT REQUESTS

DTC Now Accepting DSP-61 and DSP-73 Amendments

Many of the roughly 50,000 licenses that the Office of Defense Trade Controls (DTC) issues each year are later amended by DTC at the applicant's request. Indeed, in 1990, DTC received more than 5,000 amendment requests, 80% of which were license amendment requests.

The purpose of this article is to clarify DTC's current policies and procedures regarding both license amendment requests and agreement amendment requests. We ask that you please use this article to help facilitate our handling of amendment requests.

Amendment requests accepted for DSP-5s, 61s, and 73s. Previously, DTC only accepted license amendment requests for DSP-5 licenses. DTC has revised this policy, and is now also accepting amendment requests for DSP-61 and DSP-73 licenses. (Thus, only DSP-85 licenses are unamendable.)

Acceptable types of amendment requests. DTC favorably considers four types of license amendment requests. They are as follows:

- correcting typographical errors on the license;
- adding U.S. freight forwarders or U.S. consignors;
- changing the source of the commodity; and
- changing the foreign intermediate consignee when the consignee acts only as a forwarding agent for a hardware shipment.

Major changes require new licenses. License amendment requests cannot be used to make substantial changes to a license. Rather, major changes to an existing license require submission of an entirely new license application. Substantial changes include adding new quantities or commodities, or changing the country of ultimate destination, the end-use or end-user, or the foreign consignee.

Amendments not needed in two instances. Two common changes to licenses do not require DTC-approved amendments. First, an amendment is not needed to change the U.S. port of entry or exit. However, the company must notify DTC by letter of the proposed change prior to export and send a copy of this correspondence to the District Director of Customs at the new port. (The International Traffic in Arms Regulations (ITAR) addresses this requirement in Section 123.24.)

Second, DTC has delegated authority to the District Directors of U.S. Customs to permit the shipment of defense articles identified on any license when the total monetary value of the export does not exceed the value on the license by more than 10%. Therefore, neither DTC authorization nor a new license or amendment is required to change the dollar value on the license up to 10% above the originally licensed value. This regulation only applies to the dollar value of the item though, not to the quantity. (ITAR Section 123.25(d) addresses this issue.)

Submitting license amendment requests. To request a license amendment, please provide DTC with the signed original and one copy of the following information prepared on company stationary:

- the type of license (DSP-5, 61, or 73) being amended;
- the case number assigned by DTC to the license being amended;
- the date that the submitted amendment request was prepared;
- your company's DTC registration code;
- the company name, address, phone number, and the name of an individual point of contact;
- the country of ultimate destination indicated on the license being amended;
- the license block number that you are requesting be amended;
- the current information in this license block;
- the new information that you propose be added or changed in this license block;
- the reason or explanation for the amendment; and,
- the following statement, dated and signed by an empowered official in the company:

I (name of signatory), hereby apply for approval for the above amendment; warrant the truth of all statements made herein; and acknowledge, understand, and will comply with the provisions of Title 22 CFR 120-130 and any conditions or limitations imposed.

In addition to the original and one copy of the above submission, please provide the following with your amendment request:

- a copy of the license to be amended, including copies of all proviso letters or other attachments to the license; and,
- a self-addressed mailing label.

In those instances where an amendment request adds U.S. freight forwarders or consignors to the license, you must also submit a signed certification letter (as outlined in ITAR Section 126.13).

Four officers handling license amendments. Upon receipt in DTC, all license amendment requests are handled by the four "DSP-61/73 licensing officers" identified in the article "Licensing Officers' Workload Assignments" published in the January 1991 edition. Namely, in the Aerospace and Ordnance Branch, Terry Hunter handles all amendments for companies A-J while Sue Clark handles companies K-Z. In the Electronics and Combat Systems Branch, Carolyn Love handles all amendments for companies A-L and Daniel Buzby handles companies M-Z.

Approved and denied amendment requests. If approved, the original amendment request is signed by the appropriate DTC licensing officer, dated, sealed with the Department of State seal, and returned to the applicant. Upon receipt of the approved amendment, the applicant should attach the amendment to the license, or provide it to U.S. Customs to attach to the license.

Denied amendment requests are returned without action to the applicant, with the reason for denial indicated in the returned package. If a new license application is required, the existing license should accompany the new application. The statement "This is a new application to replace license (fill in the #) " should be indicated at the bottom of the commodity block on the "replacement" license application. The license application should reflect only the unshipped balance, and should include the appropriate licensing documentation.

Amending agreements. As with proposed license amendments, proposed agreement amendments (including extensions) must also be submitted to DTC for approval and may not enter into force until approved. Also as with license amendments, two types of agreement amendments do not have to be pre-approved. They are:

- amendments that only alter delivery or performance schedules; and,
- amendments that represent minor administrative changes that do not affect the duration or scope of the agreement or the clauses or information that must be included in such agreements under the ITAR.

For these minor agreement amendments, however, the company must submit an information copy of the amendment to DTC within 30 days. (Agreement amendments are addressed in ITAR Section 124.1(b).)

Submitting agreement amendment requests. Agreement amendment requests should be submitted in writing with a cover letter explaining the proposed change. The cover letter should follow the format of ITAR Section 124.12 (unless it is a request for an extension, a change in company name, or another "minor" change).

A copy of the proposed amendment and a signed certification letter (per ITAR Section 126.13) must also be submitted with each request. (Please note that Distribution Agreement (AG-DIS) amendments need also be submitted in accordance with ITAR Sections 124.13 and 124.14.)

Updating old agreements. If the proposed amendment is for an agreement that is more than 6 years old (i.e., issued prior to January 1, 1985), the company should review the clauses required by ITAR Sections 124.9 and 124.10 to make sure that they are current in the agreement. If the clauses are outdated, the company should include the current clauses in its submittal of the proposed amendment. (Failure to update these clauses will result in the proposed amendment being returned without action.)

One officer handling most agreement amendments. All Manufacturing License (AG-MLA) and Technical Assistance Agreement (AG-TAA) amendment requests are handled by licensing officer Sue Plant. Distribution Agreement (AG-DIS) amendment requests, which are much more infrequent, are reviewed by the officer handling the commodity involved (as identified in the article "Licensing Officers' Workload Assignments"). ◆

DEFENSE TRADE TRENDS: EAST ASIA AND THE PACIFIC

Strong Prospects for U.S. Exporters

Special features of the Asian market. The East Asia and Pacific region presents unique features that differentiate it from the other two major defense markets of Europe and the Middle East.

In Asia, the major customers are countries with robust industrial economies, considerable absorptive capacity for sophisticated equipment, and relative immunity to the political and oil-income uncertainties affecting the Middle East. Also, the level of security threat faced by U.S. friends and allies in Asia and the Pacific has not declined as dramatically as has occurred in Europe during the past 2 years.

Given these features, the Pacific region's large (27%) share of global U.S. defense exports (commercial and government-to-government) will most likely hold or increase in the near term.

U.S. advantages. Close political and security ties give U.S. firms an edge in maintaining their share of the major Asian and Pacific markets. U.S. market shares recently reached 35-40% of the Australian and South Korean markets, and 17% of the Japanese procurement budget.

Competition from European suppliers, although growing, is relatively slight. In Japan and Korea, at least, the main challenge comes from host country pressure for co-production and "indigenization." This pressure is expected to continue, in line with the defense and industrial policies of both countries.

Characteristics of leading countries. The U.S.'s three main defense trade partners in this region—South Korea, Australia, and Japan—all share some common characteristics. All three have reached a high level of industrial development and all three look to the U.S. as their key security partner and major defense supplier. They share these characteristics with a fourth major market, Taiwan—a case set apart, however, by special political factors.

South Korea. Given the close U.S.-Republic of Korea security relations, it is not surprising that over 75% of the estimated $1.5B (late 1980s) of Korean overseas military procurement came from U.S. sources. Furthermore, there is little prospect of a major shift from U.S. sourcing in the early to mid-1990s, despite aggressive marketing efforts by some European firms.

However, there is growing eagerness on the part of Korean industry to demonstrate its export potential in the defense field. A related trend will be increased Korean emphasis on offsets, co-production, and retransfer rights. Korean purchases will likely be heavily affected by the prospects for technology transfer and the impetus to develop commercial industries.

Australia. Australian defense policy emphasizes increasing self-reliance, while still seeking access to sophisticated military hardware at reasonable cost. For Australia, such access is a major benefit of its alliance with the U.S.

With $1.0-1.5B in annual purchases from the U.S. during 1985-90, Australia is obviously a leading defense customer. The outlook is for continued U.S. sales in the Australian market, particularly since the current Australian emphasis on improving mobility and force projection capabilities fits well with what the U.S. has to offer.

Japan. Japan's recently published 1991-1995 Mid-Term Defense Plan (MTDP) continues the policies of the 1986-1990 MTDP, though on a lesser scale of acquisition and production. For example, the new MTDP is still designed to meet the goal of protecting sea lanes of communications out to 1,000 nautical miles. In the 1980s, this policy drove defense procurement, which grew steadily to its current total of $8B. However, fiscal pressure on further growth of the defense budget has resulted in stabilization of procurement spending over the period of the current MTDP.

The emphasis on indigenous development and co-production is at its most developed in Japan; although some 90% of procured defense items are produced indigenously, 80% of that 90% is licensed from the U.S. Procurement from other countries remains a relatively negligible factor.

In certain areas, such as missile propulsion systems and defense electronics, Japanese industry has established a firm basis for local research and development in the future. The F-15 co-production project of the past decade and the FSX co-development project of the 1990s are important stages in a longer-term strategy for building indigenous design capability for advanced fighter aircraft.

But, there are limits to the Japanese push for co-production. Fiscal pressures will likely increase, while government policy against the export of defense articles will restrict the potential market, driving up unit costs.

Taiwan. U.S. commercial and government-to-government defense sales to Taiwan amounted to some $660M in FY90, out of a Taiwanese defense budget of nearly $5B.

Since the termination of U.S.-Taiwanese diplomatic relations in 1979, the U.S. defense trade relationship with Taiwan has operated under special constraints. These include the August 17, 1982 U.S.-People's Republic of China Communique, which states that U.S. "arms sales to Taiwan will not exceed, either in qualitative or in quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the United States and China." ◆

DOD CRITERIA FOR "FMS-ONLY" HARDWARE SALES

"FMS-only." Under the Arms Export Control Act, the President may designate that specific items be sold only through the government-to-government Foreign Military Sales (FMS) program (rather than commercially). In Executive Order 11958, the President delegated this authority to the Department of State, which looks to the Department of Defense (DOD) for recommendations on this matter.

Four key FMS-only criteria. Defense is usually neutral as to whether a foreign country purchases a U.S. defense article through the FMS program or on a direct commercial basis. In some instances, however, Defense prefers that a specific transaction be "FMS-only" and notifies State accordingly.

Specifically, for cases in which one or more of four criteria apply, DOD will recommend to State that an exception to normal procedures be made and that the transaction be designated as an FMS-only sale. The four key criteria are:

- legislative or Presidential restrictions;
- DOD or Service policies, directives, or regulatory requirements, such as National Disclosure Policies;
- government-to-government agreement requirements; and,
- interoperability or safety requirements for U.S. forces.

The internal DOD process. In the course of its review of staffed State license applications, DOD (usually, the armed services) examines each case to determine if any of these criteria apply. Service recommendations to make a sale FMS-only based on the above criteria must be supported with specific details and concurred with by the Defense Technology Security Administration (DTSA).

Internal DOD disagreements between DTSA and a Service regarding FMS-only recommendations may be referred to the International Technology Transfer Control Committee for resolution. The final DOD recommendation is then forwarded, along with any other recommended provisos, back to the Office of Defense Trade Controls (DTC).

State consideration of DOD recommendations. Upon receipt of a DOD recommendation for an FMS-only restriction, DTC considers the recommendation in the course of its final review of the license application. Most often, State defers to DOD on the issue of FMS-only sales and includes the FMS-only restriction in its proviso letter accompanying the license.

Point of contact. For questions regarding FMS-only criteria or procedures, please contact Nancy Hindman in DOD/DTSA at (703) 614-7761 or telefax at (703) 693-5306. ◆

U.S. CUSTOMS AT DTC

Detentions and Seizures

Within the U.S. Government, the U.S. Customs Service is the lead agency responsible for enforcing the various export control laws and regulations administered by both the Departments of State and Commerce. This responsibility includes, when appropriate, detaining and seizing goods going through U.S. ports.

The EXODUS Command Center as the hub. In 1982, U.S. Customs established a national EXODUS Command Center at Customs Headquarters in Washington, D.C. to coordinate—and thereby maximize the effectiveness of—the activities of the numerous EXODUS inspection teams located at ports throughout the country. Since then, for all port detentions and seizures nationwide, the EXODUS Command Center has served as the central reference point for the EXODUS port teams.

The Center's responsibilities. By maintaining an extensive information system and liaison network, the Command Center is usually able to quickly resolve the thousands of detentions and seizures that are referred to it each year.

Specifically, the EXODUS Command Center responds to port inquiries for export licensing verifications and provides operational guidance to inspection teams in the field. In addition, the Center works to facilitate the flow of critical investigative and intelligence information to and from the various EXODUS inspection teams and Customs investigative groups at the ports.

Port experience mandatory for Center staff. The staff at the Command Center consists of a Supervisory Special Agent, Customs Inspectors, a Program Analyst, and support personnel. Having all worked in an EXODUS port team before coming to headquarters, the Center's staff possesses a good deal of export-related field experience.

After completing a tour of duty at the Command Center, staff members return to the field with a stronger appreciation of how the EXODUS program relates to the different federal agencies, U.S. industry, and U.S. national security and foreign policy.

Detentions and seizures: A six-step process. Detention and seizure of a suspicious export or import by U.S. Customs ordinarily proceeds according to the following six-step process.

- *Port Inspection and Detention:* The U.S. Customs EXODUS inspectors at the numerous ports of exit and entry throughout the U.S. routinely examine export documents, shipper's export declarations, invoices, and airway bills, as well as the export commodity itself. For suspect items, the EXODUS inspector at the port detains the shipment.

- *Referral to the Command Center:* Having detained the shipment, the EXODUS inspector at the port contacts the EXODUS Command Center in Washington, D.C. and relays the relevant information about the shipment.

- *Referral to the Regulatory Office:* The EXODUS Command Center forwards the detention information to the appropriate regulatory office in the federal government for review. The Office of Defense Trade Controls (DTC), for example, gets all detention referrals for defense articles and defense services.

- *Licensing Determination Made:* The regulatory office then makes a licensing determination on the detention and notifies the EXODUS Command Center of this determination. The determination states whether the commodity has been properly licensed or not.

- *Command Center Notifies the Port:* The Command Center advises the EXODUS inspector at the local port to either release the commodity if it has been determined that the license is valid or no license is required, or seize the commodity if there has been an export violation.
- *Release or Seizure:* The EXODUS inspector at the port notifies the exporter of the determination and then either lifts the detention or seizes the shipment. After a shipment is seized, the matter is turned over to the Office of Fines, Penalties, and Forfeitures in the local Customs District office. All communications from the exporter regarding the seizure are handled by that office.

A large caseload. Since its establishment, the Command Center has handled more than 15,000 referrals for export license verifications, about two-thirds of which have resulted in seizures. In FY90 alone, there were nearly 1,800 detentions, of which a record 92% resulted in seizures (valued at $162M).

EXODUS Liaison in DTC. Given the volume of detentions of defense articles and services that are referred to DTC, U.S. Customs has detailed an EXODUS Liaison Officer to DTC. This officer coordinates DTC's handling of detention referrals and works closely with both the EXODUS Command Center and the EXODUS port teams. (See the article "U.S. Customs at DTC: The Positions and the People" in the September 1990 edition for more information.)

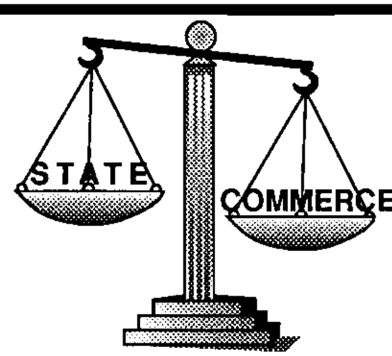
Local Customs offices as POCs. As pointed out, the EXODUS Command Center was established to support U.S. Customs field personnel and to coordinate and expedite internal U.S. Government operations. All contact from private sector entities regarding detentions or seizures should be directed to the local U.S. Customs District Office at the port of detention or seizure. The following list provides all of the U.S. Customs District Offices in alphabetical order by city. ◆

U.S. Customs District Offices

(in alphabetical order by city)

Anchorage, AL	(907) 271-4043	New York, NY	(212) 466-5817
Baltimore, MD	(301) 962-2666	New York, NY (JFK Airport)	(718) 917-1542
Boston, MA	(617) 223-6598	Newark, NJ	(201) 645-3760
Buffalo, NY	(716) 846-4374	Nogales, AZ	(602) 287-9163
Charleston, SC	(803) 724-4312	Norfolk, VA	(804) 441-6546
Charlotte Amalie, St. Thomas	(809) 774-2530	Ogdensburg, NY	(315) 393-0660
Chicago, IL	(312) 353-6100	Pembina, ND	(701) 825-6201
Cleveland, OH	(216) 522-4284	Philadelphia, PA	(215) 597-4605
Dallas/Ft. Worth, TX	(214) 574-2170	Port Arthur, TX	(409) 724-0087
Detroit, MI	(313) 226-3177	Portland, ME	(207) 780-3326
Duluth, MN	(218) 720-5201	Portland, OR	(503) 221-2865
El Paso, TX	(915) 541-7435	Providence, RI	(401) 528-5080
Great Falls, MT	(406) 453-7631	St. Albans, VT	(802) 524-6572
Honolulu, HI	(808) 546-3115	St. Louis, MO	(314) 425-3134
Houston/Galveston, TX	(713) 225-2334	San Diego, CA	(619) 293-5360
Laredo, TX	(512) 723-2956	San Francisco, CA	(415) 556-4340
Los Angeles/Long Beach, CA	(213) 514-6001	San Juan, Puerto Rico	(809) 723-2091
Miami, FL	(305) 536-4101	Savannah, GA	(912) 944-4256
Milwaukee, WI	(414) 291-3924	Seattle, WA	(206) 442-0554
Minneapolis, MN	(612) 349-3990	Tampa, FL	(813) 228-2381
Mobile, AB	(205) 690-2106	Washington, D.C.	(202) 566-8511
New Orleans, LA	(504) 589-6353	Wilmington, NC	(919) 343-4601

COMMODITY JURISDICTION DETERMINATIONS



The following chart provides selected Commodity Jurisdiction (CJ) determinations. The commodity descriptions are intentionally general to ensure the confidentiality of all proprietary information related to individual cases.

These determinations apply only to the specific commodity reviewed in the CJ process. If you believe one of your products is similar to one of those listed as having been placed on the Department of Commerce's Commodity Control List (CCL), please submit a CJ request letter (ITAR 120.5). Please refer to the article "A Checklist for Preparing CJ Requests" published in the September 1990 edition of *Defense Trade News* for assistance in submitting your request.

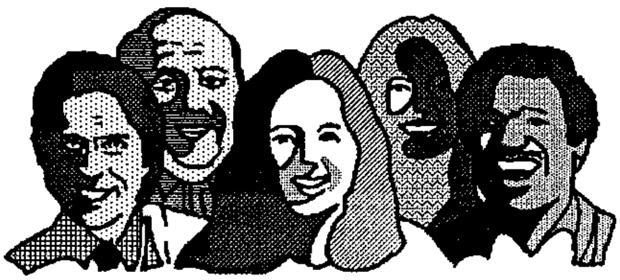
COMMODITY	JURISDICTION
Access Security Adapters Board	CCL *
High Speed Encryption Daughter Board	USML XIII(b)
Aircraft Arresting Systems	CCL *
when modified for military use	USML VIII(e)
Automatic Teller Software	CCL (GTDR)
Bus Interface (VHSIC)	USML XI(d)
Color Laser Image Recorders	CCL *
Cryptographic Variable Split Band Filter	USML XIII(b)
Depleted Uranium Alloy Penetrators	USML III(b)
EMI Receivers	CCL (ECCN 6598F)
Global Positioning System (GPS) Receivers	CCL (ECCN 1501A)
GPS for Unmanned Air Vehicles	USML XI(a)(2)
Hermetic Relays and Thermostats for high performance Aircraft and Spacecraft	USML XI(b) & (e)
Imaging device for military application	USML XI(a)
Klystron Amplifiers	
Extended Interaction Klystrons	USML XI
Extended Interaction Amplifiers	USML XI
Twystrons	USML XI
Operational Frequency above 18GHz	
Minimum Peak Pulsed Powers above 5mW at frequency of 6 GHz or less	
Minimum Peak Pulsed Power above 3mW at frequency above 6 GHz	
Instantaneous Bandwidth of 3% or more	
All others	CCL (ECCN 1558A)

COMMODITY	JURISDICTION
Advanced Epitaxy System	CCL (ECCN 1355A)
Analog Radio	CCL *
Branch Automated Processor using DES	USML XIII(b)
Closed Circuit Underwater Breathing Equipment	USML XIII(c)
Concept for Stealth Technology	USML VIII(h) & XIII(e)
Demo Program for software tool	CCL *
Electronics Encoders that encrypt Satellite Transmissions	USML XIII(b)
Firefighting Trainers for Navy	USML IX(a)
Helix Traveling Wave Tubes	USML XI
Operating Frequency above 18GHz	
Minimum Peak Power 2.1 KW	
Continuous Wave Power of 300w or higher	
Instantaneous band width more than 1 octave	
All others	CCL (ECCN 1558A)
High Density Interconnect Technology	CCL (GTDR)
Lead Styphate (explosive)	USML V(a)

COMMODITY	JURISDICTION	COMMODITY	JURISDICTION
Linear DC Servo Amplifiers	CCL (ECCN 6599G)	Magnetrons Operational frequency above 18 GHz Tunable, except mechanically or hydraulically	USML XI
		All others	CCL (ECCN 1558A)
Message Authentication Software without encryption	CCL (GTDR)	Metal Detectors	CCL *
Molds for Fuse Assemblies	USML III(d)	Money Transfer Software Programs	CCL (ECCN 1527A)
Non FAA Certified Aircraft Engines and technical data	USML VIII(b)	Oleoresin Capsicum	
		Products containing greater than 1%	USML XIV
		Products containing 1% or Less	CCL *
Quartz Fiber Material	CCL *	Satellite System Test Equipment	USML VIII (j)
Security Software Program for Cryptographic Device	USML XIII(b)	Security Systems	
		Monitor and Control units	CCL *
		Network Gateways and Transponders	USML XII(b) & (e)
Shell band Arc Welder	USML III(d)	Smart Cards with full DES	USML XIII(b)
Software tool for modeling effect of Radiation in Space on Systems	USML VIII	Software Code designed for evaluating nuclear weapons explosion	USML XVI
Software for Circuit design	CCL (GTDR)	Space-qualified Attenuators, Mixers, Junction Couplers and RF Couplers	USML XI(b) & (e)
Space designed and tested Crystal Oscillators and Filters	USML XI(b) & (e)	Space Toilets	CCL *
Sputnik Display Model	USML VIII(b)	Titanium Alloy Blanks	CCL *

* A specific Export Commodity Classification Number (ECCN) was not provided by the Department of Commerce. For the ECCN number, please file a commodity classification request with the Bureau of Export Administration (BXA), Department of Commerce, P.O. Box 273, Washington, DC 20044.

PERSONNEL UPDATES



As a regular feature in each newsletter, the Center for Defense Trade (CDT) profiles several employees. For this edition, we have selected three licensing officers, one paralegal, one registration specialist, and one attorney.

Calvin Chin arrived at DTC August 27, 1990 from the General Accounting Office (GAO) where he served as an analyst reviewing various U.S. national security and foreign policy programs. Both his previous job experience and Masters Degree in Political Science transfer directly to his DTC assignment as a Licensing Officer in the Electronics and Combat Systems Branch of the Arms Licensing Division (ALD). Chin currently handles DSP-5 and DSP-85 applications for all of Category IX (Military Training Equipment); for Radars (Weather, Navigation, & Traffic Control) in Category XI; for companies N-Z for some items in category XII including Fire Control Systems and Lasers and Night Vision Equipment; and for numerous articles covered by Category XIII.

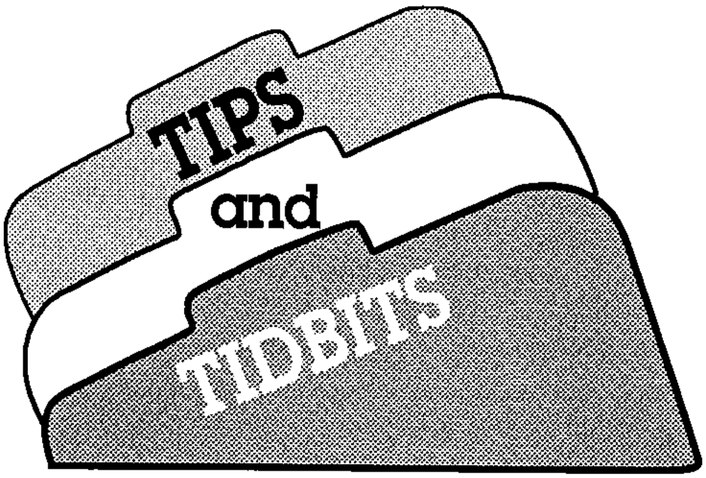
Suzanne P. Norsworthy came to DTC September 4, 1990, from the State Department's Office of Foreign Missions where she served for 4 years. In her previous position, Norsworthy assisted the U.S. diplomatic community in all areas where U.S. Foreign Service personnel encountered problems abroad, and applied reciprocal restrictions on foreign diplomats serving in the U.S. She began her government career as a researcher in the Foreign Affairs and National Defense Division of the Congressional Research Service while completing her Masters Degree in International Affairs. In her current assignment as a licensing officer in ALD's Aerospace and Ordnance Branch, Norsworthy handles all DSP-5s (except spare parts less than or equal to $500,000 and amendments) and DSP-85s for Companies K-Z for Categories I (Firearms) and III (Ammunition and Ammunition Producing Equipment).

Sue Ann Plant began her new duties as a licensing officer on September 23, 1990. She possesses a Bachelor's Degree in Political Science, and worked for the past 5 years in private industry. Plant's industry experience in providing program management support for four major, international naval weapons programs transfers directly to her current position. In the Agreements and Commodity Jurisdictions Branch of the Arms Licensing Division (ALD), Plant handles all amendments for Manufacturing Licensing Agreements (AG-MLAs) and Technical Assistance Agreements (AG-TAAs) for all USML Categories.

Eva O. Tyler also arrived in DTC on September 23, 1990. Since she joined the Department in 1976, Tyler has served in positions in the Passport Office, the Foreign Service Institute, and, most recently, for 4 years as a paralegal specialist in the Office of the Legal Adviser after completing her degree as a paralegal specialist in 1986. Tyler's extensive work experience in many of the Department's bureaus and her first-hand knowledge of the Office of Legal Adviser assist her greatly in her current position as a Paralegal Specialist in the Compliance Analysis Division (CAD).

Wendy Payne came to DTC on August 27, 1990 from a position in the Department's Bureau of Administration. She has a total of 8 years' experience in the State Department, with other assignments including the Bureau of Consular Affairs and the Office of the Secretary of State. Her previous experience with the administrative activities of the Department are a great asset in her new position as a Compliance Operations Specialist focusing on registration duties in the Compliance Analysis Division (CAD).

Susan Page joined the State Department's Office of the Legal Adviser (L/PM) as an Attorney-Adviser for Politico-Military Affairs on March 11, 1991. After completing a Bachelors Degree in English, she pursued a law degree at Harvard University, graduating in 1989. Following law school, Page served as an attorney in Nepal where she worked on children's rights issues while on a 1-year Rotary Foundation Fellowship. In L/PM, she will be working with the Arms Licensing Division (ALD) on a variety of defense trade licensing issues related to the State Department's authority under the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). ◆



DTC Expands Telephone Hours

DTC is continuing its efforts to improve its telephone system and services. To this end, we are expanding our public telephone hours effective immediately.

The new telephone hours are from 11 am to 5 pm weekdays. These expanded hours nearly double the time when the DTC staff is available to answer public queries.

Note: Appointment hours will remain 2 pm to 5 pm.

Federal Express Return Packages

Frequently, registrants request that the Office of Defense Trade Controls (DTC) return an approved license application via the Federal Express overnight delivery system. We honor these requests whenever the return bill of lading is properly completed to reflect that the registrant is paying the service charge. DTC does not have a Federal Express account or a funding line to pay for these services.

To insure proper, prompt return of your Federal Express package, follow these instructions when completing your Federal Express Airbills:

1. Complete one airbill to send the package to us.

- Fill in your Federal Express Account Number in the top left box if you have an account.
- Fill in all information in Block #1, Sender, regarding you or your company.
- For Block #2, Recipient, fill the appropriate person or Division [either Arms Licensing Division (ALD) or Registration/Compliance Division (CAD)] and the corresponding phone number [(703) 875-6644 for ALD or (703) 875-6650 for CAD]. For Company, enter Office of Defense Trade Controls, PM/DTC, 1701 N. Fort Myer Dr., Rm. 200, Arlington, VA, 22209-3113.
- For Block #3, Payment, check the appropriate square. Use square 1 if you have a Federal Express Account. Use square 4 if you want to bill your credit card. (Fill in your credit card account number and expiration date on the shaded blue line below squares 2 and 3. **NOTE:** Do not use square 2 because DTC cannot accept billing as a recipient.)
- Complete the rest of the form, indicating the services and special handling you desire.
- Attach this airbill to the outside of the package.

2. Complete another airbill for us to send a return package to you.

- For Block #1, Sender, fill the appropriate person or Division [either Arms Licensing Division (ALD) or Registration/Compliance Division (CAD)] and the corresponding phone number [(703) 875-6644 for ALD or (703) 875-6650 for CAD]. For Company, enter Office Defense Trade Controls, PM/DTC, 1701 N. Fort Myer Dr., Rm 200, Arlington, VA, 22209-3113.
- Fill in all information in Block #2, Recipient, regarding you or your company. (This information is probably identical to Block #1 of the first airbill.)

- For Block #3, Payment, check either square 2 or square 4, as appropriate. Use square 2 if you have a Federal Express Account and fill in your account number on the shaded blue line below squares 2 and 3. Use square 4 if you want to bill your credit card and fill in the credit card account number and expiration date on the shaded blue line below squares 2 and 3. **(Note:** Do not use square 1 because DTC cannot accept billing as a sender.)
- Complete the rest of the form, indicating the services and special handling you desire when DTC returns your package.
- Attach this airbill to the outside of an appropriate size envelope. Fold the envelope and place in the package that you are sending to DTC. ◆

PUBLICATIONS FOR EXPORTERS

Starting with this edition, "Publications for Exporters" will be a regular department in *Defense Trade News*. It will feature U.S. Government, non-profit, and other publications that may be useful reference guides for U.S. exporters.

GPO, The Information Warehouse

What is GPO? For this first article on "Publications for Exporters" however, we thought it would be useful to provide an overview of the Government Printing Office (GPO) since it is the official printer for most U.S. Government publications.

Although some departments use other printers for their internal publications, most documents releasable to the public are printed by GPO. Indeed, only GPO prints periodicals, books, posters, pamphlets, etc. from all parts of the federal government.

Three types of publications. GPO publications fall into three basic types.

- *Periodicals available by subscription.* These are printed on a regular basis at a pre-determined subscription price. Such periodicals include regular U.S. Government magazines, newsletters, directories, catalogues, etc.
- *Recurring publications.* Recurring publications are published at regular intervals, but without specific publication dates or pre-determined prices due to variations in the volume of information. Examples include Annual Reports to Congress, Factbooks, and the *Code of Federal Regulations* (CFR).
- *One-time publications.* GPO also prints a wide variety of one-time publications as needed.

Free catalogs list what GPO sells. The Superintendent of Documents offers three free, standard catalogs that list most of GPO's publications. The newest of these catalogs is aimed exclusively at U.S. businesses, and includes publications on exporting. This catalogue, *U.S. Government Books for Business Professionals* (SN 021-700-00254-4), highlights publications on general business, export/import, patents and trademarks, accounting and taxes, law, labor relations, and selling to the government.

In addition, GPO publishes two other standard catalogues. One, *U.S. Government Books* (SN 021-602-00001-9), features hundreds of new government books. The other, *Government Periodicals and Subscription Services* (SN 021-600-000290-6), contains descriptions of periodicals and recurring publications available by subscription.

Subject bibliography catalogs too. In addition to these three catalogs, GPO offers a "subject bibliography" service. This service provides catalogs of all currently available GPO titles in a specific area of study, with a brief description of each publication.

Some of the subject bibliographies available that are related to defense trade are *Foreign Trade and Tariffs* (SB-123); *Foreign Relations of the United States* (SB-210); *Foreign Area Studies* (SB-166); and, *Foreign Affairs of the United States* (SB-075).

To order a subject bibliography, or to get a listing of all available subject bibliographies, write to the Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328. Subject bibliographies are also free.

Twenty-four U.S. Government bookstores. All GPO publications are available at or through the 24 U.S. Government bookstores located across the country. Each store carries many of the Government's most popular publications, along with a selection of other books tailored to suit the interests of the store's local clientele. Any government publication that is not in stock can be mail-ordered through the store. The stores are located in the following cities, listed in alphabetical order by city. (For exact locations, look in the Yellow Pages under "Books.")

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Birmingham, AL	Laurel, MD
Boston, MA	Los Angeles, CA
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Cleveland, OH	New York, NY
Columbus, OH	Philadelphia, PA
Dallas, TX	Pittsburgh, PA
Denver, CO	Portland, OR
Detroit, MI	Pueblo, CO
Houston, TX	San Francisco, CA
Jacksonville, FL	Seattle, WA
	Washington, DC

Library collections too. GPO publications are also available at some 1,400 depository libraries throughout the U.S. and its territories through the Federal Depository Library System (FDLS). Established by Congress to allow free public access to government publications, the FDLS is administered by GPO. (*Defense Trade News* is available in more than 900 of these depository libraries.)

To find the Depository Library in your area, contact your local library or write to the Superintendent of Documents, Mail Stop SM, U.S. Government Printing Office, Washington, D.C. 20402. Or, you may telefax your request for Depository Library information to (202) 275-7747.

How to Order. We have provided the "GPO Publications and Subscriptions" order form at the end of this edition of *Defense Trade News*. Complete ordering information is listed on the back of the order form.

Please note in ordering GPO publications that all GPO orders must be paid in advance. Moreover, to expedite the handling of your order, place subscription orders and non-subscription orders on two separate forms.

Phone orders are accepted 8 am-4 pm weekdays at (202) 783-3238. Expect a telephone tree (press "1" for subscriptions, "3" for a recorded list of recently published GPO books, and "6" to order GPO catalogs, books, pamphlets, or posters). Use (202) 275-0019 to telefax an order for subscriptions or (202) 275-2529 for non-subscription items, catalogs, and subject bibliographies. Both telefax numbers are available 24 hours a day, 7 days a week. ◆

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Please wait for at least 6 weeks to inquire about your order. For inquiries on subscriptions, write to Subscription Service Section, U.S. Government Printing Office, Stop: SSOM, Washington, DC 20402-9375. To check on orders for publications other than subscriptions, write to Publications Service Section, U.S. Government Printing Office, Stop: SOS, Washington, DC 20402-9329. You may also call (202) 275-3050 for inquiries about publications other than subscriptions and (202) 275-3054 for subscription inquiries.

Customer Service

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