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⑨ Final Rept. on Phase 4

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INTEGRATING THE CRITICAL TECHNOLOGIES
APPROACH INTO THE DEFENSE EXPORT
CONTROL PROCESS.

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JANUARY 1981

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Final Report: Phase IV of the United States
Technology Transfer Export Controls Project

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- H DoD Directive 2030.4, "Support for the Strategic Trade
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INTRODUCTION

In the Export Administration Act of 1979, Congress mandated that the Department of Defense prepare and maintain a Militarily Critical Technologies List (MCTL) and further indicated that this List should become the basis for Defense export control procedures. While the primary emphasis of DoD efforts to meet its responsibilities under this Act has been on the development of the MCTL, DoD has also been concerned with the activities required to incorporate the List, as it is formulated, into export control processes and institutions. These activities are related to the following objectives for implementing the Critical Technologies Approach to export control:

- Maintain, update, and substantiate the MCTL
- Incorporate the MCTL into the DoD export license review process
- Integrate the MCTL into U.S. export control regulatory mechanisms
- Prepare Critical Technology proposals and negotiate those within COCOM

Betac has devoted its energies, under this phase of its Critical Technologies Project (MDA 903-78-C-0137), to assisting DoD in specifying the actions that should be taken to achieve these objectives. This Final Report presents Betac's assessment of and resulting recommendations for this implementation process.

In an earlier report Betac concluded that, as part of the process for implementing the critical technologies approach for export control, the existing system for processing export license applications within the Department of Defense needed to be revised.^{1/} A major thrust of this report follows up on this conclusion by presenting a specific option

^{1/} Richard H. Van Atta and David L. Gandle, "Preliminary Concept for Implementing the Militarily Critical Technologies List (MCTL) in the DoD Export Control Process," Betac Corporation, July 1980.

for revising this system and by assessing the documentation and the information processing requirements necessary to implement this option. The adequacy of current procedures and statements of policy in the area of export control are assessed and specific suggestions are made for improving the definition of responsibilities and the specification of duties that are required to have a fully effective export control process. This report also addresses the need for improved data base administration capabilities to facilitate the operation of a revised export control process.

Currently the main document articulating Defense export control policy is the "Interim DoD Policy Statement on Export Control of United States Technology" issued by Secretary Brown on August 26, 1977. During the years since this Statement was issued, a number of memoranda and other documents have been issued to implement various aspects of the policy. However, there has been no overall implementing documentation that provides a coherent and uniform statement of responsibilities and functions for export control. Moreover, the enactment of the Export Administration Act of 1979, as well as the on-going programs within DoD regarding export control, have modified and reoriented some aspects of the policy laid out in the Interim DoD Policy Statement. Therefore, we have concluded that a new DoD Directive on Export Control is now necessary and that the existing Interim Policy Control should be substantially revised.

This Final Report on implementing the Critical Technologies Approach to export controls is organized into four chapters. Chapter I presents our recommended option for revising the export license review process. Documentation requirements are addressed in Chapter II; a new DoD Export Control Directive is proposed and the Interim Policy Statement is assessed as a basis for revision. In Chapter III a program is recommended for providing data base capabilities to support the implementation effort. Lastly, Chapter IV discusses the steps required to institutionalize the assessment of critical technologies within the Department of Defense.

CHAPTER I

RECOMMENDED OPTION FOR REVISING THE DoD EXPORT LICENSE REVIEW PROCESS

1.1 Introduction

As part of its overall tasking to develop a program for implementing the Militarily Critical Technologies List in the Defense export control process, Betac developed a number of options for improving the DoD export license processing system.^{1/} These options present various methods for distributing export control responsibilities within DoD in order to ensure that all licenses will receive adequate assessment for national security impact, and that such assessments will be carried out within the time limits established by the Export Administration Act of 1979. The imposition of time limits on the assessment process, however, creates a variety of problems for the adequate assessment of license applications and intensifies the need for a restructuring of the license review process to include only those activities that are absolutely essential to the protection of U.S. national security. With this purpose in mind we developed several options: each embodying certain advantages and disadvantages over the others; they were not, however, intended as the definitive set of all possible methods of altering the export licensing review process. They were intended, rather, to serve as positions from which to discuss possible changes in license processing. From this range of options, presented herein as Options A through D, a final option, shown as Option E, was developed based on a review with export control officials in DoD of the set of original options. Option E has become the basis for revising the export license review process within DoD.

^{1/} Richard H. Van Atta and David L. Gandle, "Preliminary Concept for Implementing the Militarily Critical Technologies List (MCTL) in the DoD Export Control Process", Betac Corporation, July 1980.

1.2 General Concerns

Five alternative options for DoD export license application processing are discussed below. The distinguishing characteristic of each one is the differing locus of responsibility for day-to-day export license case processing. Option A illustrates the present licensing system, with responsibility for processing activities centered in the Deputy Director for Export Control, a new position proposed to formalize the duties presently carried out by Captain Howar within the Office of Technology Trade. Option B is a processing system in which operations are centered in a Joint Defense Export Control Group (JDECG), made up of representatives of the services and concerned agencies within DoD. Option C is similar to Option B, but with changes made to eliminate possible duplications of effort, and with a balanced review role for both the Services and IP&T. Option D is an attempt at streamlining the system by having a "Lead Service" in charge of specific technology areas. Option E is a recommended composite of the other options, based on discussions with OSD export control officials.

A fundamental question common to all of the options is that of manpower resources. We have structured the various choices with a presumption that the changes called for will take place within existing manpower limitations. Individuals needed for participation in the JDECG which is proposed in Options B and C below, or other new activities, can be drawn from existing export control billets, if necessary. This is not to say that additional manpower resources could not be usefully applied. Case processing time would be positively effected by the addition of new manpower resources in any or all of the options. Additional manpower would be especially important in Option A, i.e., the continuation of the present system. It is our belief that only if additional manpower resources are added at the IP&T Export Control Office level can the present system

remain viable. Such additional manpower resources could maintain a stronger liaison with the Services and would reduce the need for the Services to take the lead in day-to-day license processing functions. However, as it is not likely that additional manpower will be available for the processing of export license applications, we have focused on what can be done within existing personnel levels.

A question which is relevant to all of the processing options presented here, but which has not been addressed in this assessment, is the relationship between the license applicant and licensing officials. This relationship has both a feedback and a lobbying aspect to it. This relationship, although informal in nature, forms a significant part of the license review process. While we do not depict this relationship in the option diagrams presented below, we recognize that it might be useful in the future to develop a formal structure for integrating this activity into the licensing process. As noted by officials within the government, the efforts of industry to monitor cases within the export license review process are often carried out at very high levels within DoD and DoC, quite removed from those who are knowledgeable of the status of the application. The establishment of formal procedures for feedback to industry may help alleviate this problem. This is a question that should be addressed in detail in the near future.

A consideration common to all of the options, except for Option A, is the structure of support activities necessary to maintain communication between the new organizational entities and the rest of the processing system. These are questions for which pragmatic solutions can be determined after deciding upon the broader organizational options. Thus we have not addressed these questions in this chapter; we do treat certain aspects of communications among the various organizations in subsequent chapters.

OPTION A

Option A, illustrated in Figure 1-1, is basically the system presently in use for DoD export license application processing. This system is centered on the position of the Deputy Director for Export Control in IP&T. Incoming cases are received by him and then sent out at his discretion to the Services (or other parties such as OSDRE(R&AT)) for evaluation. The results of these evaluations are returned by the Services or other reviewing parties to the Deputy Director who then formulates a DoD position based on these inputs. This decision is then sent to the Commerce Department as the official DoD opinion on the case; should the case be subject to specialized treatment or to inter-agency disagreement, this decision will form the basis for DoD representations in the Operating Committee.

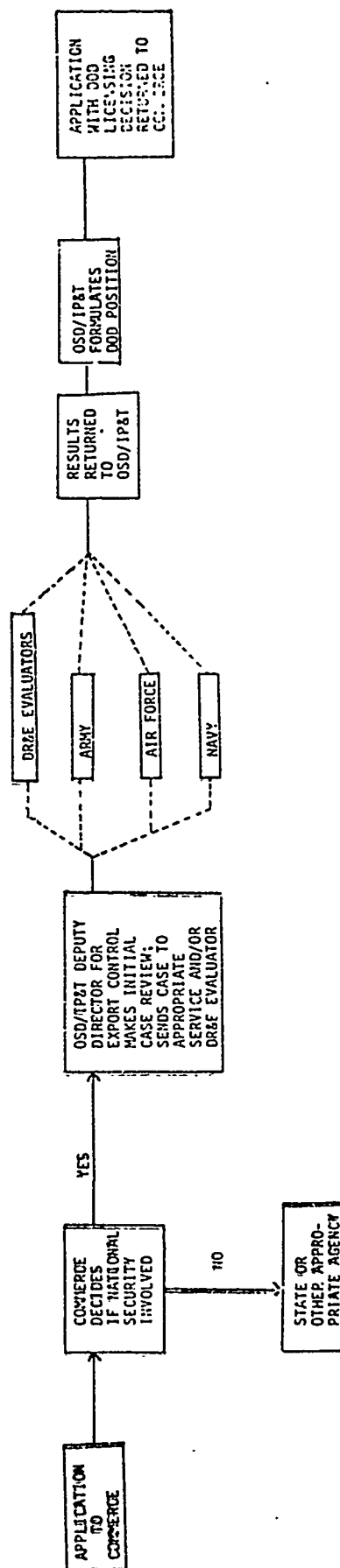
Advantages:

- Centralized supervision in OSD/IP&T allows easy contact with Commerce, State and other concerned agencies.
- Deputy Director, in "cut-and-dried" cases, can make decision on case without having to involve the Services or other levels of DoD.
- Processing time for case after technical evaluation is completed may be shortened as Deputy Director can directly formulate a DoD position on license application.
- Deputy Director gets technical information first hand; knows who to contact for any follow-up information.
- Option A is basically a continuation of the present system and would not require a readjustment in the processing structure.

Disadvantages:

- Deputy Director chooses Services to which specific cases will be sent; some Services may not receive cases, and thus review may be insufficient.
- Deputy Director sometimes may deal directly with a single technical evaluator in a given Service and thus bypass the Service's export control office.

OPTION A



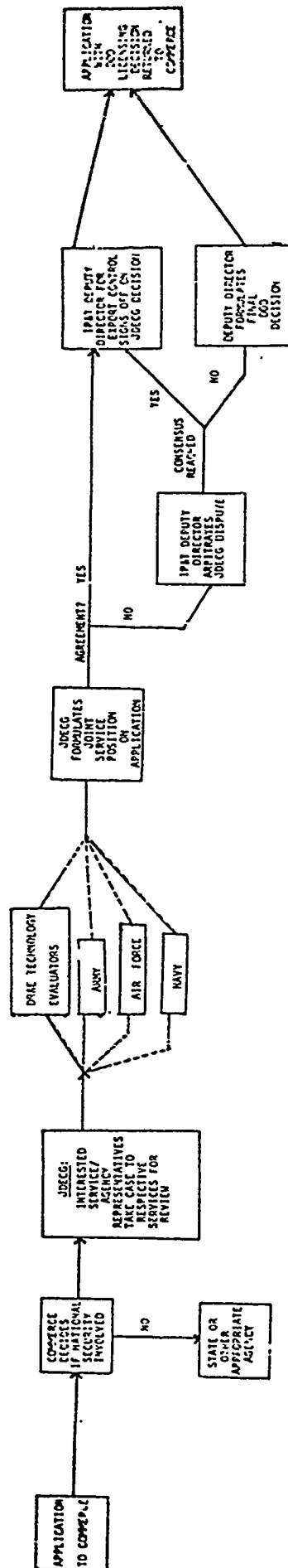
- The heavy workload placed on the Deputy Director and his immediate staff by this centralized processing of cases may not permit proper assessment of cases in the time constraints imposed by the Export Administration Act of 1979.
- Services unsure if adequate use is made of their assessments after they are sent to OSD/IP&T.

As can be seen from the above listed disadvantages, concern is centered on the inability of the Services, under Option A, to review all incoming applications or to choose those they want to evaluate. At the same time, the funneling of all cases through the Deputy Director results in an overload on his office that slows down case processing and makes it difficult for him to engage in other activities necessary to the effective operation of the system. What is desired is a system that can meet the designated time constraints while guaranteeing a thorough analysis of the national security impact of a given export. The general opinion which we perceived in our series of interviews with DoD export control personnel was that, under Option A, the former needs tend to be given precedence over the latter. This is not surprising, in that the time constraints are more tangible requirements than the degree of assessment necessary for "adequate" review.

OPTION B

Option B, shown in Figure 1-2, presents a system in which the Services have the primary role for day-to-day case processing. Representatives of the Services and other concerned DoD agencies meet as the Joint Defense Export Control Group (JDECG) to review incoming license applications from Commerce or State and decide whether their respective agencies or Services will conduct detailed technical assessments of the application. After the opinions of all of the agencies/Services have been determined, a joint position will be formulated by the JDECG representatives and presented to the IP&T Export Control Deputy Director (DD), who will sign off on the decision and forward

OPTION B



it to Commerce. If, however, a consensus cannot be reached in the JDECG, the IP&T Deputy Director will arbitrate the dispute in an effort to find an agreeable position. If a consensus still cannot be reached, the IP&T Deputy Director formulates a final DoD position based on the material produced by the JDECG members and sends it to Commerce as the DoD response to the application.

Advantages:

- Deputy Director freed from heavy case load and day-to-day export license processing; can devote time to management, evaluation, policy & precedent setting cases, inter-agency issues.
- Services allowed to see all export license applications coming into DoD from Commerce and to choose those which they want to review.^{2/}
- JDECG representatives monitor and direct the assessment of cases within their respective Services to make sure items are thoroughly analyzed within the established time constraints. If more time is needed, they must present reasons to the JDECG.

Disadvantages:

- JDECG formulation of joint position on an application after technical evaluation may be an unnecessary step. If JDECG representatives are in agreement, case can be passed directly from Services to Deputy Director's office. If they are not in agreement, DD would call them together anyway.
- Administration/management responsibility is diffused.

Being removed from routine case processing, the Deputy Director, in Option B, is able to concern himself with supervisory matters to a greater degree, and to troubleshoot problem areas in the export control system. The problems with this option lie in the lack of definition of the operating mechanisms for administering reviews through a "hybrid" committee, and the belief that the use of the JDECG to devise a joint Services position on a license application after technical evaluations are completed is unnecessary and can just as easily be done by the Deputy Director. Another issue is the problem of the final

^{2/} The details of administration of this approach have not been worked out.

disposition by OSD of JDECG export license recommendations, even if they are consensus recommendations. ODUSDR&E(IP&T) reserves the right to veto any JDECG recommendation, even a unanimous one, if they do not agree with the Services' position, allowing the Services to reclama, if they so desire (See Option C, below).

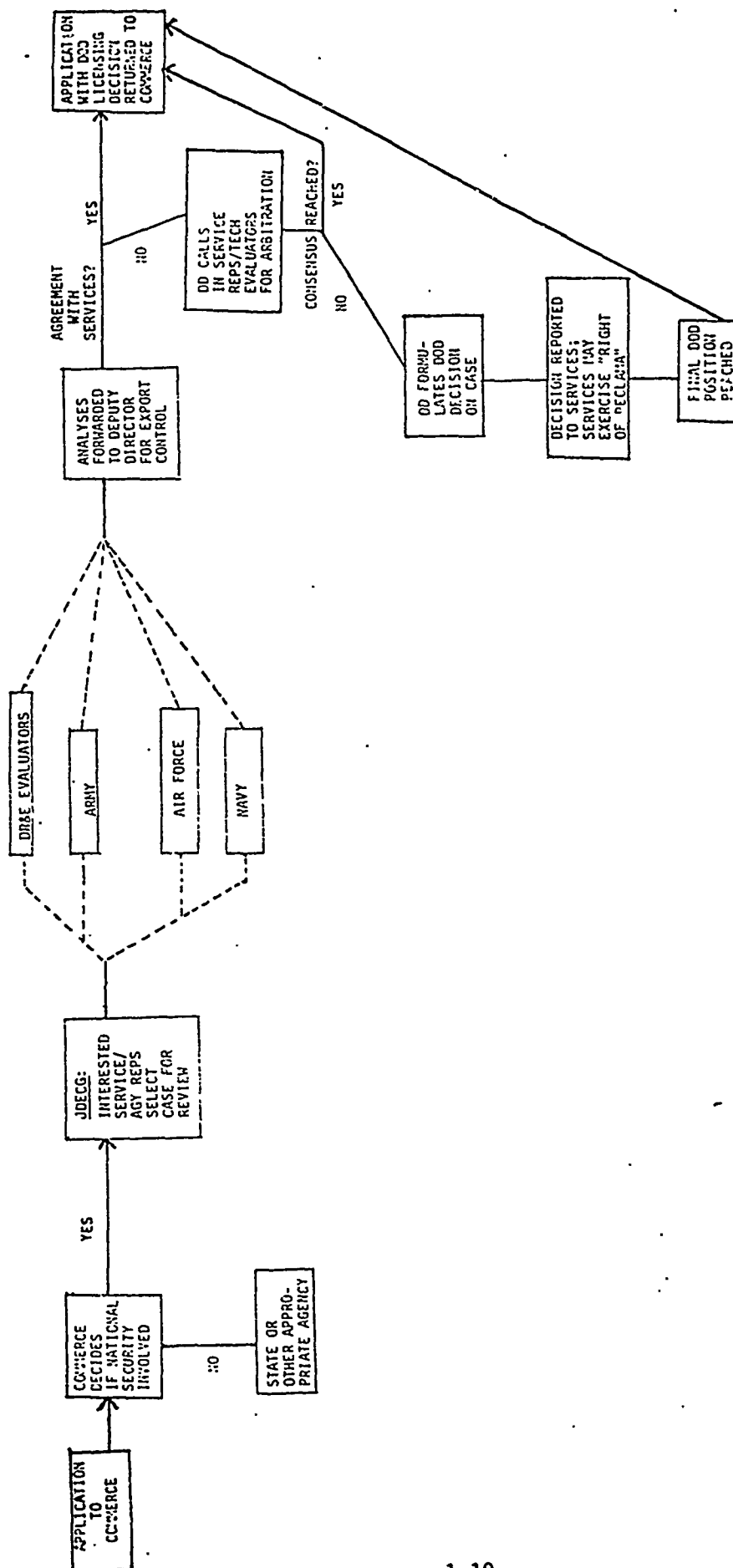
OPTION C

For this option (see Figure 1-3), as for Option B, the Services and concerned DoD agencies meeting as the Joint Defense Export Control Group (JDECG) receive export license applications from the Department of Commerce, after which the applications are passed on by the group members to their respective Services/agencies for evaluation, if desired. The results of these analyses, including recommendations for approval or rejection of the application are passed on to the IP&T Deputy Director who formulates a DoD position based upon the technical evaluations of the JDECG representatives' organizations. If there is agreement among the evaluating agencies, then the IP&T Deputy Director formalizes the decision and passes it on to the Commerce Department. If there is disagreement, however, the IP&T Deputy Director, as in Option B, calls in the JDECG representatives and technical evaluators in an attempt to reach a consensus. If no consensus can be reached, the Deputy Director formulates a DoD position on the application. Unlike Option B, however, the Services have a "Right of Reclama" over this position. Only after the Services and the Deputy Director have worked out their differences, keeping in mind the statutory time limits for export license processing, is an official DoD position finalized and sent to the Commerce Department.

Advantages:

- No unnecessary JDECG meetings after technical evaluation of cases.
- In the event of lack of consensus among Services over disposition of a specific export license application, the DoD decision formulated by the DD will be reviewed by the Services and subject to a right of "reclama" by them before the decision is sent to the Commerce Department.

OPTION C



- Other advantages same as Option "B".

Disadvantages:

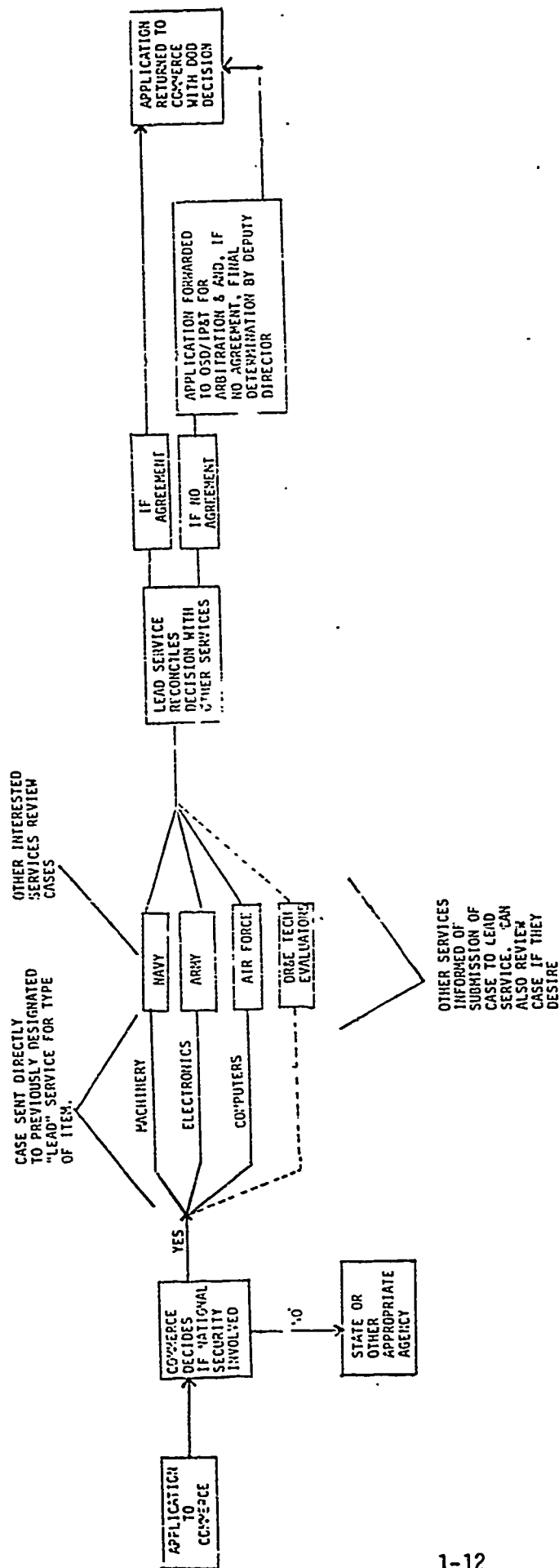
- Allowance for Service review of DD decision and "reclama" procedure before case is returned to Commerce may create major time delays in controversial cases.

As noted above, the time element is the center of difficulties for this approach. If this approach were to be pursued further, a determination should be made as to the amount of time that Service review and reclama might take. Given provisions of the new Export Administration Regulations promulgated by the Commerce Department in July, these functions could pose a stumbling block to the protection of U.S. national security since they might act as a detriment to the meeting of processing time limits and thus force hasty technical assessments.

OPTION D

This option, shown in Figure 1-4, represents a somewhat different approach from that of the other options thus far presented. This approach would move the greater part of DoD export control functions down to the Service level, but would not use a joint Service group as the central point for license processing. Instead, the Commerce and State Departments would receive a list of the lead Services for specific types of cases, (e.g., computers, electronics, etc.) and license applications would be forwarded to the lead Service for the item to be assessed. At the same time, the other Services would be informed that the lead Service for this case had received the application; these other Services could then ask for copies of the application package in order to conduct their own review if they so desired. After evaluation of the application, the lead Service would either send the application directly back to Commerce, if none of the other Services had evaluated the application, or, if there were multiple Service opinions, the lead Service would attempt to resolve any differences. If unreconciled differences still

OPTION D



existed, the lead Service would forward the case to ONUSDR&E(IP&T). Should the case be forwarded to ONUSDR&E(IP&T), the same procedures would be followed as in Option C, although the reclama procedure outlined in Option C is not included here. Any reclama procedure in this approach would be carried out after the case had been returned to Commerce or State. The Services, specifically the Navy, claim that the reclama procedure is ineffective if the case has already been returned to Commerce or State before a reclama process can be completed. Adding a reclama process to this option prior to sending the application back to the referring agency once again would bring up the question of time constraints. The following is a list of specific advantages and disadvantages of Option D:

Advantages:

- Elimination of "middleman" groups and positions between Commerce and Service technical evaluators should speed up processing of cases.
- As in Options B & C, would free Deputy Director from heavy case load and day-to-day export license processing.

Disadvantages:

- Commerce may send cases to technical evaluators noted for their "leniency" with certain items.
- Lead Service's opinion may be taken and used as basis for licensing decisions before the opinions of "other interested Services" are ready.
- Right of reclama to be exercised only after case decision has been passed back to Commerce.
- Idea of lead Service reconciling position with other Services may be unnecessary step similar to JDECG post-evaluation meeting described in Option "B". Case could be passed directly by Services to DD if there is no disagreement; if disagreement exists, could be settled by DD meeting with Service reps.

In theory, at least, the elimination of any "middleman" position should result in the saving of a considerable amount of processing time. A problem arises, however, with the proposition to send the application to the lead Service while informing the other

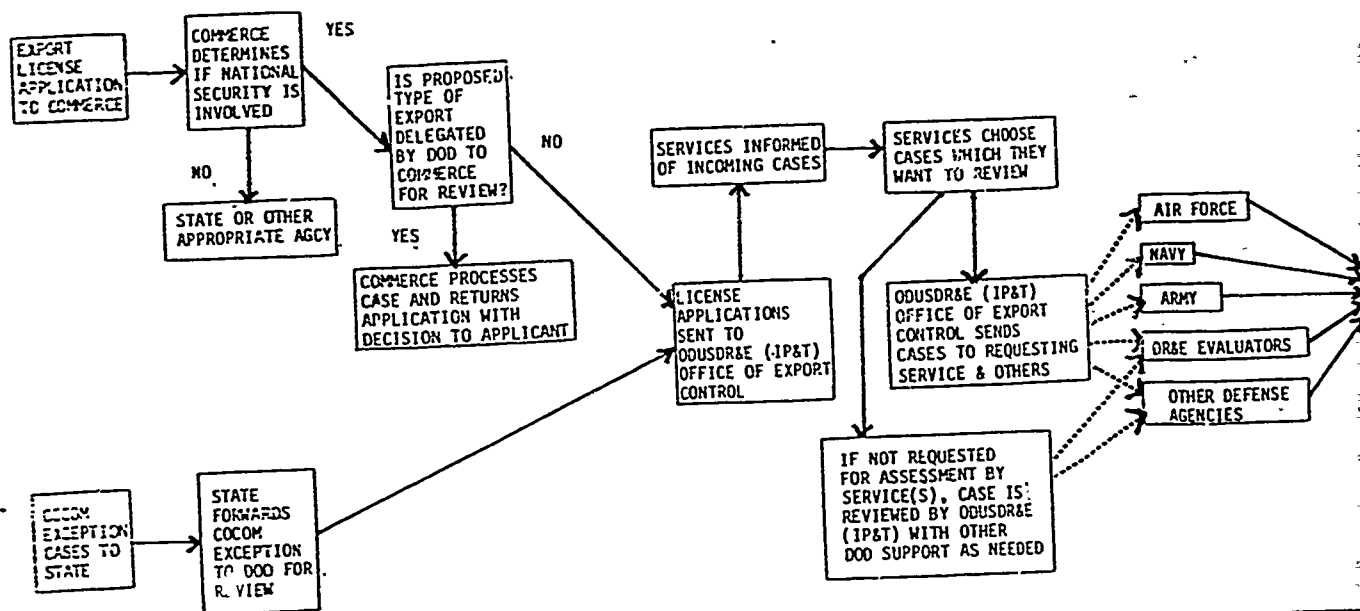
Services that such an application has been sent to the lead Service and asking if they also want to review it. Unless a full application with complete accompanying documentation is sent to the other Services, they may not be able to accurately determine if they want to (or need to) review it. Thus, rather than just inform the other Services of the application, it might be necessary to send copies of the entire package to all the Services (which would essentially counter the notion of a lead Service).

Option D, at first glance, resembles proposals by the GAO, among others, to remove the DoD from any role in the export control process other than that of making technical assessments. The post-technical assessment phase of Option D, where Service differences exist, however, brings ODUSDR&E(IF&T) as an equal partner into the process. As noted above, this may complicate the time-saving aspect by the need for a Service right of reclama. This option would appear to be advantageous then only if the "lead" Service tended to be the only Service interested in reviewing a specific assigned license application. The need of the lead Service, according to the given format, to reconcile its opinion with those of the other Services if any of these Services have also reviewed the case and disagree with the lead Service's assessment result in an activity identical to that of the post-assessment use of the JDECG in Option B. As noted in Option C, this may be an unnecessary activity and could just as easily be carried out by the IP&T Deputy Director. The cases could be sent directly to the Deputy Director from the Services, and he could arbitrate any differences among them himself.

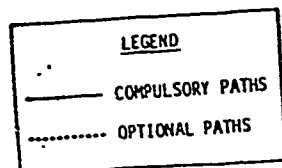
OPTION E

This option, shown in Figure 1-5, is a composite of the other alternatives, based on discussions with OSD export control officials concerning the advantages and disadvantages of Options A through D. Incoming cases from Commerce or State initially

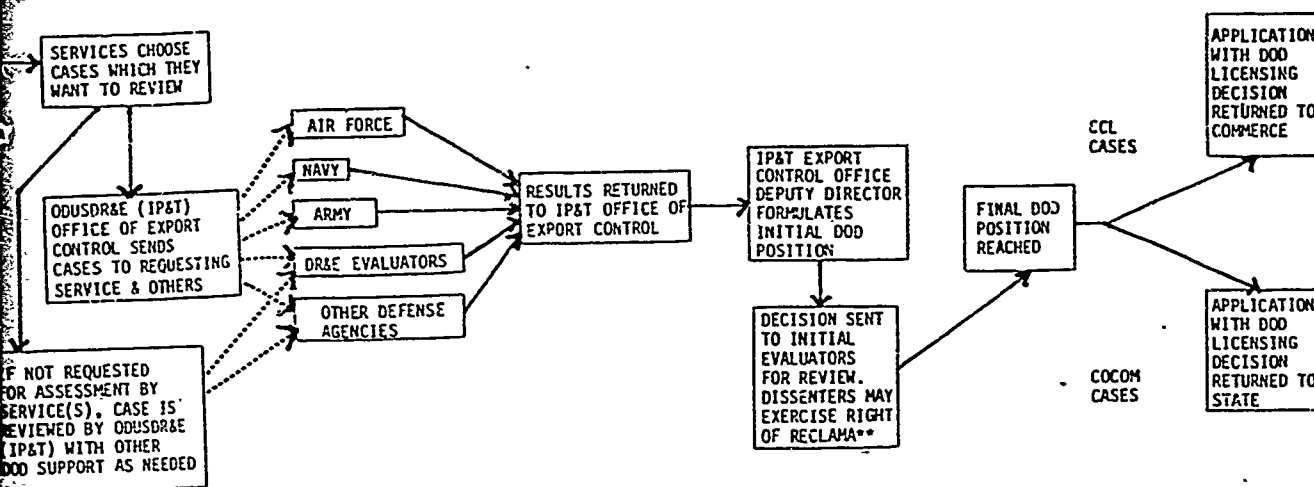
OPTION E: RECOMMENDED REVISED DOD EXPORT



ONGOING INTERACTION WITH A



REVISED DOD EXPORT LICENSE REVIEW PROCESS



ONGOING INTERACTION WITH APPLICANTS*

* FORMAL STRUCTURE FOR THIS INTERACTION TO BE DEVELOPED

** DETAILED RECLAMA PROCEDURES TO BE DEVELOPED

2

would be reviewed in IP&T, which would then inform the Services and other reviewing agencies of the case, after which the Service would decide whether or not it desires to perform a full technical assessment. If so requested by a Service the entire package of information concerning the case would be sent to that Service, whose technical evaluators would review the case. The Service would then develop and submit its recommendations to the IP&T Office of Export Control. The Export Control Office Deputy Director would formulate an initial DoD position on the case; this initial position would be sent to the Services for review where, if there is disagreement with the IP&T position, the Services could exercise a right of reclama concerning the case. Keeping in mind the statutory time limits for processing, a decision would be reached within DoD (although conceivably it could have been carried as high as the SECDEF level before it was finally decided) and the case then sent off to State or Commerce as appropriate.

This option maintains the distribution of cases to the Services as proposed in Options B and C, but does not utilize a coordinating group, such as the JDECG, to develop an overall Service position. There was basic agreement within DoD that the creation of any additional bureaucratic entities within the export licensing process should be avoided. It would appear that Option E can satisfy most of the Service requirements for access to cases, while not further encumbering the organization. However, as is discussed in Chapter III, this option poses immediate requirements for an export control data base to manage case processing.

Advantages:

- Minimizes organizational/bureaucratic changes.
- Maintains centralized OSD management of process.
- Allows Services opportunity to select from all incoming cases those of interest for review.
- Maintains single (OSD) focus for DoD interface with other agencies.

Disadvantages:

- Requires increased management information and coordination capabilities to effectively monitor process.

1.3 Conclusion

Of the five options presented here, Option E most closely meets the needs of all concerned parties while fulfilling the primary goals of adequate assessment within the time constraints established by the EAA of 1979. It represents a workable distillation of the other options, and can be specified in further detail to operate on a test basis. This specification would include such subjects as scheduling, distribution of information, interaction with applicants, and reclama procedures. The next two chapters address the process of implementing Option E: Chapter II discusses the type of documentation DoD requires to implement this option; Chapter III treats pertinent data system requirements.

CHAPTER II

RECOMMENDED CHANGES TO DOD DOCUMENTATION FOR IMPLEMENTING EXPORT CONTROLS

2.1 Introduction

Our review of existing guidelines for implementing export controls in the Department of Defense indicates the present documentation is inadequate. In this Chapter we analyze this documentation, propose a new DoD Directive for export control, and recommend that DoD issue a Secretary of Defense Policy Statement on Export Control to replace the Interim Policy Statement. The three DoD documents most pertinent to export control are:

- (1) Department of Defense Directive No. 2030.4 on DoD Support for the Strategic Trade Control Program, December 11, 1962.
- (2) Department of Defense Directive No. 5030.28 on Munitions Control Procedures for U.S. Munitions List Export License Applications Referred to DoD by Department of State, March 10, 1970.
- (3) Interim DoD Policy Statement on Export Control of United States Technology, August 26, 1977.

These documents, appended as references to this chapter, require extensive revision and updating to provide the necessary basis for DoD export control.

The first document listed above presents DoD responsibilities for Strategic Trade controls. This Directive is out of date, referring both to legislation that has long since been superseded and to internal organizational responsibilities that have been radically altered. It is our recommendation that this Directive be cancelled and replaced by a Directive that reflects current legislation, organizational responsibilities, and policies. In this chapter we present a recommended draft for replacing this Directive. Moreover,

the Munitions List Directive, the second document listed, while not outmoded to the same degree as that for Strategic Trade, still requires updating. The recommended Directive presented in this chapter combines the Munitions and Strategic Trade export control directives into a unified statement, not only updating the separate documents, but also integrating these two related aspects of export control.

The third document listed is the "Interim DoD Policy Statement on Export Control of United States Technology" issued on August 26, 1977 by Secretary of Defense Brown. This document presented a set of guidelines for carrying out DoD responsibilities within the U.S. export control system. These guidelines were largely based upon the recommendations of the Defense Science Board Task Force on U.S. Export Policy which called for the focus of national security export control concerns to be placed on "critical technologies."^{1/} The Interim Policy Statement was especially concerned with actions to bring about the implementation of the Critical Technologies Approach (CTA).

Since the Interim Policy Statement was issued there has been considerable progress made in developing the CTA, and some significant international developments have transpired which directly impact on U.S. export control policy. Therefore, this chapter reviews the actions called for by the Interim Policy Statement, analyzes the degree to which they have been successfully carried out, and assesses how the requirements they were to fulfill may have changed over time, particularly with regard to functioning of the export license review process discussed in the preceding chapter. A determination is made of the continuing applicability of some sections contained in the Interim Policy Statement and of the need for provisions to cover new policy problems.

^{1/} A "Critical Technology" was defined in the Interim Policy Statement as a technology whose acquisition by a potential adversary could make a "significant contribution, which could prove detrimental to the national security of the United States, to the military potential of such country."

These results are then used as a basis for recommending a new DoD Policy Statement on Export Control.

2.2 DoD Export Control Directives

Based on a review and assessment of existing DoD export control documentation, we have concluded that a new Directive for DoD export control responsibilities is required. This determination was based on the age of the existing export control directives and their resulting failure to address many of the most urgent concerns of the present DoD export control system. These concerns include:

- The need for continued development and implementation of the critical technologies approach to export controls within the DoD Export Control System.
- The need for greater efficiency in DoD export license application processing in order to provide thorough license application assessments within legislatively mandated time limits.
- The need to better define and formalize relationships between ODUSDR&E(IP&T), the Services, and other DoD components involved with export control matters in order to maintain better communications and maximum use of available resources.

Since the issuance of SECDEF Brown's "Interim DoD Policy Statement on Export Control of United States Technology" in August 1977, DoD's strategic trade initiatives have been focused on the development of the critical technologies approach to export control. The promulgation of the proposed DoD Export Control Directive presented here would be a significant step in the further institutionalization of this approach. Unlike the present Strategic Trade Directive, this new directive specifies the responsibilities and duties of the DoD components involved in export control and tasks them to make use of critical technologies materials in carrying out their duties. It also directs the Services and other DoD components to provide technical expertise for the continued development and updating of the Militarily Critical Technologies List thereby formalizing their

participation in Critical Technologies implementation. Further steps toward this objective of a more formal process within DoD for assessing critical technologies are discussed in Chapter IV.

The Export Administration Act of 1979 included mandatory time limits within which export license applications had to be processed through the multi-agency U.S. export control system. These time limits have resulted in a need to move applications quickly through the DoD export control license processing structure; this need for speedier processing in turn has raised concerns that case reviews may not be sufficiently thorough to ensure the protection of U.S. national security. In Chapter I, we presented as Option E our recommendations for revamping the DoD export license processing system to deal with these dual concerns regarding time and effectiveness. This proposed directive is worded to put into effect the changes in DoD export license processing presented in Option E which include time limits on case processing, formalization of contact positions for export control in the Services and other concerned DoD components, reclama procedures, and strengthened and formalized communications/feedback channels between OSD and the Services.

In the proposed directive which follows, we have combined the substance of the two directives on Strategic Trade and U.S. Munitions List items into a single revised document covering both the dual-use and arms sales aspects of DoD export control responsibilities. We believe that the amalgamation of these two directives is an appropriate step, given their common purposes and goals. It is important to note that DoD directives are general statements of policy and responsibilities. It can be expected that additional DoD instructions or memoranda may be needed in order to delineate in greater detail the exact methods by which the duties and tasks outlined in this DoD Directive will be carried out.

The documents listed as references in the proposed DoD directive are included in this report as Appendices A through J. Among them are the two current directives (Appendices H and I), presented for purposes of comparison and contrast with their proposed replacement.

Proposed DoD Export Control Directive

SUBJECT: Processing and Evaluation of Dual-Use and Munitions List Export License Applications through DoD

REFERENCES:

- (a) Export Administration Act of 1979
- (b) SecDef Interim Policy Statement on Export Control of U.S. Technology, dated August 26, 1977
- (c) Executive Order 12002 (42 CFR 35623), July 7, 1977
- (d) Arms Export Control Act of 1976, As Amended
- (e) Executive Order 11958 (42 CFR 4311, 44 CFR 7939, 44 FR 56673) January 18, 1977
- (f) International Traffic in Arms Regulations (ITAR), (Revised Version, to be effective in 1981) (22 CFR Parts 121-130)
- (g) National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Nationals and International Organizations (National Disclosure Policy, NDP-1/11)
- (h) DoD Directive 2030.4, "Support for the Strategic Trade Program," December 11, 1962 (hereby cancelled)
- (i) DoD Directive 5030.28, "Munitions Control Procedures for U.S. Munitions List Export License Applications Referred to DoD by the Department of State," March 10, 1970 (hereby cancelled)
- (j) Memorandum of Deputy Secretary of Defense Duncan on Reorganization of the DoD Export Control System, dated 19 May 1979

1. PURPOSE

This Directive

- a. Updates and combines references (h) and (i), which are hereby superseded and cancelled.
- b. Establishes policy and guidance for the operation of the DoD Export Control System in carrying out the processing of CCL, COCOM IL and Munitions List export license applications.
- c. Assigns responsibilities, delineates requirements, and states objectives of the DoD Export Control System.

2. APPLICABILITY AND SCOPE

The provisions of this directive apply to the Office of Secretary of Defense (OSD) and the Military Departments (hereafter called "DoD Components"), specifically those DoD Components that control and manage programs, personnel and other resources involved in the CCL/COCOM IL/Munitions List export license review process.

3. POLICY

United States policy towards strategic trade and toward the export of items on the U.S. Munitions List is governed by separate sets of statutes and related material:

- A. For strategic trade, including those items whose export is controlled under the U.S. CCL and Multilateral COCOM lists, it is U.S. policy as mandated by Reference (a) above, to prevent the export of goods and technologies from the United States to nations whose acquisition of such items might increase their military capabilities in such a manner as to be detrimental to the national security of the United States, while minimizing the degree to which such restriction inhibits U.S. trade. DoD's primary objective within this context, as called for in Reference (b), is the protection of U.S. leadtimes in the application of advanced technologies to military use.
- B. For items on the U.S. Munitions List, it is U.S. policy to permit the export to friendly nations of munitions articles and services and related technical data, including manufacturing license and technical assistance agreements, provided that such export is consistent with the protection of security interests of the U.S. It is DoD's objective to examine the export of such items from the viewpoint of the Government's arms transfer policy, foreign policy interests, applicable legislation and specific disclosure policy considerations.
- C. In making judgements on both strategic trade and Munitions List export license applications, DoD evaluators will employ to the maximum extent possible the critical technology approach as set out by References (a) & (b) and further developed within DoD.

4. RESPONSIBILITIES

- A. The Under Secretary of Defense (Research and Engineering) shall be responsible for
 - 1. Providing policy guidance to the Military Departments and other DoD components involved in the processing of strategic trade and munitions list export licensing cases for the carrying out of their export control assignments.
 - 2. The Administration and management of the export control system within DoD.
 - 3. Establishing the DoD position on individual strategic trade and Munitions List cases.
 - 4. Developing programs to facilitate the processing of strategic trade and Munitions List cases efficiently and expeditiously, drawing wherever possible on the critical technology approach mandated in Refs. (a) & (b).
 - 5. Consulting with ASD(ISA) on matters of international security and policy relating to strategic trade and Munitions List export applications.
 - 6. Identifying Critical Technologies on a continuing basis.
 - 7. Informing the Military Services and other concerned DoD components of all incoming cases and offering them for review.

B. The Military Departments, the JCS and other DoD components concerned will:

1. Each designate a single point of contact to communicate with USD(R&E) on strategic trade and Munitions List cases and related actions.
2. Each provide USD(R&E) with a list of types of exports that they want to review in all cases.
3. Insure that all cases selected for assessment are evaluated by qualified technical personnel.
4. For each strategic trade and munitions list case completely review and return license applications to USD(R&E) with a recommendation within
 - a. Thirty (30) calendar days for strategic trade cases
 - b. Twenty (20) calendar days for Munitions List cases
5. Provide copies to USD(R&E) of any formal correspondence with other executive branch departments and agencies having export control responsibilities.

C. In providing recommendations to USD(R&E), the Military Departments and other concerned DoD components will:

1. For Strategic trade, focus recommendations concerning export licensing, as mandated in References (a) and (b), upon the need to control the export to adversaries or potential adversaries of militarily critical goods and technologies. These goods and technologies consist primarily of
 - a. arrays of design and manufacturing know-how;
 - b. keystone manufacturing, inspection, and test equipment;
 - c. goods accompanied by sophisticated operation, application or maintenance know-how
2. For Munitions List items, identify, as a basis for making the licensing recommendation, the following:
 - a. material or data to be controlled and its end-use;
 - b. Security policy interests and/or implications, including the current security classification, if any, of the item involved. Reference (g) will serve as guidance for recommendations of this type.
3. Consider for each proposed export, the following:
 - a. Military advantage or detriment to the U.S., and impact on U.S. Government policy, including consistency with military objectives, plans, and operational requirements.

- b. Copyright, patent, and/or other proprietary rights involved, and the U.S. Government interest therein.
- c. Impact on military assistance programs, sales, loans and grants, co-development, co-production, and data exchange agreements.
- d. Impact on DoD research and development, production, procurement and supply for United States Armed Forces, including whether use of U.S. Government-owned tooling and industrial facilities is involved.
- e. Level of militarily critical technologies embodied in the export
- f. Ability of the importer to prevent re-export of such technology.

4. EFFECTIVE DATE AND IMPLEMENTATION

This directive is effective immediately. Two (2) copies of each implementing document will be forwarded to the Under Secretary of Defense (Research and Engineering) within thirty (30) days.

2.3 Background to Critical Technology Export Control Policy Development

The Defense Science Board Task Force Study on U.S. Export Policy and the Interim Policy Statement were issued in response to the needs created by changes in U.S. export control policy that occurred in the late 1960s and early 1970s. This change in policy was officially embodied in the Export Administration Act of 1969. In this act, U.S. export policy was modified from one having a primary concern with the protection of national security, to one having dual goals of promoting trade to the maximum extent possible while placing controls on those items whose acquisition by an adversary or potential adversary would be detrimental to U.S. national security. Not only would an export's contribution to the military capabilities of a potential adversary have to be demonstrated, as had been true under the old law but it also would have to be shown that this contribution actually was detrimental to U.S. national security. The old theoretical basis for export controls had rested on the premise that any item shipped to the Soviet Union would free up Soviet industrial resources normally used in its manufacture for application to military production. Thus almost all manufactured goods, even those with exclusively civilian uses, became candidates for export control. The basis of the new policy was that an item should only be controlled if it could be demonstrated that, if exported to an adversary or potential adversary, the item could be applied to military use or have technology extracted from it in such a way that an increase in the adversary's military capabilities would result sufficient to be damaging to U.S. national security. The question now arose as to what level of increase was considered to be "damaging to U.S. national security." The major purpose of the Interim Policy Statement was to provide official guidelines for determining the answer to this question when evaluating export license applications.

The methodology which the Interim Policy Statement promulgated as the solution to balancing the dual export policy objectives was the "Critical Technologies Approach to Export Controls (CTA)." This concept, originally set out in the report of the Defense Science Board Task Force on U.S. Export Policy (the "Bucy Report"), concentrates controls on those technologies in which the United States has a significant lead time (e.g. five or more years) when compared with our adversaries in the application of the technologies to use in major military systems. The Interim Policy Statement outlined the circumstances under which such items would be controlled and the conditions necessary before export of these items to various destinations would be approved. It was recognized in the Interim Policy Statement, that in order for the CTA to be fully effective, a list of technologies specifically designated as critical had to be developed. Many of the necessary determinations which the Interim Policy Statement requires be made in the course of license reviews could only be carried out with any degree of reliability and consistency if there was a detailed list of critical technologies to be used as the basis for processing decisions. Such determinations begin with the basic question of whether or not an item is or contains a critical technology. Having determined this, follow-on information is necessary, such as the transferability of the technology (e.g. possibility of reverse engineering etc.) and adversary capability in the technology. To be as objective as possible, and thus to maximize the protection of U.S. national security, such licensing judgements must be based on a more systematic review than the time-constrained ad hoc judgements presently used in most such cases.

The Interim Policy Statement, then, gave both the first official endorsement to the development of a list of critical technologies and, at the same time, called for steps to be taken to initiate a critical technologies focus in export licensing assessments while an operational critical technologies list was being produced. Without the information and guidelines that a critical technologies list can be expected to provide, however, export

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license processing could not completely fulfill the goals that the Interim Policy Statement and Bucy Report envisioned as being the results of the implementation of the critical technologies approach. The attempts at critical technology implementation that have taken place up to the present can be seen as laying the groundwork for the adoption of a fully developed critical technologies list at some future point. The list, together with the data bases necessary to determine the relationship of specific proposed exports to its guidelines, is the heart of the critical technologies approach. Therefore, while the Interim Policy Statement does call for the focusing of control efforts during the transitional pre-list period on critical technologies, those efforts to date cannot be said to be indicative of the effectiveness of this approach.

Since the issuance of the Interim Policy Statement, major changes have occurred in overall U.S. export control policy, both as a result of legislative action (the Export Administration Act of 1979) and the impact of international events (the invasion of Afghanistan by the Soviet Union and the strengthening of U.S. ties with the People's Republic of China). These and other less visible occurrences have caused DoD export control policy to evolve in ways not anticipated by the Interim Policy Statement; some aspects of the statement have become outdated by events, while others need to be rewritten to accommodate new policy initiatives and objectives. Therefore, we present the following review and analysis of Interim Policy Statement provisions which was done in order to determine the need for changes in the basic formulation of DoD procedures for the carrying out of export control policy.

2.4 Analysis of the DoD Interim Policy Statement

It is our recommendation that the Department of Defense issue a DoD Policy Statement on Export Controls to supplant the Interim Policy Statement which has become outdated by developments in the international arena and by progress within DoD on the Critical Technologies Approach. We review here certain provisions of the Interim Policy Statement in order to point to the type of issues that must be addressed in formulating a new Policy Statement. We recognize that considerable additional review and evaluation of U.S. export control objectives and approaches will be necessary before a new Policy Statement can be prepared.

Our review of the Interim Policy Statement identified the following issues:

- o International events may have altered substantially the definition of what types of exports are considered detrimental to U.S. security;
- o Any statement on the applicability of technology controls to COCOM countries may have undesired implications for obtaining COCOM support;
- o The subject of re-export restrictions, their effectiveness, and alternative mechanisms for limiting re-export should be addressed;
- o A consistent statement on the application of controls to different transfer mechanisms of the same export should be formulated;
- o There should be a statement regarding how DoD intends to work with other Departments and Agencies on implementing the Critical Technologies Approach and integrating the MCTL into the export control process.

Each of these issues is briefly developed in the discussion below.

Impact of International Developments

The Interim Policy Statement notes that U.S. policy on international trade consists of "two elements that are not always reconcilable." These are (1) the promotion of trade and commerce with all other nations, and (2) the control of those exports that could make a "significant contribution to the military potential of any other nation or nations that would prove detrimental to the national security of the United States." While this still remains official U.S. export policy, the definition of what types of exports would prove detrimental to U.S. national security appears to have been altered as a result of unexpected world events and related changes in foreign policy.

In the wake of the Soviet invasion of Afghanistan, it has become apparent that it may be desirable to control not only those technologies that offer an adversary significant advances in military applications of advanced technologies, but also those technologies which allow major quantitative and qualitative improvements to the industrial infrastructure of nations engaged in aggressive international activities. This industrial infrastructure is the key to a nation's ability to maintain and increase the conventional warfare capability necessary to carry out such aggressive policies. The implementation of this new emphasis in export control would supplement rather than replace the already established policy of protecting U.S. leadtimes in critical technologies. This new emphasis, however, presents further problems regarding the policy objective of promoting U.S. exports. Its impact needs to be studied and evaluated as part of DoD's Critical Technologies Project before a final decision is made as to its formal adoption as part of DoD export control policy.

COCOM Relations

The Interim Policy Statement called for DoD advocacy of changes in COCOM guidelines to shift the emphasis in COCOM export policy from control of products to control of technology. Congressional testimony by DoD officials indicates that the critical technology approach has been used as the basis for U.S. proposals for changes in COCOM guidelines in the years since the issuance of the Interim Policy Statement. There have been difficulties in obtaining allied agreement to these proposals, however. In some COCOM countries, for example, the government apparently does not have statutory authority to control technology exports and may not be able or willing to obtain passage of such legislation. In order to overcome the hesitancy of our COCOM allies to adopt the critical technology approach on a multilateral basis, it may be necessary to first successfully establish the CTA as the basis for the U.S. export control system. A demonstrated lessening of control over products and an increase of efficiency within the license processing system would be a powerful aid in convincing our allies of the feasibility of extending the CTA into the multilateral arena. Any new policy statement, therefore, should note the link between successful efforts of the U.S. to implement the critical technology approach and implementation of the CTA on the multilateral level.

At the same time that the Interim Policy Statement advocates taking action within COCOM to shift to technology controls, it also advocates imposing restrictions on the export of critical technologies to all nations -- presumably including those participating in COCOM. Since the issuance of the Interim Policy Statement, the question of placing controls on technology exports to our allies has surfaced in Congressional hearings, but no substantive action appears to have been taken within DoD on implementing these recommendations. This inaction is not surprising, as a similar attempt in 1964 to place strict controls on technology exports to friendly nations

resulted in such an outcry from our allies that the offending regulations, while remaining on the books, were "deferred," and remain so today. The issue remains, however, whether the advocacy of critical technology controls on our allies would be compatible with U.S. efforts to get the COCOM nations to endorse the critical technologies approach.

Re-export Restrictions

At the present time, many of the items listed on the CCL are controlled to non-Communist destinations only in order to obtain a guarantee from importers in these countries that they will not allow the unauthorized re-export of the item or of controlled products manufactured from it. If a method other than the re-export prohibitions contained within Validated Export Licenses could be devised to protect against re-export, most of these items would no longer require Validated Licenses to non-Communist destinations. This would considerably reduce the volume of export license applications coming into the Commerce Department. Any new DoD policy statement in this area should cite the need to develop an alternative to this present method of obtaining guarantees of no unauthorized re-export. It can be expected that this task would involve negotiation with our COCOM allies over questions of the need for them to strengthen their control systems or bring them more into line with basic multilateral guidelines.

While the non re-export provisions of Validated Export Licenses are a cause of much of the "over-control" that presently remains within the U.S. export control system, the effectiveness of these guarantees of non re-export has generally been viewed as minimal. There are apparently little or no resources available for verification of compliance with these guarantees after they are given by the purchaser. This reinforces the need to develop alternative and more effective methods of preventing the re-export

of controlled items. In the meantime, the criteria stated in the Interim Policy Statement for approval of exports to friendly or neutral nations should be strictly applied. The new DoD Policy Statement should reiterate as export licensing criteria the effectiveness of present re-export controls and the willingness of countries to monitor the agreements and/or maintain their own controls on the re-export of the item and/or products manufactured from it to unauthorized destinations. Given the problems of enforcing re-export restrictions the new Policy Statement should require that DoD carefully scrutinize a nation's intentions and past performance in controlling re-exports.

Transfer Mechanisms

The Interim Policy Statement makes two references to the question of varying levels of control for differing transfer mechanisms of the same export. The basic view is that DoD export control policy "shall be applied without regard" to the type of mechanism through which the transfer will take place. However, this is qualified somewhat in the next section, where it is stated that "explicit account shall be taken of the relative efficiency of the various methods of technology transfer." Examples of possible transfer mechanisms are given, most of which relate to situations involving personal contact between individuals rather than the shipment of goods. These examples include the attendance by foreign nationals at professional conferences and symposia, the international distribution of academic research publications, and the training of foreign nationals at U.S. academic institutions.

Exports occurring through personal contact are more difficult to place under export controls than are commodity exports. Under U.S. law, the fact of personal contact per se is not sufficient basis for determining whether export has occurred, and therefore whether export control legislation applies. It is the extent to which the

method of contact transfers the particular know-how which is to be protected that determines the applicability of export controls -- i.e., whether an export has taken place. The Interim Policy Statement called for a determination of the need to apply controls in the area of personal contacts and, where necessary, for DoD to recommend restrictions to other "responsible government agencies" on these forms of exports. Within DoD and within the Congress there has been continuing concern about the possibility of unauthorized exports of technology occurring in academic and other person-to-person contacts. Tangible steps toward increased control have taken place, however, only since the Soviet invasion of Afghanistan. Any new DoD policy statement on export controls should include a recommendation that such controls be linked to the Militarily Critical Technologies List. At the same time the new Policy Statement should continue the authorization for the DoD to "recommend restrictions" on these types of possible transfer mechanisms while complete information is being developed on the effectiveness of this type of export.

In contrast to the prohibition in the Interim Policy Statement on variable control levels for different transfer mechanisms, the Bucy Report stated that controls should be concentrated on the more "active" transfer mechanisms. No statement was made within the report that the proposed mechanism for transfer of an export should not be considered when making licensing decisions. The DoD Critical Technologies Project during Fiscal Year 1981 will include an effort to develop information concerning the efficacy of various transfer mechanisms for the technologies listed on the MCTL. This information, once it is produced, should serve as a data base for overcoming the lack of information on export transfer mechanism effectiveness that has stood in the way of developing different control levels for transfer mechanisms. Therefore, it is our view that a new DoD Policy Statement should support the possibility of varying levels of control for different transfer mechanisms both for products and for technical

Incorporating Critical Technologies in Export Controls

The Interim Policy Statement calls for the development and maintenance of a critical technologies list. It makes no recommendation as to how the list should be used after it is produced, other than to note that it "will be communicated to the Departments responsible for administering U.S. export controls." The Export Administration Act of 1979 repeated the requirement for a critical technologies list, but gave it the added impetus of law and placed a deadline for publication of the Initial List a year from the date of enactment of the law. It also expanded on the provisions of the Interim Policy Statement by providing that the critical technologies list, now called the Militarily Critical Technologies List, ultimately "become part of" the CCL. There are various possibilities as to how the List might be integrated into the CCL: these include its addition as an Appendix; entering the information under the pertinent CCL number as a subdivision within the entry; replacing the CCL with the MCTL, etc. No specific DoD decision has yet been made on which of these, or other, options to support in carrying out this task. A new DoD policy statement should present the DoD position on how the Export Administration Act provision that the MCTL "become part of" the CCL will be implemented as official DoD policy.

The Interim Policy Statement has a provision calling upon the DoD, with the assistance of the Intelligence Community, to study "in greater depth and on a continuous basis selected aspects of U.S. technology over time, in order to ascertain their impact on the military capabilities of potential adversaries and on critical U.S. leadtimes". Due to resource limitations within both DoD and the Intelligence Community it does not appear that this recommendation has been given much attention. Discussions occurring during the IDA MCTL development effort indicated that the cost in manpower and material resources to carry out such an effort would be considerable. Therefore, it is suggested that a new DoD Export Control Policy Statement should support such studies and should state that the resources required for them should be made available. At the same time the Policy Statement should call for maximum efforts to insure that any information obtained by the Intelligence Community or other sources concerning Soviet applications of Western technology to military use be made available on a continuing and timely basis to export control officials within DoD. (Section 4.4 of Chapter IV discusses this topic further.)

The Interim Policy Statement cites the need for recommendations to be made to the Commerce Department for the streamlining of case processing procedures and for the introduction of the critical technologies approach into the Commerce Department's export licensing procedures. However, it does not appear that to date any voluntary attempt has been made by Commerce to incorporate elements of the critical technology approach into its export licensing procedures. The Export Administration Act of 1979, however, specifically stated that national security export controls as administered by all participating agencies will focus on the critical technology aspects of proposed exports. This has not produced any further action on the part of Commerce and it appears that further development of the critical technology approach on a multi-agency basis is dependent upon the integration of the Militarily Critical Technologies List (MCTL) into

the CCL (as called for in the EAA of 1979), thus institutionalizing the MCTL guidelines within the license assessment process. The process of the MCTL "becoming part of the CCL" (as the law states), is not yet defined and will constitute a major task to be carried out by the DoD Critical Technologies Project over the next year. Recommendations have already been made within DoD for improvements in the interface between DoD and other agencies involved in export control; these may be implemented as the MCTL becomes operational within the CCL. A new DoD policy statement should indicate how DoD proposes to extend the application of the critical technology approach into Departments outside of DoD in order to develop a uniform basis for U.S. export control efforts.

The Interim Policy Statement underscores the need for DoD to make continual efforts to improve inter-agency coordination and communication in order to aid in the efficient functioning of the entire licensing process. In previous reports^{2/} Betac has addressed the question of better inter-agency communications and has indicated the need for such efforts, especially if the critical technology approach is to be successfully implemented on a multi-agency basis. We have specifically recommended such actions as the creation of better feedback channels between Commerce and the assessment level of DoD to inform DoD technical evaluators of the final disposition of license applications they have reviewed, and the creation of a formal mechanism for communication between the heads of the export control sections of the various concerned agencies. There is an on-going need for this type of work; and any new statement of DoD export control policy should retain the provision of the Interim Policy Statement on inter-agency coordination. Further expansion on this recommendation is needed in order to develop more specific actions to be taken.

^{2/} Richard H. Van Atta and David L. Gandle, "Preliminary Concept for Implementing the Militarily Critical Technologies List (MCTL) in the DoD Export Control Process", Betac Corporation, July 1980.

In conclusion, we recommend that a new DoD Policy Statement be developed that continues the policy thrusts outlined in the Interim Policy Statement with modification and elaboration as necessary to accommodate the changes in policy brought on by the impact of international events and by the further development of the critical technology approach. The creation of a large body of critical technology material over the last year under the IDA-led Critical Technologies Project allows a new stage in the critical technologies implementation process to begin. This new Policy Statement, like the Interim, should then act both as a guide for export licensing decisions and as an outline for the further development of the critical technologies project.

CHAPTER III

A RECOMMENDED PROGRAM FOR DEVELOPING AN EXPORT CONTROL DATA BASE FOR THE ELRP

3.1 Introduction

The responsibility for reviewing export license applications for national security purposes resides with the Deputy Under Secretary of Defense for Research and Engineering (International Programs and Technology). His staff processes export license applications for both technology trade as mandated by the Export Administration Act of 1979 and for the export of weapons-related articles controlled under the Arms Export Control Act. Because the requirements for reviewing export applications make a substantial demand on Department of Defense resources, an effort is being made to utilize data base automation to assist in improving the efficiency of tracking and processing of export license applications. A major long range program is currently underway to develop an integrated management information system, FORDTIS, to provide such capabilities.^{1/}

In the interim, while the FORDTIS is under development, there are immediate requirements for managing the flow of export license applications which must be met in order to insure DoD's responsiveness to export control requirements imposed on it by law. In this chapter Betac presents a phased program to meet these immediate

^{1/}FORDTIS is the Foreign Disclosure and Technical Information System. This system is currently under development for the Office of the Deputy Under Secretary of Defense (Policy Review) with actual monitorship of the system assigned to the Director of Information Security.

requirements by (1) providing data base system capabilities for tracking technology export cases and (2) developing and testing an Export Control Information Center for coordinating and administering DoD's export control information processing and distribution functions.

The approach presented in this chapter for developing and implementing an OSD Export Control Data Base (ECDR) system is designed to assist DoD in tracking, reviewing and analyzing export license cases. This approach is presented in three phases, as shown in Figure 3.1. These phases are discussed further in this section.

3.2 PHASE I -- Review and Modify Present System

The current export control system is essentially a manual operation consisting of:

- o OSD-level case review
- o Distribution of cases to individual Military Services for review
- o Compilation of Service positions
- o Formulation of DoD positions
- o Manual file maintenance for case processing
- o Manual report development for internal management and legislative input.

The Washington Headquarters Service (WHS) Datapoint Munitions Subsystem contains automated capabilities that provide for:

- o Entering closed cases in a Library History file
- o Limited query capabilities

- o A Datapoint transaction tape of closed cases for input into the FORDAD System.^{2/}

^{2/} FORDAD is the Foreign Disclosure Automated Data System. This system was initially developed in the late 1960's for the Assistant Secretary of Defense (International Security Affairs). It was developed to provide a responsive centralized information and retrieval capability for Classified Military Information (CMI) disclosed or denied by DoD.

Figure 3.1

OSD Export Control Data Base Plan

PHASE I Review and Modify Present System

- o System Design and Modification
- o System Input of Open Strategic Trade Cases
- o System Output on Open Strategic Trade Cases

PHASE II Develop Export Control Information Center

- o System Operations
- o System Input of New Strategic Trade Cases
- o System Outputs on Open Strategic Trade Cases
- o System Test and Demonstration
- o Education and Training

PHASE III Expand ECDB Capabilities

The objective of Phase I is to provide design specification to (1) initiate data collection and entry procedures and (2) modify the manual operation of the strategic export control system to an automated system in conjunction with Washington Headquarters Service's (WHS) Datapoint Munitions Subsystem.

The specific goals for this phase are to:

1. Develop and implement procedures for data collection and entry to provide:
 - o Input forms for data collection
 - o Documented requirements for data entry processing to include:
 - File update procedures
 - Data editing and quality control exercises
 - o File creation plan and schedule for current and back-log cases.

Here, the focus should be on standardization of input and simplification of the data collection process while converting the manual operations into an automated process.

2. Modify the manual operation by upgrading and extending capabilities of the WHS Datapoint Munitions Subsystem to include the strategic export control system and provide the following:
 - o Capability to enter open and closed cases on daily basis for both Munitions and Strategic cases
 - o Query capabilities for any element in a case

- o Data entry turn-around for case tracking within a twenty four hour period
- o Reports of new export license cases to facilitate Service selection of cases for review (24 hour turn-around).

To meet these requirements, the three functions discussed below should be accomplished.

System Design and Modification

A review of the present FORDAD system should be conducted and modifications made to satisfy immediate requirements for managing the flow of export license applications.

Conducting this review would provide an understanding of:

- o Basic requirements which are satisfied by the existing system which must be carried forward to the new technology export control system;
- o Current system weaknesses which must be addressed by the upcoming FORDTIS system.

This understanding would be essential input to the Phase II effort described in the next section.

In modifying the WHS Datapoint Munitions Subsystem, the following factors should be evaluated:

- o Flexibility and Ease of Modification - An examination should be conducted of the computer program code to determine whether new or revised computer program functions may be implemented efficiently and with predictable results.
- o Operating Effectiveness - Assuming that the evaluation of other criteria shows that the modification of the existing system can meet immediate requirements, the system should be implemented and evaluated to determine how effectively it operates in the current environment.

System Input

The data structures and content of each element of information which must be entered and processed for the initial input of current CCL and COCOM cases must be defined. After the establishment of data structures, the data must be entered into the system according to a schedule for data entry in terms of content, volume and format. This schedule would be utilized in Phase II.

System Outputs

In order to meet the immediate requirements of ODUSDR&E (IP&T), the present WHS Datapoint Munitions Subsystem query capabilities need to be modified to provide for the following:

- o Report listing all new cases and the status of all pending cases
- o Reports on case processing for management purposes.

3.3 PHASE II -- Develop Export Control Information Center

The objective of this phase is to develop and test a data base administration and control center for the DoD export control process. To accomplish this objective, procedures will have to be developed for system implementation, operations, test and evaluation, coordination and control of data resources, and training. To administer and control the above activities, a specific operation will have to be set up for data base administration (DBA).

In order to solidify the concept of DBA, it is necessary to define the functional responsibilities, emphasizing the theme of coordination and control. The DBA operation is defined as a "human function responsible for the coordination of all data related activities." The primary purpose of the DBA is to match the needs of the organization with the appropriate response from the information system, and vice versa. The DBA's primary focus is on the origin of data, how it is selected, how it enters the system, and the timing of its collection and entry. These activities are of critical importance for the reliability and general utility of the information.

The primary communication between the OUSDR&E focal point and the information sources would take place via the DBA operation; the DBA operation would coordinate and regulate activities between the two. Thus the DBA plays a critical role in determining how effective the information system is for the export control process. During the operational phase of the system, the DBA operation becomes the focus of responsibility for data usage, system modification, and establishment of procedures to be followed in the event of system malfunction (e.g., data base recovery).

The data base administration plan described below should be used to centralize data-related activities and administrative control.

Data Base Administration Plan

It will be crucial to the success of the Export Control Data Base (ECDB) that there be a clear understanding of the role of the DBA operation. Therefore, Retac recommends that a Data Base Administration Plan be developed to include:

- o Data Collection and Distribution Procedures
- o Data Base Control Standards for
 - Data Usage
 - Data Access and Manipulation
 - Data Edit and Validation
- o Computer Operations
 - Operating Procedures
 - Scheduling
 - Restart and Recovery Procedures
- o Data Base System Management
 - Performance Management
 - Audit Trails
 - System Improvements
- o Education and Training Requirements

System Input

The system input function can be divided into two general areas:

- o Data Preparation and Entry - As a follow on to the completion of Phase I, the input of current open cases, the update of open cases with responses from Services, and the start of the entry of the closed case backlog would have to be performed. This data should be entered utilizing the input form shown in Figure 3.2.
- o Edit Procedures - Reviewing, editing, and the exercising of quality control over the data input for the ECDB will have to be performed to ensure that the quality of input be uniform so that the data base remains as consistent as is practicable. As part of this activity an error follow-up report should be developed that will identify for system users errors in the data base that have been detected and corrected.

System Outputs

A protocol needs to be developed to define reporting requirements. The protocol should consist of a preliminary identification and organization of new reporting requirements based upon an analysis of the currently existing system (manual and automated). The protocol should identify reporting requirements in terms of:

FIGURE 3.2

EXPORT CONTROL

BTR CASE NO.		OC DOC. NO/SUPPLEMENT		CCL NO.	
COMPUTER MEMO NO.		WAIVER NO.		DATE RECEIVED	
SUBJECT					
APPLICANT NAME					
APPLICANT CITY/STATE			CONSIGNEE NAME		
CITY			COUNTRY		
COMMODITIES					
QUANTITY	PART NO./DESCRIPTION				VALUE
END USE:					
REFERENCE DOCUMENTS:					
					CRITICAL TECHNOLOGY FLAG
LICENSING HISTORY					
AGENCY	DATES		RECOMMENDATION		
	OUT	IN	APPROVE	OBJECT	APPROVE
ARMY					
NAVY					
AIR FORCE					
DRE					
DIA					
NSA					
DoD-TT					
DoC					
OTHER					

- o Report purposes
- o Relationship to functions performed
- o Content
- o Frequency
- o Anticipated volume
- o Use by others.

System Test and Demonstration

The ECDB Center should be operated over a period of time to determine the extent to which such a facility adequately meets DoD immediate requirements and to determine how such a facility could best be integrated into the FORDTIS concept of operations. At the end of this period, the data center concept of operation should be evaluated and modifications proposed.

Education and Training

A training curriculum should be developed. Training must be provided to data processing personnel in implementation, maintenance and operation of the data base center. Users external to the data center must receive training in concepts, data availability, data entry, report generation and query facilities.

3.4 PHASE III -- Expand ECDB Capabilities

This phase of the project, to commence after the successful completion of Phase II, would expand the capabilities of the Export Control Data Base (ECDB) Center to include additional near term system requirements and prepare the ECDB for integration

into the FORNTIS. While some requirements beyond those listed under Phase II can be identified, the specification of such requirements should be founded on the experience gained from the development, operation and testing of the ECDB Center in Phase II.

For this reason, the specific tasks comprising Phase III should be developed after Phase II is well underway. Some of the activities considered for possible inclusion in the Phase III effort are listed below:

- o Develop a network capability for the ECDB to link Military Service and OSD export data systems and initiate an electronic mail operation for case processing and information access.
- o Complete definition of license application parameters on closed cases for full text-reference data base.
- o Develop and implement an Export Control Regulatory Documentation File to permit computer access, retrieval and cross indexing of the various export control lists (CCL, COCOM IL, Munitions) and related documentation (Export Control Commodity Number, MCTL, reference cases) utilizing full text retrieval capabilities.
- o Develop Historical Export License Files for closed cases using text storage and retrieval capabilities of INFOCEN and/or DTIC.
- o Develop a Pilot Office Automation Demonstration Facility that would incorporate such capabilities as data base management, advanced word processing, full text processing via microfiche or computer text processing.

With the completion of Phase II it should be possible to specify these requirements for Phase III in more detail, determine their relative priority, and develop a program for integrating the ECDB into the FORDTIS program.

3.5 CONCLUSION

Case processing time could be positively effected by the addition of new manpower resources. However, as it is not likely that additional manpower will be available, attention should be focused on employing the integrated Export Control Data Base concept into the ELRP.

The recommended concept would eliminate the need for IP&T to inform Services and other reviewing agencies of incoming cases because the information would be stored daily in the data base and case officers at all levels will have access to relevant data available from this data base. This concept is designed to provide management visibility, permit consistency of decision making and allow for improved processing time. Such improvements will assist DoD case officers and other decision makers conducting export licensing activities, while not restricting their flexibility to process cases.

Further assessment will have to be made of export license data systems requirements with emphasis on the interface of the ELRP with OSD's FORDTIS program. The focus will be on the type of information required for the Services and OSD to effectively process cases. Specific concerns include:

- How much detail on an individual case is required by specific offices for their review?

- What information needs to be transmitted to whom regarding the status of cases being reviewed?
- What information should be made available or transmitted, and in what manner, regarding the outcome of case review?
- What data capabilities exist at the Service level, and how can they best be utilized by DoD?
- What data is needed for OSD(IP&T) to evaluate the effectiveness of the ELRP?

Betac will be performing this assessment as part of its continued assistance to OSD in implementing the Export License Review Process.

CHAPTER IV

INSTITUTIONALIZING THE ASSESSMENT OF MILITARILY CRITICAL TECHNOLOGIES

4.1 Introduction

Congress mandated in the Export Administration Act of 1979 that DoD prepare and maintain a Militarily Critical Technologies List (MCTL). A question of concern is how should the process of identifying militarily critical technologies be conducted on a continuing basis. This Chapter addresses this concern.

In requiring that the Department of Defense develop a list of militarily critical technologies the EAA specified that an "initial version" of the list would be completed and published in the Federal Register not later than October 1, 1980. While the Department of Defense recognized that the EAA imposed upon it a continuing requirement to maintain a Militarily Critical Technologies List, its energies, up to October 1, 1980 were focused on producing the Initial List for publication. Some attention was paid to implementing the MCTL and institutionalizing the process of assessing critical technologies, but these considerations were given lower priority than the Congressionally mandated publication of the Initial List. As the process by which the Initial List was developed was itself untested, it was reasonable to wait until its product was available before setting out a strategy for institutionalizing the process for assessing critical technologies. It is now appropriate, based on the experience of the last year, to consider how best to institutionalize this process.

4.2 Continuation of List Development

It was recognized by DoD that the Initial MCTL was a preliminary step in a continuing effort to identify critical technologies for export control purposes. Due to constraints of time and personnel availability, not all of the technology areas that DoD believed to contain critical technologies were included in this initial effort. Moreover, further efforts will be required in those technology areas included in the initial scope to specify the identified critical technologies in sufficient detail to meet the strictures of the EAA.^{1/}

It is stated in the EAA that the MCTL "shall become part of the Commodity Control List". Therefore, a major aspect of the continuing Defense export control program will have to be directed toward integrating the MCTL into the Commodity Control List (CCL). Since the CCL is administered by the Department of Commerce, an inter-agency effort will be required to execute this task. Nevertheless, the Department of Defense should take the lead in this task, given its prime role in producing the MCTL and its interest in seeing it adopted on an inter-agency basis. It should be an objective of DoD to develop a strategy for making the MCTL part of the CCL and presenting this strategy to DoC. Based on DoD initiative an implementation plan should be worked out on an inter-agency basis for integrating the MCTL into the export control regulatory process.

^{1/} The EAA states the list "shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act." It is not clear what level of specificity is necessary to achieve this goal. Presumably the licensing authorities within the Departments of Commerce and Defense would have to agree that the technology definitions are sufficiently specific to be used in export license processing. No procedures have been established thus far to obtain this agreement.

A complicating factor for export control is the necessity for United States controls to be coordinated with those of our COCOM allies. The Department of Defense recognizes that U.S. efforts to control the export of technologies is not likely to be successful without COCOM support. Obtaining acceptance of critical technologies within COCOM will necessitate negotiations which are apt to be protracted. The U.S. position will have to be carefully prepared and documented in order to obtain international support.

The assessment of critical technologies should become part of the on-going process for supporting U.S. efforts to gain acceptance for the control of critical technologies within the COCOM arena. The identification of critical technologies per se should become decreasingly important, however, while the effort to prepare COCOM proposals on critical technologies and negotiate the proposals within COCOM should steadily expand. The review and maintenance of the MCTL to take into account changes in technologies and their application, compared to the effort required to develop the Initial MCTL, should be a much less intense activity, and be carried out on a routine, periodic basis.

4.3 Defense Export Control Program

This continuing activity by DoD to incorporate critical technologies into the institutions for export control will extend into 1983. As summarized in Figure 4-1, these activities support the following objectives:

- Develop & Maintain the Militarily Critical Technologies List (MCTL)
- Incorporate the MCTL into the DoD Export License Review Process
- Integrate the MCTL into the U.S. export control regulatory process

Figure 4.1

MAIN THRUSTS OF DEFENSE EXPORT
CONTROLS PROGRAM

	FY81	FY82	FY83
DEVELOP & MAINTAIN MCTL	- o COMPLETE MCTL & BACKUP DOCUMENTATION - o PUBLISH REVISED VERSION OF MCTL - o RECOMMEND CHANGES FOR CCL	- o COMPLETE & MAINTAIN MCTL AND BACKUP - MUNITIONS LIST REVIEW - RECOMMEND CHANGES FOR CCL	- o MAINTAIN MCTL; REVISE AS NECESSARY - o CONTINUE TO REVIEW CCL & MUNITIONS LIST
INCORPORATE MCTL INTO EXPORT LICENSE REVIEW PROCESS	- o DETERMINE INFORMATION REQUIREMENTS - o ISSUE NEW DOD DIRECTIVE ON EXPORT CONTROL - o IMPLEMENT GSD EXPORT CONTROL DATA BASE	- o IMPLEMENT DOD-WIDE EXPORT CONTROL DATA SYSTEM (FORDTIS) - o CONTINUE EFFORTS TO IMPROVE OSD-SERVICE COORDINATION	- o MAINTAIN DOD EXPORT CONTROL DATA SYSTEM (FORDTIS) - o CONTINUE EFFORTS TO IMPROVE OSD-SERVICE COORDINATION
INTEGRATE MCTL INTO USG REGULATORY PROCESS	- o ASSESS TECHNICAL DATA REGULATIONS - o DEVELOP INTER-AGENCY IMPLEMENTATION PLAN - o IDENTIFY TRANSFER MECHANISMS FOR SELECTED MCTL ITEMS	o CONTINUE INTER-AGENCY EFFORTS ON CRITICAL TECHNOLOGIES	o CONTINUE INTER-AGENCY EFFORTS ON CRITICAL TECHNOLOGIES
DEVELOP COCOM PROPOSALS	- o DEVELOP INITIAL PROPOSALS - PROCESSING TECHNOLOGY - SOFTWARE & COMPUTERS	o DEVELOP FURTHER PROPOSALS FOR INCORPORATING CRITICAL TECHNOLOGIES	o REVISE PROPOSALS TO SUPPORT NEGOTIATIONS
NEGOTIATE COCOM PROPOSALS	o CONDUCT PRELIMINARY COCOM DISCUSSIONS ON CRITICAL TECHNOLOGIES	o BEGIN NEGOTIATIONS ON PROPOSALS	o COMPLETE NEGOTIATIONS ON CRITICAL TECHNOLOGIES

- Develop Critical Technology proposals for negotiation within COCOM
- Negotiate COCOM proposals.

Figure 4-1 shows the type of activities that need to be conducted over the next three years to institutionalize the critical technologies approach within the export control process.

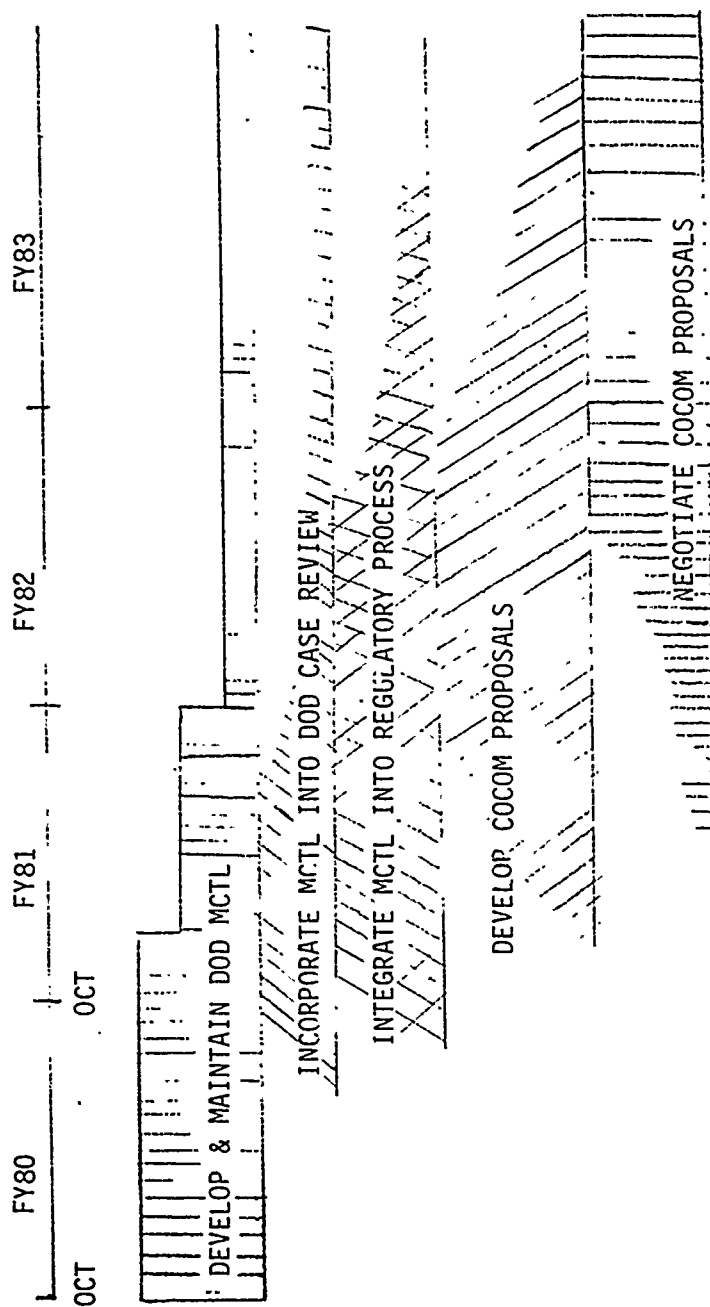
As shown in Figure 4.2, which illustrates the timeline for the DoD export controls program development, it is foreseen that the thrust of this overall program will shift over time from the concern with identification of critical technologies to the effort to gain acceptance in the international arena of the control of these technologies. However, it should be noted that the activities receiving heavy emphasis in the first two years will still need to be supported on a continuing, albeit a reduced, level in subsequent years. The functions of critical technologies identification, their utilization in the license review and the regulatory process, and the negotiation with U.S. allies to obtain a unified position to protect technologies should have become by this time engrained into the export control institutions.

4.4 Capabilities Assessments

The analysis of foreign capabilities is a particular aspect of the assessment of militarily critical technologies that has proven to be most difficult from the standpoint of establishing systematic procedures and mechanisms for assessment. There is a need to establish an organizational responsibility within DoD to provide such assessments. However, existing resources within DoD regarding the high technology capabilities of

Figure 4.2

TIMELINE FOR DEFENSE EXPORT CONTROLS PROGRAM



other nations are dispersed and not easily brought together, except for very specific single-shot analyses. As no single organization appears to have the internal assets available to devote to this requirement, the question is how to tap the dispersed resources both within and outside of DoD to perform the required analyses.

As a first recommendation, ODUSDR&E(IP&T) needs to establish a focal point for this effort. Its options for assigning this focal point appear to be:

- an individual within IP&T
- an organization within one of the Military Services
- the DIA
- an outside party (IDA, some other FCRC, or a contractor)

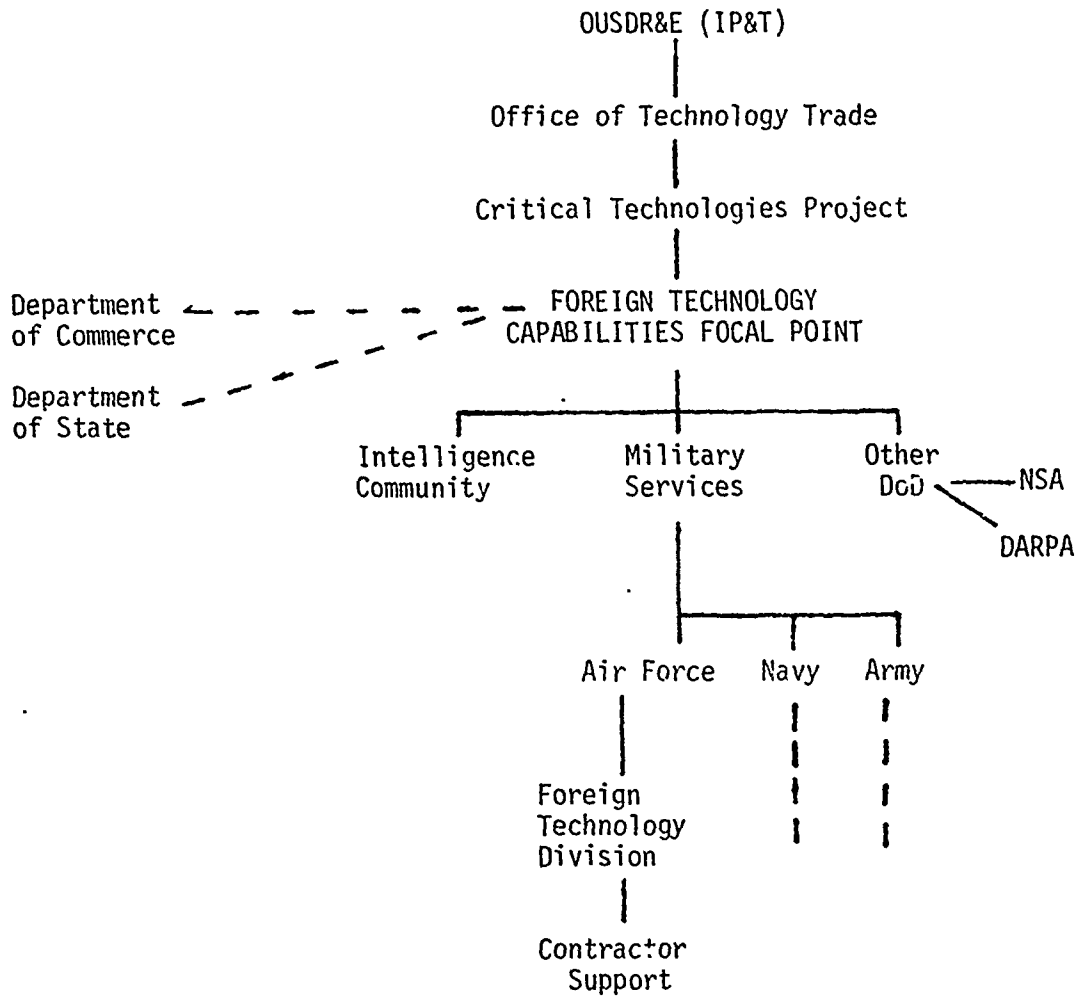
Of these, the DIA would seem to be the most able to tap the widest variety of sources and provide the greatest amount of internal support. However, there might be political or organizational reasons that would detract from DIA serving as the focal point, particularly if considerable involvement with information sources outside the U.S. Government would be required. There are two reasons for not using an individual within IP&T as the focal point: personnel are already severely taxed with their present assignments and IP&T has no indigenous capability to provide the information required. While individual Services have specific technical expertise, it is not clear whether any one Service has the breadth required to serve as the focal point, or whether an individual Service filling this role would be acceptable from an organizational standpoint, both in terms of coordinating with and obtaining the cooperation of other organizations. Problems of coordination become even more problematic, if organizations outside of DoD, such as an FCRC or other contracting organizations, are considered. However, such organizations might give the greatest flexibility as far as tapping a variety of resources including private industry and the academic community.

Beyond determining a focal point, a second recommendation is that ODUSDR&E(IP&T) must develop a clear tasking on the assessments it requires. Given the scarcity of resources, clear statements are required of the areas of technology, the nations whose capabilities are to be assessed, the type of information to be provided, the time frame of the assessment (e.g., snap shot, projection), and related topics. To develop such specifications IP&T needs to determine how the assessments will be utilized in the continuing process of assessing critical technologies.

Assessing foreign capabilities is a task requiring the ability to collect and evaluate a large amount of highly technical information for a large number of subjects. While a focal point for this effort will be necessary, it will also require an extensive support structure for conducting the assessments. An illustration of the type of organization that would be required is shown in Figure 4-3. In order to develop the foreign technology capabilities assessment organization needed to support the critical technologies process, ODUSDR&E (IP&T) should meet with the Services and the DIA to evaluate what internal resources are available and determine how to best access external resources. At least until a single focal point can be determined, a Foreign Technology Capabilities Assessment Working Group should be convened on a periodic basis by the director of the OSD Critical Technologies Project to deal with the problem of how this function should be performed.

Figure 4.3

Illustration of Support Structure
Needed to Assess Foreign Technology
Capabilities



APPENDIX A

Export Administration Act of 1979 (Key Sections)

SHORT TITLE

Export
Administration
Act of 1979.

SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

50 USC app. 2401
note.

FINDINGS

SEC. 2. The Congress makes the following findings:

50 USC app.
2401.

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nation's economy.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can curtail the efforts of American business to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which

contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to achievement of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

DECLARATION OF POLICY

50 USC app.
2402.

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make every reasonable effort to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before resorting to the imposition of controls on exports from the United States. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

50 USC app.
2403.

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) COMMODITY CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "commodity control list") consisting of any goods or technology subject to export controls under this Act.

(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States.

(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

50 USC app.
2404.

SEC. 5 (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

Publication in
Federal
Register.

(2)(A) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(B) Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restriction, if appropriate.

Export license
denial, notice.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States. Such regulations shall not be based upon the assumption that such effective safeguards can be devised.

Regulatory
safeguards for
U.S. security.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence.

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the commodity control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of

Regulations.

Submission of
written data,
views, or
arguments.

such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.

Review.

(d) **MILITARILY CRITICAL TECHNOLOGIES.**—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, and

(C) goods accompanied by sophisticated operation, application, or maintenance know-how,

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

Publication in Federal Register.

(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

Report to Congress.

(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.

(e) **EXPORT LICENSES.**—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license in lieu of a validated license.

Validated licenses, requirement.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.

Qualified
general license.

(4) Not later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.

(F) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

Review.

Export controls
maintenance.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

Validated
license approval.

(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision

to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.

(4) In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

Information
gathering.

(5) In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.

(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Export Administration concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

Regulations.

(g) INDEXING.—In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

Site visitation
requirements,
removal.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or

licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

Membership.

Term of office.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

Travel and other expenses, reimbursement.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

Termination.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if

Export controls maintenance.

Determination,
publication

Coordinating
Committee,
functions.

such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.

(i) **MULTILATERAL EXPORT CONTROLS.**—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.

(4) Agreement on more effective procedures for enforcing the export controls agreed to pursuant to paragraph (3).

(j) **COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.**—(1) Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) **NEGOTIATIONS WITH OTHER COUNTRIES.**—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.

(l) **DIVERSION TO MILITARY USE OF CONTROLLED GOODS OR TECHNOLOGY.**—(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary for as long as that diversion to significant military use continues—

(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national

security controls under this section which contribute to that particular military use, regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act with respect to the party referred to in subparagraph (A) as are feasible to deter the further military use of the previously exported goods or technology.

(2) As used in this subsection, the terms "diversion to significant military use" and "significant military use" means the use of United States goods or technology to design or produce any item on the United States Munitions List.

"Diversion to significant military use" and "significant military use".

FOREIGN POLICY CONTROLS

SEC. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

50 USC app 2405.

(2) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (c). Any such extension and any subsequent extension shall not be for a period of more than one year.

Expiration date.

(3) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

Export license denial

(4) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

Export license application, review.

(b) CRITERIA.—When imposing, expanding, or extending export controls under this section, the President shall consider—

(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States

THE SECRETARY OF DEFENSE.
WASHINGTON, D. C. 20301

AUG 26 1977

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR, DEFENSE RESEARCH & ENGINEERING
ASSISTANT SECRETARY OF DEFENSE (COMPTROLLER)
ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL
SECURITY AFFAIRS)
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
ASSISTANT TO THE SECRETARY FOR ATOMIC ENERGY
DIRECTOR, DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
DIRECTOR, DEFENSE INTELLIGENCE AGENCY
DIRECTOR, POLICY REVIEW

SUBJECT: Interim DoD Policy Statement on Export Control of United
States Technology

1. Purpose.

This memorandum of policy sets forth the definitions and provides interim internal guidance to the Department of Defense with regard to the DoD role in support of US Government efforts to control exports of critical US technology and related products.

2. Background

US policy on international trade consists of two elements that are not always reconcilable: 1) to promote trade and commerce with other nations, and 2) to control exports of goods and technology which could make a significant contribution to the military potential of any other nation or nations when this would prove detrimental to the national security of the United States. While the Defense Department's chief concern is with the second of these goals, it must discharge its concern without restricting US trade and exports any more than necessary.

Defense's primary objective in the control of exports of US technology is to protect the United States' lead time relative to its principal adversaries in the application of technology to military capabilities. This lead time is to be protected and maintained as long as is practical, in order to provide time for the replenishment of technology through new research and development. In addition, it is in the national interest not to make it easy for any country to advance its technology in ways that could be detrimental to US interests. These controls, however, are to be applied so as to result in the minimum interference in the normal conduct of commercial trade. This policy statement, drawing upon the recommendations

of the Report of the Defense Science Board Task Force on Export Control of US Technology (the "Bucy Report"), provides interim internal guidance to the Defense Department to maximize the above objectives to the maximum practical extent.

3. Definitions.

The term "critical technology" as used herein refers to the classified and unclassified nuclear and non-nuclear unpublished technical data, whose acquisition by a potential adversary could make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country -- irrespective of whether such technology is acquired directly from the United States or indirectly through another recipient, or whether the declared intended end-use by the recipient is a military or non-military use.

"Technical data" means information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, testing, maintenance or reconstruction of articles or materials. The data may take a tangible form, such as a model, prototype, blueprint, or an operating manual, or they may take an intangible form such as technical service.

Control of such critical technology also requires the control of certain associated critical end products defined as "keystone" that can contribute significantly in and of themselves to the transfer of critical technology because they 1) embody extractable critical technology and/or 2) are equipment that completes a process line and allows it to be fully utilized.

4. Defense Department Policy in Export Control of US Technology

In assessing and making recommendations upon those export applications referred to it by the State and Commerce Departments, Defense will place primary emphasis on controlling exports to any country of arrays of design and manufacturing know-how; of keystone manufacturing, inspection and test equipment; and of sophisticated operation, application or maintenance know-how.

In order to protect key strategic US lead times, export control of defense-related critical technology to all foreign countries is required. To this end, Defense will:

- 1) request the Department of Commerce to alter existing regulations so as to require a validated license for proposed exports of critical technology to all destinations;
- 2) recommend to, and support the negotiation by, the Department of State with COCOM countries, and such other nations as may

be appropriate, of new measures to control or restrict the flow of critical technology to Communist countries, as well as recommendations as to the revision of the list of embargoed products.

- 3) recommend to the Secretary of Commerce that procedure be streamlined in such a way as to minimize delays in forwarding and processing export applications by a) speeding referral by Commerce of export applications for review and b) making use of new and/or improved technical guidelines to be supplied by DoD, which will allow maximum emphasis to be placed upon applications for the export of critical technologies and associated end products, thereby also allowing more rapid processing of applications for other, non-critical end products.

Defense will support the transfer of critical technology to countries with which the US has a major security interest where such transfers can 1) strengthen collective security, 2) contribute to the goals of weapons standardization and interoperability, and 3) maximize the effective return on the collective NATO Alliance or other Allied investment in R&D.

In assessing the advisability of the transfer of critical technology to either COCOM or other non-Communist countries, Defense will carefully assess the proposed recipient's intent and ability to prevent either the compromise or the unauthorized re-export of that technology. Where classified information is involved, security classification guidance will be provided to the recipient, and where feasible, security surveys will be accomplished in addition to the completion of appropriate military and industrial security arrangements.

The Department of Defense will look to the State and Commerce Departments and the intelligence and security communities to identify those instances in which the initial recipient makes unauthorized further transfers, or allows compromise, of critical technology. The Department will incorporate the results of such observations in its assessments of subsequent applications for commercial export, Foreign Military Sales (FMS), Data Exchange Agreements (DEA), Information Exchange Programs (IEP), and other transfers to such recipients. Violations of US third-country transfer prohibitions or instances of compromise will normally be considered grounds for employment of sanctions involving critical technologies. Coordination within DoD will be strengthened to meet the requirements of military and industrial security.

Defense will normally recommend approval of sales of end products to potential adversaries in those instances where 1) the product's technology content is either difficult, impractical, or economically infeasible to extract, 2) the end product in question will not of itself significantly enhance the recipient's military or war-making capability, either by virtue of its technology content or because of the quantity to be sold, and 3) the product cannot be so analyzed as to reveal US system characteristics and thereby contribute to the development of countermeasures to equivalent US equipment.

There shall be a presumption for recommending disapproval of any transaction involving a revolutionary advance in defense-related technology to the proposed recipient country (if the resultant military capability threatens US interests). Defense will assess a proposed export of technology not on the basis of whether the item is obsolete by US standards, but on whether the proposed export would significantly advance the receiving country's potential and prove detrimental to the national security of the United States.

End-use statements and safeguards are not to be considered a factor in approving exports to potential adversaries of critical technologies and products except as may be otherwise provided in Presidential directives. Departure from this procedure will occur only with specific approval of the Secretary of Defense, or his designee.

Defense recommendations to approve the export of end products to potential adversaries are to be made primarily on the basis of an assessment that the products' inherent performance capabilities, or the quantity sold, do not constitute a significant addition to the recipients' military capability which would prove detrimental to the national security of the United States.

This policy shall be applied without regard to whether the exporter is a government department or agency, a commercial enterprise, an academic or non-profit institution, an individual entrepreneur, or in the case of re-export requests, a foreign government or an international organization; and without regard to the transfer mechanism involved, e.g., turnkey factories, licenses, joint ventures, training, consulting, engineering documents and technical data.

Explicit account shall be taken of the relative efficiency of the various mechanisms of technology transfer (e.g., foreign liaison activities, scientific and technical exchanges, commercial visits, trade fairs, training programs, sales proposals and consulting agreements, as well as in specific technology export cases). When the potential for inadvertent transfer of critical technology is considered to be high, Defense shall formulate and recommend to the responsible agencies restrictions on the amount, extent or kind of interpersonal exchange in a given transaction. Visitor control mechanisms within the Department of Defense will be improved.

The Department of Defense, in coordination with other Departments and Agencies, shall identify and maintain a continuously updated list of specific critical technologies and/or end products whose export should be restricted for reasons of national security. This list and its updates will be communicated to Departments responsible for administering US export controls. It is recognized that these list items will be time-dependent. Appropriate items will be added and/or deleted from the list as time goes by.

In coordination with and assisted by the intelligence community, Defense will undertake to improve the information and data base pertaining

to technology transfer by studying in greater depth and on a continuous basis selected aspects of US technology transfers over time in order to ascertain their impact on the military capabilities of potential adversaries and on critical US lead-times.

In the interagency arena, Defense will propose and support means by which national security considerations can be taken fully into account from the beginning stages of any international projects having the potential of promoting the transfer of critical technologies.

The Department of Defense will propose and support means of improving interagency communication and coordination on matters of export controls and technology transfers in order to help achieve adequate and appropriate interagency coordination in these areas.

Harold Brown

APPENDIX C

b. Executive Order 12002, July 7, 1977, 42 F.R. 35623

ADMINISTRATION OF THE EXPORT ADMINISTRATION ACT OF 1969, AS AMENDED¹

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

Section 1. Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

Sec. 2. (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act, which directs that every reasonable effort be made to secure the removal or reduction of assistance by foreign countries to international terrorists through cooperation and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

Sec. 3. The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as members the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, the Secretary of Defense, and the Chairman of the East-West Foreign Trade Board (Section 7 of Executive Order No. 11846, as amended). No alternative Board members shall be designated, but the acting head of any department may serve in lieu of the head of the concerned department. In the case of the East-West Foreign Trade Board, the Deputy Chairman or the Executive Secretary may serve in lieu of the Chairman. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

Sec. 4. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, and the

¹ While the Export Administration Act of 1969 expired on September 30, 1979, it was replaced by the Export Administration Act of 1979. Section 21 of the 1979 Act provided that all orders (which would include this executive order) issued under the 1969 Act and which were in force on the effective date of the 1979 Act, would continue in effect until modified, superseded, set aside, or revoked.

domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

Sec. 5. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

Sec. 6. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked in Section 7 of this Order, and not revoked administratively or legislatively, shall remain in full force and effect under this Order until amended, modified, or terminated by proper authority. The revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

Sec. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 20, 1976 are hereby revoked.

APPENDIX D

Arms Export Control Act of 1976, As Amended

(Key Sections)

Section 1. "It is the sense of Congress that all such sales be approved only when they are consistent with the foreign policy interests of the United States, the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended, the extent and character of the military requirements, and the economic and financial capability of the recipient country, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to the impact of the sales on programs of social and economic development and on existing or incipient arms races."

(Arms sales should be consistent with foreign policy interests and take into account the financial and economic capability of the receiving country as well as the impacts on arms races.)

Section 3. "Eligibility - (a) No defense article or defense service shall be sold by the United States Government under this Act to any country or international organization unless -

(1) The President finds that the furnishing of defense services to such country or international organization will strengthen the security of the United States and promote world peace;

(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it to anyone not an officer, employee, or agent of that country or international organization and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained;

(3) the country or international organization shall have agreed that it will maintain the security of such article and will provide substantially the same degree of security protection afforded to such article by the United States Government; and

(4) the country or international organization is otherwise eligible to purchase defense articles or defense services."

(For sales under this Act the President must make a positive finding that the security of the United States will be strengthened. In addition the receiving country must agree (1) to maintain the security of the articles of sale and (2) not to retransfer the articles without U.S. Presidential approval.)

Section 4. "Purposes for Which Military Sales by the United States Are Authorized - Defense articles and defense services shall be sold by the United States Government under this Act to friendly countries solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries."

Section 36(b)(1). "In the case of any letter of offer to sell any defense articles or services under this Act for \$25,000,000 or more, or any major defense equipment for \$7,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the Chairman on Foreign Relations of the Senate a numbered certification with respect to such offer to sell . . . In addition, the President shall, upon the request of such committee or the Committee on International Relations of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request -

(D) an analysis of the arms control impact pertinent to such offer to sell, prepared in consultation with the Secretary of Defense;

(F) in analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

(K) an analysis of the extent to which comparable kinds and amounts of defense articles or services are available from other countries;"

Section 36(c). "In the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of \$7,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$25,000,000 or more, not less than 30 days before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (1) the foreign country or international organization to which such export will be made, (2) the dollar amount of the items to be exported, and (3) a description of the items to be exported. In addition, the President shall, upon the request of such committee or the Committee on International Relations of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in paragraph (3) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States."

Section 36(d) "In the case of an approval under section 38 of this Act of a United States commercial technical assistance or manufacturing licensing agreement for or in a country not a member of the North Atlantic Treaty Organization which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c) containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection."

(The above portions of section 36 indicate what the Executive Branch must be prepared to submit to the Congress with regard to arms control impacts, effects on U.S. military preparedness, the availability of comparable equipment from other countries, and the number of U.S. personnel needed in the foreign country in the event of a proposed major sale of defense articles, services, equipment, technical assistance, or manufacturing licensing agreement.)

Section 38. "Control of Arms Exports and Imports. - (a)(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List."

(Section 38 was added by Section 212(a)(1) of the International Security Assistance and Arms Export Control Act of 1976 and Section 414 of the Mutual Security Act of 1954 was repealed by the same act.)

Section 42. "General Provisions - (a) In carrying out this Act, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this Act, there shall be taken into consideration (1) the extent to which the proposed sale damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States, (2) the portion of the defense articles so manufactured which is of United States origin, and (3) in coordination with the Director of the United States Arms Control and Disarmament Agency, the Director's opinion as to the extent to which such sale might contribute to an arms race, or increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements."

(Section 42 emphasizes that the act covers coproduction and licensed production of defense articles outside the United States as well as direct sales.)

Section 212 (b)(1) "Section 414 of the Mutual Security Act of 1954 is repealed. Any reference to such section shall be deemed to be a reference to section 38 of the Arms Export Control Act and any reference to licenses issued under section 38 of the Arms Export Control Act shall be deemed to include a reference to licenses issued under section 414 of the Mutual Security Act of 1954."

Section 212 (b)(2) "All determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under section 414 of the Mutual Security Act of 1954 shall continue in full force and effect until modified, revoked, or superseded by appropriate authority."

(This section of the 1976 act repealed Section 414 of the Mutual Security Act of 1954 but not past actions taken under that section of the 1954 act.)

APPENDIX E

Executive Order No. 11958, January 18, 1977

Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Delegation of Functions. The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), hereinafter referred to as the Act, are delegated as follows:

(a) Those under Section 3 of the Act [section 2753 of this title], with the exception of subsections (a)(1), (b), (c)(3) and (c)(4), to the Secretary of State: *Provided*, That the Secretary of State, in the implementation of the functions delegated to him under Sections 3(a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense articles or related training or other defense service by a foreign country or international organization not otherwise eligible under Section 3(a)(1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under Section 5 [section 2755 of this title] to the Secretary of State.

(c) Those under Section 21 of the Act [section 2761 of this title], with the exception of the last sentence of subsection (d) and all of subsection (h), to the Secretary of Defense.

(d) Those under Section 22(a) of the Act [section 2762(a) of this title] to the Secretary of Defense.

(e) Those under Section 23 of the Act [section 2763 of this title], with the exception of the functions of certifying a rate of interest to the Congress as provided by paragraph (2) of that Section, to the Secretary of Defense.

(f) Those under Section 24 of the Act [section 2764 of this title] to the Secretary of Defense.

(g) Those under Section 25 of the Act [section 2765 of this title] to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that Section.

(h) Those under Section 34 of the Act [section 2774 of this title] to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under Section 35(a) of the Act [section 2775(a) of this title] to the Secretary of State.

(j) Those under Sections 36(a) and 36(b)(1) of the Act [section 2776(a) and (b)(1) of this title], except with respect to the certification of an emergency as provided by subsection (b)(1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1) shall consult with the Secretary of State, who shall, with respect to matters related to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a)(5) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under Sections 36(c) and (d) of the Act [section 2776(c) and (d) of this title] to the Secretary of State.

(l) Those under Section 38 of the Act [section 2778 of this title]:

(1) to the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense;

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under Section 38 of the Act [section 2778 of this title] shall have the concurrence of the Secretary of State and the Secretary of Defense;

(3) to the Secretary of Commerce, to carry out on behalf of the Secretary of State, to the extent such functions involve Section 38(e) of the Act [section 2778(e) of this title] and are agreed to by the Secretary of State and the Secretary of Commerce.

(m) Those under Section 39(b) of the Act [section 2779(b) of this title] to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under Section 22 of the Act [section 2762 of this title].

(n) Those under Sections 42(c) and (f) of the Act [section 2791(c) and (f) of this title] to the Secretary of Defense.

SEC. 2. Coordination. (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act [section 2752(b) of this title] and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

SEC. 3. Allocation of Funds. Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 4. Revocation. Executive Order No. 11501, as amended, is revoked; except that, to the extent consistent with this Order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken or entered into under the provisions of Executive Order No. 11501, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

GERALD R. FORD.

APPENDIX F

International Traffic in Arms Regulations (ITAR)

The ITAR is not included since it is presently undergoing revision and will not be published in a final form until early Spring, 1981.

APPENDIX G

National Policy and Procedures for the Disclosure of Classified
Military Information to Foreign Nationals and International Organizations
(National Disclosure Policy, NDP-1/11)

This document is classified and is thus not included in this report.

December 11, 1962
NUMBER 2030.4



ASD(ISA)

Department of Defense Directive

SUBJECT DoD Support for the Strategic Trade Control Program

- Refs:
- (a) Export Control Act of 1949 (63 Stat. 7), as amended (50 U.S.C. App. 2020-2032)
 - (b) Mutual Defense Assistance Control Act of 1951, as amended
 - (c) Executive Order 10945, "Administration of the Export Control Act of 1949," dated May 24, 1961

I. PURPOSE

This Directive sets forth policies governing participation by the Department of Defense in the Strategic Trade Control Program, and assigns responsibility for coordination of the Program's requirements for DOD technical and intelligence support.

II. APPLICABILITY

The provisions of this Directive apply to all components of the Department of Defense.

III. BACKGROUND

- A. Effective trade controls depend in large measure on readily available technical data, intelligence, and other information from which decisions are made as to the strategic importance of materials and equipment which might be exported from the free world into the Sino-Soviet Bloc and other prohibited destinations. Such data, for the most part, is furnished to the Government by the Military Departments and other components of the DOD, and by DOD contractors.

- B. Unilateral controls maintained by the United States derive chiefly from the Export Control Act of 1949 (ref. (a)), administered by the Secretary of Commerce. DOD participation in the unilateral U.S. control system is required by Executive Order 10945 (ref. (c)), under which the Export Control Review Board was established, with the Secretary of Defense as a member.
- C. International controls derive chiefly from the Mutual Defense Assistance Control Act of 1951, as amended, (ref. (b)), administered by the Secretary of State. DOD participation in the international control system is provided for in Section 103(a) of (ref. (b)).

IV. POLICY

- A. The United States has established trade controls for the purpose of restricting the movement from the free world to the Sino-Soviet Bloc (or to any nation or group of nations threatening the national security of the U.S.) of military equipment and supplies, and of such other materials, equipment and technology as are determined to be strategic by virtue of their potential contribution to the military or economic strength of such countries.
- B. DOD participation in the Strategic Trade Control Program shall be in conformance with the (1) legislative acts and executive order cited in refs. (a), (b), and (c), and (2) national policy objectives, and shall be coordinated so as to insure the most effective use of DOD technical advice and guidance, intelligence and other data, and such other support as may be appropriate.
- C. DOD determinations with respect to the military and strategic importance of items coming under review in the Trade Control Program shall be governed by the criteria established for this purpose in interdepartmental and international agreements.

V. RESPONSIBILITIES

- A. The Assistant Secretary of Defense (International Security Affairs) shall be responsible for implementation of the policies established in Section IV hereof, and for coordination of DOD support of the Strategic Trade Control Program.

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- B. The Military Departments and other Components of the DOD concerned shall establish points of contact to facilitate (1) technical level participation with the OASD(ISA), and (2) the furnishing of technical data, intelligence, and other information required for arriving at decisions as to the strategic importance of materials, and the effective enforcement of the program.

VI. IMPLEMENTATION AND EFFECTIVE DATE

Two copies of implementing regulations and/or Directives shall be forwarded to the Assistant Secretary of Defense (ISA) within thirty (30) days. This Directive is effective immediately.

Lowell T. Galt

Deputy Secretary of Defense



March 10, 1970
NUMBER 5030.28

ASD(ISA)

Department of Defense Directive

SUBJECT Munitions Control Procedures for U.S. Munition List Export
License Applications Referred to DoD by Department of State

- Refs.: (a) Section 414, Mutual Security Act of 1954, as amended
(Title 22, United States Code, Section 1934)
(b) Section 105, Executive Order 10973, November 3, 1961
(3 CFR, 1961, Supp., p. 131)
(c) International Traffic in Arms Regulations (ITAR),
Department of State, Revised August 1969 (22 CFR,
Chapter I, Subchapter M)
(d) National Policy and Procedures for the Disclosure of
Classified Military Information to Foreign Nationals
and International Organizations (National Disclosure
Policy, NDP-1), December 17, 1969.
(e) Armed Services Procurement Regulation
(f) DoD Directive 5030.28, subject as above, February 20,
1964 (hereby cancelled)

I. REISSUANCE AND PURPOSE

This Directive updates reference (f) which is hereby superseded and cancelled. It delineates requirements and responsibilities of the Assistant Secretary of Defense (International Security Affairs), the Director of Defense Research and Engineering, the Military Departments, the Joint Chiefs of Staff, and other DoD components for reviewing and presenting the Department's position to the Department of State on munitions export license applications referred to the Department of Defense under the provisions of References (a), (b), (c), and (d) above.

II. APPLICABILITY

The provisions of this Directive apply to all components of the Department of Defense.

III. SCOPE AND DEFINITION

Munitions control procedures concern those requests from U.S. firms or other entities, for Department of State export license or approval, referred to the Department of Defense as numbered munitions cases, for concurrence or recommendations. Such requests pertain to defense articles or services as described in the U.S. Munitions List and enumerated in the International Traffic in Arms Regulations, Department of State. These articles are designated as arms, ammunition and implements of war, and may consist of manufacturing license and technical assistance agreements, materiel, and/or technical data. Changes to the Munitions List are effected by the Secretary of State with the concurrence of the Secretary of Defense. (This Directive does not cover materiel or services provided by the U.S. Government as grant military assistance or as foreign military sales.)

IV. POLICY AND RESPONSIBILITIES

It is the policy of the Department of Defense consistent with overall national policy and the protection of security interests of the U.S. to permit the export to friendly nations of munitions articles and services and related technical data including manufacturing license and technical assistance agreements.

- A. The Assistant Secretary of Defense (International Security Affairs) or his designee for this purpose will:
 - 1. Develop programs, in conjunction with the Department of State, to facilitate the processing of munitions cases expeditiously and efficiently.
 - 2. Administer and manage the program within the DoD.
 - 3. Provide policy guidance to the Military Departments, the Office of the Director of Defense Research and Engineering, and other DoD components, as required, concerning the review of munitions cases and related actions.
 - 4. Establish the DoD position on munitions cases.
- B. In accordance with References (a), (b), (c), and (d), and Paragraph IV.A. above, the Military Departments, ODDR&E and applicable DoD components:

1. Will designate a single point of contact to communicate with ASD(ISA) on munitions cases and related actions.
 2. Will provide ASD(ISA) with a department or component recommendation regarding each munitions case referred by the Department of State for action.
 3. May communicate with the Office of Munitions Control, Department of State, on administrative matters relating to munitions cases under departmental review, providing ASD(ISA) copies of correspondence as appropriate.
 4. May request the Organization of the Joint Chiefs of Staff to provide recommendations on military security matters in those cases where definitive policy guidance has not been established.
 5. Will complete staffing on munitions cases, and return them to the ASD(ISA) within twenty (20) working days from the date of receipt. Internal procedures will be established to assure meeting this suspense.
- C. The Military Departments, the JCS, DDR&E, and other DoD components concerned will provide recommendations to the ASD(ISA), taking into consideration the following factors:
1. Identification of materiel or data and its end-use.
 2. Security policy interests and/or implications, including the current security classification, if any, of the item involved. In this connection, export applications concerning materiel or weapon systems will be reviewed to determine whether a resultant sale of the item(s) or system(s) although perhaps unclassified, would require the disclosure of classified information at a later date for operation, maintenance, or production. If disclosure of classified information will be required, the case will be considered in accordance with the guidance in NDP-1 (reference (d)), and on the basis of the highest classification.
 3. Military advantage or detriment to the U.S., and impact on U.S. Government policy, including consistency with military objectives, plans, and operational requirements.

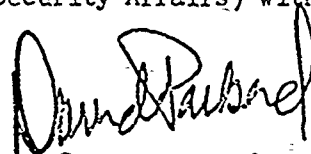
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4. Copyright, patent, and/or other proprietary rights involved, and the U.S. Government interest therein.
5. Impact on military assistance programs, sales, loans or grants, co-development, co-production, and data exchange agreements.
6. Impact on DoD research and development, production, procurement and supply for United States Armed Forces, including whether use of United States Government-owned tooling or industrial facilities is involved. In those cases where export of matériel or services may have an adverse effect on the logistic support of U.S. forces or the U.S. production base, a statement describing this effect will also be provided. Normally, the Military Departments will be responsible for bringing such cases to the attention of OASD(I&L).
7. Significance of the specific item proposed for export in relation to the state-of-the-art or advanced technology. Relationship of proposed export to technological developments or programs in the country of destination and the latter's capability to operate and maintain the equipment or utilize the data.
8. Conformance with the Armed Services Procurement Regulation (reference (e)), the International Traffic in Arms Regulations (reference (c)), the NDP-1 (reference (d)), the National Security Decision Memoranda, etc. All munitions cases will be examined carefully against the criteria set forth in NDP-1 (reference (d)) to insure that approval of unclassified munitions cases will not inadvertently commit the United States to a future release of classified information or matériel. The exportation of unclassified information or matériel related to classified items will be approved only after approval by the originating department or agency to release such related classified items as may later be required. If classified end items of equipment or technical data are identified as ultimately being involved in an application originated as an unclassified munitions case, the following will apply:
 - a. Within the Limits of NDP-1
 - (1) The DoD component reviewing the request will bring this matter to the attention of ASD(ISA).

- (2) The DoD component concurring in such request will also certify that the eventual disclosure of classified information meets the criteria of the NDP-1 (reference (d)). (NOTE: Concurrence in such cases indicates that the DoD component has considered all classified end items or data involved and is prepared to approve their release.)
- b. Exceed Limits of NDP-1. If the eventual disclosure of classified information exceeds the limits set forth in NDP-1 (reference (d)), DoD components will either:
- (1) notify the ASD(ISA) specifically where the policy has been exceeded and forward an accompanying statement that the DoD component does not wish to sponsor the required exception; or
 - (2) forward an interim reply to the ASD(ISA) if wishing to sponsor the exception, indicating that the DoD component-sponsored request for exception to the National Disclosure Policy is being acted on by the National Disclosure Policy Committee (NDPC) (see reference (d)). Interim disclosures of related UNCLASSIFIED information or information of a lower classification level will not be authorized, pending resolution of the case by the NDPC.

V. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Two (2) copies of each implementing document will be forwarded to the Assistant Secretary of Defense (International Security Affairs) within thirty (30) days.



Deputy Secretary of Defense

APPENDIX J

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

19 May 1979

MEMORANDUM FOR Under Secretary of Defense for Research
and Engineering
Assistant Secretary of Defense (International
Security Affairs)
Deputy Assistant Secretary of Defense
(Administration), OASD(C)

SUBJECT: Export of Technology and Technology Products

For some time Secretary Brown and I have been reviewing Department of Defense policy responsibilities, organizational structures, and management arrangements for controlling the export of technology and technology products, including COCOM, to foreign nations

Under current arrangements, key functions and responsibilities are fragmented among several organizations within the Office of the Secretary of Defense. Broad policy and political considerations and the processing of export requests are assigned to several offices within the ASD(International Security Affairs). Technological matters are assigned to two separate offices within the USD(Research and Engineering).

I believe it is essential that we strengthen both the policy and operating aspects of this program. Accordingly, I have decided that the following realignment should occur:

- Policy and political considerations will be centralized in one office within the ASD(International Security Affairs).

- Technological matters and the processing and coordination of export requests will be consolidated within a new Deputy Under Secretary of Defense for Research and Engineering (Technology Trade). This office will also serve as the DoD focal point on all aspects of export technology, including COCOM, with the Department of State and other Federal agencies.

The USD(R&E), in coordination with ASD(ISA) and the DASD(A) should prepare an implementation plan to be submitted to me before June 30. The plan should consider:

- a) dual-uses military technology and products;
- b) all categories of munitions;
- c) FMS cases;
- d) international S&T agreements, national disclosure policy issues;
- e) responsibilities of DoD in this area regarding appearances in Congress, COCOM discussions, interagency and White House Boards and Councils;
- f) foreign policy issues related to technology transfer (e.g., third country sales);
- g) NATO technical issues (e.g., RSI) and propose a clear and unequivocal assignment of responsibilities.

Disagreements should be recorded and referred to me for resolution.

Personnel ceilings and assignments must be defined, space problems resolved.

No increase in the presently authorized personnel ceilings will be acceptable.



Charles W. Duncan, Jr.