

**A** *Audit*



**R** *Report*

DOD INVOLVEMENT IN THE REVIEW AND REVISION OF THE  
COMMERCE CONTROL LIST AND THE U.S. MUNITIONS LIST

Report No. D-2001-088

March 23, 2001

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<b>Abstract</b> Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, i4Annual Report of Militarily Sensitive Technologies to Countries and Entities of Concern,li October 5, 1999, requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director, Central Intelligence Agency, and the Director, Federal Bureau of Investigation, conduct annual reviews of the transfer of militarily sensitive technologies to countries and entities of concern. The Commerce Control List identifies all dual-use commodities, software, and technologies subject to the export licensing process as well as the conditions under which those commodities, technologies, and software may be exported. The U.S. Munitions List identifies those items, technologies, and services that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States. The list of militarily critical technologies is designed to be sufficiently specific to guide the determinations of export controls for any official exercising export licensing responsibilities. Technology Working Groups are technical experts from the DoD community including academia, Government, and industry essential to the Militarily Critical Technologies Program.		<b>Monitoring Agency Acronym</b>
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### **Acronyms**

CCL	Commerce Control List
DTRA	Defense Threat Reduction Agency
DTSI	Defense Trade Security Initiative
MCT	Militarily Critical Technologies
TWG	Technical Working Group
USML	U.S. Munitions List



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March 23, 2001

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE  
(TECHNOLOGY SECURITY POLICY)  
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

SUBJECT: Audit Report on DoD Involvement in the Review and Revision of the  
Commerce Control List and the U.S. Munitions List  
(Report No. D-2001-088)

We are providing this report for your information and use. We conducted the audit in response to Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, "Annual Report on Transfer of Militarily Sensitive Technologies to Countries and Entities of Concern." We considered management comments on a draft of this report in preparing the final report.

Comments on the draft report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. No additional comments are required.

For additional information on this report, please contact Ms. Evelyn R. Klemstine at (703) 604-9172 (DSN 664-9172) or Mr. Timothy E. Moore at (703) 604-9633 (DSN 664-9633). See Appendix H for the report distribution. The audit team members are listed inside the back cover.

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## Office of the Inspector General, DoD

Report No. D-2001-088

(Project No. D2000LG-0244)

March 23, 2001

### DoD Involvement in the Review and Revision of the Commerce Control List and the U.S. Munitions List

#### Executive Summary

**Introduction.** Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, "Annual Report of Militarily Sensitive Technologies to Countries and Entities of Concern," October 5, 1999, requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director, Central Intelligence Agency, and the Director, Federal Bureau of Investigation, conduct annual reviews of the transfer of militarily sensitive technologies to countries and entities of concern. The Commerce Control List identifies all dual-use commodities, software, and technologies subject to the export licensing process as well as the conditions under which those commodities, technologies, and software may be exported. The U.S. Munitions List identifies those items, technologies, and services that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States. The list of militarily critical technologies is designed to be sufficiently specific to guide the determinations of export controls for any official exercising export licensing responsibilities. Technology Working Groups are technical experts from the DoD community including academia, Government, and industry essential to the Militarily Critical Technologies Program.

**Objectives.** The overall audit objective was to evaluate the role of DoD in reviewing and revising the Commerce Control List and the U.S. Munitions List. Specifically, we examined the DoD process for ensuring that U.S. national security objectives are being considered when revisions to the Department of Commerce Control List and the Department of State (State) U.S. Munitions List are made. We also reviewed the management control program as it related to our objectives.

**Results.** DoD performed periodic reviews of multilaterally controlled items\* listed on the Commerce Control List. However, DoD did not perform periodic reviews of unilaterally controlled items, which comprise 29 percent of the Commerce Control List. Additionally, DoD did not perform a review of countries for which unilateral controls were applicable. As a result, a valid requirement for an export license may no longer exist for at least some of the 137 unilaterally controlled items on the Commerce Control List and some of the 196 countries on the Commerce Country Chart (finding A).

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\*Items as used in this report, refer to all goods, software, and technologies included in each Export Control Classification Number, not necessarily just one item.

The Defense Threat Reduction Agency has developed a plan and started to perform reviews of approximately one-fourth of the U.S. Munitions List each year that will result in a complete review of the U.S. Munitions List every 4 years. The Defense Threat Reduction Agency Technology Security Directorate is responsible for the Militarily Critical Technologies Program. The list of militarily critical technologies is the main product of the Militarily Critical Technologies Program. However, critical parameters for military technologies on the list of militarily critical technologies, a list developed to be a guide for export controls, may be outdated and some developing technologies with potential military applications may not have been identified. As a result, the list of militarily critical technologies may not be sufficiently current to guide the determinations of export controls and developing technologies that are militarily critical may not have been added to export control lists (finding B).

The commodity jurisdiction and commodity classification procedures are key processes used by the U.S. Government to establish licensing controls. DoD reviews the commodity jurisdiction requests; however, DoD is afforded limited review of commodity classification requests. In FY 2000, DTRA averaged 76 days to respond to commodity jurisdiction request referrals from State. National Security Council guidance allows referral departments 35 days to respond to State on the referred commodity jurisdiction requests. As a result, DoD contributed to delays in rendering export control decisions to exporters, causing uncertainty in the business community regarding export controls (finding C).

See Appendix A for details on our review of the management control program. Appendix C provides a report on DoD management actions, planned in response to the Defense Trade Security Initiative, for reviewing the U.S. Munitions List. A Defense Trade Security Initiative that will result in a review of approximately one-fourth of the U.S. Munitions List every year has been announced, with a review of the total U.S. Munitions List every 4 years.

**Summary of Recommendations.** We recommend that the Deputy Under Secretary of Defense (Technology Security Policy) establish a process for working with the Department of Commerce to facilitate periodic interagency reviews of the Commerce Control List; work with the Department of Commerce to determine if any of the items currently controlled unilaterally by the United States should be removed from the Commerce Control List and to determine if any of the countries to which controls apply should be removed from the Commerce Country Chart; establish goals and procedures for the Militarily Critical Technologies Program ensuring that it adequately supports the Technical Working Groups in their review of the list of militarily critical technologies; and continue to work with the Department of Commerce to establish a process to review commodity classification requests. We recommend that the Director, Defense Threat Reduction Agency, ensure that adequate funding and resources are available to support regular reviews of the Militarily Critical Technologies List, and provide adequate resources to decrease processing times for review of commodity jurisdiction requests.

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) concurred with the recommendations and was initiating corrective actions. The comments were responsive and met the intent of all recommendations. A discussion of management comments is in the Findings section of the report and the complete text is in the Management Comments section.

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## Background

Public Law 106-65, National Defense Authorization Act for Fiscal Year 2000, section 1402, “Annual Report of Militarily Sensitive Technologies to Countries and Entities of Concern,” October 5, 1999, requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director, Central Intelligence Agency, and the Director, Federal Bureau of Investigation, conduct annual reviews of the transfer of militarily sensitive technologies to countries and entities of concern. To comply with the first-year requirement of the Act, the Offices of the Inspector General conducted an interagency review of Federal agency compliance with deemed export licensing requirements contained in the Export Administration Regulations and the International Traffic in Arms Regulations. To comply with the second-year requirement of the Act, the Offices of the Inspector General conducted an interagency review of Federal agency review and revision of the Commerce Control List (CCL) and the U.S. Munitions List (USML).

**Commerce Control List.** The CCL identifies dual-use commodities, software, and technologies subject to the export licensing process as well as the conditions under which those commodities, technologies, and software may be exported. All of the CCL items are controlled for export either multilaterally by the signatories of international agreements or unilaterally by the United States. The CCL is contained within the Export Administration Regulation, 15 Code of Federal Regulations, part 730. The Department of Commerce (Commerce), Bureau of Export Administration, controls the export of dual-use commodities using the authority provided in the Export Administration Act, which expired in August 1994 and has not been reenacted. However, with the issuance of Executive Order 12924, the President declared a national emergency and thereby continued and amended the provisions of the Export Administration Act under the authority of the International Emergency Economic Powers Act (Title 50, United States Code, section 1701). Each year thereafter, and most recently on November 13, 2000, the President issued a notice, “Continuation of Emergency Regarding Export Control Regulations,” that continues the emergency declared by Executive Order 12924.

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The CCL is divided into 10 categories as listed in Table 1.

<u>Category</u>	<u>Title</u>
0	Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]
1	Material, Chemicals, “Microorganisms” and Toxins
2	Materials Processing*
3	Electronics
4	Computers
5	Telecommunications and “Information Security”
6	Lasers and Sensors
7	Navigation and Avionics
8	Marine
9	Propulsion Systems, Space Vehicles, and Related Equipment

\*Materials Processing includes items such as ball bearings and pumps.

Within each CCL category, items are arranged by group. Each category contains the same five groups. Each group is identified by the letters A through E, as follows:

- A. Equipment, Assemblies, and Components;
- B. Test, Inspection, and Production Equipment;
- C. Materials;
- D. Software; and
- E. Technology.

Within each group, an Export Control Classification Number identifies individual items. The Export Control Classification Number may designate a general classification, such as “Items on the International Munitions List” or may be more specific, such as “police helmets and shields.” Goods and technologies covered by the category, group, and export control classification numbers are controlled for export as delineated by the CCL.

**Commerce Role.** The Export Administration Act requires the Secretary of Commerce to establish and maintain a list of dual-use goods and technologies that are subject to export controls. The Export Administration Act states that the Secretary of Commerce must conduct partial quarterly reviews of the list and promptly make necessary revisions. The review should include an analysis of the availability of controlled items from sources outside the United States. The Export Administration Act also requires that “all goods and technologies on the list shall be reviewed at least once each year.”

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**DoD Role.** The Export Administration Act states that the Secretary of Defense shall identify goods and technologies for inclusion on the CCL. The Secretary of Commerce must have the concurrence of the Secretary of Defense to have export controls on items for national security concerns. If the Secretaries of Commerce and Defense do not agree, the Secretary of Defense can escalate the issue to the President. Additionally, in performing required reviews of the CCL, the Secretary of Commerce must consult with the Secretary of Defense to ensure that national security export controls are limited to militarily critical goods and technologies.

**U.S. Munitions List.** The USML, which is controlled by the Department of State, identifies those items, technologies, and services that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States. The USML specifies Defense articles, services, and related technical data that may be exported as well as the conditions under which munitions may be exported. The USML is contained within the International Traffic in Arms Regulations, 22 Code of Federal Regulations, part 120. The State Office of Defense Trade Controls is responsible for ensuring compliance with the Arms Export Control Act. The USML consists of 21 categories, with 2 categories reserved for future use.

The Arms Export Control Act authorizes the President to control export of defense-related articles and services and to designate which items appear on the USML. In Executive Order 11958, "Administration of Arms Export Controls," January 18, 1977, the President delegated responsibility for administering export functions associated with the Arms Export Control Act to the Secretary of State. Within State, that function is delegated to the Bureau of Political-Military Affairs, Office of Defense Trade Controls. That office carries out its responsibilities by registering persons or companies involved in defense trade, approving or denying export licenses, and ensuring compliance with the Arms Export Control Act and other applicable laws and regulations.

**Defense Threat Reduction Agency.** The Defense Threat Reduction Agency (DTRA) Technology Security Directorate is the DoD component that the Department of Commerce (Commerce) and State consult when revising or updating the CCL or USML. DTRA serves as the DoD agent for implementation of DoD technology security policies established by the Under Secretary of Defense for Policy and the Deputy Under Secretary of Defense (Technology Security Policy) on international transfers of defense-related goods, services, technologies and munitions consistent with DoD Directive 2040.2, "International Transfers of Technology, Goods, Services, and Munitions," January 17, 1984. During FY 2000, DTRA reviewed 10,047 dual-use license applications and 12,343 munitions license applications.

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## Objectives

The overall audit objective was to evaluate the role of DoD in reviewing and revising the CCL and the USML. Specifically, we examined the DoD process for ensuring that U.S. national security objectives are being considered when revisions to the CCL and the USML are made. Additionally, we evaluated whether DoD decisions regarding the CCL and the USML are reached in an efficient, optimal manner using all available information resources. We also reviewed the management control program as it applies to our objectives. See Appendix A for a discussion of the scope and methodology and our review of the management control program. See Appendix B for prior coverage related to the objectives.

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## A. Review of the Use of the Commerce Control List

DoD performed periodic reviews of multilaterally controlled items<sup>1</sup> listed on the CCL. However, DoD did not perform periodic reviews of unilaterally controlled items, which comprise 29 percent of the CCL. Additionally, DoD did not perform a review of countries for which unilateral controls were applicable. Unilaterally controlled items listed on the CCL and countries listed on the Commerce Country Chart were not reviewed because DoD officials were not required to review export controls placed on items because of foreign policy and short supply concerns. As a result, a valid requirement for an export license may no longer exist for at least some of the 137 unilaterally controlled items on the CCL and some of the 196 countries on the Commerce Country Chart.

### Requirements for Export Controls

The Export Administration Act states that export controls should be used only after fully considering the impact on the U.S. economy and only to the extent needed to restrict the export of goods and technology to:

- prevent a significant contribution to the military potential of any other country or combination of countries and be detrimental to the national security of the United States,
- further U.S. foreign policy or meet its international obligations, and
- protect the domestic economy from the excessive drain of scarce materials and reduce the impact of foreign demand.

**National Security Export Controls.** National security export controls are detailed in Section 5 of the Export Administration Act. Goods or technologies controlled for national security concerns are regulated to prevent a significant contribution to the military potential of a country of concern that would prove detrimental to the national security of the United States and do not include those goods and technologies detailed in Section 6 of the Export Administration Act, Foreign Policy Controls. The United States is a member of several international organizations concerned with the export of dual-use and munitions items to countries of concern. Those organizations include the Australia Group, the Chemical Weapons Convention, the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). See Appendix D for a detailed discussion of those

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<sup>1</sup>Items as used in this report refer to all goods, software, and technologies included in each Export Control Classification Number, not necessarily just one item.

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international organizations and their signatories. Items that have multilateral export controls are generally items controlled by the United States for national security reasons.

**Foreign Policy Export Controls.** According to the provisions of Section 6 of the Export Administration Act of 1979, as amended, export controls maintained for foreign policy purposes (unilateral controls) require annual extension. Section 6(f) of the Export Administration Act requires the Secretary of Commerce, through authority delegated by the President, to submit a report to Congress to extend the controls. The Export Administration Regulation defines a foreign policy control as follows.

A control imposed under the Export Administration Regulation for any and all of the following reasons: chemical and biological weapons, nuclear nonproliferation, missile technology, regional stability, crime control, anti-terrorism, United Nations sanctions, and any other reason for control implemented under section 6 [Foreign Policy Controls] of the EAA [Export Administration Act] or other similar authority.

An example of controlling exports for foreign policy concerns would be the control of items classified under Export Control Classification Number 1C992, “commercial charges and devices containing energetic materials.” Items under this classification could enhance a country’s ability to support acts of international terrorism. Therefore, the United States controls export of commercial charges and items containing energetic materials as an anti-terrorism control even though commercial markets exist and the items may be widely available.

**Short Supply Export Controls.** Short supply controls are detailed in Section 7 of the Export Administration Act. To protect the domestic economy from an excessive drain of scarce materials and reduce the impact of foreign demand, “the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States.”

An example of controlling exports for short supply concerns would be control of items classified under Export Control Classification Number 1C983, “natural gas liquids and other natural gas derivatives.”

## Using the CCL

**Use of the Commerce Control List.** To classify an item against the CCL, the exporter identifies the appropriate category and matches the item’s characteristics and functions to a specific Export Control Classification Number. Each Export Classification Number has associated reasons for control. The exporter must then review the Commerce Country Chart to determine if the country to which they are exporting the item requires a license.

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**Commerce Country Chart.** The Commerce Country Chart, like the CCL, is maintained by Commerce, Bureau of Export Administration. The Commerce Country Chart helps the exporter, based on the reasons for control associated with their item, determine if a license is needed to export or reexport the item to a particular destination. Items controlled for short supply reasons and unique entries, which include United Nations sanctions, are the only instances in which the Commerce Country Chart is not used. Part 738 of the Export Administration Regulation, Commerce Control List Overview, and the Country Chart, lists unique entries. Part 754 of the Export Administration Regulation, Short Supply Controls, describes reasons for short supply controls.

## CCL Controlled Items

DoD performed reviews of multilaterally controlled items listed on the CCL for national security concerns. However, DoD was not required to perform periodic reviews of unilaterally controlled items listed on the CCL or to perform a review of countries for which unilateral controls are applicable.

**Multilaterally Controlled Items.** Several international organizations exist that have agreed on multilateral export controls for items that contribute to the military potential of other countries. Each international organization differs in membership but the mechanisms to change applicable export control lists are similar and the preparation process for each is nearly identical. Changes made to an international agreement are made through a proposal process. The international organizations review each of the international agreement export control lists during the proposal process. Each country submits proposals agreed upon through negotiations. Once members of the agreement have agreed to a proposed change, each country must implement that change. The United States implements the change by revising the CCL or USML, as applicable. Because multilateral export controls are considered more effective than unilateral controls, DoD gives a high priority to periodic reviewing of multilaterally controlled items, developing proposals for revisions of international agreements, and researching foreign proposed changes to international agreements.

**Comparing the CCL with the International Agreements.** We compared the CCL with the export control lists of the international organizations of which the United States is a member and the Chemical Weapons Convention Treaty. For each of the international agreement export control lists and the Chemical Weapons Convention Treaty, we compared each item and sub-item to the items on the CCL. As of December 21, 2000, 472 items were on the CCL. Of the 472 items, control of 14 items was based on the Australia Group control list; 2 items on the Chemical Weapons Convention Treaty; 109 items on the Missile Technology Control Regime control list; 97 items on the Nuclear Suppliers Group control list; and 157 items on the Wassenaar Arrangement dual-use list. We were able to locate all of the items controlled by international agreements on the CCL except for 16 of the items on the Missile Technology Control Regime list. Those 16 items were controlled by the USML. In total, the international agreement export control lists and treaty-based controls comprised 71 percent of the items controlled by the CCL.

Items not listed on the international agreement export control lists named above were considered unilaterally controlled. The remaining 137 items were controlled unilaterally by the United States. Table 2 shows our results.

**Table 2. Comparison of the CCL to the Multilateral Regime Lists**

<u>Category</u>	<u>CCL Items per Category</u>	<u>Unilateral Controls</u>	<u>Australia Group</u>	<u>Chemical Weapons Convention Treaty</u>	<u>Missile Technology Control Regime</u>	<u>Nuclear Suppliers Group</u>	<u>Wassenaar Arrangement</u>
<b>0</b> – Nuclear Materials, Facilities and Equipment	37	22	0	0	0	15	0
<b>1</b> – Materials, Chemicals, “Microorganisms,” and Toxins	112	21	8	2	20	40	27
<b>2</b> – Materials Processing	67	24	6	0	11	23	18
<b>3</b> – Electronics	43	15	0	0	6	12	13
<b>4</b> – Computers	21	10	0	0	4	0	8
<b>5 Part 1</b> – Telecommunications	14	6	0	0	4	0	4
<b>5 Part 2</b> – Information Security	7	3	0	0	0	0	4
<b>6</b> – Sensors and Lasers	53	17	0	0	12	7	24
<b>7</b> – Navigation and Avionics	40	4	0	0	22	0	20
<b>8</b> – Marine	12	4	0	0	0	0	8
<b>9</b> – Propulsion Systems, Space Vehicles and Related Equipment	66	11	0	0	30	0	31
<b>Total*</b>	<b>472</b>	<b>137</b>	<b>14</b>	<b>2</b>	<b>109</b>	<b>97</b>	<b>157</b>

\*Items on control lists do not add up to 472 because many of the items are controlled by more than one multilateral regime list.

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**Removing Items from International Agreement Export Control Lists.** Items listed on the CCL because of national security concerns may be removed from international agreement export control lists for a number of reasons, including growth in commercial markets or the items becoming widely available from multiple sources. However, there are instances when the United States will decide the item should continue to be controlled. In those instances, the United States will continue to control the item unilaterally by retaining the item on the CCL for foreign policy reasons, usually for anti-terrorism controls. Once an item on the CCL is designated as a foreign policy controlled item, DoD does not perform any subsequent reviews to determine if control of the item is still necessary.

**Unilaterally Controlled Items.** Items may be unilaterally controlled because they are not available from any country other than the United States or because the United States does not want to export the items for foreign policy concerns or short supply concerns. Foreign policy concerns include anti-terrorism, crime control, and nuclear nonproliferation. We determined that items listed as unilaterally controlled in Appendix E were not on any of the international agreement export control lists. Of the 137 items we reviewed that were unilaterally controlled, 113 items were controlled for anti-terrorism concerns; 19 items were controlled for crime control concerns; 12 items were controlled for nuclear nonproliferation concerns; 7 items were controlled for short supply concerns; 15 items were controlled based on United Nations concerns; and 2 items were controlled for other concerns. The number of items does not total 137 because items may be controlled for more than one of the reasons listed. Table 3 shows the results of our review. See Appendix E for the list of unilaterally controlled items.

**Table 3. Review of Reasons for Unilateral Control of Items**

<u>Category</u>	<u>Unilaterally Controlled</u>	<u>Anti-Terrorism</u>	<u>Crime Control</u>	<u>Nuclear Nonproliferation</u>	<u>Short Supply</u>	<u>United Nations</u>	<u>Other**</u>
<b>0</b> – Nuclear Materials, Facilities and Equipment	22	10	9	3	1	10	0
<b>1</b> – Materials, Chemicals, “Microorganisms,” and Toxins	21	13	2	1	6	2	0
<b>2</b> – Materials Processing	24	24	0	8	0	1	0
<b>3</b> – Electronics	15	13	4	0	0	0	1
<b>4</b> – Computers	10	10	3	0	0	0	0
<b>5 Part 1</b> – Telecommunications	6	5	0	0	0	0	1
<b>5 Part 2</b> – Information Security	3	3	0	0	0	0	0
<b>6</b> – Sensors and Lasers	17	17	0	0	0	0	0
<b>7</b> – Navigation and Avionics	4	4	0	0	0	0	0
<b>8</b> – Marine	4	4	0	0	0	1	0
<b>9</b> – Propulsion Systems, Space Vehicles and Related Equipment	11	10	1	0	0	1	0
<b>Total*</b>	<b>137</b>	<b>113</b>	<b>19</b>	<b>12</b>	<b>7</b>	<b>15</b>	<b>2</b>

\*The total of the foreign policy columns do not add to 137 because many items are controlled for more than one foreign policy concern.  
\*\*“Other” includes Unilateral Controls for Missile Technology and Omnibus Crime Control foreign policy concerns.

The United States can revise the CCL in response to changing domestic policies. Although infrequent, revisions to the CCL that resulted in the removal of items can be and have been made by the United States in response to changing policies. The revisions were usually for one of three reasons: either Commerce or DoD proposed revisions due to changing world events; advisory councils proposed revisions because of a review of technology that resulted in a decision that controls were no longer necessary; or, Congress directed that the CCL be changed.

**Countries for Which Unilateral Controls Are Applicable.** Once determined that an item may be controlled, the exporter must determine if the country to which they are exporting requires a license. The determination is made by reviewing the Commerce Country Chart. We did an analysis of the Commerce Country Chart to determine how many countries are included and require an export license for unilateral controls. Our analysis showed that two controls—crime control and nuclear nonproliferation—applied to a large number of countries. The results of our review are detailed in Table 4. A country can be affected by more than one unilateral control. See Appendix F for a list of the countries requiring an export license.

<b>Table 4. Summary of Countries Affected by Unilateral Controls</b>	
<u>Category</u>	<u>Number of Countries</u>
Anti-Terrorism	8*
Crime Control	178
Nuclear Nonproliferation	164

\*Includes embargoed countries

## Foreign Policy Export Controls

Unilaterally controlled items on the CCL and countries for which unilateral controls are applicable were not reviewed because DoD officials were not required to review export controls placed on items because of foreign policy and short supply concerns. The 137 items unilaterally controlled on the CCL were controlled because of foreign policy and short supply concerns as defined by the Export Administration Regulations. The majority of those items were controlled because of the potential terrorist threat that the items pose. Additionally, the 196 countries for which crime controls and nuclear nonproliferation controls were applicable were controlled because of foreign policy concerns. Controls as a result of anti-terrorism concerns could benefit from DoD expertise in a review of unilaterally controlled items on the CCL. The countries affected by foreign policy controls, especially crime control and nuclear nonproliferation controls, could also benefit from a DoD review of the Commerce Country Chart. Commerce has not required or scheduled periodic DoD reviews of unilaterally controlled items. Because the Export Administration Act requires the

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concurrence of DoD for control of items based on national security concerns and because unilaterally controlled items are controlled based on foreign policy and short supply concerns, no DoD requirement for a review of unilaterally controlled items exists.

## **Effect of Not Reviewing Unilaterally Controlled Items**

A valid requirement for an export license may no longer exist for at least some of the 137 unilaterally controlled items on the CCL and some of the 196 countries for which unilateral controls are applicable. The United States unilaterally controls exports of 137 of the 472 items (29 percent) listed on the CCL to at least 196 countries. Because no review of those items or countries has been conducted, a requirement for an export license may no longer exist. Additionally, the percentage of items on the CCL that are unilaterally controlled will continue to increase as items are removed from international export control lists and are subsequently unilaterally controlled by the United States because of foreign policy concerns.

The CCL identifies dual-use commodities, software, and technologies subject to the export licensing process. Reducing unilaterally controlled items listed on the CCL and the number of countries to which those controls are applicable reduces the administrative burden and facilitates the use of the CCL when determining if an export license is required. For each item on the CCL, an exporter must check the Export Administration Regulations to determine which country's items listed must have export licenses. When Commerce receives the license application, Commerce will duplicate the check that was made of whether an export license is required and may refer the license to DoD, who will also verify whether an export license is required. The number of items listed on the CCL with foreign policy export controls and the number of countries to which the unilateral controls apply increases the burden on exporters to submit export license applications for items that may no longer need to be controlled for export. In addition, a cost to the United States for processing each license application exists. Although we were unable to quantify the cost, actions that reduce the number of export license applications will result in a less costly, more efficient export licensing process.

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## Recommendations and Management Comments

**A. We recommend that the Deputy Under Secretary of Defense (Technology Security Policy):**

**1. Establish a process for working with Commerce to facilitate periodic interagency reviews of the Commerce Control List.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) stated that DoD will work with Commerce to encourage them to adopt a regular schedule for reviewing relevant portions of the CCL to ensure that it is up to date.

**2. Work with the Department of Commerce to determine if any of the items currently controlled unilaterally by the United States should be removed from the Commerce Control List.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) stated that while foreign policy is not a direct DoD responsibility, DoD does agree that regular interagency reviews of items on the CCL that are controlled unilaterally might benefit from DoD expertise. DoD will endeavor to offer its expertise to Commerce and State for reviews of the CCL.

**3. Work with the Department of Commerce to determine if any of the countries to which controls apply should be removed from the Commerce Country Chart.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) concurred stating that although it is complicated, the Commerce Country Chart needs to be updated to reflect the current international security environment. The DoD will be supporting a review of the Commerce Country Chart in the Export Administration Regulation.

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## **B. Review of the U. S. Munitions List and the List of Militarily Critical Technologies**

DTRA has developed a plan and started to perform reviews of approximately one-fourth of the USML each year that will result in a complete review of the USML every 4 years. DTRA Technology Security Directorate is responsible for the Militarily Critical Technologies (MCT) Program. The list of MCT is the main product of the MCT Program. However, critical parameters for military technologies on the list of MCT, a list developed to be a guide for export controls, may be outdated and some developing technologies with potential military applications may not have been identified. DTRA had not developed goals and procedures to update militarily critical parameters of existing technologies or to identify developing technologies. As a result, the list of MCT may not be sufficiently current to guide the determinations of export controls and developing technologies that are militarily critical may not have been added to export control lists.

### **U.S. Munitions List Review Requirements**

In a Deputy Under Secretary of Defense for Policy (Policy Support) white paper, "Arms Transfer and Technology Transfer White Paper," September 1999, the need for review of the USML was recognized. The white paper addressed problems raised by representatives of the U.S. defense industry and foreign customers about U.S. processes for regulating arms transfers, technology transfers, and disclosures of classified information. The white paper contained a recommendation that stated in part:

The U.S. munitions list should be reviewed to identify items and technologies that should no longer be controlled either because they represent low-risk transactions, or because of their widespread availability, are no longer controllable.

The Secretary of State announced the Defense Trade Security Initiative on May 24, 2000. State released background information on the Defense Trade Security Initiative that states the recent rapid advances in military technology and capabilities requires a set review schedule for the USML. Before the announcement of the Defense Trade Security Initiative, no clearly defined schedules for reviewing the USML were in place. The last review was undertaken in 1992.

Defense Trade Security Initiative action 17 (DTSI 17), "Periodic Review of the USML," requires State and DoD to establish a schedule for reviewing portions of the USML with a view toward refining USML categories to ensure coverage is appropriate. DTSI 17 will result in State and DoD setting up a schedule for annual reviews of approximately one-fourth of the USML. The 19 actively used categories of the USML will be divided into four groups so that all the

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categories will be reviewed every 4 years. Additionally, a process for reviewing the USML to comport with the list of MCT can be a resource for clarifying the list of MCT and the reason for export controls.

## **Periodic Review of the U. S. Munitions List**

DTRA developed a plan and began to perform reviews of approximately one-fourth of the USML each year that will result in a complete review of the USML every 4 years. According to DTRA officials, the plan was discussed with senior Commerce, DoD, National Security Council, and State officials on November 27, 2000, and review of five categories of the USML has begun. Details of the plan and the review of work completed as of December 18, 2000, are described in Appendix C.

## **The Militarily Critical Technologies Program**

The Export Administration Act assigns DoD responsibility for providing assessments of MCT and equipment. The MCT Program produces the list of MCT. In a January 1995 Deputy Secretary of Defense tasking memorandum, "Militarily Critical Technologies List (MCTL) Program Support," the Deputy Secretary of Defense stated that the list of MCT is to be used as a technical reference for licensing and export control by Commerce, U.S. Customs Services, DoD, Department of Energy (Energy), and State. DTRA manages the MCT Program, which involves contractor assistance. Administering the MCT Program is a continuous analytical, and information-gathering process that refines information and updates existing documents. The MCT Program designed the format of the list of MCT and presents proposals to DTRA for any changes to the list of MCT.

**Organization of the List of MCT.** In 1996, using comments received from users of the list of MCT as a guide, the MCT Program determined that the list of MCT would be more useful if separated into three parts. The list of MCT is now comprised of three parts: Part I, "Weapons Systems Technologies," with 18 sections; Part II, "Weapons of Mass Destruction Technologies," with 6 sections; and Part III, "Developing Critical Technologies," with 20 sections.

**Part I - Weapons Systems Technologies.** Part I details critical technologies necessary to ensure continuing superior performance of U.S. military systems. Part I consists of current technologies and takes into consideration expected development of technologies for the next 5 years. Part I also lists the technical performance parameters that result in identification of a technology as a militarily critical technology. Part I was developed to provide a guide for determination of export controls for any official exercising export licensing responsibilities.

**Part II - Weapons of Mass Destruction Technologies.** Part II identifies technologies required for development, integration, or employment of biological, chemical, and nuclear weapons and means of delivery. The section addresses technologies that proliferators might use to develop weapons of mass

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destruction. Part II differs from the Weapons Systems Technology criteria of parameter levels for superiority of U.S. military systems in that operational technology capabilities are stressed.

**Part III - Developing Critical Technologies.** Part III presents information upon which developing technologies may be militarily important, why the technologies may be militarily important, where the technologies will be developed, and how DoD can gain access to the technologies to apply them to major military systems. Part III identifies those technologies that can produce increasingly superior performance of military systems or maintain an U.S. capability more affordably. The objective of Developing Critical Technologies is to look beyond 5 years and as far in the future as reasonable to determine which developing technologies will become militarily critical. Part III is produced to provide DoD with a summary of technologies that have the potential for future military applications.

**Uses of the List of Militarily Critical Technologies.** The list of MCT, a reference guide used as one source of information in the development of export control lists, is not an export control list. The list of MCT is a technical reference designed for the following purposes:

- For U.S. officials to use as an information resource during development of U.S. proposals for export control in multilateral export control organizations;
- For Commerce, U.S. Customs Services, DoD, Energy, and State to use for licensing and export control.

## **Updating and Identifying Militarily Critical Technologies**

Critical parameters for military technologies listed in the list of MCT may be outdated and developing technologies with potential military application may not have been identified. The list of MCT was designed and created to be a significant tool for updating and identifying MCT through the MCT process.

**Wassenaar Arrangement Reviews.** DTRA scheduled DoD Technical Working Group (TWG) meetings to respond to issues raised within international arms agreement forums. The DTRA officials stated that the Wassenaar Arrangement agenda drives the MCT process. The MCT Program provides technical support for this process. DTRA officials have identified responding to Wassenaar Arrangement reviews as a top priority. MCT Program officials stated that the TWGs try to address the MCT Program requirements for updating and identifying the MCT, but the TWGs are often used to research either U.S. or foreign positions that are scheduled to be reviewed at Wassenaar Arrangement reviews. The list of MCT should be kept current to provide guidance for positions discussed in forums such as the Wassenaar Arrangement.

**Militarily Critical Technologies Program.** The MCT Program provides ongoing analyses of militarily critical parameters to the technologies and analyses of MCT. The use of TWGs is essential to the MCT Program.

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TWG members are technical experts with DoD interests. The TWGs continuously assess the status of current and developing technologies in the United States and foreign nations and evaluate national security implications. TWGs provide the technical expertise required for analysis of MCT. TWGs include members from academia, DoD, other Federal agencies, industry, and the Military Services. TWG members from industry are typically volunteers and attend meetings at no cost to the Government. TWG members are encouraged to express their own position and not necessarily that of the company or organization they represent.

**Updating Militarily Critical Parameters.** The MCT Program uses TWGs to update militarily critical parameters for technologies that have already been identified as militarily critical. “The TWGs primary task is to accomplish the necessary analyses and actions required to update data for their particular technology area and to develop the list of MCT and other documents.<sup>2</sup>” The MCT Program will call for a meeting of TWG members to define militarily critical parameters, but frequently relies on members who represent DoD officials and Government contractual agencies to define military criticality. The work of the TWGs used to define MCT is used to update Part I of the list of MCT, “Weapons Systems Technologies.” Part I of the list of MCT is also updated through a migration of information from Part III, “Developing Critical Technologies.”

The TWGs last conducted a full review of all sections of Part I of the list of MCT in 1996 when the document was reformatted. Since that time, some of the sections have been updated several times, while others have few changes. The MCT Program proposes additions and deletions to the list of MCT, but DTRA determines which revisions will occur. Revisions to Part I include removal of conventional doppler radar systems and conventional radar altimeters. The MCT Program is currently working on a complete review of Part I, section by section, but as of January 17, 2001, has no plans or goals for completion of the review. The review of Part I will provide reformatting for ease of use. However, the main emphasis will be on identifying current MCT and their parameters. The revision of Part I will contain 20 sections rather than 18 sections. The revised Section 7 is now in draft format. In the revision, Section 7, “Guidance, Navigation, and Vehicle Control Technology,” will be Section 16, “Positioning, Navigation, and Time Technology.”

The MCT Program reviewed and updated Part I periodically, however, the MCT Program did not keep pace with rapidly changing parameters for MCT such as ground systems technologies. Additionally, DTRA was not reviewing Part I on an ongoing basis for the purpose of removing from the list any technologies that were no longer militarily critical. Because Part I is primarily oriented toward providing one of many references for a variety of export control activities, a document that is up to date is highly desirable.

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<sup>2</sup>Jorstad, Norman D., and Boezer, G.L., (1999), *Technology Working Group Handbook and Membership List*, Virginia: Institute for Defense Analyses.

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**Identifying Developing Critical Technologies.** The MCT Program uses the TWG process to identify developing technologies that will produce increasingly superior performance of military systems or maintain a superior capability more affordably. Once identified, those technologies are then placed on the list of MCT in Part III.

To assist in identifying developing technologies, the MCT Program relies heavily on TWG members from academia and industry. Academia is at the forefront of research and development, but industry participation is also important because industry looks at the application of technologies. TWG meetings are sometimes held at academic institutes to solicit input from academia. Heads of academic departments at universities are often TWG members and determine to whom MCT Program officials need to talk about developing technologies. The Heads of the academic departments will often arrange meetings with scientists and researchers who are on the cutting edge of research and development. Those TWG meetings are used to prepare Part III of the list of MCT.

The initial development of Part III of the list of MCT began in 1998 as a result of the 1996 decision to divide the list of MCT into three parts. As of November 2000, Part III was approximately 80 percent complete. Of the 20 MCT sections, 11 were revised and posted on the Internet. The date when the review will be completed is unclear, as well as how long the review will take because no set goals or procedures exist to complete the review. Because Part III identifies developing MCT, the lack of meetings to review Part III may result in MCT not being identified and added to export control lists. In addition, although not planned for, regular TWG meeting should occur when the review of Part III is complete to ensure the list of MCT is kept current with developing technologies. Upon completion of Part III, emphasis should be shifted to the review and revision of Part I.

## Goals and Procedures

MCT Program officials had not developed goals and procedures to update militarily critical parameters of existing technologies or to identify developing technologies. TWG meetings were the mechanism used to update militarily critical parameters and identify developing technologies; however, no official guidance existed that stated TWG meetings should be held on a regular basis. Instead, TWG meetings appeared to be held on an ad hoc basis to address significant technology-emerging issues. In the last 3 years, TWGs existed that had not met and others that met several times. Management officials told us they did not have the resources to hold meetings of all the TWGs on a regular basis.

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**Review of Technical Working Group Meetings.** The MCT Program lists 20 TWGs that review technologies. A review of the TWG meetings in FY 2000 disclosed that 6 of 20 (30 percent) of the TWGs did not meet. For FY 1999, 7 of 20 (35 percent) TWGs did not meet.<sup>3</sup> New technologies may have emerged or new uses for existing technologies may have been found, but TWGs are not meeting to discuss the effect of emerging technologies and new uses on the list of MCT. The review of TWG meetings revealed that 3 of the 20 TWGs have not met in the last 3 years despite covering areas of fast evolving technologies with related international issues. For example, the Ground Systems TWG did not hold any meetings in the last 3 years.

**Resources for the Militarily Critical Technologies Program.** MCT Program officials suggested that the review of TWG meetings “illustrated the fact that the MCT Program continues to be financially constrained.” When a section of the list of MCT is under review, ideally initial and ending TWG meetings are held. At the ending meeting, a proposed revision to the section of the list of MCT is reviewed and recommended for approval. However, the MCT Program cannot force industry to provide people to attend actual meetings and does not have the resources to cover the cost of travel. Also, travel funding is an issue for the Military Departments and industry representatives. Therefore, members of the TWGs rely on communicating through e-mail, fax, Internet, phone, and teleconferencing. A chairperson of two of the TWGs stated that meetings are held “once in a while.” Although never actually seeing the person, the chairman tries to get input and comments from TWG members.

The MCT Program manager stated that scarce resources have resulted in a reduction of TWG meetings. DTRA funds a task order for the Institute of Defense Analyses, a Federally Funded Research and Development Center, to support the MCT Program. The Institute of Defense Analyses employs the chairperson and infrastructure support system for the TWGs. The FY 2000 Task Order requests the MCT Program to develop and publish the list of MCT Part III; begin revisions of the list of MCT Part I and II; and, as necessary, develop and publish addendums to the lists of MCT Part I and Part II. Generally, over the last 10 years, the MCT Program funding for management of the MCT Program has consistently been about \$2.2 million per year. For FY 2001, the MCT Program was authorized only half of the funding expected, and the plans for receiving the remainder of the money are unclear.

## **Effect of the List of Militarily Critical Technologies on Export Control Lists**

The list of MCT supports implementation of U.S. export control policy. The list provides rationale for additions and deletions on various export control lists. The list of MCT is not an export control list but is a reference guide to aid in making export control and technology security decisions. On an export control

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<sup>3</sup>This includes Electronics TWG meetings, which were not included in the list provided.

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list may be items that are not on the list of MCT and technologies on the list of MCT may not be on an export control list. The documents that comprise the list of MCT are updated as dictated by the national security environment.

The list of MCT is not sufficiently up to date to guide the determinations of export controls because militarily critical parameters are not periodically updated. Additionally, developing technologies that are militarily critical may not have been added to export control lists because meetings with academia and industry to identify new MCT are minimal. The United States will not have sufficient guidance on the military criticality of technologies such as ground systems when a gap of 3 years exists in reviewing the militarily critical parameters. Insufficient guidance can result in export controls that are not needed or no export controls when they are needed. Additionally, export control lists that reflect MCT, such as the CCL and USML, may not reflect current data.

The Defense Science Board report, "Globalization and Security," December 1999, stated that research and development is becoming more commercial. With the growing trend of commercialization, relationships with industry becomes more important to identify MCT in time to develop effective export controls. Additionally, universities may not be able to recognize and identify military applications when developing new technologies.

## **Conclusion**

If the DoD plan for recurring reviews of the USML is implemented, the administration of export controls by the DoD and the United States will be facilitated. Additionally, the recurring reviews should result in a clearer export control process that is easier for exporters to understand.

The list of MCT was designed to be a technical reference for licensing and export control. In the past, DoD has not used the list of MCT as intended. Additionally, the list of MCT is one important tool available for DoD to communicate with domestic academia and industry to identify emerging MCT in early stages of development. DTRA needs to establish goals and procedures to update militarily critical parameters of existing technologies and to identify emerging technologies.

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## Recommendations and Management Comments

The Deputy Under Secretary of Defense (Technology Security Policy) who is also the Director, Technology Security Directorate, Defense Threat Reduction Agency, answered recommendations made to the Director, Defense Threat Reduction Agency.

**B.1. We recommend that the Director, Defense Threat Reduction Agency, ensure that adequate funding and resources are available to support regular reviews of the list of Militarily Critical Technologies.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) concurred, stating that adequate funding and resources should be available to support regular reviews of the list of MCT. However, the MCT Program is not the only resource used by DTRA and DoD in examining and modifying export control lists, and past resources have been adequate to meet requirements.

**B.2. We recommend that the Deputy Under Secretary of Defense (Technology Security Policy):**

**a. Establish goals and procedures for the Militarily Critical Technologies Program to include scheduled meetings of all Technology Working Groups on a periodic basis.**

**b. Ensure that the Militarily Critical Technologies Program adequately supports the Technical Working Groups in their review of the Militarily Critical Technologies List at regular intervals.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) stated that TWGs can be a valuable technical resource to augment DoD capabilities. DTRA intends to continue to schedule meetings of TWGs to augment resources as necessary with appropriate regularity to meet DoD export control requirements.

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## C. Commodity Jurisdiction Requests and Commodity Classification Requests

The commodity jurisdiction and commodity classification procedures are key processes used by the U.S. Government to establish licensing controls. DoD reviews commodity jurisdiction requests; however, DoD has limited opportunity to review commodity classification requests. In FY 2000, DTRA averaged 76 days to respond to commodity jurisdiction request referrals from State. National Security Council guidance allows referral departments 35 days to respond to State on the referred commodity jurisdiction requests. DTRA did not comply with the mandatory time frames because of competing priorities among a limited work force. As a result, DoD contributed to delays in rendering export control decisions to exporters, causing uncertainty in the business community regarding export controls. DoD has limited opportunity to review commodity classification requests because Commerce refers few commodity classification requests to DoD for review. As a result, Commerce did not gain the value of DoD military expertise in properly classifying and controlling exports of dual-use items.

### Commodity Jurisdiction Determinations and Commodity Classification Request Guidance

**Commodity Jurisdiction Determinations.** The commodity jurisdiction process determines whether an item or service is covered by the CCL or the USML. The process may also be used for consideration of a redesignation of an article or service that is covered by the USML. Upon written request, State Office of Defense Trade Controls will provide a determination of whether a particular article or service is covered by the USML. If determined that an article or service is covered by the USML, State requires registration for exporters, furnishers, and manufacturers of defense articles and services. If covered by the CCL, the Commerce Export Administration Regulations are used to decide if export licenses are required. To determine an export classification under the CCL, the exporter can submit a commodity classification request.

**Commodity Classification Requests.** The commodity classification process, managed by the Commerce Bureau of Export Administration is used to identify the Export Control Classification Number of a dual-use item. The Export Administration Regulations state that an exporter is responsible for classifying items for export control or may request that Commerce provide them with the correct Export Control Classification Number. Once Commerce has determined which, if any, Export Control Classification Number an item falls under, the exporter will know if an export license is required for a particular item. Each Export Control Classification Number has guidance as to whether an export license is required for a given destination.

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**National Security Council Guidance.** National Security Council memorandum, “Procedures On Commodity Jurisdiction and Commodity Classification,” April 15, 1996, directs State to continue to refer to DoD and Commerce any commodity jurisdiction requests. The memorandum provides State an overall cumulative time frame of 95 calendar days to resolve commodity jurisdiction requests. Within the 95-day time frame, referral agencies, such as DoD, were provided 35 days to respond to referred commodity jurisdiction requests but may request in writing an additional 10 days when DoD considers the circumstances extraordinary. For commodity classification requests, DoD has 2 days to respond to Commerce. Failure to respond will be considered consent to the Commerce classification.

## **Review of Commodity Jurisdiction Requests by DTRA**

In FY 2000, the DTRA Technology Security Directorate averaged 76 days to respond to 215 commodity jurisdiction requests referred by State. State referred 215 commodity jurisdiction requests to both Commerce and DoD. In contrast, Commerce referred only 13 commodity classification requests to DoD and State during the same period.

**DoD Commodity Jurisdiction Process.** State refers commodity jurisdiction requests to DoD when there is a question of whether a commodity has a predominant civil application; has a civil application performance equivalent, as defined by form, fit, and function; or has a significant military or intelligence application such that it is necessary to control export as a defense article or service. DoD uses its engineering expertise and experience with munitions items to assist State in making determinations. The DTRA Technology Security Directorate reviews commodity jurisdiction cases that are referred by State to DoD.

A DTRA licensing officer makes a preliminary review of the commodity jurisdiction request and determines whether DTRA engineering or Military Department expertise will be required. Often DTRA engineers work with the Military Departments to develop a DoD recommendation. Commodity jurisdiction requests are handled similar to a munitions license request except that there is a single DTRA licensing officer assigned to processing commodity jurisdiction requests.

**DoD Processing of Commodity Jurisdiction Requests.** In FY 2000, DTRA processed 215 commodity jurisdiction requests. According to DTRA records, the processing time for the 215 commodity jurisdiction requests averaged 76 days. Of the 215 commodity jurisdiction requests, only 18 were processed within the permissible time frame. For the 215 requests, the processing time ranged from 13 days to 356 days. The processing time was measured from the time the commodity jurisdiction request was received until the time a response was returned to State. If additional information was requested from the requestor or an escalation above State level occurred for a final determination, that time did not count in the 76-day processing time.

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## **Competing Priorities**

DTRA could not comply with the mandatory time frames for processing commodity jurisdiction requests because of competing priorities and a limited work force. The DTRA licensing officer processing commodity jurisdiction requests also processes license requests when necessary. Export license applications are normally given a higher priority than commodity jurisdiction requests, as delays in processing export license applications can adversely impact business opportunities for exporters. Commodity jurisdiction determinations establish the applicable licensing procedures for a product but actual exports of a product are accomplished by way of separate actions. Therefore, while commodity jurisdiction requests are being processed, DTRA routinely advises exporters to submit export license requests if the exporters have urgent near-term business opportunities. In FY 2000, DTRA processed 22,390 license applications. DTRA is in the process of hiring 12 new licensing officers and 18 engineers to alleviate the existing workload among licensing officers. The DTRA licensing officer who handled commodity jurisdiction requests was confident that the mandatory 35-day time frame for commodity jurisdiction requests could be met if one individual were dedicated to the effort.

## **Effect of Delayed Commodity Jurisdiction Requests**

DoD contributed to delays in rendering export control decisions to exporters, causing uncertainty in the business community regarding export controls. The 41 days average excess time that it takes DoD to process commodity jurisdiction requests directly affects the amount of time it takes to render a decision as to where exporters should submit license applications. That decision determines whether the CCL or the USML covers an article or service that determines when export licenses are required. However, when no determination on commodity jurisdiction has been made, it is unclear to the business community whether State will determine if the article or service is a munitions item. The lack of a U.S. Government decision results in regulations appearing to be less clear and the process less transparent. Timely determinations provide certainty to the business community and increase the likelihood that the business community will correctly comply with export control regulations. As DoD becomes more dependent on commercial enterprises, the practice of responding to business requests in a timely manner is good business sense to ensure DoD policies provide the U.S. business community with opportunities to successfully compete in the global market.

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## **Review of Commodity Classification Requests by DTRA**

**DoD Processing of Commodity Classification Requests.** Commerce refers commodity classification requests to DoD when Commerce determines that the item in question was initially designed or developed for military application. Based on engineering, military, and policy expertise with dual-use and munitions items, DoD advises Commerce as to whether:

- the proposed Export Control Classification Number is appropriate;
- the item should actually be controlled on the USML; or
- a formal commodity jurisdiction review should be initiated.

A DTRA licensing officer makes a preliminary review of the commodity classification requests and determines whether DTRA engineering expertise is required. DTRA makes a recommendation on the referral and returns the commodity classification request back to Commerce within 2 working days as specified by National Security Council guidance.

## **DoD Position on the Review of Commodity Classification Requests**

A 1996 memorandum from the National Security Council set forth guidance for processing commodity classification requests. The National Security Council guidance stated that Commerce “will share with State and DoD all commodity classification requests for items/technologies specifically designed, developed, configured, adapted and modified for a military application, or derived from items/technologies specifically designed, developed, configured, adapted or modified for a military application.” Furthermore, the guidance instructed Commerce to refer these munitions-related commodity classification requests to DoD and State, allowing a turnaround time of 2 working days. In the Interagency Report No. 99-186, “Review of the DoD Export Licensing Processes for Dual-Use Commodities and Munitions,” June 1999, we stated that from April 1996 through March 1999, Commerce referred only 12 commodity classification requests to DoD. We recommended that DTRA work with Commerce to develop additional guidance and procedures on how to implement the 1996 National Security Council guidance.

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In FY 2000, Commerce received 3,411<sup>4</sup> commodity classification requests, 13 of which were sent from State to DoD for review. Since the 1999 interagency report, discussions between DTRA and Commerce have taken place on commodity classification referrals but no agreements were reached. Further complicating the issue was a May 13, 1996, letter sent by the Director of the Defense Technology Security Administration (later consolidated into DTRA) to the Deputy Assistant Secretary of Export Administration requesting that Commerce provide, on a weekly basis, a copy of completed commodity classification requests and decisions to DoD. Commerce officials interpreted the letter to mean that DTRA was interested in seeing only completed commodity classifications and not proposed commodity classification requests. During our audit, Commerce officials stated that they would not send commodity classification requests to DoD for review unless the letter was rescinded.

On December 6, 2000, the Assistant Inspector General for Auditing, DoD, sent a memorandum to the Deputy Under Secretary of Defense (Technology Security Policy) requesting clarification of the DoD position on reviewing commodity classification requests. The Deputy Under Secretary of Defense replied in writing to the Assistant Inspector General for Auditing the same day. See Appendix G for copies of those memoranda.

In his reply, the Deputy Under Secretary stated that DoD has long maintained that all commodity classification decisions must be subject to prior interagency review. Additionally, he emphasized that DoD supported legislative language in a proposed Export Administration Act that would have provided an interagency dispute resolution process for commodity classification decisions. The Deputy Under Secretary stated:

There are important national security interests involved with commodity classifications. For example, one possible outcome is a classification that no [export] license is required. If this determination is not proper, then certain items of national security concern could be exported to problematic destinations without prior government review. As such, we believe that significant military expertise resident in DoD can provide real value in ensuring that proper classifications are provided to exporters.

## Conclusion

Commodity jurisdiction requests referred by State to DoD are not being processed in compliance within National Security Council directed time frames. The prompt processing of commodity jurisdiction requests would result in better relations between DoD and the U.S. business community and more clear export controls.

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<sup>4</sup>This number differs from our Memorandum for Deputy Secretary of Defense (Technology Security Policy), December 6, 2000, because subsequently the Bureau of Export Administration provided updated information for commodity classification requests. The Bureau of Export Administration included commodity jurisdiction and license determinations in the original number they provided.

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In the 1999 Interagency Report, DoD expressed concerns that Commerce referred too few commodity classification requests to DoD for review. Since the report, no significant increase in the number of referrals were reported. The report also stated that Commerce made decisions on cases with national security implications without the benefit of DoD input. DoD stated that with improper classification determinations, certain items of national security concern could be exported to problematic destinations without prior Government review. DoD indicated that the significant military expertise in DoD could provide real value in ensuring that proper classifications are provided to exporters. We continue to strongly agree with the DoD position that commodity classification decisions must be subject to interagency reviews.

## **Recommendations and Management Comments**

The Deputy Under Secretary of Defense (Technology Security Policy) who is also the Director, Technology Security Directorate, Defense Threat Reduction Agency, answered recommendations made to the Director, Defense Threat Reduction Agency.

**C.1. We recommend that the Director, Defense Threat Reduction Agency, provide adequate resources to decrease processing times for review of commodity jurisdiction requests.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) stated that DTRA is in the process of hiring 12 additional staff and some of those resources will be applied to the CJ review process.

**C.2. We recommend that the Deputy Under Secretary of Defense (Technology Security Policy) continue to work with the Department of Commerce to establish a process whereby all commodity classification requests are reviewed by the Defense Threat Reduction Agency in a disciplined and transparent procedure with strict time frames.**

**Management Comments.** The Deputy Under Secretary of Defense (Technology Security Policy) concurred, stating that DoD is continuing to discuss the important matter of handling commodity classification requests with Commerce and other agencies, particularly in context of the Senate consideration of a bill to reauthorize the Export Administration Act.

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## Appendix A. Audit Process

### Scope

This is one in a series of reports being issued by the Inspector General, DoD, in accordance with the National Defense Authorization Act for Fiscal Year 2000, section 1402, which requires an annual report on the transfer of militarily sensitive technology to countries and entities of concern.

We evaluated the role of DoD in reviewing and revising the CCL and the USML. Specifically, we examined the DoD process for ensuring that U.S. national security objectives are being considered when revisions to the CCL and the USML are made. Additionally, we evaluated whether DoD decisions regarding the CCL, the list of MCT, and the USML are reached in an efficient, optimal manner using all available information and resources.

To accomplish the audit, we reviewed the applicable parts of the Export Administration Act and Export Administration Regulation; the CCL, list of MCT, and USML; the export control lists of international organizations; the IDA task order and TWG documentation; the documentation concerning the timeliness of commodity jurisdiction and commodity classification requests; and the white paper concerning the defense trade security initiatives and plan for the annual review of the USML. The documents were dated from September 1979 through November 2000.

We conducted interviews with personnel at DTRA; Defense Security Cooperation Agency; Security Assistance Command, Army; the Navy International Programs Office; International Affairs Division, Secretary of the Air Force; U.S. Army Communications-Electronic Command, Research, Development and Engineering Center, Electronics Sensors Directorate; Defense Intelligence Agency; National Security Council, Bureau of Export Administration, Department of Commerce; Office of Arms Control and Nonproliferation, Department of Energy; Office of Defense Trade Controls, Department of State; and the Institute for Defense Analyses.

**Limitations of Scope.** We did not review Part II of the list of MCT, “Weapons of Mass Destruction Technologies,” because of its sensitive nature.

**DoD-Wide Corporate-Level Government Performance and Results Act Coverage.** In response to the Government Performance and Results Act, the Secretary of Defense annually establishes DoD-wide corporate-level goals, subordinate performance goals, and performance measures. This report pertains to achievement of the following goal, and subordinate performance goal.

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**FY 2001 DoD Corporate-Level Goal 2:** Prepare now for an uncertain future by pursuing a focused modernization effort that maintains U.S. qualitative superiority in key warfighting capabilities. Transform the force by exploiting the Revolution in Military Affairs, and reengineer the Department to achieve a 21<sup>st</sup> century infrastructure. **(01-DoD-02) FY 2001 Subordinate Performance Goal 2.2:** Transform U.S. military forces for the future.

## Methodology

**Audit Approach.** We performed work in the following areas:

- with representatives from the Office of the Inspector General, Department of Commerce, compared the 376 items on the 4 multilateral export control lists and 2 items on the international treaty export control list with the 472 items on the CCL to determine how many items on the CCL are controlled by multilateral lists or are unilaterally controlled by the United States;
- reviewed the Export Administration Act to determine whether the list of MCT is required to be used in developing the CCL and to determine whether DTRA used the list of MCT in accordance with the Export Administration Act;
- researched the DoD role in processing 215 commodity jurisdiction requests and 13 commodity classification requests;
- researched and analyzed the DoD plan to review the USML on a quadrennial basis; and
- researched the structure and background of the CCL to determine how specific items are placed under listed classifications.

**Audit Types, Dates, and Standard.** We performed this program audit from August 2000 through January 2001 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly we included tests of management controls considered necessary.

**Use of Computer-Processed Data.** To achieve the audit objectives, we relied on computer-processed data contained in the DoD Foreign Disclosure and Technical Information System and provided by Commerce, Bureau of Export Administration, and State, Office of Defense Trade Controls. Although we did not perform a formal reliability assessment of the computer-processed data, we did not find errors that would preclude the use of the data to meet the objectives of the audit or that would change the conclusions in the report.

**Contacts During the Audit.** We visited or contacted individuals and organizations within DoD, the Departments of Commerce, Energy and State, and within industry. Further details are available upon request.

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## Management Control Program Review

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of those controls.

**Scope of Review of the Management Control Program.** DTRA officials identified export control and technology security policies as an assessable unit. However, export control and technology security policies were assigned an overall low risk assessment. DTRA officials stated that the reason for the low risk assessment is that DTRA does not have ultimate authority over the export licensing function. We did not review the adequacy of management controls over the CCL and USML because those lists are controlled by Commerce and State, respectively. We did review the DTRA and DTRA Technology Security Directorate management controls over the list of MCT.

**Adequacy of Management Controls.** DTRA management controls were adequate in that we identified no material management control weaknesses.

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## **Appendix B. Prior Coverage**

During the last 5 years the General Accounting Office and the Inspector General, DoD, have conducted multiple reviews related to the adequacy of management controls over transfers of sensitive and critical DoD technology with potential military application to foreign nationals. Unrestricted General Accounting Office reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted Inspector General, DoD, reports can be accessed over the Internet at <http://www.dodig.osd.mil/audit/reports>. The following previous reports are of particular relevance to the subject matter in this report.

### **General Accounting Office**

General Accounting Office Report No. NSIAD-00-190R (OSD Case No. 2045), “Defense Trade: Status of the Department of Defense’s Initiatives on Defense Cooperation,” July 19, 2000

General Accounting Office Report No. NSIAD-95-82 (OSD Case No. 9798), “Export Controls: Some Controls Over Missile-Related Technology Exports to China Are Weak,” April 1995

### **Inspector General, DoD**

Inspector General, DoD, Report No. D-2001-007, “Foreign National Security Controls at DoD Research Laboratories,” October 27, 2000

Inspector General, DoD, Report No. D-2000-130, “Foreign National Access to Automated Information Systems,” May 26, 2000

Inspector General, DoD, Report No. D-2000-110, “Export Licensing at DoD Research Facilities,” March 24, 2000

Inspector General, DoD, Report No. 99-186, “Review of the DoD Export Licensing Processes for Dual-Use Commodities and Munitions, June 18, 1999

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## **Interagency Reviews**

Inspectors General of the Departments of Commerce, Defense, Energy and State, Report No. D-2000-109, "Interagency Review of the Export Licensing Process for Foreign National Visitors," March 24, 2000

Inspectors General of the Departments of Commerce, Defense, Energy, State, and the Treasury and the Central Intelligence Agency, Report No. 99-187, "Interagency Review of the Export Licensing Processes for Dual-Use Commodities and Munitions," June 18, 1999

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## Appendix C. Management Actions to Review the U.S. Munitions List

In response to DTSI 17, as described in finding B, DTRA officials created a plan for recurring reviews of the 19 actively used categories of the USML every 4 years and to present any resultant recommended revisions to State. State would consider the DoD recommendations and determine whether the continued control of items was justified. The criteria for adding, deleting, or continuing to control items under the USML would be foreign policy considerations and national security interests. Items that DoD and State agree to remove from the USML must be approved by the State Under Secretary for Arms Control and International Security, and Congress must be notified 30 days before a USML change. Industry would participate through the Defense Trade Advisory Group and the Federal Register rule-making process. Commerce would be involved when DoD and State agree that export controls of certain items should be moved from the USML to the CCL.

The latest version of that plan is dated November 27, 2000. The plan outlines the process and schedule for conducting the initial review of the first five USML categories by May 2001. Those five categories are:

- Category I - Firearms;
- Category V - Explosives, Propellants, Incendiary Agents and their Constituents;
- Category VIII - Aircraft and Associated Equipment,
- Category XIV - Toxicological Agents and Equipment and Radiological Equipment; and
- Category XVI - Nuclear Weapons, Design and Test Equipment.

The plan listed four outcomes or goals of the reviews.

1. Identification of USML items that are more properly controlled by the CCL.
2. Identification of items that should no longer be controlled on either the USML or CCL. Continued controls under the Department of Treasury Office of Foreign Asset Control regulations to terrorist and embargoed destinations may be required for such items, however.
3. Identification of additions to the USML, primarily because of new technological developments.
4. Clarification of USML language to ensure that users of the list can easily identify the items requiring export licenses.

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According to DTRA officials, the plan was discussed with senior Commerce, DoD, National Security Council, and State officials on November 27, 2000. Review of the first five categories of the USML has begun. Either four or five of the remaining categories will be selected for review each year to result in a review of the total USML every 4 years.

DTRA officials also stated that the overall objectives of the effort would be to make the USML easier for users to identify specific items for which export licenses would be required and to ensure that the USML reflected the critical technologies identified in the list of MCT. Reviews are to be performed by DoD working groups being established for each USML category. Technical issues will be referred to TWGs. An oversight group will be staffed by DTRA licensing and technology officials. A coordinating group will be staffed by principals from the Military Departments, as well as the Offices of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Policy.

**Working Group Actions.** The working groups have completed a draft revision of USML Category V, which has been renamed “Energetic Materials and Related Substances.” Information pertaining to items in Category V has been reorganized under homogeneous subcategory headings and the names of new technology substances have been added. References to related export control regulations have also been added.

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## Appendix D. Multilateral Export Control Organizations

The United States is a member of several international organizations that attempt to control the export of munitions and dual-use items. The multilateral organizations are international agreements that contain export control lists. Each agreement has specific times when the international representatives meet each year to determine changes that would be beneficial to the lists. Through proposals, suggestions for list changes are received, discussed, and implemented according to agreement. The international organizations are as follows.

**Australia Group.** The Australia Group is an informal forum of states whose objective is to limit the transfer of components of chemical weapons, equipment used in the production of chemical and biological weapons, and biological warfare agents. The Australia Group actions are viewed as complementary measures in support of the 1925 Geneva Protocol, the 1972 Biological and Toxins Weapons Convention, and the 1993 Chemical Weapons Convention. The Australia Group has no charter or constitution; it operates by consensus. The Australia Group has established common export controls for chemical and biological weapons nonproliferation purposes. The Australia Group meetings focus on sharing information about national export controls; considering proposals for “harmonization;” adopting common controls by all members on chemical precursors, equipment, biological weapons related materials; and considering other measures to address chemical and biological weapon proliferation and use. The Australia Group has 30 members. Requests by nations to join the Australia Group are considered on a case-by-case basis. As of January 1999, the following were signatories to the Australia Group.

Argentina	Greece	Poland
Australia	Hungary	Portugal
Austria	Iceland	Romania
Belgium	Ireland	Slovak Republic
Canada	Italy	South Korea
Czech Republic	Japan	Spain
Denmark	Luxembourg	Sweden
Finland	Netherlands	Switzerland
France	New Zealand	United Kingdom
Germany	Norway	United States

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**Chemical Weapons Convention.** The Chemical Weapons Convention is a global treaty that bans an entire class of weapons of mass destruction—chemical weapons. The Chemical Weapons Convention not only requires parties to destroy their chemical weapons arsenals but prohibits them from transferring chemical weapons to other countries or assisting anyone in prohibited activities. As of November 28, 2000, there were 141 signatories to the Chemical Weapons Convention treaty.

**Missile Technology Control Regime.** The Missile Technology Control Regime is an informal nontreaty-based export control regime with the aim of limiting the spread of missiles and missile technology. The regime also covers delivery systems for chemical and biological weapons. The Material and Technology Annex of the Missile Technology Control Regime is divided into two main categories: Category I includes finished missile systems and unmanned air vehicle systems that exceed the Missile Technology Control Regime range and payload limitations; and Category II includes materials, components, and technologies that could aid in the development of proscribed systems. The only prohibition contained in the regime’s guidelines is on the transfer of complete facilities for regime-controlled missile production. The Missile Technology Control Regime is neither an international treaty nor a legally binding agreement. Missile Technology Control Regime members voluntarily pledge to adopt the Missile Technology Control Regime export guidelines and to restrict the export of items contained in the Missile Technology Control Regime annex. No provisions exist in the Missile Technology Control Regime for enforcement of its terms or sanctions for violations. Membership decisions are made only by consensus. As of August 2000, there were 32 members of the Missile Technology Control Regime.

Argentina	Greece	Portugal
Australia	Hungary	Russia
Austria	Iceland	South Africa
Belgium	Ireland	Spain
Brazil	Italy	Sweden
Canada	Japan	Switzerland
Czech Republic	Luxembourg	Turkey
Denmark	Netherlands	Ukraine
Finland	New Zealand	United Kingdom
France	Norway	United States
Germany	Poland	

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**Nuclear Suppliers Group.** The Nuclear Suppliers Group, which was first called the London Club in May of 1974, is a group of nuclear supplier countries that seek to contribute to the nonproliferation of nuclear weapons. The Nuclear Suppliers Group is not an international legally binding agreement but a collective policy agreement of the member states. The Nuclear Suppliers Group consists of two controls—Dual-Use controls and Trigger List controls. A country can become an “adherent” to the Nuclear Suppliers Group Guidelines by sending a letter to the Director General of the International Atomic Energy Agency declaring the intention of the government to conduct its nuclear export control activities in accordance with either part or both of the Nuclear Suppliers Group Guidelines. The European Union has been given permanent observer representation in all of the activities of the Nuclear Suppliers Group. Nonmember countries that desire to observe must be accepted by consensus for each plenary. As of November 30, 2000, the Nuclear Suppliers Group has 39 members.

Argentina	Germany	Romania
Australia	Greece	Russia
Austria	Hungary	Slovak Republic
Belarus	Ireland	Slovenia
Belgium	Italy	South Africa
Brazil	Japan	Spain
Bulgaria	Latvia	Sweden
Canada	Luxembourg	Switzerland
Cyprus	Netherlands	Turkey
Czech Republic	New Zealand	Ukraine
Denmark	Norway	United Kingdom
Finland	Poland	United States
France	Portugal	

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**Wassenaar Arrangement.** The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was established as a successor to the Coordinating Committee for Multilateral Export Controls in order to address post-cold war security concerns. Participating countries, through national policies, ensure that transfers of items do not contribute to the development or enhancement of military capabilities that undermine goals, and are not diverted to support such capabilities. The decision to transfer or deny transfer of any item is the sole responsibility of each participating country. The measures undertaken with respect to the Wassenaar Arrangement are in accordance with national legislation and policies and implemented on the basis of national discretion. As of July 31, 2000, the Wassenaar Arrangement has 34 participating members.

Argentina	Hungary	Russia
Australia	Ireland	Slovak Republic
Austria	Italy	Spain
Belgium	Japan	Sweden
Bulgaria	Luxembourg	Switzerland
Canada	Netherlands	Turkey
Czech Republic	New Zealand	Ukraine
Denmark	Norway	United Kingdom
Finland	Poland	United States
France	Portugal	
Germany	Republic of Korea	
Greece	Romania	

## Appendix E. Unilaterally Controlled Items on the Commerce Control List

The following is a list of the 137 unilaterally controlled items on the CCL.

### Category 0 - Nuclear Materials, Facilities, and Equipment

ECCN	Description
<b>A.</b>	<b>Systems, Equipment and Components</b>
0A018	Items on the International Munitions List
0A978	Saps
0A979	Police helmets and shields; and parts
0A980	Horses by sea
0A982	Saps; thumbcuffs, leg irons, shackles, and handcuffs, straight jackets, plastic handcuffs, police helmets and shields; and parts and accessories
0A983	Specially designed implements of torture and thumbscrews; and parts and accessories
0A984	Shotguns, barrel length 18 inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts
0A985	Discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts
0A986	Shotgun shells, except buckshot shotgun shells, and parts
0A987	Optical sighting devices for firearms and parts
0A988	Conventional military steel helmets and machetes
0A989	Water cannon and specially designed components for water cannon
0A999	Specific processing equipment
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
0B008	Equipment for nuclear reactors
0B986	Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells
0B999	Specific processing equipment
<b>C.</b>	<b>Materials</b>
<b>D.</b>	<b>Software</b>
0D001	Software specially designed or modified for the development, production or use of goods
0D999	Specific software

<b>E.</b>	<b>Technology</b>
0E001	Technology for the development, production, or use of items controlled by this category
0E018	Technology for the development, production, or use of items controlled by the International Munitions List
0E982	Technology exclusively for the development or production of equipment
0E984	Technology for the development or production of shotguns and buckshot shotgun shells

**Category 1 - Materials, Chemicals, Microorganisms, and Toxins**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
1A290	Depleted uranium in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials
1A984	Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile or 1 percent or less of chloroacetophenone, except in individual containers with a net weight of 20 grams or less; smoke bombs; nonirritant smoke flares, canisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks
1A985	Fingerprinting powders, dyes, and inks
1A999	Specific processing equipment
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
1B999	Specific processing equipment
<b>C.</b>	<b>Materials</b>
1C018	Commercial charges and devices containing energetic materials on the International Munitions List
1C980	Inorganic chemicals that were produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of any Naval Petroleum Reserves produced or derived commodities
1C981	Crude petroleum including reconstituted crude petroleum, tar sands and crude shale oil
1C982	Other petroleum products that were produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of any Naval Petroleum Reserves produced or derived commodities

1C983	Natural gas liquids and other natural gas derivatives that were produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of any Naval Petroleum Reserves produced or derived commodities
1C984	Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy) produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of any Naval Petroleum Reserves produced or derived commodities
1C988	Western red cedar ( <i>Thuja plicata</i> ), logs and timber, and rough, dressed and worked lumber containing wane
1C990	Fibrous and filamentary materials, not otherwise controlled, for use in composite structures
1C991	Vaccines, immunotoxins, medical products, diagnostic and food testing kits
1C992	Commercial charges and devices containing energetic materials
1C995	Mixtures containing precursor and intermediate chemicals used in the production of chemical warfare agents that are not otherwise controlled
1C996	Hydraulic fluids containing synthetic hydrocarbon oils
1C999	Specific materials
<b>D.</b>	<b>Software</b>
1D993	Software specifically designed for the development, production, or use of equipment or materials
1D999	Specific software
<b>E.</b>	<b>Technology</b>
1E994	Technology for the development, production, or use of fibrous and filamentary materials

### Category 2 - Materials Processing

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Equipment, Assemblies and Components</b>
2A290	Generators and other equipment specially designed, prepared or intended for use with nuclear plants
2A291	Equipment related to nuclear material handling and processing and to nuclear reactors
2A292	Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel alloy or other steel containing 10 percent or more nickel and/or chromium
2A293	Pumps designed to move molten metals by electromagnetic forces
2A991	Bearings and bearing systems not otherwise controlled

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2A993	Explosive detection systems, consisting of an automated device, or combination of devices, with the ability to detect the presence of different types of explosives, in passenger checked baggage, without need for human skill, vigilance, or judgment
2A994	Portable electric generators and specially designed parts
2A999	Specific processing equipment
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
2B290	Numerically controlled machine tools not otherwise controlled
2B991	Numerical control units for machine tools and numerically controlled machine tools
2B992	Nonnumerically controlled machine tools for generating optical quality surfaces, and specially designed components therefor
2B993	Gearmaking and/or finishing machinery not otherwise controlled capable of producing gears to a specified quality level
2B996	Dimensional inspection or measuring systems or equipment not otherwise controlled
2B997	Robots not otherwise controlled that are capable of employing feedback information in real-time processing from one or more sensors to generate or modify programs or to generate or modify numerical program data
2B998	Assemblies, units or inserts specially designed for machine tools or for equipment
2B999	Specific processing equipment
<b>C.</b>	<b>Materials [Reserved]</b>
<b>D.</b>	<b>Software</b>
2D202	Software specially designed or modified for the development, production or use of equipment
2D290	Software specially designed or modified for the development, production or use of Materials Processing items
2D991	Software specially designed for the development, production, or use of Materials Processing equipment
2D992	Specific software
2D994	Software specially designed for the development or production of portable electric generators
<b>E.</b>	<b>Technology</b>
2E290	Technology according to the General Technology Note for the use of Materials Processing equipment
2E991	Technology for the use of Materials Processing equipment
2E994	Technology for the use of portable electric generators

**Category 3 – Electronics**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
3A292	Oscilloscopes and transient recorders and specially designed components therefor
3A980	Voice print identification and analysis equipment and parts
3A981	Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment; automated fingerprint and identification retrieval systems; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories
3A991	Electronic devices and components not otherwise controlled
3A992	General purpose electronic equipment not otherwise controlled
3A999	Specific processing equipment
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
3B991	Equipment for the manufacture of electronic components and materials, and specially designed components and accessories therefor
3B992	Equipment used for the inspection or testing of electronic components and materials, and specially designed components and accessories therefor
<b>C.</b>	<b>Materials</b>
3C992	Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths between 370 and 350 nanometer
<b>D.</b>	<b>Software</b>
3D102	Software specially designed for the development or production of equipment
3D980	Software specially designed for the development, production, or use of electronics
3D991	Software specially designed for the development, production, or use of electronic devices or components, general purpose electronic equipment, or manufacturing and test equipment
<b>E.</b>	<b>Technology</b>
3E292	Technology according to the General Technology Note for the development, production, or use of equipment
3E980	Technology specially designed for development, production, or use of electronics
3E991	Technology for the development, production, or use of electronic devices or components, general purpose electronic equipment, or manufacturing and test equipment

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**Category 4 – Computers**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
4A980	Computers for fingerprint equipment
4A994	Computers, electronic assemblies, and related equipment and specially designed components therefor
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
4B994	Equipment for the development and production of magnetic and optical storage equipment
<b>C.</b>	<b>Materials</b>
4C994	Materials specially formulated for and required for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives
<b>D.</b>	<b>Software</b>
4D980	Software specially designed for the development, production, or use of computer items
4D993	Program proof and validation software, software allowing the automatic generation of source codes, and operating system software that are specially designed for real time processing equipment
4D994	Software specially designed or modified for the development, production, or use of equipment and materials
<b>E.</b>	<b>Technology</b>
4E980	Technology for the development, production, or use of computer items
4E992	Technology for the development, production, or use of equipment, materials, or software
4E993	Other technology for the development or production of graphics accelerators or equipment designed for multidatastream processing and technology required for the development or production of magnetic hard disk drives

**Category 5, Part I - Telecommunications and Information Security**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
5A980	Communications intercepting devices; and parts and accessories therefor
5A991	Telecommunication equipment
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
5B991	Telecommunications test equipment
<b>C.</b>	<b>Materials</b>
5C991	Preforms of glass or of any other material optimized for the manufacture of optical fibers

<b>D.</b>	<b>Software</b>
5D991	Software specially designed or modified for the development, production, or use of equipment
<b>E.</b>	<b>Technology</b>
5E991	Technology for the development, production, or use of equipment, software, and other technologies

**Category 5, Part II – Telecommunications and Information Security**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
5A992	Equipment and telecommunications
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
<b>C.</b>	<b>Materials [Reserved]</b>
<b>D.</b>	<b>Software</b>
5D992	Information Security software
<b>E.</b>	<b>Technology</b>
5E992	Information Security technology

**Category 6 - Sensors and Lasers**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
6A991	Marine or terrestrial acoustic equipment, capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components
6A992	Optical Sensors
6A994	Optics
6A995	Lasers
6A996	Magnetometers
6A997	Gravity meters (gravimeters) for ground use
6A998	Airborne radar equipment, and specially designed components therefor
6A999	Specific processing equipment
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
6B995	Specially designed or modified equipment, including tools, dies, fixtures or gauges, and other specially designed components and accessories therefor
<b>C.</b>	<b>Materials</b>
6C992	Optical sensing fibers which are modified structurally to have a beat length of less than 500 millimeters (high birefringence) or optical sensor materials having a zinc content of equal to or more than 6 percent by weight
6C994	Optical materials

<b>D.</b>	<b>Software</b>
6D991	Software specially designed for the development, production, or use of equipment
6D992	Software specially designed for the development or production of equipment
6D993	Other software
<b>E.</b>	<b>Technology</b>
6E991	Technology for the development, production, or use of sensors and lasers
6E992	Technology for the development or production of equipment, materials, or software
6E993	Other technology

**Category 7 - Navigation and Avionics**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
7A994	Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
7B994	Other equipment for the test, inspection, or production of navigation and avionics equipment
<b>C.</b>	<b>Materials [Reserved]</b>
<b>D.</b>	<b>Software</b>
7D994	Software, for the development, production, or use of navigation, airborne communication and other avionics
<b>E.</b>	<b>Technology</b>
7E994	Technology, for the development, production, or use of navigation, airborne communication, and other avionics equipment

**Category 8 – Marine**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
8A018	Items on the International Munitions List
8A992	Underwater systems or equipment and specially designed parts therefor
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
<b>C.</b>	<b>Materials</b>
<b>D.</b>	<b>Software</b>
8D992	Software specially designed or modified for the development, production or use of equipment
<b>E.</b>	<b>Technology</b>
8E992	Technology for the development, production or use of marine equipment

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**Category 9 - Propulsion Systems, Space Vehicles and Related Equipment**

<b>ECCN</b>	<b>Description</b>
<b>A.</b>	<b>Systems, Equipment and Components</b>
9A980	Nonmilitary mobile crime science laboratories; and parts and accessories
9A990	Diesel engines, and tractors and specially designed parts therefor
9A991	Aircraft, and gas turbine engines and parts and components
9A992	Complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use
<b>B.</b>	<b>Test, Inspection and Production Equipment</b>
9B990	Vibration test equipment and specially designed parts and components
9B991	Specially designed equipment, tooling or fixtures, for manufacturing or measuring gas turbine blades, vanes or tip shroud casting
<b>C.</b>	<b>Materials [Reserved]</b>
<b>D.</b>	<b>Software</b>
9D990	Software, for the development or production of equipment
9D991	Software, for the development or production of equipment
<b>E.</b>	<b>Technology</b>
9E990	Technology, for the development or production or use of equipment
9E991	Technology, for the development, production or use of equipment
9E993	Other technology

## Appendix F. Countries Affected by Unilateral Controls

Abstract of the Commerce Country Chart							
<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>	<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Afghanistan	X	X	-	Benin	X	X	-
Albania	X	X	-	Bhutan	X	X	-
Algeria	X	X	-	Bolivia	X	X	-
Andorra	X	X	-	Bosnia and Herzegovina	X	X	-
Angola	X	X	-	Botswana	X	X	-
Antigua and Barbuda	X	X	-	Brazil	-	X	-
Argentina	-	X	-	Brunei	X	X	-
Armenia	X	X	-	Bulgaria	-	X	-
Australia	-	-	-	Burkina Faso	X	X	-
Austria	-	X	-	Burma	X	X	-
Azerbaijan	X	X	-	Burundi	X	X	-
Bahamas, The	X	X	-	Cambodia	X	X	-
Bahrain	X	X	-	Cameroon	X	X	-
Bangladesh	X	X	-	Canada	-	-	-
Barbados	X	X	-	Cape Verde	X	X	-
Belarus	X	X	-	Central African Republic	X	X	-
Belgium	-	-	-	Chad	X	X	-
Belize	X	X	-	Chile	X	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
China	X	X	-
Colombia	X	X	-
Comoros	X	X	-
Congo	X	X	-
Costa Rica	X	X	-
Cote d'Ivoire	X	X	-
Croatia	X	X	-
Cuba	See part 746 of the Export Administration Regulation to determine whether a license is required.		
Cyprus	X	X	-
Czech Republic	-	X	-
Denmark	-	-	-
Djibouti	X	X	-
Dominica	X	X	-
Dominican Republic	X	X	-
Ecuador	X	X	-
Egypt	X	X	-
El Salvador	X	X	-
Equatorial Guinea	X	X	-
Eritrea	X	X	-
Estonia	X	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Ethiopia	X	X	-
Fiji	X	X	-
Finland	-	X	-
France	-	-	-
Gabon	X	X	-
Gambia, The	X	X	-
Georgia	X	X	-
Germany	-	-	-
Ghana	X	X	-
Greece	-	-	-
Grenada	X	X	-
Guatemala	X	X	-
Guinea	X	X	-
Guinea-Bissau	X	X	-
Guyana	X	X	-
Haiti	X	X	-
Honduras	X	X	-
Hong Kong	X	X	-
Hungary	-	X	-
Iceland	X	-	-
India	X	X	-
Indonesia	X	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Iran	See part 746 of the Export Administration Regulation to determine whether a license is required.		
Iraq	See part 746 of the Export Administration Regulation to determine whether a license is required.		
Ireland	-	X	-
Israel	X	X	-
Italy	-	-	-
Jamaica	X	X	-
Japan	-	-	-
Jordan	X	X	-
Kazakhstan	X	X	-
Kenya	X	X	-
Kiribati	X	X	-
Korea, North	X	X	X
Korea, South	-	X	-
Kosovo (Serbian province of)	X	X	-
Kuwait	X	X	-
Kyrgyzstan	X	X	-
Laos	X	X	-
Latvia	X	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Lebanon	X	X	-
Lesotho	X	X	-
Liberia	X	X	-
Libya	See part 746 of the Export Administration Regulation to determine whether a license is required.		
Liechtenstein	X	X	-
Lithuania	X	X	-
Luxembourg	-	-	-
Macau	X	X	-
FYROM (Macedonia)	X	X	-
Madagascar	X	X	-
Malawi	X	X	-
Malaysia	X	X	-
Maldives	X	X	-
Mali	X	X	-
Malta	X	X	-
Marshall Islands	X	X	-
Mauritania	X	X	-
Mauritius	X	X	-
Mexico	X	X	-
Micronesia	X	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Moldova	X	X	-
Monaco	X	X	-
Mongolia	X	X	-
Montenegro	X	X	-
Morocco	X	X	-
Mozambique	X	X	-
Namibia	X	X	-
Nauru	X	X	-
Nepal	X	X	-
Netherlands	-	-	-
New Zealand	-	-	-
Nicaragua	X	X	-
Niger	X	X	-
Nigeria	X	X	-
Norway	-	-	-
Oman	X	X	-
Pakistan	X	X	-
Palau	X	X	-
Panama	X	X	-
Papua New Guinea	X	X	-
Paraguay	X	X	-
Peru	X	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Philippines	X	X	-
Poland	-	X	-
Portugal	-	-	-
Qatar	X	X	-
Romania	-	X	-
Russia	-	X	-
Rwanda	X	X	-
St. Kitts and Nevis	X	X	-
St. Lucia	X	X	-
St. Vincent and Grenadines	X	X	-
San Marino	X	X	-
Sao Tome and Principe	X	X	-
Saudi Arabia	X	X	-
Senegal	X	X	-
Serbia (not including Kosovo)	See part 746 of the Export Administration Regulation to determine whether a license is required.		
Seychelles	X	X	-
Sierra Leone	X	X	-
Singapore	X	X	-
Slovakia	-	X	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Slovenia	X	X	-
Solomon Islands	X	X	-
Somalia	X	X	-
South Africa	-	X	-
Spain	-	-	-
Sri Lanka	X	X	-
Sudan	X	X	X
Suriname	X	X	-
Swaziland	X	X	-
Sweden	-	X	-
Switzerland	-	X	-
Syria	X	X	X
Taiwan	X	X	-
Tajikistan	X	X	-
Tanzania	X	X	-
Thailand	X	X	-
Togo	X	X	-
Tonga	X	X	-
Trinidad and Tobago	X	X	-
Tunisia	X	X	-
Turkey	X	-	-

<u>Country</u>	<u>Nuclear Non- proliferation</u>	<u>Crime Control</u>	<u>Anti- Terrorism</u>
Turkmenistan	X	X	-
Tuvalu	X	X	-
Uganda	X	X	-
Ukraine	-	X	-
United Arab Emirates	X	X	-
United Kingdom	-	-	-
Uruguay	X	X	-
Uzbekistan	X	X	-
Vanuatu	X	X	-
Vatican City	X	X	-
Venezuela	X	X	-
Vietnam	X	X	-
Western Sahara	X	X	-
Western Samoa	X	X	-
Yemen	X	X	-
Zaire	X	X	-
Zambia	X	X	-
Zimbabwe	X	X	-

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# Appendix G. Letters Concerning Commodity Classification Requests



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-2884

DEC - 6 2000

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE  
(TECHNOLOGY SECURITY POLICY)

SUBJECT: DoD Review of Commodity Classification Requests

This memorandum is a request for immediate clarification of the DoD position on reviewing commodity classification requests. A 1996 memorandum from the National Security Council set forth guidance for processing commodity classification requests. The National Security Council guidance stated that Commerce "will share with State and Defense all commodity classification requests for items/technologies specifically designed, developed, configured, adapted and modified for a military application, or derived from items/technologies specifically designed, developed, configured, adapted or modified for a military application." Furthermore, the guidance instructed Commerce to refer these munitions-related commodity classification requests to State and DoD, allowing them a turnaround time of two working days. In our Report No. 99-186, "Review of the DoD Export Licensing Processes for Dual Use Commodities and Munitions," June 1999, we stated that from April 1996 through March 1999, Commerce referred only 12 commodity classification requests to DoD. We recommended that your office work with Commerce to develop additional guidance and procedures on how to implement the 1996 National Security Council guidance.

Our current audit project, "DoD Involvement in the Review and Revision of the Commerce Control List and the U. S. Munitions List," has raised questions again on the handling of commodity classification requests. In FY 2000, Commerce received 3,959 commodity classification requests, 13 of which were sent to DoD for review. We understand that there had been discussions between you and Commerce on the subject of commodity classification referrals but that no agreements were reached. Further complicating the issue is a May 13, 1996, letter (attached), sent by you to the Deputy Assistant Secretary of Export Administration requesting that Commerce provide, on a weekly basis, a copy of completed commodity classification requests and decisions to DoD. Commerce officials have interpreted this letter to mean that you are interested in seeing only completed commodity classifications and not proposed commodity classification requests. During our current audit, Commerce officials have stated that they will not send commodity classification requests to Defense for review unless this letter is rescinded.

Please inform us, by December 22, 2000, what the DoD position is for reviewing proposed commodity classification requests. Specifically, is it the DoD position that all commodity classification requests received by Commerce should be referred to DoD, that a defined subset of those requests should be referred, or that the

status quo of reviewing very few requests should continue? Our current audit will become part of a larger interagency review on the same subject. Our report and the larger interagency review report will reflect your response to this memorandum as the official enunciation of the DoD position, so a timely and definitive reply is needed.

Questions should be directed to Ms. Evelyn R. Klemstine at (703) 604-9172 (DSN 664-9172) (eklemstine@dodig.osd.mil) or Mr. Timothy E Moore at (703) 604-9633 (DSN 664-9633) (tmoore@dodig.osd.mil).



Robert J. Lieberman  
Assistant Inspector General  
for Auditing

Attachment



DEFENSE TECHNOLOGY SECURITY ADMINISTRATION  
400 ARMY NAVY DRIVE, SUITE 300  
ARLINGTON, VA 22202-2884



MAY 13 1996

In reply refer to:  
I-96/11802

Mr. Iain S. Baird  
Deputy Assistant Secretary  
Export Administration  
Department of Commerce  
Washington, DC 20230

Dear Mr. Baird:

I refer to the procedures on commodity jurisdiction and commodity classification approved by the President on April 15, 1996, which require the Departments of State and Defense to each inform you of their requirements and procedures for receiving commodity classification requests for items or technologies specifically designed, developed, configured, adapted, modified, or derived from a military application.

The Department of Defense requests that the Department of Commerce provide, on a weekly basis, a copy of such completed commodity classification requests and decisions, including technical descriptions, to Ms. Linda Randall, DTSA/LD, Suite 302, 400 Army Navy Drive, Arlington, VA.

Sincerely,

Dave Tarbell  
Director

Defense Technology Security Administration

cc: State, Mr. Will Lowell

DEFENSE TECHNOLOGY SECURITY ADMINISTRATION  
EXPORT ADMINISTRATION  
MAY 13 1996  
RECEIVED



Attachment



DEPUTY UNDER SECRETARY OF DEFENSE  
400 ARMY NAVY DRIVE, SUITE 300  
ARLINGTON, VA 22202-2884

TECHNOLOGY  
SECURITY POLICY

December 6, 2000

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING

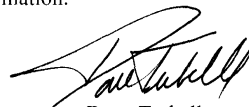
SUBJECT: DoD Review of Commodity Classification Requests

I am responding to your request of December 6, 2000 regarding DoD's position on reviewing commodity classification determinations by the Department of Commerce. Notwithstanding the National Security Council guidance issued in 1996, DoD has long maintained that all commodity classification decisions must be subject to prior interagency review. Over recent years, DoD has testified numerous times before Congress that greater transparency is needed as well as a timely process to ensure that disputed cases are escalated to appropriately senior officials. DoD worked closely with several committees in the current Congress earlier this year as part of deliberations on a new Export Administration Act (EAA). DoD supported the following language for inclusion in a new EAA:

"Classification Requests. In any case in which the Secretary *{of Commerce}* receives a written request asking for the proper classification of an item on the Control List or the applicability of licensing requirements under this title, the Secretary shall promptly refer such requests and the proposed classification for review to the Secretary of Defense and other departments or agencies the Secretary considers appropriate. Reviewing departments and agencies shall notify the Secretary of any objection within 10 days of receiving the referred request and the proposed classification. Any objections shall be subject to the interagency dispute resolution process in this Title. If there are no objections, the Secretary shall inform the person making the request of the proper classification within 14 days of receiving the request."

There are important national security interests involved with commodity classifications. For example, one possible outcome is a classification that no license is required. If this determination is not proper, then certain items of national security concern could be exported to problematic destinations without prior government review. As such, we believe that the significant military technical expertise resident in DoD can provide real value in ensuring that proper classifications are provided to exporters.

Please contact me if you need additional information.



Dave Tarbell

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## **Appendix H. Report Distribution**

### **Office of the Secretary of Defense**

Under Secretary of Defense for Acquisition, Technology, and Logistics  
Under Secretary of Defense for Policy  
    Assistant Secretary of Defense (International Security Affairs)  
    Deputy Under Secretary of Defense (Policy Support)  
Under Secretary of Defense (Comptroller)  
    Deputy Chief Financial Officer  
    Deputy Comptroller (Program/Budget)

### **Department of the Army**

Auditor General, Department of the Army

### **Department of the Navy**

Naval Inspector General  
Auditor General, Department of the Navy

### **Department of the Air Force**

Assistant Secretary of the Air Force (Financial Management and Comptroller)  
Auditor General, Department of the Air Force

### **Other Defense Organizations**

Director, Defense Threat Reduction Agency  
Defense Intelligence Agency  
Director, Defense Logistics Agency

### **Non-Defense Federal Organizations**

Office of Management and Budget  
Inspector General, Department of Commerce  
Inspector General, Department of Energy  
Inspector General, Department of State

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## **Congressional Committees and Subcommittees, Chairman and Ranking Minority Member**

Senate Committee on Appropriations  
Senate Subcommittee on Defense, Committee on Appropriations  
Senate Committee on Armed Services  
Senate Committee on Governmental Affairs  
Senate Select Committee on Intelligence  
House Committee on Appropriations  
House Subcommittee on Defense, Committee on Appropriations  
House Committee on Armed Services  
House Committee on Government Reform  
House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform  
House Subcommittee on Technology and Procurement Policy, Committee on Government Reform  
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform  
House Committee on International Relations  
House Subcommittee on International Economic Policy and Trade, Committee on International Relations  
House Permanent Select Committee on Intelligence

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# Deputy Under Secretary of Defense (Technology Security Policy) Comments



TECHNOLOGY  
SECURITY POLICY

DEPUTY UNDER SECRETARY OF DEFENSE  
400 ARMY NAVY DRIVE, SUITE 300  
ARLINGTON, VA 22202-2884

March 22, 2001

MEMORANDUM FOR INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE

SUBJECT: Department of Defense Comments on the February 2, 2001 Draft Audit Report on "DoD Involvement in the Review and Revision of the Commerce Control List and the U.S. Munitions List (Project No. D2000LG-0244)

This is in response to your request of February 2, 2001 for comments on the subject draft audit report. We have been working very closely with your staff up until March 16 on this report and believe that the description of the various aspects of the Department of Defense role in export control list development has been significantly improved. We have reviewed the revised recommendations based on those discussions and agree in general with the direction that they suggest. In this spirit, we offer the following detailed comments on each of the revised recommendations.

Recommendation A.1. The Deputy Under Secretary of Defense for Technology Security Policy (DUSD/TSP) should establish a process for working with Commerce to facilitate periodic reviews of the Commerce Control List.

Comments: The Department of Defense works very closely with the Department of Commerce in ensuring that the Commerce Control List is up-to-date and reflects national security considerations. We will continue to work closely with Commerce and the rest of the interagency export control agencies to identify items and technologies that require control because of national security or proliferation concerns. As well, we will work with them to identify items on the CCL that no longer require control because the items are not controllable or do not represent a security or proliferation risk. As technology advances and business becomes increasingly international, we are mindful of the need for continuously reviewing the various export control lists and to accomplish this in a multilateral context with other supplier nations through various international export control regimes. In this regard, we will work with Commerce to encourage them to adopt a regular schedule for reviewing relevant portions of the CCL to ensure that it is up-to-date given the security environment and the advance of technology.

Recommendation A.2. The DUSD/TSP should work with the Department of Commerce to determine if any of the items currently controlled unilaterally by the United States should be removed from the Commerce Control List.

Comments: In the course of your review, we have explained that items that are unilaterally controlled by the United States are usually done so to meet a significant foreign policy interest (e.g., human rights). While foreign policy is not a direct responsibility of the Department of Defense, we agree that the process of regular interagency reviews of items on the CCL that are controlled “unilaterally” might benefit from technical expertise in the Department of Defense. We will endeavor to offer such expertise to the Departments of Commerce and State as part of their efforts to review these items on the list.

Recommendation A.3. The DUSD/TSP should work with the Department of Commerce to determine if any of the countries to which controls apply should be removed from the Commerce Country Chart.

Comments: We agree that the Commerce Country Charts need to be updated to reflect the current international security environment. This is complicated, however, because it is both a matter of revising the list of countries that present security or proliferation risks and relating that list and the risks in a direct way to specific items and technologies on the CCL. The Senate version of the Export Administration Act specifically recognizes the need for updating country risk appraisals, and whether or not this legislation passes, the Department of Defense will be supporting a review of the country charts in the Export Administration Regulations. The goal of such a review will not only be to remove unnecessary controls on certain countries for certain items, but to also examine whether controls should be applied to countries and items that may represent specific security or proliferation risks that are not adequately addressed in the current structure.

Recommendation B.1. The Director, Defense Threat Reduction Agency should ensure that adequate funding and resources are available to support regular reviews of the list of Militarily Critical Technologies.

Comments: We agree that adequate funding and resources should be available to support regular reviews of the list of Militarily Critical Technologies, and believe that this has been the case since the responsibility for the Military Critical Technologies Program was transferred from the Office of the Under Secretary of Defense for Acquisition and Technology. During the annual budget and programming review within DoD, we examine requirements for resources to support export control list reviews, including use of contractors through the Militarily Critical Technologies Program. In this regard, it is important to reinforce the point that the MCTP is not the only resource used by DTRA and DoD in examining and modifying export control lists, and past resources devoted to the MCTP have been adequate to meet our requirements.

Recommendation B.2.a. The DUSD/TSP should establish goals and procedures for the Militarily Critical Technologies Program to include scheduled meetings of all Technology Working Groups on a periodic basis.

Comments: As stated above, the MCTP is not the only resource that we use in reviewing technological change and its implications for export control policy and implementation, including updating export control lists. We agree that Technology Working Groups (TWGs) under the MCTP can be a valuable technical resource to augment our capabilities and fill gaps. In this regard, we intend to continue to schedule meetings of relevant TWGs as the need arises for expertise to fill gaps and to augment other technical resources.

Recommendation B.2.b. The DUSD/TSP should ensure that the Militarily Critical Technologies Program adequately supports the Technical Working Groups in their review of the Militarily Critical Technologies List at regular intervals.

Comments: As stated above, we regularly review the requirement for various Technical Working Groups, both to augment other technical resources and to assist in developing information for use in revising relevant portions of the Militarily Critical Technologies List. We intend to continue to rely on these TWGs to fill gaps and augment resources as necessary and with appropriate regularity to meet DoD export control requirements.

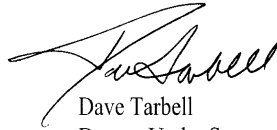
Recommendation C.1. The Director, Defense Threat Reduction Agency should provide adequate resources to decrease processing times for review of commodity jurisdiction requests.

Comments: Over the past year, DoD and DTRA increased the DTRA Technology Security Directorate's manpower authorization by 12 personnel for the Licensing Division. One responsibility of the License Division is coordinating the review of and determining DoD positions on commodity jurisdiction (CJ) requests referred by the Department of State. We are in the process of hiring these 12 additional staff and some of these resources will be applied to the CJ review process. It should be noted, however, that CJ determinations are often complicated and highly technical. They take more time than license applications to review because of complex regulatory and technical issues involved. While we agree that processing times for CJs could be improved, processing time is not as important a metric for determining effectiveness of the CJ process as with license applications review. In this regard, we have consistently informed exporters that, if they are unsure about the appropriate regulatory treatment for their proposed export and they have a business opportunity that needs to be addressed in a short time frame, they should submit a license application to State and we will review it without prejudice to our ongoing review of their jurisdiction request.

Recommendation C.2. The DUSD/TSP should continue to work with the Department of Commerce to establish a process whereby all commodity classification requests are reviewed by the Defense Threat Reduction Agency in a disciplined and transparent procedure with strict timeframes.

Comments: We agree with this recommendation, and are continuing to discuss this important matter with Commerce and other agencies, particularly in the context of Senate consideration of a bill to reauthorize the Export Administration Act.

We appreciate the opportunity to comment on the draft audit report and the cooperation of your staff in working on this project.



Dave Tarbell  
Deputy Under Secretary of Defense,  
Technology Security Policy  
and  
Director, Technology Security Directorate,  
Defense Threat Reduction Agency

## **Audit Team Members**

The Readiness and Logistics Support Directorate, Office of the Assistant Inspector General for Auditing, DoD, prepared this report. Personnel of the Office of the Inspector General, DoD, who contributed to the report are listed below.

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