



Department of State Directorate of Defense Trade Controls

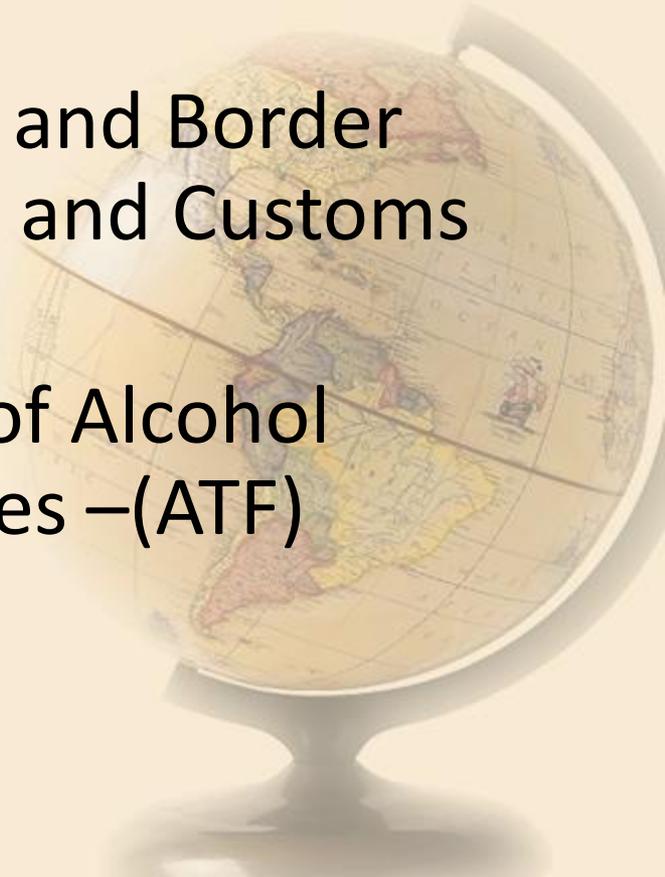
Donald Beck
Defense Controls Analyst,
Aircraft Division





Agency Roles

- State Department
- Commerce Department
- Homeland Security (Customs and Border Protection(CBP)/Immigration and Customs Enforcement (ICE)
- Justice Department (Bureau of Alcohol Tobacco, Firearms & Explosives –(ATF)
- Department of Defense
 - DTSA and Armed Services





International Traffic in Arms Regulations (ITAR)

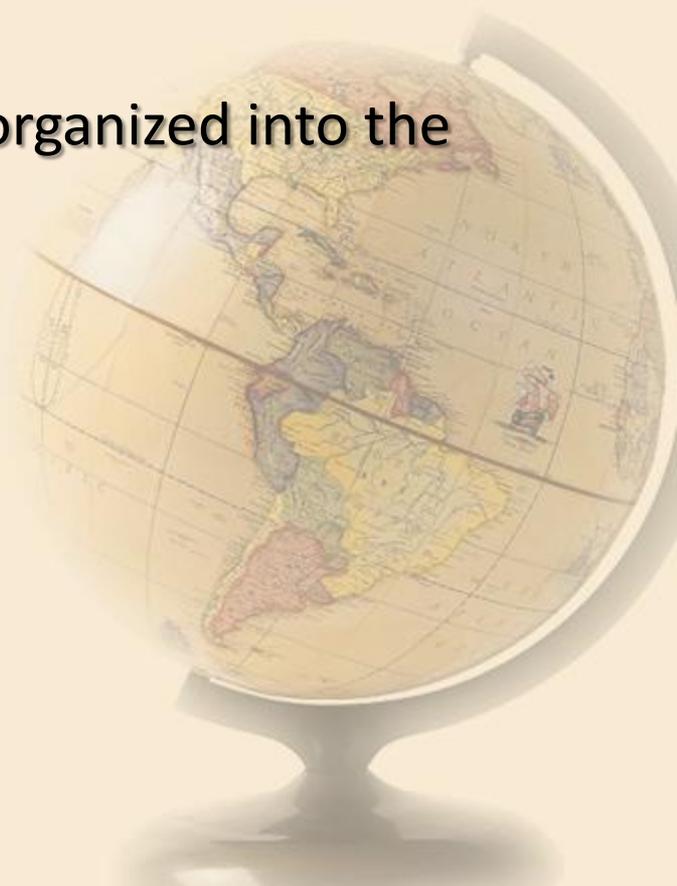
- 22 CFR Part 120 - 130
- Implements Arms Export Control Act (AECA)
- Regulations for export of U.S. Munitions List (USML) articles
- Contains the USML - designates defense articles/services subject to Department of State export jurisdiction
- Compliance and Enforcement - Violations & Penalties





Office of Defense Trade Controls Licensing (DTCL)

- Receives, reviews, refers, and adjudicates export license applications submitted by industry.
 - Approximately 50 Licensing Officers, organized into the following Divisions:
 - Night Vision, Vehicles, and Vessels
 - Space and Missile
 - Electronics
 - Aircraft
 - Small Weapons and Firearms
 - Emerging Technologies and Training



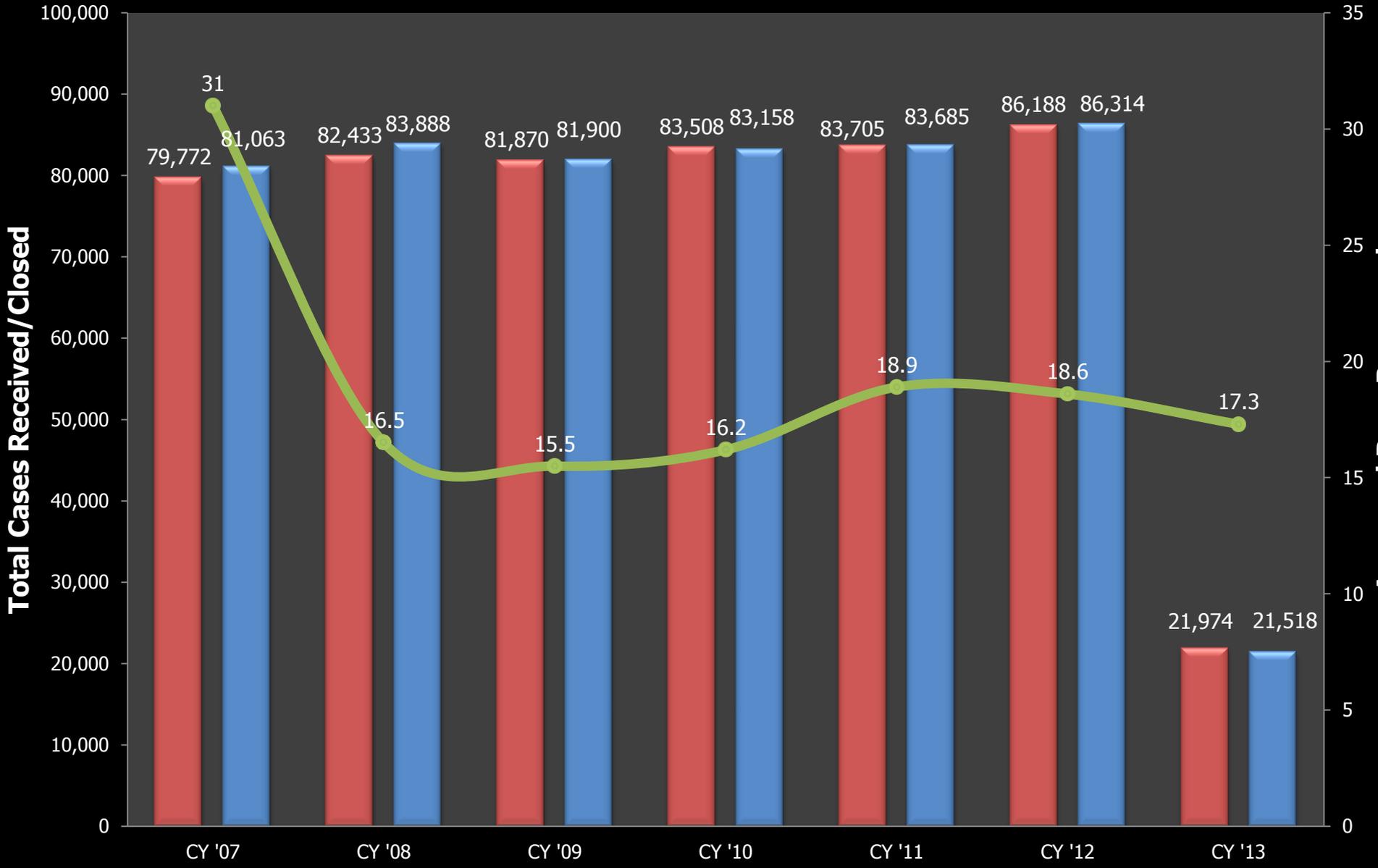


License Review Statistics

- Over *86,000* cases received and adjudicated in 2012

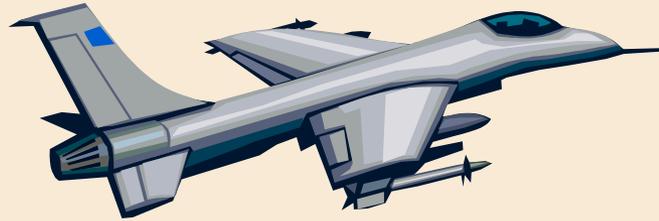


CY 07 - CY 13 (as of April 2013) License Decision





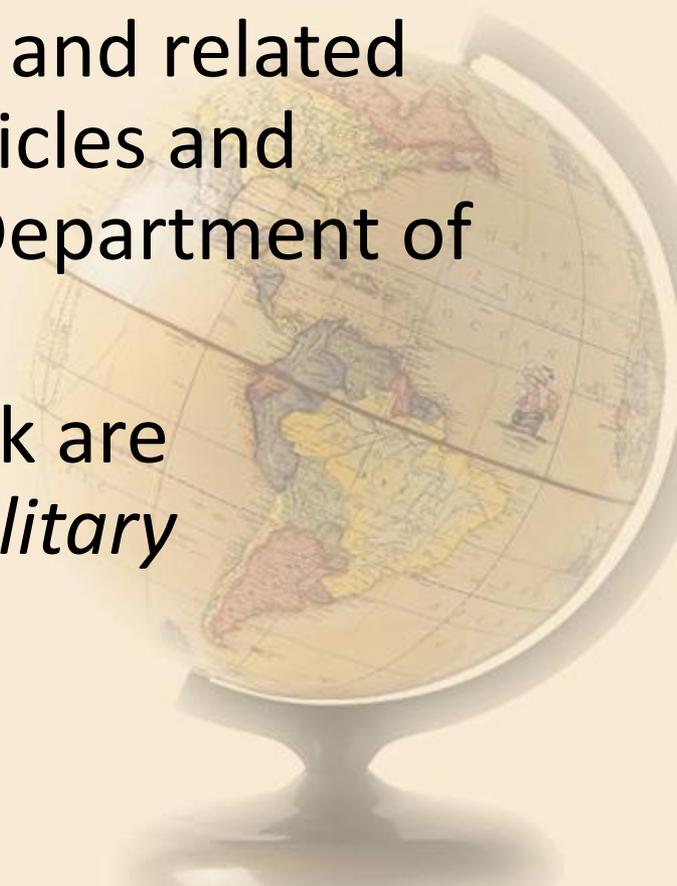
U.S. Munitions List





U.S. Munitions List (USML) - 121

- Designates articles, services, and related technical data as defense articles and defense services subject to Department of State export approval
- Items preceded by an asterisk are designated as “*significant military equipment*” (SME)





USML - § 121.1 categories related to Aircraft and Avionics

- II Guns and Armaments (over .50 cal),
- III Ammunition/Ordnance
- IV Launch Vehicles, Guided Missiles, Rockets, Torpedoes, Bombs, Mines





USML - § 121.1

- V Explosives and Energetic Materials, Propellants, Incendiary Agents
- VIII Aircraft and Associated Equipment
- XI Military Electronics





Commodity Jurisdiction (CJ)

- Process
 - Registration is not required prior to submission of a CJ
 - Request submitted by letter
 - Request reviewed by CJ officer
 - Case staffed to DOC and DOD
 - Replies received and analyzed by CJ officer





Commodity Jurisdiction

- If disagreement – CJ officer reconciles positions or if he can't
- Escalation of decision making
- Decision made
- Determination reply letter to requestor

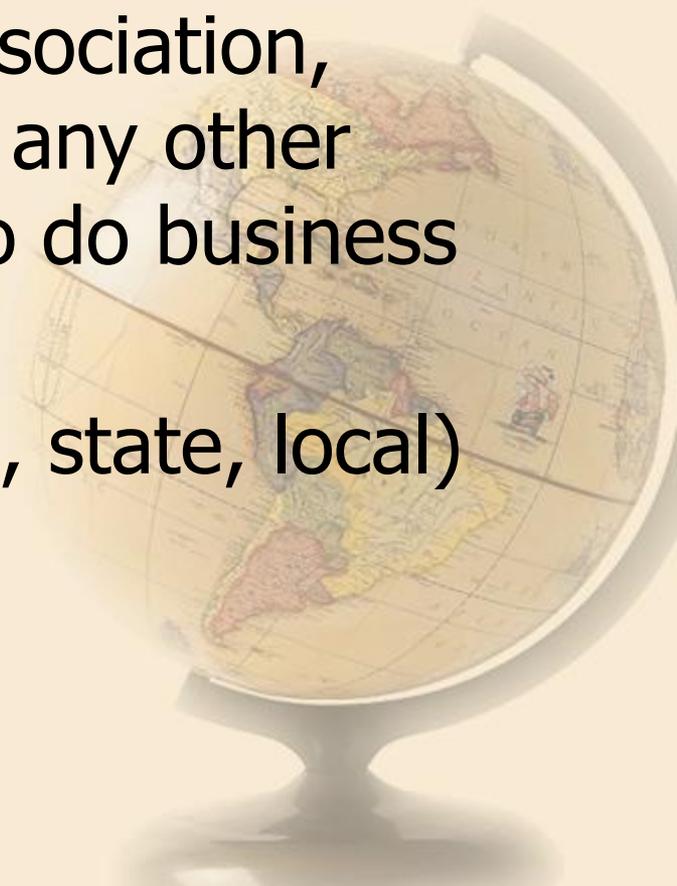




U.S. Person

22 CFR 120.15

- A lawful permanent resident of the U.S.
- Any corporation, business association, partnership, trust, society or any other entity that is incorporated to do business in the United States
- Governmental entity (federal, state, local) and U.S. military

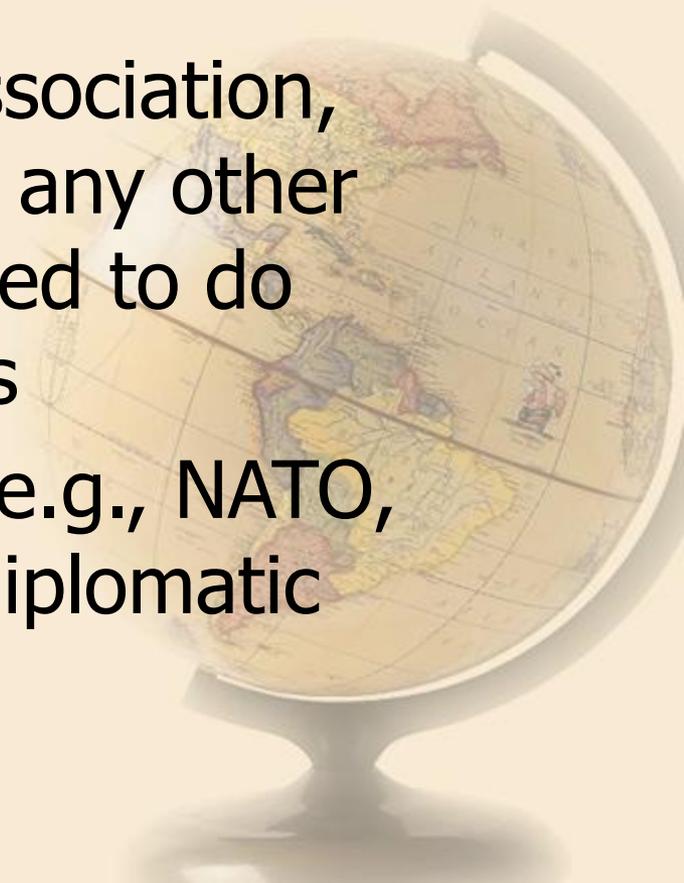




Foreign Person

22 CFR 120.16

- NOT a lawful permanent resident of the U.S.
- Any corporation, business association, partnership, trust, society or any other entity that is NOT incorporated to do business in the United States
- International organizations (e.g., NATO, UN), foreign governments, diplomatic missions and embassies

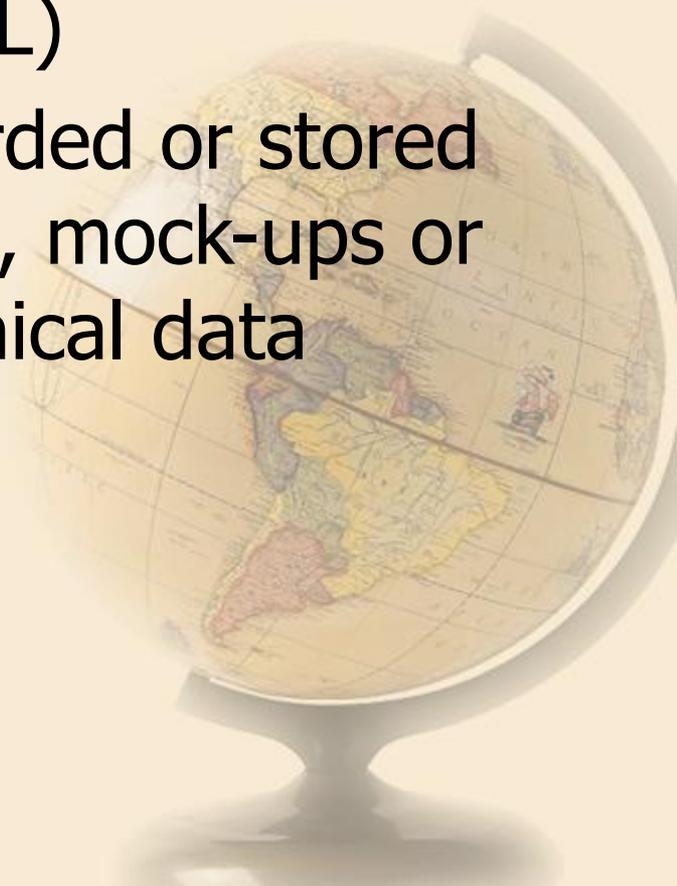




Defense Article

22 CFR 120.6

- Any item or technical data designated on the U.S. Munitions List (USML)
- Includes technical data recorded or stored in any physical form, models, mock-ups or other items that reveal technical data

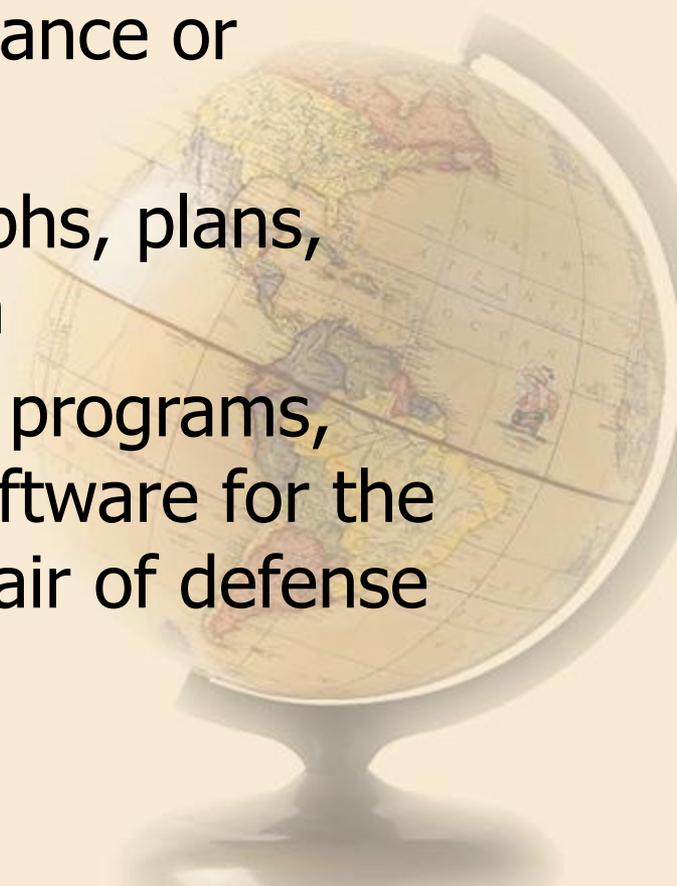




Technical Data

22 CFR 120.10

- Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles
 - Blueprints, drawings, photographs, plans, instructions and documentation
- Software consisting of application programs, operating systems and support software for the design, testing, diagnosis and repair of defense articles





Technical Data 22 CFR 120.10

- Does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or in the public domain
- Does not include basic marketing information on function or purpose or general system descriptions





Export

22 CFR 120.17

- Sending or taking a **defense article** or **technical data** out of the United States
- Disclosing, by any means, or transferring a defense article or technical data to a **foreign person** in the United States or abroad
- Performing a **defense service** on behalf of or for the benefit of a foreign person in the United States or abroad





Purpose of Controls

- Foreign Policy
- National Security
- Human Rights
- Regional Stability
- Proliferation





Prohibited Destinations

§ 126.1

- U.S. arms embargo
- U.N. arms embargo
- Countries supporting international terrorism
- policy of denial





Processing Time-lines

- Export applications must be processed within 60 days
- Exceptions to 60 day limit:
 - Congressional notification required
 - DOD review still pending
 - Blue Lantern pending
 - Government Assurances required
 - Waiver required
 - Policy under review





DDTC Export Authorization Mechanisms

LICENSES

Exports Defense Articles or Technical Data

AGREEMENTS

Exports Technical Data, Defense Services with Possible Defense Articles

EXEMPTIONS

Exports without prior DDTC Authorization





DSP License Types

- DSP-5 Permanent Export
 - DSP-73 Temporary Export
 - DSP-61 Temporary Import
 - DSP-85 Classified Transactions
-
- Valid for Maximum of Four Years
 - A License Expires When:
 - Total Value Authorized is Exported; or
 - Total Quantity Authorized is Exported; or
 - Date of Expiration is Reached





Review Criteria

- Applicant Eligibility
- Parties/Countries Involved in Transaction
- Commodity and Quantity
- End-use and End-users
- Value of Exports
- Compliance with Procedures and Policies
- Retransfer Requests
- Shipping/Routing Details
- Congressional Thresholds/Interests

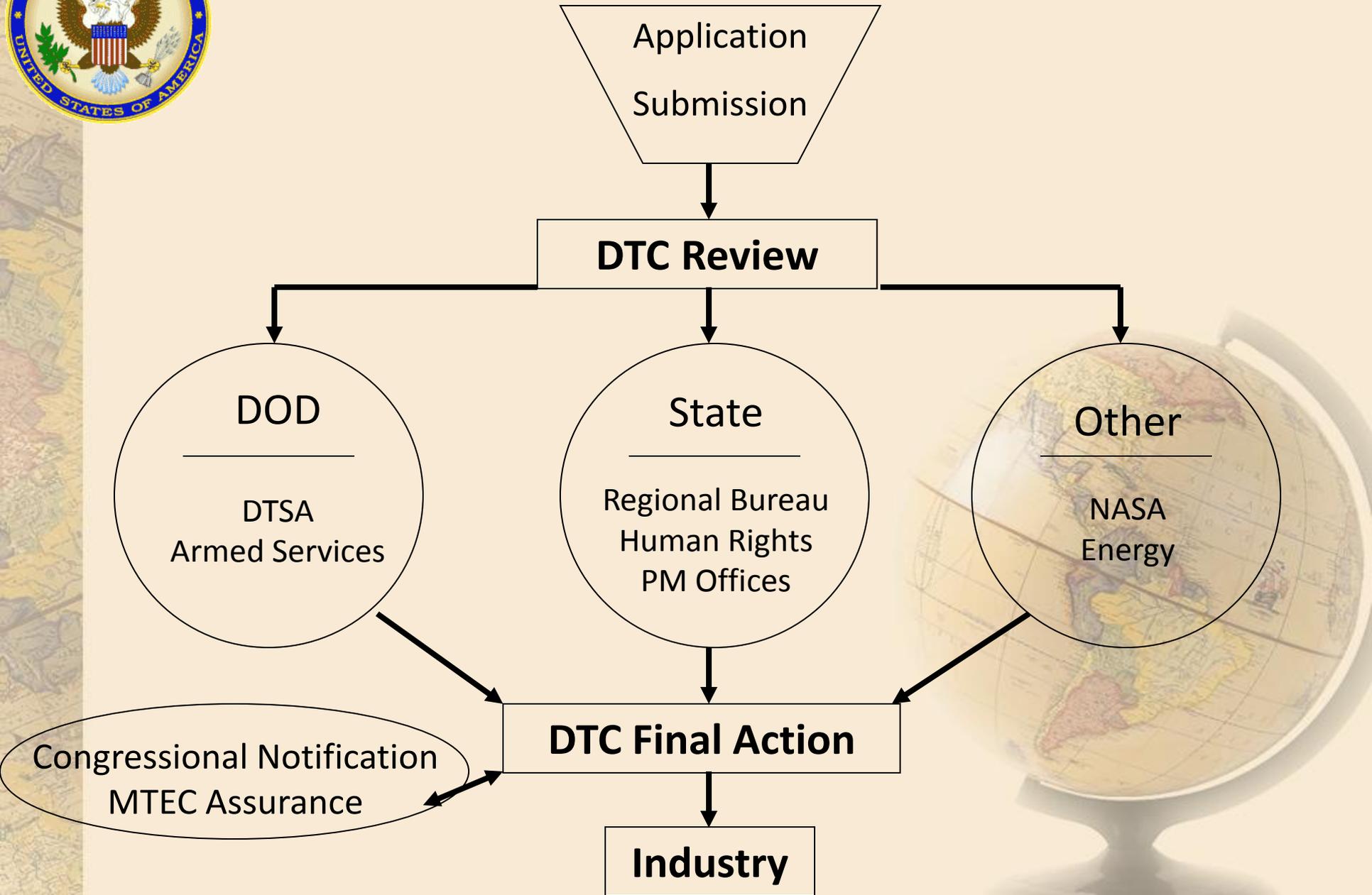




Review Criteria

- Risk Assessment Conducted Against:
 - Foreign Policy
 - National Security
 - Regional Stability
 - Human Rights Policy
 - Multilateral Regimes
 - Arms Proliferation Concerns







DSP-5 Permanent Export

- Unclassified permanent export of defense articles
- Unclassified export of technical data





License Documentation Requirements

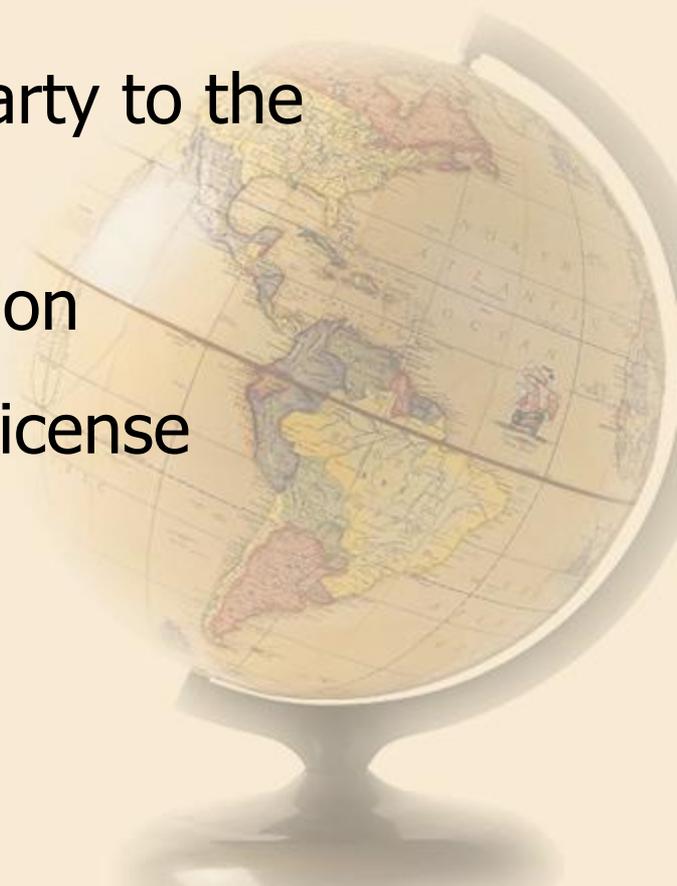
- Purchase order
- Letter of intent
- Other appropriate documentation (e.g., signed contract)





DSP-5 Permanent Export Supporting Documentation

- Must be addressed to the U.S. applicant applying for the export license.
- Must be provided by a foreign party to the transaction
 - In English or provide translation
- Must be issued within 1 year of license application





Required Information

- specific article
- quantity
- value
- ultimate end-user
- end-use





Aircraft Programs

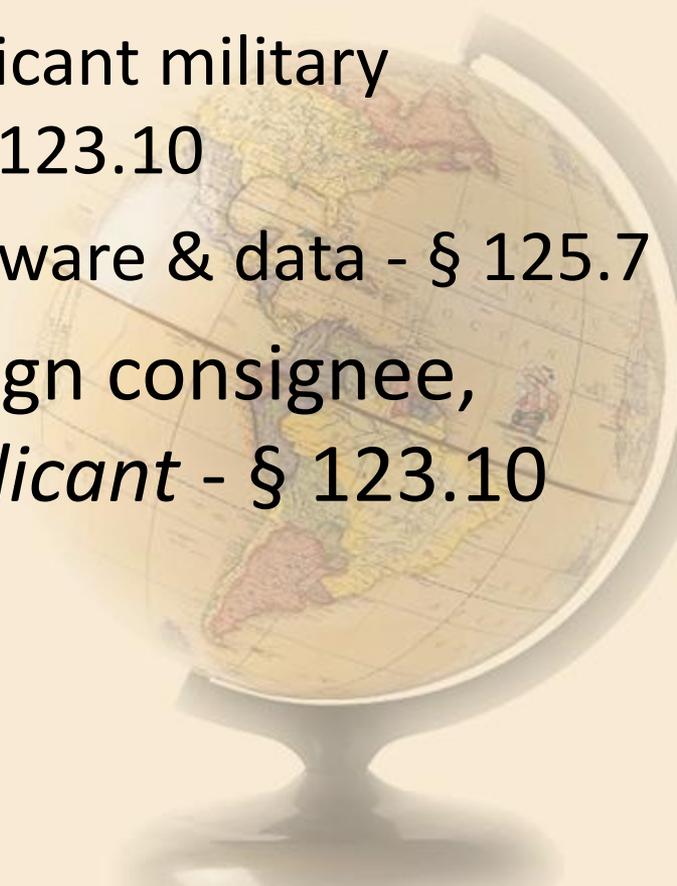
- A400M
- Eurofighter Typhoon
- Panavia Tornado
- JAS Gripen
- NH-90 Helicopter
- EH-101/AW-101 Helicopter
- C27J Spartan
- Eurocopter Tiger Helicopter





DSP-83 Non-transfer & Use Certificate - § 123.10

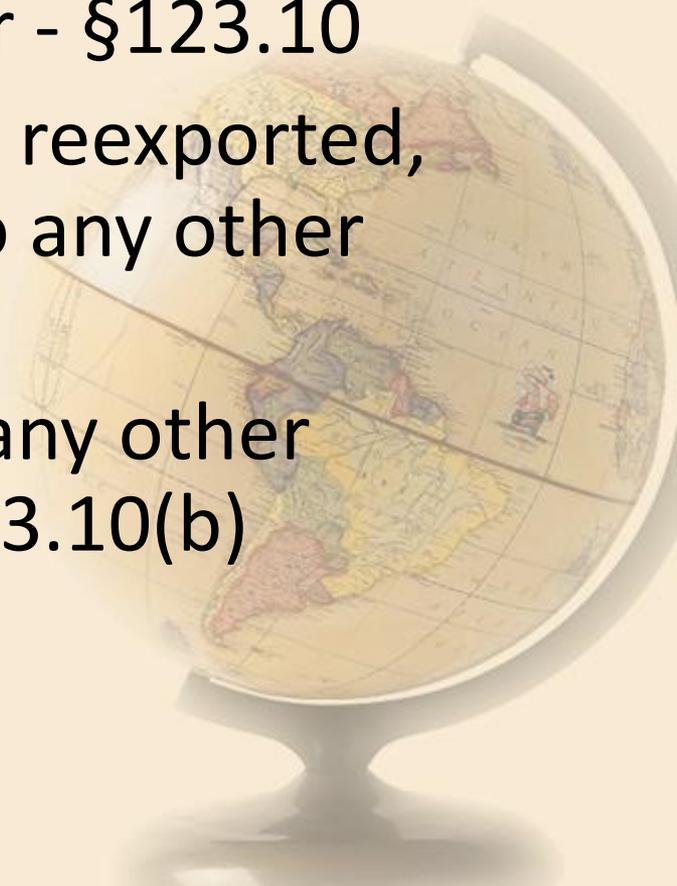
- DSP-83 is required for
 - permanent export of significant military equipment (* in USML) - § 123.10
 - export of all classified hardware & data - § 125.7
- Must be executed by foreign consignee, foreign end-user, *and applicant* - § 123.10





DSP-83 Non-transfer & Use Certificate - § 123.10

- DDTC may also require foreign government official to sign DSP-83 when export is to non-governmental foreign end-user - §123.10
- Stipulates that SME will not be reexported, resold outside of country, or to any other person
- DDTC may require DSP-83 for any other defense article or service - §123.10(b)





Types of Agreements

- Technical Assistance
- Manufacturing License
- Distribution Agreement





Technical Assistance Agreement

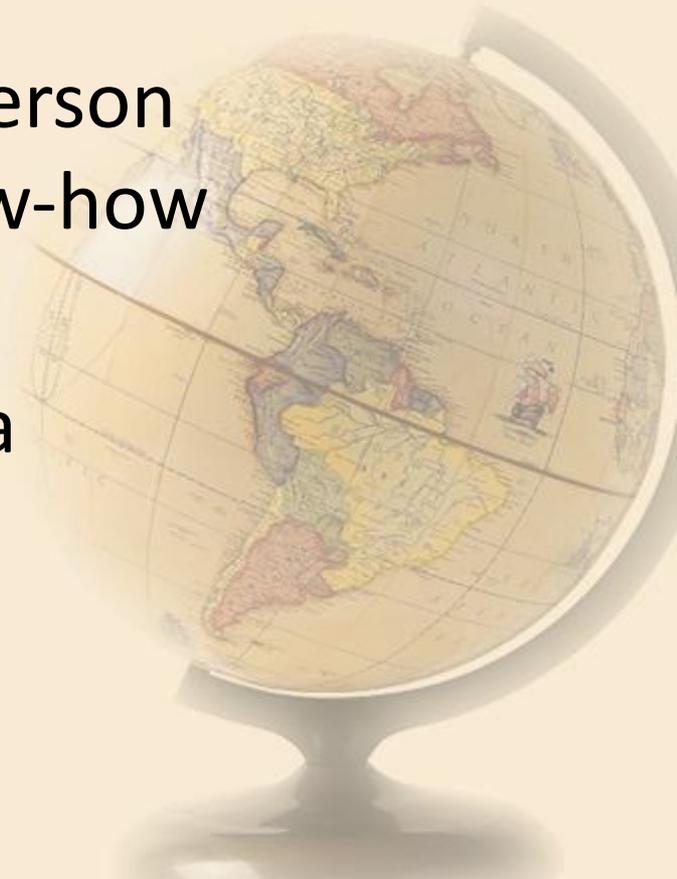
- US person furnishes assistance to foreign person in design, assembly, repair, maintenance, operation, etc. of a defense article
 - export of technical data





Manufacturing License Agreement

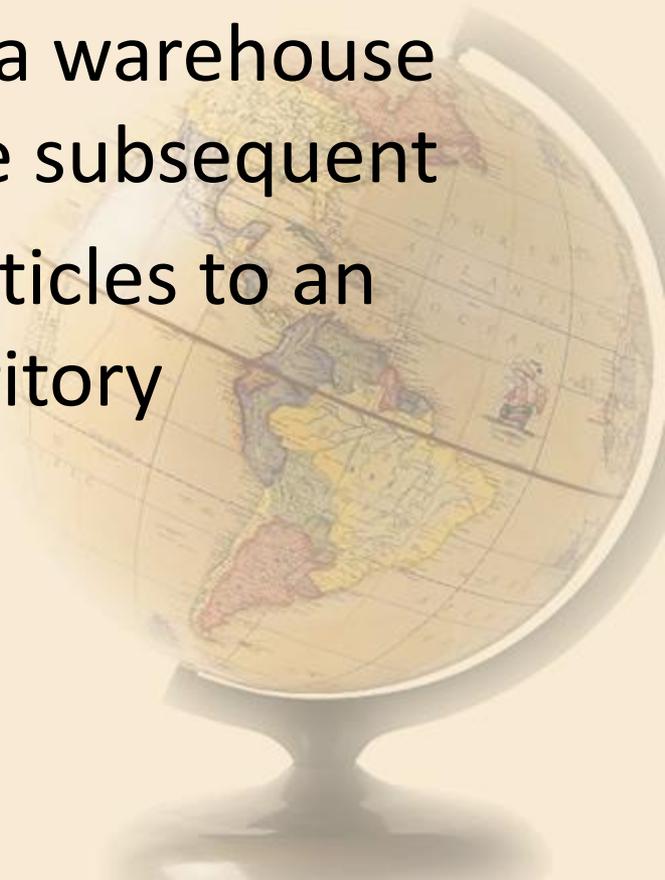
- US person grants a foreign person manufacturing rights or know-how concerning defense articles
 - export of technical data





Distribution Agreement

An agreement to establish a warehouse or distribution point for the subsequent distribution of defense articles to an approved sales territory





Congressional Notification

- 30 calendar days notice
(countries other than NATO members, Australia, Japan, New Zealand)
- Manufacture abroad of SME
- Major Defense Equipment \$14 million or more
- Defense articles/services \$50 million or more
- Firearms \$1 million or more





Congressional Notification

- 15 calendar days notice
(NATO, Australia, Japan, New Zealand)
- Manufacture abroad of SME
- Major Defense Equipment \$25 million or more
- Defense articles/services \$100 million or more
- Firearms \$1 million or more





Reexport/Retransfers

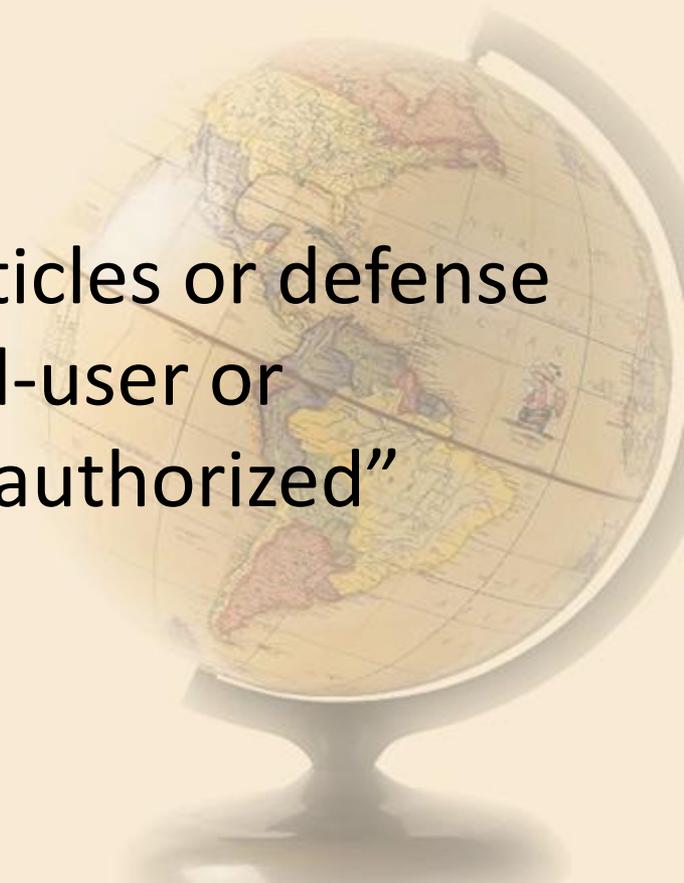




Reexport/Retransfer

Definition – §120.19

- “the transfer of defense articles or defense services to an end-use, end-user or destination not previously authorized”





Reexport/Retransfer

Reexports/retransfers require prior approval from DDTTC pursuant to the ITAR

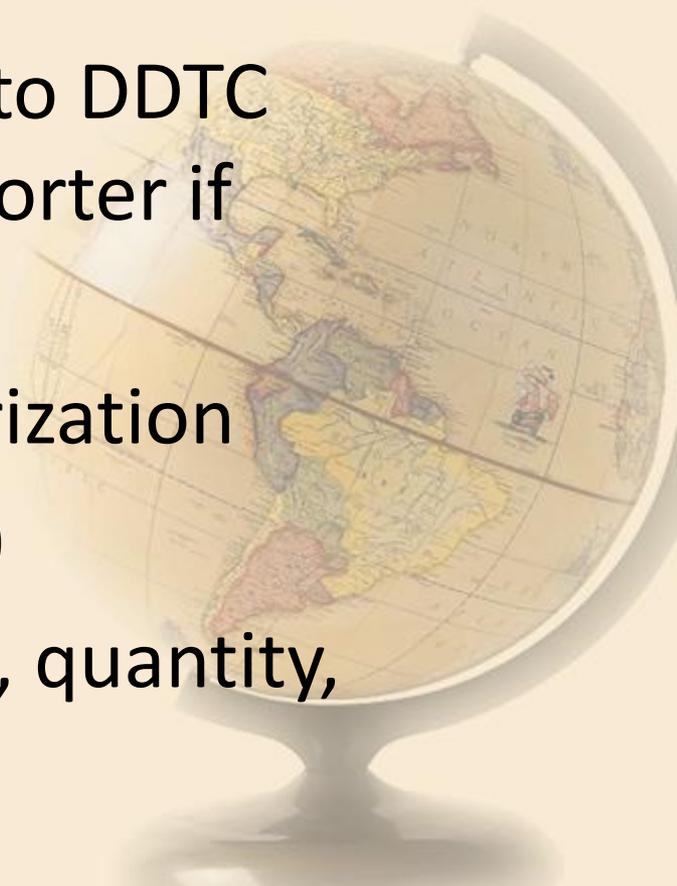
- new end-use
- new end-user
- new destination





Reexport/Retransfer

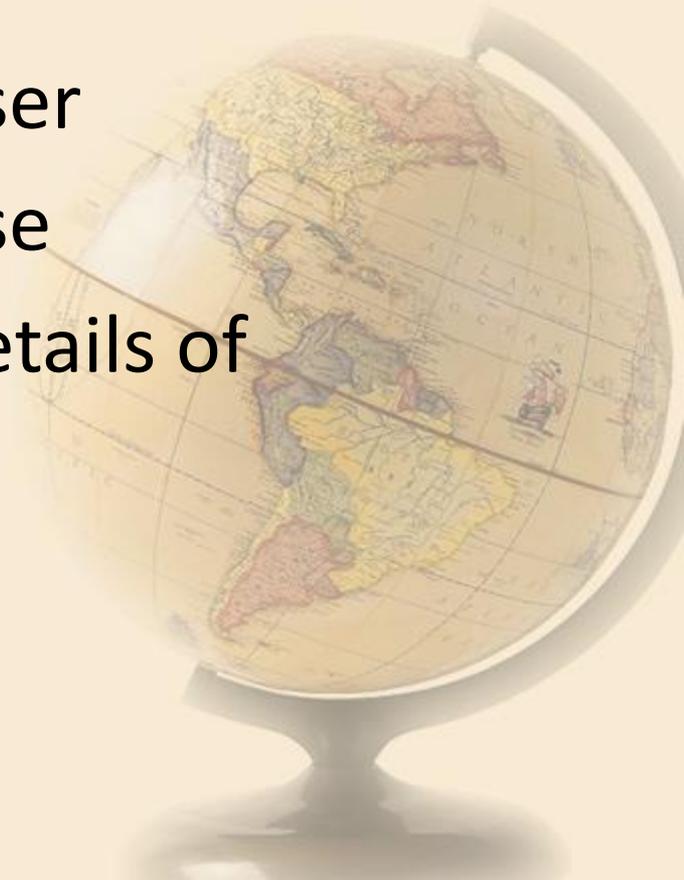
- submit written request to DDTC (submit through U.S. exporter if possible)
- provide previous authorization evidence (e.g., license #)
- describe defense article, quantity, value





Reexport/Retransfer

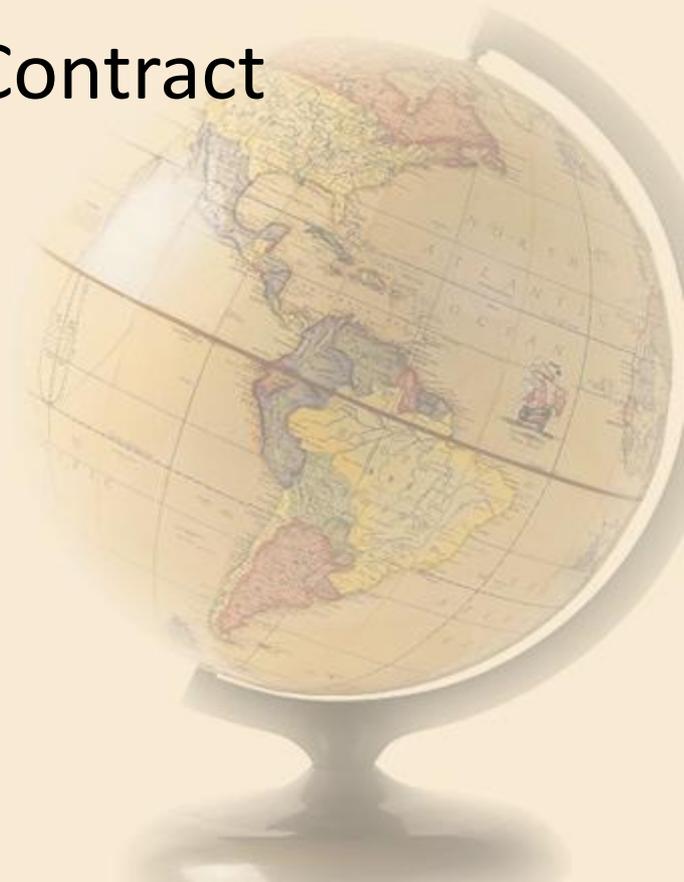
- describe new end-user
- describe new end-use
- provide any other details of transaction





Provide Appropriate Documentation

- Purchase Order or Signed Contract
- DSP-83
- Descriptive Literature
- Part 126.13 Statement





Reexport Exemption

ITAR § 123.9(e) allows re-export/retransfer without prior written approval:

- US origin components
- Incorporated into a foreign defense article
- For government of NATO country, Australia, Japan, New Zealand or South Korea





Reexport Exemption

Conditions:

- US origin components were previously authorized for export
- US origin components are not:
 - SME
 - MTCR items
 - Of a value triggering congressional notification





Reexport Exemption

Reporting Requirement:

- Written notification to DDTC within 30 days of reexport
- Specify articles re-exported and recipient government





Temporary Import License Exemption - ITAR § 123.4

- US origin, unclassified hardware
 - Repair, overhaul, replacement, calibration, testing or reconditioning
 - Incorporation in to hardware already approved for export
 - Demonstration/marketing in US
 - Rejected for permanent import
 - Approved under Foreign Military Sales program





Temporary Import License Exemption - ITAR § 123.4

- U.S. company must declare import prior to import
- Foreign company must notify U.S. company before sending the defense article to the U.S.





Compliance & Enforcement





Office of Defense Trade Controls Compliance

- Registration
- Watchlist
- End-use checks
- Audits of U.S. companies





Blue Lantern Program

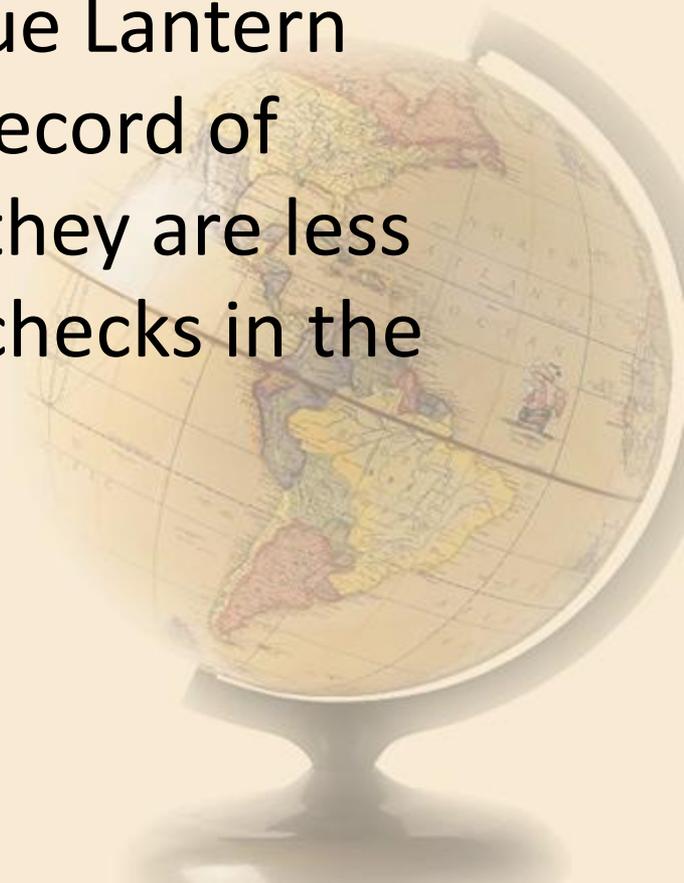
- Mandated by the Arms Export Control Act (AECA) and is dependent on Embassy support and commitment
- Key program in assuring that our exports do not end up in the Grey Market
- Pre-or post-check of end-users or intermediaries
- An important factor in developing and maintaining our confidence in the recipients of U.S. defense exports.





Blue Lantern Program Cooperation is a *Plus*.

- Parties that cooperate with Blue Lantern checks soon establish a track record of reliability with the result that they are less likely to be the target of such checks in the future.





Violations

- Unlawful to import/export or to attempt to import/export any defense articles /technical data or furnish any defense service without a license or other approval from the US Dept. of State
- Unlawful to violate any of the terms and conditions of the ITAR





Violations

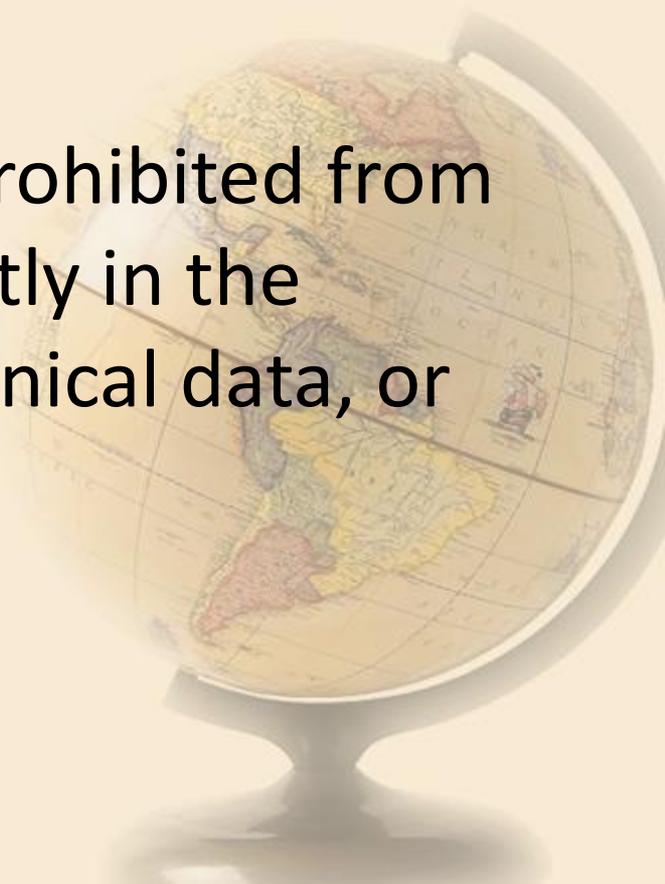
- Unlawful to make a false statement or misrepresent on export/import documentation
 - Purchase order
 - Foreign import certificate
 - Bill of lading
 - Nontransfer and use certificate





Penalties

- Any person who willfully violates a provision of the ITAR may be subject to fine, imprisonment, or both
- Person and company may be prohibited from participating directly or indirectly in the export of defense articles, technical data, or services





Penalties

- Criminal penalty
 - each violation a fine of up to \$1,000,000, or imprisonment up to 20 years, or both
- Civil penalty
 - each violation a fine of not more than \$500,000





Voluntary Disclosure - § 127.12

- Strongly encouraged if company discovers a violation
- Could be considered a mitigating factor in determining penalties
- Must be made prior to USG awareness and inquiry into the activity





Export Control Reform (ECR) Initiative

Announced in August 2009, the NSC and NEC were directed to jointly review the existing controls, structure, and policy and recommend a way forward.

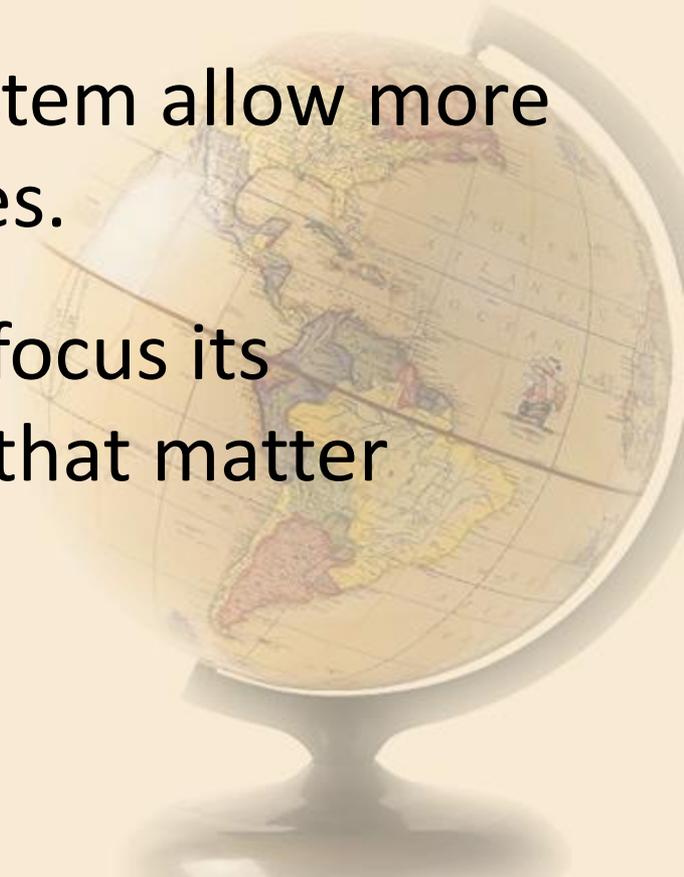
- In 2010, the President approved a plan that envisions:
- A Single Licensing Agency to receive and adjudicate licenses currently processed by State, Treasury and Commerce
- A Single Control List
- A Single IT system for submission, review and adjudication of licenses
- A Single Export Enforcement Coordination Agency





ECR Control List End-Game

- Enhance U.S. national security is the ultimate goal of the ECR effort.
- To make the export control system allow more interoperability with close allies.
- Allow the U.S. government to focus its resources on the transactions that matter most.





Control List Review Criteria

Items that should remain controlled on the USML:

- Is the item certainly or likely to be considered a “critical” item.
- Does the item have, by virtue of its function (as opposed to merely its form or fit), immediate tactical utility without modification.

Items for potential transfer to the CCL:

- Items that have been historically USML-controlled defense articles merely by virtue of modifications to their form or fit (as opposed to their function) and are types of items that do not provide substantial or significant military or intelligence advantage in and of themselves
- An end item fielded by militaries but has only insignificant military utility, is obsolete, or has features that would limit utility





Public Export Control Reform Actions

- “Specially Designed” definition
- USML to CCL Transition Plan
- Category Rewrites:
 - IV (Missiles)
 - VI (Naval Vessels)
 - VIII (Aircraft)
 - X (Protective Equipment)
 - XIII (Materials)
 - XIX (Gas Turbine Engines)
 - V (Explosives)
 - VII (Military Vehicles)
 - IX (Simulators)
 - XI (Military Electronics)
 - XVI (Nuclear Weapons)
 - XX (Submersibles)





The First Implementation Rules

- Revised USML Category VIII (Aircraft) and ECCN 9Y610
- New USML Category XIX (Gas Turbine Engines and Associated Equipment) and ECCN 9Y619

Definition of “specially designed”

- Transition guidance
 - Validity of authorizations
 - Delegation of authority
 - Activities during transition
- Conforming ITAR and EAR changes
 - Policy for determining and designating defense articles
 - Definition additions and changes
- Exemptions and exceptions





“Specially Designed”

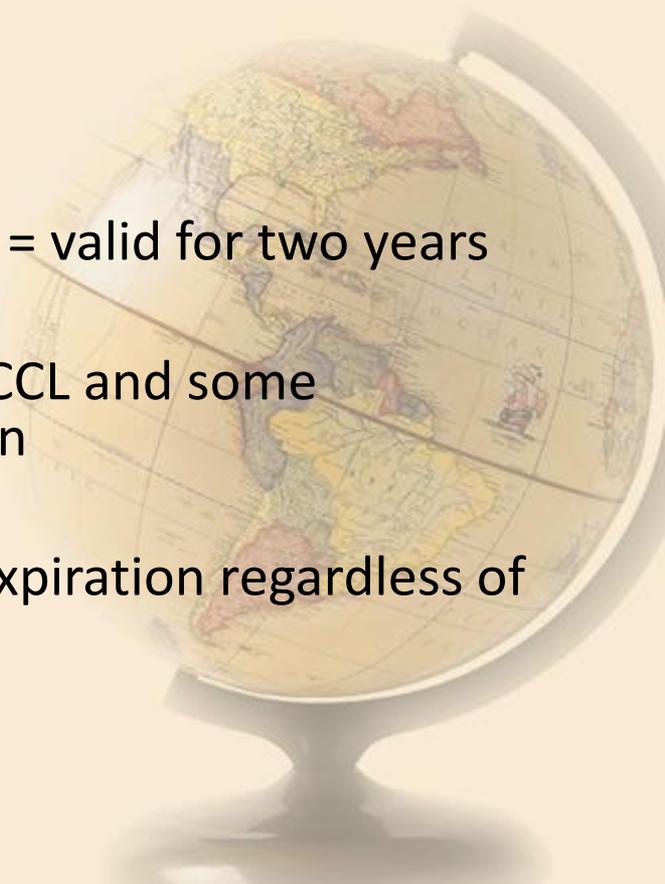
- New definition in ITAR §120.41 and EAR §772.1
 - Mirror definitions with minor differences
- Has a “catch and release” construction
- Must be used in the control text
- Only applicable to revised USML categories and CCL entries
 - Does not replace “specifically designed or modified” in the USML
 - Provides essentially the same control criteria





Transition Period

- 180-day transition period (started April 2013)
 - Allow industry to evaluate products and pending shipments
 - Foreign recipient review of inventory
- First removals to be effective October 2013
- DSP-5s with all items transitioning to the CCL = valid for two years
- DSP-5s with some items transitioning to the CCL and some remaining on the USML = valid until expiration
- DSP-73s and DSP-61s will remain valid until expiration regardless of transitioning status of commodities





Contact Information

- DDTC Web Site:
 - pmddtc.state.gov
- Response Team
 - telephone
202-663-1282
 - email:
DDTCResponseteam@state.gov

