CHAPTER 2

TYPES OF INTERNATIONAL PROGRAMS

A. INTRODUCTION

1. International programs covered by this Handbook that will involve the disclosure or export of defense articles and related technical data can occur through commercial programs or government programs. A "commercial program" is one that is initiated by a contractor, such as a direct commercial sale. The article of technology may have been developed under government contract, but if the transaction is initiated by a contractor, it is a commercial program. A "government program" is initiated by a government entity, such as foreign military sales or a cooperative agreement. Most of these programs are governed by the Arms Export Control Act (AECA) *(reference b)*. Government-to-government sales, called Foreign Military Sales (FMS), are further governed by the Security Assistance Management Manual (SAMM) *(reference d)*. Exports of defense articles and related technical data by contractors under a commercial program require a license or other written export authorization pursuant to the International Traffic in Arms Regulations (ITAR) *(reference c)*, except for certain exemptions (see subsection B.5. below and Chapter 4). One of the situations in which commercial exports may be exempt from the licensing requirements of the ITAR occurs if the export is in furtherance of a program between a United States (U.S.) Government agency and a foreign government (i.e., a government program). The Department of Defense (DoD) Components must use caution when exercising this exemption status to ensure that they do not aid a contractor in circumventing the ITAR licensing requirements for commercial exports that are not in support of a government program. The Deputy Under Secretary of Defense (Technology Security Policy & National Disclosure Policy) has issued policy guidance on use of ITAR licensing exemptions by the military departments. "Exports" by DoD Components must comply with agency directives and regulations that implement the AECA, just as contractors must comply with the ITAR for commercial exports. Likewise, government exports must be documented and recorded.

2. The National Security Decision Memorandum (NSDM) 119 *(reference t)*, which is implemented by the National Disclosure Policy (NDP-1) *(reference s)*, is the basic policy that governs decisions on the foreign disclosure of classified articles and information related to both commercial and government international programs.

3. The decision on whether a foreign purchaser should acquire defense articles through a government program or direct commercial sale usually is governed by the particular circumstances and is made by the purchaser. Exceptions to this principle are items that are sold only through FMS because of security reasons, Presidential restriction, international agreement, a U.S. interoperability or safety requirement, government furnished equipment (GFE) is

involved, or a strong U.S. preference for FMS when the purchaser is using U.S. provided credit funds. The Defense Security Cooperation Agency (DSCA) pamphlet, "A Comparison of Direct Commercial Sales & Foreign Military Sales for the Acquisition of U.S. Defense Articles and Services" *(reference y)* presents a thorough discussion of the pros and cons of each method.

4. On May 24, 2000, the Department of State announced the U.S. Defense Trade Security Initiative (DTSI) representing a significant updating of the U.S. Defense Export Control System. Those initiatives that have taken effect and are implemented in the ITAR are reflected in Section B. this Chapter.

B. COMMERCIAL EXPORTS OF DEFENSE ARTICLES AND TECHNICAL DATA

1. Defense Articles

a. Unclassified Defense Articles.

(1) Part 123 of the ITAR governs the export of unclassified defense articles. It requires a person who intends to export a defense article to obtain a license from the Directorate of Defense Trade Controls (DDTC) prior to the export, unless the export qualifies for an exemption. A copy of a purchase order or letter of intent from the purchaser or other appropriate documentation must accompany the application for a license to permanently export defense articles. The application (Form DSP-5) becomes the license for permanent export when approved by the DDTC.

(2) Temporary exports of defense articles which will return to the United States within a specified period of time, with no transfer of title, require an application and prior approval on Form DSP-73. This form, when approved by DDTC, becomes the license for the temporary export.

b. **Classified Defense Articles.** Part 125 of the ITAR governs the export of classified defense articles. Only U.S. nationals and foreign governmental entities in the United States; e.g., an embassy, may submit applications to DDTC for the permanent or temporary export or temporary import of classified defense articles, using Form DSP-85. It, like Forms DSP-5 and DSP-73, becomes the license when approved by the DDTC. A Form DSP-83, Nontransfer and Use Certificate (see Chapter 6) must accompany the application.

2. Technical Data

a. Persons planning to export classified or unclassified technical data must obtain a license from the Department of State prior to the transaction unless the ITAR provides an exemption from licensing. This requirement applies whether the export or disclosure to foreign nationals is in connection with visits by U.S. persons to foreign countries, visits by foreign

persons to the United States, or otherwise. The disclosure of technical data during visits by U.S. persons to diplomatic missions and consular offices also requires a license. The method of transmission (e.g., in person, by telephone, correspondence, telex, etc.) is immaterial. The export occurs in "...disclosing or transferring technical data to a foreign person, whether in the United States or abroad."

(1) **Unclassified Technical Data.** A Form DSP-5 usually is the application/ license for the disclosure of unclassified technical data. When the disclosure is to support foreign production, a Manufacturing License Agreement (MLA) is required; for defense services, a Technical Assistance Agreement (TAA) is required. The TAA also must be used for recurring exports of technical data. The licensing procedures in Part 124 of the ITAR apply to MLAs and TAAs.

(2) **Classified Technical Data.**

(a) All applications for the export of classified technical data are to be submitted to the DDTC on Form DSP-85 or through an MLA or TAA. A DSP-85 is not required when a Letter of Offer and Acceptance (LOA) is used to export classified technical data. Only U.S. persons may submit an application or agreement. A completed DSP-83 must accompany the application. The transmission to DDTC of classified information accompanying the application must be in accordance with the National Industrial Security Program Operating Manual (NISPOM) *(reference z).*

(b) Once the DDTC has approved the export of classified technical data, the transfer also must be in accordance with the security requirements of the NISPOM. See also Subsection B.5. below, and Chapter 6 of this handbook for more details concerning contractor responsibilities and the functions performed by the Defense Security Service (DSS).

(c) Part 125 of the ITAR does not cover the export of data relating to naval nuclear propulsion plants, their land prototypes, special facilities for their construction support and maintenance (United States Munitions List (USML) Category VI (e)) and nuclear weapons design and test equipment (USML Category XVI). These are governed by the Department of Energy and the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 *(reference f),* as amended, and the Nuclear Non-Proliferation Act of 1978 *(reference aa).*

b. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office under 35 U.S. Code (U.S.C.) 184 *(reference bb).* The export of technical data which exceeds that used to support a domestic filing of a patent application, or to support a foreign filing of an application when no domestic application has been filed, or that has had a secrecy order placed on it by the patent office, requires a license issued by the Department of State.

3. **Special Authorizations for North Atlantic Treaty Organization (NATO) Countries, Australia, Japan and Sweden.**

Under the DTSI, the U. S. Government, in May 2000, approved 17 initiatives to improve international defense trade. Some of the initiatives created new exemptions to the ITAR or changes to existing exemptions; some enhanced existing processes; and others described special export authorizations pertaining to NATO, the NATO countries, Australia, and Japan; Sweden was added later**.** Once approved, these special authorizations constitute an ITAR exemption and exports within the terms of the authorization may occur without further referral to the Department of State. The special authorizations are generally valid for 10 years after approval. The scope of each initiative must be fully explained, to include a description of all defense articles and technical data to be involved, and all sub-contractors and venders, as applicable. Records must be kept for each export under the exemption. All other AECA and ITAR requirements must be met; e.g., Congressional notification and the non-transfer and use certificate. Part 126.14 of the ITAR must be consulted for full details.

a. Major Project Authorization. For well-circumscribed, commercially developed major projects where a principal registered U.S. exporter/prime contractor identifies in advance the broad parameters of the project including the defense exports needed, and other participants (e.g., exporters with whom they have teamed, sub-contractors, and foreign government end-users).

b. Major Program Authorization. For well-circumscribed, commercially developed major programs where a single registered U.S. exporter defines in advance the parameters of a broad commercial program for which the registrant will be providing all phases of necessary support (including the needed hardware, technical data, defense services, development, manufacturing, and logistic support).

c. Global Project Authorization. For exports of defense articles, technical data, or defense services in support of a government-to-government cooperative project (covering research and development) pursuant to an agreement between the U.S. Government and the other country or a Memorandum of Understanding (MOU) between the DoD of Defense and the Ministry of Defense (MOD) of the other country.

d. Acquisition, Teaming Arrangement, Joint Venture Authorization. For exports of technical data in support of the registered U.S. exporter's consideration of entering into such an arrangement.

4. **Information Requirements to Support Export Applications.** In order to expedite and comply with the export licensing decision process, contractors should include the following types of information with their applications. Items not listed below, but which should also be considered, include requisite ITAR certifications and statements, if applicable, and the Form DSP-83, Nontransfer and Use Certificate, which is required for Significant Military Equipment

(SME), including classified information. The prescribed number of copies must be provided with the application.

a. Include in the request for export authorization or as an attachment:

(1) A description of the U.S. or foreign government requirement which justifies the proposed export;

(2) A description of the type and classification level of any classified information and other export controlled technical information which ultimately would have to be exported and the name, address and telephone number of the government entity that originated any of that classified information;

(3) The identification of any prior licenses for the same articles or data to the intended recipient and other countries;

(4) A discussion on how U.S. operational and technology interests can be protected (e.g., can certain information be withheld);

(5) An evaluation of foreign availability of similar articles or technology;

(6) The identity, including name, address, and telephone number of U.S. and foreign government officials (including U.S. in-country officials) who are knowledgeable concerning the government requirement; and

(7) The contractor's opinion on benefits to accrue to the United States from the proposed export.

b. To facilitate the transfer upon approval of the application, provide in or with the request:

(1) The federal supplier code (FSC) or commercial and government entity code (CAGE) for each listed U.S. entity;

(2) The identities of the entities listed on the application that will have title and/or custody to the article or data during transfer;

(3) Proposed transfer arrangements and transportation plan, if required;

(4) Any security arrangements proposed by the contractor or foreign recipient that may require U.S. and/or foreign government approval (e.g., hand carriage); and

(5) The identification with address and telephone number of the responsible DSS office for all listed U.S. contractors.

c. Contractors may, concurrent with submission of the request for export authorization, furnish the controlling DoD Component with a copy of the request, including all attachments

and supplements, to expedite the review process. The controlling DoD Component is identified in the pertinent DD Form 254, Contract Security Classification Specification that is required for all DoD contracts involving classified information.

5. **ITAR Exemptions**

a. **Technical Data Exemption.** The ITAR, Parts 123, 125 and 126, provide exemptions to the licensing requirements for the export of classified and unclassified defense articles and technical data. The exemptions are not applicable to proscribed countries listed in Part 126.1 of the ITAR. The exemptions cannot by used for manufacturing purposes except as described in Part 125.4 of the ITAR, or for offshore procurement. The transmission of classified information under an exemption must be in compliance with the NISPOM. The exporter also must certify to the transmittal authority (normally DSS or a Defense Contract Management Agency (DCMA) in-plant representative) that the technical data to be exported does not exceed the technical limits of the applicable export authorization. The following exemptions are available for the export of technical data:

(1) Technical data, including classified information, pursuant to an official written request or directive from the DoD. The disclosure authorization to exercise this exemption must be in support of a government program and in accordance with the DoD Component's procedures implementing policy guidelines issued by the Office of the Deputy Under Secretary of Defense (Technology Security Policy & National Disclosure Policy). Exemptions for classified technical data must be approved by a Principal or Designated Disclosure Authority of the DoD Component that has classification jurisdiction over the information. The Military Department authorities for this purpose are the Deputy Assistant Secretary of the Army (Exports and Cooperation), the Navy International Programs Office, and the Deputy Under Secretary of the Air Force (International Affairs). The DoD component is identified in the pertinent DD Form 254 as mentioned in subsection 4, above;

(2) Technical data, including classified information, in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State consistent with the requirements of Section 124.3 of the ITAR;

(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of relevant technical data and such data does not disclose the details or design, development, production or manufacture of any defense article;

(4) Copies of technical data, including classified information, previously authorized for export to the same recipient. Revised copies of such technical data are also exempt if they pertain to the identical defense article, and if the revisions are solely editorial and do not add to the content of technology previously exported or authorized for export to the same recipient;

(5) Technical data, including classified information, being returned to the original source of import;

(6) Technical data directly related to classified information previously exported or authorized for export to the same recipient, and which does not provide the details of design, development, production, or manufacture of any defense article;

(7) Technical data, including classified information, to be sent by a U.S. corporation to a U.S. person employed by that corporation overseas, or to a DoD Component. The data must be solely for U.S. use, not for support of a proposal or for foreign production or technical assistance. The recipient U.S. person overseas must be either an employee of the U.S. Government or a direct employee of the U.S. corporation and not an employee of a foreign subsidiary or division of the corporation. Classified data must be transferred through official government channels as described in Chapter 6 of this handbook;

(8) Technical data, including classified information, for which the DDTC has granted an exemption in writing to the exporter pursuant to an agreement with the DoD or National Aeronautics and Space Administration (NASA) that requires such exports. DDTC will normally grant this exemption only if the arrangement directly implements an international agreement to which the United States is a party and fulfillment of the agreement requires multiple exports;

(9) Technical data in the form of basic operations, maintenance and training information relating to a defense article lawfully exported or authorized for export to the same recipient. (Note: There are exceptions for NATO countries, Australia, and Japan and Sweden as described in subparagraph 14 below). This exemption only applies to exports by the original exporter;

(10) Technical data related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information;

(11) Disclosures of unclassified technical data in the United States by a U.S. institution of higher learning to foreign persons who are their bona fide and full-time regular employees. This exemption is available only if:

(a) The employee's permanent abode throughout the period of employment is in the United States;

(b) The employee is not a national of a country to which exports are prohibited in accordance with Part 126.1; and

(c) The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without prior written permission from DDTC.

(12) Technical data approved for public release (i.e., unlimited distribution) by the cognizant U.S. Government department or agency.

(13) As part of the DTSI, a new exemption permits U.S. companies to export certain technical data and services in support of DoD bid proposals without a license. Exempted exports are limited to unclassified defense services and related technical data to persons in NATO countries, Australia, Japan, and Sweden for the purposes of responding to a written request or directive from an authorized DoD official. The defense services and technical data are limited further to build-to-print, build/design to specifications, and basic research. It may not include design methodology, engineering analysis, or manufacturing know-how.

(14) Also part of the DTSI, a new exemption has been created for increased levels of maintenance services and maintenance training for NATO countries, Australia, Japan, and Sweden if such repairs provide no upgrades to the equipment's original capability and do not include the transfer of manufacturing designs, information, or know-how.

b. **Plant Visits Exemption.**

(1) Oral and visual disclosures of unclassified technical information during a classified plant visit by a foreign person are exempt from licensing requirements pursuant to Part 125.5 of the ITAR, provided:

(a) The classified visit is authorized by a license issued by DDTC; or

(b) The classified visit was approved in connection with an actual or potential government-to-government program by a DoD Component having classification jurisdiction over the classified article or data; and

(c) The unclassified information is directly related to the classified article or data previously approved and does not disclose the details of the design, development, production or manufacture of any other defense article. For U.S. Government approved visits, the requirements of the NISPOM must be met; and

(d) The visit authorization is explicit on the information that may and may not be disclosed.

(2) The documentary disclosure of unclassified information during the course of a classified or unclassified plant visit by a foreign person approved by DDTC or a DoD Component is exempt from licensing requirements provided the documents do not disclose technical data in excess of that authorized for oral and visual disclosure. The document must not contain technical data that could be used for the design, development, production or manufacture of a defense article unless the exemption described in subparagraph 5.a. (2), above, applies.

(3) The oral and visual disclosure of classified information to a foreign person during a plant visit approved by the appropriate DoD component is exempt from licensing requirements if:

(a) The visit complies with the requirements of the NISPOM (see also Chapter 7 of this handbook);

(b) The classified information relates directly to and is within the scope of the disclosure approved by the DoD Component; and

(c) The disclosure does not disclose the details of the design, development, production or manufacture of any other defense article.

c. **Government Agencies Exemption.** The temporary export of any classified or unclassified defense article or technical data by or for any agency of the U.S. Government is exempt from the licensing requirements, if the export is:

(1) For official use by such agency, or

(2) For carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to the control of the President by other means. This exemption only applies when all aspects of the transaction (export, carriage, and delivery abroad) are affected by a DoD Component, or when the export is covered by a U.S. Government Bill of Lading. This exemption does not apply when a DoD Component acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of DDTC must be obtained before defense articles exported pursuant to this exemption are permanently transferred to a foreign person (e.g., property disposal of surplus defense articles overseas) unless:

(a) The transfer is pursuant to a grant sale, lease, loan, cooperative project under the AECA or a sale, lease or loan under the Foreign Assistance Act of 1961 (FAA), as amended *(reference cc)*, or

(b) The defense articles have been rendered useless for military purposes beyond the possibility of restoration. Part 126.4 of the ITAR should be consulted for details. DoD Components must use caution to ensure that this exemption is not used to circumvent the licensing requirements of the ITAR. See also subparagraph d., below.

d. **Foreign Military Sales Exemption.** As part of the DTSI, a new exemption for Foreign Military Sales Defense Services permits the license free export of technical data and defense services if they are expressly described in an LOA and the underlying contract with a U.S. company. License free exports are permitted for the duration of the LOA and the underlying contract. Exports of defense articles and services and related technical data pursuant to an executed DoD LOA are permitted without a license if the export is accompanied by a properly executed Form DSP-94. The export must be made by the cognizant diplomatic mission or properly cleared and designated freight forwarder that is registered by the

Department of State. If the export involves classified articles or data there must be an approved transportation plan and the security arrangements must be in compliance with the NISPOM.

e. **Canadian Exemption.**

(1) Section 126.5 of the ITAR permits exports to Canada of certain unclassified defense articles, defense services or related unclassified technical data without a license if the defense article, defense service or related technical data is for end-use in Canada by Canadian citizens or return to the United States. However, there are numerous exceptions listed in Part 126.5. These must be complied with.

(2) The exemption does not exempt the export from the AECA's thirty-days Congressional notification period and the requirements of Part 123.15 of the ITAR, or from filing a shipper's export declaration required by Section 123.22 of the ITAR. The Congressional notification requirement must be satisfied prior to issuance of the license. This exemption may not be used for the manufacture in Canada of defense articles or for providing defense services. These require authorization under the provisions of a Manufacturing License Agreement or Technical Assistance Agreement or offshore procurement pursuant to Part 124 of the ITAR. The U.S./Canada Joint Certification Program is discussed in Chapter 4, subsection B.8.

6. **Enhancing Existing Practices under DTSI**

a. The Department of State is encouraging increased use of multiple destination licenses that permit U.S. firms to market specific products to specific countries for specific end users and end uses. The Department of State has issued a Listing of Countries to assist U.S. industry in applying for Multiple Destination Licenses.

b. The Department of State also is encouraging increased use of overseas warehousing agreements that permit U.S. firms to export large numbers of items, like spare parts, to a foreign country, including U.S. subsidiaries incorporated overseas. The warehousing agreement authorizes the foreign company to re-export the parts to a list or pre-approved end users for specified end uses.

c. Expedited License Review Process under DTSI

(1) The United States and its NATO allies have agreed that the capability gap between U.S. forces and those of its NATO allies needs to be closed. The Department of State has issued a NATO Expedite List for Munitions Export Licenses in five capability areas (deployability and mobility, sustainability and logistics, effective engagement, survivability of forces and infrastructure, command and control, and consultation). The Department of State will expedite the license review process for projects in these capability areas.

(2) As part of the DTSI, the Department of State will expedite the review of export license submitted by the governments of NATO countries, Japan, Australia, and Sweden, via their embassies in Washington, D.C., for end use by the requesting government.

(3) As part of the DTSI, the Department of State will streamline the licensing process for parts and minor components and limited technical data needed to bid on projects and respond to insurance requests on commercial satellites. This should minimize the number of license needed to support commercial satellite programs where all the parties to the programs are NATO countries or major non-NATO allies.

7. **Missile Technology Control Regime (MTCR).** The MTCR is an informal international arrangement designed to control the proliferation of rocket and unmanned aerial vehicle systems and their associated equipment and technology which are capable of delivering weapons of mass destruction. The articles and technical data that are subject to MTCR controls are in Part 121.16 of the ITAR. Although the program is an informal one, many participating countries have passed laws that regulate the export of controlled articles and technical data. The SAMM, section C3.2, describes the review process that must be undertaken by DoD to identify possible MTCR implications of FMS. The Defense Technology Security Administration (DTSA), and DoD personnel who review export license applications, identify MTCR implications for commercial sales. When DoD personnel identify a government or commercial transaction that has possible MTCR implications, the concerns are forwarded to the Missile Technology Export Committee (MTEC), an interagency committee chaired by the Department of State, which considers the transaction and decides whether it will be approved, and if any assurances will be required on the part of the recipient government. An international agreement or an exchange of diplomatic notes containing the assurances may be required is the transaction is to be approved.

8. **Prior Approval and Prior Notification.** There are certain circumstances when a defense contractor cannot discuss the sale or manufacture of defense articles and services with a potential foreign customer – even using information that is in the public domain. These initiatives require the prior approval of or prior notification to the Department of State, depending on the circumstances. Part 126.8 of the ITAR must be consulted on the details of these circumstances and the procedures to be followed.

9. **Congressional Notification.** Sections 36c and 36d of the AECA require that Congress be notified of exports of major defense equipment (section 36c) at specified dollar amounts and any export of a MLA or TAA (see Parts 123.15 and 124.11 of the ITAR). Congress has 30 working days to act of the notification, except for initiatives involving NATO countries, Japan, Australia and New Zealand which is 15 working days. Commitments cannot be made pending the completion of these requirements.

10. **End-use Monitoring.**

a. The AECA requires the President to establish a program that shall provide for the end-use monitoring of defense articles and services sold, leased, or exported under that Act and the FAA. The purpose of the program is to reasonably assure that the recipient is complying with U.S. requirements with respect to transfer, use, and security. The program is to provide for end-use

verification of defense articles and services that incorporate sensitive technology, that is, those that are particularly vulnerable to diversion or exploitation or other misuse, and those whose diversion or misuse could have significant consequences, The program must prevent the diversion, through reverse engineering or other means, of technology incorporated in defense articles.

b. The DDTC is responsible for the Department of State's end-use monitoring program for articles and services sold through commercial initiatives. The program is known as the "Blue Lantern" program. U.S. Mission personnel in country carry out the verifications. The Defense Security Cooperation Agency is responsible for verification with respect to those articles and services that are transferred under the Foreign Military Sales Program. That program, known as "Golden Shield," is carried out by DoD Security Assistance Offices in country.

11. **Defense Security Service Responsibilities.** The ITAR does not describe specific security procedures for the export of classified articles or data. It specifies that security arrangements will be in the NISPOM (or the Industrial Security Manual), and that DSS will be responsible for ensuring compliance. The specific procedures are in Chapter 10 of the NISPOM. DDTC will forward the original of the approved license or agreement for the export of classified articles and technical data to the DSS, with a copy to the exporter. After verifying the articles and data to be exported against the export authorization, and ensuring that all security requirements are satisfied (see Chapter 6 of this handbook), DSS or a Designated Government Representative (DGR) appointed by DSS, will authorize transfer. DSS will return the endorsed license to DDTC upon completion of the export or expiration of the license or agreement, which ever occurs first. Pursuant to an agreement with the Defense Logistics Agency and the Office of the Under Secretary of Defense (Policy), the DCMA may perform the DSS functions at some facilities.

C. COMMERCIAL AND DUAL-USE ITEMS

The Department of Commerce (DoC) has jurisdiction over commercial (i.e., civilian use) and dual-use exports. Dual-use technology and hardware are considered to have military applications. The DoC regulates exports to implement national security controls, U.S. foreign policy and controls commodities that may be in short supply. The Export Administration Regulations (EAR) (*reference u*) contain a listing of all controlled commodities, technical data, and software. This list is known as the Commerce Control List (CCL). Also, the DoC has established a Commerce Country Chart that allows a determination, based on the reason(s) for Control associated with a commodity, if a license is required to export that commodity to a particular destination. Additionally, the exporter must consult lists of general prohibition, exception, and embargoed destinations to determine if a license is required for a particular export. The Bureau of Industry and Security (BIS) is the office that administers all DoC licenses.

D. GOVERNMENT PROGRAMS

1. **Security Assistance and the Security Assistance Management Manual.** Security assistance transactions are administered and managed by the DoD. The security assistance program is comprised of a group of programs authorized by the FAA, and the AECA, and other related statutes. Under these authorities the United States provides defense articles, military training, and other defense related services, by grant, credit, cash sales, loans or leases in furtherance of national policies and objectives. The SAMM provides detailed guidance concerning these programs. Security assistance programs must follow the same DoD policies concerning the disclosure of classified military information (CMI) and controlled unclassified information (CUI) as other international programs.

a. **Foreign Military Sales.** One of the largest security assistance programs is the FMS program. It is a program through which eligible foreign governments and international organizations purchase defense articles and services from the U.S. Government. Examples of these transactions are sales of military equipment, supporting publications, training, technical data packages and engineering services. An LOA is the usual documentation for establishing and carrying out an FMS transaction. An LOA is generally considered a form of contract, not an international agreement within the meaning of DoD Directive 5530.3 *(reference dd)*. Therefore, LOAs are specifically exempt from the requirements of DoD Directive 5530.3. In addition to the security and technology provisions in Section Two (Standard Terms and Conditions) of the LOA, the SAMM provides for additional security provisions.

(1) The transfer of defense articles and services also may include the release by the government of defense related technical data of U.S. origin to a foreign recipient. The most prominent vehicle for transferring technical data is a Technical Data Package (TDP). The TDP normally includes technical design and manufacturing information sufficient to enable the construction or manufacture of a defense item or component, or its modification, or to enable the performance of certain operation and maintenance or production processes.

(2) There basically are three reasons to provide technical data to foreign governments. The first is to ensure the continued maintenance of U.S. origin equipment by the foreign recipient. The second is for evaluation or study by a foreign government considering a request to the United States for a coproduction or licensed production project. The third is for use in production of the item or components, or follow-on development, or improvement of an item of U.S. equipment. Coproduction is described in subparagraph C.1.d., below.

(3) The SAMM requires that the LOA clearly state that the purpose of the TDP is for one of the following:

(a) "This TDP is for operation and maintenance only; no production is authorized;

(b) "This TDP is for study purposes only--no production is authorized"; or

(c) "This TDP is for production purposes."

b. **Leases.** The U.S. Government may lease defense articles to a foreign government or international organization under the authority of Chapter 6, Sections 61 through 64 of the AECA, when there are compelling foreign policy and national security reasons to do so. Leases require the prior approval of the Director, DSCA. Typical cases are the leasing of an article for testing purposes to assist a government in making a decision whether to procure the article from the United States and the leasing of military equipment (e.g., ships, aircraft and vehicles) for operational use. The lessee pays rent and promises to restore the article to its original condition in accordance with the terms of the lease. A standard lease agreement in the SAMM is the vehicle for carrying out this program. The provisions of DoD Directive 5230.11 *(reference ee)*, also apply.

c. **Loans and Grants.**

(1) **FAA Loans of Defense Articles.** Section 503 of the FAA authorizes the loan of defense articles (materials, supplies and equipment) to foreign governments and international organizations with prior DSCA approval. The cost of the loan is charged to military assistance appropriations.

(2) **AECA Loans of Defense Articles.** Section 65 of the AECA and Deputy Secretary Of Defense memorandum, "Delegation of Authority to the Military Departments and Directors of Defense Agencies," of November 27, 1990 *(reference ff)* provide the authority to loan materials, supplies and equipment to and accept loans or gifts of defense materials, supplies or equipment from NATO and major non-NATO allies for cooperative research and development (R&D) purposes. An international agreement within the meaning of DoD Directive 5530.3 is required. These are not Security Assistance programs.

(3) **Monetary Grants and Loans.** Sections 23, 24 and 31 of the AECA authorize the Foreign Military Financing Program (FMFP) which consists of grants or loans, using Congressionally appropriated funds that enable eligible foreign governments to purchase U.S. defense articles, services and training through either FMS or direct commercial sales. There is no repayment required for a grant. The SAMM provides a sample loan agreement. DoD Directive 5230.11 also applies to grants and loans of small quantities of classified items for test and evaluation.

d. **Coproduction/Licensed Production.** Coproduction is an important component of DoD international programs. Allies are showing more interest in producing and assembling all or part of U.S. developed weapons systems, thereby improving their industrial skills and providing jobs for their citizens. Under coproduction, the U.S. Government enables a foreign government, international organization, or designated commercial producer to acquire the technical data and know-how to manufacture or assemble an item of U.S. defense equipment. Coproduction may be implemented through any one, or a combination of,

international agreements, FMS arrangements, and direct commercial agreements. A coproduction agreement is subject to the provisions of DoD Directive 5530.3 and the security requirements of DoD Directives 5230.11 and 5230.20 *(reference gg)*. Licensed production provides a similar vehicle for the transfer of technical data and know-how, but it is based on agreements by U.S. commercial firms with international organizations, foreign governments, or foreign commercial firms.

e. **International Military Education and Training (IMET) Program.** The IMET program is the means by which the DoD provides grant training to military and defense establishment persons from eligible foreign countries and international organizations. The training includes both formal and informal instruction in the United States and overseas or by correspondence courses, publications and media of all kinds, training aids, orientation, training exercises, and military advice to foreign military units and forces. An LOA is the usual vehicle for providing such training to a foreign country.

2. **Armaments Cooperation Programs.** The United States participates in a wide variety of cooperative research and development programs, including exchange programs involving scientific and technical information, with allies and other friendly governments and with international organizations. The following is a brief description of the types of programs that fall under the category of cooperative R&D. The International Arms Cooperation Handbook (*reference hh*) should be consulted for further details on these programs.

a. **Data and Information Exchange Programs.**

(1) In these programs the DoD exchanges certain technical data with countries in order to identify cooperative opportunities to avoid wasteful or duplicative research and development. Examples of data and information exchange programs are the Information Exchange Program (IEP), various NATO R&D programs, The Technical Cooperation Program (TTCP) and the American-British-Canadian-Australian Armies (ABCA). Both of the latter two programs involve the United States, Canada, Australia, the UK and New Zealand. These programs normally involve the sharing of defense related basic scientific and technical information or technology base development information. Data and information exchange programs require an international agreement as prescribed in DoD Directive 5530.3.

(2) The generally accepted definition of basic scientific and technical information is information relating to fundamental theories, designs, and data for purely theoretical or experimental investigation into possible military application. It does not include manufacturing knowledge or design and production information or information on system capabilities and vulnerabilities of operational or developmental systems.

(3) The generally accepted definition of technology base development is information encompassing basic research, exploratory development and demonstrations of advanced technology development. These are DoD R&D budget appropriations categories 6.1, 6.2 and 6.3A, respectively. Included is the exploration of alternatives and concepts prior to development of specific weapons systems. Also included are feasibility demonstrations

and test and evaluation of new concepts, technologies or equipment, and alternative solutions and research on generic systems.

(4) Agreements on data or information exchange programs are not to be used to avoid foreign disclosure and other requirements related to programs governed by other laws and policies, such as foreign sales, the loan or lease of equipment, and cooperative development. However, the information and data exchange programs often lead to the establishment of other programs, such as a cooperative development project. See Chapter 5 of this handbook for further discussion of programs under international agreements.

b. **The Engineer and Scientist Exchange Program.** The objective of the Engineer and Scientist Exchange Program (ESEP) is to promote international cooperation in military research, development, test and evaluation (RDT&E) through the exchange of defense establishment engineers and scientists. It provides for on-site working assignments for DoD military and civilian engineering and scientific (E&S) persons in allied and friendly countries and the reciprocal assignment of foreign E&S persons to U.S. defense establishments. These assignments are in areas of technical interest related to conventional weapon systems and equipment. See also Chapter 7.

c. **Cooperative Research and Development Programs.** The DoD is authorized to conduct cooperative research and development programs with allies and other friendly countries under both Title 10 (Armed Forces) and Title 22 (Foreign Relations and Intercourse) of the U.S.C. The objectives of these programs are to enhance U.S. and allied security; strengthen political, military and economic alliances; promote harmonization of mutual requirements; and lay the foundation for future cooperation. Before beginning a cooperative development program, DoD Components must consider the potential benefits and liabilities of cooperation. These considerations include, but are not limited to, system and/or technology performance, disclosure implications, technology transfer and/or acquisition, rationalization, standardization and interoperability (RSI); sales rights and restrictions; source selection and contracting; and impact on the U.S. defense industrial base. Chapter 8 discusses and describes the documentation required to analyze these issues.

d. **The Foreign Comparative Testing (FCT) Program.** The FCT Program is a test and evaluation program that encourages the DoD Components to fully evaluate allied and friendly foreign nations' systems, weapons or technology as a procurement option to satisfy a valid requirement. The 1990 DoD Authorization Act *(reference a)* established this program. It consolidates the 1970s individual Military Component programs for testing foreign weapons, the Foreign Weapons Evaluation (FWE) program of the 1980s and the NATO Comparative Testing (NCT) Program. Classified and other sensitive U.S. test data shall be provided to the foreign governments or manufacturers in accordance with Chapters 3 and 4 of this handbook.

e. **Foreign Test of U.S. Equipment.** Foreign countries may ask to test U.S. equipment prior to making their decision whether to buy U.S. equipment or produce their own. The tests must be under the control of the United States unless the head of the responsible DoD

Component, in coordination with the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD(AT&L), approves an exception to policy. DoD Directive 5230.11 is the applicable directive.

f. **International Aspects of the Systems Acquisition Process.** A key objective of international armaments cooperation is to reduce the costs of weapon system acquisition through joint development, production, and follow-on support. The DoD Components are to pursue international cooperation in the acquisition process to the maximum extent possible. Security and the protection of critical program information must be considered in the systems acquisition process. This issue is discussed in more detail in Chapter 8 of the Handbook.

g. **Reciprocal Procurement Agreements.** Most DoD equipment is procured from domestic sources. However, the DoD also makes use of a worldwide supplier base. In regards to worldwide procurement, the DoD sometimes is hampered is dealing with sources in other countries because of statutes that favor U.S. sources, such as the Buy America Act and specific limitation in annual appropriations bills that restrict certain procurements to U.S. sources. Other countries often have similar restrictions. To overcome some of these restrictions, the DoD has entered into "reciprocal procurement arrangements" with 20 countries. These arrangements also are designed to give contractors from signatory countries the opportunity to bid on each country's procurement initiatives. In so doing, the signatory countries agree to waive some of the procurement restrictions. These arrangements are called Reciprocal Procurement International Agreements (UK, France, Germany, Italy, the Netherlands, Norway, Portugal, Belgium, and Denmark); Defense Industrial Cooperation International Agreements (Turkey, Spain, and Greece); and the General Procurement International Agreements (Israel, Sweden, Switzerland, Canada, Egypt, Austria, Australia, and Finland). See section E., below.

3. **Award of DoD Contracts to Foreign Contractors.**

a. It is DoD policy to ensure full and open competition in solicitations leading to the award of DoD contracts. Foreign contractors from countries where the DoD has a reciprocal procurement MOU[1] shall be afforded the opportunity to participate in solicitations and negotiations leading to the award of U.S. contracts. In order to participate, however, all information necessary to perform as a prime contractor or subcontractor must be releasable to the government of their country of origin pursuant to applicable disclosure policies. Moreover, provisions of law (e.g., national mobilization or emergency, sensitive technologies, and small business offsets) may preclude foreign involvement in some DoD procurements.

b. There may be instances where access by the government of a foreign contractor to CMI or CUI is not permissible under the NDP-1 or other applicable disclosure policies. In this case, foreign contractors may be considered non-qualifying suppliers under Part 9 of the Defense Supplement to the Federal Acquisition Regulation (DFARS) (*reference ii*), thus preventing their participation as a prime contractor. However, the foreign contractor should be given the

[1] Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the UK

opportunity to participate as a subcontractor, provided the required information is authorized for disclosure to the contractor's government.

c. DoD contracting offices should initiate a foreign disclosure review with the Designated Disclosure Authority (DDA) of the responsible system program office before issuing a solicitation in order to avoid delays in the procurement process and to ensure that qualified foreign contractors have the opportunity to participate and prepare proposals. If the foreign disclosure review results in restrictions on participation by foreign contractors, the restrictions should be published in the solicitation announcement, along with any other restrictions that may be required by law or policy. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the procurement of defense equipment/services from foreign firms.

d. Bid packages containing classified information shall be requested by potential foreign contractors and, if approved, be released on a government-to-government basis through the potential foreign contractor's Washington, D.C. embassy, unless other procedures are approved by the contracting office's DDA.

E. PROGRAMS WITH NATO

1. The United States is a member of NATO. This membership poses unique security and disclosure challenges. Generally, classified information released to the organization is available to all members at the discretion of the holder of the information. Therefore, prior to authorizing the disclosure of CMI to NATO, this factor must be taken into consideration.

2. The DoD is involved with numerous NATO organizational elements. The Conference of National Armaments Directors (CNAD) is the primary organization for related research and development. The CNAD mission is to monitor, coordinate and support the development and implementation of alliance armaments programs. Its subordinate bodies are divided into "main groups" and "cadre groups" and their subordinate bodies. The main groups provide forums for the discussion and exchange of information and guidance for cooperative R&D programs. They are the principal action bodies to initiate cooperative efforts. Cadre groups work on the broad material acquisition issues affecting cooperative programs rather than focusing on a specific program.

a. The main groups include the NATO Army Armaments Group (NAAG), the NATO Navy Armaments Group (NNAG), the NATO Air Force Armaments Group (NAFAG), the Defense Research Group (DRG), and the Tri-Service Group on Communications and Electronic Equipment (TSGCEE), the NATO Industrial Advisory Group (NIAG) and the NATO Group on Acquisition Practices.

b. The cadre groups include the Group of National Directors on Codification, the Group of National Directors for Quality Assurance, and the Group on Rationalization of Design

Principles and Test and Safety Criteria for Explosive Materials and Explosive Stores, and others.

3. In addition, there are other NATO organizations and subsidiary bodies in which the DoD participates. NATO Production and Logistic Organizations (NPLOs) are subsidiary organizations of NATO responsible for the implementation of tasks for which the North Atlantic Council has granted clearly defined organizational, administrative and financial independence to meet the requirements of the members in the fields of production and logistics, usually related to weapons or weapons systems procurement. NATO Management Offices or Agencies are responsible for the administration of NPLO projects. For example, one such organization, the NATO Maintenance and Supply Organization (NAMSO) is chartered to provide logistic support services for weapon and equipment systems held in common by NATO members. The day-to-day execution of these functions is carried out by the NATO Maintenance and Supply Agency (NAMSA). DoD also participates in the NATO infrastructure program, where individual NATO nations act as NATO's agent to manage commonly funded NATO infrastructure projects, such as airfields.

4. The DoD Components' foreign disclosure authorities are responsible for prior review of disclosures to international organizations and their component staffs and organizations. In order to limit access within an organization, disclosures may be contingent upon a prior arrangement with the organization to restrict access to specified components or persons.

F. RECIPROCAL PROCUREMENT ARRANGEMENTS

1. To promote standardization of defense equipment within NATO, the Congress enacted the Culver-Nunn Amendment to the FY 1977 Defense Authorization Act (P.L. No. 94-361) *(reference jj)*. Culver-Nunn authorizes the Secretary of Defense to waive the Buy American Act of 1933 (41 U.S.C. 10a) *(reference kk)* when it is determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to DoD's acquisitions for public use of certain supplies mined, produced or manufactured in certain foreign countries. With the impetus of Culver-Nunn, the DoD negotiated and signed reciprocal procurement MOUs with the NATO nations. The DoD negotiated similar agreements with additional nations over the years (see subparagraph 5., below).

2. A reciprocal procurement MOU is a bilateral agreement between the DoD and the MOD of an allied or friendly nation. It is designed to give the contractors of the signatory countries the opportunity to participate, on a competitive basis, in defense procurements of the other country.

3. Under the MOUs, the United States also waives the provisions of the Buy American Act of 1933 and the Balance of Payments Program *(reference ll)*. Similarly, the allies must waive their "buy national" restrictions. This means that the industries of the signatory nations have an equal opportunity to bid on announced procurements.

4. Not all restrictions are waived by the MOUs. The DoD, for instance, restricts to United States and Canadian sources procurements of any items determined to be vital in case of national mobilization or emergency. In addition, it restricts to U.S. sources procurements that include certain classified information or sensitive technology, procurements set aside for small businesses, and any other items restricted by law or regulation. The other signatories restrict similar items although, in some cases, their restrictions are not as well defined. The announcement of planned U.S. procurements is normally made in the Commerce Business Daily (CBD) by the contracting authority. The announcement must list any restrictions pertaining to a particular procurement. Program and foreign disclosure/ security personnel should review the applicable Program Protection Plan (PPP), Technology Assessment/Control Plan (TA/CP) and cooperative opportunities documentation (see Section F, below, and Chapter 8) to determine whether restrictions on foreign participation for security reasons or technology control are appropriate prior to forwarding the request for proposal (RFP) package to the contracting officer for publication of the announcement.

5. The DoD currently has reciprocal procurement MOUs or similar agreements (see section D.2.g.) with 20 countries:

Australia	Austria	Belgium	Canada
Denmark	Egypt	Finland	France
Greece	Germany	Israel	Italy
Netherlands	Norway	Portugal	Spain
Sweden	Switzerland	Turkey	United Kingdom (UK)

G. PLANNING FOR INTERNATIONAL PROGRAMS

1. Reductions in the defense budgets of the United States and the NATO nations, and in other allied and friendly nations, coupled with the high cost of weapons systems has resulted in more international cooperation in the development of weapons systems. This trend is expected to continue. Therefore, planning must start at the beginning of system acquisition programs to consider if foreign participation can be permitted without jeopardizing U.S. military capabilities and the defense technology base. The basic principles described in Chapter 1 must be applied. Foreign participation includes cooperative development as well as subsequent coproduction and sales. This planning should commence prior to the Defense Acquisition Process Milestone A. The following documents, which are discussed in more detail in Chapter 8, can form the basis for determining both foreign involvement in the program and necessary security arrangements. These documents are mutually supporting and therefore should involve a team approach to develop.

a. **Technology Assessment/Control Plan.** The original purpose of the TA/CP was to provide a standard process to be used by program managers in describing the scope of their program and developing foreign disclosure, security, and negotiating guidelines for agreements on cooperative programs. DoD Directive 5530.3 requires a TA/CP as part of the package that requests authority to negotiate an international coproduction agreement. The

Deputy Secretary of Defense expanded the purpose of the TA/CP to include its use to expedite decisions on government and commercial sales of military systems and other foreign involvement in U.S. defense acquisition programs. The TA/CP also can support the development of the acquisition strategy by the program manager.

b. **Delegation of Disclosure Authority Letter (DDL).** The DDL provides foreign disclosure guidance to U.S. participants in an international program. The content is based on the TA/CP. The DDL is one of the most important documents that are prepared during the Acquisition Process. It provides disclosure guidance that can be applied during the life of a system; thus greatly expediting subsequent decisions on the sale, coproduction, and cooperative development of the system and system modifications.

c. **Program Protection.** Program Protection Planning (DoD Directive 5000.01 (*reference mm*), DoD Instruction 5000.02 (*reference nn*), and DoD Instruction 5200.39 (*reference oo*)) shall begin early in the acquisition life cycle, and be updated as required. Its purpose is to identify elements of the program, classified or unclassified, that require protection (i.e., Critical Program Information (CPI)) to prevent unauthorized disclosure or inadvertent transfer of critical technology or information. The planning shall incorporate risk management and threat-based countermeasures to provide cost-effective protection. When foreign participation is anticipated, the TA/CP and DDL are part of the PPP.

d. **Cooperative Opportunities.** Title 10, U.S.C. 2350a (*reference a*) requires the DoD to cooperate in research, development or production with allied countries in major acquisition programs. The acquisition strategy developed by the program manager shall discuss the potential for enhancing reciprocal defense trade and cooperation, including international cooperative research, development, production, logistic support, and the sale of military equipment. This analysis is normally described in a document called the Cooperative Opportunities Document (COD).