

**UNITED STATES' DEFENCE EXPORT CONTROLS
GUIDANCE FOR AUSTRALIAN COMPANIES**

Director US Export Control Systems

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Introduction

The US Government offers Australia, as a long-standing ally and a major buyer of US defence equipment, access to some of the world's most advanced defence technology.

This access supports Australia's self-reliant defence posture and capability for contributing to alliance operations. It also sustains the capabilities Australian industry needs to meet its commitments for supporting the Australian Defence Force (ADF). Australian industry is a vital component of Australia's Defence capability, contributing to the development and acquisition of new defence capabilities, and to the ADF's sustainment and operational effectiveness.

Commonly Used US Technology Transfer Arrangements

Major projects, such as the Wedgetail AEW&C, the Collins submarine, the ANZAC frigate and FFG Upgrade programs, have provided the conduit through which advanced US defence technology and skills have been transferred into Australia to support these vital requirements. Transfers most commonly occur under the following arrangements:

- **Foreign Military Sales (FMS).** FMS is a government-to-government sales arrangement under which the US Defense Department negotiates and manages an FMS "case" for the acquisition of US technology on behalf of the Australian Government. The Australian Government generally has little direct contact with the US contractor under an FMS arrangement.
- **Direct commercial sales (DCS).** Under DCS, a US company exports defence articles and services directly to an Australian customer. The US Government controls such sales through the US exporter's technology controls, and in particular through export licences which the US company must obtain from the State Department.
- **Collaborative programs.** Collaborative programs can include multilateral programs (eg, Joint Strike Fighter) or bilateral programs (eg, Heavy Weight Torpedo and Nulka Decoys). US technology transfers under collaborative programs are controlled just as closely as under any other arrangement, and perhaps more so under multilateral programs given the involvement of additional foreign parties.

US defence technology can also be transferred to Australia in other ways, including personnel exchanges and visits; data exchange agreements; trade missions and exhibits; international meetings and symposia.

Obligations for Protecting US Technology

Regardless of the mechanism by which US defence technology (including technical information) is transferred, Australian access is conditional upon acceptance of certain fundamental obligations for protecting the technology, namely:

- US defence technology must not be used for any purpose other than authorised under the original agreement unless State Department approval has been obtained.
- It must not be transferred by any means (including by email, fax or in discussion) from the nominated end-user to another company or individual in Australia or overseas, unless State Department approval has been obtained.
- Products manufactured from or using US defence technology must not be transferred by any means to another company or individual in Australia or overseas, unless State Department approval has been obtained.

These obligations are enforced by a variety of US control mechanisms, including technology planning and technology controls implemented by US companies; rigorous industry security arrangements; and US defence export controls.

This guidance focuses on US *defence* export controls. It does not examine the need for Australian export permits or licences; nor does it address US dual-use and commercial controls which are administered by the US Commerce Department's Bureau of Industry and Security. Information about Australian permit and licence requirements can be obtained from the Director Defence Export Control Office (Ph: 1800 66 10 66 or by email deco@defence.gov.au). Advice on dual-use controls can be obtained from the Director US Export Controls (see contact details on the last page of this guidance).

US defence export controls – an overview

Administration

Under the US Arms Export Control Act, the Congress has delegated authority for controlling the export and temporary import of defence articles, data and services to the President, who in turn has delegated his authority to the Secretary of State. Within the State Department, the Directorate of Defense Trade Controls (DTC) in the Bureau of Political-Military Affairs administers the Arms Export Control Act through the International Traffic in Arms Regulations (ITAR).

The ITAR can be found at <http://www.pmdtdc.state.gov/reference.htm>, and a Glossary of commonly-used ITAR terms is at **Annex A**.

Another office of the Bureau of Political-Military Affairs, the Office of Regional Security and Arms Transfer, administers Foreign Military Sales (FMS) and retransfers involving FMS-origin technology. The role of this office in relation to FMS will not be discussed further in this guidance but retransfer options, including FMS retransfers, are discussed at page 22 below.

US Munitions List

Within the ITAR (at Part 121), the US Munitions List (USML) catalogues controlled defence articles and services under a number of categories, including firearms; ammunition; missiles; propellants; warships; military vehicles; aircraft and spacecraft; military training equipment; protective personnel equipment; military electronics; guidance and control equipment; toxicological agents and radiological equipment; nuclear weapons design and test equipment; and miscellaneous articles.

Within the USML, a number of items (marked with an “*”) are designated as Significant Military Equipment (SME). SME also includes classified defence articles, data and services. The US Government has determined that such items require special control, including the requirement to lodge a DSP-83 (see page 8 below) with the draft licence or agreement.

Controlled Unclassified Exports

Most US defence exports to Australia are Controlled Unclassified. Controlled Unclassified is a unique US classification defined as “technology or technical information to which access or distribution limitations have been applied in accordance with applicable US national laws or regulations”. Controlled Unclassified has no direct equivalent in Australia. Its nearest equivalent in Australia is probably RESTRICTED, but the control measures the US Government expects to be applied to Controlled Unclassified US defence technology are more aligned with CONFIDENTIAL.

Deciding whether a non-USML article may be ITAR-controlled

Apart from items designated as “controlled” defence articles, technical data or services in the USML, an article or service may be designated as a defence article or defence service if:

- It is specifically designed, developed, configured, adapted, or modified for a military application, and does not have a predominant civil application and performance equivalent (form, fit and function) to an article or service used for civil application; or
- It has significant military or intelligence applicability.

Whether or not the article is intended for civilian use after its export is irrelevant to a decision on whether it will be subject to US defence export controls.

Licences, agreements & end-use certificates

Under the ITAR, US companies (and individuals) that manufacture or export defence articles or services are required to register with DTC. They must then apply for an export authorization (a licence or agreement) before exporting a defence article or data, or providing a defence service.

Licences

The following US export licences are most commonly used for exports and imports of defence articles and technical data in hard copy form:

- DSP-5 – a licence for the permanent export of unclassified defence articles and related technical data (in hard copy form);
- DSP-61 – a licence for temporary import of unclassified defence articles;
- DSP-73 – a licence for the temporary export of unclassified defence articles;
- DSP-85 – a licence for the permanent/temporary export or temporary import of classified information (in hard copy form); and
- DSP-94 – authority to export Defence Articles and Defence Services under FMS.

Agreements

The most common agreement encountered by Defence project offices and Australian companies is the Technical Assistance Agreement (TAA), an example of which is at **Annex B**. A TAA authorises a US company to disclose US technical data to a foreign person or to perform a defence service – but it does not confer manufacturing rights.

In simple terms, while a hardware licence permits the export of hard copy information, a TAA allows for discussion and information exchange within the scope of the agreement. That said, the fundamental obligations for protecting US defence technology remain the same under a licence or TAA.

A TAA is required for, among other things:

- Marketing US defence products;
- Supporting US defence sales – including responding to Requests for Tender; and

- Importing technology from abroad – by permitting the US party to enter discussions with the foreign party.

Suggestions on matters to consider when developing a TAA and the process following for staffing TAAs in the US are covered in the following sections.

There are two other agreements which apply more commonly to Australian companies, but are not generally encountered within Defence projects. These are the Manufacturing Licence Agreement (MLA) which provides manufacturing rights and data to a foreign entity; and the Distribution Agreement which authorises a foreign party to establish a warehouse or distribution point for US defence articles. Further information about these agreements can be obtained from the Director US Export Controls.

Matters to consider when negotiating a TAA

While there is little difference in the obligations for protecting US technology under US export licences or agreements, TAAs can present unique difficulties for Australian importers. The following points should be borne in mind when negotiating, and before signing, a TAA:

- **TAAs may override the contract.** DTC requires US exporters to include the following clause in all agreements:

“...this Technical Assistance Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter”.

In this light, Australian companies should ensure that the TAA accurately reflects Australian requirements, but does no more than satisfy the requirements of the ITAR. It should not commit Australia to unacceptable or unnecessary obligations.

- **Potential imbalance in information flows.** While a TAA permits discussion of US technical data, its primary purpose is to control what US companies can share with Australian (and other foreign) partners. Australia does not have an equivalent control mechanism over “soft” information passed to the US, and this creates a potentially significant imbalance particularly when a TAA is set up by a US company or agency to facilitate the import of Australian technical data.
- **There is no *de minimis* under ITAR.** Any US value-adding makes the value-added Australian product subject to US export controls. Thus, if US information provided under a TAA is used to change or improve an Australian product or technical manual, then the product or manual would become subject to US export controls and would require State Department approval before it can be exported, sold, transferred

or otherwise disposed. The fact that the product or manual may be marked "Subject to Australian Export Controls" will have no effect on this outcome.

DSP-83 Nontransfer and Use Certificates

Before the State Department will approve a TAA involving Significant Military Equipment (SME) – including classified technology – it requires a non-transfer and end-use assurance to be signed by the Australian end-user and by a designated Australian Government official (see below). In some circumstances, the State Department may also call for similar assurances for non-SME and unclassified defence articles or defence services.

These assurances can take two forms:

- For US equipment or services exported to Australia under FMS, the obligations are embedded in the FMS Letter of Offer and Acceptance (LOA) which is signed by an authorised officer in the Australian Embassy, Washington. Specifically, the LOA states that "The Purchaser will not transfer title to, or possession ... to anyone who is not an officer, employee, or agent of the Purchaser (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized, unless the consent of the US government has first been obtained". An agent is generally defined under FMS as a freight forwarder, or US party acting on behalf of a foreign country in establishing the FMS case; not an Australian contractor providing through-life support to FMS-origin equipment.
- For US defence equipment acquired under direct commercial sales arrangements, end-use assurances are provided in a certificate known as a Nontransfer and Use Certificate, or DSP-83 (see [Annex C](#)).

The following guidance is provided for completing a DSP-83:

- **Block 3** (the nominated end-user) should identify a specific end-user by position title. For projects that involve more than one end-user, each must provide a signed, original DSP-83 (the State Department does not permit copies).
- **Block 6** (consignee) should only be completed by an Australian company or individual who is acting as a broker – ie, a conduit through which US technology is being passed to a Defence customer (other than a freight forwarder or transport company) – or who is incorporating US technology into a product for Defence, but will retain no US hardware or data on completion of the task;
- **Block 7** must be signed by the nominated Australian end-user of the US defence articles (the person identified in Block 3). Where the end-user is a DMO Systems Program Office, the DSP-83 may be signed by the officer in charge (ie, the Commanding Officer or Director, as appropriate) or by the Director General.

Australian companies should identify an “empowered official” authorised to sign and “seal” DSP-83s. By signing the DSP-83, the end-user undertakes to seek prior written approval from the State Department before re-exporting, transferring, re-selling or otherwise disposing of the items specified in the DSP-83, both within Australia and overseas. Once Block 7 has been signed, the end-user must arrange for Block 8 of the DSP-83 to be signed by the designated Australian Government official.

- **Block 8** must be signed by the Director Defence Export Control Office (or his deputy) or the Counsellor Defence Materiel (Washington). These designated Australian Government officials have been authorised by the Minister for Defence to sign DSP-83s on behalf of the Australian Government. Before signing, the authorised official will ensure that the end-user has been identified correctly (by title); the items to be exported have been clearly identified; and Block 7 has been signed correctly. In signing Block 8, the authorised Australian Government representative commits the Australian Government to ensuring that re-exports, transfers, etc, will not be authorised without the prior written approval of the State Department.

Once Block 8 has been signed, the original signed copy of the DSP-83 will be passed to the US exporter for submission to the US Government with the export licence application or draft agreement. The Director Defence Export Control Office will retain a copy of the signed DSP-83 on file, and will forward a copy to the relevant end-user drawing attention to their obligations.

Collaborative program requirements

As noted above, technology transfer controls under collaborative programs are similar to those for transfers under a direct commercial sale, with minor exemptions outlined below:

- US export controlled information can be transferred directly from US Defense personnel (not contractors) to Australian government personnel (not contractors) under a collaborative program MOU without the need for a TAA (or some form of exemption).
- US-contractor developed/generated information delivered to the US Defense Department under a collaborative program can be transferred directly from US Defense personnel to Australian government personnel (not contractors) without the need for a TAA (or some form of exemption).
- US contractors working on a cooperative project must have a TAA in place (or obtain State Department's agreement for an exemption) to transfer information directly to either Australian government or contractor personnel.
- US contractors working on a cooperative project must have a TAA in place (or obtain State Department's agreement for an exemption) before they can directly answer

questions concerning information provided by US Defense personnel to Australian government personnel.

- If a US contractor wants to provide additional information/data, related to but outside the scope of the cooperative agreement, the contractor must obtain a TAA

Exemptions available under ITAR

As indicated in the above section, subject to certain requirements being met, the ITAR provides for a number of licence exemptions. A summary of the common exemptions that may be of use to Australian companies are:

- **Imports to the US for repair and overhaul (ITAR 123.4(a)(1)).** The temporary import to the US, and subsequent export, of unclassified US defence articles may be permitted if the article is temporarily imported for servicing – but not for any modification, enhancement, upgrade or other form of improvement that changes the performance of the article. (This does not apply to shipments that transit the US for Canada.)
- **Imports under FMS (ITAR 123.4(a)(5)).** The temporary import and subsequent export of unclassified US defence articles may be permitted if the FMS case approves such an import.
- **Reexports to NATO, Australia and Japan (ITAR 123.9(e)).** US origin components incorporated into a foreign defence article may be reexported or retransferred to a government of a NATO country, Australia or Japan, without the prior written State Department approval. There are a number of conditions which apply to this exemption, including that the components must previously have been authorised for export to the countries concerned, and must not be Significant Military Equipment.
- **Defence articles in support of agreements (ITAR 123.16(b)(1)).** Defence hardware being exported in support of a TAA (or MLA) may not require an export licence if it meets a number of conditions, including that it must not be SME and it must be identified by item, quantity and value in the agreement.
- **Maintenance exemption for NATO, Australia, Japan and Sweden (ITAR 124.2(c)).** A TAA is not required for maintenance training or the performance of maintenance, including the export of supporting technical data to NATO, Australia, Japan and Sweden, for certain USML articles, provided certain conditions are met, including that congressional notification is not required (see below); maintenance does not involve modification, enhancement, upgrade or other improvement; software documentation on the design, or information on design methodology, engineering analysis or manufacturing know how is not included.

Information about other exemptions can be obtained from the Director US Export Controls.

Processing US licences and agreements

Process overview

The key steps in the US export licence review process administered by the State Department's Directorate of Defense Trade Control (DTC) are as follows:

- **Lodgment.** The US exporter lodges an unclassified licence application electronically under the DTC's on-line licensing system (*D-Trade*) – or in paper copy for classified licences and agreements. (*D-Trade* must be used for DSP-5, DSP-61, and DSP-73 licences; but it cannot be used at present for DSP-85s (classified licences) or for Agreements (such as TAAs) and Agreement Amendments. The State Department is optimistic that *D-Trade* will be fully implemented by the end of 2007.)
- **Initial DTC Review.** Applications are assigned a number and logged into DTC's database before being passed to a licensing officer for initial review based on the US Munitions List category involved. Parties to the application are screened against a watch-list of parties about whom the US has concerns. If there is enough information available, the licensing officer can take final action on the application. About two-thirds of export licences for Australia are dealt with at this stage.
- **External US Agency Review.** If more detailed external review is needed, then the licensing officer decides which US Government agencies (eg, Defense, Commerce, etc) should be involved. About a third of Australian licence applications and all agreements are referred to other US Government agencies for external review. For paper-based licence applications and agreements, the referral process is slow, relying on the physical distribution of paper documents via couriers and inter-office mail.
- **Final DTC Review.** Once all external agencies have provided their recommendations, the DTC licensing officer decides on the appropriate licensing action; the licence or agreement can be approved, approved with provisos, or denied. The entire process can take some months – and longer if congressional notification is required.
- **Congressional Notification.** Under the Arms Export Control Act, Congress must be notified of an export licence or agreement when the export involves major defence equipment (MDE) in excess of US\$25 million, or a total contract value for defence articles/defence services in excess of US\$100 million. Only a handful of Australian licence applications require congressional notification each year. Congressional notification begins after the final DTC review, at which point the State Department coordinates lodgment with congressional staff. Once lodgment has occurred, agreements involving NATO, Australia, Japan or New Zealand are approved

automatically after 15 days unless objections are raised by congressional members (for other countries, 30 days is required).

Implications for defence projects

While *D-Trade* offers improvements in the time taken to process US licences, the external licence review process has given rise to a number of concerns, namely:

- **Time.** The average regulatory approval time for a staffed application is about three months, although some TAAs may take much longer. This does not including the time taken by the US exporter to develop the application, which itself may add months to the process. This creates project significant schedule difficulties, and may even deter US companies from engaging with Australian companies on business opportunities.
- **Uncertainty.** The number of authorities involved in reviewing licence applications has raised concerns about the lack of predictability of the licensing process and its outcomes.
- **Opacity.** The licensing process involves the US regulatory authority and US companies – and information and issues that may not be shared with allies. Thus, it is sometimes difficult to gain insight into issues affecting particular applications, let alone support Australian companies with licensing problems.

Defence is working to address these concerns under a package of export control improvement proposals known as the *Technology Transfer Process Improvement Initiatives* being worked on by the AUSMIN Defence Acquisition Committee (ADAC).

Improving timeliness - Expedited Licence Review (ELR)

Under the *Technology Transfer Process Improvement Initiatives*, the State Department has agreed to provide the following streamlined export licence processing arrangements for Australia:

- **ELR I.** Australian licences and a number of agreements will be reviewed only by the State Department if the items to be exported meet the Canadian ITAR exemption criteria (ITAR 126.5) and the licence or agreement is intended for the Defence Department. The State Department will endeavour to approve such licences within 10 days.
- **ELR II.** For the remaining licences (ie, for which Defence is not an end user or which do not meet the Canadian ITAR exemption criteria required for ELR I above) and for TAAs (most of which are not covered by the Canadian exemption in any case), the US will work to a 30 day approval time. The US will also advise us of anticipated delays.

The US' implementation of this arrangement is dependent on the continued implementation of *D-Trade*. Until *D-Trade* is fully implemented, licence and TAA

approvals may take longer than the target times shown above – but hopefully less than the average approval time shown above.

To ensure that the potential benefits of ELR I and II are gained as soon as possible, Australian companies should request that US companies to flag in their licence or agreement submission letter to the State Department (known as a “transmittal letter”) whether the proposed export would be eligible for the Canadian ITAR exemption and thus eligible for ELR I consideration. Where this is not the case, the letter should seek expedited processing under ELR II arrangements.

While US companies will be best equipped to determine eligibility for the Canadian ITAR exemption, which is based on applying ITAR Clause 126.5 to the controlled items listed in the US Munitions List, an indicative list of items likely to be covered by the Canadian exemption is attached at **Annex D** to assist in assessing whether a particular US technology might be eligible for ELR I consideration.

Reducing uncertainty

Reducing the need for wide-ranging external review under ELR I will eliminate a currently available opportunity for attaching conditions on licence applications and agreements. The uncertainty associated with the current process will be further reduced by the US State and Defense Departments’ agreement, under the *Technology Transfer Process Improvement Initiatives*, not to impose “US-eyes only” conditions on future licences and agreements.

Improving transparency

At the State Department’s suggestion, Australian companies have been invited to ask their US partners to include in their US export licence or agreement submission letters “*Information on the ... processing of this licence application may be shared with the Australian Government*”. This should permit Defence to access “proprietary” US licensing information to better assist to Australian companies with licensing difficulties. Any difficulties experienced by companies in having such words included should be referred to the Director US Export Controls.

Other agreement-related issues

Third country and dual-national employees

Certain mandatory ITAR clauses must be included in all TAAs (and MLAs). One of these clauses, taken from ITAR 124.8(5), stipulates that:

The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third

country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained,

The State Department's policy for implementing this regulation is to interpret "national of a third country" as including "dual-nationals". According to this US interpretation, a naturalized Australian citizen is an Australian dual-national, while an Australian Permanent Resident is a foreign national.

To comply with this regulation, the State Department requires that agreements specifically list the countries of foreign and dual-nationality of employees who may have access to US technology (but not the names of individual employees). Non-Disclosure Agreements (NDAs) must also be completed by employees of Australian project offices and companies who are nationals of a third country (ie, non-Australian citizens including Permanent Residents), but they are not required of dual-nationals. Completed NDAs should be forwarded to the US company for retention for five years after the expiration of the agreement; copies should be retained by the company for its records.

However, as a concession to Australia, and as a result of the *Technology Transfer Process Improvement Initiatives* discussions (referred to above), the State Department has agreed that Australian dual-national employees of the Defence Department and Australian companies do not need to provide nationality information for US licensing purposes if they have at least a RESTRICTED security clearance and a need to know. In the case of Australian companies, the relevant TAA must be linked to a US collaborative program or to a program for which Defence is the ultimate end-user. This can be demonstrated by Defence being a TAA signatory or by reference to a Defence Capability Plan project.

This agreement does not apply to non-citizens, including third country exchange officers with the ADF, or to dual-nationals of proscribed countries listed at ITAR 126.1 (eg, Cuba, China, Iran, Libya, North Korea and Vietnam). In such cases, prior written approval must be sought from the State Department before access to US technology is granted (unless access is permitted under the terms of the TAA).

The agreement is not retrospective: existing TAAs must be amended if current dual-national clauses conflict with the agreement.

Ideally, Australian companies should be able to pass information about the above agreement to a US exporter before a draft TAA is developed; but more often, companies find themselves having to seek amendments to nationality clauses that may have been developed by the US exporter to address unique project circumstances (eg, a multinational TAA involving French, German, Canadian, UK and/or Australian signatories). In such circumstances, advice can be sought from the Director US Export Controls on how best to address nationality requirements in the TAA.

ITAR 124.7 (4) TAA territory statement

As required by ITAR Clause 124.7(4), TAAs are required to “specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licenced”.

In compliance with this requirement, Australian TAAs must include a statement along the lines of "...technical assistance, technical data and defence services under this agreement may be provided [for example] in the United States or in Australia".

A recent case involving the proposed deployment of US-origin defence hardware to Afghanistan revealed that this terminology presents an ITAR "gray area" which can effectively make maintenance support by US companies for operationally deployed US-origin equipment subject to US State Department approval.

While there is no suggestion that State Department approval would not be forthcoming, the need to seek approval places an additional administrative burden on staff arranging such deployments. Moreover, while the State Department applies rapid processing for current OIF/OEF deployments, future Australian operational deployments may not be related to coalition operations and thus may not be accorded similar treatment.

Accordingly, TAAs should be reviewed, and if appropriate and when the opportunity presents, an amendment to the ITAR 124.7(4) statement should be sought along the following lines "...technical assistance, technical data and defence services under this agreement may be provided....in ..., or where the related Defence Article might be operationally deployed".

Sublicensing

Under the ITAR, **sublicensing** is the retransfer to a third party of specific US defence articles, technical data or defence services that were approved for export to a specific Australian end-user to enable the sublicensee to assist in the delivery of the program or project. Sub-licensing must be approved by the State Department.

Under US export controls, sublicensing is distinguished from **subcontracting** which does not include the retransfer to the third party of specific US-origin defence articles, technical data or defence services, then the subcontracting is not classified as sublicensing.

The State Department requires that if an Australian party is planning to sublicense another Australian or overseas company, then the US exporter must provide the roles of the proposed sublicensees and a description of the technical data to be retransferred. Unless advised otherwise, the State Department will assume that all technical data is to be retransferred to a sublicensee – and may question why the proposed sublicensee will not be a signatory of the agreement in its own right. In this regard, sublicensing does not confer full

rights under the agreement (eg, to participate in meetings or discussions beyond the limited scope of the specific technical data approved for release).

The sublicensee will be required to execute an NDA incorporating the provisions of the parent agreement. Copies of NDAs referencing the parent agreement case number will be maintained by the US exporter for five years from the expiration of the agreement.

While the names of the sublicensees are generally listed in the parent TAA, there are two circumstances where this may not be the case, namely:

- For agreements that do not involve Significant Military Equipment (SME), the US company can request blanket State Department approval for the Australian party to sublicense within the territory identified in ITAR 124.7(4) section of the TAA (eg, Australia). Any sublicensees would be required to execute an NDA incorporating the provisions of the agreement, which the US company will maintain for five years from the expiration of the agreement. Since the State Department does not review the companies signing NDAs, the US company will be held responsible for monitoring the Australian end-user's selection of parties for sublicensing and retransfer. Some US companies may not wish to accept this responsibility and may insist on listing sublicensees in the parent agreement.
- If sublicensing involves SME but not the transfer of data or hardware specific to the SME, sublicensees may not need to be listed in the parent agreement. However the agreement will need to explain how sublicensing will be managed. Again, the US company may decide it is easier and safer to list sublicensees.

When developing agreements

Some US companies need assistance to develop agreements which clearly articulate what is intended and what is not intended in simple and concise English – and which avoid technical jargon. The following “pointers” may be useful in developing agreements:

Insist on reviewing the draft

Many US exporters submit draft TAAs to the US State Department to save time (and to clarify the scope of what might be permitted) before exposing the draft to an Australian customer. Having done so, Australian companies are then pressed to sign the TAA – in some cases with unacceptable obligations – because it has already been agreed by the State Department and any amendment would result in lengthy delays.

This is contrary to the recommended approach outlined in the State Department's *Agreement Guidelines* (page 13), which states that:

“It is recommended that the agreement be reviewed by the foreign party prior to submitting to [Defense Trade Controls] so that the parties can work out problems with the language or details on the transaction. In the official approval letter from DTCL, the applicant may be directed to make changes to the agreement via provisos. These changes must be made prior to signing by the parties.”

Accordingly, Australian companies should make clear from the outset of any discussions with US companies that they expect to contribute to the development of TAAs before they are submitted to the State Department.

Keep agreements simple

Not all US exporters are experts on TAA development. Apart from cloaking the TAA in technical jargon, some exporters may seek to include provisions that are not required under the ITAR. Such provisions can unintentionally undermine previously agreed contractual agreements, thereby potentially reducing the rights of the Australian recipients. For this reason, companies should also ensure that contractual clauses are not included in TAAs.

Where uncertainty exists, companies should consult the Director US Export Controls on the development and language in TAAs.

Think strategically - consider the scope

Careful consideration should be given to the scope of the agreement to ensure that it meets current and any anticipated future requirements, particularly the longer term requirements such as Through Life Support.

That said, the benefits of expanding the scope of a TAA to meet longer term requirements must be balanced against the increased likelihood that a US exporter might “push back”, or that DTC will place boundaries on what is approved for export (in the form of provisos). Determination of the appropriate approach calls for early consultation within Australia and with both the US exporter and US authorities.

Don't overlook mandatory clauses

As noted above, the US Government requires that all TAAs must include a number of mandatory clauses from ITAR 124.8. Any modifications to these clauses will result in disapproval of the agreement. Apart from the nationality clause already discussed, two of other ITAR 124.8 clauses are noteworthy, namely:

“The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.”

“No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.”

The implications of these clauses should always be kept in mind when developing a TAA.

Limit the number of signatories

Some TAAs are signed by several parties – in some cases approaching double digits. While this may be administratively convenient during the acquisition process, it can make management of the TAA and future amendments more difficult. It can also lead to provisos based on “the lowest common denominator” and create problems in respect of the attribution of liabilities. Ideally, TAAs should be signed by no more than four or five parties, with the Australian signatory securing the right to transfer information to sublicensees or sub-contractors (listed in the TAA).

Who should sign - Commonwealth or Defence?

TAAs should not be entered into by “Defence” or the single services (Navy, Army or Air Force). As outlined in the *Defence Procurement Policy Manual* (Section 2, Chapter 2.1), the services are not separate legal entities for the purposes of entering into a contract. As the Commonwealth has legal capacity to enter into contracts, the TAA should be entered into by “the Commonwealth of Australia represented by the Department of Defence (‘the Commonwealth’)”.

Agreements that refer only to the “Department of Defence” do not require amendment, but agreements that have been signed by and for a single service (Navy, Army or Air Force) should be amended to “the Commonwealth” formulation outlined in the previous paragraph. This will avoid possible retransfer issues with the movement of US defence technology between Defence groups (eg, from Navy to DSTO).

Consultants working in project offices

Consultants working in Defence project offices are not considered to be “agents of the Commonwealth” if they are employed by a consulting firm working for the Defence project. In such circumstances, the consulting firm should be either a signatory to the agreement or a sublicensee. If the consultant has been hired from a consulting “body shop”, then it is usually appropriate to seek to have the individual “body shop” employees listed in the TAA.

If the consultant is employed directly by the project office (eg, a retired officer who returns to the DMO on a part or full-time basis), then he or she would be considered to be an “agent of the Commonwealth” and would not need to be listed separately in the TAA.

Do not include ITAR definitions or contractual clauses

TAAAs should not seek to redefine terms such as Technical Data and Defence Services. Such terms are already defined in the ITAR.

Post-processing issues

Reconsideration of Provisos

Under the *Technology Transfer Process Improvement Initiatives* (referred to above), the State and Defense Departments agreed that US-eyes only provisos will no longer be attached to Australian export licences and agreements.

If an Australian company considers that a proviso to an agreement is too restrictive, then it should ask the US exporter to seek "Proviso Reconsideration". This process can also be used to clarify a proviso if the company is unclear about the restriction imposed by a particular proviso. In doing so, the reasons for seeking reconsideration (eg, the proviso it is "too restrictive", "in error," or "not applicable") must be clearly stated, and justification must be provided to support the request.

Companies should advise the Director US Export Controls if US companies decline to provide them with a copy of the State Department's licence or agreement approval letter.

Amending Agreements

A US company may make "Minor Amendments" to a TAA without the need for State Department approval. Minor amendments are limited to those which alter schedules, or which correct typing errors, addresses, etc, but do not affect the duration or scope of the agreement.

Changes to an agreement that must have prior State Department approval include:

- Expanding the scope of the TAA (eg, additional technical data, Statement of Work amendments, or an increase in hardware proposed for export).
- Extending the term of the agreement.
- Adding parties to the agreement.
- Changing names of the US or foreign signatory.
- Increasing the value of the agreement.

Retransferring US defence technology

Fundamental obligations

As previously noted, the fundamental obligations for protecting US technology are that:

- It must not be used for any purpose other than authorised in the original contract and agreement, unless State Department approval has been obtained.
- It must not be transferred by any means (including by email, fax or in discussion) from the nominated end-user to another company or individual in Australia or overseas without State Department approval.
- Australian products produced or manufactured from or using US defence technology must not be transferred by any means to another Australian company or individual, or be re-exported to an overseas company or individual, without State Department approval.

Against this background, Australian companies proposing to transfer US defence technology (including technical manuals) to Australian or overseas companies must seek US State Department approval before doing so.

MOUs and government-to-government arrangements

These fundamental obligations are not overridden by Memoranda of Understanding or similar government-to-government arrangements, which will invariably caveat key commitments by wording such as “subject to national laws, regulations and policies”.

This caveat should be read as stating that exchanges of equipment, material or information under the MOU will be governed by US export control laws, regulations and policies. This can potentially constrain what is permissible under the MOU, but more importantly it means that the existence of the MOU does not relax the obligations Australian projects accept when receiving US defence technology.

The obligations are also applicable to Foreign Military Sales cases, all of which include the following standard clause:

The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support material, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or agent of the Purchaser (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized, unless the consent of the US government has first been obtained”

Approaches to seeking US retransfer approval

Depending on the circumstances, US retransfer approval can be achieved in a number of ways including:

- Adding “Additional Foreign Consignees” to DSP-5 (hardware licences);
- Amending existing TAAs (including by sub-licensing);
- Lodging an ITAR 123.9 Request for Re-export/Retransfer Approval.

Initial advice should be sought from the Director US Export Controls on the approach that is likely to be suitable. Since the approaches outlined above will require the support of the original US exporter (and licensor), it is also appropriate and sensible to seek US exporter advice as soon as a possible retransfer requirement becomes known.

ITAR 123.9 Retransfers

The ITAR 123.9 approach is commonly used for seeking retransfer approval for FMS-origin equipment and data to private sector companies (eg, to provide through life support for equipment and data that has been acquired via FMS). It is subject to lengthy US interagency and legal review, and can take more than six months to complete. Not all requests are approved.

In developing a ITAR 123.9 retransfer request, a project office or company will be required to provide the following detailed information:

- Detailed information about articles or technical data to be transferred;
- How and when did we acquire the articles or data: FMS (case number), Direct Commercial Sale, Memorandum of Understanding, or other;
- Original acquisition value;
- The reason for the proposal to transfer, and whether it is temporary or permanent;
- The proposed recipient;
- The proposed planned end-use for the articles or data;
- Whether the proposed recipient currently possesses the articles or data;
- Any intermediaries in the proposed transfer; and

- Contact details for the Australian Defence Department project office or company, the proposed recipient and any intermediaries.

Companies can seek assistance in developing ITAR 123.9 retransfer applications from the Director Defence Export Control Office (DECO), who is responsible within Defence for the Australian end of retransfer processing. The contact details are:

Director Defence Export Control Office
Russell Offices R1-1-A038
Canberra ACT 2600
Ph: 1800 66 10 66
Email: deco@defence.gov.au
Web: <http://www.defence.gov.au/strategy/dtcc/>

Further information about US export controls

Further information or clarification of US export control issues discussed in this guidance can be obtained from:

Director US Export Control Systems
Mail Box 18
Keswick Barracks SA 5035
Tel: +61 8 8305 6370
Fax: +61 8 8305 6280
Mob: 0416 265 037
Email: steve.hyland@defence.gov.au

ITAR GLOSSARY

Terms used in Australian Licences and Agreements

Defence article: Any item or technical data listed in the US Munitions List. It includes technical data recorded or stored in any physical form, models, mock-ups or other items that reveal technical data directly relating to US Munitions List items. It does not include basic marketing information on function or purpose or general system descriptions.

Significant military equipment: Articles for which special export controls are warranted because of their capacity for substantial military utility or capability. It includes items in the US Munitions List preceded by an asterisk, and all classified US Munitions List items.

Major defence equipment: Any item of significant military equipment (see above) having a nonrecurring R&D cost of more than US\$50,000,000 or a total production cost of more than US\$200,000,000.

Defence service:

- (1) The furnishing of assistance (including training) to foreign persons, whether in the US or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defence articles;
- (2) The furnishing to foreign persons of any controlled technical data, whether in the United States or abroad; or
- (3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the US or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

Technical data:

- (1) Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defence articles, including information in the form of blueprints, drawings, photographs, plans, instructions and documentation.
- (2) Classified information relating to defence articles and defence services;
- (3) Information covered by an invention secrecy order;
- (4) Software directly related to defence articles;
- (5) It does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain (see below). It also does not include basic marketing information on function or purpose or general system descriptions of defence articles.

Public domain: Information which is published and which is generally accessible or available to the public:

- (1) Through sales at newsstands and bookstores;
- (2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- (3) At libraries open to the public or from which the public can obtain documents;
- (4) Through patents available at any patent office;
- (5) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the US;
- (6) Through fundamental research in science and engineering at accredited institutions of higher learning in the US where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific US Government access and dissemination controls.

University research will not be considered fundamental research if:

- (1) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- (2) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

Export:

- (1) Sending or taking a defence article out of the US in any manner, except by mere travel outside of the US by a person whose personal knowledge includes technical data; or
- (2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the US Munitions List, whether in the US or abroad; or
- (3) Disclosing (including oral or visual disclosure) or transferring in the US any defence article to an embassy, any agency or subdivision of a foreign government; or
- (4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the US or abroad; or
- (5) Performing a defence service on behalf of, or for the benefit of, a foreign person, whether in the US or abroad.

Re-export or retransfer: The transfer of defence articles or defence services to an end use, end user or destination not previously authorised.

TECHNICAL ASSISTANCE AGREEMENT (TAA) EXAMPLE

This agreement is entered into between [US company name], an entity incorporated in [US state] with offices at [address] and the Commonwealth of Australian represented by the Department of Defence, with offices at [project office address] (hereinafter “the Commonwealth”) and [Australian company name(s)] whose office(s) is/are at [address(es)] and is effective upon the date of signature of the last party to sign the agreement.

WHEREAS, [US company] [Describe the program for which the US company is seeking to provide technical assistance and the type of assistance proposed.]

WHEREAS, under [Project SEA/LAND/AIR], the Commonwealth is seeking to acquire [provide brief details of the Commonwealth’s intentions]

WHEREAS, [foreign or other US companies names] [describe their proposed role – separate paragraph for each foreign company]

NOW THEREFORE, the parties desire to enter into the Technical Assistance Agreement as follows:

1. This Technical Assistance Agreement is intended to [provide a concise summary of the proposed program. This can be drawn from the Statement of Work attached to the TAA and incorporated by reference within the agreement.] This agreement expires on [date – must have a date and not a duration period].
2. It is understood that this Technical Assistance Agreement is entered into as required under US Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.
3. The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the US Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

I. ITAR 124.7

(1) [Describe the defence articles to be exported in support of this agreement – described by military nomenclature, contract number, National Stock Number, or other specific information. If no hardware is being exported, then this must be stated. Only defence articles listed in the agreement or in an attachment and referenced will be eligible for export under the exemption in ITAR 123.16(b)(1) or by separate licence (ie, DSP-5, DSP-73, etc.).]

(2) [Describe the assistance and technical data involved.]

(3) [Specify the end date – not to exceed ten years from end of the current year.]

(4) [Specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed or sublicensed. **Ensure that this includes “or wherever the Defence Articles listed in the attachment (or in sub-paragraph (1) above) might be operationally deployed”**. If sublicensing is intended, then the sublicensing information must be provided.]

II. ITAR 124.8

The following statements must be included verbatim as written in the ITAR.

(1) This agreement shall not enter into force, and shall not be amended or extended without the prior written approval of the Department of State of the US Government.

(2) This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the US Government pursuant to such laws and regulations.

(3) The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the US Government.

(4) No liability will be incurred by or attributed to the US Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the US Government's approval of this agreement.

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

(6) All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year above provided.

(signature block for U.S. person)

(signature block for foreign person)

DSP-83 NONTRANSFER AND USE CERTIFICATE



U.S. Department of State
UNITED STATES OF AMERICA
NONTRANSFER AND USE CERTIFICATE

1. This certificate is submitted in connection with export application no. _____

OMB No. 1405-0021
 EXPIRATION DATE: 09-30-2008
 *ESTIMATED BURDEN: 1 Hour
 (Instruction Page)

2. Name of United States applicant	3. Name of foreign end-user	4. Country of ultimate destination
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5. Articles/data
 We certify that we have placed an order with the person named in item 2 for the following articles/data in the quantity and value shown below:

QUANTITY	ARTICLES/DATA DESCRIPTION	VALUE (U.S. \$)

6. Certification of foreign consignee
 We certify that we are importing the articles/data listed in item 5 for delivery to the end-user in item 3. Except as specifically authorized by prior written approval of the U.S. Department of State, we will not re-export, resell, or otherwise dispose of any of those articles/data (1) outside the country in item 4 above, or (2) to any person, including the end-user, if there is reason to believe that it will result, directly or indirectly, in disposition of the articles/data contrary to the representations made in this certificate by any party. We further certify that all of the facts contained in this certificate are true and correct to the best of our knowledge and belief and we do not know of any additional facts that are inconsistent with this certificate. We will promptly send a supplemental certificate to the U.S. applicant in item 2 disclosing any change of facts or intentions set forth in this statement.

Sign here in ink _____
 Signature of Official, Foreign Consignee

_____ Date Signed (mm-dd-yyyy)

Type or print _____ Seal

_____ Name and Title of Signer

7. Certification of foreign end-user
 We certify that we are the end-user of the articles/data in item 5. Except as specifically authorized by prior written approval of the U.S. Department of State, we will not re-export, resell, or otherwise dispose of any of those articles/data (1) outside the country in item 4 above, or (2) to any other person. If the end-user is a foreign government, we certify that we will observe the assurances contained in item 8. We further certify that all of the facts contained in this certificate are true and correct to the best of our knowledge and belief and we do not know of any additional facts that are inconsistent with this certificate.

Sign here in ink _____
 Signature of Official, End-User

_____ Date Signed (mm-dd-yyyy)

Type or print _____ Seal

_____ Name and Title of Signer

8. Certification of foreign government
 We certify that we will not authorize the re-export, resale or other disposition of the articles/data authorized in item 5 outside the country in item 4 without prior written approval of the U.S. Government. If the articles/data are for use by our "armed forces" (i.e., army, navy, marine, air force, coast guard, national guard, national police, and any military unit or military personnel organized under or assigned to an international organization), we certify that we will use the authorized articles/data only: (a) for the purposes specified in the Mutual Defense Assistance Agreement, if any, between the U.S. Government and this government; (b) for the purposes specified in any bilateral or regional defense treaty to which the U.S. Government and this government are both parties, if subparagraph (a) is inapplicable; or (c) for internal security, individual self-defense, and/or civic action, if subparagraphs (a) and (b) are inapplicable.

Sign here in ink _____
 Signature of Government Official

_____ Date Signed (mm-dd-yyyy)

Type or print _____ Seal

_____ Name and Title of Signer

9. We certify that no corrections, additions or alterations were made on this form by us after it was signed by the foreign consignee, foreign end-user or foreign government.

Sign here in ink _____
 Signature of Applicant

_____ Date Signed (mm-dd-yyyy)

Type or print _____ Seal

_____ Name and Title of Signer

Annex D

INDICATIVE LIST OF ITEMS THAT MIGHT BE ELIGIBLE FOR US EXPORT CONTROL UNDER EXPEDITED LICENCE REVIEW I

The following list of items against US Munitions List categories that could be subject to the Canadian ITAR exemption and thus eligible for ELR I processing. This list is subject to change by the U.S. Government.

Category II and III: Artillery and Projectiles

- Guns over .50 calibre, howitzers, mortars and recoilless rifles.
- Military flame-throwers and projectors.
- As well as:
 - Components, parts, accessories and attachments.
 - Ammunition, including components, parts, accessories and attachments (except for firearms).
 - Ammunition belting and linking machines (except for firearms).
 - Ammunition manufacturing machines and ammunition loading machines (except hand-loading).

Category IV: Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines (except those on the MTCR Annex)

- Launchers for these items (except MTCR Annex).
- Apparatus, devices, materials for the handling, control, activation, monitoring, detection, protection, discharge or detonation of these items (except MTCR Annex).
- Military explosive excavating devices.
- Components, parts, accessories, attachments and associated equipment (except MTCR Annex).

Category V: Explosives, Propellants, Incendiary Agents and Their Constituents

- Military explosives.
- Military fuel thickeners.
- Propellants for articles in Categories II and IV (except MTCR Annex).
- Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.
- All compounds specifically formulated for articles in this category.

Category VI: Vessels of War and Special Naval Equipment

- Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels and any vessels specifically designed or modified for military purposes.
- Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults, mine sweeping equipment (including mine countermeasures equipment deployed by aircraft) and other significant naval systems specifically designed or modified for combatant vehicles.

- Harbour entrance detection devices (magnetic, pressure and acoustic) and controls.
- All specifically designed or modified components, parts, accessories, attachments, and associated equipment.

Category VII: Tanks and Military Vehicles

- Military type armed or armoured vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialised military equipment or fitted with such items.
- Tanks, combat engineer vehicles, bridge launching vehicles, half-tracks & gun carriers.
- Self-propelled guns and howitzers.
- Military trucks, trailers, hoists, and skids specially designed, modified, or equipped to mount or carry firearms, artillery or missiles, or for carrying and handling of ammunition.
- Military recovery vehicles.
- Amphibious vehicles.
- Engines specifically designed or modified for the above (except for those in the bullet beginning "military trucks").
- All specifically designed or modified components and parts, accessories, attachments and associated equipment.

Category VIII: Aircraft and Associated Equipment

- Military aircraft engines, except reciprocating engines, specifically designed or modified for military aircraft.
- Cartridge-actuated devices utilised in emergency escape of personnel and airborne equipment (including airborne refuelling equipment) specifically designed or modified for use with military aircraft or engines.
- Launching and recovery equipment for military aircraft.
- Inertial navigation systems, aided or hybrid navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) except for those on the MTCR Annex.
- Ground effect machines (GEMs), including but not limited to surface effect machines and other air cushion vehicles, and all components, parts and accessories, attachments and associated equipment specifically designed or modified for use with such machines.
- Components, parts accessories, attachments and associated equipment (including ground support equipment) specifically designed or modified for the above or complete military aircraft.

(NB: The Canadian ITAR exemption does not cover complete military aircraft, helicopters, non-expansive balloons, drones and lighter-than-air aircraft that are specifically designed, modified or equipped for military purposes.)

Category IX: Military Training Equipment

- Military training equipment including attack trainers, radar target trainers, radar target generators, gunnery training devices, anti-submarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defence articles.
- Components, parts, accessories, attachments and associated equipment.

Category X: Protective Personnel Equipment

- Body armour specifically designed, modified or equipped for military use.
- Articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors.
- Military helmets equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.
- Partial pressure suits and liquid oxygen converters used in military aircraft.
- Protective apparel and equipment specifically designed or modified for use with toxicological agents or equipment or radiation equipment.
- Components, parts, accessories, attachments and associated equipment.

Category XI: Military Electronics

Electronic equipment specifically designed, modified or configured for military application, including:

- Underwater sound equipment to include active and passive detection, identification, tracking and weapons control equipment.
- Underwater acoustic active and passive countermeasures and counter-countermeasures.
- Radar systems with capabilities such as: search, acquisition, tracking, moving target identification, imaging radar systems, ground air traffic control radar (except for MTCR Annex).
- Electronic combat equipment such as: active and passive countermeasures, active and passive counter-countermeasures, and radios (including transceivers) specifically designed or modified to interfere with other communication devices or transmissions.
- Command, control and communications systems to include radios (transceivers), navigation, and identification equipment (except for MTCR Annex).
- Computers specifically designed or developed for military application and any computer specifically modified for use with any defence article on the U.S. Munitions List. (MTCR Annex items are not included in the exemption.)
- Any experimental or developmental electronic equipment specifically designed or modified for military applications or specifically designed or modified for use with a military system (except MTCR Annex).
- Electronic systems or equipment specifically designed, modified, or configured for intelligence, security, or military purposes for use in search, reconnaissance, collection,

monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum and electronic systems designed or modified to counteract electronic surveillance or monitoring (except MTCR Annex).

- Components, parts, accessories, attachments and associated equipment.

Category XII: Fire Control, Range Finder, Optical & Guidance & Control Equipment

- Fire control systems: gun and missile tracking and guidance systems; gun range, position, height finders, spotting instruments and laying equipment; aiming devices (electronic, optic and acoustic); bomb sights, bombing computers, military television sighting and viewing units, and periscopes for articles in this section.
- Lasers specifically designed, modified or configured for military application, including those used in military communication devices, target designators and range finders, target detection systems, and directed energy weapons.
- First and second generation image intensification tube and first and second generation image intensification night sighting equipment.
- Inertial platforms and sensors for weapons or weapon systems; guidance, control and stabilisation systems; astro-compasses and star trackers and military accelerometers and gyros.
- Components, parts, accessories, attachments and associated equipment.

Category XIII: Auxiliary Military Equipment

- Cameras and specialised processing equipment therefore, photo-interpretation, stereoscopic plotting, and photogrammetry equipment.
- Military Information Security Systems and equipment, cryptographic devices, software, and components.
- Self-contained diving and underwater breathing apparatus controlled on the USML.
- Carbon/carbon billets and preforms.
- Concealment and deception equipment, including but not limited to special paints, decoys and simulators and components, parts and accessories.
- Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction that are specifically designed or modified for military application.
- Chemiluminescent compounds and solid state devices.
- Devices embodying particle beam and electromagnetic pulse technology and associated components and sub-assemblies.
- Metal embrittling agents.
- Hardware and equipment associated with the measurement or modification of system signatures for detection of defence articles

Category XV: Space Systems and Associated Equipment

- Commercial communications satellites.
- Ground control stations for telemetry, tracking and control of spacecraft or satellites.
- Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use, but for Australian Government end-users only.