

Defense Technology Security Administration



Export Control Reform:
Where are we? Where are we going?
How do we get there?
April 26, 2011



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Defense Technology Security Administration

A grayscale world map showing the continents and country borders, serving as a background for the text.

To promote United States national security interests by protecting critical technology while building partnership capacity



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Department of Defense Role in Export Controls

- ❑ **Defense perspective to the process**
 - National security review of export license applications
 - Developing multi-lateral control lists

- ❑ **Unique knowledge of systems and capabilities**
 - Operators and designers of systems

- ❑ **National security dimension to strategic trade**
 - Trade, foreign affairs, defense all part of the equation

- ❑ **Strategic element to defense cost and awareness**
 - Expensive countermeasures
 - Knowledge of extant technologies



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*Sr Adv for Arms Ctrl
& Strat Stability*
Ted Warner

Rule of Law &
International
Humanitarian Policy
C&SC: Rosa Brooks

Under Secretary of Defense (Policy)

Michèle Flournoy

Principal Deputy USD (Policy)

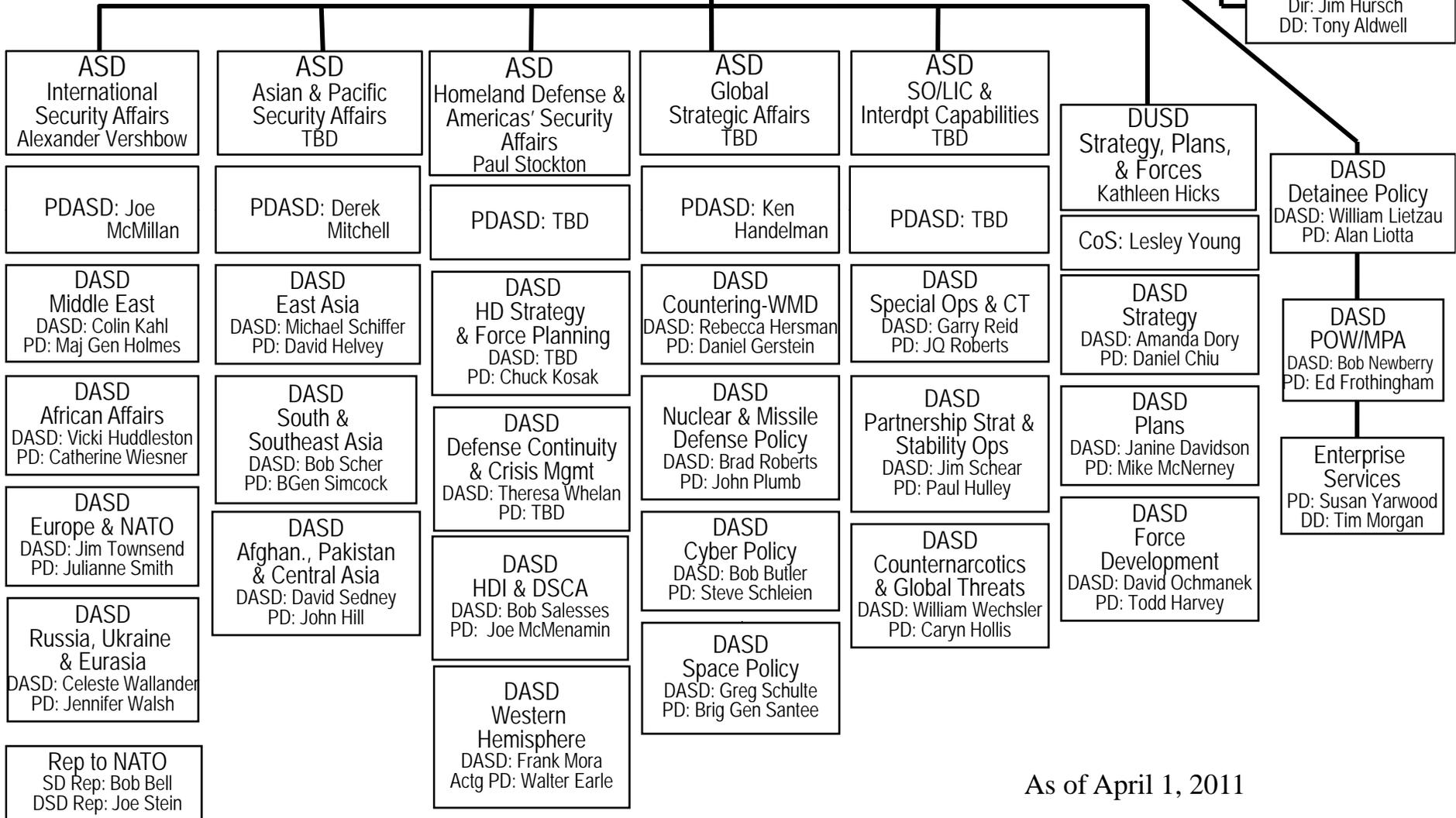
James Miller

USD(P) CoS
Peter Verga

DSCA
Dir: VADM Landay
DD: Richard Genaille
Ops : Karen Garvey
Prog: Jeanne Farmer
Bus. Ops: Ann Cataldo
Str: Scott Schless

DPMO
Dir: Bob Newberry
PD: Ed Frothingham

DTSA
Dir: Jim Hursch
DD: Tony Aldwell

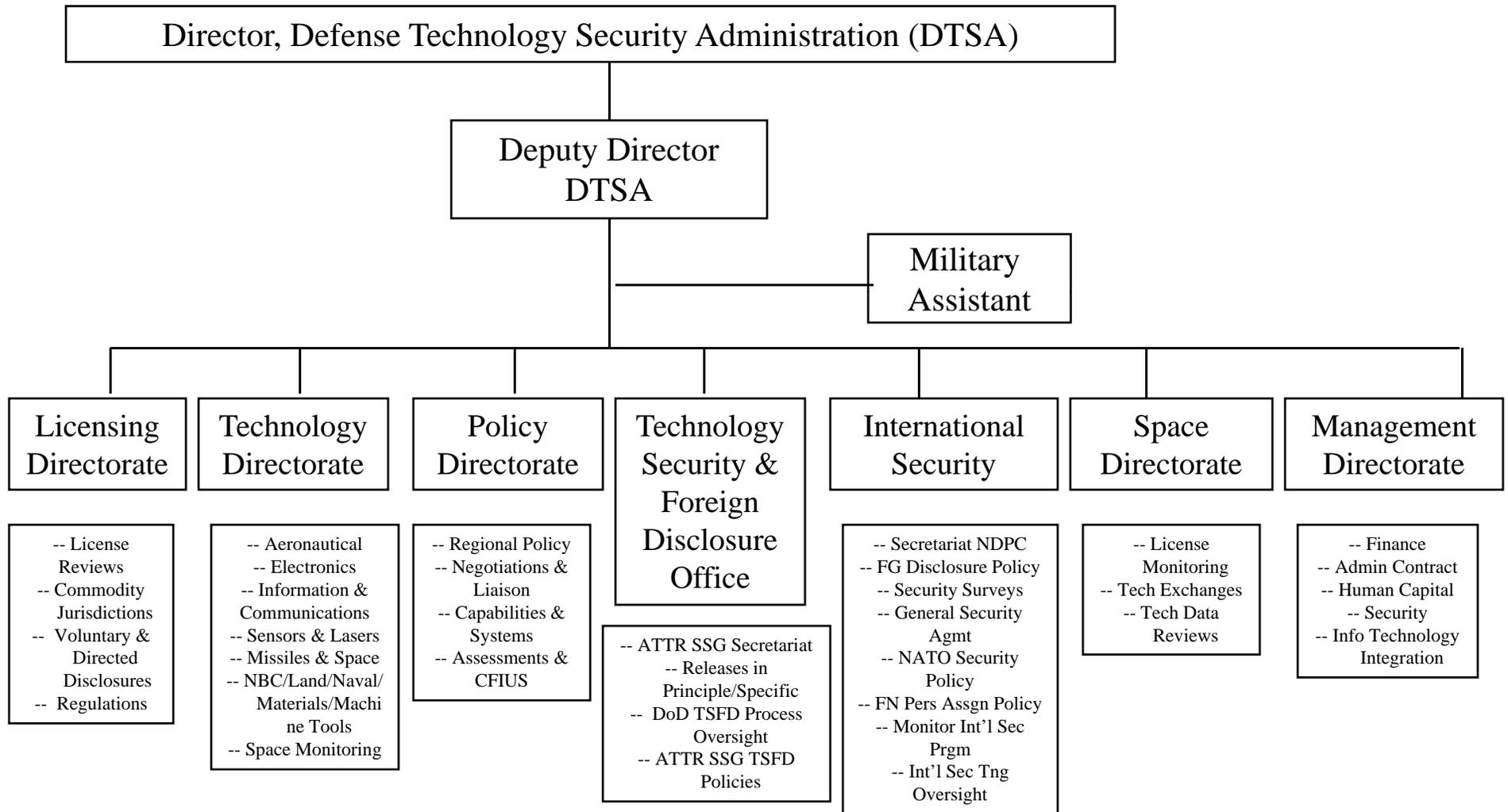


As of April 1, 2011



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Primary Responsibilities

Review Munitions & Dual-Use Licenses

- National security review of export license applications for controlled hardware and technology
- 50 senior engineers with unique knowledge of systems & capabilities

Committee on Foreign Investments in the U.S. (CFIUS)

- Serve as the DoD Representative as part of the committee that reviews foreign acquisitions of U.S. companies

Wassenaar Arrangement – DoD Representative

- Responsible for technical evaluations and regime list changes



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Primary Responsibilities - continued

National Disclosure Policy Committee (NDPC) - Chair

- Establish/promulgate national policy for disclosure of classified military information (CMI) to foreign governments and international organizations
- Assess foreign government security programs to determine capability to protect U.S. CMI
- Negotiate General Security of Military Information Agreements and Industrial Security Agreements (GSOMIA)

Space Monitoring

- Responsible for physical monitoring of launches in foreign countries of U.S.-origin satellites and related items



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Current Export Control System and Shortcomings

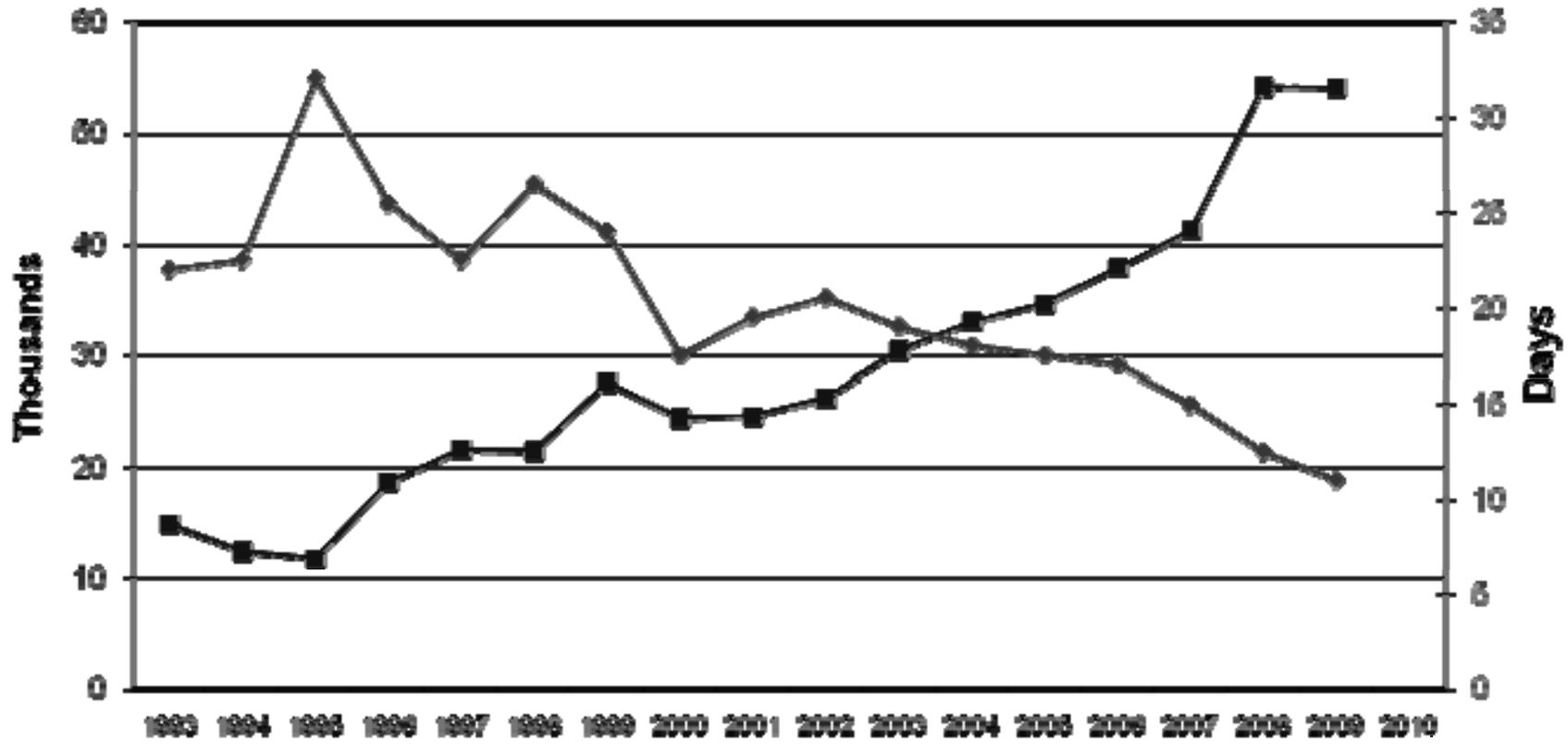
- ❑ **U.S. has a robust export control system, but it is rooted in the Cold War**
 - System must be updated to address current threats
- ❑ **Current system may not allow for timely or flexible cooperation with allies or partners**
- ❑ **Prolonged U.S. Interagency Deliberations**
 - Commodity jurisdiction clashes: whether State or Commerce issues the license.
- ❑ **Past reform efforts have “nibbled around the edges” for too long**
 - Short term reform efforts at the detriment of fundamental reform.
- ❑ **We may have squeezed all efficiencies out of current system**



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DoD Review Statistics 1993-Present Caseload – Average Age

“We may have squeezed all efficiencies out of current system.”





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Export Control Reform

❑ Secretary Gates' speech in April 2010: Facing New Realities

- Threats have evolved—
 - global terrorism
 - proliferation of weapons of mass destruction, their delivery systems, and
 - advanced conventional weapons.
- Technology has evolved—
 - U.S. no longer is the only country on the cutting edge of technology.
 - New technologies are no longer always developed for military use and then converted to civilian; often it is the other way around.



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Export Control Reform

Secretary Gates noted:

- “We need a system that dispenses with the 95 percent of “easy” cases and lets us concentrate our resources on the remaining 5 percent.
- “By doing so, we will be better able to monitor and enforce controls on technology transfers with real security implications while helping to speed the provision of equipment to allies and partners who fight alongside us in coalition operations.”

If addressed properly, national security and efficiency are not mutually exclusive.

Reform is driven by national security.



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Basic Principles for a New System

- Protect the “crown jewels” of U.S. technology**
 - Maintain important technological advantage

- Expedited technology sharing and cooperation with Allies and partners**

- Certain countries and entities should not receive U.S. exports**
 - Deny all resources possible to terrorists, adversary states, and proliferators
 - Retain the legal authority to impose unilateral sanctions

- Fulfill international export control and nonproliferation obligations**
 - Wassenaar Arrangement, the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime



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Structure of the New Export Control System

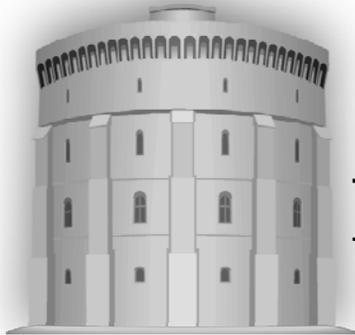
- ❑ **On August 31, 2010, the President announced that the Administration is moving forward on a fundamentally new U.S. export control system.**

- ❑ **The system will be based on the four singles that Secretary Gates mentioned in his April speech:**
 - Single export control licensing authority
 - Single control list
 - Single primary enforcement coordination agency
 - Single IT system to process all licenses



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“Higher Walls Around Fewer Items”



The “Crown Jewels”

The most critical technologies

Sensitive Military and Dual-Use items produced in the U.S. and some other like-minded countries; Sensitive Dual-Use items with limited foreign availability, ubiquitous military items

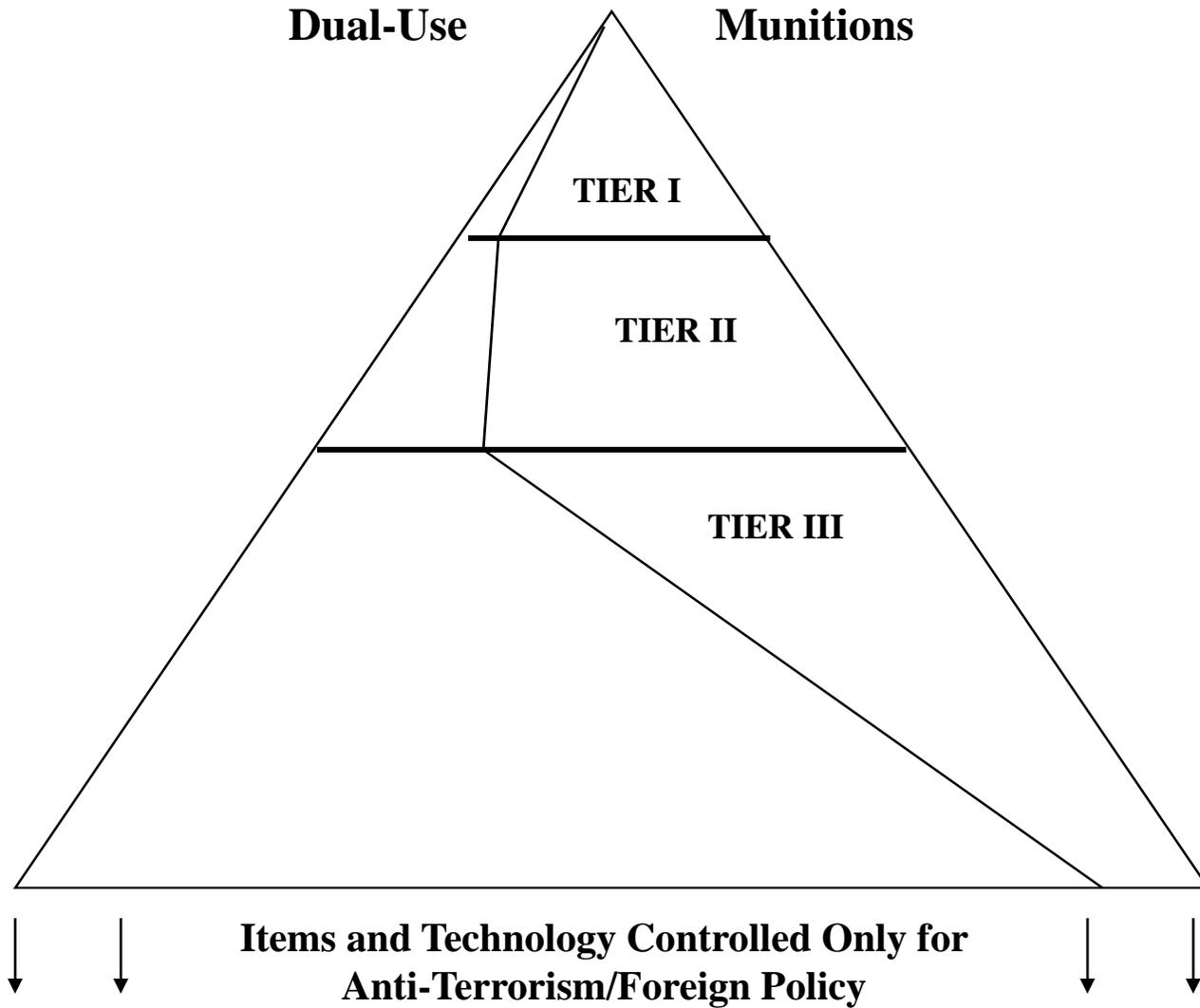
Less sensitive Dual-Use items; Everything else (not to entities or countries of concern)

Over time as technology becomes more widespread



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Tiering Approach to Export Controls





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Export Control Reform Milestones

- ❑ **August 13, 2009, the President directed a broad-based interagency review of the U.S. export control system**
- ❑ **December 21, 2009, PSD-8 issued, directing study of U.S. export controls**
- ❑ **January 2010, Task Force issued findings and proposes specific areas of change**
- ❑ **April 20, 2010, Secretary of Defense announced key elements of the reform to BENS (Four Singles – agency, list, IT system, enforcement)**
- ❑ **June/July 2010, Interagency approval of new criteria and methodology for bright line/positive list exercise**
- ❑ **August 31, 2010, POTUS announced moving forward on Four Singles**
- ❑ **November 9, 2010, EO issued establishing Export Enforcement Coordination Center**
- ❑ **December 9, 2010, Federal Register Notices published regarding USML and CCL rewrites; and proposed licensing policies for license-free exports to Allies/regime members and less sensitive items for civil end-uses for broader group of countries.**



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Completed Phase I Work

- ❑ **New foreign national regulation regarding employment of dual and third country nationals.**
 - State prepared revised rules based on public comments (from Aug. 11, 2010 federal register notice). The final regulation should be issued shortly.
 - Currently, a USG license is required in order to allow access by dual and third country nationals to ITAR-controlled technology. Under the new rule, a foreign company, government, or international organization, with effective compliance programs, will “self-license.” No individual USG licenses will be required.
 - The new rule should eliminate many licensing requirements for European partners.

- ❑ **New encryption regulation (published June 2010) will significantly reduce the licensing requirement for exports of certain mass market encryption software.**



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Ongoing Phase II and III Work on Four Singles

□ Single List

- “Bright Line” Exercise:
 - Objective is to rewrite the U.S. Munitions List into a “positive” list, using objective rather than subjective criteria such as design intent or a catch-all, and to structurally “align” USML and CCL controls so they can be combined into a single list of controlled items by the end of the reform effort.
 - Public comments are being sought on the USML rewrite. Notice of Inquiries were published on December 9, 2010, seeking public comments on the draft of Category VII (Military Vehicles) as well as the entire USML.
 - DoD has taken the lead in this exercise. MilDeps and other DoD components are actively participating in working groups.
 - Objective is to have drafts of all categories by June 2011.
- The Dual-Use List (CCL) will also be reviewed.



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Ongoing Work

- ❑ **Licensing Policies.** Agencies are developing the licensing policies that would apply to items in each of the control “tiers.”
 - On December 9, 2010, Commerce released a proposed regulation establishing a new license exception (Strategic Trade Authorization) for almost all dual-use controlled items for NATO/EU and regime members.
 - The same licensing exception would also allow less sensitive dual-use items to be exported license free a second group of cooperating countries for civil and military end-use.
 - DoD is reviewing this regulation to determine which very sensitive technologies should continue to require a license, as well as which countries may pose national security/proliferation concerns.
 - The public comment period ended February 7, 2011.

- ❑ **Licensing policies for munitions exports are being discussed separately.**



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Way Ahead

❑ **Single Licensing Agency**

- Creation of the Single Licensing Agency (SLA) will likely require legislation
- The Task Force has draft legislation which they expect to discuss with new congressional leaders in January 2011

❑ **Single IT System**

- Memorandum of Agreement (MOA) signed with State in February 2010 – initial operational capability expected by June 2011
- MOA signed with Commerce in October 2010 – initial operational capability projected for June 2012

❑ **Enforcement Coordination Center –**

- Work on-going to implement EO



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Other On-Going Initiatives

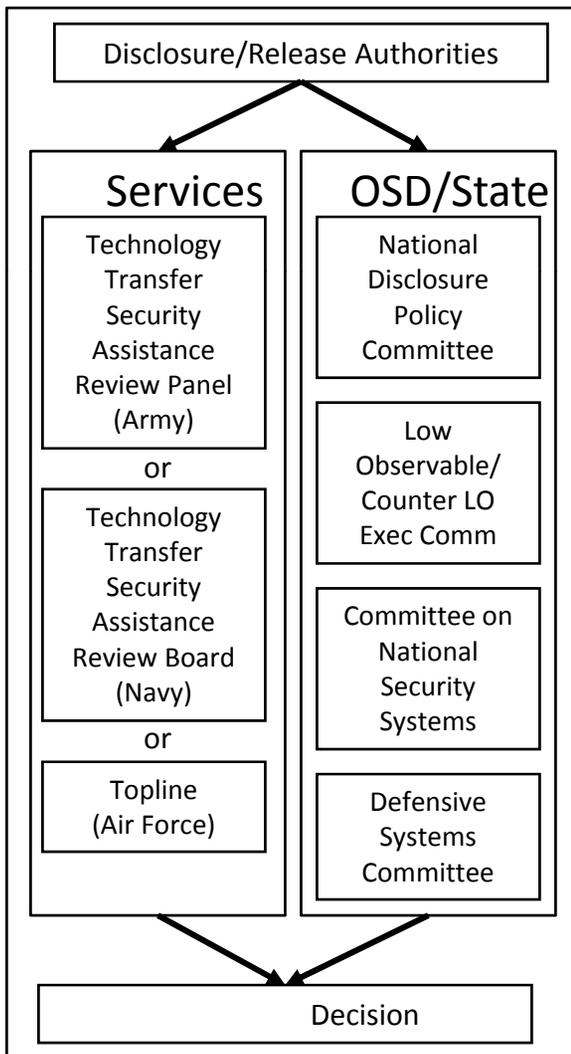
- ❑ Single license application form is pending
- ❑ Consolidated “Entities/Sanctioned End-Users” database completed
- ❑ Harmonization of definitions, e.g., “specially designed”
- ❑ DoD also undertaking technology release/foreign disclosure process review to find efficiencies and best practices.



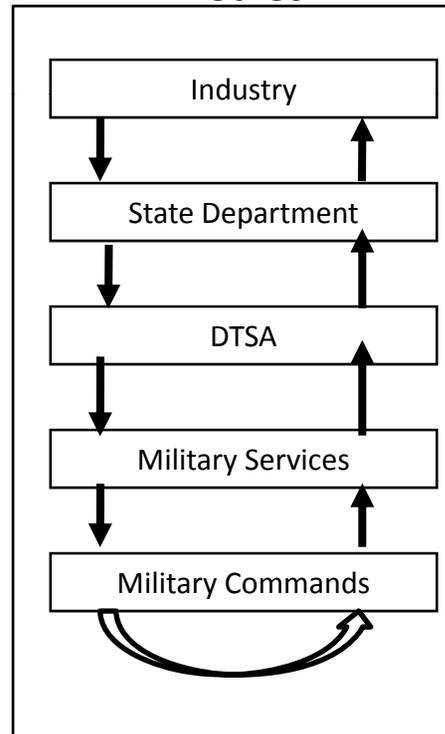
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USG Arms Transfer and Technology Release Overview

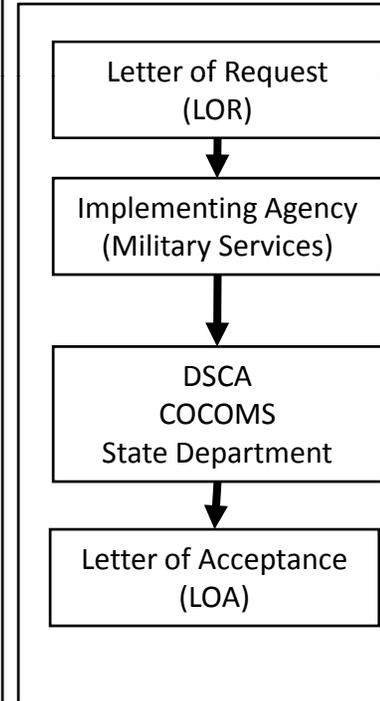
Disclosure/Release Process



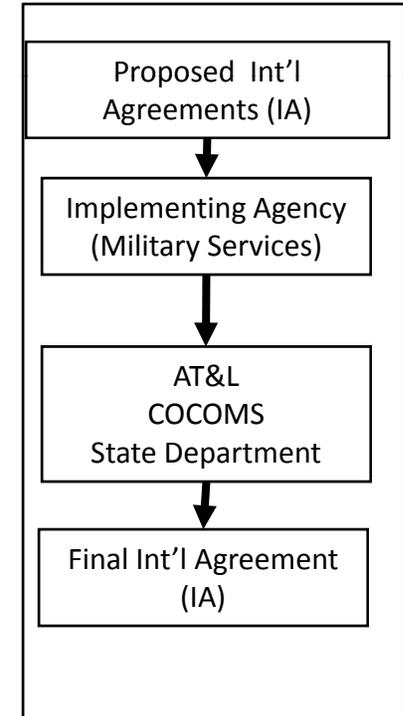
Export Licensing: Direct Commercial Sales



Foreign Military Sales



Int'l Arms Cooperation



* Note – Congressional reporting occurs for some DCS, FMS, and IAC transactions