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Glasgow Business and US Export Controls

**Overcoming Barriers to International Business Development
and Understanding US Export/Import Legislation**

University of Glasgow

Ms. Brooke Butler

April 30, 2008



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Welcome

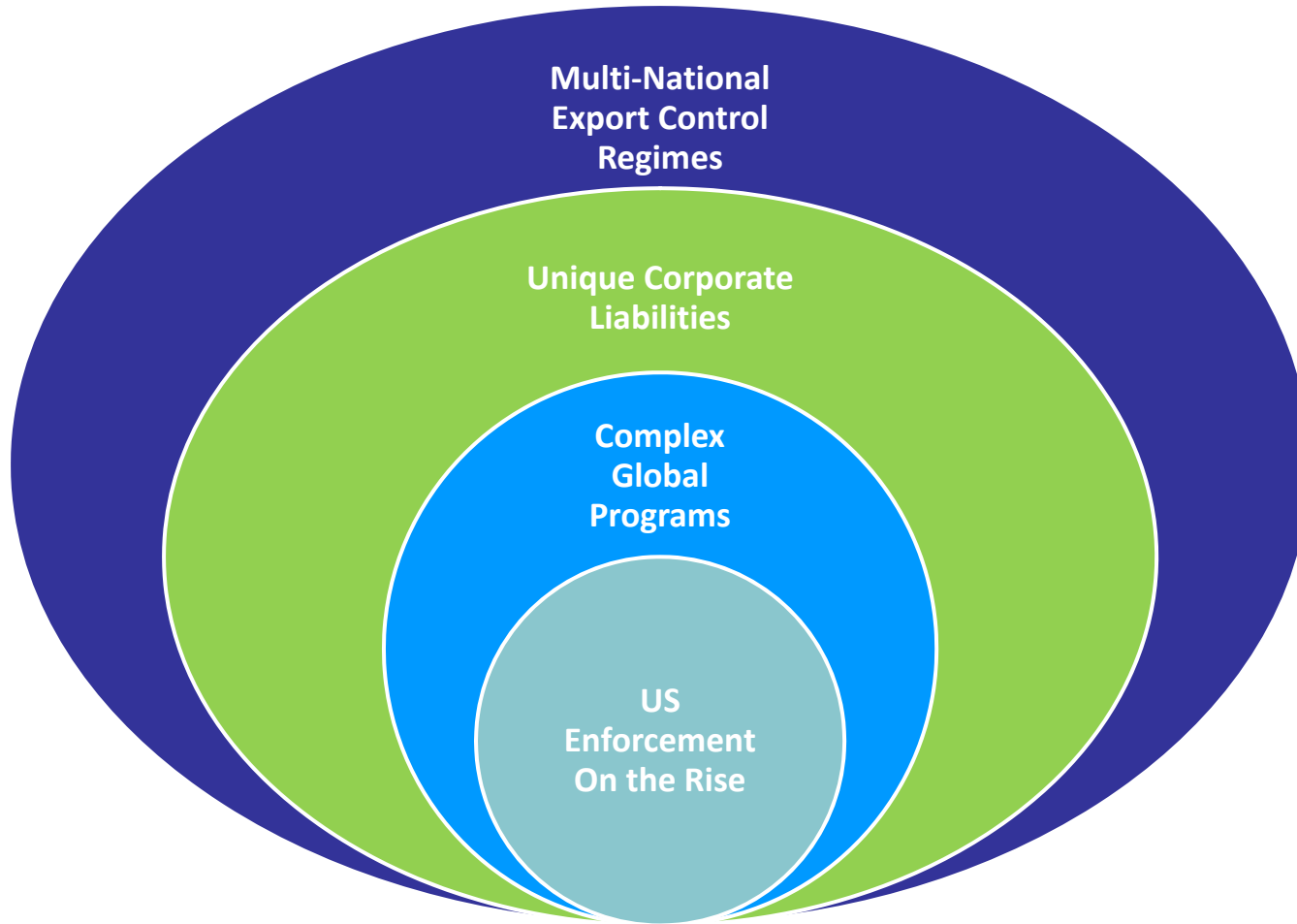
- US Export Controls Overview
- Aerospace and Defence Specific Issues
- Relevant Case Studies
- Internal Control Systems
- Issue Capture



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US EXPORT CONTROLS OVERVIEW



Compliance is Competitive Advantage

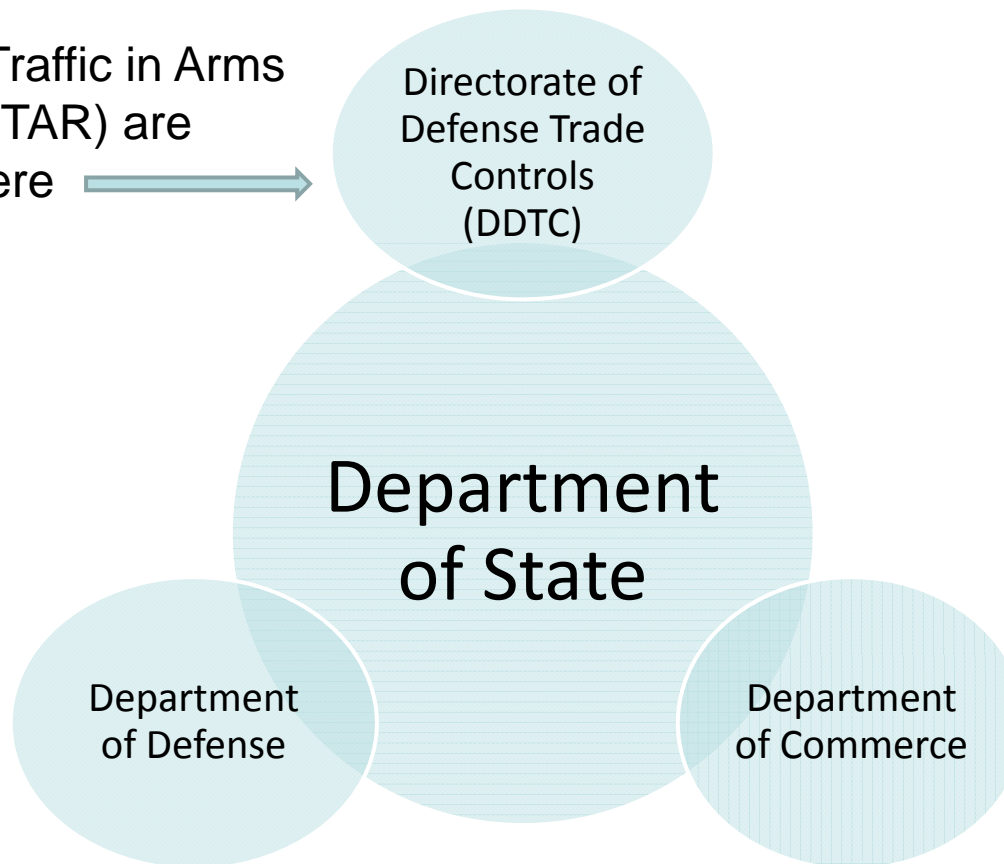
US Has Multi-Agency Control



NUMEROUS AND COMPLEX REGULATIONS

US Munitions Licensing Process

International Traffic in Arms Regulations (ITAR) are Interpreted Here →



What the ITAR Control

International Traffic in Arms Regulations

United States Munitions Lists (USML)

Defense Articles

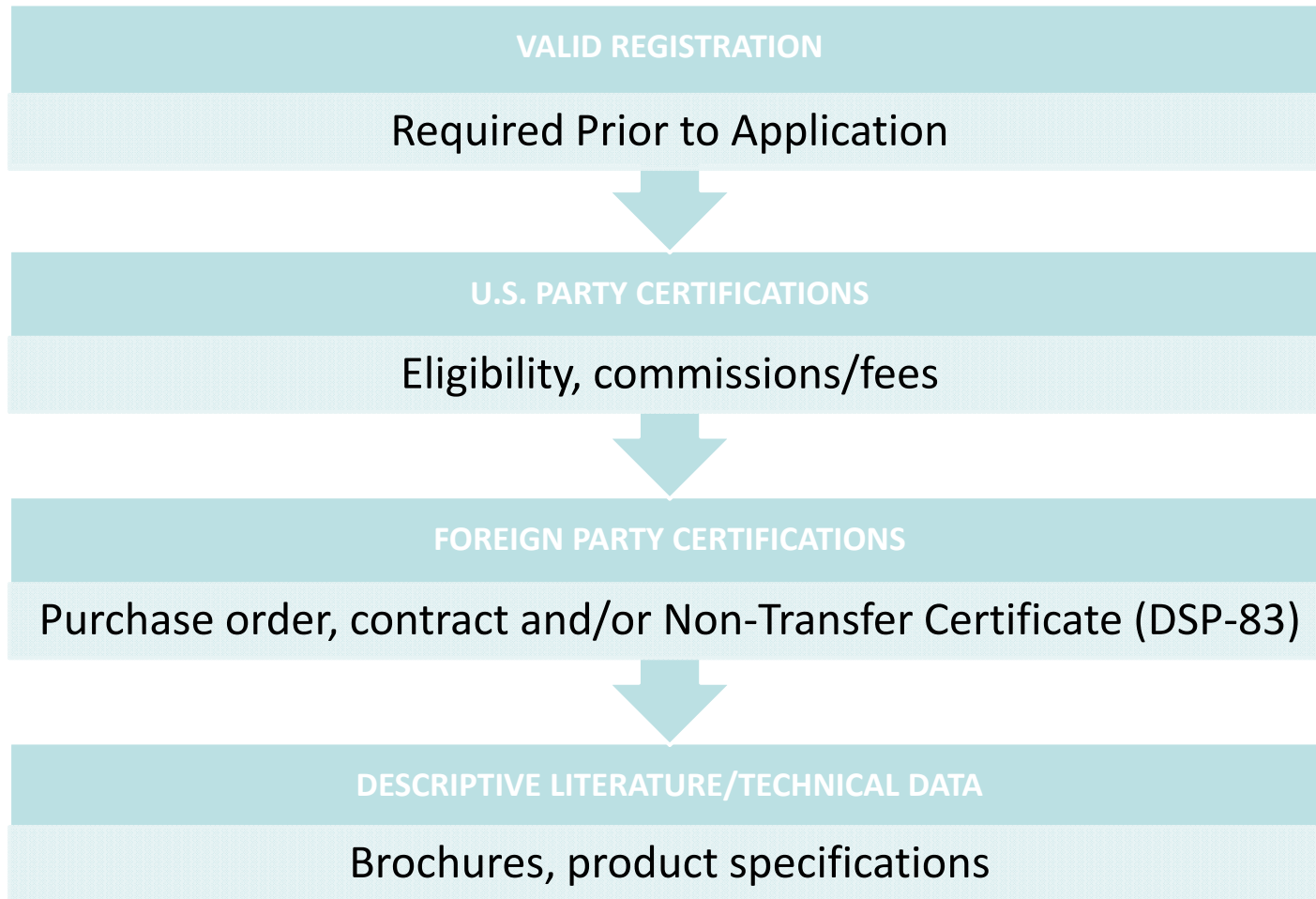
- Technology or data
- Hardware

Defense Services

- Technical assistance
- Manufacturing know how

- The Very First Step in ITAR Compliance:
 - Manufacturers
 - Sellers
 - Brokers
 - Exporters/importers
- Just *ONE* export of a Defense Article or Defense Service trips the registration requirement

US Companies Will Need





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Licensing Instruments

DSP-5/6

Permanent Export of Unclassified Hardware & Technical Data

DSP-61/62

Temporary Import of Unclassified Hardware

DSP-73/74

Temporary Export of Unclassified Hardware

DSP-83

Non-transfer and Use Certificate (supports license request)

DSP-85

Permanent/Temporary Export of Classified Hardware & Technical Data and Temporary Import of Classified Hardware & Technical Data

DSP-94

Export of Hardware sold under the FMS Program

DSP-6000

Series of General Correspondence Forms

TAA

Technical Assistance Agreement

MLA

Manufacturing License Agreement

WDA Warehouse & Distribution Agreement

Approval Considerations

Are there
country
concerns?

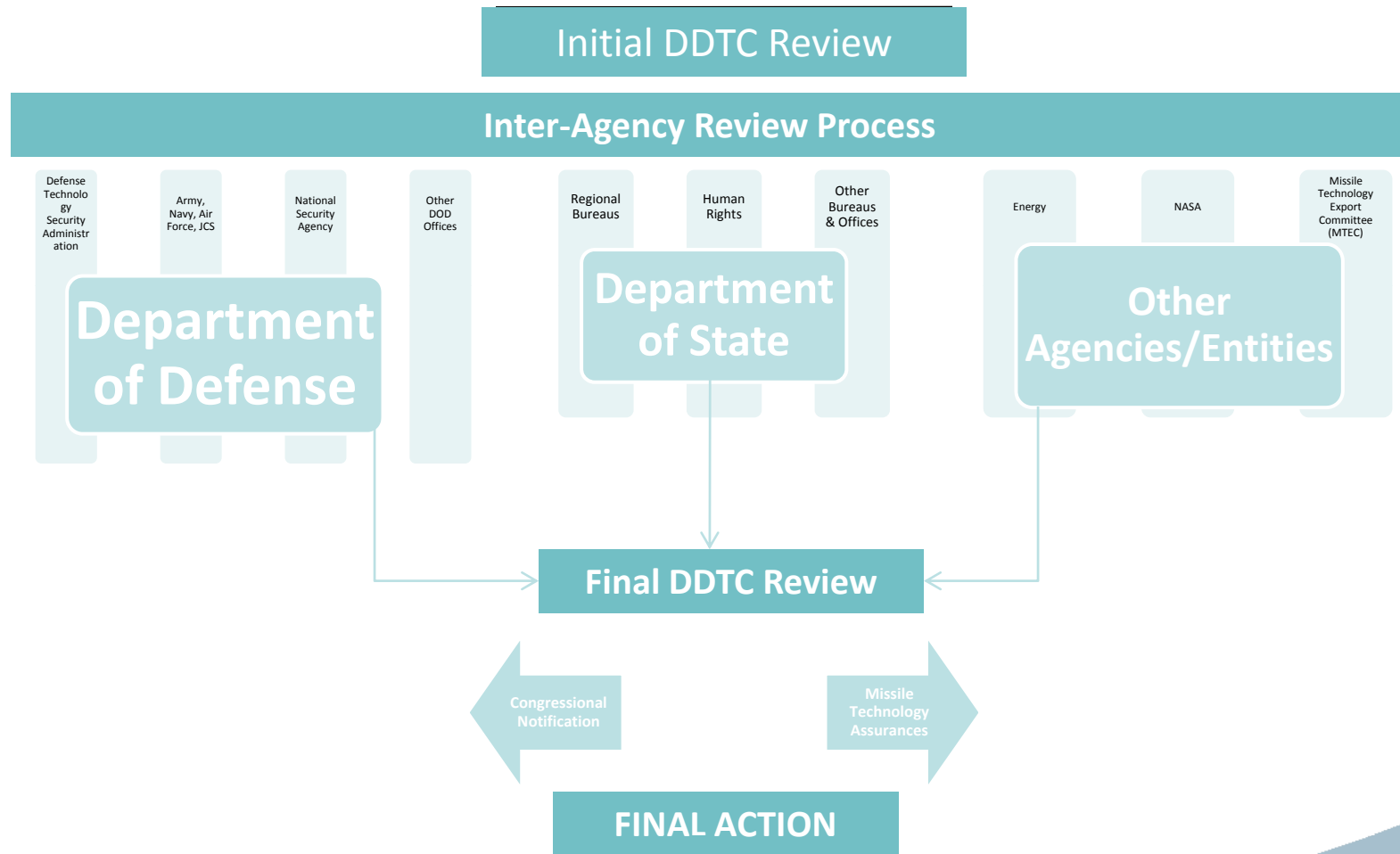
Is the
Transaction
Consistent
with US
defense
trade
policy?

How
sensitive is
the
commodity
or
technology?

Are ALL
parties
eligible?

Are the end
use and end
user a
match?

License Review Cycle



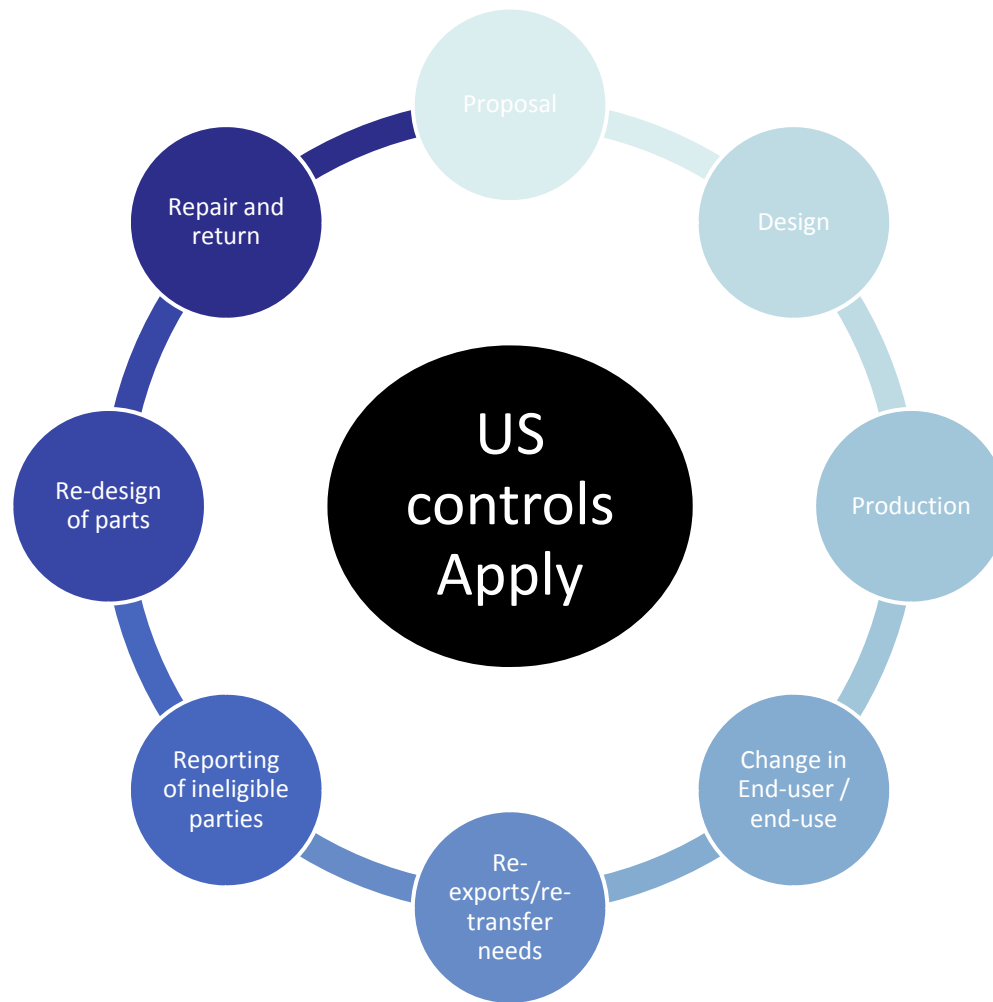


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D-Trade Brings DDTC On Line

- Additional Forms DSP 6, 62, 74
 - Delivered Summer 2006
- Retiring Legacy Applications (Ellie/ROBB)
 - Began Fall 2006
- New Application for Agreements (TAA, MLA, etc.)
 - April 2008
- New Forms to Replace General Correspondence (DSP 6000 Series)
 - April 2008
- Electronic Munitions Licensing Fully Operational
 - End of 2008

US Controls Far Reaching



- Defense Articles are approved for export
 - Specified End Use
 - Specified End User
- Main responsibility is on US Applicant
 - ***Supply chain security*** is key and requires recipient cooperation
- Non-US party is obliged to adhere to conditions and limitations of approval

THE SUPPLY CHAIN SHARES RESPONSIBILITY

- US party is the usual party to apply for re-export / re-transfer approval
- Non-US party may go through their embassy in limited cases
- D-Trade Form DS-6004 available on line

Summary



Exporting in
US is a
Privilege, not
A right

Privilege
Brings serious
Responsibility

Risk
Management
Key to
Success

Questions?



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AEROSPACE AND DEFENSE ISSUES

- Dual and Third Country Nationals
 - 126.1 Proscribed Countries will not be authorized
- New Guidance on March 4, 2008
 - 124.16 Nationality employees are not required to execute a Non-Disclosure Agreement (NDA)
 - Minor amendments due prior to **October 1, 2008**

§ 124.16 Special retransfer authorizations for unclassified technical data and defense services to member states of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.

The provisions of §124.8(5) of this subchapter notwithstanding, pursuant to this subsection the Department may approve access to unclassified defense articles exported in furtherance of or produced as a result of a TAA/MLA, and retransfer of technical data and defense services to individuals who are third country/dual national employees of the foreign signatory or its approved sub-licensees provided they are nationals exclusively of countries that are members of NATO the European Union, Australia, Japan, New Zealand, and Switzerland and their employer is a signatory to the agreement or has executed a Non Disclosure Agreement. The retransfer must take place completely within the physical territories of these countries or the United States. Permanent retransfer of hardware is not authorized.

[72 FR 71786, Dec. 19, 2007]

Sub-Licensing

UK licensee needs to flow ITAR controlled data to a sub-contractor

Subcontractor needs to be approved as a 'Sub-Licensee'

Requires specific Non-Disclosure Agreement

- Terms may not translate equally across borders (e.g., ‘finished parts’)

§ 121.10 Forgings, castings and machined bodies.

Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions List (including components, accessories, attachments and parts as defined in §121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use.

***COMPLIANCE CRITERIA IS OFTEN A
MOVING TARGET***

Due Diligence Required

Difficult to know if US company is prepared

Registration information not visible

Ask suppliers, customers, freight forwarders about readiness level

- Blue Lantern Program
 - DDTC Research and Analysis Division
 - Intelligence community
 - Pre and post license checks ongoing
 - Trip wires and red flags

(Refer to Handout for Blue Lantern Reports)

- Entities/persons (***US or Non-US***) are debarred from doing business with any US exporter, manufacturer or broker
- Gray arms market is profitable, until you get caught and then you are out of business
 - ITT Corporation fined \$100,000,000 (US) and nine+ years of increased scrutiny
 - Norinco of China Sanctioned 2003-2008
 - Cut off from doing business in US (e.g., Wal-Mart)
 - Suffered millions in losses
 - Issued Corporate principles governing internal export control on nonproliferation in 2007

Obligation to Protect

Technology

- Engineering discussions
- Business development briefings

Hardware

- Tooling
- Onsite and offsite inventory

CONTROL ACCESS

Facility

- Visitors
- Tours
- Contractors

Information Systems

- Intranet data repositories
- Engineering design tools
- VPN/Email

- State Department web site
 - www.pmddtc.state.gov
- Department of Commerce web site
 - www.bis.doc.gov
- The Eagle Compliance Company and globaleyes team and web sites
 - info@globaleyesnow.com
 - www.globaleyesnow.com
 - www.eaglecompliance.com

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RELEVANT CASE STUDIES

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INTERNAL CONTROL SYSTEMS

DDTC registered companies must have
Internal Control Program

US company
applies for
the license

UK company
uses the
licensed item

CONTROLS ARE NEEDED ON BOTH SIDES OF TRANSACTION

Guidelines for ICP

Organization Structure

- Organizational charts
- Description (and flow charts where appropriate) of internal trade functions
- Description of management and control structures for implementing and tracking

Corporate Commitment and Policy

- Executive management directive to comply with the law and regulations (i.e., AECA and ITAR)
- Knowledge and understanding of when and how AECA and ITAR affect company business
- Knowledge of internal controls and control points that have help company comply with AECA and ITAR

Identification, Receipt and Tracking of ITAR Controlled Items/Technology

- Describe in detail the methods used internally to identify and account for ITAR controlled goods, technology and services
- Demonstrate process steps from receipt to delivery

Re-Exports/Retransfers

- Detailed procedures used to:
 - Obtain written DTC approval prior to the retransfer
 - Track the re-export/re-transfer (including placing parties on notice that the proposed transfer are controlled by DTC)
- Procedure when an ITAR controlled item/technology is transferred even internally (e.g., foreign national employees)
- Procedure when an ITAR controlled item/technology is transferred to a foreign person within the U.S.
- Procedure when ITAR controlled item/technology is transferred from the company to a foreign person outside of the U.S.
- Procedure for when an ITAR controlled item/technology is to be used or transferred for an end-use not included in the DTC authorization

Guidelines for ICP (cont.)

Restricted/Prohibited Exports and Transfers

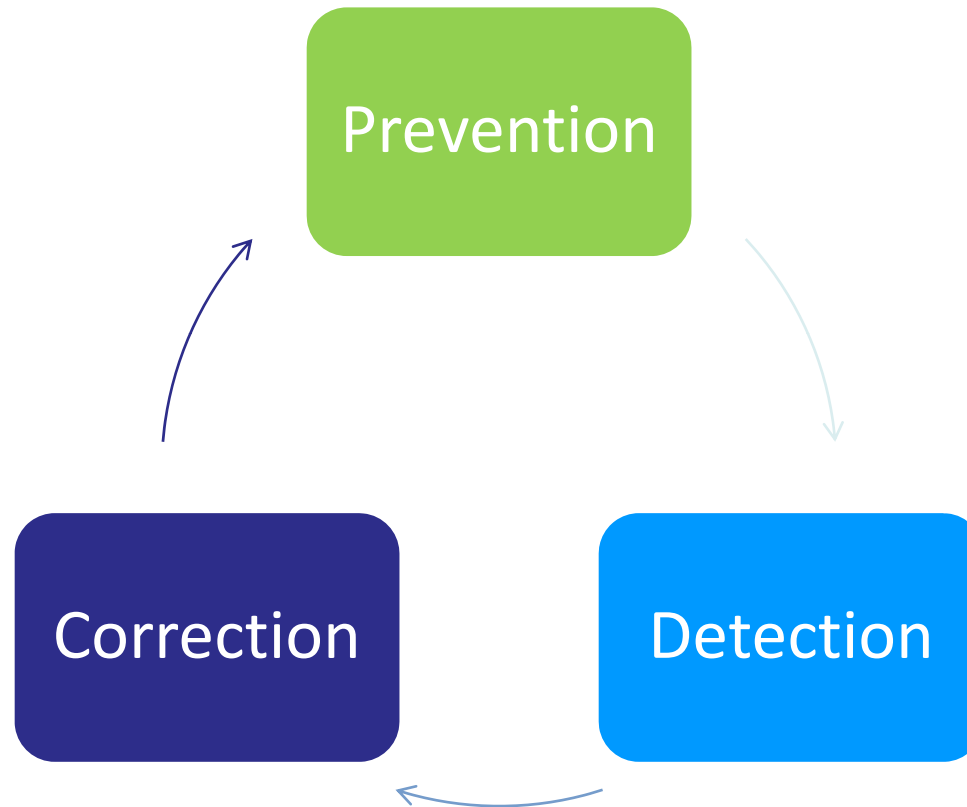
- Procedure for screening customers, carriers and countries
- Screening procedure for high-risk transactions to combat illegal exports/retransfers
- Procedures to investigate any evidence of diversion or unauthorized use of U.S. origin products

Recordkeeping

- Description of record systems concerning U.S. origin products
- Procedures for maintaining records (i.e., five years from expiration of DTC license or approval)
- Regular interval review of the files to ensure proper practices and procedures by persons reporting to top management

Internal Monitoring

- Perform audits periodically to ensure integrity of compliance program
- Emphasis on validation of full export compliance, including adherence to license and other approval conditions and limitations
- Measurement of effectiveness of day-to-day operations
- Adopt procedure for highlighting any compliance areas that need more attention
- Report known or suspected violations to corporate/executive office
- Ensure effective liaison and coordination with Ombudsman



***MANAGE YOUR ITAR RISK AND YOU WILL BETTER
MANAGE YOUR INTERNATIONAL BUSINESS***

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ISSUE CAPTURE

Risk Mitigation

On Aviation Safety...

Flying is so many parts skill, so many parts planning, so many parts maintenance, and so many parts luck. The trick is to reduce the luck by increasing the others.

— David L. Baker



GET OUT OF MURKY WATER AND ONTO SOLID GROUND

Are You Ready to Export?

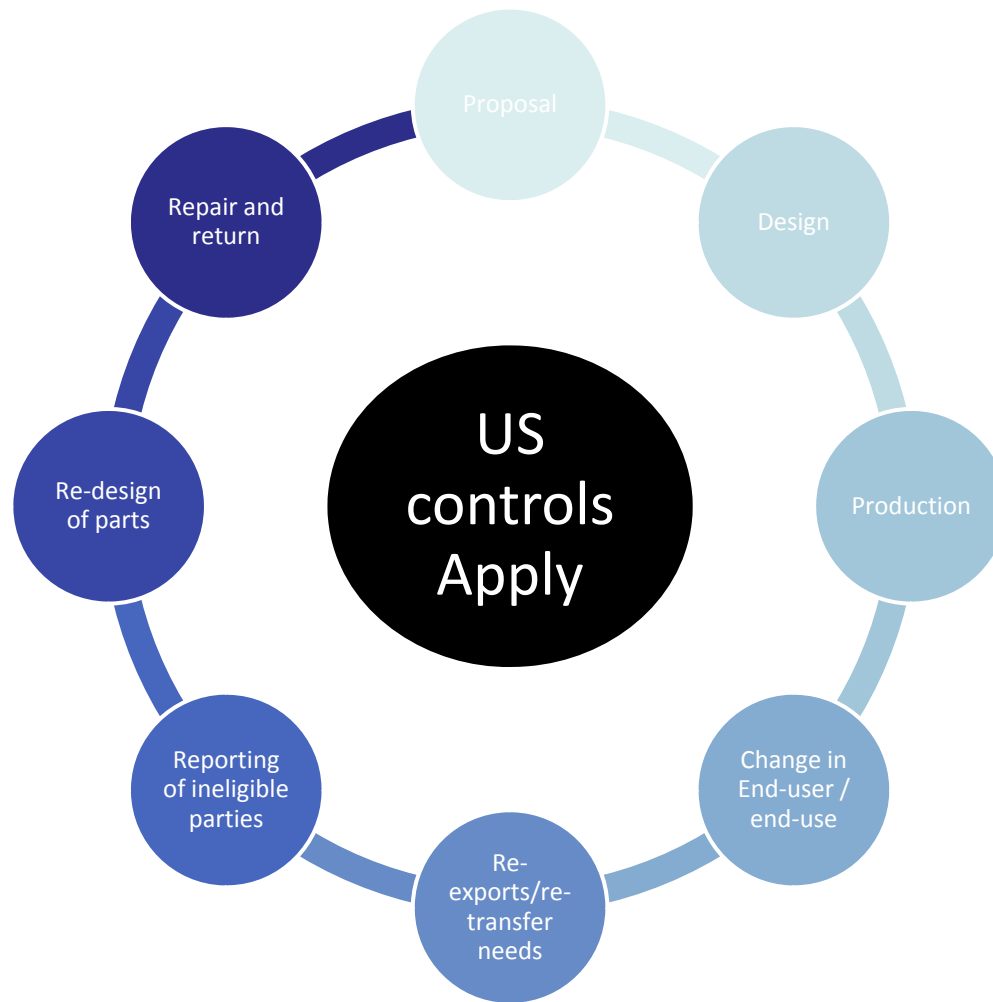


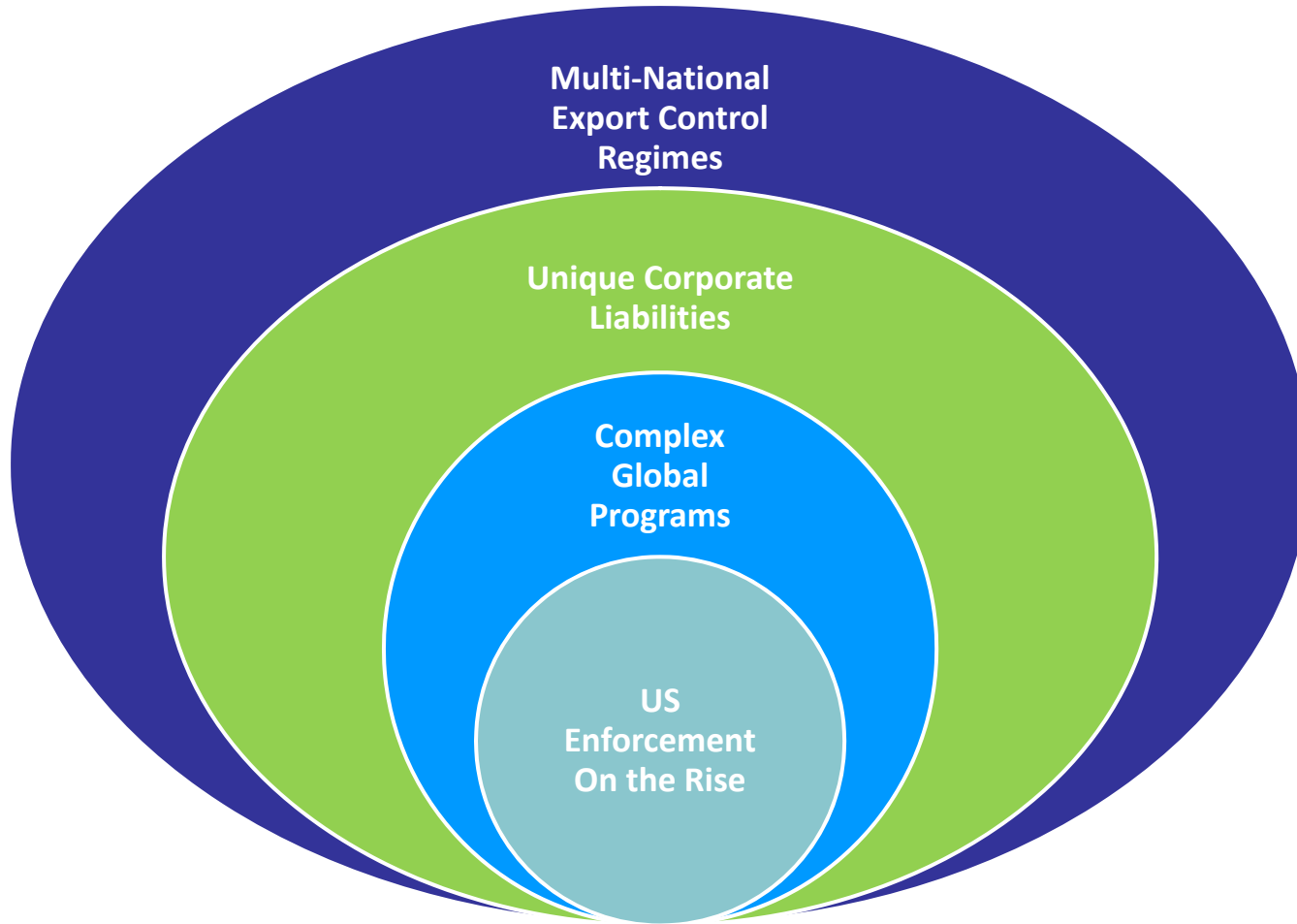
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SUMMARY

US Controls Far Reaching





Compliance is Competitive Advantage

Thank You



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**THE EAGLE
COMPLIANCE
COMPANY**