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Dear Mr O'Callaghan

**EXPEDITED U.S. PROCESSING FOR AUSTRALIAN LICENCES & AGREEMENTS**

This letter provides information on further developments in United States (U.S.) export control arrangements affecting Defence and Australian companies.

My previous advice (HID/OUT/2006/811) of 30 November 2006 outlined the agreement reached with the U.S. State Department under the AUSMIN Defence Acquisition Committee's (ADAC) *Technology Transfer Process Improvement Initiative* concerning access to U.S. technology by Australian dual-nationals employed in Australian companies.

Under the dual-national agreement, Australian dual-national company employees with a RESTRICTED security clearance and a need-to-know do not need to provide nationality information or a Non-Disclosure Agreement before being granted access to U.S. *Controlled Unclassified* technology. This does not apply to non-citizens, or to those whose dual-nationality includes a country proscribed under U.S. International Traffic in Arms Regulations (ITAR) Clause 126.1 (eg, Cuba, Iran, Libya, North Korea, Syria, China and Vietnam). In such cases, State Department approval is required before access is granted.

Importantly, this agreement applies only where the Defence Department is the ultimate end-user of a proposed U.S. export; a fact that can be verified either by Defence being a party to the agreement, or by the U.S. exporter making reference to the relevant Defence Capability Plan (DCP) project in the agreement submission letter. The latter should be supported by a letter from the relevant DMO project office or Capability Development Executive sponsor.

The latest development to which I now draw attention involves the streamlined processing of U.S. export licences and agreements for Australia, as follows:

- a. **Expedited Licence Review I (ELR I).** The U.S. State and Defense Departments have agreed that Australian licences (and a very limited 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 export is intended for the Australian

Defence Department. The State Department will endeavour to approve such licenses and agreements within 10 days.

- b. **Expedited Licence Review II (ELR II).** For licences and agreements for which Defence is not an end user or which do not meet the Canadian ITAR exemption criteria (most TAAs are not covered by the Canadian exemption), the U.S. State and Defense Departments have agreed to work to a 30 day approval time (rather than the current average of about three months). The U.S. has also undertaken, where possible, to advise Defence of anticipated delays.

The U.S. implementation of Expedited Licence Review arrangements are dependent on the continued implementation of *D-Trade*, an on-line U.S. export licensing system which currently applies only to unclassified licences, and not to agreements or classified licences. The State Department hopes to have *D-Trade* fully implemented by the end of 2007. Until then, licence and TAA approvals may take longer than the 10 and 30 day target times, but hopefully less than current approval times.

To ensure that the potential benefits of ELR I and II are gained as soon as possible, Australian companies should request that U.S. companies flag in their licence or agreement submission letters whether a licence or agreement appears to be eligible for treatment under ELR I (as described above). In particular, the letter should specify whether a proposed export would be eligible under the Canadian ITAR exemption if it were destined for Canada. Where this is not the case, the letter should seek expedited 30 day processing under ELR II arrangements.

While U.S. companies will be best equipped to determine eligibility under the Canadian ITAR exemption (which is based on applying ITAR Clause 126.5 to items controlled under the U.S. Munitions List), an indicative list of items likely to be covered by the Canadian exemption is attached to assist you in assessing whether a particular U.S. technology might be eligible for ELR I consideration.

Assistance and clarification of matters outlined above can be obtained from Mr Steve Hyland, Director U.S. Export Control Systems, by phone on (08) 8305 6370 or by email at [steve.hyland@defence.gov.au](mailto:steve.hyland@defence.gov.au).

Yours sincerely



Kerry Clarke AO  
Head Industry Division, DMO

15 May 2007

## **INDICATIVE LIST OF ITEMS THAT MIGHT BE ELIGIBLE FOR U.S. EXPORT CONTROL UNDER EXPEDITED LICENCE REVIEW I**

The following list of items against U.S. Munitions List categories that could be subject to the Canadian ITAR exemption, and thus eligible for ELR I. 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.
- Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and 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. It would also not cover developmental aircraft, engines and components.)*

### **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 defense 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 defense 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 and Guidance and 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 defense articles (e.g., signature measurement equipment, prediction techniques and codes, signature materials and treatments, and signature control design methodology) .

#### **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.