Department of Defense

DIRECTIVE

NUMBER 2040.2

January 17, 1984

Administrative Reissuance Incorporating Change 1, July 5, 1985

ASD(ISP)

SUBJECT: International Transfers of Technology, Goods, Services, and Munitions

References: (a) Public Law 96-72, "The Export Administration Act of 1979," as amended (50 U.S.C. 2401 et seq.)
(b) Public Law 94-329, "The Arms Export Control Act," as amended (22 U.S.C. 2751 et seq.)
(c) National Security Decision Directive Number 5, "Conventional Arms Transfer Policy," July 8, 1981
(d) through (q), see enclosure 1

1. PURPOSE

This Directive:

1.1. Implements relevant portions of references (a) through (c) by establishing policy, assigning responsibilities, and prescribing procedures for international transfer of defense-related technology, goods, services, and munitions.

1.2. Establishes the DoD International Technology Transfer (IT^2) Panel and Subpanels, whose charters are at enclosure 2.

1.3. Cancels DoD Directive 2030.4, DoD Directive 5030.28, and the Secretary of Defense Memorandum of December 29, 1983 (references (d), (e), and (f)).

1.4. *Authorizes the publication of handbooks for certain technologies.*

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff (OJCS), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2.2. This Directive applies to all technology transfer mechanisms and shall be implemented through such processes as strategic trade licensing, munitions licensing, security assistance, and DoD research, development, and acquisition activities.

2.3. The policies, procedures, and responsibilities contained in NDP-1 and DoD Directive 5230.11 (references (g) and (h)) concerning disclosures of classified military information are not affected by this Directive.

3. DEFINITIONS

The terms used in this Directive are defined in enclosure 3.

4. POLICY

It shall be DoD policy to treat defense-related technology as a valuable, limited national security resource, to be husbanded and invested in pursuit of national security objectives. Consistent with this policy and in recognition of the importance of international trade to a strong U.S. defense industrial base, the Department of Defense shall apply export controls in a way that minimally interferes with the conduct of legitimate trade and scientific endeavor. Accordingly, DoD Components shall:

4.1. Manage transfers of technology, goods, services, and munitions consistent with U.S. foreign policy and national security objectives.

4.2. Control the export of technology, goods, services, and munitions that contribute to the military potential of any country or combination of countries that could prove detrimental to U.S. security interests.

4.3. Limit the transfer to any country or international organization of advanced design and manufacturing know-how regarding technology, goods, services, and munitions to those transfers that support specific national security or foreign policy objectives.

4.4. Facilitate the sharing of military technology only with allies and other nations that cooperate effectively in safeguarding technology, goods, services, and

munitions from transfer to nations whose interests are inimical to the United States.

4.5. Give special attention to rapidly emerging and changing technologies to protect against the possibility that militarily useful technology might be conveyed to potential adversaries before adequate safeguards can be implemented.

4.6. Seek, through improved international cooperation, to strengthen foreign procedures for protecting sensitive and defense-related technology.

4.7. Strive, before transferring valuable defense-related technology, to ensure that such technology is shared reciprocally.

5. PROCEDURES

5.1. In all technology transfer cases referred for review, the DoD Components concerned shall:

5.1.1. Consider proposed transfers of technology, goods, services, and munitions on a case-by-case basis.

5.1.2. Conduct policy reviews, technical evaluations, operational and military mission impact assessments, and intelligence assessments of proposed transfers.

5.1.3. Ensure that transfers of technology, goods, services, and munitions:

5.1.3.1. Are consistent with U.S. national security and foreign policy objectives.

5.1.3.2. Do not constitute an unreasonable risk to U.S. security in the degree to which they reduce technological leadtime.

5.1.3.3. Receive positive consideration when such transfers will result in tangible and direct benefits to the defense objectives of the United States and its allies or to the defense industrial base. Such benefits should be at least equivalent to the value of the technology transferred.

5.1.4. Make sensitive transfers conditional upon agreements with allied and other nations that restrict the transfer of technology, goods, services, and munitions that harm or may harm the security of the United States and the security of U.S. allies and other friendly nations.

5.1.5. Oppose transfers of sensitive technology, goods, services, and munitions through multinational organizations in which potential adversaries participate.

5.1.6. Assess whether recipient nations:

5.1.6.1. Restrict their transfer or export of U.S. technology, goods, services, and munitions to other nations who use, or may use, such technology, goods, services, and munitions against the best interests of the United States.

5.1.6.2. Secure written U.S. Government agreement before reexporting U.S. technology, goods, services, and munitions.

5.1.6.3. Maintain control over U.S. technology, goods, services, and munitions.

5.1.6.4. Report promptly and fully to the U.S. Government any known or suspected transfers of U.S. technology, goods, services, and munitions that do not have U.S. Government approval.

5.1.6.5. Transfer non-U.S. critical technology, goods, services, and munitions harmful to U.S. security.

5.1.7. Assess annually the total effect of transfers of technology, goods, services, and munitions on U.S. security, regardless of the transfer mechanisms involved.

5.1.8. Support approved DoD programs designed to inform Government, Congress, industry, academia, and the public on the dangers of the loss of Western technological leadership.

5.2. In strategic trade cases, the DoD Components concerned shall:

5.2.1. Assess whether proposed transfers of technology and goods through actual or potential military use could threaten U.S. security, regardless of the stated end use or end user of such technology and goods.

5.2.2. Ensure that potential transfers of technology and goods are assessed with a primary consideration to control of critical technology as described by Pub. L. 96-72 and the "DoD Militarily Critical Technologies List" (references (a) and (i)).

5.2.3. Disapprove exceptions to the Coordinating Committee of the Consultative Group (COCOM) lists that are disadvantageous to the security of the United States and its allies.

5.2.4. Support North Atlantic Treaty Organization (NATO) efforts to control technology and goods.

5.2.5. Provide support to, and cooperate with, non-COCOM countries to control the transfer of militarily relevant technology and goods to the Warsaw Pact nations.

5.2.6. Assess whether recipient nations support U.S. objectives in COCOM and the COCOM embargo.

5.3. In munitions licensing cases, the DoD Components concerned shall:

5.3.1. Give favorable consideration to transfers of services and munitions to U.S. allies and friendly nations that are intended to achieve specific U.S. defense objectives.

5.3.2. Ensure that transfers of munitions and services involving critical technology receive special scrutiny, taking into account the importance of arms cooperation with NATO and other close friendly nations and allies, potential third-party transfers, and the protection of advanced military operational cap abilities and associated technology.

5.3.3. Ensure that decisions on munitions license applications that involve or may lead to the disclosure of classified military information are in compliance with NDP-1 and DoD Directive 5230.11 (references (g) and (h)).

5.4. The DoD Components concerned shall submit unresolved technology security cases and issues to the appropriate DoD IT^2 Subpanel for resolution.

5.5. Two subcommittee reports to the DoD Steering Committee on National Security and Technology Transfer (references (j) and (k)), when approved, may provide additional procedural guidance affecting publications and technology monitoring.

6. COORDINATING COMMITTEE OF THE CONSULTATIVE GROUP (COCOM)

6.1. COCOM, founded in 1949, is an informal multinational organization made up of the NATO nations (except Iceland and Spain) and Japan. COCOM's mission is to maintain a uniform export control system among its member nations in order to protect Western security.

6.2. DoD Components concerned with strategic trade policy shall seek to strengthen COCOM by:

6.2.1. Promoting the development of a professional secretariat.

6.2.2. Promoting the tightening of the strategic control list.

6.2.3. Encouraging enforcement of COCOM controls.

6.2.4. Promoting a threshold on the COCOM list beyond which technology and goods cannot be transferred to potential adversaries.

6.2.5. Promoting broader membership of free-world nations in COCOM and associate agreements with COCOM for advanced, industrialized nations.

6.2.6. Promoting the establishment of a military committee to consider strategic issues related to the control programs.

6.2.7. Providing full-time DoD policy representation to COCOM.

6.2.8. Supporting and promoting other measures that strengthen the COCOM organization and function and that support U.S. objectives.

7. RESPONSIBILITIES

7.1. The Under Secretary of Defense for Policy (USD(P)) shall:

7.1.1. Develop, coordinate, and issue policies relating to technology transfer control in accordance with DoD Directive 5111.1 (reference (l)).

7.1.2. Prepare technology transfer control and enforcement policy guidance and coordinate overall application of DoD policy.

7.1.3. Represent the Department of Defense in interagency, national, and international forums concerning policy for technology transfer control and enforcement

matters.

7.1.4. For technology transfer policy matters, serve as DoD point of contact for foreign governments, international agencies, other Federal Agencies, interagency groups, industry, and DoD Components.

7.1.5. Act as the DoD receiving point for all strategic trade, COCOM, and munitions license cases.

7.1.6. Conduct policy reviews on technology, goods, services, and munitions transfer cases.

7.1.7. Prepare the coordinated DoD position for strategic trade, COCOM, and munitions license cases. If the projected recommendation differs from recommendations of the DoD Components concerned, advise the DoD Components of the recommendation and supporting rationale in sufficient time to permit submission of the issue to the DoD IT^2 Subpanel A before issuing the position.

7.1.8. Issue coordinated DoD recommendations on strategic trade, COCOM, and munitions transfer cases to the Commerce and State Departments.

7.1.9. Develop and maintain comprehensive reference data bases on technology, goods, services, and munitions transfer matters that are accessible to all DoD Components.

7.1.10. Provide to DoD Components a weekly update of the disposition of significant transfer cases.

7.1.11. Provide executive direction of the DoD IT^2 Panel in accordance with enclosure 2.

7.1.12. Develop, review, and negotiate international agreements under this Directive, DoD Directive 5530.3, and DoD Instruction 2050.1 (references (m) and (n)).

7.1.13. Assess, with the support of the Director, Defense Intelligence Agency (DIA), and the Chairman, National Disclosure Policy Committee, recipient nations.

7.1.13.1. Laws, regulations, and internal operating procedures to determine their ability to enforce technology security and control provisions of applicable U.S. export license stipulations, specific cooperative program agreements with the U.S. Government, COCOM embargoes, and other industrial and government

agreements.

7.1.13.2. Reliability in maintaining control over technology, goods, services, and munitions that originate in the United States and whose transfer to other nations may be against the best interests of the United States.

7.1.13.3. Reliability in securing prior written U.S. Government approval before exporting technology, goods, services, and munitions originating in the United States to other nations.

7.1.13.4. Reliability and promptness in reporting known or suspected transfers of U.S. technology, goods, services, and munitions that were not approved by the U.S. Government.

7.1.13.5. Support of U.S. objectives in COCOM and the COCOM embargo.

7.1.13.6. Cooperation and support for the principle of sharing technology of comparable value with the United States.

7.1.13.7. Reliability in preventing transfer to potential adversaries of non-U.S. critical technology, goods, services, and munitions harmful to the U.S. security.

7.1.14. Request the Under Secretary of Defense for Research and Engineering (USDR&E) to provide technical advisors and consultants necessary to support development of DoD technology transfer policy.

7.1.15. Assess annually the total effect of technology, goods, services, and munitions transfers on the security of the United States, regardless of the transfer mechanism involved.

7.1.16. Support the U.S. intelligence and enforcement communities in their efforts to halt or control the flow of technology, goods, services, and munitions to potential adversaries.

7.1.17. Establish, through the appropriate DoD IT_2 Subpanel, working groups and task forces to develop ways and means to protect technology from exploitation by potential adversaries.

7.2. The Under Secretary of Defense for Research and Engineering shall:

7.2.1. Manage overall DoD technical and acquisition efforts related to technology, goods, services, and munitions transfer in accordance with DoD Directive 5129.1 (reference (o)).

7.2.2. Oversee implementation of DoD technology transfer policy for all research, development, and acquisition matters.

7.2.3. For research, development, and acquisition matters, act as DoD point of contact with industry, other Federal Agencies, interagency groups, DoD Components, academia, and appropriate international forums.

7.2.4. Coordinate the technical review of strategic trade, COCOM, and munitions cases and establish the DoD technical positions, with supporting rationales, regarding the proposed transfer of technology, goods, services, and munitions.

7.2.5. Develop and administer programs to identify and define lists of militarily critical technologies that should be controlled for export, including necessary guidelines.

7.2.6. Manage technical efforts in support of DoD participation in and implementation of studies and analyses of COCOM, U.S. export controls, and related technology, goods, services, and munitions transfer matters.

7.2.7. Develop the DoD technical portion for the "DoD Militarily Critical Technologies List" (reference (i)) revisions and COCOM negotiations.

7.2.8. Provide technical advisors and consultants as needed to support the USD(P) in the development of DoD technology transfer policy.

7.2.9. Provide technical support of DoD views in interagency, national, and international forums of technology, goods, services, and munitions transfer matters.

7.2.10. Provide technical support for USD(P) assessments of the foreign availability of technology, goods, services, and munitions.

7.2.11. Develop, review, and negotiate international agreements in accordance with this Directive, DoD Directive 5530.3, and DoD Instruction 2050.1 (references (m) and (n)).

7.2.12. Develop and maintain a comprehensive technical data base for technology, goods, services, and munitions transfer cases.

7.2.13. Participate on the DoD IT^2 Panel and Subpanels in accordance with enclosure 2.

7.2.14. Support the U.S. intelligence and enforcement communities in their efforts to halt or control the flow of technology, technical data, goods, services, and munitions to potential adversaries.

7.2.15. For technology transfer research cases:

7.2.15.1. Serve as the receiving point in the Department of Defense.

7.2.15.2. Obtain a policy position from the USD(P).

7.2.15.3. Conduct reviews and prepare coordinated DoD recommendations, with supporting rationales.

7.2.15.4. Advise DoD Components if the projected recommendation differs from their recommendations and provide an opportunity for the DoD Components to submit the issue to the DoD IT^2 Subpanel B before issuing a DoD position. If a case is appealed, within 15 days the case shall be decided and all interested parties notified or the case shall be referred to the Deputy Secretary of Defense or Secretary of Defense for a final decision.

7.2.15.5. Issue, after the appeal process is completed, the coordinated DoD recommendation.

7.3. The Assistant Secretary of Defense (International Security Policy) (ASD(ISP)) shall:

7.3.1. Monitor compliance with this Directive through the Deputy Assistant Secretary of Defense (International Economic, Trade, and Security Policy) (DASD(IETSP)).

7.3.2. Chair the DoD IT^2 Panel and participate on the DoD IT^2 Subpanels in accordance with enclosure 2.

7.4. The Chairman of the Joint Chiefs of Staff shall:

7.4.1. Conduct and provide operational and military mission impact assessments on technology, goods, services, and munitions transfer issues, as requested.

7.4.2. Provide operational expertise and military judgment in interagency, national, and international forums on technology, goods, services, and munitions transfer matters.

7.4.3. Participate on the DoD IT^2 Panel and Subpanels in accordance with enclosure 2.

7.5. The Director, Defense Intelligence Agency, shall:

7.5.1. Formulate DoD coordinated intelligence assessments concerning the types and numbers of illegal transfer of technology, goods, services, and munitions and the associated transfer mechanisms.

7.5.2. Designate a point of contact to represent the DIA on technology, goods, services, and munitions transfer matters.

7.5.3. Conduct and provide intelligence reviews on technology, goods, services, and munitions transfer cases.

7.5.4. Assess foreign availability of technology, goods, services, and munitions proposed for transfer.

7.5.5. Conduct end-user checks on the declared ultimate consignee on technology, goods, services, and munitions transfer cases.

7.5.6. Provide intelligence expertise in interagency, national, and international forums on technology, goods, services, and munitions transfer matters.

7.5.7. Provide intelligence concerning the total effect of transfers of technology, goods, services, and munitions on U.S. security.

7.5.8. Participate on the DoD IT^2 Panel and Subpanels in accordance with enclosure 2.

7.5.9. Assist in identifying and assessing critical technology.

7.6. The Heads of DoD Components shall:

7.6.1. Designate a point of contact in their respective Component for technology, goods, services, and munitions transfer matters.

7.6.2. Conduct assessments of proposed technology, goods, services, and munitions transfer cases as required and provide coordinated positions.

7.6.3. Assist in identifying and assessing critical technology and in supporting DoD participation in export control list reviews.

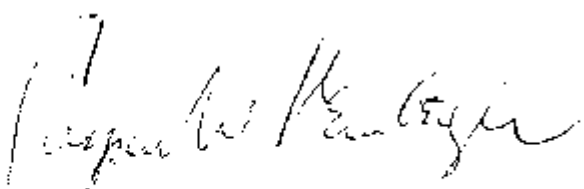
7.6.4. Participate on the DoD IT^2 Panel and Subpanels in accordance with enclosure 2.

7.6.5. Consistent with this Directive, DoD Directive 5530.3, and DoD Instruction 2050.1 (references (m) and (n)), coordinate the development and negotiation of international agreements pertaining to technology, goods, services, and munitions transfers.

7.6.6. Assure the calculation of nonrecurring cost recoupment charges in accordance with DoD Directive 2140.2 (reference (p)).

8. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (International Security Policy) within 120 days.



Caspar W. Weinberger
Secretary of Defense

Enclosures - 3

E1. References, continued
E2. DoD International Technology Transfer (IT^2) Panel and Subpanels
E3. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

(d) DoD Directive 2030.4, “DoD Support for the Strategic Trade Control Program,” December 11, 1962 (hereby canceled)

(e) DoD Directive 5030.28, “Munitions Control Procedures for U.S. Munitions List Export License Applications Referred to DoD by Department of State,” March 10, 1970 (hereby canceled)

(f) Secretary of Defense Memorandum, "DoD Directive 2040.2, 'International Transfers of Technology, Goods, Services, and Munitions,' December 29, 1983" (hereby canceled)

(g) "National Policy and Procedures for the Disclosure of Calssified Military Infromation to Foreign Governments and International Organizations" (NDP-1), September 9, 1981

(h) DoD Directive 5230.11, "Disclosure of Classified Military Information to Foreign Governments and International Organizations," March 2, 1979

(i) Under Secretary of Defense for Research and Engineering, "DoD Militarily Critical Technology List (U)" (Secret Noforn), October 1, 1982

(j) Report when approved of the Subcommittee on Publications to the DoD Steering Committee on National Security and Technology Transfer, November 9, 1983

(k) Report when approved of the Subcommittee on Technology Monitoring to the DoD Steering Committee on National Security and Technology Transfer, September 19, 1983

(l) DoD Directive 5111.1, "Under Secretary for Policy," October 27, 1978

(m) DoD Directive 5530.3, "International Agreements," December 6, 1979

(n) DoD Instruction 2050.1, "Delegated Approval Authority to Negotiate and Conclude International Agreements," July 6, 1977

(o) DoD Directive 5129.1, "Under Secretary of Defense for Research and Engineering," November 29, 1978

(p) DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of USG Products and Technology," January 5, 1977

(q) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980

E2. ENCLOSURE 2

DoD INTERNATIONAL TECHNOLOGY TRANSFER (IT^2) PANEL AND SUBPANELS

E2.1. THE DoD IT^2 PANEL

E2.1.1. Functions. The DoD IT^2 Panel shall:

E2.1.1.1. Identify and address technology transfer policy issues.

E2.1.1.2. Resolve differences within the Department of Defense concerning program administration, interagency issues, and coordinated DoD recommendations on transfer cases referred by the DoD IT^2 Subpanels.

E2.1.1.3. *Approve the publication of handbooks for certain technologies.*

E2.1.2. Organization and Management

E2.1.2.1. The DoD IT^2 Panel shall be chaired by the ASD(ISP) or, in his absence, by the vice-chair.

E2.1.2.2. The vice-chair shall be the Principal Deputy USDR&E (PDUSDR&E) or, in his absence, a person designated by the ASD(ISP) shall serve as chair.

E2.1.2.3. In addition to the chair and the vice-chair, the Panel consists of representatives of the Office of the Deputy USD(P) (ODUSD(P)), the Office of the ASD(ISP) (OASD(ISP)), the Office of the USDR&E (OUSDR&E), the OJCS, the Defense Security Assistance Agency (DSAA), the DIA, the National Security Agency (NSA), the Defense Advanced Research Projects Agency (DARPA), and the Military Departments.

E2.1.2.4. Panel members, excluding representatives of the NSA, DSAA, DARPA, and DIA, shall have one vote, and all voting members shall be polled on any decision. The NSA shall vote on matters having a potential impact on the cryptologic (communications security (COMSEC) and signals intelligence (SIGINT)), computer security, and electronic warfare (EW) mission areas. The DSAA shall vote on matters concerning security assistance. The DIA and DARPA shall serve in an advisory capacity.

E2.1.2.5. Other DoD Components and other Agencies and individuals may be invited to participate as necessary, but will have no vote.

E2.1.2.6. Issues may be referred to the Panel on the recommendation of any voting member or from the DoD lT2 Subpanels.

E2.1.2.7. The Panel shall meet quarterly and at other times subject to the call of the chair.

E2.1.2.8. On matters not concerning the resolution of DoD positions on specific transfer cases, a two-thirds majority vote shall resolve any differences.

E2.1.2.9. In resolving differences concerning coordinated DoD recommendations on transfer cases, a unanimous vote is required to recommend approval of a proposed transfer.

E2.1.2.10. Appeals shall be resolved by the Secretary of Defense or Deputy Secretary of Defense and may be made by any voting member of the Panel.

E2.2. DoD IT2 SUBPANEL A, EXPORT CONTROL POLICY

E2.2.1. Functions. The DoD IT2 Subpanel A shall:

E2.2.1.1. Resolve differences within the Department of Defense on matters referred to it concerning the transfer of technology, goods, services, and munitions; IT2 program administration and interagency technology transfer issues; and transfer cases requiring a coordinated DoD recommendation.

E2.2.1.2. Identify and recommend solutions to technology transfer policy issues.

E2.2.1.3. As required, form working groups drawn from member organizations and agencies to address specific issues raised by the DoD IT2 Panel, by member organizations or agencies, or as deemed appropriate by the chair to address high-priority technology transfer policy issues.

E2.2.1.4. *Recommend the approval and publication of handbooks for certain technologies.*

E2.2.2. Organization and Management

E2.2.2.1. The DoD IT^2 Subpanel A shall be chaired by the DASD(IETSP), OASD(ISP).

E2.2.2.2. The vice-chair shall be the Deputy Under Secretary of Defense (International Programs and Technology) (DUSD(IP&T)), OUSDR&E.

E2.2.2.3. In addition to the chair and vice-chair, the Subpanel consists of representatives of the ODUSD(P); the ODASD(IETSP), OASD(ISP); the ODUSD(IP&T), OUSDR&E; the OJCS; the DSAA; the NSA; the DIA; DARPA; and the Military Departments.

E2.2.2.4. Each member, excluding representatives of the DSAA, NSA, DIA, and DARPA, shall have one vote. All voting members shall be polled on any decision. The DSAA shall vote on matters concerning security assistance. The NSA shall vote on matters having a potential impact on the cryptologic (COMSEC and SIGINT), computer security, and EW mission areas. The DIA and DARPA shall serve in an advisory capacity.

E2.2.2.5. Other DoD Components and other agencies and individuals may be invited to participate as necessary, but will have no vote.

E2.2.2.6. Technology transfer issues may be referred to the Subpanel by any member when the issue requires resolution by establishing a precedent for critical or sensitive technology or when intelligence or political information dictates a policy review for specified countries.

E2.2.2.7. On issues not concerning the resolution of DoD positions on transfer cases, a two-thirds majority vote shall resolve any differences. When a two-thirds majority decision cannot be reached, the matter under consideration shall be referred to the DoD IT^2 Panel for disposition.

E2.2.2.8. Issues concerning coordinated DoD recommendations on transfer cases shall be referred to the Subpanel only after an attempt has been made to resolve the differences at the working level or if a DoD position on a case must be issued within 15 working days and the differences have not been resolved.

E2.2.2.9. In resolving differences concerning coordinated DoD recommendations on transfer cases, a unanimous vote is required to recommend approval of a proposed transfer. Appeals on the cases under consideration may be made by any DoD Component having a voting member. The chair shall refer the

cases to the DoD IT^2 Panel for review.

E2.2.2.10. The chair of the Subpanel A shall chair the DoD IT^2 Panel if the Panel chair and vice-chair are unable to attend the Panel meeting.

E2.2.2.11. Subpanel A shall meet monthly and at other times subject to the call of the chair. When a specific transfer case is appealed to Subpanel A, the Subpanel shall meet to resolve the case within 10 working days.

E2.2.2.12. Administrative support for Subpanel A shall be provided by the Office of the DASD(IETSP), OASD(ISP).

E2.3. DoD IT^2 SUBPANEL B, RESEARCH AND DEVELOPMENT

E2.3.1. Functions. The DoD IT^2 Subpanel B shall:

E2.3.1.1. Address issues and resolve differences in the Department of Defense regarding technical standards and definitions and the dissemination and exchange of technical information.

E2.3.1.2. Consider appeals on recommendations in technology transfer research cases.

E2.3.1.3. As required, form working groups drawn from member organizations and agencies to address specific issues raised by the DoD IT^2 Panel, by member organizations or agencies, or as deemed appropriate by the chair to address high-priority technology transfer research cases.

E2.3.2. Organization and Management

E2.3.2.1. The chair shall be the Deputy Under Secretary of Defense for Research and Advanced Technology (DUSD(R&AT)), OUSDR&E.

E2.3.2.2. The vice-chair shall be the DASD(IETSP), OASD(ISP).

E2.3.2.3. Other members of Subpanel B shall be representatives from the ODUSD(P), USD(P); ODASD(IETSP), OASD(ISP); ODUSD(R&AT), OUSDR&E; the Assistant Secretaries of the Army (Research, Development, and Acquisition), the Navy (Research, Engineering, and Systems), and the Air Force (Research, Development, and Logistics); the DSAA; the DIA; DARPA; and the NSA.

E2.3.2.4. Each member, excluding representatives of the DSAA, DIA, DARPA, and NSA, shall have one vote, and all voting members shall be polled on a decision. The DSAA shall vote on issues concerning security assistance. The DIA shall serve in an intelligence advisory capacity. DARPA shall vote on issues affecting fulfillment of DARPA's mission. The NSA shall vote on issues concerning its missions in cryptology (COMSEC and SIGINT), computer security, and EW.

E2.3.2.5. Additional DoD Components and other Agencies and individuals may be invited by the chair or vice-chair to participate as necessary, but will have no vote.

E2.3.2.6. Issues may be referred to the Subpanel by any member, including representatives of the DSAA, DIA, DARPA, and NSA.

E2.3.2.7. A two-thirds majority vote shall resolve differences. Any member voting on a particular issue may appeal a decision to the DoD IT^2 Panel.

E2.3.2.8. Administrative support for Subpanel B shall be provided by the Office of the DUSD(R&AT), OUSDR&E.

E2.3.2.9. The Subpanel shall meet monthly and at other times as determined by the chair. When a research technology transfer case is appealed to Subpanel B, the Subpanel shall meet within 10 working days to resolve the case.

E3. ENCLOSURE 3

DEFINITIONS

E3.1.1. Critical Technology. Technologies that consist of (a) arrays of design and manufacturing know-how (including technical data); (b) keystone manufacturing, inspection, and test equipment; (c) keystone materials; and (d) goods accompanied by sophisticated operation, application, or maintenance know-how that would make a significant contribution to the military potential of any country or combination of countries and that may prove detrimental to the security of the United States (also referred to as militarily critical technology).

E3.1.2. Goods. Any articles, materials, supplies, or manufactured products, including inspection and test equipment. The term excludes technical data.

E3.1.3. Items of Intrinsic Military Utility. End items other than those identified in the "DoD Militarily Critical Technologies List" (reference (i)) whose transfer to potential adversaries shall be controlled for the following reasons:

E3.1.3.1. The end product in question could significantly enhance the recipient's military or war-making capability either because of its technology content or because of the quantity to be sold; or

E3.1.3.2. The product could be analyzed to reveal U.S. system characteristics and thereby contribute to the development of countermeasures to equivalent U.S. equipment.

E3.1.4. Keystone Equipment. Includes manufacturing, inspection, or test equipment and is the required equipment for the effective application of technical information and know-how. Keystone materials have the same significant application.

E3.1.5. Know-how. Includes both the know-how of design and manufacturing and the know-how and related technical information that is needed to achieve a significant development, production, or use. The term know-how includes services, processes, procedures, specifications, design data and criteria, and testing techniques.

E3.1.6. Militarily Critical Technology. See critical technology.

E3.1.7. Munitions. Includes:

E3.1.7.1. Arms, ammunition, and other implements of war.

E3.1.7.2. Any property, installation, commodity, material equipment, supply, or goods used to make military items.

E3.1.7.3. Any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing repair, servicing, storage, construction, transportation, operation, or use of any article listed above.

E3.1.7.4. Technical data related to State Department munitions list items.

E3.1.8. Services. Includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information used to furnish military assistance, including military education and training activities.

E3.1.9. Strategic Trade Cases. Cases involving technology and goods that are dual-use in nature, that is, capable of being used either for legitimate civilian purposes or capable of being used or diverted to increase a nation's military potential.

E3.1.10. Technical Data. Classified or unclassified information of any kind that can be used, or adapted for use, in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or reconstruction of goods or munitions; or any technology that advances the state of the art or establishes a new art in an area of significant military applicability in the United States. The data may be tangible, such as a model, prototype, blueprint, or an operating manual, or may be intangible, such as a technical service or oral or visual interactions.

E3.1.11. Technology. The technical information and know-how that can be used to design, produce, manufacture, use, or reconstruct goods, including technical data and computer software. The term does not include the goods themselves.

E3.1.12. Transfer Mechanisms. The means by which technology, goods, services, and munitions are transferred, including but not limited to:

E3.1.12.1. Commercial and Government sales.

E3.1.12.2. Scientist, engineer, student, and academic exchanges.

E3.1.12.3. Consulting agreements.

E3.1.12.4. Licensing and other data exchange agreements.

E3.1.12.5. Codevelopment and coproduction agreements.

E3.1.12.6. Commercial proposals and associated business visitors.

E3.1.12.7. Trade fairs, exhibits, and airshows.

E3.1.12.8. Sales to third-party nations.

E3.1.12.9. Multinational corporation transfers.

E3.1.12.10. Foreign technical missions.

E3.1.12.11. International programs (such as fusion, space, and high energy).

E3.1.12.12. International meetings and symposia on advanced technology.

E3.1.12.13. Patents.

E3.1.12.14. Clandestine or illegal acquisition of military or dual-use technology or equipment.

E3.1.12.15. Dissemination of technical reports and technical data, whether published or by oral or visual release.

E3.1.12.16. Dissemination of technical reports under DoD Directive 5400.7 (reference (q)).

E3.1.12.17. Diversion or evasion of control procedures.

E3.1.12.18. Smuggling.

E3.1.12.19. Dummy corporations.

E3.1.12.20. Acquiring an interest in U.S. industry, business, and other organizations.