



An Industry Perspective: Critical Actions to Ensure U.S. Defense Trade Success

The dialogue between senior officials at the Departments of State and Defense and industry repeatedly centers around challenges facing the defense export enterprise. For the U.S. Government (USG), these challenges have been articulated as a steady increase each year in the number of licenses described by USG as complicated, staffing challenges, and crisis-related impacts to the enterprise like the global COVID-19 pandemic and Russia's invasion of Ukraine.

There are several ways these specific challenges impact the aerospace and defense industry. AIA member companies highlight the following as presenting the most significant obstacles to shared USG-Industry success: a significant extension of export authorization processing timelines, industry advances outpacing export regulations, and a high volume and diminishing accuracy of issued export authorizations.

AIA members propose several actions to develop speed and collectively “do more with less,” building on creative ideas such as the Open General Export License (OGL) pilot program to reduce regulatory and administrative burden on both the government and industry workforces. The below time-sensitive actions would help ensure the licensing system not only aligns with but also realizes USG's evolving arms transfer and security cooperation policy objectives to replenish, re-supply, and pivot partners and allies to U.S.-origin defense capabilities. Moreover, AIA notes these proposed time-sensitive actions would have a significant impact on small-to-medium sized enterprises which face limited resources to navigate the trade regulatory environment.

1. Recalibrate export authorization processing times

Reset expectations regarding processing times. AIA member companies experience export authorization processing timelines that extend beyond what State advises as typical. Evaluating current processing timelines and providing industry a varied, realistic estimate of these for different types of authorizations allows industry to accurately plan, avoiding costly production, manufacturing, procurement, program, and schedule delays. Additionally, it establishes clear expectations for industry, so that it neither distracts nor deters the USG from achieving the regulatory mission.

AIA member company comment: Our team has challenges advising internal business units on when the company will receive the license it needs. Our analysis of staffing times proves inconsistent. The length of time it takes to staff an authorization request from DDTC to the interagency can take several weeks to a month or more, but this is true as well for cases returned from interagency review for finalization and issuance.

- ***Recommended Action: Automate time-based alerts within Defense Export Control and Compliance System (DECCS) that notify the Licensing Officer of export authorizations under review that are reaching or breaching the standard timeline to maintain processing consistency, then advise industry accordingly.***

AIA member company comment: Compliance is paramount and our authorizations with classified provisos, although issued, are unusable due to unclear compliance requirements until we have the set of provisos in hand. In-person pickup is no longer available, and the current process of mailing provisos takes many days or weeks post-approval. For timeliness, reinstating a policy and procedure that supports in-person pickup, enables regular use of UPS Next Day service for delivery, and promotes speedy mailing and sharing tracking information with the recipient will be beneficial.



- **Recommended Action: Reinstitute and revamp the process for delivery and receipt of classified provisos.**

Minimize unpredictable reviews. Directorate of Defense Trade Controls (DDTC), and by extension Defense Technology Security Administration (DTSA), must effectively enforce reasonable license position deadlines. It is opaque to the exporter in terms of time, why certain case reviews are so lengthy or inconsistent, beyond the notion of “national security”. License requests, even with precedent, and compared to other interagency reviewers, generally take significantly longer for review by DTSA engineers, Missile Technology Export Committee (MTEC), and National Security Administration (NSA). Additionally, as the interagency conducts product classification reviews for Commodity Jurisdiction requests, balanced and consistent application of “specially designed” criteria is necessary for industry to accurately plan for potential compliance requirements.

AIA member company comment: We would recommend training, specifically for reviewers of classification requests, to ensure an understanding of “specially designed”. We have been seeing an increasingly inconsistent understanding or application of this definition over the last few years.

- **Recommended Action:** Provide training and/or guidance, if already available that may require updates for clarity, to the respective review officers on the criteria of “specially designed” for consistent application for commodity jurisdiction and classification requests.

Accelerate Allies. Export authorizations for U.S. allies, particularly Five Eye (FVEY) countries, face heavy scrutiny and lengthy processing perplexing to industry. With substantial opportunities for revitalized and fortified defense trade arrangements under security agreements like AUKUS, industry suggests the outcome be acceleration of regulatory requirements for those allies in the form of expanded and comprehensive International Traffic in Arms Regulations (ITAR) exemptions or expansion of OGL.

AIA member company comment: For 2022, our average cycle time for our export agreements to Australia and the United Kingdom is around 140 days, so about five months, and this is without Congressional Notification.

- **Recommended Action: Reduce regulatory requirements, expand applicability of exemptions, and leverage security pacts, such as AUKUS, to ensure rapid support for a broad range of defense capabilities to our closest allies.**

2. Delayed policy and regulatory updates impacting strategic priorities

Maintain competitive edge. Updates to DoD technology release policies and the U.S. Munitions List (USML) are critical to improving USG-industry competitive success. The USG enterprise is burdened when resources are spent on stringent reviews for technology where the U.S. maintains no technological advantage or that have dual-use applications; the essence of Export Control Reform. Updating the regulations frees manpower, meets the 21st century marketplace, and creates a more level playing field for U.S. companies with their international counterparts.

AIA member company comment: Industry is keen to use available exemptions. For 22 CFR 126.4, we need more comprehensive guidance on when and how it should be used to avoid the unnecessary trap of simply seeking a license instead, and we see significant value and recommend DDTC publish the Defense Trade Advisory Group (DTAG) updates to 22 CFR 123.17 for Personal Protective Equipment (PPE) to move forward with its use. We want to reduce the burden on the defense trade enterprise and these steps eliminate unnecessary licensing for lower risk, lower sensitivity transfers.



- **Recommended Action:** Issue additional guidance on and publish proposed updates of existing ITAR exemptions to enable broader and more streamlined use.

AIA member company comment: The regulatory environment for products in our portfolio is one that is not consistent with the plain language of the ITAR. We have parts and components that are seemingly controlled under the USML as a result of USG directed jurisdictional determinations that are not reflective of the published USML entries, and thus the order of review. A return without action (RWA) is recommended, requiring us to resubmit using facially inconsistent USML categories to get applications approved. We assume this indicates the USML and DoD policies are not fully synchronized. Nevertheless, removing transparency from the process and unpublished policies creates confusion for Original Equipment Manufacturers (OEMs), downstream suppliers, and subcontractors. Industry benefits from the continued intent of Export Control Reform and evolving the USML to keep pace with USG's policy objectives and global technological developments.

- **Recommended Action:** Synchronize Department of Defense policies with the U.S. Munitions List.

3. Reduce the workload burden

Revisit and revise license staffing procedures. A review of the current case staffing procedures with an eye toward limiting interagency stakeholders for purely procedural cases should prove to reduce burden on the system, particularly the experience of increased workload during times of crisis. Interagency reviews should be based on license scope and stakeholder equities. Eliminating reviews that do not apply to the request will reduce inefficiencies and redundancies in the system; especially for authorization amendments and “in furtherance of” cases.

AIA member company comment: Our organization had an IFO DSP-5 staffed to DoD, and it was a quick turnaround, but we are looking for clarity to proactively plan when IFO cases will or will not be staffed out, given that the base agreement was fully reviewed by the interagency.

- **Recommended Action:** Explicit guidance for license staffing, particularly for “in furtherance of” applications for industry.

AIA member company comment: We appreciate the opportunity to work with and engage the licensing officers (LO) who work our cases at DDTC. Standard process guidance on the contexts where issues can be resolved via proviso vice RWA will help both DDTC and industry manage the applications. We have experienced personal LO preferences regarding when to RWA vs. addressing an issue via proviso and this is difficult for our business to manage. RWA's for administrative details that can be easily addressed imposes a significant time cost.

We have experienced what appears to be preferences within DTCL that are inconsistent with posted requirements, variable between licensing officers, or not communicated to industry at all and discovered upon receipt of an RWA. We are trying to comply with a moving target. In one case, we submitted two identical tech data license applications with different end-users, following the format we have used for several years. LO 1 staffed Application A, while LO 2 RWA'd Application B and gave new instructions on how to change the applications. Upon resubmission, LO 1 happened to receive the amended Application B and contacted us because they did not understand the format. After discussion and explanation of LO 2's directions, LO 1 stated they would RWA the resubmitted Application B and instructed us to resubmit in the original format and inform them of the new case number which they would take and promptly staff.



- **Recommended Action:** If possible, update and clarify, such as in another revision to the Guidelines for Preparing Agreements, when administrative issues may be addressed via proviso vice requires an RWA.

Emphasize proviso accuracy. A USG workforce managing a high-volume of cases leads to adjudicated export authorizations with provisos that either do not reflect current policy, or provisos added during the amendment process rendering the base agreement unusable. Over time it indicates an industry-wide, systemic issue. Inaccuracy will impact implementation of the strategic policy objectives for U.S. defense trade, complicate foreign relations when partners do not receive timely products with accurate performance, and for industry it increases costs and risks compliance. Administrative errors specifically within adjudicated cases that must be rectified increases workload to both parties.

AIA member company comment: We sought licensing to proceed with a proposal for a significant procurement of a closely allied nation. The authorization was issued less than a month before the submission deadline. The issued case contained outdated provisos and/or seemingly pulled from precedent cases not directly related to the current context. Inapplicable provisos rendered the license unusable. It took weeks and significant engagement to correct the license. Moreover, the license contained classified provisos which took several weeks to receive. The administrative errors and processing time ultimately hampered our company's ability to efficiently produce a compliant proposal and a timely submission to the allied nation risking U.S. industry access to the opportunity.

- **Recommended Action:** Move forward with proviso updates to reflect the modern defense trade environment and establish a separate process for proviso rectification that moves quickly given the policy exists, rather than the more in-depth review of proviso reconsiderations.