



Department of Defense DIRECTIVE

NUMBER 2030.8

November 17, 1997

ASD(ISP)

SUBJECT: Trade Security Controls on DoD Excess and Surplus Personal Property

- References:
- (a) DoD Directive 2030.7, "Security Trade Controls on DoD Personal Property Sold in Foreign Areas," May 8, 1973 (hereby canceled)
 - (b) DoD Instruction 2030.6, "Implementing Procedures for Security Trade Controls on Sales for Foreign Excess Personal Property," March 20, 1973 (hereby canceled)
 - (c) DoD 4160.21-M-1, "Defense Demilitarization Manual (DDM)," October 1991
 - (d) "International Security Assistance and Arms Export Control Act of 1976 (AECA)," June 30, 1976, as amended (22 U.S.C. 2751 et seq.)
 - (e) through (p), see enclosure 1

1. PURPOSE

This Directive:

1.1. Replaces references (a) and (b). Implementing procedures formerly covered by reference (b) are contained in reference (c).

1.2. Sets forth trade security control policy and procedures to ensure that the DoD program for disposing of excess and surplus personal property is administered in a manner consistent with U.S. laws, regulations and policies governing exports and related transfers of technology, goods, services, and munitions, as well as with other laws, regulations, and policies relating to the disposal of such property. These include the Arms Export Control Act (AECA) (reference (d)), the International Traffic in Arms Regulations (ITAR) (reference (e)), continuation of the expired Export Administration Act (EAA) under Executive Order 12924 (reference (f)), the Export Administration Regulations (EAR) (reference (g)), the Regulations of the U.S. Department of

Treasury's Office of Foreign Assets Control (reference (h)), and other laws and regulations relating to the control and disposition of excess and surplus property, including the Federal Property and Administrative Services Act (reference (i)), 41 CFR (reference (j)), and the FAR (reference (k)).

2. APPLICABILITY AND SCOPE

This Directive

2.1. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard), the Chairman of the Joint Chiefs of Staff, the Combatant Commands and the Defense Agencies (collectively referred to as "the DoD Components").

2.2. Applies to DoD-owned or DoD-controlled excess and surplus personal property that are Munitions List Items (MLIs) or Commerce Control List Items (CCLIs) as follows:

2.2.1. Subject to controls on exports and related transfers as set forth in:

2.2.1.1. The ITAR, administered by the U.S. Department of State (DoS);

2.2.1.2. The EAR, administered by the U.S. Department of Commerce (DoC);

2.2.1.3. The Regulations of the Office of Foreign Assets Control (OFAC) administered by the U.S. Department of Treasury (DT).

2.2.2. Transferred through U.S. Government programs including DoD Foreign Military Sales (FMS) and the Military Assistance Program (MAP)/Grant Aid Program (see definition E2.1.3., enclosure 2) as authorized by the Foreign Assistance Act (reference (l)) and the Arms Export Control Act (reference (d)).

2.2.3. In the possession of individuals or entities other than the Department of Defense, including DoD contractors, State and local governments, and in museums.

2.3. Does not alter the procedures and responsibilities contained in relevant DoD Directives except references in the DDM (reference (c)), the DRMM (reference (m)), and the DMMR (reference (n)).

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

4. POLICY

It is DoD policy to:

4.1. Ensure that all DoD excess and surplus personal property constituting an MLI or CCLI, whether or not demilitarized, and whether located within or outside the United States, is transferred in accordance with U.S. laws, regulations, and policies administered by the Department of Defense, DoS, DoC, and DT. Measures shall be implemented that are designed to prevent the illegal acquisition or other unauthorized transfers of such property, including transfers to ineligible transferees (see definition E2.1.8., enclosure 2). These measures shall include proper demilitarization coding of property, conducting end-use and end-user or integrity and reliability checks (see definitions E2.1.4. and E2.1.9., enclosure 2); notifying purchasers of export license requirements, and requiring purchaser and end-use certificates as well as import certificates and delivery verifications.

4.2. Ensure, prior to an export or other transfer, within or outside the United States, that all DoD excess or surplus property requiring demilitarization has been properly demilitarized as required by 41 CFR (reference (j)) and by the Defense Demilitarization Manual (reference (c)).

4.3. Ensure that property exported or otherwise transferred as "scrap" (see definition E2.1.11., enclosure 2) does not contain end-items, components, accessories, attachments, parts, firmware, software, systems, or associated technical data that constitute MLIs or CCLIs.

4.4. Ensure, prior to a transfer of excess or surplus MLIs or CCLIs located in the United States, that the initial transferee, and each subsequent transferee, is a U.S. person as defined in the ITAR, and is notified and acknowledges, in writing, that a valid export license from DoS and/or DoC must be obtained prior to export, unless a license exception or other authorization has been granted or confirmed in writing by the appropriate Agency.

4.5. Ensure, prior to a transfer of excess or surplus MLIs or CCLIs located outside the United States (see definition E2.1.3., enclosure 2), that the transferee has a valid DoS and/or DoC export license, unless a license exception or other authorization has been granted or confirmed in writing by the appropriate Agency.

4.6. Ensure that MLIs or CCLIs transferred by the Department of Defense to a foreign government or entity, which has become excess or surplus to that foreign government or entity, including FMS and MAP/Grant Aid Program property, are demilitarized or otherwise disposed of properly.

4.7. Ensure that all U.S. Government personnel involved in the DoD excess and surplus property program, and all persons acquiring such property or associated technical data, are informed that violation of U.S. export control laws and regulations, and failure to report such a violation to the appropriate authorities, may subject them to criminal and civil penalties.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Policy shall:

5.1.1. Establish trade security control policy for the disposition of DoD excess and surplus personal property in accordance with applicable U.S. laws, regulations, and policies.

5.1.2. Ensure that the Director of the Defense Technology Security Administration formulates, and updates as appropriate, trade security control policy on DoD excess and surplus personal property in accordance with DoD Directive 2040.2 (reference (o)).

5.1.3. Ensure that the Director of the Defense Security Assistance Agency (DSAA) develops and coordinates with DoS written procedures for implementing trade security control policy. These procedures shall be incorporated in the Security Assistance Management Manual (SAMM) (reference (p)), and shall address the demilitarization or disposal of property transferred by the Department of Defense to a foreign government, including FMS and MAP/Grant Aid Program property.

5.2. The Under Secretary of Defense for Acquisition and Technology shall:

5.2.1. Have overall responsibility for establishing and implementing trade security controls and procedures for transfers of DoD excess and surplus personal property.

5.2.2. Ensure that the Director of the Defense Logistics Agency:

5.2.2.1. Acts as the program manager for policy implementation of trade security control policy and procedures for transfers of DoD excess and surplus personal property transferred by the Department of Defense.

5.2.2.2. Provides control and oversight of the demilitarization program to ensure that all MLIs requiring demilitarization are properly demilitarized prior to transfer, except as otherwise permitted by law, regulation and policy, to prevent unauthorized use and/or potential compromise of national security.

5.2.2.3. Ensures that MLIs and CCLIs are disposed of in accordance with DoD policy and implementing measures and procedures.

5.2.2.4. In coordination with the Customs Service, the DT, the DoC, the DoS, the intelligence agencies, and the DoD Components' investigative agencies, implements trade security control policy. This includes, but is not limited to:

5.2.2.4.1. Verifying the stated end use, end user, and destination of the MLI or CCLI;

5.2.2.4.2. Verifying that the MLI or CCLI is not transferred to or through an individual, entity, or country that is an ineligible transferee;

5.2.2.4.3. Ensuring that end-use and end-user checks, or integrity and reliability checks, are conducted prior to awards or other transfers of MLIs and CCLIs;

5.2.2.4.4. Ensuring that initial transferees, subsequent transferees, and end-users are notified in writing of the requirement to obtain a license from the DoS, the DoC, or other authorized U.S. Agency, prior to any transfer or retransfer of MLIs or CCLIs, unless the appropriate Agency has confirmed in writing that an exception to the license approval is available and in place, and that transferees provide notice to any subsequent transferees in the United States;

5.2.2.4.5. Verifying that the MLI or CCLI is delivered to the approved destination by employing import certification or delivery verification procedures (see definition E2.1.7., enclosure 2); and

5.2.2.4.6. Verifying the ultimate disposition of the property by performing post-delivery end-use checks.

5.2.2.5. Ensures that appropriate action, including investigative, administrative, and/or referral for legal action, is taken when violations of either

demilitarization or of DoD, DoS, DoC, and DT trade security controls are discovered or suspected.

5.2.2.6. Assists in the disposal or demilitarization of MLIs and CCLIs that have been transferred by the Department of Defense.

5.2.2.7. Coordinates with the DoS and the DSAA for demilitarization and disposal of FMS and MAP/Grant Aid Program property.

5.2.2.8. Provides written guidance and technical assistance for the assignment of correct demilitarization codes on DoD property and for safeguards for MLIs and CCLIs.

5.3. The Heads of the DoD Components shall:

5.3.1. Ensure compliance with the policies and procedures contained in this Directive by their subordinate elements.

5.3.2. Ensure the assignment of correct demilitarization codes for all managed inventory items in accordance with applicable DoD policies.

5.3.3. Ensure that, in each fiscal year, an audit of the demilitarization codes for at least 20 percent of all managed inventory items (including new items) is conducted to determine that the correct demilitarization codes have been assigned. Furthermore, every item must be reviewed at least once every 5 years.

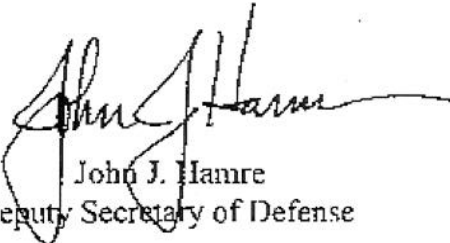
5.3.4. Ensure that MLIs and CCLIs are properly safeguarded to prevent theft, pilferage, or illegal diversion.

5.3.5. Ensure that accurate demilitarization codes appear on DD Form 1348-1A, Issue Release/Receipt Document.

5.3.6. Refer to the appropriate Federal Department or Agency suspected violations of U.S. laws and regulations involving the disposition of MLIs and CCLIs.

6. EFFECTIVE DATE

This Directive is effective immediately.



John J. Hamre
Deputy Secretary of Defense

Enclosures - 2

- E1. References, continued
- E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Department of State (DoS) International Traffic in Arms Regulations (ITAR) (Title 22, Code of Federal Regulations, Parts 120-130)
- (f) Executive Order 12924, "Continuation of Export Control Regulations," August 19, 1994¹
- (g) Department of Commerce (DoC) Export Administration Regulations (EAR) (Title 15, Code of Federal Regulations, Parts 768-799)
- (h) Title 31, Code of Federal Regulations, Regulations of the Office of Foreign Assets Control (OFAC) Department of Treasury
- (i) Sections 511-514 of title 40, United States Code, "The Federal Property and Administrative Services Act of 1949," June 30, 1949, as amended
- (j) Title 41, Code of Federal Regulations, Parts 101-45. 309-3, "Demilitarization and Decontamination"
- (k) Federal Acquisition Regulation (FAR), Part 45, "Government Property," current edition
- (l) Section 505 of "The Foreign Assistance Act of 1961 (FAA)," September 4, 1961, as amended (22 U.S.C. 2151 et seq.)
- (m) DoD 4160.21-M, "Defense Reutilization and Marketing Manual (DRMM)," March 1990, authorized by DoD Directive 4160.21, December 5, 1980
- (n) DoD 4140.1-R, "DoD Material Management Regulation," January 1993
- (o) DoD Directive 2040.2, "International Transfers of Technology, Goods, Services, and Munitions," January 17, 1984
- (p) DoD 5105.38-M, "Security Assistance Management Manual (SAMM)," October 1988

¹The Export Administration Act of 1979 (EAA), September 29, 1979, as amended (50 U.S.C. App. 2401 et seq.) expired on August 20, 1994. Executive Order 12924 continues in full force and effect, to the extent permitted by law, the export control system maintained by the Export Administration Regulations issued under the EAA.

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Commerce Control List Item (CCLI) (formerly known as Strategic List Item). Commodities and associated technical data (including software) subject to export controls under the EAR. The EAR contains the Commerce Control List and is administered by the Bureau of Export Administration, DoC.

E2.1.2. Demilitarization Code. A single-character code indicating "MLI" or "CCLI" and the degree of demilitarization necessary (if any) before release from DoD control.

E2.1.3. DoD Excess and Surplus Personal Property. DoD excess personal property is property not needed by any DoD activity, whether located inside or outside the United States. DoD surplus personal property is property not needed by any Federal activity. DoD foreign excess personal property (FEPP) is property located outside the United States, American Samoa, Guam, Puerto Rico, Palau, or the U.S. Virgin Islands. The term "excess property" includes FEPP. FMS and MAP/Grant Aid Program excess personal property is property transferred by the Department of Defense to a foreign government that becomes excess to that government.

E2.1.4. End-Use and End-User Checks. A pre-award clearance check by the appropriate U.S. Government Agency to verify that the destination, end-user, and end-use of controlled DoD property conforms to that stated in the export license or the end-use certificate. (See also definition E2.1.9.)

E2.1.5. End-Use Certificate. A statement by a prospective purchaser or other transferee indicating the intended destination and disposition of MLI and CCLI property to be purchased/transferred, and acknowledging U.S. export license requirements.

E2.1.6. Export. The transfer of a controlled MLI or CCLI out of the United States in any manner. Transfer of an MLI or CCLI in the United States to a non-U.S. person may also be deemed an export in certain circumstances. (See the ITAR (reference (e)).)

E2.1.7. Import Certificate/Delivery Verification. Procedures designed to ensure that MLI or CCLI property imported into an IC/DV participating country is actually delivered and is not diverted, transshipped, or re-exported to another destination except in accordance with DoS or DoC regulations or licensing stipulations.

E2.1.8. Ineligible Transferees. Individuals, entities, or countries excluded from Federal programs by the General Services Administration; delinquent on obligations to the U.S. Government under surplus sales contracts; designated by the Department of Defense as debarred and suspended from defense contracts; or subject to denial, debarment, or other sanctions under export control laws and related laws, and regulations and orders administered by the DoS, the DoC, or the DT.

E2.1.9. Integrity and Reliability (I&R) Checks. A pre-award clearance check by the appropriate U.S. Government Agency to verify that the destination, end-user, and end-use of controlled DoD property conforms to that stated in the export license or the end-use certificate. This term is used in lieu of "End-Use and End-User Checks" for clearance checks prior to awards or other transfers of U.S. property located overseas.

E2.1.10. Munitions List Item (MLI). Defense articles, associated technical data (including software), and defense services recorded or stored in any physical form, controlled by the ITAR. The ITAR, which contains the U.S. Munitions List, is administered by the Office of Defense Trade Controls, DoS/Political Military Affairs.

E2.1.11. Scrap. Personal property that has no value except for its basic material content.

E2.1.12. Transfer. The sale, lease, loan, grant, exchange, trade, barter, or donation of an item to another person or entity.