



**INTERNATIONAL BEST PRACTICE PROJECT**

**For**

**EXPORT OF CONTROLLED MATERIAL**

**THALES**

[www.thalesgroup.com](http://www.thalesgroup.com)

**MK Technology**

[www.mktechnology.com](http://www.mktechnology.com)

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## INTRODUCTION

This “International Best Practices Project” for the Export of Controlled Material (also known as Export Control Best Practices or ECBP) was produced at the behest of senior career officials of the U.S. State Department’s Directorate of Defense Trade Controls (DDTC) and with the enthusiastic support of their counterparts in the U.S. Commerce Department’s Bureau of Industry and Security (BIS), and the Australian Departments of Defence and of Industry and Resources. Senior career officials of the U.S. Defense Department’s Defense Technology Security Administration (DTSA) joined their colleagues in the State and Commerce Departments to welcome this joint work by large, medium and small enterprises to develop ECBP for the common good.

This project is a direct successor to – and update of – the well-known Nunn-Wolfowitz study in 2000, with revised scope to allow for time and resource constraints. Led by the Australian subsidiary of the worldwide Thales Group and co-sponsored by the Group itself, this Report is the joint product of the key export officials in six of the world’s leading dual-use and munitions exporters (two based in Europe, the others in the USA), with similar participation by a Europe-based Small-Medium-sized Enterprise (SME) trading sensitive nuclear-related dual-use products worldwide, and two smaller U.S.-based specialty firms producing sensitive equipment and aircraft for the U.S. Defense and Homeland Security Departments.

After an extensive briefing in mid-2006 by the undersigned and his U.S. adviser, Terence Murphy, Esq. of MK Technology on Thales’ own export-compliance programs, senior Commerce and State Department officials were uniformly enthusiastic and urged the creation of a “best practices” project with leading U.S. companies. Subsequently, many key officials in some of those same companies also lent their support to the project. All concerned thought it “the right thing to do”.

Our experience taught us that the U.S. Government’s confidence in our own good compliance practices had placed Thales Australia “near the head of the queue” at the relevant U.S. Government agencies. We in the Thales Group also believe that where our respective national security interests are concerned, as good corporate citizens we have an obligation to share those practices that work not only for the common good but for our respective “bottom lines”.

Some of this belief came from my own background as a civil servant in the Australian Government working closely with colleagues in the American, British, French and other allied governments to protect against unauthorized access to classified or controlled material. My more recent experience in the private sector has further convinced me that the private sector can play an important role in these efforts as well, and that the outcome is beneficial for industry and government.

I am delighted by the enthusiastic participation in the ECBP of leading U.S. and non-U.S. enterprises including BAE Systems, Boeing, General Electric, Northrop Grumman, Raytheon and several well-managed small and medium enterprises (SMEs) producing

strategically-important dual-use and ITAR products demonstrating that “export compliance is good for business.”

Even at our most self-interested, none of us desires that the superior military capability represented by the talent and products of our leading enterprises should fall into the hands of those who are prepared to do harm to our countries and their citizens. Clearly, where we have responsibility for developing, manufacturing and providing capability either directly-military or dual-use, we should provide the protective measures and processes at all stages of business to ensure that such unacceptable transfers do not occur.

The second driver is a plain and unadulterated one; every sensible business should know what it has, where it is, who has access to it, where it is going and how it will be used. For a defense or dual-use company, these questions go to the heart of governance, security and accountability. Good controls and good processes are good for business.

The third driver is very much based on my personal belief that there are some things that are above competition, that personal and business interests must take account of national security interests. Within this belief is my view – very much shared by senior management both in Australia and elsewhere in the Thales Group – that leaders of all ranks have an obligation to share what they have learned to strengthen our society as well as our companies. It has been gratifying that this view was shared by senior members of the participating companies and government officials in both Australia and the U.S., thereby enabling the project to go ahead.

We in Thales and our consulting colleagues in MK Technology hope that this Report of the ECBP project may be found useful by all in the export control community and may assist in providing some specific guidance to "doing well by doing good."



Jason L Brown  
National Security Director  
Thales Australia

cc. Paul Moffatt, Esq.  
Group Export Controls Director  
Thales Group, SA

Terence Murphy, Esq.  
Chair

Frank Record  
Executive Partner

Frank Cevasco  
Senior Adviser

MK Technology, LLC

## **EXECUTIVE SUMMARY**

Nine years ago, the “Nunn-Wolfowitz” Task Force Report recommended a series of export control benchmarks to the Board of Directors of Hughes Electronics Corporation establishing a standard of conduct for complying with the full range of U.S. export control laws and regulations. Over time, this study has become a template and foundation for corporate export control compliance as companies evolve their own best practices as a function of their size, organizational structure, relative importance of exports to the company, dominant technologies, and company culture.

This International Best Practices Report, sponsored by Thales was conducted by the global trade consultancy MK Technology (MKT), based in Washington, DC with operations worldwide. It assesses how nine companies (Appendix A) see themselves as implementing their own best practices. It does so through a series of carefully structured interviews with 29 of their key export managers and executives providing the first effort at updating the 2000 landmark Nunn-Wolfowitz Report (see Appendix B). The companies shared views confidentially with MKT and not with each other or with Thales. All carefully reviewed the drafts having advised MK Technology that their individual views could not be identified.

We concluded that the long-term benefits of an internal export compliance program outweigh any actual or potential sales or other short-term implementation costs. The careful execution

of such a program is vitally important to a company's reputation, enhancing the efficiency and profitability of its operations. Moreover, a high standard of compliance conveys to government customers and government regulators the label of a good corporate citizen where executives set overall ethical "best of class" guidelines for the conduct of every employee.

In sum, we found a growing realization across the spectrum of nine companies - large, medium and small - not only that the penalties for licensing failures and non-compliance are rising but that public recognition of export control best practice in the boardroom and on the shop floor is becoming a competitive advantage. Doing the right thing at modest cost in the short run is viewed as a way to increase a company's stature and its ability in the long run to work effectively with government agencies and other corporate partners. It was the unanimous view of all company participants: "Export compliance is good for business."

## **BACKGROUND**

This "Export Control Best Practices" (ECBP) study was launched in 2007 by MK Technology at the initiative of Thales Australia (the sponsoring Thales Group's subsidiary) with the encouragement and support of officials at the U.S. State Department's Directorate of Defense Trade Controls, the Commerce Department's Bureau for Industry and Security and the Australian Departments of Defence and of Industry and Resources. Note the August 6<sup>th</sup>, 2006 letter of support and

encouragement to ADI, Limited (now Thales Australia) from Acting Assistant Secretary for Export Administration, Matthew Borman in Slide 11 of the PowerPoint section.

Presented publicly in a PowerPoint version to the Global Trade Conference in London in November of 2008, the report was well-received by the more than 40 export control managers, practitioners, and government officials in attendance, including by the representative from the State Department's DDTC and the Commerce Department's BIS, and other foreign government officials from France, Germany, Japan, the UK and the EU. Using many of the same benchmarks in the original Nunn-Wolfowitz Report, ours reflects the views of key export control officials and practitioners on how they define and implement best practice.

Like the authors and the sponsors of the nine year old Nunn-Wolfowitz Report, the sponsor and participants of this report believe that the identification of a best practice standard for complying with the letter and spirit of U.S. export control laws and regulations would prove useful for other companies in their own compliance efforts.

The two reports have many points in common: we both consulted closely with several government agencies and reviewed the various guides and publications available on their websites.

While the Nunn-Wolfowitz report interviewed export compliance personnel and representatives from six large companies and several trade associations, this report interviewed key officials from six large companies (including three of the same companies, Boeing, General Electric, and Northrup Grumman, taking part in the Nunn-Wolfowitz Report) as well as three small and medium-sized companies, one based in Europe and two in the USA.<sup>1</sup>

Owing to personnel, resource and other constraints, we did not try to copy or duplicate all of the areas covered by the first study, but instead we focused on those topics and benchmarks that reflect current best practice for companies large and small. We also did not seek to replicate the outstanding “Toolkit for Internal Compliance”, produced by the Society of International Affairs in April 2008 and cited with hyperlink as Appendix E to this ECBP report. With violations frequently punished by fines, prosecution and even loss of export and import privileges, every company interviewed in our report is mindful of the need for a fully functioning compliance program, and all remain well aware that strict compliance remains essential in the post Cold War era.

This report is by no means an all-inclusive review of every export control issue or a compendium of how the participating companies view the full range of regulatory policy and

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<sup>1</sup> One smaller company, Insitu, subsequently became part of Boeing. It was an independent company at the time of this ECBP study, and neither company took part in MKT’s interviews with the other.

practice. Nor does it speak to such policy issues which remain in the purview of the companies.

It does not discuss any pending regulation or policy initiative by the current or former Administrations and is not intended to convey any particular view, be it positive or negative, on controls and regulations administered by any government agency. It is also not intended to provide any interpretation of the Export Administration Regulations, International Traffic in Arms Regulations, or any other law or statute.

It is intended rather as an overview of how 29 responsible officials from nine large, medium and small companies are implementing export control best practices. Toward this end, we reviewed the constraints and incentives to their adoption, including five of the benchmarks in the Nunn-Wolfowitz Task Force Report. These include management commitment, compliance organization, training and education, export compliance instruction manuals, and foreign national issues.

Our objectives include the definition of best practice; identification and analysis of varying approaches to export compliance programs; and sharing of findings with industry and government. To borrow from comments made in the preliminary phase of this ECBP study by an executive of a participating "prime" defense contractor dealing with both ITAR and dual-use products worldwide, our objectives also include the "culture change" (that individual's expression)

discussed in the Introduction by the Thales Australia executive overseeing this report.

These objectives are all the more relevant in light of the recently released compliance materials and reports in the U.S. and in other countries. On February 19, 2009, the Commerce Department's Bureau for Industry and Security (BIS) issued revised guidelines for export control compliance program self-assessments.

Comprised of nine elements or categories of findings, the February 2009 Department of Commerce export compliance guidelines touched to varying degrees on many of the same practices identified in the 2008 preliminary edition of this report presented in London. Recommended practices included the commitment of management to export compliance, the identification of compliance objectives, compliance councils, training and education, and foreign nationals. Note that the overall structure and components of a model Export Management Control Program (EMCP) are described on the DOC/BIS website (<http://www.bis.doc.gov/licensing/exporterfaq.html>).

## **METHODOLOGY**

The project was constructed from a series of confidential and in-depth structured interviews conducted throughout 2008, by a single principal investigator and the ECBP project manager, with 29 officials from four large U.S.-based multinational

enterprises, two large Europe-based multinationals (including the sponsoring Thales Group and its Australia subsidiary), and three small-to-medium sized (SME) U.S.- and Europe-based companies.

Companies agreeing to participate were asked initially to provide paper copies of, or access to, their internal export control documentation with assurances that the information would not be shared with any of the other companies. Most declined, but some agreed only to change their minds quickly thereafter. Ultimately, only a few organizational charts and other survey information were obtained, indicating that although the companies were cooperative and forthcoming in structured interviews, all the participating companies considered their actual compliance manuals and other documents describing their export control processes and procedures as too valuable to share, even under restricted conditions.

The interviews focused exclusively on the responses to the 19 questions listed in Appendix C. Two or more executives were interviewed in each company. Eleven interviews were conducted with one functional manager or executive, while between two and eight such officials took part in all the other interviews. Multiple interviews were conducted in each of the six large companies, anticipating that responses would vary despite the presence of an overarching corporate policy regarding export control. One interview took place with all of the key global personnel of a large company participant; while

others took place with two MKT interviewers and two responsible officials.

Large companies include: BAE Systems, Boeing, General Electric, Northrop Grumman, Raytheon and the Australian subsidiary of the worldwide Thales Group.

The other companies include: Oerlikon of Germany, a manufacturer of high-precision solar, vacuum and other applications; Insitu of Bingen, Washington (acquired by Boeing long after its executives had been interviewed for this report), a manufacturer of unmanned aerial vehicles in use by the U.S. military in Afghanistan, Iraq, and elsewhere as well as for civilian use in open-ocean fishing surveys; and Calumet Electronics of Calumet Michigan, a specialty manufacturer of printed circuit boards for the U.S. Defense and Homeland Security Departments.

Mr. Frank Cevasco was the principal investigator. He has served in senior positions at the Department of Defense and has had a lengthy practice assisting public and private clients in strategic and defense issues. All of the interviews were conducted under his direction, with the direct participation in multiple-interview settings of MK Technology's Chairman and then-CEO Terence Murphy, who has had extensive international legal and consulting practice in this and other areas. They drew up the questions (see Appendix C), in consultation with MKT export control professionals who had served in either senior U.S. Government or industry positions.

The late Dana Townsend of MKT was a principal designer of this ECBP study.

The study covered several broad areas including specifically the identification and analysis of varying approaches to export control compliance programs, the cooperation between industry and government, the sharing of findings between industry and government, and the definition of best practice, probing informally and confidentially how companies think about, organize for, and implement their export control and compliance functions.

As noted, the questions focused, in part, on five key benchmarks in the Nunn-Wolfowitz Task Force including management commitment, compliance organization, training and education, export compliance instruction manuals and foreign national issues. (The other Nunn-Wolfowitz benchmarks were not specifically addressed including export compliance personnel, export compliance intranet site, license application process, implementing license authorizations, recordkeeping, audits, and handling suspected violations).

The questions also focused more broadly on several other areas considered important in a contemporary setting: the identification and analysis of varying approaches to export compliance programs; the sharing of findings with industry and government; and the overall evolution and definition of best practice including how companies organize and implement their export control and compliance functions.

Those interviewed were assured from the outset that all their responses would be on a not-for-attribution basis, prompting a frank and candid exchange in all cases. In short, the confidential information obtained from any one of the cooperating enterprises obtained in the interview process was not shared with any of the other eight. They all saw only the melded information that was presented at the Global Trade Conference in November, 2008. Prior to this event, each enterprise had carefully reviewed the slide presentation and confirmed to Messrs. Cevalasco and Murphy that its own confidential information could not be identified.

## **INTRODUCTION**

Compliance with export controls is fundamental to a national defense capability in post-Cold War era as the Soviet threat has been replaced by nuclear proliferation, unstable and failed states, and non-state actors.

- Changes in the global economy challenge the assumption of maintaining technological superiority through a denial strategy where the export of technology to other markets is restricted;
- Markets have become increasingly integrated with supply chains frequently set up on a global basis. Well-trained

scientists and engineers as well as capital and technology are no longer concentrated in one country or region;

- The administration of export controls has become increasingly complex with: Adversaries, including non-state actors, making aggressive efforts to obtain U.S. technology, Demands of conducting joint operations with coalition partners, and Growing transnational terrorist threats;
- Export controls and regulations can change with little notice or warning and they are strictly enforced by governments;
- Violations are punished by fines, prosecution or loss of export/import privileges. Often the fact or threat of adverse publicity is a constraint on short term “cost cutting” of corporate export control organizations or their activities;
- No company has been exempt from export control errors and unintentional oversights and lapses that can be identified and addressed by a fully functioning internal compliance program;

- Companies recognize the need to evolve their own control practices to fit their own unique organizational structure and business practices;
- The Nunn-Wolfowitz Task Force Report remains a useful guide for export control best practices;
- But it needs to be updated in the face of challenges from an increasingly globalized marketplace, new regulatory developments and stepped up enforcement;
- The Departments of State and Commerce have encouraged our efforts, and their Government of Australia counterparts, to review and revalidate export compliance best practices of corporate export control organizations;
- Our ECBP report examines views of aerospace, defense and commercial industry as distilled from practices of six large and three medium-small companies.

## **FINDINGS**

### *DEFINITION*

The responses to the structured interviews established a generalized definition of best practices consisting of company policies, procedures and guidance designed to: (1) inform

executives, managers and workers about export control laws and regulations; (2) ensure that all senior executives, as well as all staff, put the highest priority on complying with these same laws and regulations; (3) create an environment for full compliance on the part of every employee and ensure that he or she has ready access to a wide range of explanatory material including guidelines, references, standardized forms and templates; (4) provide training in the use of such material; (5) ensure internal compliance efforts are being constantly monitored and evaluated by senior management and that corrective action is taken as needed; and (6) provide sufficient funding, staff, and infrastructure to support these objectives.

### *OPERATIONAL THEMES*

A number of operational and ethical themes also emerged from the interviews with compliance officials and practitioners.

- Export compliance trumps monetary considerations where executives and employees understand that they are expected to do what is right and not to seek or exploit loopholes;
- Beyond consideration of good citizenship and good governing it is recognized that export compliance is “good for business” and that good compliance breeds confidence in regulators worldwide, poor compliance can have the opposite effect;
- Efficiency is not in competition with compliance such that the company deliberately separates the two functions of revenue generation and licensing and compliance;

- A conservative approach is taken regarding exports and export compliance; reporting is done through a function not driven by profit and loss considerations;
- While compliance errors and shortcomings do occur, they are largely inadvertent;
- Nothing should be allowed to compromise their commitment to integrity.

### *COMMITMENT OF MANAGEMENT*

Several of the firms clearly indicated that controlled data or technology would be exported or otherwise utilized in conformity with all applicable export control regulations and guidelines, both in the U.S. and other countries where the companies operate. Several others were more expansive in this area, stating that no marketing policy or even a direct order from a high-ranking official would justify employees compromising the company's ethical guidelines and principles.

Fostering a culture of compliance to prevent any unauthorized disclosures reinforces the goal of preserving the company's good name at home and abroad. Financial performance and high standards of governance, in their view, go hand in hand with supporting both the national interest of individual firms' home countries as well as the needs of worldwide customers.

A consensus emerged on the part of all the participating executives that the sustained commitment of management is essential to the success of any company's export control

system. In this regard, all nine companies clearly stated that senior executives are - and must remain - responsible for the oversight of all their export control activities.

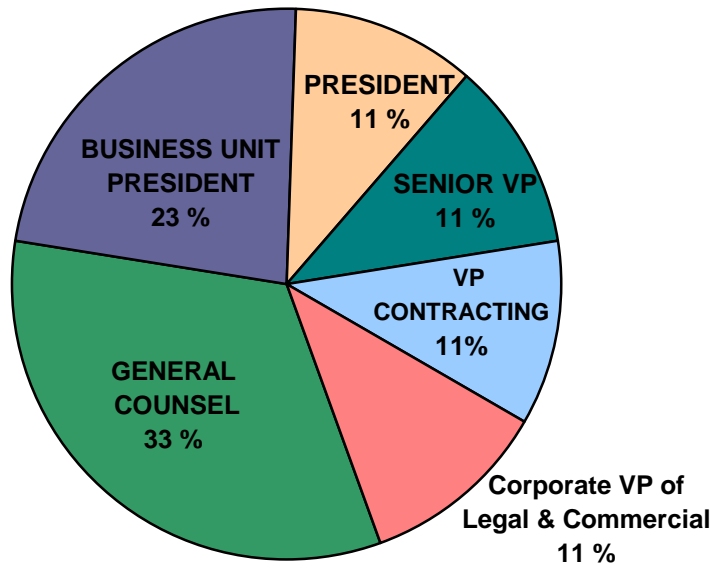
But how they handled these responsibilities varied from company to company. For example, the responsible executives in seven of these companies report directly to their executive boards. Two assigned export control to a business unit manager who in turn reports to senior executive officials. Senior corporate executives in charge of export control include: President (or equivalent), General Counsel (or equivalent), Senior Vice President, Vice President for Contracting, Corporate Vice President of Legal and Commercial, business unit President and Thales Australia's National Security Director with direct access to TA's Board of Directors. See Chart A for the distribution of these functions across all companies and business units.

Financially supporting the commitment is, of course, no less important. Executives from seven companies assert that their export control funding is fully adequate; one company executive indicated that his/her company's funding is "barely adequate" and the executive of another expressed the opinion that funding is inadequate to provide sufficient oversight.

General Counsels (Senior Legal Officers) and Business Unit Presidents predominated as the "designated official" responsible for overseeing the export control process:

## **Senior Executive Responsible for Export Control**

Chart A



### *ASSESSING THE SYSTEM*

When asked to rate the management of their export control operations, executives from all nine companies assessed them as “above average compared to their competition”. While one company executive proclaimed that “this is an area where we stand out”, another acknowledged that one of their competitors set the standard upon which they based their own operations.

In assessing the effect of the government’s overall export control system on a company’s sales, responses varied widely from one company to another, and even within companies.

Eight executives responded that their company has, or probably has, lost sales as a result of its compliance program. Thirteen reported 'disappointed customers' produced by delayed deliveries or by delivery of a product with less capability than initially promised.

One mentioned receiving pressure from foreign customers for ITAR-free products. Another mentioned receiving pressure from within their company for ITAR-free products. Note that only two out of the 29 interviewed for this report said that this was an issue, a surprisingly low percentage in light of its prominence in industry panel discussions and commentary in the policy community.

Executives from two companies, when asked about any disappointed customers, reported troubled prime-supplier relationships as a source of product and export shipment delays.

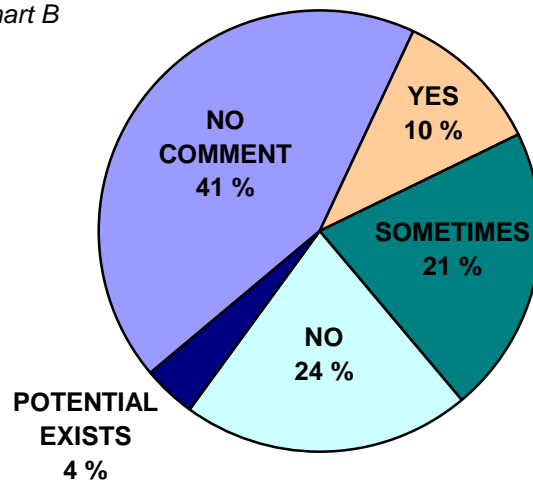
### **Problems Generated Within Company**

See Chart B in regard to the response to the question if any of the problems experienced with the export control system are generated within your own company. Note that the responses varied from one company to another and also within companies.

Three people pointed to compliance challenges facing them as a result of poorly articulated and ambiguous export licensing provisions, while another person acknowledged internal administrative errors as a source of problems. Over 30% of respondents acknowledged that their company is or could be the source of their own export compliance problems pointing to the trust they placed in MKT's project manager and principal investigator, and in the anonymity of their companies' responses.

*Are any of the problems experienced with the export control system generated within your company?*

Chart B



### Foreign Nationals and Role of International Subsidiaries

Companies generally distinguished between foreign employees and foreign visitors. At least three companies have

Technology Control Plans to ensure compliance with existing restrictions on foreign nationals with security badge systems and other administrative mechanisms restricting their access as required. Most restrict access to company facilities and IT systems. Note that some of the companies in our report do not have foreign employees.

Several companies include their international subsidiaries in export compliance training and in setting overall policy. Three of the companies surveyed solicit policy guidance and suggestions from their subsidiaries; at least three extend training to them; and four others bring representatives from their subsidiaries into meetings on export control issues.

### **Differences between Large and Small Companies**

All companies, large and small, perceived themselves as very successful in managing export control issues. No matter what their size, they reported that their firms generally provided adequate resources for export control functions and they paid careful attention to Consent Agreements with the full realization that doing any less could damage their corporate reputation.

Large companies, in general, voiced more confidence in their ability to ensure that systemic problems did not originate from them. With their higher corporate profile and well-known name brand, large companies tended “to carry the national flag” with more resources (including expert staff) at their disposal and larger export control programs, they generally made

greater efforts to develop professional relationships with U.S. Government licensing officials.

With a limited executive suite, small companies have much less latitude on delegating export control-related decisions. In areas of potential risk to the company, such as in export compliance, the chief executive usually takes personal responsibility.

Small companies acknowledge the need for continuous improvement of export compliance guidelines but do not generally keep pace in this area compared to larger companies. Small company guidelines are much more apt to be uniform, if not *pro-forma*, than those of larger more diverse companies.

## Large and Small Companies

### Scale has impact on:

- Corporate executive attitudes regarding export control
- Large companies had a more comprehensive understanding of their weaknesses
- Small companies hold export control especially close to their chief executives
- Large companies have substantial flexibility in how they

organize the export control function

- Large companies are resourced to reach out to government licensing authorities

### Scale has no impact on:

- Success managing export control
- Studying mistakes of others

## Staying on Best Practice and Preventing Export Control Violations

Best practice takes place when export control is a matter of personal and corporate pride, when senior executives set ethical themes and communicate them effectively with all company employees, and when they routinely review Consent Agreements involving other firms indicating where similar problems might exist in *their own* company.

Studying the mistakes of others raises overall awareness of potential problems and how best to avoid them. Certain measures have generally been found effective in preventing problems from becoming systemic where they take root inside a company. These include: quality control of the license application preparation process, training, monitoring suppliers, clarifying ambiguous license provisions, and limiting access to facilities and controlled information by foreign national employees and visitors.

In assessing whether any of the recent government rulings over company practices have led to changes in their own export control compliance process, all nine pointed to the fact that they regularly review each new Consent Agreement when made publicly available by the State Department's Directorate of Defense Trade Controls.

Five indicated that these reviews help raise awareness about the importance of export to their companies and the need for training. Only one acknowledged that it adopted what it called minor changes after a review, while two others indicated that they

subsequently implemented internal changes. Another company representative indicated that it followed up by issuing new internal guidance.

In some instances these reviews led to a change in corporate policies and in the commitment of resources: one increased its investment in export control measures, while two others indicated that they subsequently changed procedures in how they managed their suppliers.

Companies were also asked to assess their own guidelines. In this area, all nine reported that their internal compliance guidelines are adequate. Six cited the need for “continuous improvement” to accommodate regulatory changes, two updated them on an “as required” basis, and one did not offer a position. While four impose common procedures throughout the company, five others allow flexibility at the business unit level; one of the five indicated its intention to impose uniformity.

### **Relationship with U.S. Government Authorities**

Despite day to day problems with licensing regulations and policies, all nine companies report that they enjoy a healthy relationship with U.S. Government licensing agencies. A professional relationship with licensing officials can help a company find an optimal solution to its licensing issues and avoid future violations by steering it toward voluntary disclosures.

In regard to the relationship with specific agencies, six indicated a strong relationship with State licensing authorities, four with Defense and two with Commerce and others in their home countries. Two companies hold regular meetings with government officials including discussions on export marketing topics for one, and on how its compliance process is being perceived for the other.

Systematic efforts by some companies to improve export control operations did not go unnoticed by government regulators, and it was these same companies that could expect to see their license requests decided on a timelier basis.

### **Role of Training and Corporate Guidelines**

When senior executives accord priority to export control issues including internal compliance programs, the staff can be expected to follow their lead. Continuous and systematic training of employees is essential to achieving “best practice” status. When it includes executive participation, the message is further reinforced.

All nine companies have training programs (self-described as essential) and set training goals at the corporate level, with “Empowered Officials” receiving the most intensive instruction. The primary goal is to increase awareness of export control compliance issues and potential problems to provide tools to solve them.

At least four companies provide training by corporate staff, while others provide it through outside consultants or through a combination of corporate and business unit personnel. Large

companies' training programs include lectures, online courses, and informal newsletters with each company using one or more of these training methods. Most large companies offer several different versions and levels, ranging from awareness training, targeted functional training and online training for export control professionals, with Human Resources tasked to remind staff when they need a refresher course.

In regard to the uniformity of their procedures, half imposed common procedures throughout all corporate levels and the other half allowed different approaches at business unit levels.

### **Different Approaches to Management**

A centralized management is not necessarily required to obtain a "best practices" outcome. A decentralized approach can work just as well if effectively supervised. Export compliance decision-makers are most commonly separated from sales and business managers with "profit and loss responsibility" but even when they are linked, high level corporate managers often implement monitoring systems to ensure effective compliance.

### **Identifying Common Elements**

In the course of our interviews identifying common elements of "best practice" we were well aware that others, including several government agencies, are developing their own ways to assess a company's overall performance. The Department of Commerce's BIS, for example, has put its version of "best practice" on its web site and the State Department's Directorate of Defense Trade Controls (DDTC), in its posted Consent Agreements with a number of

companies, has also identified key benchmark goals. (See Appendix D).

The Society for International Affairs has compiled numerous useful documents on its web site including *Compliance Insiders: Toolkit for Internal Compliance*, a document laying out the operationalized details of export control compliance. (See Appendix E).

## CONCLUSIONS

### *RETHINKING THE COSTS OF COMPLIANCE*

1. Participating companies concluded that export compliance programs contribute to profitability and enhance the corporate profile;
2. Compliance programs are now being viewed as a contributor to profit as well as a legal obligation;
3. The long-term tangible and intangible benefits of such a program outweigh any short-term costs of foregone sales and of maintaining an export compliance infrastructure with the result that export compliance trumps business considerations;
4. An effectively managed export compliance process can improve a company's competitive position. Conversely, a badly designed and implemented process can lead to lost

sales, disappointed customers and damage of a company's reputation as a reliable supplier and in many cases carry heavy fines and other penalties;

#### *"BEST PRACTICES" BENCHMARKS*

5. Training is an essential part of compliance, and a workforce well-educated in the complexities of a company's export control obligations will not knowingly cause a violation. As the Group Export Controls Director of Thales advised a London conference in 2009, the key is "training training training";
6. Corporate compliance guidelines tend to lose relevance unless subject to continuous updating;
7. Companies must limit access to facilities and controlled information by foreign national employees as well as visitors;
8. Consideration should be given to including foreign subsidiaries in policy formulation, export control meetings and training sessions;
9. Investing the time to develop a professional relationship with licensing officials is an important way for companies to identify when preventative actions are needed – before a violation takes place;

### *NEED FOR HIGH-LEVEL ENGAGEMENT*

10. High-level executive engagement is essential for the success of the export control function and to ensure that it is adequately funded. Corporate executives unaware or uninterested in compliance issues can send a clear – if negative – symbol to the chain-of-command and damage a company's reputation and future profitability;
11. To avoid systemic internal problems, a company needs to maintain the highest possible quality control of the export licensing application process. The designation of an internal compliance officer(s) with ready access to senior management is crucially important;
12. In addition, the company needs to make enhanced efforts to clarify unclear licensing provisions;

### *SUPPLIER RELATIONSHIPS*

13. Companies must pay closer scrutiny to the compliance aspects of their supplier relationships, encouraging companies they work with to set up their own compliance procedures;

### *ATTAINING BEST-OF-CLASS STATUS*

14. Export control should be a matter of professional and corporate pride, encouraging the attainment of “best of class” status;

15. Senior executives need to set the overall ethical and operational themes for the company and communicate them effectively to the entire workforce if they are to become part of the corporate culture;
16. It is also critically important that they review all relevant Consent Agreements to determine if any of the violations could occur in their own company and to take preventative actions if necessary;
17. Many companies closely guard their internal compliance procedures as “proprietary” with the conviction that they provide a competitive advantage in the global marketplace;

### *GOVERNMENT ROLE*

18. Government agencies should actively encourage companies to make voluntary self-disclosures, thereby bringing problems directly to the attention of regulators. Equally, they should avoid the perception that a voluntary self disclosure (VSD) may bring heavy fines or other punishment, as under those conditions no national exporter or competent advisor would willingly take a VSD except as a last resort;
19. Agencies should promote private-public partnerships and other ways of recognizing consistent best practices performers;

20. Government-sponsored workshops and conferences should highlight and publicize specific examples where small and medium-sized companies have put best practices in place.

## NEXT STEPS

With its limited resources and personnel, this ECBP Study took a “snap-shot” approach to compliance best practices in conducting interviews with compliance practitioners from nine companies across aerospace, defense, and commercial sectors. There are, of course, many ways in which this effort could be expanded or refocused.

First, a follow-on study could examine the Nunn-Wolfowitz benchmarks that were not covered, including handling suspected violations, audits and recordkeeping, the license application process, implementing licensing authorizations, and export compliance personnel and intranet sites. Efforts could be made to determine if there are software tools that could be used (or should be developed) to assist companies in implementing any one or all of the benchmarks.

Second, the number of participants could be increased to include more small and medium-sized companies. Other industry sectors could be added, and more respondents could be interviewed in each company.

Third, a follow-on effort could be more focused on how ongoing government enforcement efforts are changing the way companies operate and are shaping their best practices efforts. Exploring voluntary self disclosure practices and the ways to strengthen public-private partnerships might be useful in this regard.

Fourth, after the new Administration has reviewed and implemented its own regulatory and licensing policies, benchmarks could be accordingly retested and reevaluated.

## APPENDICES

### A. PARTICIPATING COMPANIES

**BAE Systems** ([www.baesystems.com](http://www.baesystems.com)) -- Engaged in development, delivery, and support of defense and aerospace systems. Provides support and service solutions for current and future defense, intelligence, and civilian systems; designs, develops, and manufactures electronic systems and subsystems for military and commercial applications.

**Boeing** ([www.boeing.com](http://www.boeing.com)) -- Aerospace company and the largest manufacturer of commercial jetliners and military aircraft combined. Boeing designs and manufactures rotorcraft, electronic and defense systems, missiles, satellites, launch vehicles and advanced information and communications systems.

**Calumet Electronics** ([www.cec-up.com](http://www.cec-up.com)) -- Located in "The Copper Country" of Michigan's Upper Peninsula, Calumet Electronics has

established its reputation for manufacturing printed circuit boards that meet the highest standards for quality and performance for over 40 years.

**General Electric** ([www.ge.com](http://www.ge.com)) -- GE is a diversified technology, media, and financial services company with products and services ranging from aircraft engines, power generation, water processing and security technology to medical imaging, business and consumer financing, media content and industrial products.

**Insitu** ([www.insitu.com](http://www.insitu.com)) -- Insitu (now part of the Boeing Group) is a leading high-tech systems company producing an ever growing fleet of Unmanned Aircraft Systems that are low-cost, long-endurance, and have low personnel requirements.

**Northrop Grumman** ([www.northropgrumman.com](http://www.northropgrumman.com)) -- A global defense and technology company providing innovative systems, products, and solutions in information and services, electronics, aerospace, and shipbuilding to government and commercial customers worldwide.

**Oerlikon** ([www.oerlikon.com](http://www.oerlikon.com)) -- The Oerlikon Corporation is a Swiss-based manufacturer of high-tech applications. It is comprised of six business segments: textile, solar, coating, vacuum, drive systems and components.

**Raytheon** ([www.raytheon.com](http://www.raytheon.com)) -- A technology leader specializing in defense, homeland security, and other government markets throughout the world. It provides electronics, mission systems integration, and other capabilities in the areas of sensing, effects, command, control, communications and intelligence systems.

**Thales** ([www.thalesgroup.com](http://www.thalesgroup.com)) -- Thales designs, develops and deploys integrated solutions and equipment to meet security requirements in the aerospace, defense and security markets.

Thales combines expertise in mission-critical information systems, secure communications, supervisions systems and sensors. It has subsidiaries in Australia, Thales Australia ([www.thalesgroup.com/au](http://www.thalesgroup.com/au)) and in North America, Thales USA ([www.thalesgroup.com/USA](http://www.thalesgroup.com/USA)).

**B. NUNN-WOLFOWITZ TASK FORCE REPORT: INDUSTRY “BEST PRACTICES” REGARDING EXPORT COMPLIANCE PROGRAMS**

(<http://www.kslaw.com/library/pdf/nunnwolfowitz.pdf>)

**C. QUESTIONS POSED TO 29 COMPANY EXECUTIVES FROM NINE COMPANIES, INCLUDING THALES**

1. Does your company manage its export control operations more successfully, or less successfully, than other comparable U.S. companies?
2. Do you have an export control office in your corporate headquarters?
3. Describe the division of labor among: your corporate level export control office (if there is one), your Washington office, and your operating companies.
4. How uniform are your export control practices across your various operating companies?
5. How many Empowered Officials do you have?
6. Have the recent rulings against ITT and others brought about any significant changes in your export compliance process?
7. Are your corporate executives actively engaged in export compliance?

8. To whom does the senior export compliance official report?
9. Are your international subsidiaries included in export compliance meetings and in setting policy?
10. Is the export compliance function tied into your corporate Business Ethics program?
11. Have your senior executives adequately funded the export control organizations resident at the corporate and operating company levels?
12. Characterize the quality of your company's working relationship with State, Commerce and Defense Department export control organizations.
13. Are there adequate export control guidelines in your company? Would they benefit from updating?
14. Are any of the problems your company experiences with the export control system generated within your company?
15. As an experienced practitioner, what are the perceptions about the overall U.S. export control system? Is it a big problem, a small problem, or not a problem for your company?
16. Has your company lost export sales, disappointed export customers, or suffered other tangible damage because of the U.S. export control system?
17. Has your company encountered problems with the export control systems in other countries?
18. Training is an area that appears regularly in the export control and compliance literature. How does your company perform training?

19. Many companies employ foreign nationals. Does your company employ any foreign nationals? If yes, how is their access to export controlled technology and equipment managed?

**D. REVISED GUIDELINES FOR COMPLIANCE PROGRAM SELF-ASSESSMENTS ISSUED BY THE COMMERCE DEPARTMENT'S BUREAU FOR INDUSTRY AND SECURITY**

(<http://www.bis.doc.gov/complianceandenforcement/index.htm>)

**E. *COMPLIANCE INSIDERS: TOOLKIT FOR INTERNAL COMPLIANCE, PARTS I AND II.* 1<sup>st</sup> ed. SOCIETY FOR INTERNATIONAL AFFAIRS, April 2008.**

(<http://www.siaed.org/en/catalogs/items/view.asp?catalogid=19>)

**F. *TOWARD A U.S. EXPORT CONTROL AND TECHNOLOGY TRANSFER SYSTEM FOR THE 21<sup>ST</sup> CENTURY.* CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, MAY 2008.**

([http://www.csis.org/media/csis/pubs/080516\\_csis\\_exportcontrol\\_final.pdf](http://www.csis.org/media/csis/pubs/080516_csis_exportcontrol_final.pdf))

September 2009

# INTERNATIONAL BEST PRACTICE PROJECT

for

EXPORT OF CONTROLLED MATERIAL

THALES

[www.thalesgroup.com](http://www.thalesgroup.com)

MK TECHNOLOGY

[www.mktechnology.com](http://www.mktechnology.com)

# OUTLINE

- Introduction to Thales
- Export Control/Compliance
- Study Objectives, Methodology and Structure
- Detailed Findings
- Best Practice

# Thales

- Importance of ITAR compliance within Thales overall compliance program
- Implementing a group-wide compliance program for Thales
- Managing the risk of export compliance violation as a business risk

**MULTI-ENTERPRISE  
EXPORT CONTROL BEST PRACTICES  
PROJECT  
(ECBP)**

The case for exploring best practice

# EXPORT CONTROL/COMPLIANCE

- Fundamental to national defense capability but also impacts capabilities of coalition partners
- Defined by national law and regulations
- Complex & can change without warning
- Strictly enforced by governments—neither debatable nor negotiable
- Virtually every company is prone to unintentional oversights that a fully functioning compliance program will help uncover
- Violations frequently punished by fines, prosecution, loss of export/import privileges

A more productive approach would be for agencies to encourage voluntary self-disclosure, thereby bringing problems to the attention of regulators

# IMPORTANCE OF BEST PRACTICES

- Controls remain important. In the post Cold War era; the Soviet threat has been replaced by: nuclear proliferation, unstable regions, unstable states, failed states, rise of near-peer competitors, and non-state actors
- Equipment & technology with military application may be shared with allies & friends but must be kept away from bad actors
- Classic “Nunn-Wolfowitz” Report identified a set of “best practices” in July, 2000 to guide industry export compliance. *That was nine years ago*  
<http://www.kslaw.com/library/pdf/nunnwolfowitz.pdf>
- Individual companies recognize the need to evolve their own practices
- ECBP research—describing today’s shared best practices—was carried out with the encouragement of the U.S. Departments of State and Commerce and the Australian Departments’ of Defence and of Industry and Resources
- After the ECBP 2006-08 Project was presented to the November 2008 Global Trade Controls conference in London, BIS published its February 2009 “Compliance Audit Module Self-Assessment Tool” <http://www.bis.doc.gov>



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Export Administration**  
Washington, D.C. 20230

August 7, 2006

Mr. Jason L. Brown  
General Manager  
Country Security  
ADI Limited  
Level 2, ACIL House  
103-105 Northbourne Avenue  
Turner, ACT 2612, Australia

Dear Mr. Brown,

I was delighted to meet with you to hear your thoughts on export controls and learn about ADI Limited's program to ensure compliance with international export requirements for national security. Our countries share a common goal in our efforts to strike the right balance between protecting international security and promoting responsible development and growth of commerce. To this affect, I commend ADI Limited's commitment to international cooperation in the area of dual-use export controls.

Sincerely,

Matthew S. Borman  
Acting Assistant Secretary  
for Export Administration



# BEST PRACTICE--DEFINITION

Company policies, procedures, and guidance designed to:

- inform executives, managers and workers about export control laws and regulations
- ensure senior executives, as well as all staff, put the highest priority on compliance with all relevant export control laws and regulations
- create an environment for full compliance on the part of every employee
- provide a body of user-friendly explanatory material (e.g., guidelines, references, standardized forms, and templates) readily accessible to all employees
- provide training in the use of such material
- ensure internal compliance efforts are being constantly monitored and evaluated and that corrective action is taken as needed and,
- provide sufficient funding, staff, and infrastructure to support these objectives

But how is “best practice” made operational?

# STUDY OBJECTIVES, METHODOLOGY AND STRUCTURE

# OBJECTIVES

- Identify common and unique features of varying approaches to export control/compliance that represent best practice
- Summarize findings in a manner that will allow them to be shared with the larger export control/compliance community—industry and government

# METHODOLOGY

- Conduct structured interviews with senior export/import executives in several companies—large and small
- Interview two or more executives in each of the companies
- Seek export control/compliance policies and procedures documentation from participating companies
- Include six large & three small-to-medium enterprises (SME), including Thales Australia (TA) as participants
- Distill indicators of best practice from the interviews and company documentation

# STRUCTURE

The facts and observations reported in this study all derive from interviews conducted in 2008; findings are organized into nine categories, including five that draw on Nunn-Wolfowitz “Best Practices”

## Addressed in this study

- Ethical and operational themes
- Fundamentals—Perceptions and Response
- Organizational structure
- Industry-government relations
- Management commitment\*
- Compliance Council\*
- Export compliance instruction manuals\*
- Training and education\*
- Foreign nationals\*

## Not addressed in this study

- Export compliance personnel\*
- Export compliance intranet site\*
- License application process\*
- Implementing license authorizations\*
- Recordkeeping\*
- Audits\*
- Handling suspected violations\*

\* Nunn-Wolfowitz Task Force Report: Industry “Best Practices” Regarding Export Compliance Programs, July 25, 2000

# STATUS

Conducted one or more confidential interviews with BAE Systems, Boeing, Calumet Electronics, General Electric, Insitu, Northrop Grumman, Oerlikon, Raytheon, and Thales Australia (Descriptions per firms' websites.)

## **BAE Systems** ([www.baesystems.com](http://www.baesystems.com))

Engaged in development, delivery and support of defense and aerospace systems. Provides support and service solutions for current and future defense, intelligence, and civilian systems; designs, develops and manufactures electronic systems and subsystems for military and commercial applications. Approx 32,000 North American employees

## **Boeing** ([www.boeing.com](http://www.boeing.com))

Aerospace company and the largest manufacturer of commercial jetliners and military aircraft combined. Boeing designs and manufactures rotorcraft, electronic and defense systems, missiles, satellites, launch vehicles and advanced information and communication systems. Approx 160,000 employees

## **Calumet Electronics** ([www.cec-up.com](http://www.cec-up.com))

Located in "The Copper Country" of Michigan's Upper Peninsula, Calumet Electronics has established its reputation for manufacturing printed circuit boards that meet the highest standards for quality and performance for over 40 years. Approx 150 employees

## **General Electric** ([www.ge.com](http://www.ge.com))

GE is a diversified technology, media and financial services company with products and services ranging from aircraft engines, power generation, water processing and security technology to medical imaging, business and consumer financing, media content and industrial products. Approx 300,000 employees

# STATUS (cont'd)

## **Insitu** ([www.insitu.com](http://www.insitu.com))

Insitu (now part of Boeing) is a leading high-tech autonomous systems company producing an ever growing fleet of Unmanned Aircraft Systems that are low-cost, long-endurance, and have low personnel requirements. Approx 200 employees

## **Northrop Grumman** ([www.northropgrumman.com](http://www.northropgrumman.com))

A global defense and technology company providing innovative systems, products, and solutions in information and services, electronics, aerospace and shipbuilding to government and commercial customers worldwide. Approx 120,000 employees

## **Oerlikon** ([www.oerlikon.com](http://www.oerlikon.com))

A leading high-tech industrial group offering pioneering solutions for the production of thin-film silicon solar modules, textile production, thin-film coatings, and drive, precision, and vacuum systems. Approx 19,000 employees

## **Raytheon** ([www.raytheon.com](http://www.raytheon.com))

A technology leader specializing in defense, homeland security, and other government markets throughout the world providing electronics, mission systems integration, and other capabilities in the areas of sensing; effects; command, control, communications and intelligence systems. Approx 72,000 employees

## **Thales Group** ([www.thalesgroup.com](http://www.thalesgroup.com))

### **Thales Australia** ([www.thalesgroup.com/au](http://www.thalesgroup.com/au))

### **Thales USA** ([www.thalesgroup.com/usa](http://www.thalesgroup.com/usa))

Accumulated a reference library of export/import compliance material including the Society for International Affairs' *Compliance Insiders: Toolkit for Internal Compliance*, an important reference document containing a wealth of information about the myriad details of export control compliance

# ADVANCING FROM METHODOLOGY TO FINDINGS

- 19 open-ended, interview questions were drafted after consulting with well-respected export control professionals who had served in senior US government or industry export control related positions
- The questions were designed to probe how companies think about, organize for, and implement their export control and compliance functions
- Those interviewed were assured their responses would be treated on a strictly not-for-attribution basis except on the collated basis here, responses were shared only with consultants from MK Technology, and not with any representatives of Thales or of any other participating company
- The assurances prompted candor, without exception, in each of the 16 mostly one-hour interviews, seven conducted in person, eight by phone, and one by e-mail

## ADVANCING FROM METHODOLOGY TO FINDINGS (cont'd)

- A single person was interviewed in nine cases; between two and eight senior export control managers/executives were interviewed in each of the others
- The structured interview process provided numerous insights about how companies address export control from 26 expert export control practitioners
- Practitioners resided in six large and three small-to-medium enterprises (SME), including four large U.S. based multi-nationals
- Multiple interviews were conducted with executives/managers from four of the six large companies to gather insights from several vantage points

## WHY THE “INTERVIEW ONLY” APPROACH?

- Companies agreeing to participate were asked initially to provide either paper copies of, or access to, their internal export control documentation; firm assurances were given that their documents would not be shared outside the MK Technology study team
- Most companies declined, but several companies initially responded positively; all of the latter subsequently reversed their position
- Ultimately, only a few company organization charts and other summary information were obtained
- Despite reluctance to share documentation, all those interviewed were forthcoming in their responses to questions; their responses provide the source data for the study

Participating companies closely guard their internal procedures as “proprietary” believing their procedures provide a competitive advantage

# DETAILED FINDINGS

## EXECUTIVE-LEVEL ETHICAL AND OPERATIONAL THEMES

What follows are statements lifted from corporate policy documents and comments made by some of those interviewed.

- Executives and employees understand they are expected to do what is right, not to seek and exploit loopholes
- Efficiency is not in competition with compliance
- The constant is that the corporation consciously and deliberately separates officials responsible for revenue and officials responsible for licensing and compliance
- We seek to go beyond simply obeying the law—we embrace the spirit of integrity
- We follow a conservative approach regarding exports, we do not "push the envelope"
- Export compliance trumps business considerations
- Do not allow anything—not “making the numbers,” competitive instincts or even a direct order from a superior—to compromise your commitment to integrity
- The common thread is that [export compliance] reporting is done through a function that is not driven by profit and loss considerations but rather one of governance and accountability

## FUNDAMENTALS I

*How well do the participating companies perceive they manage their own export control operations vis-à-vis others?*

- All nine companies assessed their company's export control operations as very successful. Responses included: "more successful," "better than most" & "among the upper half"
- One company stated "this is an area where we stand out;" another characterized itself as "a model for the industry"
- One company acknowledged that others may perform some modest aspects of export control better, but the same company also indicated interest in emulating the others in those limited cases

## FUNDAMENTALS II

*Have the recent rulings against some companies brought about any significant changes in export control compliance processes?*

- All nine companies stated they review each new Consent Agreement for possible lessons applicable to their company
- Five companies indicated the rulings raised awareness throughout the company about the importance of export control
- One company acknowledged it adopted “minor” changes after a review; two others indicated they recently implemented internal changes; another indicated it issued new internal guidance
- The rulings caused management in one company to invest additional funds in export control; another to raise awareness about the importance in training; and, in two others to better manage their suppliers
- One company thought the rulings provided insight into the U.S. Government’s thinking on export enforcement

## FUNDAMENTALS III

*Are any of the problems experienced with the export control system generated within your company?*

- Three people responded “yes;” six responded “sometimes;” five responded “no;” and one responded “the potential exists”
- Responses even varied among those within the same company
- One company attributed “Returned Without Actions” to avoidable internal administrative error—suggesting the company holds itself to a high standard of performance
- Three people pointed to poorly articulated and ambiguous export license provisions causing them to either engage an internal group of experts or to seek guidance from licensing authorities before proceeding

## CENTRALIZED OR DECENTRALIZED CONTROL

*Describe the division of labor between your corporate-level export control office and your business units*

- Eight companies reserve policy development to corporate headquarters (or its proxy); one delegates policy development to its Washington office
- Five companies are highly centralized where corporate headquarters not only develops detailed policy and procedures but also reviews, signs and submits export license applications from the business units
- Two other companies are more decentralized delegating to their business units, the right to draft license applications, and to review sign and submit them, while reserving the right to develop policy and procedures
- Two companies task a business unit to manage the export control function on behalf of the entire company
- Five companies only allow corporate headquarters to contact government licensing authorities; four others delegate that right to their individual business units

# INDUSTRY-GOVERNMENT RELATIONS

*Characterize the quality of your company's working relationship with State, Defense and Commerce Department export control organizations*

- All nine companies report their relationship with the U.S. Government licensing agency (or agencies) is healthy; one volunteered its relationship with the State Department was very positive, but it experienced problems with the military departments
- Descriptive words used include: “very strong,” “very solid,” “exceptional,” “good,” and “positive”
- Seven companies spoke of their relationship with State; four with DoD; and two with Commerce
- Two companies spoke of holding periodic meetings with the government; one other used them to brief its export marketing targets; and, another used them to ascertain its export control related performance as perceived by government
- Positive relationships were often associated with enhanced access to licensing officials

# MANAGEMENT COMMITMENT

*Are your corporate executives actively engaged in export compliance?*

- All nine companies asserted their senior executives were directly engaged but the mode of engagement varied from one company to another
- Senior corporate executives in charge of export control include: President (1), General Counsel (3), Senior VP (1), VP Contracting (1), and business unit President (3)
- Only two companies assigned an executive with profit and loss responsibility to manage export control for the company, but those executives report to corporate senior executives
- At least six of the nine companies report export control issues to their Boards of Directors
- When asked if corporate executives provided adequate funding for export control seven companies responded “yes;” one responded with a “yes and no” (“yes” for corporate, “no” for business units); and, one responded with a qualified “no” (performing professionally but not providing sufficient oversight)

# EXPORT COMPLIANCE INSTRUCTION MANUALS

*Are the export guidelines in your company adequate? How uniform are your export control procedures across your various business units?*

- All nine companies responded their guidelines are adequate
- Six cited the benefits of “continuous improvement” to accommodate regulatory changes and introduce clarification, simplification, and automation
- Two companies update on an “as required basis;” one indicated a review was underway and might prompt an update
- All nine companies operate under some form of corporate guidelines
- Four companies impose common procedures throughout, while five currently allow differences (of varying magnitude) at business unit level

# FOREIGN NATIONALS

*Does your company employ any foreign nationals? If yes, how is their access to export controlled technology and equipment managed?*

- Companies differentiated between foreign employees and foreign visitors
- At least three companies use Technology Control Plans to address broad policy issues and manage access
- Elaborate security badge systems (and other administrative mechanisms) are in widespread use to identify foreign nationals and restrict their access
- Access to company facilities and company IT systems is restricted
- Staffs are trained to differentiate between ITAR and other technology controlled information, and information not subject to regulatory control

# EDUCATION AND TRAINING

*Training is an area that appears regularly in the export control and compliance literature. How does your company perform training?*

- All nine companies set training goals at the corporate level and viewed their training programs as essential
- Primary goals are increased awareness of export control and increased skill in addressing export control issues as they arise
- At least four companies provide training by corporate staff, whereas others provide it through a combination of corporate and business unit assets and consultants
- Large companies' training programs are sophisticated and exist in a variety of forms including lectures, online courses, and informal newsletters; each company uses one or more forms of training
- Large companies often offer several levels of training, typically some variation of awareness training, targeted functional training, and online training for export control professionals; Empowered Officials receive detailed training
- HR typically retains training records and notifies staff when they must submit to new and refresher training

## EXPORT CONTROL IMPACT ON SALES & REPUTATION

*Has your company lost export sales, disappointed export customers, or suffered other tangible damage because of government export control system?*

- Responses varied substantially even within the same company
- Eight people responded their company has (or “probably” has) lost sales; thirteen people reported “disappointed customers”
- Most reported delayed shipments and delivery of a product with less capability than initially offered
- Two companies specifically mentioned they experienced problems managing the large prime-small supplier (U.S. and foreign) relationship—some small suppliers may not be well-equipped to fulfill their export control responsibilities
- One mentioned receiving “pressure” from foreign customers for an ITAR-free product; another mentioned receiving “pressure” from within his/her own company for ITAR-free products

# FOREIGN SUBSIDIARIES

*Are your international subsidiaries included in export compliance meetings and in setting policy?*

- Three companies stated they solicited policy inputs from their foreign subsidiaries, but one company stated that its subsidiaries have no role in policy formulation
- Three companies indicated they extend training to their foreign subsidiaries, others may as well
- Three companies indicated their foreign subsidiaries are brought into export control-related meetings, while one said they are not

# LARGE & SMALL COMPANIES I

## ■ Executive-level ethical and operational themes

- Large companies visibly carry the national flag as well as service their shareholders
- Small companies concentrate mostly on their shareholders; and they realize that paying inadequate attention to export control could affect their survival

## ■ Perceived success managing export control

- There was no difference between large and small companies
- All believed they were very successful

## ■ Mistakes of others

- There was no difference between large and small companies
- All reviewed new Consent Agreements for possible lessons applicable to their companies

## LARGE & SMALL COMPANIES II

- **Avoiding systemic problems originating within the company**
  - Small companies were more tentative in their response than were large companies
- **Division of labor between corporate and business units**
  - Large companies have the luxury of exploring multiple variations of organizational structure and degree of delegation of functions before deciding
  - Small companies have limited resources, must carefully manage overhead functions, and generally hold export control (a potential risk area) close to the chief executive

# LARGE & SMALL COMPANIES III

## ■ Company-government relations

- Large companies have more resources and larger export programs than small companies
- The substantial difference in magnitude of resources and export business volume causes large companies to invest more effort than smaller companies in developing professional relationships with U.S. Government licensing officials

## ■ Corporate executive engagement

- Larger companies varied regarding where they assigned responsibility for export control
- Small companies have less latitude as they have a limited executive suite
- Most large companies and both small companies reported adequately funded export control organizations
- However, several executives volunteered they had to fight internally for adequate funding

# CONCLUSIONS

- A well-managed export control compliance program can confer competitive advantage and the label of a good corporate citizen; it can be a “money maker” as well as an obligation under the law
- The long-term tangible and intangible benefits of such a program outweigh any short costs of forgone sales and of an export-control infrastructure
- An essential part of a company's due diligence is avoiding the mistakes of others, in particular carefully reviewing all Consent Agreements and ensuring preventive action is taken before any possible violations could occur. Care should be taken to manage the small supplier relationship especially in light of the fact that some are not well-equipped to handle their own export control responsibilities
- Company executives should not only set overall ethical, “best of class” guidelines but also should communicate them to all employees who need to put them into practice

# CONCLUSIONS II

- Companies should extend export control training to all their business units and to their foreign subsidiaries and give them a role in the policy formulation process; such training and policy dialogue are particularly important for the employees of newly acquired firms
- For companies employing foreign nationals, a Technology Control Plan is needed to manage access and related policy issues
- Export compliance reporting is done through a function not driven by profit and loss considerations: for most companies this involves a highly centralized approach where corporate headquarters controls all the policy issues as well as the licensing procedures. A small number of companies take a decentralized approach where, with appropriate safeguards, their business units are allowed to handle all aspects of the licensing process

# MEANING

Participating companies concluded export control programs contribute to profitability and enhance corporate profile. The programs are accorded proprietary protections because they are viewed as a way to achieve a competitive advantage and to foster a successful public-private partnership. In short, they are an impetus for profound changes in corporate practice and policies.

Too often in the past, export control policies and procedures were pigeon-holed in the company's hierarchy and given scant attention by upper management. Viewed as a cost of doing business, their second-class status seemingly befitted a confusing and opaque regulatory environment. It was all too easy to blame government regulators for the difficulties companies experienced in the export market while turning a 'blind eye' to a company's own shortcomings.

In the wake of rising administrative penalties and fines as well as the negative publicity accorded licensing lapses and oversights, a number of companies realized that the attendant Consent Agreement with the government was hardly the playbook of choice and that a new direction was needed. With high-level support and guidance, new export control procedures and policies were put in place, training enhanced, and resources increased.

The determined effort by some companies to improve their export control operations did not go unnoticed by government regulators who were putting in place more predictable licensing procedures and reviews. Invariably, these same companies were the first to see their license requests decided on a more timely basis: best practice in industry and government had a mutually advantageous outcome.

**In short, good export compliance is good business**

# BEST PRACTICE SPECIFICS

# BEST PRACTICE I

## ■ Executive-level ethical and operational themes

- Senior executives set overall ethical and operational themes for the company and communicate them to staff making them part of the corporate culture

## ■ Perceived success managing export compliance

- Export compliance should be a matter of “personal, professional and corporate pride” where companies should actively seek “best of class” status

## ■ Mistakes of others

- It is critically important for executives to review Consent Agreements to determine if the reported violations could occur in their company
- They take preventive actions when necessary and otherwise exploit the “raised awareness” from the mistakes of their competitors by encouraging all employees to accord a higher priority to export control

## BEST PRACTICE II

- **Avoiding systemic problems originating within the company**
  - Improved quality control of export licensing application preparation
  - Improved training, including programs for employees of acquired companies
  - Closer monitoring of suppliers
  - Enhanced efforts to clarify unclear license provisions
- **Division of labor between corporate and business units**
  - Choice of either the centralized or decentralized approach reflects the persona of the company
  - Key determinants in this decision include the confidence corporate has in the ability of the business units to manage export control risk, and the relative importance of its export business compared to its domestic sales
  - Export control management is most commonly separated from P&L organizations, but the exception can work if closely monitored by corporate executives who hold governance roles

# BEST PRACTICE III

## ■ Company-government relations

- Cultivate a professional relationship with licensing officials to help in identifying areas where companies may apply preventative actions before a violation occurs

## ■ Corporate executive engagement

- Executive engagement is essential if the export control function is to receive adequate resources
- Failure to engage could adversely affect the company's reputation and future profitability, while conversely, professional execution of export controls is a potential competitive advantage

## BEST PRACTICE IV

### ■ Adequacy of corporate guidelines

- Corporate guidelines set the overall tone, but they tend to lose relevance unless subject to continuous or periodic updating
- Standardized forms, templates, and automation are useful to those at the working level
- Differences in technology, legacy, and culture may outweigh potential benefit of standardizing procedures across all business units

### ■ Foreign nationals

- Companies must limit access to facilities and to controlled information by foreign national employees and visitors
- Technology Control Plans and badge systems are in routine use by many companies

# BEST PRACTICE V

## ■ Education and training

- “Training-training-training” is a powerful vehicle in the sense well-trained staff will not knowingly cause a violation
- Executive participation in training reinforces the message that export control is important and should be accorded high priority

## ■ Business implications

- Ineffective management of the export control process can result in delays and limitations leading to lost sales, disappointed customers, and damage to corporate reputation as a reliable supplier
- Conversely, effective management can improve competitive position

## ■ Involving foreign subsidiaries

- Foreign subsidiaries are subject to corporate policy guidance on export control, some are engaged in policy formulation, some are included in export control meetings, and some are included in training

**THANKS FOR YOUR KIND  
ATTENTION**

# For more information please contact:

**Terence Murphy, O.B.E.**  
**Chairman**  
**MK Technology**  
[tmurphy@mktechnology.com](mailto:tmurphy@mktechnology.com)  
[www.mktechnology.com](http://www.mktechnology.com)

**Frank Record**  
**Executive Partner**  
**MK Technology**  
[frecord@mktechnology.com](mailto:frecord@mktechnology.com)  
[www.mktechnology.com](http://www.mktechnology.com)

**Frank Cevasco**  
**Senior Adviser**  
**MK Technology**  
[fcevasco@mktechnology.com](mailto:fcevasco@mktechnology.com)  
[www.mktechnology.com](http://www.mktechnology.com)