

# An Overview of U.S. Export Controls

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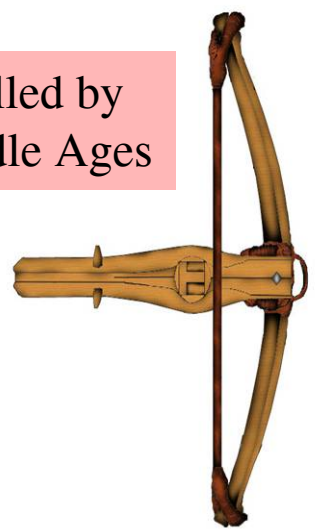
The Trade Management Consulting Group of JPMorgan



# What do these items have in common?

OVERVIEW OF U.S. EXPORT REGULATIONS

Crossbow – controlled by fiefdoms in the Middle Ages



Gunpowder – restrictions on it's export were for obvious reasons



Carrier Pigeon – German Kaiser issued edict restricting its export in WWI

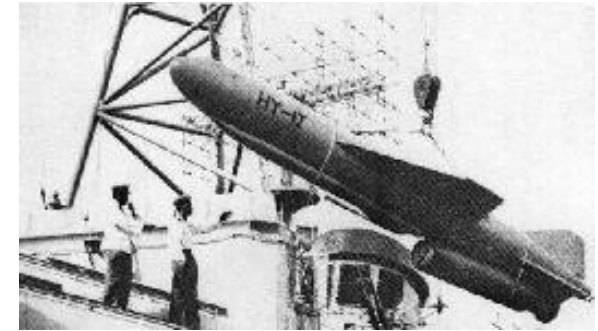


Karelian Timber – controlled due to its usefulness in making sailing masts in Medieval period



# Purpose of U.S. Export Controls

- Ensure the national security of the U.S. and its allies
- Promote the U.S. foreign policy agenda
- Inhibit the proliferation of weapons of mass destruction
- Combat terrorists and countries which sponsor terrorism
- Ensure the strategic availability of commodities considered to be in short supply





# Who is subject to U.S. Export Controls

- United States companies that are engaged in international trade
- U.S. persons and any person in the U.S.
- Foreign persons
  - Reexports of U.S.-origin items
  - Conduct of activities that are subject to U.S. export regulations
- **Your company**, as a U.S. corporation, is subject to these export laws and regulations, as well as the corresponding laws of the foreign countries in which your company does business
- All U.S. companies are subject to the same export regulations and laws (e.g. Export Administration Act, Arms Export Control Act, etc.)



# U.S. Export Control System



President

National Security Council

## Principle Licensing Agencies

**Department of Commerce**

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Bureau of Industry & Security

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Export Administration Regulations

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**“Dual-use” goods and Technology**

**Department of State**

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Directorate of Defense Trade Controls

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International Traffic in Arms Regulations

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**Defense items and Services**

**Department of the Treasury**

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Office of Foreign Assets Control

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Foreign Assets Control Regulations

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**People and Money**

Central Intelligence Agency  
National Security Agency

Department of State  
Bureau of Political - Military Affairs

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Arms Control & Disarmament Agency

Department of Defense  
Defense Technology Security Administration

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Defense Intelligence Agency

Department of Energy  
Sub-group on Nuclear Export Coordination

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Nuclear Regulatory Commission

Other agencies  
e.g. FDA, EPA, DEA, etc.

## Export Clearance Agencies

US Census Bureau

US Customs & Border Protection

## Counter-Proliferation Task Forces Coordination



National Export Control Coordinator

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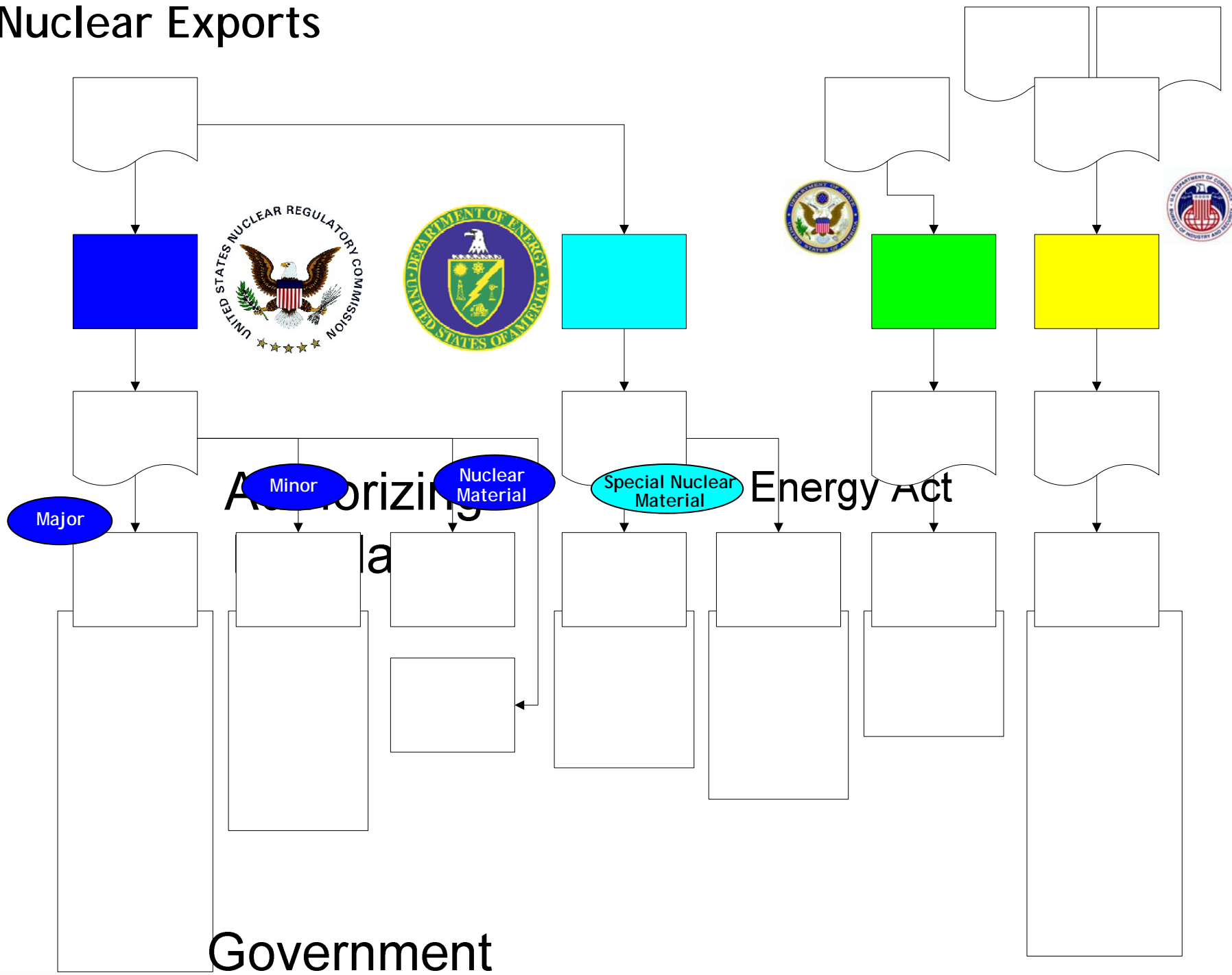
U.S. Department of Justice  
Counterespionage Section of the  
National Security Division



OVERVIEW OF U.S. EXPORT REGULATIONS

# Overview of U.S. Government Agency Jurisdiction for Nuclear Exports

OVERVIEW OF U.S. EXPORT REGULATIONS





# Reasons for Control (under the EAR)

- Products and technology may be controlled for one or more of the following reasons:
  - Chemical & Biological Weapons
  - Nuclear Non-Proliferation
  - National Security
  - Missile Technology
  - Regional Stability
  - Firearms Convention
  - Crime Control
  - Anti-Terrorism



# Reasons for Control (under the ITAR)

- Defense articles, technical data and services are controlled for the following reasons:
  - U.S. National Security
  - U.S. Foreign Policy
  - Furthering World Peace







# Reasons for Control (under the FACR)

- “U.S. persons” (broadly defined), their activities related financial transactions are controlled primarily to further U.S. foreign policy interests
- Examples:
  - Comprehensive economic sanctions



- Targeted economic sanctions on individuals, terrorist groups and narcotics traffickers
- Investment restrictions with respect to Burma (Myanmar)



# U.S. Trade Regulations as they apply to Embargoed / Sanctioned / Restricted Countries

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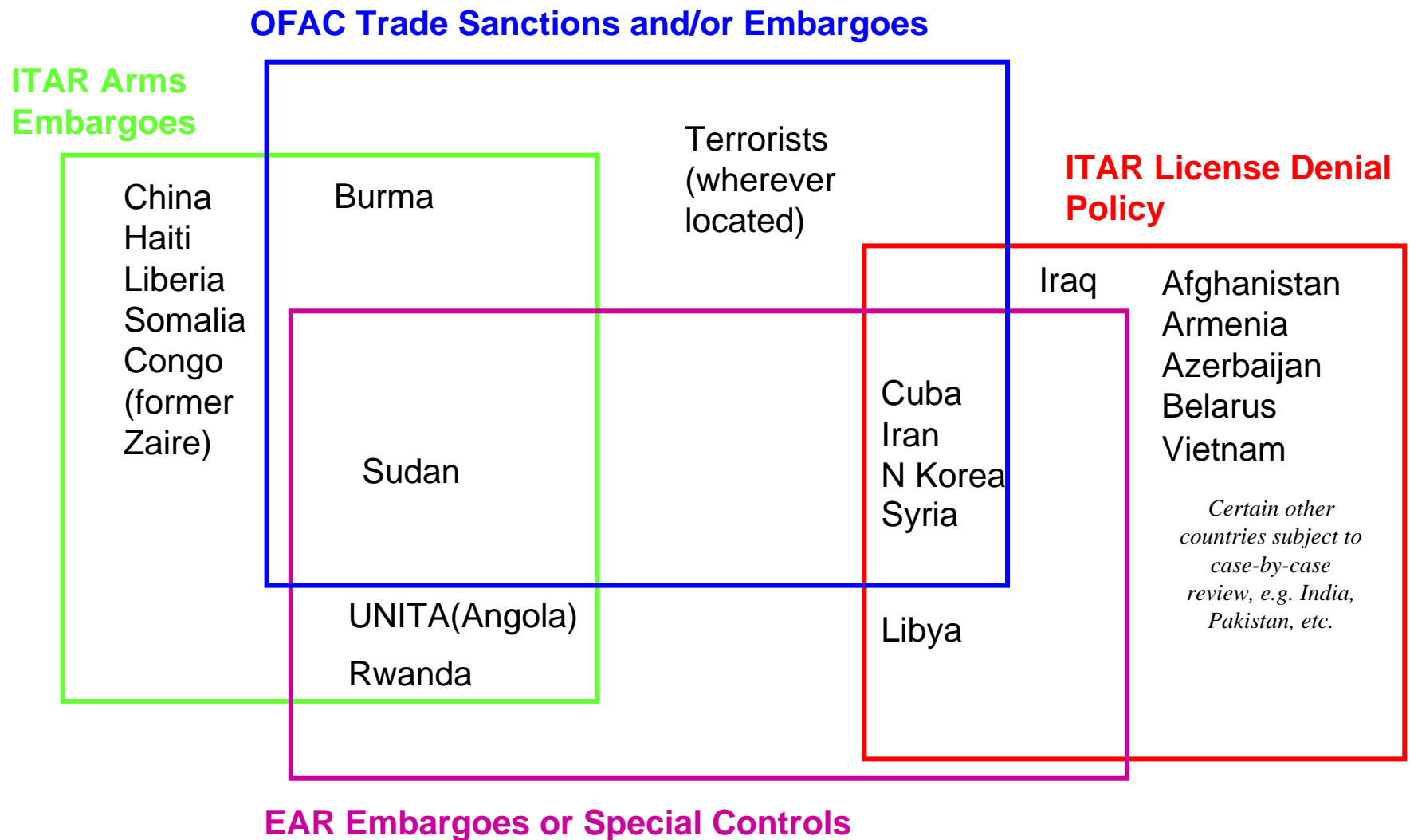
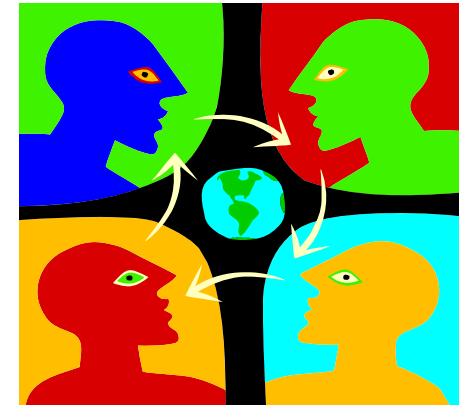


Diagram is representative only due to frequent changes in regulations




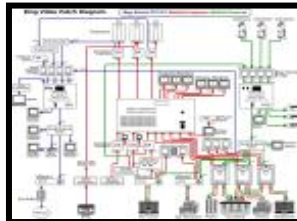
# What is an “Export”?

- Any shipment, transfer or release of items or information (technology) from a U.S. company to another country or to a foreign national in the U.S. or abroad
- This includes shipments from foreign subsidiaries of U.S. companies
- Categories of items controlled include:
  - Hardware
  - Software
  - Technology and technical data
  - Electronic data and voice transmissions
  - Technical Data Disclosures / Deemed Exports - access to the above by foreign persons/nationals, including employees
  - Site Visits, e.g. plant tours by foreign visitors

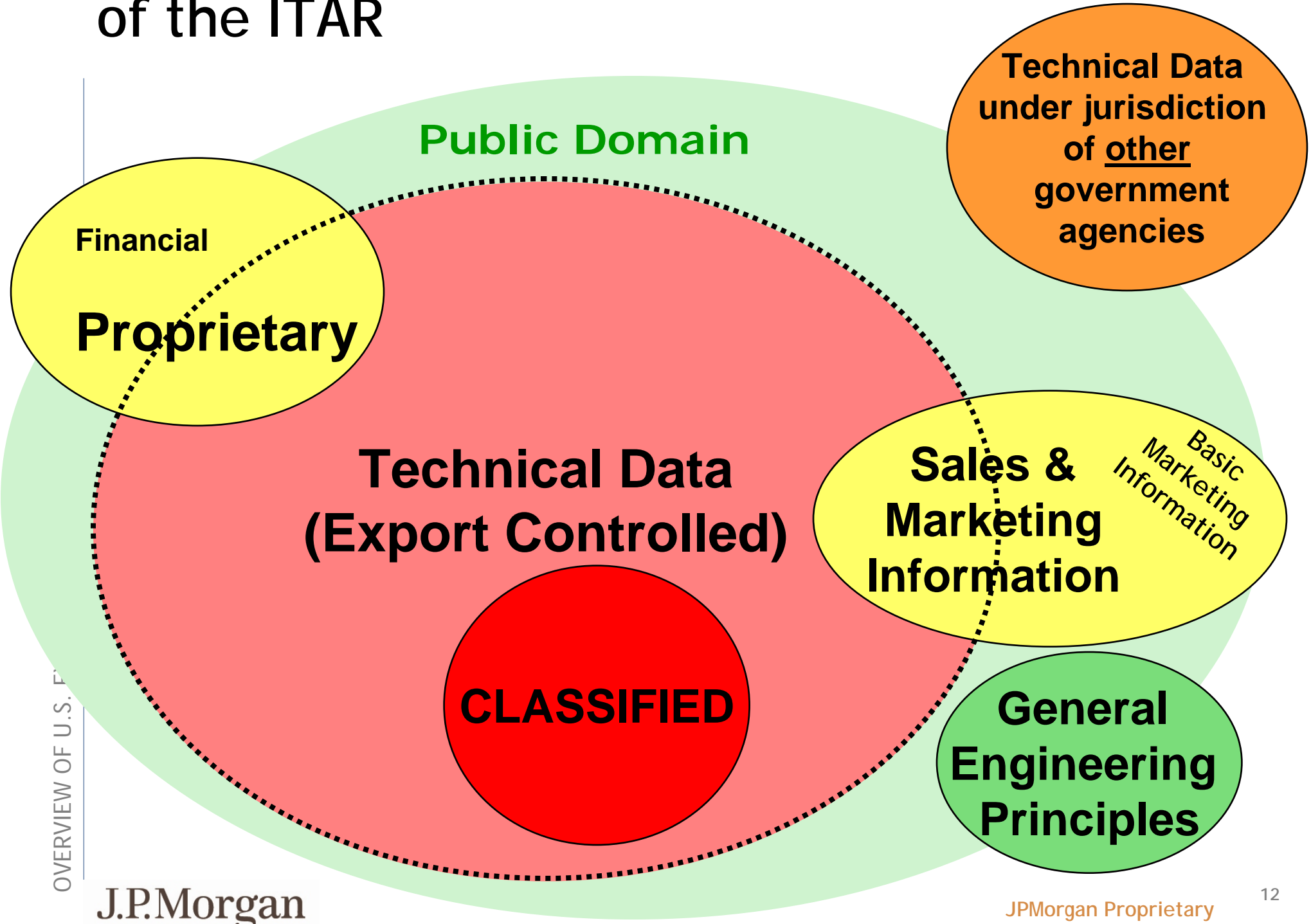




# What is Controlled?

- U.S. export laws and regulations control the export of:
  - Products produced in the United States and any item being exported out of the U.S.
  - Products produced by U.S. companies' foreign subsidiaries
  - Products produced using or incorporating U.S. technology or components
  - U.S. developed software and technology 
  - Products which originated in the U.S. and which are being re-exported to a third country ("reexport controls") 
  - Technology including certain technical data, manuals, and software
  - Activities of U.S. persons and firms - wherever located - in relation to countries and entities subject to U.S. economic sanctions (Foreign Assets Control Regulations)

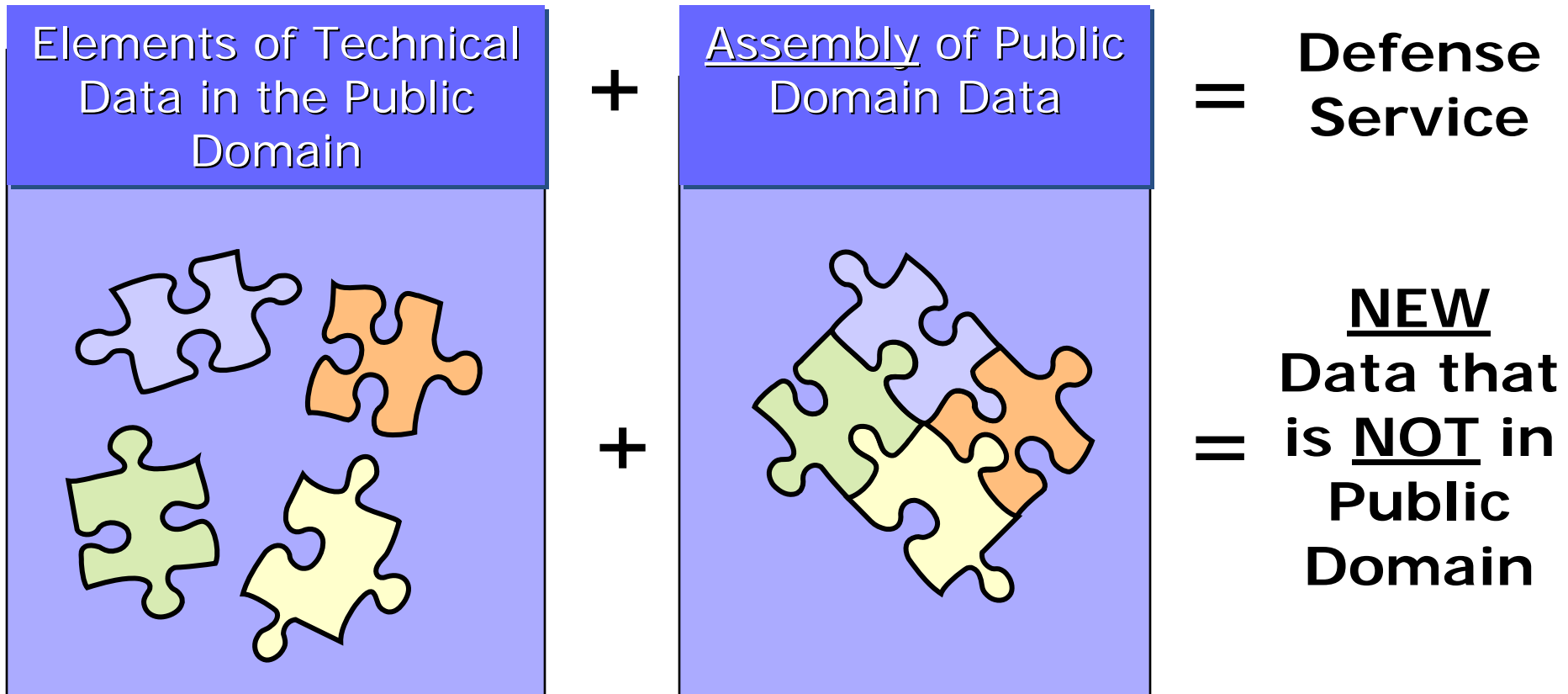
# Information Categories through the Prism of the ITAR



OVERVIEW OF U.S. F

# How can the provision of “Public Domain” data become a Defense Service under the ITAR and/or ITAR controlled data?

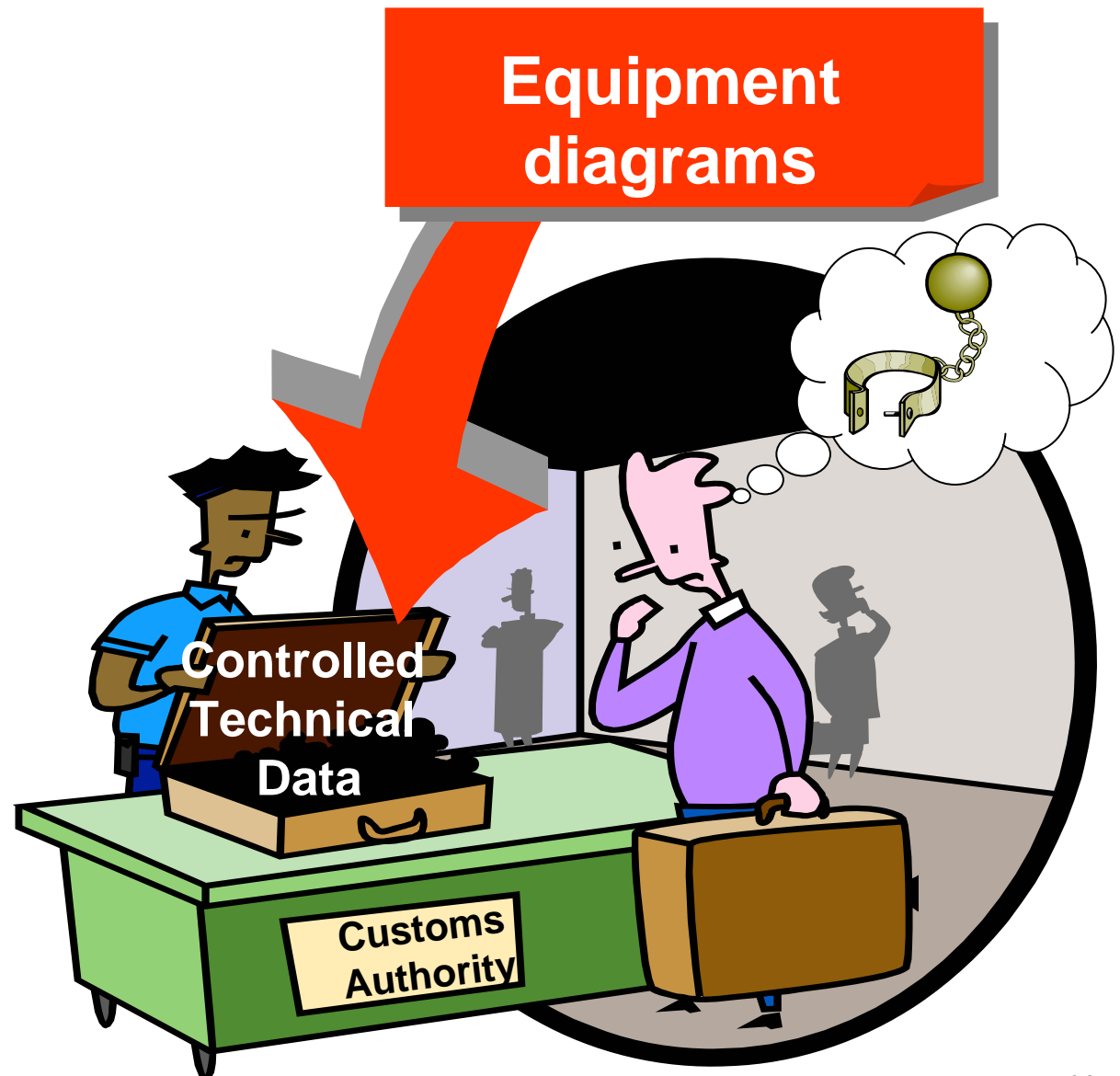
- Defense Service (clarified) - applicable even if all the information relied upon by the U.S. person in performing the defense service is in the PUBLIC DOMAIN



# Hand Carrying an item Abroad is an EXPORT

**BEWARE!**

**Technical Data  
(hard or soft-copy)  
also requires  
export approval,  
documentation  
and export  
clearance when  
hand-carried  
abroad by a  
company  
employee**



# 5 Key Elements of Export Compliance

- What is the product
  - Capabilities, performance levels and original design intent
- Who is going to use it
  - End-User screens
- Where will it be used
  - Prohibited country screening
- How will it be used
  - End-Use screens
- Proliferation and / or diversion risks
  - Red Flags





# Product Based Export Controls

## ■ Export Administration Regulations ~ EAR



*(dual-use items, technical data and software)*

- Computers, software, encryption (information security)
- Telecommunications, electronics, sensors, lasers, navigation
- Marine equipment, security, crime control equipment, aircraft and associated parts
- Chemicals and related equipment, technology and software

## ■ International Traffic in Arms Regulations ~ ITAR

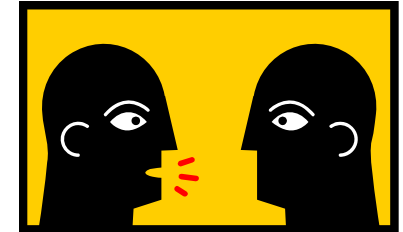


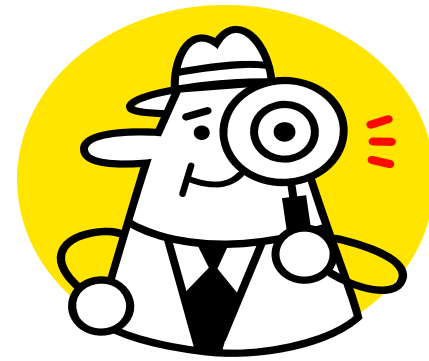
*(defense articles, technical data and services)*

- Firearms, ammunition
- Military equipment, vehicles, vessels, aircraft
- Spacecraft systems and associated equipment
- Specially designed or configured items for military applications

# Customer Based Controls

- U.S. export regulations require that exporters “Know their customers”
- This requirement extends to end-users if they are not the actual customer
- A company’s export compliance procedures should be based on a *comprehensive, timely, and meaningful screening* of its customers and / or end-users



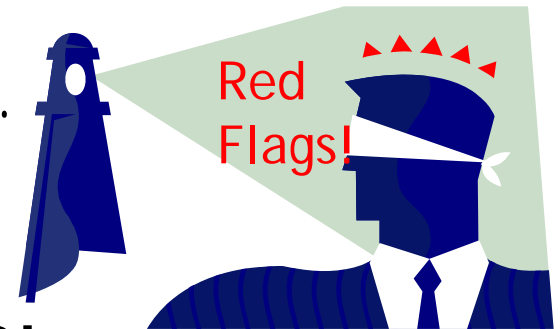


# End-Users of Concern

- Denied Parties
  - Exports denied to individuals or persons designated as Denied Parties by the U.S. government
  - Denied Parties cannot appear in any capacity in an export transaction
- Entities of Concern
  - Exports denied to persons, organizations or firms designated as Entities of Concern - regardless of technology level (I.e. BIS's "Entities List")
- Specially Designated Nationals (SDNs)
  - Includes nationals of embargoed countries, terrorists and their related organizations and drug traffickers
  - U.S. persons may not conduct business with SDNs

# Handling of suspicious enquiries or orders

- The Company should raise awareness among staff to recognize suspicious enquiries or orders
- Sales and Order processing staff should be made aware of indicators to allow them to spot any dubious business
- You are NOT expected to be a policeman... but information you would gather in the normal course of business must not be ignored - **DO NOT SELF-BLIND!**



**Who are you?  
Where are you calling from?  
How are you using our product?**

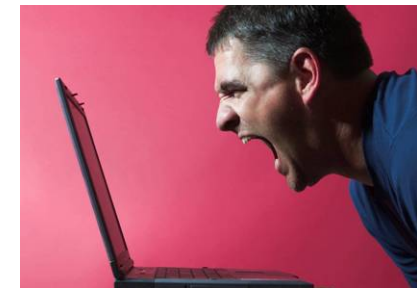
# Understanding the Regulatory Requirements

- U.S. export regulations obligate companies to perform a range of activities related to export sales
  - Jurisdiction Determination and Product Classification
  - Ultimate Country of Use Determination
  - Customer screening
  - End-Use, Diversion Risk, and EPCI (Enhanced Proliferation Control Initiative) Screening
  - Management of export authorization requirements (e.g. provisos or conditions attached to usage of licenses, exemptions, exceptions, etc.)
  - Recordkeeping & Reporting
- In addition, the Regulations also impose requirements covering access to technical data and software, upgrades, service and replacement parts



# Consequences of Non-Compliance

- Exporting is a *privilege*, not a right under U.S. law
- The law and regulations include **stiff penalties** for non-compliance
  - Likelihood of the typical company being penalized has been low
  - In aftermath of 9-11 enforcement efforts continue to increase
  - Cost of a legal defense often exceeds any penalty
- Not following best compliance practices can lead to increased costs and delayed deliveries
  - Customer satisfaction issues
  - Competitive pressures (time-to-market)
- Negative publicity and public perception relating to enforcement action



# Potential Sanctions - The Price per Mistake

- For the Individual
  - \$250,000 maximum criminal fine
  - 10 years in prison
  - Possible loss of U.S. visa status
  - \$250,000 maximum civil fine, per violation (no limit) or twice the value of the transaction
  - Potential reprimand, demotion, or dismissal
- For the Company
  - Suspension or revocation of export privileges
  - \$1,000,000 maximum criminal fine

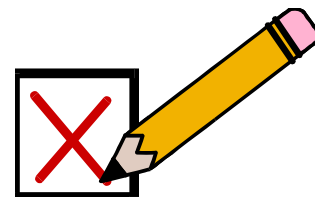
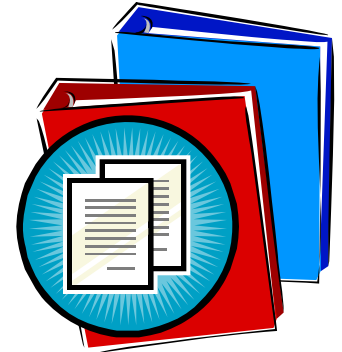
*I should have asked my export control manager before I sent those [specs]....*



Export Compliance Manager

# Impact of the Controls on Companies

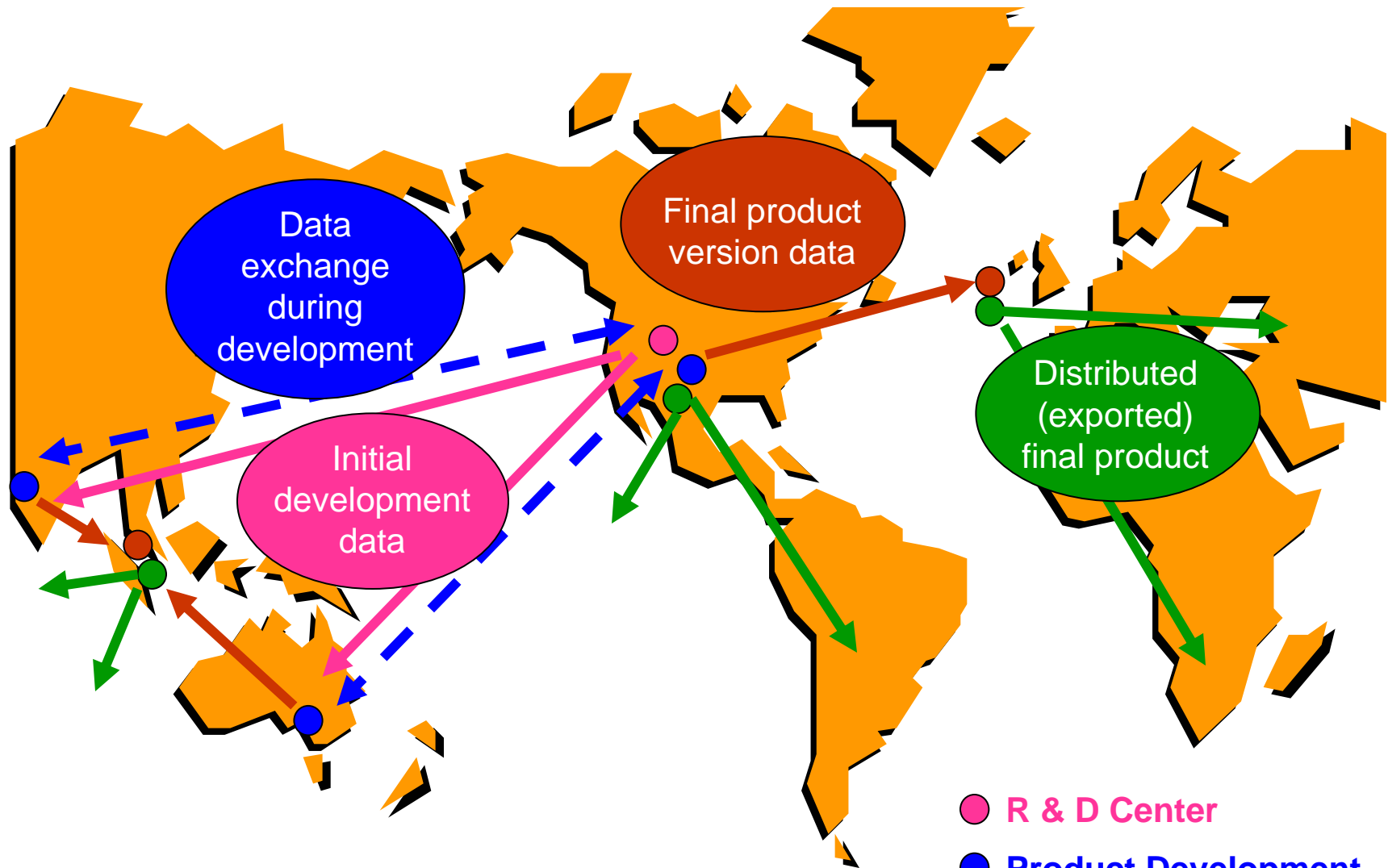
- A comprehensive export compliance policy, including a set of documented processes and procedures is strongly advised
- An export compliance organization should be established to implement, operate and maintain the corporate policy and ensure compliance
- Technical data, services and equipment must have proper export jurisdiction determination and classification performed
- Each export transaction, including the release of technical data to foreign nationals in the United States or abroad, should have export (license) determination performed

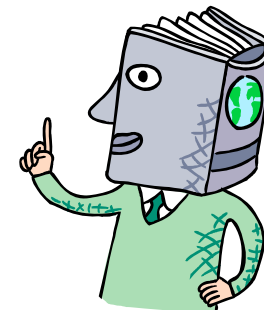




# An "export" has often occurred long before the finished product ships

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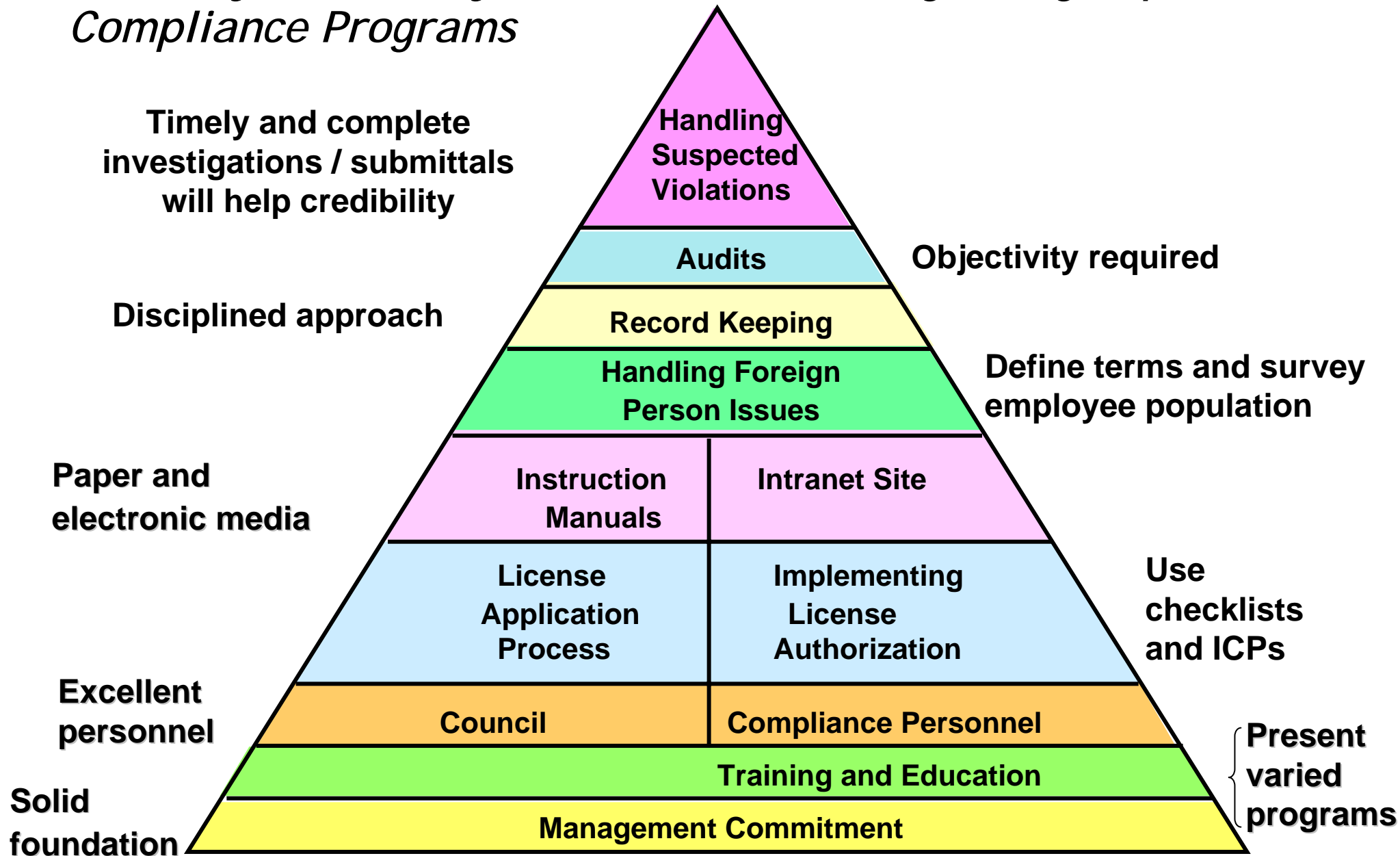


# Export Compliance - Core Elements

- Corporate Policy & Commitment
- Export Compliance Organization
- Business Unit Export Compliance Officers
- Jurisdiction Determination & Export Classification
- Export (License) Determination
- Export Compliance Process Manual
- Export Compliance Work Procedures
- Non-Compliance and Escalation
- Recordkeeping and Reporting
- Training Program
- Audit & Review Process
- Performance Measurements

# Nunn-Wolfowitz Task Force Report

## *Summary of Industry "Best Practices" Regarding Export Compliance Programs*



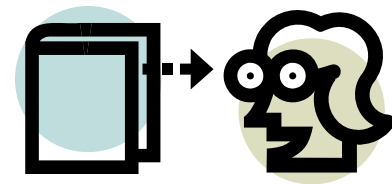
# Board of Directors' Obligations under the Federal Sentencing Guidelines

- Know and understand the compliance program
- Provide regular oversight
- Provide adequate resources
- Give direct access to board by compliance officers



# What is an Effective Compliance Process?

- Key questions to ask yourself when evaluating each element of your export compliance program
  - Is there a process?
  - Is the process followed?
  - Is the process documented?
  - Is the process regulatory 'compliant'?
  - Is it a process that meets 'best practice'?
  - Is the process comprehensive and does it make sense?
  - Is there a process for updating / is the process updated?
  - Is the process audited, and is there a process for auditing?
  - Are personnel aware of the process and trained on it?



*If you do not address ALL of the above issues you may just be creating the ILLUSION of an effective compliance program, which may ultimately expose you to criminal liability in an enforcement case*

Thank You!

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