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# ATP ELIGIBILITY CRITERIA FOR U.S. SUBSIDIARIES OF FOREIGN-OWNED COMPANIES:

## LEGISLATION, IMPLEMENTATION, AND RESULTS

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Technology Administration  
National Institute of Standards and Technology  
Advanced Technology Program, Economic Assessment Office

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# **ATP Eligibility Criteria for U.S. Subsidiaries of Foreign-Owned Companies:**

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**Economic Assessment Office  
Advanced Technology Program  
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U.S. DEPARTMENT OF COMMERCE  
William M. Daley, Secretary

TECHNOLOGY ADMINISTRATION  
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## Abstract

The U.S. Advanced Technology Program (ATP) invests directly in the nation's economic growth by cost sharing with industry in the development of high-risk, enabling technologies that form the basis for new and improved products, manufacturing processes, and services. The ATP relies on U.S. companies to conceive and propose technology development projects, carry out the research of funded projects, and share in the costs. According to ATP's authorizing legislation, U.S.-owned companies and U.S. subsidiaries of foreign-owned companies are eligible applicants, provided selection criteria are met. Foreign-owned companies that are located abroad are not eligible to receive funding from the ATP.

This report addresses the criteria set forth by Congress that U.S. subsidiaries of foreign-owned companies must meet as a condition of receiving ATP funding. It provides information and statistics on foreign eligibility and participation and can be a useful resource for potential applicants. Policymakers, government administrators, academicians, private individuals, law firms, think tanks, and others interested in the issue of foreign participation in publicly funded research and development (R&D) programs may also find the report useful.

The report begins with an overview of the ATP to provide readers with a general understanding of the goals of the ATP and an awareness of the number of projects and the kinds of technologies that have received funding to date. The next section discusses the published project selection criteria that apply to all participating companies - - regardless of country of ownership. The ATP uses the published criteria for selecting highly qualified R&D proposals for funding. This section provides a background and context for a discussion of additional eligibility requirements, mandated by Congress, which apply only to U.S. subsidiaries of foreign-owned companies. The report then lays out these special eligibility requirements that U.S. subsidiaries of foreign-owned companies and their parent companies' countries of incorporation must meet. How the ATP identifies foreign-owned companies and situations that lead to a foreign eligibility finding are provided and the sources of information for the finding are discussed. Data on the current participation of U.S. subsidiaries of foreign-owned companies in the ATP are also included. Finally, a question and answer format is used to address common questions the ATP has received on foreign eligibility and participation.

## Keywords

*Advanced Technology Program; foreign eligibility; foreign-owned companies.*

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Thanks and appreciation are also due Holly Graham, Statistician, ATP, for her assistance in gathering the data on foreign participation in the ATP, and Robert Sienkiewicz, Economist, ATP, for his helpful comments and suggestions on an early draft of the report. I would also like to acknowledge the contribution of the Washington Editorial Review Board Reader, Michael Rubin, Deputy Chief Counsel, NIST. Finally, sincere appreciation is extended to the many individuals who have contributed to the preparation of foreign eligibility findings since the inception of the ATP in 1990. They include: past and present Science and Technology Counselors and other officials of foreign embassies located in Washington, DC; officials of foreign countries and managers of foreign counterpart programs; officials at the Office of the U.S. Trade Representative, the U.S. Patent and Trademark Office, and the U.S. Department of State; officials from U.S. embassies located abroad; scholars and academicians; industry representatives; and colleagues at NIST.

### **Copies of the Report**

Additional copies of the report are available by calling Cindy Smith, Economic Assessment Office, ATP, 301-975-4332. The report is also available electronically on ATP's home page on the World Wide Web, specifically, <http://www.atp.nist.gov/atp/npc.htm>.

## **EXECUTIVE SUMMARY**

Since 1990, the Advanced Technology Program (ATP) has been investing directly in the growth of the nation's economy by cost sharing with industry in the development of high-risk, enabling technologies that form the basis for new and improved products, manufacturing processes, and services.

Congress created the ATP in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, codified at 15 U.S.C. 278n) and charged the U.S. Department of Commerce's National Institute of Standards and Technology (NIST) with administering the program to help U.S. companies accelerate the creation and commercialization of highly innovative technologies with strong potential for generating broad-based economic benefits for the nation.

ATP multi-year awards are made to individual companies and to joint research and development ventures (hereafter referred to as "joint ventures") through a highly competitive, merit-based, peer-reviewed selection process. According to the ATP Statute (authorizing legislation), only U.S.-owned companies and U.S. subsidiaries of foreign-owned companies (i.e., U.S.-incorporated companies that are majority owned or controlled by individuals who are not citizens of the U.S.) are eligible to receive awards for technology development, provided selection criteria are met. The ATP bases its selection of all project proposals on how well each proposal addresses five selection criteria: scientific and technical merit; potential net broad-based economic benefits to the U.S.; adequacy of plans for eventual commercialization; level of commitment and organizational structure; and experience and qualifications. Proposals are evaluated against these criteria and those judged to have the highest merit receive further consideration and are referred to as "semifinalists." Semifinalists are invited to the ATP for an oral review after which all semifinalist proposals are scored and ranked. From the list of finalists, proposals are selected for awards.

All funded projects, regardless of the country of ownership of the participating companies, must score high against the five selection criteria outlined above. U.S. subsidiaries of foreign-owned companies must meet additional eligibility requirements, according to the ATP Statute. For an award to be given to a U.S. subsidiary of a foreign-owned company, the Secretary of Commerce (or the Secretary's designee) must find that the company's participation is in the economic interest of the U.S. Furthermore, the Secretary of Commerce (or the Secretary's designee) must find that the country of incorporation of the foreign parent provides U.S.-owned companies: opportunities comparable to those provided to any other company to participate in programs similar to the ATP; local investment opportunities comparable to those provided to any other company; and, adequate and effective protection of their intellectual property rights. The first special eligibility requirement is already covered under the first of five project selection criterion - - "potential for net broad-based benefits to the U.S." - - focused on the project's impact on the U.S. economy as described above. However, this requirement is reviewed and scrutinized, taking into account the likely impact of foreign ownership of the particular foreign-owned company in question. The determination of eligibility for foreign-owned companies will be referred to herein as "the foreign eligibility finding."

In implementing its legislative mandate, the ATP initiates a foreign eligibility finding in situations where a



foreign-owned company is selected as a finalist in a competition; or seeks to join an existing ATP joint venture project. In addition, if a U.S.-owned company which is already participating in a project experiences a change in ownership and becomes majority-owned or -controlled by non-U.S. citizens, and wishes to continue its participation in the project, a foreign eligibility finding is initiated. Program implementation of this statutory requirement is carried out by the Director of the ATP, the Secretary of Commerce's designee, who bases the determination of a foreign-owned company's eligibility to receive an award on evidence gathered from a number of sources. For a foreign eligibility finding to be determined positive, each of the four special eligibility requirements must be found positive. A positive foreign eligibility finding means that the applicant is determined eligible to participate in an ATP-supported project, provided all other requirements - - common to all ATP award candidates - - are met.

Since its inception, the ATP has received over 3,000 applications submitted to thirty competitions. ATP's fiscal year 1998 budget is \$192.5 million. Through 1997, the ATP has funded 352 projects, involving 842 participants, including for-profit companies, universities, and non-profit organizations - - not counting subcontractors, and informal partners and collaborators. Slightly over \$2.3 billion in advanced research has been committed, with industry providing more than half the funds and the ATP supporting the remainder.

The ATP has carried out a total of fifty-one foreign eligibility findings through 1997. Of these, forty-eight foreign eligibility findings were for companies whose projects were selected as finalists for awards. The rest were for companies seeking to join existing projects, or to continue participating in existing ATP projects after experiencing a change in their ownership status. The total number of findings does not correspond directly to the number of projects in which U.S. subsidiaries of foreign-owned companies sought participation. There are a few instances in which joint venture projects had more than one foreign-owned company seeking participation. Also note that the total number of findings does not correspond directly to the number of foreign-owned companies currently participating in projects for a variety of reasons. Some findings, for example, were determined to be positive, but for other reasons the foreign-owned company never participated in the project. Of the fifty-one foreign eligibility findings carried out through 1997, only two were negative. Both of these findings were for Japanese-owned firms, and they did not pass on the basis of the national policies of Japan rather than any shortcomings of the companies themselves. Of the total 352 projects in ATP's portfolio, twenty-nine active and completed projects involve thirty-three participants who are U.S. subsidiaries of foreign-owned companies. They are participating in 18 out of a total of 119 joint venture projects and 11 out of a total of 233 single-company projects. These participants represent twenty-one distinct foreign-owned companies from twelve different countries. A few of these companies are participating in more than one project.



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## **1. OVERVIEW OF THE U.S. ADVANCED TECHNOLOGY PROGRAM**

Congress created the Advanced Technology Program (ATP) in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), codified in Title 15 of the United States Code, Section 278n (15 U.S.C. 278n), and amended in the American Technology Preeminence Act of 1991 (P.L. 102-245). The ATP invests directly in the growth of the nation's economy by cost sharing with industry in the development of high-risk, enabling technologies. These technologies, once developed, are expected to form the basis for new and improved products, manufacturing processes, and services. Stated in another way, the goal of ATP's cost-shared investment is to help U.S. companies accelerate the creation and commercialization of highly innovative technologies with strong potential for generating broad-based economic benefits for the nation. These broad-based economic benefits are expected to extend significantly beyond the direct benefits to companies receiving awards.

The ATP relies on U.S. companies to conceive and propose technology development projects, carry out the research of funded projects, and share in the costs. U.S. companies seeking financial assistance from the ATP must submit proposals that address published selection criteria, including a detailed research plan; a plan for future commercialization of the proposed technology; and an explanation of how the technology is expected to result in net broad-based economic benefits for the nation. The ATP emphasizes integrated planning across all aspects of a project by encouraging participants to form a team that includes people who are involved with the development of the technology and others who will be responsible for the eventual commercialization of the proposed technologies. Although funding is only provided for research activities, the ATP requires at least preliminary upfront planning for downstream activities, such as marketing, production, and distribution, for at least one potential application of each technology proposed to be developed during the project. It encourages applicants to incorporate into the process the voice of the customer or end-user as early as possible. If companies successfully complete their research projects, they - - or their allies or licensees - - are expected to undertake subsequent commercialization activities with private-sector or other sources of funds and to promote the diffusion of the technologies for broader benefits to the U.S. economy.

Proposals are accepted only in response to announced competitions, of which there are two types: general competitions, open to proposals in all areas of technology, and focused program competitions, open only to proposals that support specific, pre-defined technology and business goals. ATP awards are made to individual companies and to joint research and development ventures (hereafter referred to as "joint ventures") through a highly competitive, merit-based, peer-reviewed selection process. Only U.S.-owned companies and U.S. subsidiaries of foreign-owned companies that meet ATP's selection requirements are eligible to receive awards. Single-company proposers that are small-to-medium size can receive up to \$2 million in ATP support for direct project costs over three years, but must cover their own indirect costs, whatever they may be. Beginning in 1998, single-company proposers that are large in size must cover a minimum of sixty percent of total project costs.<sup>1</sup> Joint venture proposers - - comprised

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<sup>1</sup> The change in cost-share ratio for single-company proposers that are large in size provides an incentive for large companies to participate in joint ventures and is one of several policy changes and initiatives designed to

of a minimum of two, separately-owned, for-profit companies both performing the research and sharing in the costs of the research, often in combination with other companies, universities and non-profit research laboratories as additional partners - - can propose projects of any size for up to five years of funding, but must cover more than fifty percent of total project costs.

With a Congressional appropriation of \$10 million in FY 1990, the ATP held its first competition in 1990, and selected 11 projects for awards. Since then, the ATP has received over 3,000 applications submitted in thirty competitions. ATP's FY 1998 appropriations is \$192.5 million. Through 1997, the ATP has funded 352 projects, involving 842 participants, including for-profit companies, universities, and non-profit organizations - - not counting subcontractors and informal partners and collaborators. Slightly over \$2.3 billion in advanced research has been committed, with industry providing more than half the funds and the ATP supporting the remainder. Over half of the projects funded - - 52.5% - - are led by small businesses. In addition, over 100 universities and academic institutions have been involved in ATP projects through 1997, either as subcontractors to private companies or as members of industry-led joint ventures. By technology area, of the 352 projects funded, 34% involve computing, information, & communications, 16% biotechnology, 14% electronics, 14% materials, 11% manufacturing, 7% chemicals & chemical processing, and 4% energy & environment, with many overlaps across the areas.

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strengthen the ATP which was announced by Secretary of Commerce William M. Daley in July 1997. These policy changes and initiatives are the result of a sixty-day study of the ATP which was initiated by Secretary Daley in March 1997 to solicit comments on the program from the public on improving the program while ensuring that its fundamental strengths remain unchanged. Additional details can be found on ATP's home page on the World Wide Web, specifically, <http://www.atp.nist.gov/www/press/n97-32.htm>.



## 2. ATP'S PUBLISHED PROJECT SELECTION CRITERIA THAT APPLY TO ALL

This section provides ATP's published criteria - - that apply to all participating companies regardless of country of ownership - - for selecting proposed technology development projects as background and context for a discussion of additional eligibility requirements that apply only to foreign-owned companies. The ATP bases its selection of all project proposals on how well each proposal addresses five selection criteria established in the ATP Rule.<sup>2</sup> The five selection criteria, with their respective weights in parentheses, are scientific and technical merit (30%); potential net broad-based economic benefits to the U.S. (20%); adequacy of plans for eventual commercialization (20%); level of commitment and organizational structure (20%); and experience and qualifications (10%).<sup>3</sup>

Scientific and technical merit is determined by assessing the quality, innovativeness, and cost-effectiveness of the proposed technical plan; its technical risk and feasibility; the appropriateness of the project's technical risk and feasibility; the plan's coherency and clarity of vision of technical objectives; whether the project has an integrated, forward-looking, team approach; and, the potential broad impact on U.S. technology and knowledge base. Potential net broad-based economic benefits to the U.S. are assessed based on the potential of the project to improve U.S. economic growth and productivity; timeliness of the proposed work; the degree to which ATP support is essential; strength of the project's potential to generate spillover benefits extending well beyond those accruing to the award recipients; and, the project's cost-effectiveness (i.e., probable benefits relative to the total cost of the project). Adequacy of plans for eventual commercialization is based on evidence that if the project is successful, the proposer - - or its allies or licensees - - will pursue further development of the technology toward commercial application; the degree to which the proposal identifies potential applications of the technology; evidence of credible plans to assure prompt and widespread use of the technology once developed; and the protection of intellectual property.

The proposer's level of commitment and organizational structure is assessed based on the level of commitment the proposer has for the project as demonstrated by contributions of cash, personnel, equipment, and facilities; the type of organizational structure; the participation of small businesses in the case of joint venture proposals; the participation and relationship of subcontractor/supplier/collaborators to the project; and, the clarity and appropriateness of the management plan. Experience and qualifications are assessed based on adequacy of facilities, equipment, design and manufacturing tools, and other technical, financial, and administrative resources; quality and appropriateness of technical and business staff; past performance of the company or joint research venture participants in carrying out

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<sup>2</sup> For those who are unfamiliar with the term, the ATP Rule guides the agency's implementation of the ATP Statute, its authorizing legislation.

<sup>3</sup> Note that no project will be funded unless the ATP determines it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other four selection criteria.

similar kinds of efforts successfully; and, factors and resources that bear on the technical and business success of the project.<sup>4</sup>

Project proposals submitted to the ATP are scored against these selection criteria. Those which score highest are selected as semi-finalists and invited to the ATP for an oral review to give the selection board an opportunity to ask applicants questions related to how well their proposal meets the criteria. Proposals are then ranked in descending order of their scores, taking into consideration information obtained during the oral review. From the list of finalists, only highly ranked proposals receive awards. To be eligible to receive funding under the ATP, all companies must be incorporated in the U.S., or must be sole proprietorships or partnerships established in the U.S.

ATP-funded projects are expected to generate net economic benefits for the U.S. Although companies are not forbidden from carrying out research and other activities in other countries, such proposals will tend to receive low scores on the criterion, "potential net broad-based economic benefits to the U.S.," and will be judged as non-competitive in the selection process. This point holds equally for all projects - - whether proposed by U.S.-owned companies with foreign subsidiaries or affiliates, or by foreign-owned, U.S. subsidiaries.

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<sup>4</sup> Additional details on the subfactors of each of these five selection criteria can be found in the *ATP Proposal Preparation Kit*, the latest copy of which is December 1997, and the ATP Rule under *Sec. 295.6 Criteria for Selection*, which can be found in Appendix B. In addition, the ATP holds annual workshops around the country for potential applicants, and discusses these criteria in depth.

### 3. ADDITIONAL FOREIGN ELIGIBILITY REQUIREMENTS

U.S. subsidiaries of foreign-owned companies - - i.e., U.S.-incorporated companies that are majority owned or controlled by individuals who are not citizens of the U.S. and that have a parent company headquartered outside the U.S. - - must satisfy not only the project selection criteria outlined in Section 2 above that apply to all companies, but also four additional eligibility requirements, as specified in the ATP Statute and described below.<sup>5</sup>

The Secretary of Commerce (or the Secretary's designee) must find that:

- the company's participation is in the economic interest of the U.S.

This requirement is already largely covered under the "potential for net broad-based benefits to the U.S." criterion which is one of the five main project selection criteria that all funded projects must pass, as described earlier. But, whereas in the project selection criterion the emphasis is on the project's potential for providing net broad-based economic benefits to the U.S., the emphasis in the foreign eligibility finding is on the effect of the participation of a specific U.S. subsidiary of a foreign-owned company in the project. It is possible, therefore, for a particular foreign-owned company's participation in a joint venture project to be found not to be in the economic interest of the U.S., but for the project overall to score high on broad-based economic benefits to the U.S. In this case, the joint venture may be given the opportunity to replace the ineligible foreign member and go forward as an award recipient.

The other three eligibility requirements pertain not to the project or the company, but rather to the national policies of the country in which the parent company is incorporated and are generally beyond the control of the individual company applicant.

The Secretary of Commerce (or the Secretary's designee) must also find that:

- the foreign parent's country of incorporation provides U.S.-owned companies opportunities [in the foreign parent country], comparable to those provided to any other company, to participate in programs similar to the ATP;

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<sup>5</sup> The terms under which foreign-owned companies are eligible to participate in the ATP were established by Congress in the Omnibus Trade and Competitiveness Act of 1988 (P. L. 100-418, codified in 15 U.S.C. 278n), as amended by the American Technology Preeminence Act of 1991 (P. L. 102-245) under Subpart C, Sec. 28 (d)(9)(B)(ii), and are contained in the ATP Statute, the program's authorizing legislation. The ATP Statute can be found in its entirety in Appendix A.

- the foreign parent's country of incorporation provides U.S.-owned companies local investment opportunities [in the foreign parent country] comparable to those provided to any other company; and,
- the foreign parent's country of incorporation provides U.S.-owned companies adequate and effective protection for their intellectual property rights [in the foreign parent country].

The determination of eligibility for foreign-owned companies will be referred to herein as “the foreign eligibility finding.”



## 4. IMPLEMENTATION PROCEDURES FOR A FOREIGN ELIGIBILITY FINDING

### 4.1 IDENTIFYING FOREIGN-OWNED COMPANIES

When submitting their proposals, applicants are asked to self-identify if they are foreign-owned on either the form 1262 for single company proposals or the form 1263 for joint venture proposals.<sup>6</sup> Proposers are asked to state whether or not they have a parent company located outside the U.S., if they are majority-owned by individuals who are not citizens of the U.S., and if they are subject to control by individuals who are not citizens of the U.S.

Some companies fail to self-identify.<sup>7</sup> In any case, while their identity as foreign-owned will be discovered in the later stages of the review process, if not before, their failure to self-identify can lead to an understatement of foreign-owned applicants in ATP's "applicant database" which relies on data from forms 1262 and 1263. Applicants are urged to self-identify correctly; they gain nothing from the failure to do so.

### 4.2 SITUATIONS THAT TRIGGER A FOREIGN ELIGIBILITY FINDING

The following situations trigger an initiation of a foreign eligibility finding for U.S. subsidiaries of foreign-owned companies:

- a U.S. subsidiary of a foreign-owned company leads or participates in a project selected as a finalist in an ATP competition;
- a U.S. subsidiary of a foreign-owned company seeks to join an existing ATP project; or,
- a U.S.-owned company which is already leading or participating in a project experiences a change in ownership and becomes majority-owned or controlled by non-U.S. citizens, and wishes to continue its participation in the project.

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<sup>6</sup> Note that these forms can be found in the *ATP Proposal Preparation Kit*. The *Kit* also contains background material, proposal cover sheets, other required forms, and guidance on the preparation of proposals to the ATP. The currently available version is dated December 1997 and reflects all changes to the ATP Rule and to the ATP Statute through that date. An electronic version of the *Kit* is available on ATP's home page on the World Wide Web, specifically, <http://www.atp.nist.gov/atp/kit2/mainmenu.htm>.

<sup>7</sup> This failure to self-identify has resulted in an understatement of the number of foreign-owned companies in ATP's applicant database. This understatement in the applicant database may lead one to miscalculate the percentage of foreign-owned applicants that receive ATP awards; namely, it may lead to an overstatement.

A foreign eligibility finding would be initiated under any one of the above situations to ensure that the foreign-owned company meets the four special foreign eligibility requirements specified in the ATP Statute. The foreign eligibility finding will be carried out at, or near to the time, of the triggering event.

### **4.3 WHO PERFORMS THE FOREIGN ELIGIBILITY FINDING**

Congress provided the Secretary of the Department of Commerce with the authority to determine the eligibility of foreign-owned, U.S.-incorporated companies for receiving ATP awards. This authority was subsequently delegated to the Director of NIST, who, in turn, delegated it to the Director of the ATP. The Director of the ATP bases the foreign eligibility finding on evidence gathered from a number of sources.

### **4.4 SOURCES OF INFORMATION IN PREPARING A FOREIGN ELIGIBILITY FINDING**

Note that under each of the situations listed in Section 4.2, the project will already have scored high on the proposal selection criteria covered in Section 2. When a foreign eligibility finding is initiated, additional information is collected from a number of sources, as discussed under each eligibility requirement below.

#### ***Eligibility Requirement 1: Participation of the Company is in the Economic Interest of the U.S.***

Whether or not a project is in the economic interest of the U.S. is largely based on the project selection criterion, "evidence of net broad-based benefits to the U.S." To determine if participation of a particular foreign-owned company in the project is in the economic interest of the U.S., information provided in the proposal is reviewed and further scrutinized, taking into account the likely impact of foreign ownership. Additional analysis takes into consideration evidence of the following: that the company has a U.S. location(s) for the project's research, is making investments in research, development, and manufacturing in the U.S., and agrees to promote the manufacture in the U.S. of any products resulting from the ATP-supported technology; anticipated positive effects on U.S. employment and on sources of supply; and other aspects relevant to the project's potential to produce net broad-based benefits to the U.S. economy. To clarify and/or to supplement information in the proposal, the applicant may be requested to submit additional information to satisfy this requirement. Information is also obtained from other sources, including Dun & Bradstreet.

#### ***Eligibility Requirement 2: Comparable Opportunities for U.S. Firms to Participate in Programs Similar to the ATP in the Parent Country***

Evidence to satisfy eligibility requirement 2 - - whether or not the country of incorporation of the foreign parent affords U.S.-owned companies opportunities comparable to those afforded to any other company to participate in programs similar to the ATP - - is derived primarily from analysis of similar program(s) in the parent country. This information is obtained from the managing organizations of the program(s), embassies, other official government sources, and public information.

***Eligibility Requirement 3: Comparable Local Investment Opportunities for U.S. Firms in the Parent Country***

Evidence to satisfy eligibility requirement 3 - - whether or not the country of incorporation of the foreign parent affords U.S.-owned companies local investment opportunities - - is based primarily on information supplied by the Office of the U.S. Trade Representative through its annual National Trade Estimate report, its annual "Special 301" Fact Sheet, and updates from desk officers. Additional information on barriers to investment and trade may also be obtained from other federal agencies.

***Eligibility Requirement 4: Adequate and Effective Protection of Intellectual Property Rights of U.S. Firms in the Parent Country***

Evidence to satisfy eligibility requirement 4 - - whether or not the country of incorporation of the foreign parent provides adequate and effective protection of U.S.-owned intellectual property rights - - is based primarily on information supplied by the Office of the U.S. Trade Representative through its annual National Trade Estimate report, its annual "Special 301" Fact Sheet, and updates from desk officers. Note that this provision is stated in absolute terms and is not relative to how other companies are treated. Additional information may also be sought from other organizations, including the U.S. Patent and Trademark Office, the U.S. Department of State, and U.S. embassies abroad.

**4.5 POSITIVE AND NEGATIVE FINDINGS**

For a foreign eligibility finding to be determined positive, each of the four eligibility requirements must be found positive. A positive foreign eligibility finding means that the applicant is determined eligible to participate in an ATP-supported project, provided all other requirements - - common to all ATP award candidates - - are met.

A negative decision with respect to eligibility requirements 2 to 4 does not preclude a positive finding in the future for the country in question. Similarly, a positive finding would not preclude a negative finding in the future for the country in question. The ATP recognizes that national policies regarding opportunities for U.S. companies to participate in similar R&D programs, or opportunities for foreign investment in the foreign country, or the adequate and effective protection of intellectual property rights, may change over time. Therefore, it is ATP's policy to prepare a foreign eligibility finding at the time of a triggering event. The ATP does not determine in advance the countries that meet or do not meet the country-specific, foreign eligibility requirements.



## 5. FOREIGN-OWNED PARTICIPANTS IN ATP PROJECTS

From its inception in 1990 through 1997, the ATP has carried out a total of fifty-one foreign eligibility findings. Of these, forty-eight foreign eligibility findings were for companies whose projects were selected as finalists for awards. The rest were for companies seeking to join existing projects, or to continue participating in existing ATP projects after experiencing a change in their ownership status. The total number of findings does not correspond directly to the number of projects in which U.S. subsidiaries of foreign-owned companies sought participation. There are a few instances in which joint venture projects had more than one foreign-owned company seeking involvement, each requiring a foreign eligibility finding. Also note that the total number of findings does not correspond directly to the number of foreign-owned companies currently participating in projects for a variety of reasons. The total number of findings include findings for U.S. subsidiaries of foreign-owned companies which:

- had positive findings, officially joined the projects, and are still currently participating in active projects;
- had positive findings, officially joined the projects, but have now completed their research;
- had positive findings, but for various reasons never participated in the project;
- had positive findings, but decided to take an informal role in projects, as a subcontractor, for instance;
- had positive findings, but were in projects which did not receive an award for other reasons, or which were cancelled before the project started;
- had negative findings, and were not allowed to participate;
- were determined not to have a U.S. subsidiary, and were, therefore, ineligible to participate; or,
- became majority U.S.-owned during the life of the project.

Of the fifty-one foreign eligibility findings carried out through 1997, only two were negative. Both of these findings were for Japanese-owned firms, and they did not pass on the basis of the national policies of Japan rather than any shortcomings of the companies themselves.

Of the 352 projects, involving 842 participants, receiving support from the ATP, thirty-three participants in twenty-nine active and completed ATP projects are U.S. subsidiaries of foreign-owned companies. They are participating in 18 out of a total of 119 joint venture projects and 11 out of a total of 233 single-company projects. These participants represent twenty-one, distinct foreign-owned companies from twelve different countries. A few of these companies are participating in more than one project. Specifics



are provided in the attached tables. Table 1 lists in alphabetical order the names of participants which are U.S. subsidiaries of foreign-owned companies participating in active and completed projects, and Table 2 displays the same list of participants by their parent country. Table 3 provides active and completed projects involving U.S. subsidiaries of foreign-owned companies by project year and by project title.

## 6. QUESTIONS AND ANSWERS ON FOREIGN ELIGIBILITY AND PARTICIPATION

To clarify ATP's policies on the eligibility of foreign-owned companies, this section poses questions concerning foreign eligibility and participation, and provides answers.

**Q. Are green card holders who own a company incorporated in the U.S. eligible to receive an ATP award? Do they have to go through a foreign eligibility finding process?**

A. No, green card holders (resident aliens) are ineligible to receive an award from the ATP. Green card holders do not go through a foreign eligibility finding process. If a proposal by a green card holder is submitted for consideration, it will undergo the selection process. If the proposal is selected as a semi-finalist, the applicant will be asked during the oral review if ownership has transferred from the green card holder to a U.S. citizen(s). According to Sec. 295.39 (c) of the ATP Rule (December 1997),

*Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner (s) must either become a U.S. citizen or ownership must be transferred to a U.S. citizen (s).*

**Q. What are the eligibility requirements for foreign-owned companies seeking to participate as subcontractors in an ATP project? Is a foreign eligibility finding required?**

A. No, a foreign eligibility finding is not required in this case, but the participants will be required to justify the use of any foreign-owned subcontractors and explain how their participation will benefit the U.S. economy. It is important for proposers to identify which facility and where (in the U.S. or outside the U.S.) the research will be carried out by all participants, including subcontractors. The ATP has provided a response on page 31 of the *ATP Proposal Preparation Kit* (December 1997) as noted below:

*... because ATP's goal is to create economic growth in the U.S., ATP awardees are expected to use U.S. subcontractors located in the U.S. with benefits accruing to the U.S. Proposals which include foreign subcontractors that do not fully justify such use would normally score low in the ATP selection criterion that ensures that economic benefits must accrue to the U.S. Substantial foreign subcontractors are not encouraged. If [sic] foreign subcontractors are proposed, a clear statement that U.S. sources for the expertise have been investigated and why they are judged to be inadequate to meet the project goals is required.*

**Q. I am interested in applying to the ATP, but I am a foreign-owned company without a U.S. subsidiary. Can I still apply and receive an award?**

A. No. According to the ATP Statute, only U.S.-owned companies and U.S. subsidiaries of foreign-owned companies that meet certain requirements are eligible to receive financial assistance from the ATP. Foreign-owned companies located outside of the U.S. are ineligible for an award.

**Q. I am a foreign-owned company with a U.S. subsidiary interested in applying to the ATP. But I am not sure if I will pass the foreign eligibility finding. Could you tell me in advance if my parent country would pass the country-specific, eligibility requirements before I apply?**

A. No, the ATP cannot give an opinion on whether the parent country of a foreign-owned company would pass the country-specific eligibility requirements prior to the time of application. Just because a country's national policies were determined to meet the eligibility requirements in one year, does not mean that the country's policies will be acceptable in a subsequent year - - and vice versa - - because national policies can change. An opinion given today may not reflect the situation at the time of application.

**Q. I am curious about when the process begins for a foreign eligibility finding. I was just notified by the ATP that I'm a semi-finalist, but I have a foreign parent. Will the ATP tell me at the oral review if I pass the foreign eligibility finding?**

A. No. A determination of foreign eligibility will not be made until after the oral review. During your oral review, the selection board will ask you questions to clarify how well you meet the ATP criteria, including questions related to the foreign eligibility finding - - questions such as where you intend to carry out the research. Information collected at the oral review is used in the foreign eligibility finding process. Only those projects which reach the finalist stage, and whose participants are determined to be the U.S. subsidiaries of foreign-owned companies will be subject to a foreign eligibility finding.

**Q. I don't understand how a foreign eligibility finding is carried out. What do you do?**

A. The ATP relies on information collected by federal agencies (e.g., the Department of Commerce; the U.S. Trade Representative; the U.S. Patent and Trademark Office; the Department of State) and received from foreign embassies, U.S. embassies abroad, foreign programs, and other sources to help us make the determination of eligibility. Note that the ATP does not conduct broad surveys of the national policies of other countries.

**Q. I am a U.S. -owned company currently participating in an ATP project. We are in the process of being acquired by a foreign-owned company. We would like to continue our participation in the project. What do you do in a case like ours?**

A. First, you must notify the ATP of any change in ownership as stipulated in your cooperative agreement with NIST. When a change in ownership from majority U.S.-owned to foreign-owned is official, a foreign eligibility finding will be carried out to determine whether your company's continued participation in the project is in the economic interest of the U.S., taking into account foreign ownership, and whether your new foreign parent's country of incorporation meets the country-specific eligibility requirements mandated

by Congress. Please refer to the *ATP Proposal Preparation Kit* (December 1997), p. 37, which describes this reporting requirement as noted below:

*If at any time within the life of an ATP award, any recipient ceases to have a majority control or ownership by individuals who are citizens of the United States, the recipient shall notify the ATP of that fact within 15 days. As stipulated in Chapter 1, C. [page 2 of the Kit], a finding will be made by NIST in accordance with 15 CFR 295.3 [see Appendix B: The ATP Rule].*

If the foreign eligibility finding is determined to be positive on all four special eligibility requirements, you will be allowed to continue your participation in the project.

**Q. Once a foreign-owned company is determined eligible to participate in the ATP, is a determination of continued eligibility carried out every year?**

A. As stipulated in the cooperative agreement an awardee signs with NIST, the ATP subjects every funded project to an analysis of the criteria listed in Section 2 in this report to decide if it merits continuation of funding. The ATP does not carry out a foreign eligibility finding every year for every company and project. However, under the ATP Statute, and as further mentioned in the ATP Rule, a foreign-owned company can be suspended from continued assistance if it is determined that it fails to satisfy any of the special eligibility requirements. The following are excerpts from the ATP Statute and the ATP Rule:

*(e) The Secretary [of the Department of Commerce] may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so. [ATP Statute]*

*(b) The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so. [ATP Rule]*

It is current ATP practice not to require foreign-owned participants to undergo yearly foreign eligibility findings once they are determined eligible to participate at the time of application. Should a foreign-owned company cease to be foreign-owned during the life of a project, or a U.S.-owned company ceases to be majority U.S.-owned, the ATP must be given notification and, in the case of the latter, a foreign eligibility finding will be required in order to determine whether the company is eligible to continue its participation in the project.



It is important to note that every year, the ATP reviews the progress of all awarded projects against the five project selection criteria and against their original goals, and determines whether or not continued assistance is appropriate. During the annual review process, the ATP assesses whether each project is making sufficient progress toward its goals, including whether it continues to have the potential to generate net broad-based benefits to the U.S. In other words, even though the ATP does not carry out a foreign eligibility finding each year for currently participating foreign-owned companies, whether the company's participation continues to be in the economic interest of the U.S. is considered under the normal annual project review, while the other three country-specific eligibility requirements related to the national policies of the parent country are not.

## **7. ATP CONTACT INFORMATION**

If you have questions or comments regarding this report, please submit them to the ATP at the following address:

Economic Assessment Office  
Advanced Technology Program  
National Institute of Standards and Technology  
Administration Building, Room A303  
Gaithersburg, Maryland 20899-0001

If you wish to speak with someone at the Economic Assessment Office, please contact either:

Connie Chang  
Economist, Economic Assessment Office  
301-975-4318 (voice); 301-975-4776 (fax)  
connie.chang@nist.gov

or,

Rosalie Ruegg  
Director, Economic Assessment Office  
301-975-6135 (voice); 301-975-4776 (fax)  
rosalie.ruegg@nist.gov

To request an a proposal preparation kit, and/or request that your name be added to the ATP mailing list for future mailings and announcements of ATP workshops and other activities, call our toll-free "hotline" number, 1-800-ATP-FUND, or 1-800-287-3863; or send an email to: [atp@nist.gov](mailto:atp@nist.gov). For answers to general questions concerning the Advanced Technology Program, please feel free to browse our home page on the World Wide Web (<http://www.atp.nist.gov>).

We welcome your comments and suggestions.

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## REFERENCES

National Institute of Standards and Technology. *Advanced Technology Program Proposal Preparation Kit*. Gaithersburg, MD. U.S. Department of Commerce, Technology Administration, December 1997.

Advanced Technology Program Rule. Title 15, Code of Federal Regulations, Part 295 (15 CFR Part 295).

Advanced Technology Program Statute. Originally authorized by Section 5131 (a) of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418); codified in Title 15 of the United States Code, Section 278n (15 U.S.C. 278n); and amended by the American Technology Preeminence Act of 1991 (P.L. 102-245).

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**Table 1: U.S. Subsidiaries of Foreign-Owned Companies Participating in Active and Completed ATP Projects Through 1997**

*[Note: A few of these companies are involved in more than one project.]*

Alcan Aluminum Corporation, Farmington Hills, MI (Canada)

Asea Brown Boveri

- ABB High Power Semiconductors, Pittsburgh, PA (Switzerland)
- ABB Lummus Global, Inc., Bloomfield, NJ (Sweden and Switzerland)
- ABB Vetco Gray, Inc., Houston, TX (Switzerland)

Berclain USA Ltd., Schaumburg, IL (Netherlands)

British Petroleum

- BP Chemical, Inc., Cleveland, OH (United Kingdom)
- BP Oil, Warrenville Heights, OH (United Kingdom)

The Budd Company

- The Budd Company, Design Center, Troy, MI (Germany)
- The Budd Company, Technical Center, Auburn Hills, MI (Germany)

Ceramatec, Inc, Salt Lake City, UT (Norway)

Comark Communications Inc., Southwick, MA (France)

Elf Atochem North America, Inc., Birdsboro, PA (France)

Fiberweb North America, Inc., Simpsonville, SC (United Kingdom)

Genencor International, Inc., Palo Alto, CA (Finland)

Kurzweil Applied Intelligence, Inc., Waltham, MA (Belgium)

Magna International of America, Inc., Southfield, MI (Canada)

Maxygen Inc., Santa Clara, CA (United Kingdom)

Norton Diamond Film, Northboro, MA (France)

Philips Electronics

- Philips Consumer Electronics North America, Briarcliff Manor, NY (Netherlands)
- Philips Laboratories, Briarcliff Manor, NY (Netherlands)
- Philips Research, Briarcliff Manor, NY (Netherlands)

Royal Dutch Shell

- Shell Chemical Company, Houston, TX (Netherlands)
- Shell Exploration and Production Technology Company, Houston, TX (Netherlands)

Tecnomatix Technologies Inc., Novi, MI (Israel)

Thomson Consumer Electronics Inc., Washington, DC (France)

Toromont Process Systems, Inc., North Salt Lake City, UT (Canada)

Union Switch & Signal, Inc., Pittsburgh, PA (Italy)

United States Biochemical Corporation, Cleveland, OH (United Kingdom)

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**Table 2: U.S. Subsidiaries of Foreign-Owned Companies Participating in Active and Completed ATP Projects Through 1997: By Parent Country**

Belgium

Kurzweil Applied Intelligence, Inc., Waltham, MA  
- - Lemout & Hauspie Speech Products N.V., Ieper, Belgium

Canada

Alcan Aluminum Corporation, Farmington Hills, MI  
- - Alcan Aluminum Ltd., Montreal, Canada

Magna International of America Inc., Southfield, MI  
- - Magna International Inc., Ontario, Canada

Toromont Process Systems, Inc., North Salt Lake, UT  
- - Toromont Industries Ltd., Ontario, Canada

Finland

Genencor International, Inc., Palo Alto, CA  
- - Cultor Ltd., Helsinki, Finland (50% owner)

France

Comark Communications Inc., Southwick, MA  
- - Thomson S.A., Paris, France

Thomson Consumer Electronics, Inc., Washington, DC  
- - Thomson, S.A., Paris, France

Norton Diamond Film, Northboro, MA  
- - Compagnie de Saint-Gobain, Courbevoie, France

Elf Atochem North America, Inc., Birdsboro, PA  
- - Societe Nationale Elf Aquitaine, France

**Table 2: U.S. Subsidiaries of Foreign-Owned Companies Participating in Active and Completed ATP Projects Through 1997: By Parent Country (Cont'd)**

Germany

The Budd Company, Design Center, Troy, MI  
-- Thyssen A.G., Duisburg, Germany

The Budd Company, Technical Center, Auburn Hills, MI  
-- Thyssen A.G., Duisburg, Germany

Israel

Tecnomatix Technologies Inc., Novi, MI  
-- Tecnomatix Technologies Ltd., Herzliya, Israel

Italy

Union Switch & Signal, Inc., Pittsburgh, PA  
-- IRI Istituto Ricostruzione, Rome, Italy (62% owner)

Netherlands

Berclain USA Ltd., Schaumburg, IL  
-- Baan Company NV, Ede, Netherlands

Philips Consumer Electronics North America, Briarcliff Manor, NY  
-- Philips Electronics N.V., Eindhoven, Netherlands

Philips Laboratories, Briarcliff Manor, NY  
-- Philips Electronics N.V., Eindhoven, Netherlands

Philips Research, Briarcliff Manor, NY  
-- Philips Electronics N.V., Eindhoven, Netherlands

Shell Chemical Company, Houston, TX  
-- Royal Dutch Petroleum Company, Netherlands

Shell Exploration and Production Technology Company, Houston, TX  
-- Royal Dutch Petroleum Company, Netherlands



**Table 2: U.S. Subsidiaries of Foreign-Owned Companies Participating in Active and Completed ATP Projects Through 1997: By Parent Country (Cont'd)**

Norway

Ceramatec, Inc., Salt Lake City, UT  
 -- Elkem A/S, Oslo, Norway

Sweden

ABB Lummus Global, Inc., Bloomfield, NJ\*  
 -- Asea AB, Stockholm, Sweden (50% owner)

Switzerland

ABB High Power Semiconductors, Pittsburgh, PA  
 ABB Asea Brown Boveri, Zurich, Switzerland

ABB Lummus Global, Inc., Bloomfield, NJ\*  
 -- ABB Asea Brown Boveri Ltd., Baden, Switzerland (50% owner)

ABB Vetco Gray, Inc., Houston, TX  
 -- Asea Brown Boveri, Inc., Switzerland

United Kingdom

BP Chemical, Inc., Cleveland, OH  
 -- The British Petroleum Company PLC, London, UK

BP Oil, Warrenville Heights, OH  
 -- The British Petroleum Company PLC, London, UK

Fiberweb North America, Inc., Simpsonville, SC  
 -- BBA Group PLC, West Yorkshire, UK

Maxygen Inc., Santa Clara, CA  
 -- Glaxo Wellcome PLC, London, UK (55% owner)

United States Biochemical Corporation, Cleveland, OH  
 -- Amersham International PLC, Buckinghamshire, UK

\*This company is owned 50-50 by parents in two countries.

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### **Table 3: Active and Completed ATP Projects Involving U.S. Subsidiaries of Foreign-Owned Companies Through 1997**

*[The following twenty-nine active and completed ATP projects out of a total of 352 projects funded through 1997 involve the participation of U.S. subsidiaries of foreign-owned companies. This table presents only those projects involving U.S. subsidiaries of foreign-owned companies by year of funding and by project title. For more information on the projects, readers are encouraged to browse ATP's home page on the World Wide Web (<http://www.atp.nist.gov>) and locate the projects using the project numbers provided in parentheses. The symbol "SP" means single-company proposer projects. The symbol "JVL" means the lead company in a joint venture project. The symbol "JVP" means a participant in a joint venture project. For both single-company proposer and joint venture projects, subcontractors and informal collaborators are usually involved, but they are not shown in the table. An asterisk marks U.S. subsidiaries of foreign-owned companies.]*

*[Note that none of the projects selected for funding in FY 1996 involved a foreign-owned company and that no foreign-owned companies were funded prior to FY 1993.]*

#### **Projects Funded in FY 1997 Involving U.S. Subsidiaries of Foreign-Owned Co's:**

##### **Advanced Transgenic Model Systems for Biomedical Research and Development (97-01-0038)**

\*Genencor International, Inc., Palo Alto, CA (SP)

##### **Evolution of a Murine Model for AIDS: Applications to Discovery of Small Molecule and Vaccine Therapeutics (97-01-0240)**

\*Maxygen, Santa Clara, CA (SP)

##### **Nanocomposites New Low-Cost, High-Strength Materials for Automotive Parts (97-02-0047)**

The Dow Chemical Company, Midland, MI (JVL)

\*Magna International of America, Southfield, MI (JVP)

##### **Physician's Assistant for Continuous Transcription and Structure (97-03-0056)**

\*Kurzweil Applied Intelligence, Waltham, MA (SP)

##### **EECOMS: Extended Enterprise Coalition for Integrated Collaborative Manufacturing Systems (97-05-0020)**

IBM Corporation, CIIMPLEX, Charlotte, NC (JVL)

QAD, Inc., Mt. Laurel, NJ (JVP)

\*Berclain USA Ltd., Schaumburg, IL (JVP)  
Vitria Technology, Inc., Mountain View, CA (JVP)  
The Haley Enterprise, Inc., Sewickley, PA (JVP)  
Ingersoll-Rand Company, Woodcliff Lake, NJ (JVP)  
Intercim Corporation, Burnsville, MN (JVP)  
Enterprise Engines, Inc., San Mateo, CA (JVP)  
Envisionit Software Corporation, Piscataway, NJ (JVP)  
Scandura, Narberth, PA (JVP)

### **Projects Funded in FY 1995 Involving U.S. Subsidiaries of Foreign-Owned Co's:**

#### **Development of Closed Cycle Air Refrigeration Technology for Refrigeration Markets (95-01-0150)**

Air Products And Chemicals, Inc., Allentown, PA (JVL)  
\*Toromont Process Systems, Inc., North Salt Lake, UT (JVP)

#### **Development of a High-Pressure Oxygen Generator Using a Solid Electrolyte Oxygen Separation (SEOS) Technology (95-01-0178)**

\*Ceramatec, Inc., Salt Lake City, UT (SP)

#### **Agile Precision Sheet-Metal Stamping (95-02-0008)**

Near Zero Stamping, Inc. (c/o Auto Body Consortium), Ann Arbor, MI (JVL)  
American Iron and Steel Institute, Washington, DC (JVP)  
A. J. Rose Manufacturing Company, Avon, OH (JVP)  
Allen Bradley Company, Inc., Troy, MI (JVP)  
Atlas Technologies, Fenton, MI (JVP)  
Autodie International, Inc., Grand Rapids, MI (JVP)  
Autodesk, Inc., Novi, MI (JVP)  
Classic Design, Inc., Troy, MI (JVP)  
Data Instruments, Inc., Acton, MA (JVP)  
Chrysler Corporation, Auburn Hills, MI (JVP)  
Deneb Robotics, Inc., Auburn Hills, MI (JVP)  
HMS Company, Troy, MI (JVP)  
Ford Motor Company, Detroit, MI (JVP)  
General Motors Corporation, Flint Metal Fabricating Plant, Flint, MI (JVP)  
HMS Products Company, Troy, MI (JVP)  
Helm Instrument, Maumee, OH (JVP)  
Lamb Technicon, Warren, MI (JVP)  
Oxford Automotive, Troy, MI (JVP)  
Ohio State University, Columbus, OH (JVP)



Perceptron, Inc., Plymouth, MI (JVP)  
Sekely Industries, Salem, OH (JVP)  
Signature Technologies, Dallas, TX (JVP)  
\*Tecnomatix Technologies, Inc., Novi, MI (JVP)  
Tower Automotive, Farmington Hills, MI (JVP)  
Verson, Chicago, IL (JVP)

#### **Intelligent Resistance Welding (95-02-0013)**

Intelligent Resistance Welding Consortium (c/o Auto Body Consortium), Ann Arbor, MI (JVL)  
American Iron and Steel Institute, Washington, DC (JVP)  
\*Alcan Aluminum Corporation, Farmington Hills, MI (JVP)  
Ansys, Inc., Houston, PA (JVP)  
Allen Bradley Company, Inc., Troy, MI (JVP)  
Tower Automotive, Rochester Hills, MI (JVP)  
Chrysler Corporation, Detroit, MI (JVP)  
DuPont Central Research, Wilmington, DE (JVP)  
Battelle Memorial Institute, Columbus, OH (JVP)  
Ford Motor Company, Manufacturing Development Center, Detroit, MI (JVP)  
Johnson Controls, Inc., Automotive Systems Group, Plymouth, MI (JVP)  
Lamb Technicon, Warren, MI (JVP)  
Medar, Inc., Farmington Hills, MI (JVP)  
General Motors Corporation, NAO, Mid-Lux, Pontiac, MI (JVP)  
Progressive (PICO), Southfield, MI (JVP)  
Robotron, Southfield, MI (JVP)  
Sensotec, Inc., Columbus, OH (JVP)  
RoMan Manufacturing, Inc., Grand Rapids, MI (JVP)

#### **Springback Predictability in Automotive Manufacturing (95-02-0035)**

Environmental Research Institute of Michigan (ERIM), Ann Arbor, MI (JVL)  
\*The Budd Company, Technical Center, Auburn Hills, MI (JVP)  
Alcoa Aluminum Company of America, Pittsburgh, PA (JVP)  
Chrysler Corporation, Dearborn, MI (JVP)  
Ford Motor Company, Scientific Research Labs, Dearborn, MI (JVP)  
General Motors Corporation, North American Operations Research Analytics, Detroit, MI (JVP)  
U.S. Steel, Pittsburgh, PA (JVP)

#### **Plasma-Based Processing of Lightweight Materials for Motor-Vehicle Components and Manufacturing Applications (95-02-0036)**

Environmental Research Institute of Michigan (ERIM), Ann Arbor, MI (JVL)  
\*ABB High Power Semiconductors, Pittsburgh, PA (JVP)  
A.O. Smith Corporation, Milwaukee, WI (JVP)  
Diversified Technologies, Inc., Bedford, MA (JVP)

Empire Hard Chrome, Inc., Chicago, IL (JVP)  
General Motors Corporation, Electrical and Electronics Department, Warren, MI (JVP)  
Harley-Davidson, Inc., Wauwatosa, WI (JVP)  
IONEX, Bellaire, MI (JVP)  
Kwikset Corporation, Anaheim, CA (JVP)  
Litton Electron Devices, San Carlos, CA (JVP)  
NANO Instruments Inc., Oak Ridge, TN (JVP)  
PVI, Oxnard, CA (JVP)  
University of Wisconsin at Madison, Engineering Research, Madison, WI (JVP)

**HDTV Broadcast Technology (95-04-0026)**

Sarnoff Corporation, Princeton, NJ (JVL)  
\*Comark Communications, Inc., Southwick, MA (JVP)  
IBM Corporation, T.J. Watson Research Center, Yorktown Heights, NY (JVP)  
MCI, Richardson, TX (JVP)  
\*Philips Research, Briarcliff Manor, NY (JVP)  
Sun Microsystems Computer Corporation, Mountain View, CA (JVP)  
\*Thomson Consumer Electronics, Inc., Washington, DC (JVP)

**Continuous Biocatalytic Systems for the Production of Chemicals from Renewable Resources (95-05-0007)**

\*Genencor International, Inc., Palo Alto, CA (JVL)  
Argonne National Laboratory, Argonne, IL (JVP)  
Eastman Chemical Company, Kingsport, TN (JVP)  
Electrosynthesis Company, Inc., Lancaster, NY (JVP)  
MicroGenomics, Inc., Bridgewater, NJ (JVP)

**Thin-Film Solid Acid Catalyst for Refinery Alkylation (95-05-0034)**

\*ABB Lummus Global, Inc., Bloomfield, NJ (SP)

**Elastomeric Polypropylene and Elastic Non-wovens Venture (95-05-0039)**

Amoco Corporation, Resource Center, Naperville, IL (JVL)  
\*Fiberweb North America, Inc., Simpsonville, SC (JVP)

**Open, Voice-Enabled, Structured Medical Information (95-10-0037)**

\*Kurzweil Applied Intelligence, Inc., Waltham, MA (SP)

**Manufacturing Methodologies for Automated Thermoset Transfer/Injection Molding (TIM)**  
(95-11-0017)

\*The Budd Company, Design Center, Troy, MI (SP)

**An Agent-Based Framework for Integrated Intelligent Planning - Execution** (95-12-0024)

IBM Manufacturing Solutions Unit, CIIMPLEX, Charlotte, NC (JVL)

\*Berclain USA Ltd., Schaumburg, IL (JVP)

QAD, Inc., Americas Regional Office, Mt. Laurel, NJ (JVP)

Ingersoll-Rand Company, Mocksville, NC (JVP)

Intercim Corporation, Burnsville, MN (JVP)

EnVisionIt Software Corporation, Piscataway, NJ (JVP)

**Projects Funded in FY 1994 Involving U.S. Subsidiaries of Foreign-Owned Co's:**

**A Software Technology for Optimizing On-Time Performance in the Transportation Industry**  
(94-01-0063 - - project completed)

\*Union Switch & Signal, Inc., Pittsburgh, PA (SP)

**Dual Purpose Ceramic Membranes** (94-01-0135)

\*BP Chemical, Inc., Cleveland, OH (JVL)

Praxair, Inc., Tonawanda, NY (JVP)

**Collaborative Decision Support for Industrial Process Control** (94-01-0169)

Honeywell, Inc., Technology Center, Minneapolis, MN (JVL)

Amoco Corporation, Worldwide Engineering & Construction, Houston, TX (JVP)

Applied Training Resources, Houston, TX (JVP)

\*BP Oil, Warrenville Heights, OH (JVP)

Chevron, Richmond, CA (JVP)

Exxon Research and Engineering, Florham Park, NJ (JVP)

Gensym Corporation, Cambridge, MA (JVP)

Mobil, Pennington, NJ (JVP)

\*Shell Chemical Company, Houston, TX (JVP)

Texaco, Inc., Bellaire, TX (JVP)

**High Information Content Display Technology** (94-01-0304)

Kopin Corporation, Taunton, MA (JVL)

\*Philips Consumer Electronics North America, Briarcliff Manor, NY (JVP)

**Accelerated Commercialization of Diamond-Coated Round Tools and Wear Parts (94-01-0357)**

\*Norton Diamond Film, Northboro, MA (JVL)  
Kennametal, Inc., Corporate Technology Center, Latrobe, PA (JVP)

**Composite Production Risers (94-02-0032)**

Cullen Engineering Research Foundation, Houston, TX (JVL)  
Amoco Corporation, Houston, TX (JVP)  
Amoco Performance Products, Inc., Alpharetta, GA (JVP)  
Brown & Root USA, Inc., Houston, TX (JVP)  
Lincoln Composites, Lincoln, NE (JVP)  
Conoco, Inc., Ponca City, OK (JVP)  
Hexcel Corporation, Pleasanton, CA (JVP)  
Hydril Company, Houston, TX (JVP)  
\*Shell Exploration and Production Technology Company, Houston, TX (JVP)  
Stress Engineering Services, Inc., Houston, TX (JVP)  
University of Houston - - CEAC, Houston, TX (JVP)

**Spoolable Composite Tubing (94-02-0038)**

Cullen Engineering Research Foundation, Houston, TX (JVL)  
Hydril Company, Houston, TX (JVP)  
Amoco Corporation, Resource Center, Naperville, IL (JVP)  
\*Elf Atochem North America, Inc., Birdsboro, PA (JVP)  
Phillips Petroleum Company, Bartlesville, OK (JVP)  
\*Shell Exploration and Production Technology Company, Houston, TX (JVP)  
University of Houston - - CEAC, Houston, TX (JVP)

**Development of Manufacturing Methodologies for Vehicle Composite Frames (94-02-0040)**

\*The Budd Company, Design Center, Troy, MI (SP)

**Manufacturing Composite Structures for the Offshore Oil Industry (94-02-0048)**

Northrop Grumman Corporation, Marine Systems Division, Sunnyvale, CA (JVL)  
\*ABB Vetco Gray, Inc., Houston, TX (JVP)  
Hexcel Corporation, Pleasanton, CA (JVP)  
Texas Engineering Experiment Station, Offshore Tech. Res. Ctr. (UT and TX A&M),  
College Station, TX (JVP)  
Reading & Bates Development Company, Houston, TX (JVP)  
Texaco, Inc./Deep Star Project, Bellaire, TX (JVP)



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**Projects Funded in 1993 Involving U.S. Subsidiaries of Foreign-Owned Co's:**

**A Novel Microminiature Light Source Technology** (93-01-0045 - - project completed)

\*Philips Laboratories, Briarcliff Manor, NY (SP)

**Hyperthermophilic Microorganisms in Molecular Biology and Biotechnology** (93-01-0113 - - project completed)

\*United States Biochemical Corporation, Cleveland, OH (SP)

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## APPENDIX A: THE ATP STATUTE

[Note: The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, codified in 15 U.S.C. 278n) and was amended by the American Technology Preeminence Act of 1991 (P.L. 102-245).]

### SUBPART C -- ADVANCED TECHNOLOGY PROGRAM

#### SEC. 5131. ADVANCED TECHNOLOGY

(a) *Advanced Technology Program.* -- *The Act of March 3, 1901, as amended by this part, is further amended by adding after section 27 the following new section:*

#### "ADVANCED TECHNOLOGY PROGRAM

"SEC. 28.(a) *There is established in the Institute an Advanced Technology Program (hereafter in this Act referred to as the 'Program') for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to--*

*"(1) commercialize significant new scientific discoveries and technologies rapidly; and*

*"(2) refine manufacturing technologies.*

*The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoids providing undue advantage to specific companies. In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683).*

*"(b) Under the Program established in subsection (a), and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d), may --*

*"(1) aid industry-led United States joint research and development ventures (hereafter in this section referred to as 'joint ventures') (which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through--*

*"(A) provision of organizational and technical advice; and*

*"(B) participation in such joint ventures by means of grants, cooperative agreements, or contracts, if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial startup funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel, provided that emphasis is placed on areas where the Institute has scientific or technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;*

"(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;

"(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and

"(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

"(c) The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including --

"(1) publishing in the Federal Register draft criteria and, no later than six months after the date of the enactment of this section, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b)(1) and (2);

"(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

"(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program;

"(4) assuring that the advice of the Committee established under section 10 is considered routinely in carrying out the responsibilities of the Institute; and

"(5) providing for appropriate dissemination of Program research results.

"(d) When entering into contracts or making awards under subsection (b), the following shall apply:

"(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

"(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

"(3) No Federal contract or cooperative agreement under subsection (b)(2) shall exceed \$2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made available under subsection (b)(2) shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.



"(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

"(5) Section 552 of title 5, United States Code, shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program --

"(A) information on the business operation of any member of the business or joint venture; and

"(B) trade secrets possessed by any business or any member of the joint venture.

"(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

"(7) If a business or joint venture fails before the completion of the period for which a contract or award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

"(8) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

"(9) A company shall be eligible to receive financial assistance under this section only if --

"(A) the Secretary finds that the company's participation in the program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

"(B) either --

"(i) the company is a United States-owned company; or

"(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

"(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

*"(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.*

*"(B) For purposes of this paragraph, the term 'intellectual property' means an invention patentable under title 35, United States Code, or any patent on such an invention.*

*"(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.*

*"(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so."*

*"(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.*

*"(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.*

*"(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.*

*"(i) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.*

*"(j) As used in this section --*

*"(1) the term 'joint venture' means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of --*

*"(A) theoretical analysis, experimentation or systematic study of phenomena or observable facts;*

*"(B) the development or testing of basic engineering techniques;*

*"(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;*

*"(D) the collection, exchange, and analysis of research information;*

*"(E) the production of any product, process, or service; or*

*"(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E), and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and*

*"(2) the term 'United States-owned company' means a company that has majority ownership or control by individuals who are citizens of the United States."*

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**APPENDIX B: THE ATP RULE - - 15 CFR PART 295**

[Note: The Code of Federal Regulations (CFR) is a document that contains the codification of the general and permanent rules published in the Federal Register by departments and agencies in the Executive branch of the Federal government. Amendments to rules are published in the Federal Register. Individual issues of the Federal Register and the Code should be used together to determine the latest version of any given rule. Each volume of the Code is revised at least once annually, and issued on a quarterly basis. The ATP Rule cited below is the December 1997 version of 15 CFR Part 295.]

*Subpart A - General.**Sec. 295.1 Purpose.**Sec. 295.2 Definitions.**Sec. 295.3 Eligibility of United States- and Foreign-Owned Businesses.**Sec. 295.4 The Selection Process.**Sec. 295.5 Use of Abbreviated Proposals in the Selection Process.**Sec. 295.6 Criteria for Selection.**Sec. 295.7 Notice of Availability of Funds.**Sec. 295.8 Intellectual Property Rights; Publication of Research Results.**Sec. 295.9 Protection of Confidential Information.**Sec. 295.10 Unspent Balances of Federal Funds.**Sec. 295.11 Coordination/Cooperation with other Federal Agencies.**Sec. 295.12 Special Financial Reporting Requirements.**Sec. 295.13 NIST Technical Assistance to Recipients of Awards.**Subpart B - Assistance to United States Industry-Lead Joint Research and Development Ventures.**Sec. 295.20 Types of Assistance Available.**Sec. 295.21 Qualification of Applicants.**Sec. 295.22 Limitations on Assistance.**Sec. 295.23 Dissolution of Joint Research and Development Ventures.**Sec. 295.24 Registration.**Subpart C - Assistance to Single-Applicant U.S. Businesses.**Sec. 295.30 Types of Assistance Available.**Sec. 295.31 Qualification of Applicants.**Sec. 295.32 Limitations on Assistance.**Subpart A - General**Sec. 295.1 Purpose.*

*(a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:*

*(1) High risk, because the technical challenges make success uncertain;*

*(2) High pay-off, because when applied, they offer significant benefits to the U.S. economy; and*



(3) *Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.*

(b) *These rules prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, these rules address only the award of cooperative agreements. The program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.*

(c) *In carrying out this rule, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.*

*Sec. 295.2 Definitions.*

(a) *For the purposes of the ATP, the term "award" means Federal financial assistance made under a grant or cooperative agreement.*

(b) *The term "cooperative agreement" refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, or services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.*

(c) *The term "direct costs" means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.*

(d) *The term "foreign-owned company" means a company other than a United States-owned company as defined in 295.2(r).*

(e) *The term "grant" means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.*

(f) *The term "independent research organization" (IRO) means a nonprofit research and development corporation or association organized under the laws of any state for the purpose of carrying out research and development on behalf of other organizations.*

(g) *The term "indirect costs" means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because*

of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

(h) The term "industry-led joint research and development venture" means a joint research and development venture that consists of two or more separately-owned, for-profit businesses that perform research and development in the project; control the venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

(i) The term "intellectual property" means an invention patentable under title 35, United States Code, or any patent on such an invention.

(j)(1) The term "joint research and development venture" or "joint venture" means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of:

(i) Theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

(ii) The development or testing of basic engineering techniques;

(iii) The extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

(iv) The collection, exchange, and analysis of research information;

(v) The production of any product, process, or service; or

(vi) Any combination of the purposes specified in paragraphs (j)(1)(i), (ii), (iii), (iv) and (v) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in subsection (j)(2) of this section.

For the purposes of this document, the terms "consortia" and "partnerships" are considered to be joint ventures.

(2) The term "joint research and development venture" excludes the following activities involving two or more persons:

(i) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(ii) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(iii) *Entering into any agreement or engaging in any other conduct:*

(A) *To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or*

(B) *To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.*

(k) *The term "large business" for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by section 295.7(a) of this regulation. In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.*

(l) *The term "matching funds or cost sharing" means that portion of project costs not borne by the federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at Sec. 295.25 of this regulation, the value of in-kind contributions shall be determined in accordance with OMB Circular A-110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.*

(m) *The term "person" shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.*

(n) *The term "Program" means the Advanced Technology Program.*

(o) *The term "Secretary" means the Secretary of Commerce or the Secretary's designee.*

(p) *The term "small business" means a business that is independently owned and operated, is organized for profit, and is not dominant in the field of operation in which it is proposing, and meets the other requirements found in 13 CFR Part 121.*

(q) *The term "United States-owned company" means a for-profit organization, including sole proprietors, partnerships, or corporations, that has a majority ownership or control by individuals who are citizens of the United States.*

#### Sec. 295.3 Eligibility of United States- and Foreign-Owned Businesses

(a) *A company shall be eligible to receive an award from the Program only if:*

(1) *The Program finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and*



(2) *Either the company is a United States-owned company, or the Program finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Program; affords the United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.*

(b) *The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.*

(c) *Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).*

#### Sec. 295.4 The Selection Process.

(a) *The selection process for awards is a multi-step process based on the criteria listed in section 295.6. A source evaluation board (SEB) is established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals are eliminated that do not meet the requirements of this rule or the Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to section 295.7; or in the case of joint ventures, requests more than a minority share of funding. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal or forward it to a later stage in the review process based upon the earlier review.*

(b) *In the second step, referred to as the "technical and business review," proposals are evaluated under the criteria found in section 295.6. Proposals judged to have the highest merit based on the selection criteria receive further consideration and are referred to as "semifinalists."*

(c) *In the third step, referred to as "selection of finalists," the Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at NIST, and in some cases site visits may be required. Subject to the provisions of section 295.6, a list of ranked finalists is submitted to the Selecting Official.*

(d) *In the final step, referred to as "selection of awardees," the Selecting Official selects funding recipients from among the finalists, based upon (1) the rank order of the proposals on the basis of all selection criteria (section 295.6); (2) assuring an appropriate distribution of funds among technologies and their applications; and (3) the availability of funds. The Selecting Official is responsible for ensuring that only proposals that meet the Program selection criteria receive awards. The Program reserves the right to withhold awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.*

(e) *If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the proposer of the deficiencies and enter into negotiations with the proposer in an effort to remedy the deficiencies. If appropriate, funding up to 10 percent of the amount originally requested by the proposer may be awarded by the Program to the proposer to assist in overcoming the organizational deficiencies. If the Program*

determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the proposer to that proposer.

(f) NIST reserves the right to negotiate with proposers selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task(s) to improve the probability of success or to make the proposal more consistent with ATP's mission.

#### Sec. 295.5 Use of Abbreviated Proposals in the Selection Process

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use a preliminary qualification process based on abbreviated proposals. Announcements requesting abbreviated proposals will be published as indicated in section 295.7, seeking proposals that address all of the selection criteria, but in considerably less detail than full proposals. The Program will review the abbreviated proposals and select those that best meet the selection criteria. Submitters of abbreviated proposals will be notified in writing whether their proposals are recommended for full proposal, or, not recommended for full proposal. Those whose proposals are recommended for full proposal submission will be invited to prepare and submit full proposals. When the full proposals are received, the review and selection process will continue as described in Section 295.4.

#### Sec. 295.6 Criteria for Selection.

The evaluation criteria to be used in selecting any proposal for funding under this Program, and their respective weights, are listed below. No proposal will be funded unless the Program determines that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria. Similarly, no proposal will be funded that does not require Federal support or that is product development rather than high risk R&D. Each of the subfactors within a selection criterion shall be weighted equally.

##### *(a) Scientific and Technical Merit (30 percent)*

(1) *Quality, innovativeness, and cost-effectiveness of the proposed technical program, that is, uniqueness with respect to current industry practice. Proposers shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.*

(2) *Appropriateness of the technical risk and feasibility of the project, that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still having credibility with regard to technical approach.*

(3) *Coherency of the technical plan and clarity of vision of the technical objectives, and the degree to which the technical plan meets the project and, in the case of focused program competitions, program goals.*

(4) *Integrated, forward-looking, team approach to the project. This factor includes the extent to which the R&D team will take into account aspects such as research and raw material suppliers and considerations of manufacturability and requirements of customers, regulatory concerns, safety issues, and environmental impacts. It also includes the extent to which all of the necessary technical disciplines will be brought into the R&D and how R&D, manufacturing, and marketing will work together in an integrated fashion.*

(5) *Potential broad impact on U.S. technology and knowledge base.*

##### *(b) Potential Net Broad-Based Economic Benefits (20 percent)*



*Potential to improve U.S. economic growth, taking into account the timeliness of proposal; that is, the potential project results will not occur too late or too early to be competitively useful, and the degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This criterion takes into consideration the likelihood of the results being achieved in the same general time frame by the proposer or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work. Projects will not be selected if the Program judges that Federal support is not needed. In assessing the potential for broad-based economic benefits, emphasis is placed on a strong potential for spillover benefits extending well beyond those accruing to the awardee(s). Benefits are compared against the costs of the proposal to determine cost-effectiveness of proposal.*

*(c) Adequacy of Plans for Eventual Commercialization (20 percent)*

*(1) Evidence that if the project is successful, the proposers will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.*

*(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the proposer has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.*

*(d) Level of Commitment and Organizational Structure (20 percent)*

*(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work in relation to other company activities.*

*(2) For joint ventures, the extent to which the joint venture has been structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.*

*(3) For joint ventures, the extent to which participation by small businesses is encouraged and is a key component of the proposal.*

*(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable). For large company single proposers, the extent to which subcontractor teaming arrangements are featured and are a key component of the proposal.*

*(5) Clarity and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.*

*(e) Experience and Qualifications (10 percent)*

*(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the proposer or other collaborators.*

*(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.*

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

Sec. 295.7 Notice of Availability of Funds.

(a) The Program shall publish at least annually a Federal Register notice inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Potential proposers must request a proposal preparation kit from the Program. Applications will only be considered for funding when submitted in response to an invitation published in the Federal Register, or a related announcement in the Commerce Business Daily.

(b) All notices published in accord with section 295.7(a) shall include the amount of funds available, the approximate number of awards, types of awards, closing dates, the name, address and telephone number of the contact person, a requirement that proposals be submitted with a NIST Form 1262 (for single proposers), or NIST Form 1263 (for joint ventures), and any other appropriate guidance.

(c) Notices issued under section 295.7(a) shall also state that awards under the Program shall be subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, and shall require that funds awarded by the Program under Subpart C (single proposers) shall be used only for direct costs and not for indirect costs, profits, or management fees of the funding recipients. Notices shall also include the notification that Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

Sec. 295.8 Intellectual Property Rights; Publication of Research Results.

(a)(1) Patent Rights: Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. The United States may reserve a non-exclusive, nontransferable, irrevocable paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(2) Patent Procedures: Each award by the Program will contain procedures regarding reporting of inventions by the funding recipient to the Program; determinations by the Program as to whether it will retain a governmental use license; march-in rights, and other matters.

(b) Copyrights: Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software to distribute to the public by or on behalf of the Government.

(c) Publication of Research Results: The decision on whether or not to publish research results will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development

venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under section 295.8(b) shall not be considered a waiver of this requirement.

*Sec. 295.9 Protection of Confidential Information.*

As required by section 278n(d)(5) of Title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the activities of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act -

- (1) Information on the business operation of any member of the business or joint venture;
- (2) Trade secrets possessed by any business or any member of the joint venture.

*Sec. 295.10 Unspent Balances of Federal Funds.*

If a business or joint research and development venture receiving funds under these procedures fails before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

*Sec. 295.11 Coordination/Cooperation with other Federal Agencies.*

So as to avoid any unnecessary duplication of effort and to increase the possibilities of joint funding of projects of common interest with other agencies, the Secretary intends to coordinate with other agencies as appropriate, but particularly where the Secretary determines that the subject is of substantial interest to another agency.

*Sec. 295.12 Special Reporting and Auditing Requirements.*

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program evaluation. The audit standards to be applied to ATP awards are the Government Auditing Standards (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specific audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

*Sec. 295.13 NIST Technical Assistance to Recipients of Awards.*

(a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute of Standards and Technology has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.



(b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.

### **Subpart B - Assistance to United States Industry-Led Joint Research and Development Ventures**

#### **Sec. 295.20 Types of Assistance Available.**

This Subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:

- (a) Partial start-up funding for joint research and development ventures.
- (b) A minority share of the cost of joint research and development ventures for up to five years.
- (c) Equipment, facilities and personnel for joint research and development ventures.

#### **Sec. 295.21 Qualification of Proposers**

(a) Assistance under this Subpart is available to industry-led joint research and development ventures only, subject to the limitations set out in section 295.3 of these regulations. These ventures may include universities, independent research organizations, and governmental entities; however, the Program will not provide funding directly to any university or governmental organization.

(b) Applications for funding under this Subpart may be submitted on behalf of an industry-led joint research and development venture by one or more businesses or independent research organizations that are members of the venture. Applications must, however, include letters of commitment from all proposed members of the venture, verifying the availability of matching funds, and authorizing the party or parties submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal.

#### **Sec. 295.22 Limitations on Assistance.**

(a) An award will be made under this Subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

#### **Sec. 295.23 Dissolution of Joint Research and Development Ventures**

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

#### **Sec. 295.24 Registration.**

Joint research and development ventures selected for funding must notify the Department of Justice or the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

#### **Sec. 295.25 Special Rule for the Valuation of Transfers Between Separately-Owned Joint Venture Members**

(a) Applicability. This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

(b) Rule. The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) Definition. The term "best customer price" shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

### **Subpart C - Assistance to Single-Proposer U.S. Businesses**

#### **Sec. 295.30 Types of Assistance Available.**

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses.

#### **Sec. 295.31 Qualification of Proposers.**

Awards under this Subpart will be available to all businesses, subject to the limitations set out in section 295.3 and 295.32 of these regulations.

#### **Sec. 295.32 Limitations on Assistance.**

(a) The Program will not directly provide funding under this Subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this Subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

(c) Awards under this Subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this Subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.







