



United States  
General Accounting Office  
Washington, D.C. 20548

**Resources, Community, and  
Economic Development Division**

B-261510

June 1, 1995

The Honorable Constance A. Morella  
Chairwoman, Subcommittee on Technology  
Committee on Science  
House of Representatives

Dear Madam Chairwoman:

You requested that we identify the process that the National Institute of Standards and Technology (NIST) uses to determine the eligibility of U.S. subsidiaries of foreign-owned companies to participate in the Advanced Technology Program (ATP). Established in 1990, ATP is a competitive cost-sharing program designed to help U.S. businesses pursue high-risk technologies with significant commercial or economic potential. You also asked that we provide information on NIST's eligibility determination for a joint venture between Kennametal, Inc., and Norton Diamond Film, a foreign-owned, U.S.-incorporated company, to develop diamond-coated round tools and wear parts.

In summary, NIST's assessment of eligibility is based on information in the applicant's proposal that establishes the project's economic benefits and an analysis of the opportunities and protections afforded U.S.-owned companies by the parent company's country of origin. NIST's analysis relies on a review of organizations that manage similar research and development (R&D) programs in the foreign country, and information supplied by federal agencies that monitor trade barriers and violations of intellectual property rights.

NIST concluded that the Norton Diamond Film joint venture met the eligibility requirements for funding by ATP on the basis of the following findings:

- Potentially, the United States would benefit from the enhanced global competitiveness of its automotive and aerospace industries, the level of investment to be made by the joint venture companies, and the companies'

potential for producing and commercializing the product in the United States.

- France, the country of incorporation for the parent of Norton Diamond Film, (1) provides U.S.-owned companies reciprocal opportunities for R&D funding through two major research programs, (2) does not impose barriers on U.S.-owned companies' participation in local investment opportunities and provides incentives to non-French companies seeking to establish subsidiaries in France, and (3) has not been cited by the U.S. Trade Representative for violations of intellectual property protections for U.S.-owned companies.

#### BACKGROUND

ATP provides multiyear funding to single companies and to industry-led joint ventures to pursue R&D projects with a potentially high payoff for the nation. Eligibility requirements for ATP are contained in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), as amended by the American Technology Preeminence Act of 1991 (P.L. 102-245).<sup>1</sup> According to the statutory requirements, a foreign-owned company must meet the following conditions to be eligible for funding under ATP: (1) The company's participation must be in the economic interest of the United States, and (2) the company must be incorporated in the United States and have a parent company that is incorporated in a country that affords U.S.-owned companies certain comparable opportunities and intellectual property protections. Funding for ATP was set at \$431 million for fiscal year 1995.

Since the program's inception in 1990, 15 foreign-owned or -controlled companies have received funding by ATP in 14 awards either as single applicants or as members of a joint venture. Twelve of the awards were made last year and accounted for approximately 13.6 percent of the program's awards in 1994. The majority of the awards to foreign-owned companies have been to joint ventures with U.S. companies.

Norton Diamond Film has submitted three proposals for funding by ATP--two as a single applicant and one as a member of a joint venture. In November 1994, NIST awarded \$2 million for the joint venture proposal in which Norton

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<sup>1</sup>15 U.S.C. 278n.

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Diamond Film teamed up with Kennametal, Inc.--a U.S.-owned company--to develop and commercialize diamond-coated round tools and wear parts.

NIST'S PROCESS FOR DETERMINING  
ELIGIBILITY OF FOREIGN-OWNED COMPANIES

The Secretary of Commerce's authority for making eligibility determinations under ATP has been delegated to NIST's Deputy Director. A determination of eligibility--which is made after the proposal successfully passes technical and business reviews, and an oral review--is based on the following information:

- The research and business development plans submitted as part of ATP's application process detail the location(s) of the main R&D effort, anticipated effects of the project on U.S. employment, sources of supply, and other issues relevant to the proposed project's economic benefits to the United States. If all the information needed is not in the proposal, the applicant is questioned on the matter at the oral review.
- Organizations that manage similar R&D programs in the foreign country, embassies, or other official government sources provide evidence that the country affords U.S.-owned companies comparable opportunities to participate in programs similar to ATP.
- Information on foreign trade barriers from a number of federal agencies indicates whether the foreign country affords U.S.-owned companies local investment opportunities.
- Information reported in the U.S. Trade Representative's "Special 301" Fact Sheet indicates whether the country provides effective protection of U.S.-owned intellectual property rights. This fact sheet, which includes information supplied by the U.S. Patent and Trademark Office, reports the U.S. Trade Representative's determination of whether the laws and practices of foreign countries deny adequate and effective protection of intellectual property rights.

NIST'S ELIGIBILITY DETERMINATION  
ABOUT NORTON DIAMOND FILM

In November 1994, NIST's Deputy Director made a written determination that Norton Diamond Film was eligible to

participate in ATP. Information in the proposal and the oral review indicated that Norton Diamond Film's participation in ATP would be in the economic interest of the United States. Economic benefits are anticipated from technological improvements resulting in (1) an extended life for cutting tools, (2) improved wear parts that would be less prone to fatigue and failure, and (3) more economical machining of materials; these improvements are expected to place the United States as a world leader in the automotive and aerospace industries.

Additionally, the United States stands to benefit from projected investments in U.S. R&D and production. Approximately \$4.1 million of R&D--\$2 million provided by ATP and \$2.1 million by the companies--will be carried out in the United States. Norton Diamond Film also has a large U.S. manufacturing facility and, since 1989, has invested over \$100 million in the United States developing diamond technology.

NIST contacted officials from France's two major R&D programs--the Ministry for Higher Education and Research and the Ministry of Industry, Posts and Telecommunications --to establish that France affords U.S.-owned companies comparable opportunities to participate in programs similar to ATP. NIST also obtained the opinion of the former Science Counselor, Embassy of France in Washington, D.C., on the eligibility for and funding practices of the two French R&D programs. As a result of these contacts, NIST found that the Ministry for Higher Education and the Ministry of Industry, Posts and Telecommunications have awarded R&D monies to U.S.-owned or -controlled companies and that the ministries' selection criteria for R&D funding do not discriminate or distinguish between French and foreign-owned companies.

On the basis of a review of the U.S. Trade Representative's 1994 National Trade Estimate Report on Foreign Trade Barriers and statistical evidence regarding direct investment by foreign companies and the balance of trade, NIST determined that France affords U.S.-owned companies local investment opportunities. Information from these sources indicated that France was not cited for any restrictions on local investment opportunities, with the exception that, in most cases, foreign investors must receive approval from the Ministry of Economics before acquiring an existing French business.

NIST further found that France does not restrict foreign companies from establishing subsidiaries there. Rather, the provincial governments provide incentives, such as free land, financial assistance, and tax incentives to establish foreign subsidiaries, especially in the manufacturing industry.

NIST also determined that U.S. companies' direct investment in France in 1993 was \$13.9 billion, accounting for 1.8 percent of France's gross domestic product (GDP). The value of french companies' direct investment in the United States in 1993 was \$28.5 billion, accounting for 0.5 percent of the U.S. GDP. Furthermore, the U.S. trade balance with France in 1992 was a negative \$236 million. NIST recognizes that these statistical findings, while not proof, indicate direct investment opportunities by U.S. companies in France.

Finally, NIST determined that France affords adequate and effective protection of intellectual property rights because it was not cited in the U.S. Trade Representative's "Special 301" Fact Sheet dated April 30, 1994, which lists countries that are considered to be in violation.

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To obtain information for this report, we examined NIST's process for ensuring that foreign-owned companies comply with eligibility requirements for funding under ATP. Specifically, we interviewed ATP officials and reviewed relevant laws and regulations governing ATP, Norton Diamond Film's proposal, NIST's determination of the eligibility of Norton Diamond Film, and other pertinent ATP documents. However, we did not independently validate NIST's determination that Norton Diamond Film met ATP's eligibility requirements or evaluate NIST's technical decision to award funding under ATP to the Norton Diamond Film joint venture. We conducted our work between April and May 1995 in accordance with generally accepted government auditing standards.


We discussed the contents of this report with the Acting Director of ATP. He agreed that the report correctly represents the relevant statutes, ATP's proposal review process, and NIST's determination of eligibility about Norton Diamond Film.

We are sending copies of this report to the Secretary of Commerce; the Director of NIST; the Acting Director of ATP;

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Commerce's Inspector General; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others on request. Please contact me at (202) 512-3841 if you or your staff have any questions.

Sincerely yours,

  
for Victor S. Rezendes  
Director, Energy and  
Science Issues

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