

*The International
Trade Compliance
And Operations
Experts for over
130 years!*

Copyright© 2009
Unz & Co., Piscataway, NJ.
No part of this publication may be
reproduced or used in any form or
by any means – graphic, electronic,
or mechanical including
photocopying, recording, taping,
or information storage and
retrieval systems – without
permission of the publisher.

May 2009

Am I Subject to Defense Trade Export Controls?

Why do we have defense trade export controls?

The U.S. Government views the sale, export, and transfer of defense articles and defense services as an integral part of safeguarding U.S. national security and furthering U.S. foreign policy objectives. Authorizations to transfer defense articles and provide defense services, if applied judiciously, can help meet the legitimate needs of friendly countries, deter aggression, foster regional stability, and promote the peaceful resolution of disputes. The U.S., however, is cognizant of the potentially adverse consequences of indiscriminate arms transfers and, therefore, strictly regulates exports and re-exports of defense items and technologies to protect its national interests and those interests in peace and security of the broader international community.

What are defense trade export controls?

They are controls over the export of defense articles and services associated thereto. They are authorized by Arms Export Control Act (22 U.S.C. 2778-2780). They are administered by the Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs within the Department of State. They are found in the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130.

What is a defense trade article or service?

If you export a commodity, technology or software that has exclusively or predominantly a military application then you have a Defense Trade Article. The same criterion applies if your company provides services or technical support, directly or indirectly, to an activity that is exclusively or predominantly of a military nature.

Where do I find out what is covered by the ITAR?

The ITAR, in 22 CFR Part 121, contains the U.S. Munitions List (USML). Commodities, technologies and software that have been designated as Defense Trade Articles and Services are found within the organizational categories of the U.S. Munitions List.

If the USML is not specific or clear enough, how do I know if my item is on it?

You would submit a Commodity Jurisdiction (CJ) request to DDTC. The purpose of a CJ is to determine whether an item or service is covered by the USML and, therefore, subject to the ITAR. The CJ response will advise the requestor if the item is a USML one or subject to the jurisdiction of another federal agency – usually the Bureau of Industry & Security.

Continued...

*The International
Trade Compliance
And Operations
Experts for over
130 years!*

Copyright© 2009
Unz & Co., Piscataway, NJ.
No part of this publication may be
reproduced or used in any form or
by any means – graphic, electronic,
or mechanical including
photocopying, recording, taping,
or information storage and
retrieval systems – without
permission of the publisher.

May 2009

Am I Subject to Defense Trade Export Controls? (Cont.)

What do I do if I have USML items?

You must register your company with DDTC. Registration with DDTC of all U.S. persons that manufacture or export defense articles or furnish defense services is required. The information submitted by registrants is reviewed by the Treasury Department to ensure there are no outstanding law enforcement concerns. Registration does not confer any export privileges, but is a prerequisite to export licensing approval.

The registration process:

- Informs the U.S. Government about the U.S. defense industry (legal status, export eligibility, foreign ownership/affiliations, legally responsible personnel, areas of activity);
- Serves as a channel to provide industry with information about export regulations and Government concerns; and
- Helps validate the bona fides of U.S. firms engaged in defense trade, especially during the review of export license applications.

Registrants are charged a fee. Congress has created a mechanism that allows the State Department to retain the money collected to help support defense export control functions.

How do I know if I need a license to export Defense Trade Articles or Services?

The ITAR spells out the requirements for licenses and, if available for a particular export, a license exemption.

- DDTC approval of a license application is required prior to the export of defense articles or defense services.
- About 30 percent of the applications processed by DDTC are referred to other offices and agencies (e.g., the Department of Defense) for comment and recommendations. This is what is referred to as “staffing” the case.
- During the review process, a computerized review of all parties to the proposed transactions is made against a “watch list” of known or suspected export violators. A “match” results in a full compliance review by the State Department before final action is taken on the application.
- In addition to sorting through detailed technical specifications, the license application review process clarifies the ultimate end-use and end-user of the defense export, as well as facts related to intermediate handling.

Continued...

*The International
Trade Compliance
And Operations
Experts for over
130 years!*

Am I Subject to Defense Trade Export Controls? (Cont.)

- From the enforcement point of view, the review process provides an avenue to prevent or eliminate diversions, and to assist the U.S. Government in investigations and prosecutions should an export violation be suspected or reported.
- In submitting license applications, companies must certify eligibility to export and an understanding of the laws governing such exports. Moreover, in carrying out the physical act of exporting, they must meet certain conditions in terms of documentation (electronic reporting of export information using the [Automated Export System, "AES"](#)) and handling (particularly of classified material).
- Exporters must make clear on shipping documents that the defense export cannot be resold or retransferred without prior U.S. Government authorization – a licensing requirement that also involves compliance issues.

Copyright© 2009
Unz & Co., Piscataway, NJ.
No part of this publication may be reproduced or used in any form or by any means – graphic, electronic, or mechanical including photocopying, recording, taping, or information storage and retrieval systems – without permission of the publisher.

May 2009