

EXPORT COMPLIANCE UPDATE

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Permanent Import of Defense Articles

Companies permanently importing defense articles need to be aware of the requirements of The Department of Homeland Security, Bureau of Alcohol Tobacco and Firearms and Explosives (BATFE). While the State Department controls permanent and temporary exports and temporary imports of articles on the U.S. Munitions List (USML), the BATFE has jurisdiction over the permanent import of defense articles found on the United States Munitions Import List (USMIL)—27 CFR § 447.21. While the USMIL is very similar to the USML, it only covers the following categories: I, II, III, IV, VI, VII, VIII, XIV, XX, and XXI.

Things to consider when permanently importing defense articles: 1) Is the import permanent? If the article being imported will be incorporated into another defense article and that article will be exported, the import would be temporary, and controlled under the ITAR; 2) Is the article you are importing on the USMIL? As identified above, the USML and the USMIL are not identical. A notable exclusion from the USMIL is USML Category V "Explosives & Propellants". (This Category is excluded as importers of articles in this Category are required to be licensed by the BATFE by other means).

If you have determined that the import is permanent, do you need an Import Permit from the BATFE? There are a few exemptions from obtaining an Import Permit, including imports of components for items being manufactured un-

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FD Associates Export Seminars

We will be hosting export training seminars on the dates listed below in 2006. Mark your calendars today!

May 4 – *Tech Data & Defense Services*

June 15-16 – *2-day comprehensive ITAR workshop*

Sept. 14 – *Tech Data & Defense Services*

Oct. 26th – *Compliance Programs*

Please visit our website at www.fdassociates.net for additional information as it becomes available.

Compliance Corner - Third Country National/ Dual National Employees

The ITAR requires exporters to identify all parties to any export license application or authorization. This requirement extends to any third country national (TCN) or dual national employees of the foreign licensee. A TCN or dual national (DN) is an employee of the foreign licensee that holds citizenship other than that of the host country. For example, the country or countries of citizenship for the TCN/DN employee(s) of a U.K. firm are those employees of the U.K. firm who hold citizenship of another country, e.g. France. A transfer to a TCN/DN employee is the same as a transfer to their homeland and their country of citizenship must be included in the any license application or agreement (Technical Assistance Agreement or Manufacturing License Agreement) for them to have access to any ITAR controlled technical data.

In most cases, when licensing TCN/DNs, you do not need to give any personal information on the individuals. However, if the individual is from a sensitive country, or the license involves sensitive technology, you may need to specifically identify the employee due to national security concerns. Please note that TCN/DN employees of the ITAR 126.1 proscribed countries will not be authorized.

Prior to submitting a license or agreement to the State Department for approval, exporters need to perform due diligence with their foreign customer to ensure that any third country or dual national employees of the foreign parties that will be involved in the program, are identified. If there are TCNs/DNs involved, there must be language in the license or agreement identifying, at a minimum, the country of citizenship and what their role is. If the individual is from a sensitive country, full details of the individual and their background should be provided. Any TCN/DN employee of the foreign licensee authorized to receive ITAR controlled technical data will be required to sign a Non-Disclosure Agreement prior to receiving the data, and the US exporter will be required to obtain and keep a copy for their files.

This newsletter is provided as a service to our clients and is not intended to replace the ITAR or EAR as a reference source. If you have questions concerning the correct interpretation of the regulations please call us at (703) 847-5801.

Expired Licenses

Exporters are reminded that the ITAR requires any expired or expended licenses to be returned to the Office of Defense Trade Controls Licensing (ODTCL).

While the primary responsibility to notify the ODTCL of expiration or utilization of the license rests with the exporter, the Bureau of Customs and Border Protection (CBP) is required to return to the ODTCL any DSP-5 license that has been lodged with CBP when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first. To ensure that licenses which have been lodged with CBP are returned to the ODTCL, we recommend that exporters notify CBP in writing as soon as you are aware that license has been utilized or expired.

Exporters are responsible for returning to the ODTCL any license that is not filed with CBP (i.e., DSP-61, DSP-73, tech data DSP-5's) no later than 60 days after the license has been expended (i.e., total value or quantity authorized has been shipped) or the date of expiration, whichever occurs first, per 123.22(c)(2). A DSP-5 authorizing the export of technical data must be returned to ODTCL when the initial export of **all** of the technical data authorized on the license has been made.

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der contract for the Department of Defense, importation of defense articles, other than firearms, manufactured in foreign countries for persons in the U.S. pursuant to Department of State approval (i.e. TAA for co-production, MLA or DSP-5 Offshore Procurement), and importation by the United States or any agency thereof.

Companies requiring a BATFE Import Permit or the use of an import exemption from the BATFE must be registered with the BATFE. Note that if the defense articles you are importing were manufactured using U.S. origin technical data, you will need to obtain retransfer authorization from the Department of State's Regional Security Arms Transfer Office, prior to submitting the ATF Form 6 Import Permit request. This process not surprisingly can be quite lengthy and as with anything else, dealing with highly controlled goods, long term planning is critical.

ITAR ANSWER

ANo. While there are exemptions for use by NATO countries for the provision of training and maintenance services at ITAR 124.2(c) and bid and proposal activities in response to an "official written request from an authorized official of the Department of Defense" at 125.4(c), the scope of the Company ABC activities are not covered under these exemptions.

Company ABC must obtain a Manufacturing License Agreement (MLA) for the build-to-print of the widget going to France. An offshore procurement DSP-5 license cannot be used as the widget is not coming back into the United States after production has been completed.

Change in Expiration Date of Agreements

In our last edition of Export Compliance Update, we reported on the increasing delays in processing agreements (MLAs and TAAs) at State due to shortages of personnel and increasing backlogs in the Agreements Division. In an effort to overcome some of these delays, the Directorate of Defense Trade Controls (DDTC) has announced that, effective April 1, 2006, expiration dates for agreements will be changed from the standard December 31 of the specified year. New expiration dates will be staggered by company name as follows:

January	D, X, Y, & Z	July	N & F
February	S & C	August	L & W
March	A & M	September	U & P
April	G & V	October	R & I
May	H & T	November	O & E
June	B & Q	December	J & K

New agreements will need to include the new expiration date. Existing agreements will need to be changed to the new date upon submission of the next amendment to the agreement. **Note:** *Requests for extension to duration must be submitted to the Department for approval no later than 60 days prior to the authorized expiration*

REGULATORY UPDATES

Department of Commerce

Feb. 24, 2006 – 71 Fed. Reg. 9441: The Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to clarify the special provisions applicable to exports to Syria by stating that exports and re-exports to Syria of all items subject to the EAR, except food and medicine classified as EAR99 and deemed exports or deemed re-exports of EAR99 technology or source code, require an export license and are subject to a general policy of denial.

REGULATORY UPDATES

Department of State

Feb. 27, 2006: The Directorate of Defense Trade Controls (DDTC) announced its intention to publish a Federal Register notice changing the export jurisdiction of airframe parts and components common to the L-100 and C-130 (Models A through H – not including Model C-130J) aircraft. Such parts and components that have no current use on any other commercial aircraft will be subject to State Department jurisdiction, effective 90 days after the Federal Register notice is published. At this writing, the Federal Register notice remains unpublished. However, pending publication the DDTC notice directed exporters to apply to DDTC for new export approvals for covered items, effective immediately.

Fines & Penalties

Feb. 9, 2006: A grand jury in Miami, FL indicted Ko-Suen Moo of Taipei, Taiwan and Maurice Serge Voros of Paris, France for violations of the Arms Export Control Act including illegal brokering, conspiracy to export defense articles to the People's Republic of China, and attempted export of defense articles to PRC including one F-16 aircraft engine, Blackhawk helicopter engines, cruise missiles, and air to air missiles. Moo, who is incarcerated pending trial, is a former sales representative for Lockheed Martin.

Feb. 14, 2006: STAT Medical (Pty) Ltd. of Johannesburg, South Africa, agreed to pay a \$14,000 civil penalty to settle charges that it had aided the export of medical defibrillators to Iran without the required authorization and that it had made a false statement to special agents of the BIS Office of Export Enforcement in the course of an investigation. STAT was the alleged intermediary in an export of medical defibrillators from the U.S. to Iran

Feb. 17, 2006: BIS imposed a \$120,000 civil penalty on Chris Carter, a regional sales manager of ZOLL Medical Corp. in Athens, Greece for 16 violations of the EAR involving sales of defibrillators on behalf of ZOLL with knowledge or reason to know that they would be exported to Iran without the required export license and false statements on export documents

covering those sales. A 5-year denial order was also imposed on Carter; however, this may be reduced if he pays the penalty timely and does not commit further violations. This case involved the same shipments that resulted in the civil penalty assessed against STAT Medical (Pty), Ltd. (above).

Sanctions & Denial Orders

Department of Commerce

Feb. 3, 2006 – *71 Fed. Reg. 5809*: BIS renewed for a further 180 days the temporary denial order against Ning Wen and Hailin Lin, based on their convictions for conspiracy to violate U.S. export laws.

Feb. 7, 2006 – *71 Fed. Reg. 6263*: BIS issued a 6-month extension of the temporary denial order against Pakland PME Corporation Unit 7 & 8 and Humayun Khan, both of Islamabad, Pakistan.

March 9, 2006 – *71 Fed. Reg. 12164, 12167, 12168, and 12169*: BIS imposed 4-year denial orders on Dolphin International, Ltd of New Delhi, India, and Orcas International, Inc. of Flanders, NJ for conspiracy to export controlled toxins Aflatoxin and Staphylococcal Enterotoxin to North Korea. Four-year denial orders were also imposed on Vishwanath Kakade Rao, president of Dolphin, and Graneshwar K. Rao, president of Orcas. Dolphin and Orcas also agreed to pay civil penalties of \$22,000 and \$19,800, respectively.

March 9, 2006 – *71 Fed. Reg. 12166*: BIS imposed a denial order until July 19, 2015 on Erik Kyriacou of Rocky Point, NY following Kyriacou's guilty plea to violating the EAR by knowingly and willfully exporting four controlled electrophysics astrosopes to Iran. The astrosopes, which Mr. Kyriacou offered for sale on eBay, had been stolen from NBC, where Kyriacou was a part-time news cameraman.

March 13, 2006 – *71 Fed. Reg. 12676*. Effective March 3, 2006, BIS renewed a 6-month denial order against Oriental Trading Corporation of Islamabad, Pakistan.

March 13, 2006 – *71 Fed. Reg. 12676*. Effective February 27, 2006, the U.S.

Army suspended Eagle Global Logistics (EGL) Inc. from future contracting with any agency in the Executive Branch of the U.S. Government.

Department of Defense

March 13, 2006 – *71 Fed. Reg. 12676*. Effective February 27, 2006, the U.S. Army suspended Eagle Global Logistics (EGL) Inc. from future contracting with any agency in the Executive Branch of the U.S. Government. The Army's action specifically prevents EGL from entering into any new government business contracts as either a contractor or subcontractor. Follow-up action by the Directorate of Defense Trade Controls (DDTC) also prevents EGL from getting new licenses for exporting controlled defense articles even for existing contracts. Finally, the Army's actions prevents EGL from movements under existing or future ITAR exemptions. All export licenses approved prior to February 27, 2006, either applied for by EGL or identifying EGL as a freight forwarder/Customs broker, continue to be valid.

Department of State

Feb. 1, 2006 – *71 Fed. Reg. 5402*: DDTC imposed debarments on 23 persons based on their convictions for violations of the Arms Export Control Act (AECA). The three-year debarments are effective on each person's date of conviction and will continue in effect automatically after the three years if they are not lifted. See the Federal Register notice or contact us for the names of the 23 debarred persons.

March 6, 2006 – *71 Fed. Reg. 11281*: The State Department suspended all applications for licenses to export ITAR-controlled items to Eritrea, effective Sep. 12, 2005 for two years, in accordance with the International Religious Freedom Act due to Eritrea's "severe violations of religious freedom." Authorizations granted prior to September 12, 2005 remain valid, and an exception to the ban will be made for items that support U.S. anti-terrorism and demining programs, are necessary to meet U.S. commitments under international conventions, and are necessary for United Nations and other appropriate peacekeeping personnel and operation.

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ITAR QUIZ

Q Company ABC in the U.S. wants to send a build-to-print specification to the United Kingdom for the manufacture of a widget. The widget is a commercial product that has been slightly modified to meet the requirements of the end user, the French Ministry of Defense. Once the widget has been produced, it will be sent from the United Kingdom to France for ultimate end use by the French MOD. As the widget is for end use in a NATO country, is there an exemption that can be used?

REMINDERS

Are your 2005 Sales Reports for Manufacturing License Agreements and Distribution Agreements due?

Upcoming Trade Shows (remember, license reviews take three months):

- Eurosatory 2006 June 12-16, 2006
- Farnborough Air Show 2006 July 17-23, 2006