

Defense Trade Advisory Group Task#2

Defense Trade Cooperation Treaties

Plenary Session

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Task 2 Working Group Members



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Overview of Assignment

- Review the impacts on industry for use of the exemptions authorized to support the Defense Trade Cooperation Treaties between the United States and the United Kingdom and Australia, respectively.



Discussion Agenda

- Review of the Treaty Exemptions
- Benefits of Using the ITAR Treaty Exemptions
- Challenges to Use ITAR Treaty Exemptions
- Recommendations to Enhance Use by U.S. Exporters
- Questions



Review Process

- Reviewed Treaties' language, Implementing Arrangements and ITAR exemptions
- Created Matrix linking to Exemption language and requirements, submitted separately
- Conducted fact finding interviews with U.S. and foreign industry participants
- Conducted discussions and fact finding with US State Department and UK DESI
- Conducted e-mail discussion with AUS DECO



The “Business Case” for an Exemption

- The decision to use any exemption is a business decision
 - Ease of use, Time of use (faster than a license), Risk of non-compliance, Resources required
- Under any exemption, the risk associated with meeting the use requirements transfers from the USG to industry. So, the cost of using an exemption (dollars, time, resources) must be less than that of a license to justify its use

Treaty Exemption Requirements



- Users
 - US/UK/AS Gov't
 - UK/AS Industry Approved Community
 - US Industry Registered with DDTC
- Use
 - US-UK/AS combined mil or CT ops
 - US-UK/AS coop security/defense research, development, production, and support
 - Specific security/defense projects where UK/AS Gov't is the end-user
 - USG end-use

Treaty Exemption Rqm'ts cont'd



- Eligible Articles
 - Not specified on the treaty exemption excluded technologies list (§ 126, Supplement 1)
- Unique Export Procedures
 - Article/Service individually labeled “Restricted USML” plus unique Bill of Lading notice
 - Transportation: FIC must be on approved list
 - All req'd documentation maintained by exporter and recipient (17 document elements)



Industry Interviews

- Interviewed US, UK, and Australian companies from pilot program or those actually using the exemption(s)
 - Most significant benefit was from a company direct to government, not to a private entity in UK or Australia
 - Significant concerns remain with many regulatory requirements, as identified in public comments to the rules



Government Interviews

- Interviewed US, UK, and Australian Government organizations implementing the treaty
 - Validation of industry comments and concerns
 - Clarification of regulatory requirements and operating procedures

Government Interview Summary



- Industry Approved Community
 - Still very small (UK-4 AS-1). 2 dozen applications in progress
- Individual, site specific certification (no “central registration” approach).
 - Company reorganizations/internal leadership changes impact certification
- Only 1 industry to industry export transaction



Benefits

- The exemptions eliminate waiting time for license processing
- Most promising scenario for use was from a company direct to the AS/UK government, not to a AS/UK non-government entity



Challenges

- Unique and burdensome marking requirements
- Programs with both eligible and excluded technologies...2 systems for control increase complexities and cost
- Vague and confusing excluded technologies list
- Overly burdensome record keeping requirements
- Excluded list not in sync with approved programs
- Site survey process delays in UK limiting approved community approval
- Requirements to meet Government end use
- Dual and third country national employees
- Transportation limited to only approved FF/FICs
- US verification requires D-Trade versus DTC website



Summary of Challenges

- The treaty exemptions have many challenges that are unique to these exemptions; requirements that differ from all other standard ITAR practices
- No one challenge creates dis-incentive for use; these challenges combined, though, create dis-incentives to use



DTAG Recommendations

- Update excluded technologies lists in line with ECR and cooperative program scope
- Switch to a negative RFP statement for USG use
- Recognize dual/third country national with security clearances from UK/Australia gov't in approved community as any other company employee
- Delete the individual item marking requirements so marking is not more burdensome than marking of products and data transferred under ITAR licenses or other ITAR exemptions.



DTAG Recommendations cont'd

- Eliminate requirement for FF/FIC approved list
- Move verification outside DTRADE firewall and list all companies
- Align record keeping requirements with the rest of the ITAR



Summary of DTAG Thoughts...

- Industry would like to use the Treaties, but need to make the business case for benefits and risk vs. licenses or other exemptions.
- Adjustments would result in wider applicability and no greater administrative burden than other ITAR controlled exports.

A world map is centered on the slide, rendered in a light blue color against a dark blue background. The map shows the outlines of the continents. Overlaid on the map is the word "Questions?" in a large, black, sans-serif font.

Questions?