

DDTC Overview: Who We Are, What We Do, and Why

This document is intended to provide an overview of the Department of State's defense trade controls. These controls are contained in the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR), both of which are authoritative on this matter. This document is not intended to serve as a basis for any registration or licensing decisions on the part of the public or the Directorate of Defense Trade Controls. To the extent there is any discrepancy between this document and either the AECA or the ITAR, the Act and Regulations will prevail.

The Department of State has been responsible for regulating defense trade since 1935, with the objective of ensuring that U.S. defense trade supports the national security and foreign policy interests of the United States. We seek to deny our adversaries access to U.S. defense technology while ensuring that defense cooperation with allies and partners contributes to their ability to defend themselves and fight effectively alongside U.S. armed forces in joint operations. We also scrutinize potential defense exports for their effect on regional stability, human rights, nonproliferation, and the U.S. defense industrial base.

Today this function is vested in the Bureau of Political-Military Affairs (PM). PM oversees most government-to-government arms transfers under the Foreign Military Sales (FMS), Third Party Transfer (TPT), and Excess Defense Articles (EDA) programs. The regulation and oversight of commercial export licensing of U.S.-origin defense equipment and technologies is the responsibility of PM's Directorate of Defense Trade Controls (DDTC). DDTC is led by a Deputy Assistant Secretary and consists of a management function led by the Chief of Staff and three Offices: Defense Trade Controls Licensing (DTCL), Defense Trade Controls Policy (DTCP), and Defense Trade Controls Compliance (DTCC). The Arms Export Control Act (AECA) of 1976, as amended, and the Foreign Assistant Act (FAA) of 1961 are the basic legal authorities and are implemented by the International Traffic in Arms Regulations (ITAR).

DDTC regulates the permanent and temporary export and temporary import of defense articles and defense services, to include brokering, involving items on the U.S. Munitions List (USML), which is contained in Part 121 of the ITAR. The USML generally covers items specially designed or modified for military applications, and its 21 categories extend from firearms and protective gear to bombers and fighter jets. The scope of the USML is similar to the control lists of most other significant arms exporting countries, as well as munitions covered by the multilateral Wassenaar Arrangement list.

The ITAR covers not only hardware but also technical data and defense services, but excludes basic research and information that is in the public domain. Under the ITAR, an “export” includes not only an actual shipment or transmission of a defense article out of the United States but also “releasing or otherwise transferring technical data to a foreign person in the United States.” It also includes “performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.”

Licensing

A registered party may apply for an export authorization (a license or agreement) from the Office of Defense Trade Controls Licensing (DTCL). With few exceptions defined in the ITAR, all transfers of U.S. defense articles or services to foreign persons require case-by-case review and authorization by DTCL. In 2017, over 37,000 license applications were submitted to DTCL.

Export licensing requirements are based on the nature of the article or service and not its end-use or end-user. For example, a defense article (e.g. a radar component specially designed for military purposes) being exported to a civilian end-user (such as the foreign equivalent of the Federal Aviation Administration) is subject to the same licensing requirements as if it were going to a foreign military. The issues in the review process might be different, but the licensing requirement remains. This approach is based on the idea that the technology itself requires control, no matter its end-use.

Each license application for permanent hardware export must be accompanied by a current purchase document (e.g. a signed contract) and identify the items to be exported, as well as all parties to the transaction—not just the end-user, but also brokers, shippers, freight forwarders, distributors, etc. Many license applications are referred to other State Department bureaus, as well as the Department of Defense’s (DoD) Defense Technology Security Administration (DTSA) or other agencies for review.

All export approvals require the prior written consent of the Department of State before the recipient may retransfer the item to another end-user within the country or re-export the item to a third country or change its end-use from that originally authorized. This prior consent requirement applies even if the ITAR-controlled article or technology is incorporated in a foreign item. For items designated on the USML as “significant military equipment” (SME) because of their “substantial military utility or capability,” as well as for all classified defense articles, a specific non-transfer and end-use certificate (DSP-83) is required. This

form must be executed by the exporter, the foreign end-user, and any foreign consignees before the export will be authorized under a license or an agreement. It stipulates that the parties will not re-export, resell, or otherwise dispose of the SME outside the country without the prior written approval of the Department of State. In cases where a DSP-83 is not required, the agreement, invoice, or bill of lading must contain specific language ensuring that the foreign parties to the transaction are aware of and accept the requirement for prior written approval for any retransfer or change in end-use. These requirements apply to U.S. defense exports to all countries, including our NATO allies, plus Australia, Israel, Japan, New Zealand, and South Korea.

Although most export applications are for hardware, the most complex cases often pertain to defense services, which include:

- Furnishing assistance (including training) to a foreign person, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.
- Furnishing any technical data controlled under the ITAR to a foreign person, whether in the United States or abroad.
- Military training of foreign units or forces, including formal or informal instruction of foreign persons in the United States or abroad.

The export of defense services is authorized generally under a Technical Assistance Agreement (TAA) or a Manufacturing License Agreement (MLA). In 2017, more than 12% out of approximately 37,000 applications received were for agreements—up from 9% in 2013. In fact, between 2013 and 2017, the value of agreements was roughly double the total value of all permanent export authorizations to foreign government end-users. Almost all agreements are referred to DoD for national security and technical review. The vast majority are only approved subject to specific conditions on technology release (“provisos”).

The ITAR extends beyond the conventional meaning of the words “service” and “assistance.” For example, if a U.S. defense company provides controlled technical data to its foreign supplier so the latter can manufacture a component to certain specifications, the U.S. company is performing a “defense service” for which it will require a TAA—despite the fact that it would seem it is the foreign company that is providing the “service” or “assistance” to the U.S. company.

Even if there is a government-to-government agreement applicable to the defense service (e.g. a Memorandum of Understanding for fighter aircraft

cooperation, for example), a TAA is still required to cover the activities of the U.S. company. Furthermore, it is necessary for all parties to sign the TAA or MLA. This is to ensure that each party (U.S. or foreign) involved in activities covered by the agreement understands and accepts its responsibilities, including the requirement for prior written consent from the Department of State for any retransfer or change in end-use.

As with government-to-government transfers, licensed commercial defense exports and agreements are subject to advanced notification to Congress if they exceed a certain value. For NATO, Australia, Israel, Japan, New Zealand, and South Korea (known as “NATO plus five”), the thresholds are \$25 million for Major Defense Equipment (MDE) and \$100 million for all other defense articles and services, and the notification period is 15 days. For all other countries, the thresholds are \$14 million for MDE and \$50 million for all other exports, and the notification period is 30 days. Small arms exports (USML Category I) over \$1 million must be notified to Congress, as well as all overseas manufacturing agreements for Significant Military Equipment (SME), regardless of value. The AECA allows both houses of Congress to enact a joint resolution prohibiting the export within the 15 or 30 day notification period.

In 2017 the average processing time for all cases was 28 days; 80% of license applications received were processed in 45 days or less and 88% were processed in 60 days or less. Less than 1% of cases were denied, while approximately 83% were approved or approved with provisos. About 16% of applications were returned without action (RWA, essentially a denial without prejudice), usually because some required documentation is missing or because DTCL does not have confidence in some specific aspect of the transaction. Section 126.1 of the ITAR identifies proscribed locations (e.g. Iran, China), so exporters typically do not bother seeking approvals for such countries. Also, when exporters have questions on whether a prospective transaction might be denied, they often request a non-binding advisory opinion before submitting an application. Some cases are denied or restricted based on reasons that cannot be made public at the time of issuance due to a sensitive foreign policy issue.

Compliance

The Office of Defense Trade Controls Compliance (DTCC) is tasked with ensuring compliance with the AECA and ITAR through civil enforcement of the regulations and coordination with law enforcement regarding criminal violations. To accomplish this mission, DTCC reviews voluntary disclosures regarding

potential violations and issues “directed” disclosure requests when it develops information suggesting a violation may have occurred. On an annual basis, DTCC reviews approximately 1,000 compliance-related matters. DTCC generally works with industry to ensure compliance, but violations that are harmful to national security or particularly egregious may result in civil penalties. Imposition of civil penalties generally include the payment of fines to the U.S. Treasury and a Consent Agreement, under which companies are required to institute enhance compliance measures. Also, the Consent Agreement often includes a period of ongoing monitoring and specific conditions that must be met.

When DTCC identifies potential criminal violations of the AECA and ITAR, the office works closely with law enforcement to respond. In particular, DTCC has close working relationships with Homeland Security Investigations (part of the Department of Homeland Security) and the Federal Bureau of Investigation, including assigned liaisons. DTCC also supports requests for assistance routed through the interagency Export Enforcement Coordination Center. Beyond working with criminal investigators, DTCC works closely with the Department of Justice (DOJ) and U.S. Attorney’s offices around the country to support criminal prosecutions, including through providing expert testimony and helping prosecutors understand the regulations.

AECA violations can be extremely costly to both national security and to the violator. The AECA provides for criminal penalties of up to 20 years in prison and \$1 million in fines for each violation and administrative penalties. The combination of a vigorous civil enforcement program with a dedicated criminal enforcement effort helps supports the integrity of the law and regulations and provides a powerful incentive for full compliance by the defense industry.

In addition, DTCC is tasked with managing, reviewing and issuing registrations. Any U.S. person engaged in the United States in the business of the manufacturing, exporting, or brokering of U.S. defense articles or services is required to register with DDTTC and to pay a fee. Any U.S. person or foreign person subject to the jurisdiction of the United States who engages in brokering activities with respect to U.S. or foreign defense articles or services must also register. A U.S. person is a lawful permanent resident or protected individual, as well as “any corporation, business association, partnership, society, trust of any other entity, organization or group that is incorporated to do business in the United States.”

Registration is necessary before a U.S. person may apply for a license or most other approvals or use of a regulatory exemption from a license requirement. However, even manufacturers that do not export are required to register and pay

the fee, as has been the case since 1935. In fact, less than half of the over 13,000 entities currently registered are likely to apply for a license in any given year. However, registration provides important information on the identity and location of defense companies and enforces on their management a large degree of responsibility for compliance with export control laws. Moreover, even companies that do not export to other countries in the traditional sense have responsibilities under the ITAR, including the obligation not to transfer controlled technical data to a non-U.S. person within the United States without the written authorization of the State Department.

Registration is also important to determine that a U.S. person is eligible to export, as certain parties are prohibited from participating in defense trade. For example, persons indicted of violating the AECA or certain other U.S. laws are ineligible to export, and persons convicted of such violations may be formally debarred. Registration (as well as all license applications) requires the applicant to certify that the corporate officers are eligible under the regulations to participate in defense trade.

The ITAR also requires a license for any brokering activity by U.S. persons anywhere in the world or foreign persons subject to U.S. jurisdiction involved in the brokering of U.S. or foreign defense articles or services. Brokers (U.S. and foreign parties who are subject to the jurisdiction of the United States) must register and pay the fee. Under the ITAR, a “broker” means a person who conducts brokering activities, and includes any U.S. person (wherever located), any foreign person in the United States, and any foreign person outside of the United States who is owned or controlled by a U.S. person. Brokering activities are “any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin.”

In addition to supporting criminal and administrative cases for AECA violations, DTCC has several programs to promote and improve industry compliance with the law and regulations and regularly presents at industry events. DTCC also maintains a small team dedicated to national security issues that arise in the context of foreign corporate acquisitions of registrants or that raise AECA or ITAR export concerns. This responsibility includes the review of cases filed before the Committee on Foreign Investment in the United States for DDTC equities and compliance concerns.

Policy

Controlling defense trade is not just a regulatory function but an important tool of U.S. foreign policy. The Office of Defense Trade Controls Policy (DTCP) plays an important role in cross-cutting issues involving defense trade. DTCP's core responsibilities include: maintaining and updating the ITAR; responding to requests from industry and the U.S. government for commodity jurisdiction determinations; developing and implementing policy and interpretive guidance for exporters, the U.S. government, and close foreign partners; and conducting end-use monitoring under the Blue Lantern program.

The Blue Lantern end-use monitoring program is a system of overseas pre-license and post-shipment checks, usually conducted by U.S. Embassy personnel around the world. These end-use checks seek to verify the *bona fides* of foreign parties or confirm that the conditions of approved license authorizations are being respected (e.g., that the shipper actually delivered the defense article to the intended end-user, or that the foreign recipient has not retransferred the item without U.S. consent). In FY 2017, 429 Blue Lantern checks were conducted—around 1.2% of total licenses adjudicated—with 68 unfavorable results.

The Blue Lantern program is an important factor in developing and maintaining our confidence in the recipients of U.S. defense exports. Parties that cooperate with Blue Lantern checks soon establish a track record of reliability, with the result that they are less likely to be the target of such checks in the future. On the other hand, parties that refuse to cooperate or cannot account for previously authorized defense exports raise significant doubts about their reliability, which will constrain future licensing decisions and may result in a company being put on the Watchlist of suspected parties.

The Office of Defense Trade Controls Compliance (DTCC) and DTCP jointly maintain a comprehensive “Watchlist” of foreign and domestic companies and individuals identified from various open and classified sources. All parties on license applications and agreement applications are checked against this Watchlist. If the name of a party is on the Watchlist, the licensing officer evaluates the information on the listed party, and the license may be denied.

Starting in 2009, DTCP led efforts at the State Department to improve the export controls regime by identifying items that no longer needed to be included in the ITAR's U.S. Munitions List and could be transferred to the jurisdiction of the Department of Commerce. This reform effort produced a USML that better articulates the defense articles and defense services that provide the United States a critical military or intelligence advantage, and allowed DDTC's licensing and compliance staff to focus on the articles of greatest concern for foreign policy and national security reasons. DTCP develops and implements updates to the ITAR,

and oversees an ongoing review of all USML categories to ensure they reflect militarily critical technologies.

Outreach, IT Modernization, and Data Analytics

DDTC leaders and subject matter experts participate in dozens of outreach events around the United States and abroad every year. In addition to events hosted at the State Department, DDTC conducts outreach at trade shows, universities, U.S. and foreign embassies, multilateral fora, company compliance events, and think tanks. Information about requesting speakers and participants can be found on the DDTC website. In 2017 DDTC's combined Service Desk and Response Team handled roughly 15,000 phone inquiries and e-mails from the public, which helped diminish the demands on the time of licensing and compliance officers and provided information and technical support regarding the gradual transition to Defense Export Control and Compliance (DECCS). New enhancements to DDTC's IT platform include a browser-based fillable web application, dashboards to track work items, improved logon/password security and payment systems, and a transition to a single online interface that will streamline and simplify all aspects of conducting business with DDTC. Through IT modernization, DDTC is revamping and simplifying online registration, fee payments, and submittals of commodity jurisdiction and general correspondence requests. DDTC is also turning to advanced data analytics tools to evaluate the quality and trends of various defense trade data, identify opportunities for outreach, improve license processing, while providing enhanced protections of proprietary, sensitive, and classified data received.

The DDTC website (www.pmdtdc.state.gov) has a reference library of defense trade policies and updates, including links to the latest version of the ITAR and the U.S. Munitions List, a list of debarred parties, sanctioned and embargoed countries, and other useful information.