
The Directorate of Defense Trade Controls and the Defense Trade Function

Getting Started with Defense Trade

The information provided in this article is courtesy of the Directorate of Defense Trade Controls' (DDTC) web site: <http://pmddtc.state.gov>.

Do Defense Export Controls Apply to Me? A Quick Action Checklist

- Find out if what you want to export (hardware, technical data, and/or defense services) is covered in the *U.S. Munitions List* (USML), found in Part 121 of the *International Traffic in Arms Regulation* (ITAR).
- Not sure if your desired export is covered by the USML? File a Commodity Jurisdiction request.
- If what you want to export is on the USML, you must be registered with DDTC.
- After you are registered, you may apply for an export license. D-Trade is the preferred way of licensing.
- Have basic questions you need answered? Call the DDTC Response Team.

Rationale for Regulating Defense Exports

The U.S. government views the sale, export, and re-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.

Directorate of Defense Trade Controls – The Offices that Administer the Defense Export Regulations

The DDTC, Bureau of Political-Military Affairs, in accordance with 22 U.S.C. 2778-2780 of the *Arms Export Control Act* (AECA) and the ITAR (22 CFR Parts 120-130), is charged with controlling the export and temporary import of defense articles and defense services covered by the USML. To learn more about DDTC.

Authority for Control of Arms Exports

The AECA provides the authority to control the export of defense articles and defense services. The AECA charges the President to exercise this authority, which has been delegated to the Secretary of State. The AECA is available through the DDTC.

The ITAR implements the AECA. These regulations are frequently updated and revised to reflect change in the international political and security climate, as well as technological development. The ITAR may be accessed on the DDTC web site.

In accordance with Executive Order 11958, the Department of State (DoS), with the concurrence of the Department of Defense (DoD), determines what commodities are covered by the USML. Guidance on the commodity jurisdiction (CJ) function is available on the DDTC web site.

In addition to seeking technical support and national security assessments from the DoD, the DoS relies on extensive interagency cooperation and coordination to perform the arms export control function by:

- Working closely with U.S. Customs and Border Protection (review of defense industry registration, performance of defense export end-use checks, investigations, civil penalties).
- Working with the intelligence community to review alleged diversions and unauthorized transfers.
- Cooperates with the Justice Department and U.S. Attorneys (pre-trial consultations, trial documentary preparation, expert testimony).

U.S. Government Regulatory Measures

For the U.S., licensing and compliance are two sides of the same coin, and there is constant interaction between the two functions.

Registration

- In accordance with the AECA, registration with the DoS (via DDTC) of all U.S. persons that manufacture or export defense articles, furnish defense services, or U.S. and foreign persons engaged in arms brokering, 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
 - Helps validate the bona fides of U.S. firms engaged in defense trade, especially during the review of export license applications
- Registrants, in accordance with the AECA, are charged a fee. Congress has created a mechanism that allows the DoS to retain the money collected to help support defense export control functions.

To learn more about registration, and to access the registration form, please visit the “Regulation” page on the DDTC web site.

Licensing

- The DoS 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 the DoS are referred to other offices and agencies, e.g., the DoD, for comment and recommendations. This is what is referred to as staffing the case.

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- 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 DoS 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.
 - From the enforcement point of view, the review process provides an avenue to prevent or eliminate diversions, and to assist the USG 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.

To learn more about licensing, and to view the various licensing forms, please visit the D-Trade Information Center and the Licensing page on DDTC’s web site.

End-Use and End-User Monitoring

End-Use checks are key to the DoS’s effort to prevent illegal defense exports and technology transfers.

End-use checks (known under the program name “Blue Lantern”) enlist the help of U.S. diplomatic posts, the cooperation of U.S. Customs and Border Protection, and, most importantly, foreign governments in the conduct of pre-license checks and post-shipment verifications of defense exports.

End-Use monitoring reports are available on DDTC’s web site.

Other Compliance Mechanisms

The USG spends considerable effort trying to prevent violation:

- Via participation in industry conferences
- Internet postings
- Publication of regulations

When a problem arises, the DoS has broad authority to take action, i.e., suspend, deny, or revoke license approvals. Working with law enforcement agencies, it can prosecute criminally (possible prison sentences and fines) and independently can take civil action, e.g., fines and denial of export privileges.

Remedial assistance and attention are also offered. The DoS works with companies to develop effective export compliance programs. DDTC makes available a guideline describing the basic elements of a compliance program via its web site.

D-Trade – Conducting Your Defense Trade Business Electronically

Effective January 15, 2004, DDTC, through the use of the D-Trade electronic licensing system, is prepared to receive and adjudicate fully electronic defense export authorization requests. The requests must be properly submitted by any U.S. person who is a defense trade registrant and wishes to permanently export unclassified defense articles via the Form DSP-5, temporarily import unclassified defense articles via the Form DSP-61, or temporarily export unclassified defense articles via the Form DSP-73. Based on envisioned expansion of electronic processing capabilities, DDTC anticipates, with few exceptions, most export licensing submissions via D-Trade in the near future.

For more information on D-Trade, consult the D-Trade Information Center which is accessed through the DDTC home page. There you will find links to more background information on electronic licensing.

To Learn More

The DTC web site has more information that may be useful to you. The home page has a comprehensive listing of links to information that can assist you in your defense exporting endeavors; and consult New Items and Announcements for the latest updates. If you have any questions about any aspect of the defense export process, please contact the DDTC Response Team.