

Export of Defense Articles and Services - ITAR

University of Pittsburgh

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Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130,¹ the Directorate of Defense Trade Controls (DDTC) administers the export and re-export of defense articles, defense services and related technical data from the United States to any foreign destination or to any foreign person, whether located in the United States or abroad. Section 121.1 of the ITAR contains the *United States Munitions List* (“USML”) and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end use items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end use item. Certain non-military items and certain chemical precursors, such as toxins, and biological agents, are also controlled under those regulations.

The ITAR come into play when there is a “Defense article” (i.e. defense article, defense services or related technical data) and an “ITAR controlled activity”.

A. ITEMS CONTROLLED UNDER THE ITAR

The ITAR uses three different terms to designate export-controlled items – defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip. This practice is called the “See Through” approach.

1. Defense Article means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML.² Defense articles also include things such as models, mock-ups, or other items, i.e. technical data related to items. Note that sometimes defense articles include items not listed on the USML.

2. Technical Data means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed.

¹ The ITAR are promulgated pursuant to Section 38 of the Arms Export Control Act, 22 U.S.C. §§ 2778 *et seq.*

² 22 C.F.R. § 120.6.

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However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.³

3. Defense Service means providing assistance, including training, to a foreign person, whether in the United States or abroad in the design, manufacture, installation, repair, or operation of a defense article, as well as providing technical data. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.⁴

B. THE UNITED STATES MUNITIONS LIST

The USML controls many items that are almost identical to commercial items. When classifying, it is important to consider that any difference in form, fit, function, performance, and testing or certification procedure can determine whether it will be controlled by the ITAR or the EAR.

The USML always prevails on the Commerce Control List (CCL). Therefore, if both the USML and CCL appear to describe an item, the exporter must presume that the item is controlled by the USML. In brief, the USML should always be checked first.

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services.⁵ The USML divides defense items into 21 categories, listed below. An electronic version of the USML is available on the Department of State, Directorate of Defense Trade Controls website⁶.

- I Firearms, Close Assault Weapons and Combat Shotguns
- II Guns and Armament
- III Ammunition / Ordnance
- IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

³ 22 C.F.R. § 120.10.

Note that the ITAR uses the term "blueprints" to cover drawings and assembly instructions.

⁴ 22 C.F.R. § 120.9.

⁵ See 22 C.F.R. § 121.1.

⁶ http://www.pmdc.state.gov/regulations_laws/itar.html

See ITAR part 121

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- V Explosives and Energetics Materials, Propellants, Incendiary Agents, and their Constituents
- VI Surface Vessels of War and Special Naval Equipment
- VII Ground Vehicles
- VIII Aircraft and Related Articles
- IX Military Training Equipment and Training
- X Personal Protective Equipment
- XI Military Electronics
- XII Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII Materials and Miscellaneous Articles
- XIV Toxicological Agents, including Chemical Agents, Biological Agents, and Associated Equipment
- XV Spacecraft and Related Articles
- XVI Nuclear Weapons Related Articles
- XVII Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII Directed Energy Weapons
- XIX Gas Turbine Engines and Associated Equipment
- XX Submersible Vessels and Related Articles
- XXI Articles, Technical Data and Defense Services not otherwise enumerated

C. CLASSIFICATION

While DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, it encourages exporters to self-classify the item. If doubt exists on the classification of an item, upon written request in the form of a Commodity Jurisdiction (“CJ”), DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR, or a dual-use item subject to Commerce Department licensing.⁷ Determinations are based on the origin of the technology (*i.e.*, as a civil or military article), and on its predominant use (*i.e.* civil or military applications). Therefore, the end-user is inconsequential to the classification. Only the inherent nature of the item is crucial.

University employees should contact the University Export Control Officer (UECO) when classifying an item. If the University of Pittsburgh needs to obtain a CJ determination, the

⁷ See 22 C.F.R. § 120.4.

Note that DDTC has jurisdiction over determining whether an item is ITAR- or EAR-controlled. BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL. If doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

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UECO, in conjunction with the Office of General Counsel (OGC), will file the CJ request with DDTC.⁸

D. DEFINITION OF EXPORT UNDER THE ITAR

The ITAR defines the term “export” broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR defines as an “export” the passing of information or technology to foreign nationals even in the United States.⁹ The following are examples of exports:

Exports of articles from the U.S. territory

- Shipping or taking a defense article out of the United States.
- Transferring title or ownership of a defense article to a foreign person, in or outside the United States.

Extra-territorial transfers

- The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (*i.e.*, transferring an article that has been exported to a foreign country from that country to a third country).
- Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the United States or abroad.
- The reexport/retransfer/transfer of non-US origin items that incorporate any US defense articles.

Export of intangibles

- Disclosing technical data to a foreign person, whether in the United States (“deemed export”) or abroad, through oral, visual, or other means.
- Performing a defense service for a foreign person, whether in the United States or abroad.
- The reexport/retransfer of non-US origin items produced using US technical data/defense services.

⁸ Instructions on the content of a CJ and the filing procedure are available at http://www.pmdtc.state.gov/commodity_jurisdiction/index.html

⁹ 22 C.F.R. § 120.17.

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E. AUTHORIZATION TO EXPORT

1. Registration (ITAR 122)

The ITAR requires any U.S. person or entity that manufactures, brokers, or exports defense articles/services to be registered with DDTC.¹⁰ Therefore, registration is required even when the activity does not involve the export, reexport/retransfer of items controlled by the USML. Also, it is important to note that exporters should register prior to applying for a license or taking advantage of some license exemption.¹¹

University researchers are usually engaged only in the creation of unclassified technical data, or engaged only in the fabrication of articles for experimental or scientific purposes, including research and development. Therefore, the university is not usually required to register with DDTC.¹² However, if the university desires to involve foreign nationals in ITAR-controlled research, it must register with the DDTC to apply for a license or take advantage of certain license exemptions.

2. DDTC Authorizations

Once the registration is complete, an exporter may apply for an export authorization. Under the ITAR, there are different types of authorizations:

- *Licenses*

These are typically used for shipments of hardware, but may also be used for shipments of technical data. The license is provided to Customs with the first shipment of the licensed items.

- *Agreements*

Used when providing a “defense service,” though they can also authorize the shipment of related technical data and hardware. They are essentially a contract between the exporter and the foreign licensee which outlines the scope of the exported defense services, technical data or hardware, and include ITAR required control language.

- *Exemptions*

These are authorizations in the ITAR that allow for the export of hardware, technical data or defense services as described in the ITAR, without obtaining any further written approval from DDTC.

- *General correspondences*

Any letter issued by DDTC to the exporter authorizing a certain export of hardware, software or technical data. General correspondence is typically used when referred to in the ITAR or in

¹⁰ 22 C.F.R. § 122.1.

¹¹ 22 C.F.R. §§ 120.1(c) and (d); 122.1(c).

¹² See 22 C.F.R. §§ 122.1(b)(3) and (b)(4).

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transactions or activities that do not normally fit into a traditional license, agreement, or exemption approval.

Most types of applications also contain additional certifications / transmittal letters, supporting documentation, and in some cases, non-transfer and use certification from the licensee and / or the foreign government of the licensee.

F. EMBARGOED COUNTRIES UNDER DDTC REGULATIONS

ITAR Prohibitions. In general, no ITAR exports may be made either under license or license exemption to countries proscribed in 22 C.F.R. § 126.1. Additional restrictions apply to other countries; a complete list of U.S. arms embargoes is available on the DDTC website¹³.

DOCUMENT HISTORY AND VERSION CONTROLS		
Subject	EXPORT OF DEFENSE ARTICLES AND SERVICES - ITAR	
Last Amendment	March 2015	Version 2.0
Supersedes	May 2013 (original document)	Version 1.0

¹³ http://www.pmdtcc.state.gov/regulations_laws/itar.html - See ITAR part 126