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New Exemption Simplifies Defense Exports to United Kingdom

New §126.17 of the International Trade in Arms Regulations (ITAR) became effective on April 13, 2012, and implements the license exemption provided in the Defense Trade Cooperation Treaty (the Treaty) between the United States and the United Kingdom. U.S. exporters of defense articles, defense services or technical data may use this “U.K. Exemption” if all of the following requirements are met:

1. the exporter is a member of the “U.S. Community;”
2. the importer is a member of the “U.K. Community;”
3. the proposed end-use of the defense article, defense service or technical data is eligible for the exemption as specified by the Department of Defense Trade Controls (DDTC) at the U.S. Department of State; and
4. the defense article (including technical data) or defense service to be exported is eligible for export under the U.K. exemption upon review of Supplement No. 1 to Part 126 of the ITAR.

The U.K. exemption simplifies the movement of equipment and information between and within the U.S. and the U.K. by creating an “Approved Community” of government and private sector entities and facilities. Members of an “Approved Community” may export certain defense articles (including technical data) and defense services solely for an end-use that is within the Treaty scope without the need for ITAR export licenses or other written authorizations, so long as all of the requirements outlined in the ITAR are followed.

A U.S. exporter may self-determine whether a particular transaction is U.K. exemption-eligible by reviewing the four requirements stated above, and as discussed below:

1. The “U.S. Community” consists of departments and agencies of the U.S. Government and persons and entities registered with DDTC.
2. The “U.K. Community” consists of certain U.K. Government entities and facilities, and approved private persons and entities. Members of the “U.K. Community” are assigned an Approved Community Identification Number (ACID). U.S. exporters need to ask for the ACID from their U.K. partner, and confirm the ACID’s validity by searching the ACID in the Treaty Reference System on DDTC’s website.

3. The proposed end-use of exported defense article (including technical data) or defense service must be “eligible” for the U.K. exemption and be listed by DDTC on its website. Eligible end-uses include:
 - combined U.S.-U.K. military and counter-terrorism operations;
 - cooperative U.S.-U.K. security and defense research, development, production, and support programs;
 - security and defense projects where the end-user is the U.K. Government; or
 - U.S. Government end-use.

The list of those projects, programs and operations that qualify for processing under the terms of the U.K. exemption is available on DDTC’s website. For classified projects, or projects/operations that otherwise can’t be disclosed, U.S. exporters should contact DDTC in writing to ask if a specific project is eligible for this license exemption. Note that this exemption is not for commercial sales or transfers to third parties not in the “Approved Community.” U.S. exporters remain subject to ITAR licensing requirements for permanent exports and all other requirements not explicitly removed by the U.K. exemption.

4. The defense article (including technical data) or defense service to be exported must be “eligible” for export under the U.K. exemption. More specifically, defense article (including technical data) or defense service should not be listed on Supplement No. 1 to Part 126 of the ITAR.

As to classified items, exporters must obtain a written request, directive or contract from the U.S. Department of Defense prior to the initial export from the United States. After such initial export, U.S. classified materiel eligible for transfer under the Treaty will be moved in accordance with the Treaty’s detailed arrangements and other applicable security requirements.

All U.S. defense articles, including technical data and defense services exported under the U.K. exemption are required to have protective markings and be managed in accordance with the terms of the U.K. exemption, Implementing Arrangement, U.K. security regulations, and the U.K. Official Secrets Act.

The terms of the U.K. exemption require U.S. exporters only to use “approved” consignees, as listed on the DDTC website. All of the other requirements under ITAR, such as recordkeeping, remain in full effect and are not modified by the U.K. exemption.

Section 126.17 allows U.S. exporters to transition specific export licenses to this license exemption, if each of the four above-mentioned exemption requirements is satisfied. Such a transition should ease the compliance burden of U.S. export license holders. To transition to the exemption, U.S. exporters need to submit a written request to DDTC identifying the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from the DDTC to retire the license(s) and transition to the U.K. exemption.

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