

To: Our Clients and Friends

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DDTC Posts New Guidance Regarding Temporary Imports and Proposed Changes to ITAR §125.4(b)(9)

Recently, the Directorate of Defense Trade Controls (DDTC) posted new guidance related to temporary imports of defense articles and issued proposed changes to 22 C.F.R. §125.4(b)(9).

New Temporary Import Guidance

The temporary import of defense articles requires the use of either a DSP-61 license or the exemption under 22 C.F.R. §123.4. However, it is sometimes the case that a foreign customer returns a defense article for repair or replacement to a U.S. company without first notifying the U.S. company of the impending return. In the past, this typically put the U.S. company in the position of needing to submit a voluntary disclosure to DDTC in order to obtain a DSP-5 license to return the defense articles to the foreign customer.

DDTC has issued new guidelines for these types of situations. Now, when a U.S. company unexpectedly receives a defense article for repair or replacement from a foreign customer, the U.S. customer should investigate the circumstances surrounding the unannounced return. If the U.S. company determines it holds no responsibility for the temporary import violation, the U.S. company no longer needs to submit a separate voluntary disclosure. The U.S. company should submit a DSP-5 license application to return the defense article to the foreign person. Along with the DSP-5 license application, the U.S. company should provide a transmittal letter which explains why the company believes it bears no responsibility for the unauthorized temporary import and the steps it took to come to this conclusion. The transmittal letter should also identify and provide the address of all persons involved in the temporary import, as well as any measures the company has taken to prevent such a situation from occurring in the future.

Proposed Changes to §125.4(b)(9)

Section 125.4(b)(9) provides an exemption for the export of technical data. Currently, the exemption allows only for the sending of technical data by a U.S. corporation to a U.S. person employed by that corporation who is located overseas, or to a U.S. Government agency located overseas. It does not, as presently drafted, allow for the taking (*e.g.*, hand carrying) of technical data out of the United States by that same U.S. person. However, with the proposed changes to §125.4(b)(9), both sending and taking of technical data would be authorized, so long as the transaction meets the requirements of §125.4(b)(9)(i) through (iii). DDTC is accepting comments on this proposed rule until January 25, 2010.

The full text of the new temporary import guidance, as well as the November 24, 2009, Federal Register notice announcing the proposed changes to §125.4(b)(9), is available on DDTC's website at: www.pmdtcc.state.gov.

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