

# Steel Founders' Society of America

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# Introduction To The ITAR

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## Department of State Directorate of Defense Trade Controls (“DDTC”)

- **Charged with controlling the export and temporary import of defense articles and defense services covered by the U.S. Munitions List**
  - Arms Export Control Act (22 U.S.C § 2778)
  - **International Traffic in Arms Regulations (ITAR)**
    - **22 C.F.R. Parts 120-130**
  - **[www.pmdrtc.state.gov](http://www.pmdrtc.state.gov)**



# Why The ITAR is Important

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## **Violations of the ITAR could result in:**

- loss of exporting privileges
- loss of U.S. Government contracting privileges (“debarment”)
- adverse publicity and loss of business
- serious monetary penalties
- seizure of products being exported
- imprisonment of individual employees

# Why The ITAR Is Important *(cont'd)*

## Monetary Penalties:

- Criminal

  - » **\$1 million per violation**

  - ITT case: **\$125 million**

- Civil

  - » **\$500,000 per violation**

# Introduction to the ITAR

## What Is An Export Under The ITAR?

Any transaction involving:

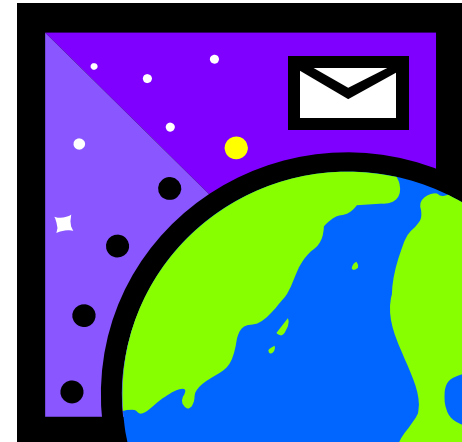
- Shipment or transmission abroad of items or technical data from the United States
- Sending an RFQ containing drawings and specs to a foreign country
- Release of information to Foreign Nationals in the U.S. – “Deemed Exports”
- Release of technical data outside the U.S., or in the U.S. with knowledge that it will be exported



# Introduction to the ITAR

## What Is An Export? cont.

- Exports of technical data can be oral or electronic: faxes, emails, downloads, etc.
- Furnishing defense services on behalf of or for the benefit of a foreign person in the U.S. or abroad
- Reexports: shipment or transmission of items from one foreign country to another
  - Also: transfers of licensed articles to unauthorized person in same country.



# Introduction to the ITAR

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## Consequences of ITAR Control

- Manufacturers of “Defense Articles” and Exporters Must Register With DDTC
- License required to most destinations
- Few exemptions

# ITAR Registration Requirement

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# ITAR Registration Requirement

# ITAR Registration Requirement

## ITAR Section 122 Requires Registration with DDTC by:

- Exporters of Defense Articles
- Manufacturers of Defense Articles, *even if not exporting*
- Brokers of Defense Articles
- Registration prerequisite to applying for licenses
- **Good for one year – Renew 60 days before expiration**
- Must notify DDTC of changes, mergers/acquisitions

# ITAR Registration Requirement

## How to Register

- Complete paper Form DS-2032
- Include:
  - Transmittal letter
  - Certificate of Good Standing from State of Incorporation
  - Lists of all Officers and Directors or Partners and Owners
    - Names
    - Dates of Birth
    - Nationality
    - Social Security Numbers
  - Check for Registration Fee
- File with DDTC via courier (Fed Ex, UPS, etc.)

# ITAR Registration Requirement

## How much is the Registration Fee?

- Depends on number of license applications in previous year
  - Tier 1 - No applications/New Registrants: \$2,250
  - Tier 2 - Up to 10 applications/year: \$2,750
  - Tier 3 - More than 10 applications/year: \$2,750 plus \$250 per application during previous year

# ITAR Registration Requirement

## Once you are registered . . .

- Registered party will receive acknowledgement letter from State Department
- Will include registration code number
  - For use on all license applications and agreements
- DDTC will request names of “Empowered Official” and persons having oversight over company’s export compliance program
- Sign up for DTRADE2 Electronic Licensing System

# ITAR Registration Requirement

## Designating an “Empowered Official”

- “Empowered Official” must be knowledgeable about the ITAR, and consequences for non-compliance
- Must be an employee with independent authority to stop the export without fear of retaliation
- “Empowered Official” signs license applications

# **DEFENSE ARTICLES, TECHNICAL DATA & DEFENSE SERVICES**

# What is a “Defense Article”? cont.

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## Who Determines What is a Defense Article or Service?

- Department of State (up to President of the United States)
- Exporters can submit a Commodity Jurisdiction Request
  - Determines whether item or service is subject to licensing requirements of Department of State (DDTC)
  - No right of judicial review

# What is a “Defense Article”? cont.

## HOW DO I KNOW IF I HAVE ITAR - CONTROLLED HARDWARE, TECHNICAL DATA OR DEFENSE SERVICES?



- Consult the U.S. Munitions List (ITAR Part 121)
- Find out if items were **specifically designed or modified** for defense application
- Look for ITAR markings on drawings
- Ask your customer
- Research the item’s design history

# What is a “Defense Article”? cont.

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- *Any* modification for a military or defense purpose, no matter how minor, is sufficient for an article to be considered a “defense article”
- *Item can be a defense article even if the end-use after export is a civil/commercial application*

# U.S. Munitions List

**“Defense articles” are designated on U.S. Munitions List (“USML”) - Section 121 of the ITAR**

- 21 Categories
- Includes hardware, technical data and defense services
- Most categories include:
  - Parts and components
  - Accessories
- Some categories include tools and related equipment

# U.S. Munitions List

## Category VIII – Aircraft and Associated Equipment

- \*(a) Aircraft
- \*(b) Military aircraft engines
- \*(c) Cartridge-actuated devices
  - (d) Launching and recovery equipment
- \*(e) Inertial navigation systems
  - (f) Developmental aircraft, engines, and components
- \*(g) Ground effect machines (GEMS)
  - (h) Components, parts, accessories, attachments, and associated equipment
  - (i) Technical data and defense services

# U.S. Munitions List

## Forgings, castings and machined bodies

“Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions List (including components, accessories, attachments and parts ...), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of the subchapter, except for such items as are in normal commercial use.”

ITAR Section 121.10

# U.S. Munitions List vs. Commerce Control List

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## Commodity Jurisdiction (“CJ”) Request

- Purpose is to determine if a commodity, data or service is
  - Covered by the U.S. Munitions List, or
  - Subject to the licensing jurisdiction of the Department of State or Commerce
- A CJ is NOT a license, approval or authority to export.

# Technical Data and Defense Services Under the ITAR



# Technical Data Under the ITAR

## §120.10

*Technical Data is Defined as –  
Information required for the:*

- design;
- development;
- production;
- manufacture;
- assembly;
- operation;
- repair;
- testing;
- maintenance; or
- modification

*of defense articles.*



# Technical Data Under the ITAR

## §120.10 (cont.)

- Does **not** include information concerning **general scientific, mathematical or engineering principles** commonly taught in schools, colleges and universities
- Does **not** include information in the **public domain**.
- Does **not** include **basic marketing information** on function or purpose or general system descriptions of defense articles.
- **Construe narrowly**



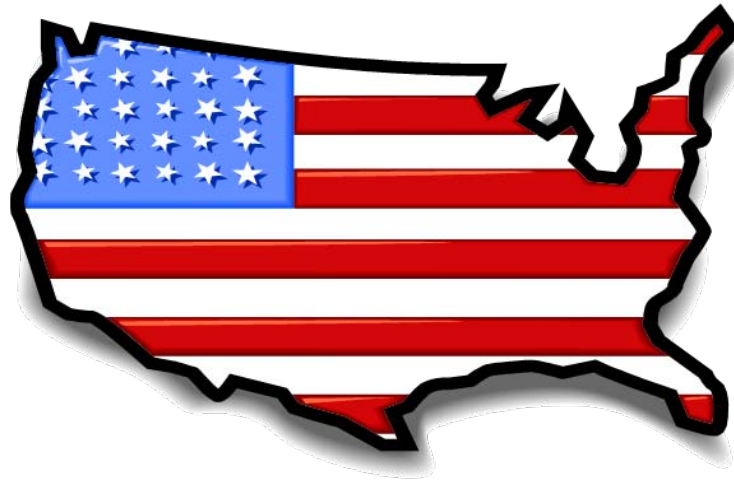
# “Defense Services” Under the ITAR §120.9

## What Is a Defense Service?

- Furnishing of assistance, including training, to foreign persons in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles
- Military training and advice



# “Deemed Exports” Under the ITAR



# What is a “Deemed Export”?

- Transfers of technical data within the U.S. to a “**foreign national**”
  - Not a U.S. citizen
  - Not lawfully admitted for permanent residence in the U. S. - not a “green card” holder
  - not a “protected individual” - asylum seeker, refugee
- An export to a foreign person is deemed to be an export to the person’s home country

# What is a “Deemed Export”?(cont.)

Applies to:

- Foreign national employees in the U.S.
  - H-1B Visa Holders
  - L-1 Visa Holders
- Foreign national visitors
- Beware 126.1 nationals - China



# How Does a “Deemed Export” Occur?

- Visual inspection of equipment and facilities
- Verbal exchanges of technology
- Electronic transfers, facsimile transmissions,
- Unrestricted *access* by foreign nationals to technical data in the U.S.



# Licensing under the ITAR

# Licensing -Proscribed Destinations

## (§ 126.1)

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### Watch for “Exports” to These Countries:

- Afghanistan, Belarus, Burma, **China**, Côte d’Ivoire, Cuba, Cyprus, Democratic Republic of the Congo (formerly Zaire), Eritrea, Fiji, Haiti, Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Palestinian Authority/Hamas, Rwanda, Somalia, Sudan, Syria, Venezuela, Vietnam, Yemen and Zimbabwe
- Policy differs depending on the country
- Watch out for Deemed Exports and Offshore Procurement

# License Applications

## Types of License Applications:

- **Permanent Export License - DSP-5**
  - Hardware
  - Technical Data (Proposals, Drawings)
  - Off-shore Procurement
  - Foreign National Employees
  - Marketing
  - Plant Visits
- Temporary Export License - DSP-73
- In-transit License (Temporary Import) - DSP-61
- Exports/Temporary Imports of Classified Articles/Data - DSP-85

# What Authorization is Required for Technical Data or Defense Services (*cont'd*)

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- **Technical Assistance Agreement (“TAA”):**  
22 C.F.R. 120.22
- **Manufacturing License Agreements (“MLA”)**  
22 C.F.R. 120.21

# Internal Compliance Programs

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## Establishing An Internal Compliance Program

# Benefits of Internal Compliance Programs

Enforcement Agent's first words: "Lets see a copy of your compliance program"

- Mitigating factor for non-compliance
- Lessens risk in export transactions
- Provides a roadmap of the processing flow to ensure consistent export compliance
- Provides personnel with tools and procedures to help them perform their functions accurately
- Improve accountability for export control tasks by identifying responsible persons

# Compliance Plan Factors to Consider

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- Each company differs in scope with respect to its export activities and general business
- Basic formats provided should be tailored to conform to the company's specific business and organizational structure
  - See DDTC website  
<http://pmddtc.state.gov/compliance.htm>

# DDTC Compliance Program Guidelines

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- Organization Structure
- Corporate Commitment and Policy
- Identification, Receipt and Tracking of ITAR Controlled Items and Technical Data
- Re-Exports
- Screening
- Restricted/Prohibited Exports and Transfers
- Recordkeeping
- Internal Monitoring
- Training
- Violations and Penalties

# What If We Discover a Violation?

# Voluntary Disclosures

## Consider Making a Voluntary Disclosure (ITAR Section 127.12)

- Voluntary self-disclosure may be considered a **mitigating factor** in determining administrative penalties, if any.
- Failure to report may be an **adverse factor** in determining the final disposition of the violation.
- **Disclosure required for violations involving proscribed destinations**

# Voluntary Disclosures (cont.)

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## Pros:

- Voluntary Disclosure can be a mitigating factor
- Corporate policy may require disclosure

## Cons:

- No guarantees – can still be referred to DOJ for criminal prosecution
- Significant fines and penalties can still be imposed

# QUESTIONS?

