

Five takeaways on the DDTC's new ITAR OGLs for Australia, Canada and the UK

In an exciting turn of events in the world of the International Traffic in Arms Regulations (“ITAR”), the US Department of State, Directorate of Defense Trade Controls (“DDTC”) issued two open general licenses (“OGLs”) authorizing the reexports and retransfers of most unclassified defense articles (including software and some technical data) to preapproved parties in, between, or among Australia, Canada, and the United Kingdom as long as the ultimate end-user of the defense article is the government of one of those countries.

DDTC is advertizing the OGLs as a “pilot” program, perhaps leaving room to revoke the OGLs. Both licenses were issued on 20 July 2022, and are available for use between 1 August 2022, and 31 July 2023, at which time DDTC may renew the OGLs. DDTC has also issued a fact sheet to help reexporters and transferors. Here’s the five key takeaways you need to know:

Takeaway #1: Original export must have been authorized by DDTC; OGLs do not cover the original exports

For the OGLs to apply, all ITAR-controlled items must have been exported to Australia, Canada, or the United Kingdom with a valid authorization (license or exemption) from DDTC. Because the OGLs only authorize reexports and retransfers, exports by the US-registered company to the ultimate consignees under the OGLs will require a DDTC authorization. We can foresee a situation where the Australian, Canadian, and UK authorized parties are happily exchanging defense articles under the OGL, but when a US party wants to get involved the OGLs do not cover its activities, so it must obtain separate DDTC authorization for all of the parties using the OGL.

Takeaway #2: reexports/transfers authorized only to certain government or member/registered consignees/end-users

Consignees/end-users in Australia, Canada and the UK have to be either the governments of Australia, Canada, and the United Kingdom or: members of the Australian Community at all locations in Australia; Members of the United Kingdom Community at all locations in



the United Kingdom; or Canadian registered persons.

Takeaway #3: Classified, missile tech, UAV, space-launch vehicle and FMS items are excluded

Not surprisingly, some ITAR-controlled items are not permitted under the OGLs. Only unclassified ITAR-controlled items can be reexported or retransferred. Also excluded are:

- Items on the Missile Technology Control Regime Annex or identified as Missile Technology (“MT”) on the United States Munitions List (“USML”).
- Items originally exported pursuant to the US government’s Foreign Military Sales (“FMS”) program.
- Items that will be used to support the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, or processing of a missile, unmanned aerial vehicle, or space-launch vehicle.

Takeaway #4: Technical data other than maintenance, repair or storage of defense article excluded, meaning OGLs cannot cover projects involving the design or manufacture of defense articles

More significantly, technical data other than that for organizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article is excluded. This is a substantial limitation making the OGLs largely ineffective for projects involving design or manufacture of defense articles

in Australia, Canada, and the UK. Such projects will still require ITAR technical assistance agreements (“TAAs”) and, for production know-how, manufacturing license agreements (“MLAs”).

Additionally, major defense items that are valued at \$25,000,000 at the time of original export are limited in their end use when permanently or temporarily reexported. Specifically, they may only be:

- Reexported for the maintenance, repair, or overhaul defense services, including the repair of defense articles used in furnishing such services, if the reexport will not result in any increase in the military capability of the defense articles and services to be maintained, repaired, or overhauled or
- Reexported temporarily for the purpose of receiving maintenance, repair, or overhaul.

The same restrictions apply to any defense article and related training or other provision of a defense service valued at \$100,000,000 or more.

Takeaway #5: Don’t forget notification and recordkeeping!

Parties using the OGLs must notify all end-users and consignees that the defense articles are subject to US export control laws and regulations and include the destination control statement specified in the ITAR.

In addition, parties using the OGLs must maintain records of all reexports and retransfers and identify the OGL in any export documentation. Records to be kept include the description of the defense article, including technical data; the name and address of the recipient and end-user, and other available contact information (telephone number and email address); the name of the natural person responsible for the transaction; the stated end use of the defense article; the date of the transaction; and the method of transfer. DDTC may request to see such records to verify proper use of the OGLs. ■

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