



# An Introduction to Export and Trade Controls

# THE EXPORT GROUP FOR AEROSPACE & DEFENCE (EGAD)

[WWW.EGAD.ORG.UK](http://WWW.EGAD.ORG.UK)



# **US EXPORT CONTROL LEGISLATION**

## **– THE CONTROLS**

### **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) – SUBJECT TO JURISDICTION OF US STATE DEPARTMENT**

- **CONTROLS EXPORT & RE-EXPORT OF MILITARY GOODS ON THE US MUNITIONS LIST PLUS, TECHNOLOGY & DEFENCE SERVICES I.E. COVERS ITEMS DESIGNED FOR MILITARY USE OR MODIFIED FOR SUCH. (N.B. ORIGINAL PRODUCT MAY NOT BE OF US ORIGIN & THE INTELLECTUAL PROPERTY MAY BELONG TO A NON-US COMPANY, BUT IF THE DESIGN & DEVELOPMENT IS US FUNDED &/OR UTILISES US MILSTANDARDS/SPECS WHICH ARE NOT PUBLIC DOMAIN THEN ITAR WILL APPLY). HARDWARE SOURCED FROM THE US IN SUPPORT OF NON-US MILITARY PROGRAMMES IS ALSO SUBJECT TO ITAR**

### **EXPORT ADMINISTRATION REGULATIONS (EAR) – SUBJECT TO JURISDICTION OF COMMERCE DEPARTMENT**

- **COVERS THE EXPORT & RE-EXPORT OF DUAL USE & CIVIL ITEMS**

**END USE CONTROLS – APPLIES TO COUNTRIES WHEREBY CERTAIN EXPORTS ARE DENIED OR REVIEWED ON A CASE BY CASE BASIS**

# **US EXPORT CONTROL LEGISLATION – APPLICATION OF THE ITAR CONTROLS (FAQ'S)**

## **WHAT IF MILITARY ITEMS ARE MODIFIED FOR CIVIL USE ?**

- **WILL BE TREATED AS MILITARY BUT MAY BE CHANGED TO CIVIL VIA A COMMODITY JURISDICTION REQUEST TO THE US STATE DEPARTMENT. THE US WILL TAKE A VIEW AS TO WHETHER 'PREDOMINANT USE' OF THE EQUIPMENT IS MILITARY OR CIVIL AND THE ORIGINAL DESIGN INTENT**

## **WHAT IF CIVIL ITEMS ARE MODIFIED FOR MILITARY USE ?**

- **CONTROLLED AS MILITARY, (BUT ANY COMPONENT PARTS WHICH CAN BE USED ON EITHER CIVIL OR MILITARY ARE TREATED AS CIVIL IF THEY STARTED OUT AS CIVIL AND HAVE NOT BEEN MODIFIED) THE COMPLETE ITEM HOWEVER WILL BE ITAR CONTROLLED EVEN IF ONLY ONE COMPONENT IS A MILITARY PART**

# US EXPORT CONTROL LEGISLATION – THE CONTROLS

**IN WHAT WAY DO US CONTROLS ESSENTIALLY DIFFER FROM  
UK CONTROLS ?**

**1 OF 2**

- **US REGULATIONS ALSO GOVERN RE-EXPORTS I.E. NOT JUST THE INTIAL EXPORT FROM US TO THE RECIPIENT COUNTRY BUT FROM THE RECIPIENT COUNTRY TO ANOTHER COUNTRY - WHETHER THAT PARTY IS A CUSTOMER, PARTNER, SUPPLIER, - OR TO A THIRD PARTY WITHIN THE UK E.G. A UK COMPANY'S SUB-CONTRACTORS & FOREIGN NATIONALS, OR FOREIGN PERSONS WORKING IN THE US**
- **US CONTROLS ARE NATIONALITY BASED AND AUTHORISATION MUST BE OBTAINED TO COVER THEIR INVOLVEMENT ON ALL PROGRAMMES OF WORK INCLUDING ANY FOREIGN NATIONALS WORKING IN THE US**

# US EXPORT CONTROL LEGISLATION – THE CONTROLS

**IN WHAT WAY DO US CONTROLS ESSENTIALLY DIFFER FROM  
UK CONTROLS ?** **2 OF 2**

- BECAUSE OF THE US CONTROLS OVER RE-EXPORTS A UK COMPANY MUST CAREFULLY CONSIDER ANY IMPACT ON ITS DESIRED STRATEGY – E.G. WHERE WILL ITS TECHNOLOGY COME FROM, WHAT MARKETS DOES IT WISH TO DEVELOP, WHERE ARE ITS CUSTOMERS, WHAT ARE ITS PROCUREMENT STRATEGIES/SUPPLY CHAIN –WHAT PARTNERS DOES IT WANT TO WORK WITH, WHO IS REQUIRED TO WORK ON THE PROGRAMME OR ACTIVITY & WHERE WILL THEY BE BASED. HOW WILL ITS PRODUCTS BE SUPPORTED IN SERVICE, WHAT IT SYSTEMS AND SOLUTIONS ARE LIKELY TO BE INVOLVED
- POTENTIALLY US LICENCES COULD BE REQUIRED TO PURSUE ANY OF THE ABOVE ACTIVITIES AND SOME COUNTRIES MAY BE DENIED & REQUIRE SPECIFIC REVIEW BY THE US STATE DEPT

# US EXPORT CONTROL LEGISLATION

## WHAT EXPORTS ARE CAPTURED BY THE CONTROLS ?

- TECHNICAL DATA (E.G DRAWINGS, REPORTS, TEST DATA, MANUALS, SOFTWARE, PHOTOS BUT EXCLUDING PUBLIC DOMAIN DATA)
- HARDWARE – PARTS, WHOLE EQUIPMENT, INCLUDING MOCKUPS & MODELS (BUT EXCLUDING COMMERCIAL OFF THE SHELF)
- DEFENCE SERVICES (E.G. TRAINING, ADVICE, INSTALLATION, ASSEMBLY & TEST)

# US EXPORT CONTROL LEGISLATION

## HOW CAN EXPORTS HAPPEN ?

- PHYSICAL SHIPMENTS
- ELECTRONICALLY/IT TOOLS
- PHONE CALLS/FACE TO FACE DISCUSSIONS
- MEETINGS/VISITS
- PRESENTATIONS TO PUBLIC
- EXHIBITIONS
- HAND CARRYING
- LEAVING DATA ON DISPLAY

# US EXPORT LEGISLATION

## WHAT LICENCES & AGREEMENTS ARE REQUIRED ? 1 OF 2

- THERE ARE FOUR MAIN LICENCES WHICH ENABLE THE EXPORT OF ITAR CONTROLLED DATA & HARDWARE FROM US DEPENDING ON WHETHER CLASSIFIED, UNCLASSIFIED, TEMPORARY OR PERMANENT, BUT GENERALLY THEY DO NOT ALLOW A COMPANY TO PROCEED BEYOND INITIAL MARKETING/BID PHASE AS NO ASSISTANCE FROM US CO. IS AUTHORISED (I.E. NO TECHNICAL DISCUSSIONS MAY TAKE PLACE)
- (TAA) TECHNICAL ASSISTANCE AGREEMENT – REQUIRED WHEN EXCHANGE OF TECHNICAL DATA & DISCUSSIONS TAKE PLACE AND THEY MUST DESCRIBE PROPOSED ACTIVITIES AND PARTIES IN DETAIL.

# US EXPORT LEGISLATION

## WHAT LICENCES & AGREEMENTS ARE REQUIRED ? 2 OF 2

- (MLA) MANUFACTURING LICENCE AGREEMENTS – COVER THE ABOVE BUT ALSO INCLUDE THE EXPORT OF MANUFACTURING DATA FOR THE PURPOSES OF MANUFACTURING ON BEHALF OF THE US
- US LICENCES CAN **ONLY** BE APPLIED FOR BY A US COMPANY & ARE GRANTED BY US STATE DEPT BUT THE NON-US PARTIES MUST ENSURE THAT LICENCES ARE ADEQUATELY SCOPED TO MEET THE REQUIREMENTS OF THE PROGRAMME OR ACTIVITY (E.G. WHAT IS REQUIRED, TO WHOM IS THE DATA TO BE TRANSMITTED AND WHERE IS THE TRANSFER TO TAKE PLACE) OTHERWISE THEY MAY NOT BE FULLY AUTHORISED TO PROCEED

# US EXPORT LEGISLATION

## IMPORTANT POINTS ABOUT LICENCES & AGREEMENTS: 1 OF 4

- ONLY THOSE PARTIES/INDIVIDUALS WHO ARE SIGNATORIES TO AN AGREEMENT CAN RECEIVE DATA/SERVICES DIRECTLY FROM A US COMPANY
- THIRD PARTIES (E.G. A COMPANY'S SUB-CONTRACTORS, SUB-LICENCEES, PARTNERS, AND CERTAIN FOREIGN NATIONALS) CAN BE AUTHORISED TO RECEIVE DATA FROM THE MAIN SIGNATORY PARTIES OF THE AGREEMENT VIA RE-EXPORT CLAUSES, BUT THE THIRD PARTIES ARE REQUIRED TO SIGN NDA'S (NON-DISCLOSURE AGREEMENTS) CONTAINING SPECIFIC ITAR CLAUSES.

# US EXPORT LEGISLATION

## IMPORTANT POINTS ABOUT LICENCES & AGREEMENTS: 2 OF 4

- THE TIME-SCALES FOR APPROVAL OF LICENCES, DEPENDING ON VALUE, CAN BE 3 – 6 MONTHS & LICENCES MAY CONTAIN ‘PROVISOS’ SO PLAN WELL AHEAD & ASSESS ALL REQUIRED DATA & HARDWARE FLOWS I.E. BEFORE BID PREPARATION & EVALUATION, CONTRACT NEGOTIATION, PURCHASE ORDER PLACEMENT
- REGARDLESS OF WHETHER US COMPANY IS A CUSTOMER, PARTNER, PARENT/SUBSIDIARY OF, OR SUPPLIER TO, A UK COMPANY IT CAN ONLY ‘EXPORT’ HARDWARE, DATA, SERVICES, ONCE IT HAS OBTAINED THE RELEVANT LICENCE COVERING THE PROPOSED ACTIVITIES. US CO.’S MUST ALSO BE REGISTERED TO WORK ON MILITARY PROGRAMMES WHICH CAN TAKE UP TO 8 WEEKS

# US EXPORT LEGISLATION

## IMPORTANT POINTS ABOUT LICENCES & AGREEMENTS: 3 OF 4

- BEWARE US SUPPLIER CONTRACTS BASED ON EX-WORKS TERMS WHEREBY THE UK COMPANY ASSUMES OWNERSHIP IN US. THIS SHOULD NOT RELIEVE US COMPANY OF THE NEED TO OBTAIN AN EXPORT LICENCE TO EXPORT TO UK, AS ONLY A US COMPANY CAN MAKE AN APPLICATION. ALLOW TIME THEREFORE TO DISCUSS & AGREE EXPORT REGULATIONS & REQUIREMENTS AT FRONT END WITH THE US COMPANY. NOT ALL US COMPANIES HAVE THE SAME LEVEL OF UNDERSTANDING OR EXPORT SPECIALISTS TO ADDRESS SUCH ISSUES, BUT BEWARE THAT THE COST OF NON-COMPLIANCE FAR OUTWEIGHS COST OF ANY BREACH !
- IF A US SUPPLIER ONLY REQUIRED TO SUPPLY EQUIPMENT THEY CAN DO SO WITH A DSP-5 LICENCE BUT IF ANY TECHNICAL DISCUSSIONS REQUIRED THEN A TAA MUST BE IN PLACE.

# US EXPORT LEGISLATION

## IMPORTANT POINTS ABOUT LICENCES & AGREEMENTS: 4 OF 4

- REMEMBER EVEN IF A UK COMPANY OWNS OR MANUFACTURES EQUIPMENT WHICH IS NOT OF US ORIGIN, IF US MILITARY TECHNOLOGY OR FUNDING IS UTILISED IN THE DESIGN OR DEVELOPMENT, THEN NOT ONLY IS THE EXPORT OF ANY HARDWARE, TECHNOLOGY & DEFENCE SERVICES CONTROLLED FROM THE US TO UK, BUT ALSO THE RE-EXPORT OF SUCH BY THE UK COMPANY TO ITS CUSTOMERS, PARTNERS, SUPPLIERS, IN THE UK & ABROAD INCLUDING FOREIGN NATIONALS

# US EXPORT LEGISLATION

## WHAT DO YOU NEED TO DO ?:

- ASK EXPORT SPECIALISTS & CHECK TO BE SURE OF HOW THE CONTROLS APPLY
- ENSURE THE RIGHT LICENCES ARE IN PLACE AND THAT NDA'S ARE SIGNED & LOGGED WITH THE RELEVANT US CO. WHERE REQUIRED
- ENSURE ALL EXPORTS CONTAINING CONTROLLED INFORMATION ARE TO BE APPROPRIATELY MARKED & LOGGED, IN ACCORDANCE WITH THE ITAR WHETHER FAX, E-MAILS, MEETINGS, PHONE CALLS. (USE APPROPRIATE LEGENDS ON ALL TECHNICAL DOCUMENTS AND EXPORTS OF CONTROLLED TECHNOLOGY)
- FULL USE OF PASSWORD PROTECTION & SECURE NETWORKS ETC
- ACT WITH DUE DILIGENCE AT ALL TIMES ABOUT WHAT IS BEING GIVEN TO WHO IN ANY REQUIRED FORMAT



# For Further Information, Contact:

Brinley Salzmann

Tel: +44 (0)1428 602622

Fax: +44 (0)1428 602628

URL: [www.the-dma.org.uk](http://www.the-dma.org.uk)

E-Mail: [b.salzmann@the-dma.org.uk](mailto:b.salzmann@the-dma.org.uk)