

The following DTAG Working Group submits the attached report showing our track changes to the proposed ITAR §123.28 language and the associated presentation which was presented at the July 7, 2010 Plenary:

Members

- Kimberly DePew – GE
- Larry Keane – National Shooting Sports Foundation
- D. Michael Cormaney - Poliner and Luks LLP
- David Kelly - Bluefin Robotics
- Robert L. Ketts - Cubic Defense Applications, Inc.
- Beth Mersch - Northrop Grumman
- Brenda Niciaco - Nivisys Industries
- Terrell R. Otis - ITT Defense International
- Dale Rill - Honeywell
- J. Rodriguez - MAC Aerospace Corp.
- Tom White – Lockheed Martin
- Bill Wade – Raytheon, Working Group Chairperson

§ 123.28 Special Exemption for the Export of Components and Spare Parts in Support of Previously Exported U.S. Origin End Items

(a) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of spare parts and components of U.S. end item as defined in § 121.8 (a), in the inventory of a foreign government when all of the following conditions are met:

- (1) The exporter is not subject to policy of denial (see 127.7), is not otherwise ineligible (§ 120.1(c) of this subchapter), and the authority to claim the exemption has not been revoked in accordance with (c) below; and
- (2) The exporter must be identified as was the original exporter-the applicant of a previously approved authorization to export the U.S. end item as defined in § 121.8 (a), the end item, and
- (3) The parts and components being exported provide no upgrade in the capability of the U.S. end item as originally exported. This does not preclude spare or replacement parts or components that would result in enhancements or improvements only in the reliability or maintainability of the U.S. origin defense article, such as an increased mean time between failure (MTBF), and
- (4) The type, amount, and frequency of the exports are consistent with repair and replacement in accordance with normal logistical support requirements for the number of end items in the end user inventory, and
- ~~(4)~~(5) The value of the purchase order or contract for the export does not exceed the requirements for Congressional Notification set forth in § 123.15, and
- ~~(5)~~(6) The consignee of the shipment is the foreign governmental end user approved under the original export authorization-and
- ~~(6)~~(7) The foreign governmental end user is not subject to restrictions under § 126.1 of this subchapter.

(b) In order to claim the exemption, the exporter must:

- (1) Be in possession of copy of a purchase order-from the foreign governmental end user-and
- (2) Cite in ~~their~~ its AES filing at the time of export the license number authorizing the previously approved export of the U.S. origin defense article original end item export as required under a2; and
- (3) Provide, upon request of the Port Director, a copy of the license cited in b(2) above and copy of a purchase order the purchase order required by b(13) above; and
- (4) If the spare parts or components are shipped, the exporter must use USPS or Be shipped by USPS (see § 123.24)-use only those freight forwarders registered with the Directorate of Defense Trade Controls and eligible, or licensed customers brokers that are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection. If export by hand carry, ensure AES filing is completed at the time of export; and
- (5) Maintain records to be provided on request to the Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and other authorized U.S. law enforcement officers that support applicant authority to use the exemption in accordance with the requirements of (a)(1)-(7~~6~~) and (b)(1)-(2) above.

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(c) If a second exporter obtains an authorization for an end item where equivalent capability to the original end item If spares are provided... the replacement of an original item previously exported by another applicant This can be used ... (Need some help with this one)

~~(e)~~(d) The authority to use this exemption may be revoked at any time by the Managing Director, Directorate of Defense Trade Controls if the exporter is found to be not in compliance with the requirements listed above.

Defense Trade Advisory Group - DTAG

**Plenary Session
Working Group #2 Report**

July 7, 2010

Special Exemption for the Export of Components and Spare Parts in Support of Previously Exported U.S. Origin End Items

Members

- Kimberly DePew – GE
- Larry Keane – National Shooting Sports Foundation
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Engaged & Committed

§ 123.28

DTAG WG #2

Special Exemption for the Export of Components and Spare Parts
in Support of Previously Exported U.S. Origin End Items

Purpose

- Create an ITAR exemption to help facilitate a streamlined flow of parts and components to the inventories of foreign government end users of U.S. end items

§ 123.28

DTAG WG #2

Special Exemption for the Export of Components and Spare Parts
in Support of Previously Exported U.S. Origin End Items

Guidance & Intent

- Straight forward - Easy to understand & use
- Supports repair of U.S. end items abroad
- Reduces a significant licensing workload
 - DDTC & Industry
- Support U.S. & Coalition Forces abroad
 - Eliminate a significant % of OEF & OIF Cases
- Enable real time customer support for previously exported U.S. end items

Access to U.S. Suppliers

§ 123.28

DTAG WG #2

Special Exemption for the Export of Components and Spare Parts in Support of Previously Exported U.S. Origin End Items

- a) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of spare parts and components of U.S end items as defined in § 121.8 (a), in the inventory of a foreign government when all of the following conditions are met:
 - 1) The exporter is not subject to policy of denial (see 127.7), is not otherwise ineligible (§ 120.1(c) of this subchapter), and the authority to claim the exemption has not been revoked in accordance with (c) below; and
 - 2) The exporter must be identified as the applicant of a previously approved authorization to export the U.S end item as defined in § 121.8 (a), and

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- 3) The parts and components being exported provide no upgrade in the capability of the U.S. end item as originally exported. This does not preclude spare or replacement parts or components that would result in enhancements or improvements only in the reliability or maintainability of the U.S. end item, such as an increased mean time between failure (MTBF), and
- 4) The type, amount, and frequency of the exports are consistent with repair and replacement in accordance with normal logistical support requirements for the number of end items in the end user inventory, and
- 5) The value of the purchase order or contract for the export does not exceed the requirements for Congressional Notification set forth in § 123.15, and
- 6) The consignee of the shipment is the foreign government end user approved under the original export authorization and
- 7) The foreign government end user is not subject to restrictions under § 126.1 of this subchapter.

Draft Language

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- (b) In order to claim the exemption, the exporter must:
- 1) Be in possession of a copy of a purchase order from the foreign government end user and
 - 2) Cite in its AES filing at the time of export the license number authorizing the previously approved export of the U.S. origin defense article as required under a2; and
 - 3) Provide, upon request of the Port Director, a copy of the license cited in b(2) above and copy of a purchase order required by b(1) above; and
 - 4) If the spare parts or components are shipped, the exporter must use USPS or only those freight forwarders registered with the Directorate of Defense Trade Controls and eligible, or licensed customers brokers that are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection. If export by hand carry, ensure AES filing is completed at the time of export; and

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- 5) Maintain records to be provided on request to the Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and other authorized U.S. law enforcement officers that support applicant authority to use the exemption in accordance with the requirements of (a)(1)-(76 and (b)(1)-(2) above.

- c) This exemption will apply if a second exporter satisfies the conditions of (a) and (b) above and obtains an authorization for the replacement of an end item initially exported by another applicant.

- d) The authority to use this exemption may be revoked at any time by the Managing Director, Directorate of Defense Trade Controls if the exporter is found to be not in compliance with the requirements listed above.

Draft Language

Defense Trade Advisory Group - DTAG

Questions?

**Plenary Session
Working Group #2 Report**

July 7, 2010

§ 123.28 Special Exemption for the Export of Components and Spare Parts in Support of Previously Exported U.S. Origin End Items

- (a) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of spare parts and components of U.S. end item as defined in § 121.8 (a), in the inventory of a foreign government when all of the following conditions are met:
- (1) The exporter is not subject to policy of denial (see 127.7), is not otherwise ineligible (§ 120.1(c) of this subchapter), and the authority to claim the exemption has not been revoked in accordance with (c) below; and
 - (2) The exporter must be identified as the applicant of a previously approved authorization to export the U.S. end item as defined in § 121.8 (a), and
 - (3) The parts and components being exported provide no upgrade in the capability of the U.S. end item as originally exported. This does not preclude spare or replacement parts or components that would result in enhancements or improvements only in the reliability or maintainability of the U.S. end item, such as an increased mean time between failure (MTBF), and
 - (4) The type, amount, and frequency of the exports are consistent with repair and replacement in accordance with normal logistical support requirements for the number of end items in the end user inventory, and
 - (5) The value of the purchase order or contract for the export does not exceed the requirements for Congressional Notification set forth in § 123.15, and
 - (6) The consignee of the shipment is the foreign government end user approved under the original export authorization and
 - (7) The foreign government end user is not subject to restrictions under § 126.1 of this subchapter.
- (b) In order to claim the exemption, the exporter must:
- (1) Be in possession of a copy of a purchase order from the foreign government end user and
 - (2) Cite in its AES filing at the time of export the license number authorizing the previously approved export of the U.S. origin defense article as required under a2; and
 - (3) Provide, upon request of the Port Director, a copy of the license cited in b(2) above and copy of a purchase order required by b(1) above; and
 - (4) If the spare parts or components are shipped, the exporter must use USPS or only those freight forwarders registered with the Directorate of Defense Trade Controls and eligible or licensed customer's brokers that are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection. If export is by hand carry, ensure AES filing is completed at the time of export; and
 - (5) Maintain records to be provided on request to the Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and other authorized U.S. law enforcement officers that support applicant authority to use the exemption in accordance with the requirements of (a)(1)-(7) and (b)(1)-(2) above.

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- (c) This exemption will apply if a second exporter satisfies the conditions of (a) and (b) above and obtains an authorization for the replacement of an end item initially exported by another applicant.
- (d) The authority to use this exemption may be revoked at any time by the Managing Director, Directorate of Defense Trade Controls if the exporter is found to be not in compliance with the requirements listed above.