



NAITA Export Control Roundtable: Marketing Defense Items & Services to Foreign Persons



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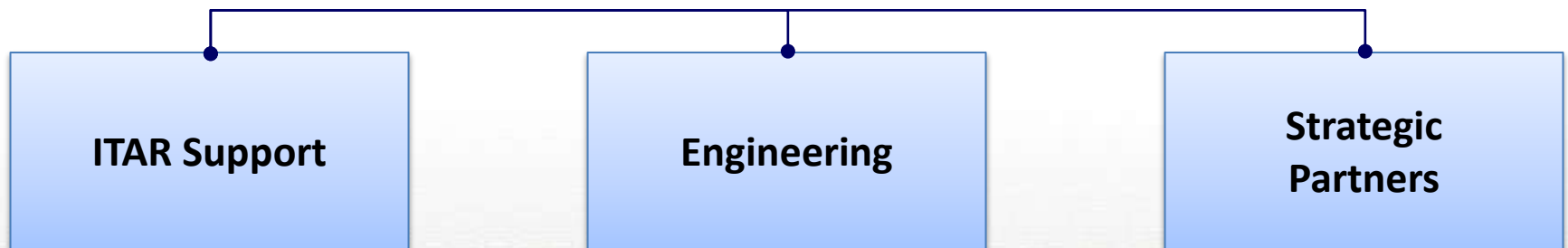
Presentation Topics

Marketing Defense Items & Services to Foreign Parties:

- Can I market ITAR controlled products/services to foreign parties?
- How to market ITAR controlled items to foreign parties?
- What needs to be considered when working with foreign parties?

Why Excelerate....

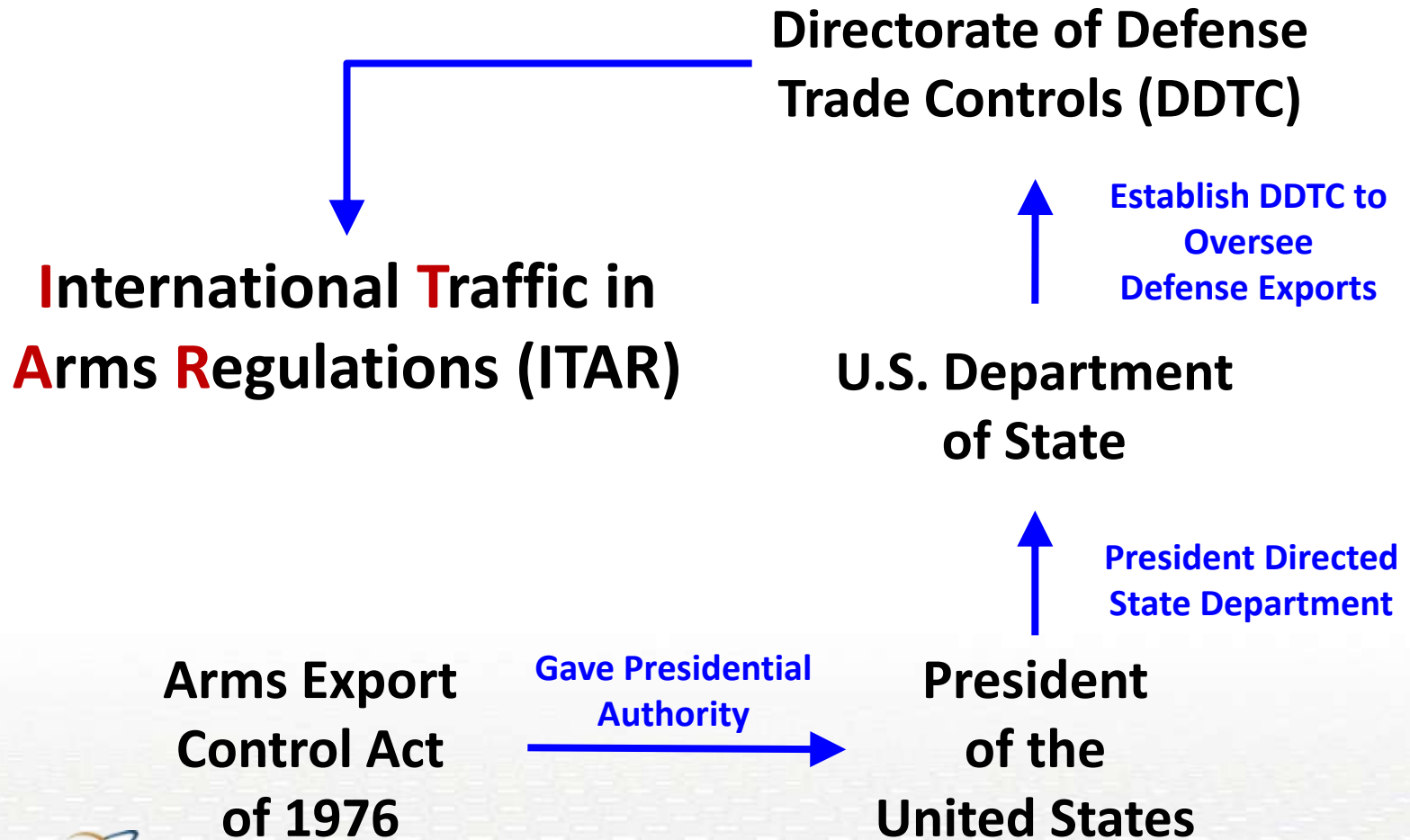
- Established 2004 – International Defense Business – 24/365
- Direct Commercial Sales (DCS) – Defense and Aerospace
- Domestic Support on ITAR Related Activities
- International Support on System Development & Integration
- Orchestrate Business Internationally
- Working in Most Areas of the World



Where Exceleerate Works....



Origin of the ITAR



Can I market ITAR controlled products/services to foreign parties?

By Laura Patrick

ITAR Basics

ITAR controlled articles, technical data and services cannot be exported to a foreign person without approval.



What does the ITAR control? (1 of 3)

The ITAR controls:

- Defense Articles
- Technical Data
- Defense Services



What does the ITAR control? (2 of 3)

Defense Articles

Items: designed
configured,
adapted or
modified for
defense
purposes

Includes: end
items,
components,
parts,
accessories and /
or attachments

Can also include:
hardware,
software,
technical data,
formulas,
manufacturing
processes,
parameters, etc.

What does the ITAR control? (3 of 3)

Technical Data

Information required for the design, development, production, manufacturing, etc. of defense articles

Defense Services

Providing assistance or training in the design, development, testing, manufacturing, production, assembly, maintenance, modification, operation, or use of defense items.

Marketing to Foreign Parties

- **“Top-Level” marketing information can be shared without approval from DDTC.**
 - Basic form, fit and function of product
 - Information considered public domain
- **Information that goes beyond “Top-Level” marketing requires approval from DDTC.**
 - Rule of Thumb: Information you wouldn’t want your competitor to know

What is Public Domain?

- **Public Domain = information published and generally accessible**
 - Approved public release by the appropriate U.S. Government department/agency
 - Sales at newsstands and bookstores
 - Patents available at any patent office
 - Public libraries
 - Subscriptions
- **Internet ≠ Public domain**

Marketing Information Requiring Approval

- Identify specific ITAR controlled systems
- Detailed performance specs – ranges, velocities...
- Potential countermeasures
- Operational, functional or design limitations
- How the product is optimized
- Engineering design and processes
- U.S. Gov specific users (without release)

ITAR Controlled Paper Confinement Tool



Non-Permanent Paper Binding Apparatus

- OD Green
- Made from high quality non-obtainium to reduce IR signature
- Holds 10 sheets of MIL-SPEC-123 paper for 254.3 days
- Dissolves if placed in salt water for 2.3 days
- 17 stacked in a crisscross pattern can stop a BB

Customers

- US SEAL Team 6
- Secret Service
- Army Rangers
- Navy Cooks
- Israeli Special Forces



Other Uses

- Fish Hook
- Fidget Toy
- Crude Digger
- Tiny Poker
- Projectile
- M16 Doohickey

Specifications

- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- Fastener Tension – 0.25 N
- MTBF: 6 months
- Max Wind Gust: 4.7 m/s

ITAR Controlled Paper Confinement Tool

Remove or Modify



Non-Permanent Paper Binding Apparatus

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- ~~US SEAL Team 6~~
- ~~Secret Service~~
- ~~Army Rangers~~
- ~~Navy Cooks~~
- ~~Israeli Forces~~

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- ~~Max Wind Gust: 4.7 m/s~~

ITAR Controlled Paper Confinement Tool

Revised Version



Non-Permanent Paper Binding Apparatus

- OD Green
- High quality construction and material
- Holds 10 sheets of MIL-SPEC-123 paper
- Rugged – the harshest environments
- Reconfigurable for many uses

Customers

- US Army
- US Navy
- Foreign Forces
- Israel MOD
- Many Customers Worldwide

Other Uses

- Fish Hook
- Fidget Toy
- Crude Digger
- Tiny Poker
- Many Military Applications

Specifications

- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- Holds tight for long periods
- 400% longer product life
- Positive retention in worst conditions

Summary

- ITAR controlled articles, technical data and services cannot be exported to a foreign person without approval.
- “Top-level” information does not need DDTC approval
- Performance, Engineering and Specific End Use/ End Users need approval

How to market controlled information to foreign parties?

By Josh Keeton

Types of ITAR Licenses & Agreements

LICENSE

- **DSP-5:** Permanent Export/Marketing
- DSP-61: Temporary Imports
- **DSP-73:** Temporary Exports
- DSP-85: Classified Exports/Imports
- DSP-94: Foreign Military Sales Exports
- DSP-119: Amendment to Above Licenses
- DSP-6: Amendment to DSP-5
- DSP-62: Amendment to DSP-61
- DSP-74: Amendment to DSP-73

Others

- DSP-83: Non-Transfer & User Certificate
- DS-4076: Commodity Jurisdiction Request
- DS-4071: Declaration of Electronic Transfer
- DS-6000: General Inquiry
- DS-6001: Advisory Opinion
- DS-6002: Prior Notification of Briefing/Proposal
- DS-6003: Reconsideration of Proviso
- DS-6004: Reconsider End User or End Use

AGREEMENTS

- Technical Assistance Agreements (TAA)
- Manufacture Licensing Agreements (MLA)
- Warehouse Distribution Agreement (WDA)

DSP-5 Marketing License

- **Allow a company to export controlled information to identified foreign parties.**
- **Can be broken down into two categories:**
 - General Marketing License
 - Specific “Proposal” License

General Marketing License (1 of 2)

- **Allows you to market your company's products / services to identified foreign parties.**
 - Briefings on key features
 - Product presentations
 - Etc.
- **Foreign parties can be located in one country, or across multiple countries inside DoS defined Regions:**
 - African Affairs (AF)
 - Western Hemispheric Affairs (WHA)
 - Near Eastern Affairs (NEA)
 - South and Central Asian Affairs (SCA)
 - East Asian and Pacific Affairs (EAP)
 - European and Eurasian Affairs (EUR)

General Marketing License (2 of 2)

- **You will need to provide to DDTC:**
 - Information you plan to share (product brochures, Presentations, etc.)
 - List of foreign parties you wish to market to:
 - For foreign governments can simply say “Govt. of Japan”, “Govt. of Taiwan”, etc.
 - For foreign companies must ID each company and give a valid address

Specific “Proposal” License (1 of 2)

- **Allows more detailed technical information to a limited number of foreign parties.**
 - Detailed insight into your products system architecture (hardware, software, communications, etc.)
 - Technical response to an RFP.
- **Foreign parties generally need to be located in one country**
 - Actual foreign customer / end-user
 - In-country partners (sales reps, integrators, etc.)

Specific “Proposal” License (2 of 2)

- **You will need to provide to DDTC:**
 - Detailed information you plan to share (“whitepaper” describing your product and what you plan to propose to the foreign party, etc.)
 - Specific list of foreign parties you plan to share information with:
 - Specify which government agency and give address
 - For foreign companies must ID each company and give a valid address

Provisos & Limitations

Most Marketing Licenses are accompanied by provisos and limitations

- **Some are Administrative:**
 - “This license expires on ...”
 - “Final USG configuration authorization **MUST** be the subject of separate export license application...”
- **Some are technical...**
 - “Software source code may not be OFFERED or DISCUSSED”
 - “No US Government threat data can be passed”
 - “Input data for simulation planning **MUST** be generic in nature or provided by the end-user.”
- **Look out for “death by proviso”**
 - Failed to properly scope the license
 - Mistake by USG

DSP-73 – Temporary Export License

- Used to temporarily take your product overseas.
- Can be for:
 - Specific demonstrations related to a DSP-5 Marketing License
 - International Tradeshows
- Information needed is similar to **General Marketing License + transmittal letter.**

Trade Show Exemption §123.16 (b) (5)

US. Customs and Border patrol will allow the temporary export of a defense item w/o a license if:

- Unclassified, and
- Destined for a **public** exhibition, trade show, etc.), and
- Previously been licensed for the same purpose, and
- Previous license is still valid.

NOTE: Some restrictions apply, item can't be considered "Significant Military Equipment" or controlled by the MTCR, etc.

What else to consider when working with foreign parties?

By Mike Doubleday

Topics

- Marketing
- Requirements
- Proposals
- Pricing
- Contracts
- Negotiations
- Execution
- Delivery

**International Direct Commercial Sales –
Lessons Learned – Compare/Contrast to U.S.**

Marketing (1 of 2)

- Patience is not just a virtue but a requirement
- Understand the culture – business and social
- ITAR controlled does not mean ITAR prevented
- In some countries, relationships provide opportunities. In others, opportunities provide relationships. In others, it is strictly business.
- Foreign Corrupt Practices Act (FCPA)
- Most have the internet not all have organization email
- In-country support works best

Marketing (2 of 2)

- Some countries require trade companies others outlaw them
- International business is product not services based – need to productize a service
- You will need brochures
- Keep your website updated – show products on-line
- English is spoken or interpreted worldwide
- Don't be surprised if 10-15 years behind

Requirements

Rarely are “detailed” requirements provided

- Few follow US approach to requirements flowdown
- They want your product information first
- Few want what we call the “D” word – Development
- Of course, being the driver of requirements is best
- Typically you will iterate (and iterate and iterate) to a final set of technical specifications....

Proposals

- Proposals are much smaller – simpler than U.S.
- Assume your proposal may be shared
- Try not to provide full solution
- Few want a “Phased” program approach
- Few understand support (T&M) contracts
- Include sections detailing: list of deliverables, assumptions and expectations

Pricing

- Maintain positive cash flow
- Customers don't come to U.S. because we are cheap
- Identify risks and if there is a cost to mitigate
- Never divulge price until you know the contract terms and full requirements
- Full pricing disclosure is not necessary
- Again – this is not a U.S. Government pricing process
- Common items to include: Travel, Warranty, Risk, Funding Expenses, Support, Negotiations,

Contracts

- Cannot apply U.S. government contracts approach
- Ask for the T&C's when it starts getting serious
- Negotiating contracts takes time
- Push back on liquidated damages and penalties
- Be prepared to walk away
- Assume you will not take legal action
- Have patience, patience, patience.....

Negotiations

- Tactics like you have never seen or expected
- Always negotiating – even after contract award
- Add items that can be removed to drop price
- May add 40% for some countries and 5% for others
- Know your absolute minimum and never go below
- Always be ready to walk away

Financing

- Firm Fixed Priced (FFP) always
- Letters of Credit (LC) – Bank Guarantees – Warranty Bonds
- Letter of Credit does not guarantee payment
- LC language is different from contract language
- LC language more important than contract
- LC insurance is available
- Always push for bank transfer payments

Execution

- Communicate export license provisos to everyone involved
- Train all participants in ITAR limitations
- Manage leverage as well as program
- Manage requirement creep – feature wants
- Remember – you are always negotiating
- Watch for good cop – bad cop

Delivery

- A good freight forwarder handles shipping details and understands the ITAR
- Shipping – direct from here to there is best
- Factor in shipping time
- Air freight is not that expensive as some believe
- Shipping goods by sea takes significant time
- Never ever turn over keys until final payment received – NEVER! This is vital in some countries.

Common Points to Remember....

- ITAR controlled does not mean ITAR prevented
- Base pricing on DCS related activities
- Always negotiating – always!
- Be flexible in all aspects of international business
- Be careful not to force DCS into U.S. Gov approach
- Culture, Culture, Culture, Culture.....
- Manager leverage as well as program
- Never give up keys until payments are made.
- **Patience is not just a virtue but a requirement....**

Questions?
Thank You!

