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Defense Trade Advisory Group
WORKING GROUP 5
Defense Trade Between
“Five Eyes” Countries

Plenary Session
October 25, 2018



Agenda

- Team
- Tasking
- Parameters/Approach
- Opportunities
- Current issues
- Proposals/Benefits
- Questions



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Tasking

(US, UK, Australia, Canada, New Zealand) is considered crucial to US national security interests and has been highlighted in various national security strategies published by the Department of Defense and the US intelligence community. In an effort to address timely and effective licensing that may apply to transfers to these countries, please identify current issues that exist with licensing [intelligence related products and technology or services] to these countries and options to address the situation. Such approaches may include concepts contained in the UK and Australia Defense Trade Cooperation Treaties, or other options authorized under the Arms Export Control Act. Would such measures enhance defense trade and lessen burdens to our closest allies? Please address potential benefits and challenges to this approach.



Simplified Export Controls for Security Partners

- Long-standing security ties with the United Kingdom, Canada, Australia and New Zealand for intelligence sharing, military operations, diplomatic initiatives and technology transfer
- Various attempts to revise US export controls for certain countries under certain conditions
 - UK and Australia Defense Cooperation Treaties
 - National Technology and Industrial Base
 - Canada Exemption to ITAR
 - NATO Exemption
 - STA Exception
- All acknowledge that close security partners can receive certain sensitive US technologies without license, or with licenses that are almost always granted.
- Each proposal attempts, with varying degrees of success, to reduce costs, delays and regulatory uncertainty in the US export licensing process.



Opportunities

- There are no export licensing issues specific to intelligence related products and technology or services that are unique to the 5 Eyes countries
- There are further export licensing efficiencies available to the 5 Eyes countries
- Proposals largely acknowledge decades of shared experience in numerous national security and industrial security regimes
- Should evolve from trust between US and partners to “Circle of Trust” among 5 Eyes partners
- Aligns with multilateral “Coalitions of Caution” approach described by Assistant Secretary Ford.
 - Cannot ask countries to help protect advanced technology while acting like we do not trust them with advanced technology
- A recognized 5 Eyes community offers immediate licensing and trade efficiencies at little risk
- A 5 Eyes community can be a test bed for other opportunities to improve licensing



Considerations/ Parameters

- Include all defense trade with 5 Eyes countries in analysis. Do not limit to intelligence sharing categories in the USML (VIII, XI, XIII)
- Comprehensive approach that expands beyond USML to include COTS technology and commercial applications (make companion changes in EAR)
- Learn from UK and Australia Treaties, maintain definitions for transfer and retransfer, do not attempt to renegotiate them
- Modify existing regulations and general trade practices to improve/expand 5 Eyes trade (i.e. exemptions, “authorized community”)
- Develop list of restricted technologies that is less restrictive than current Excluded Technologies List (“ETL”). Distinguish between sensitive technology and technology which should be unrestricted
- Have not reviewed any proposals with 4 Eyes



Current Issues

- **Canadian Exemption:** While the Australia and U.K. Defense Trade Treaties allow retransfers between members of the respective Communities (126.7(h)), separate approval is required to retransfer between Canadian CGP entities working on the same U.S./Canadian government programs
- **Transfers to Dual National or Third Country National Employees (“DTCN”):** Absent NATO+ nationality or a “security clearance” from host country government, employees must be screened for substantive contacts with 126.1 countries; this practice is often in conflict with local laws; obtaining licenses for DTCN employees is impractical
- **U.S. Academic Collaborations with 5-Eyes countries:** Current license requirements for temporary export of defense articles to or for use by 5 Eyes research partners and for the export of technical data to graduate students from 5 Eyes countries result in unnecessary repeat licenses and impede academic collaborations



Current Issues

- **Licensing requirements:** Exports to important allies subject to same lengthy license process as other foreign parties; US shares a huge amount of sensitive information and technology with pre-approved entities in the “4-Eyes ”often requiring the burden of individual export authorizations
- **Licensing for 5 Eyes Ministry of Defence (“MOD”) programs:** Requirement to identify all potential consignees on major programs and obtain specific retransfer authorizations limits MOD’s ability to fully engage contractor base , creates inefficiencies and increases schedules.
- **USG Resources:** USG is losing experienced personnel to adjudicate complicated and sensitive export licenses
- **US Persons (“USP”) employment:** Requirement for individual registration and licensing of USPs employed by non-US entities overseas act as significant deterrent to USP employment internationally
- **Licensing for 5 Eyes Intelligence Programs:** Existing authorization process for classified intelligence programs ineffective



Proposals and Benefits

Proposals	Benefits
<p>Canadian Exemption Retransfers Expand Canadian exemption to allow retransfer between Canadian Controlled Goods Program (“CGP”) entities.</p>	<p>Retransfers between CGP entities and create consistency in Canada for retransfers.</p>
<p>Transfers to DTCNs Adopt consistent agreements with 5 Eyes that vetting by the employer to some agreed minimum standard qualifies as “screening for substantive contacts” under 126.18(c)(2)</p>	<p>Remove burdensome process and eliminate possible conflict between US requirement and local law in the specific 5 Eyes country</p>
<p>U.S. Academic Collaborations with 5 Eyes countries Expand current 123.16(b)(5) to include temporary exports of defense articles for use on “fundamental research” projects outside the U.S. and, where the export is to a 5-Eyes country or partner, without the previous license requirement.</p> <p>Expand current 125.4(b)(10) to include international students from 5-Eyes countries who are enrolled as full-time students in graduate programs at U.S. institutions of higher learning.</p>	<p>Reduce need for unnecessary repeat licenses for defense articles which are temporarily exported multiple times for use on similar research projects</p> <p>Reduce need for multiple license for graduate students who require access to technical data for basic operation and maintenance of defense articles</p>



Proposals and Benefits

Proposals	Benefits
<p>Facilitating licensing requirements to authorized community Establish an “authorized community” within and among 5 Eyes whereby each country is responsible for managing the vetting and approval process for parties selected within their respective country i.e. selected models include Canadian Control Goods Program, US C-TPAT program, Treaty Approved Communities</p> <p>Alternatives: Expedited review - 5 Eyes license applications receive expedited processing by establishing parameters for no staffing i.e. C-TPAT type preparation in 5 eyes; expand exemption for certain types of support activities ; call it dynamic licensing</p> <p>Export exemption – Create an Exemption (similar to UK Open General Export License) for exports to 5 Eyes “authorized community” with a defined set of less sensitive technologies non SME (similar to STA) (reporting requirement for SME)</p> <p>Retransfer exemption – Create exemption for reexport and retransfer among 5 Eyes “authorized community” for non SME (reporting requirement for SME)</p>	<p>Advances collaboration within 5 Eyes and provides review and pre-approval of entities involved in trade</p> <p>Facilitates 4 Eyes acquisition and maintenance of US equipment by reducing repetitive, license -by-license review of key 4 Eyes MOD industry partners</p> <p>Timely approvals, critical in crisis situations and coalition efforts to support “5 Eyes” national security objectives</p> <p>Facilitates quicker response for defined technologies; eliminates license burden on USG for less sensitive exports and more focus on complex transactions</p> <p>Advances cooperation among 5 Eyes and reduces licensing burden for all</p>



Proposals and Benefits

Proposals	Benefits
<p>Licensing for 5 Eye MOD programs Establish process for MODs to obtain blanket General Correspondence (“GC”) approvals to cover retransfers to and within their contractor base on their programs; could provide blanket coverage for MOD or be program specific, could apply to MOD vetted/selected contractors or “authorized community” entities that are updated regularly to DDTC</p>	<p>Allows MOD programs to operate more efficiently</p>
<p>USP Employment Allow bulk registration and licensing under employer-managed process [GC would need to allow adding USPs as hired]</p> <p>Finalize and issue existing USP employment proposals to not require registration, licensing for USPs unless they are transferring technical data from the US or performing defense services</p> <p>Also clarify that technical data must have originated in US, and define “required for” to limit spread of ITAR to systems that merely interface with ITAR equipment.</p>	<p>Eliminates individual registration and licensing that deters USP technical employment in 4 Eyes countries defense industries</p> <p>Reduces significant risk of unintended introduction of ITAR-controlled technology into 4 Eyes systems, thereby encouraging technical collaboration within 5 Eyes industry programs</p>



Proposals and Benefits

Proposals	Benefits
For Classified Intelligence Programs – Expand 125.4(b)(1) exemption in order to allow exports per written request from intelligence agency	Doesn't burden DDTC with licensing that current system is unable to address
Expand Canadian Exemption to include UK, NZ and Australia	Simple straight forward fix that that is already proven Statutory foundation established with NTIB and Treaties



Thank You