



DENTONS

Guide to International Traffic in Arms Regulations* (ITAR) in New Zealand

* This guide is based on the **latest version** of ITAR as of 24 February 2025. ITAR is part of Code of Federal Regulations Title 22, Chapter 1, subchapter M (120 – 130).

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1. Scope and purpose of this guide

- 1.1** This guide is intended to provide a high-level overview of the [International Traffic in Arms Regulations](#) (ITAR) and its potential implications for New Zealand businesses. It is intended for general informational purposes only and does not constitute legal advice.
- 1.2** ITAR is a complex and evolving regulatory framework, and compliance obligations will vary depending on the specific nature of a business's activities, transactions, and interactions with U.S. entities. Businesses should seek qualified legal advice from a U.S. export controls specialist to ensure they fully understand and comply with ITAR requirements.
- 1.3** Export controls do not operate in isolation; they are part of a global web of international treaties, agreements, and national regulations. Multi-jurisdictional issues are likely to arise, as one country's export control requirements may trigger additional licensing obligations for reexports or further restrictions under another country's laws. For example, technical data exported from the U.S. under an ITAR licence may require an import licence from New Zealand before it can be re-exported from one foreign jurisdiction to another.
- 1.4** Similarly, New Zealand businesses who are engaged with ITAR controlled items may be required to comply with New Zealand's export control regime in addition to U.S. requirements.
- 1.5** Given these complexities, businesses should conduct thorough due diligence and seek expert legal and compliance advice before engaging in transactions involving controlled items, technical data, or defence-related services.



2. Overview of U.S. Export Controls for New Zealand Business

- 2.1** The U.S. maintains a comprehensive export control system to regulate the transfer of sensitive technologies, goods, and services. The primary objective is to protect national security and support foreign policy interests while facilitating legitimate trade. This system operates through two key regulatory frameworks:
- a. ITAR; and
 - b. [Export Administration Regulations \(EAR\)](#),
- each administered by different government agencies.
- 2.2** ITAR is administered by the Department of State's [Directorate of Defense Trade Controls](#) (DDTC) under the Arms Export Control Act,¹ and governs the export and temporary import of defence articles, services and technical data. These items are listed on the [United States Munitions List](#) (USML).
- 2.3** The [Bureau of Industry and Security](#) within the [Department of Commerce](#) administers EAR, which regulates dual-use items—goods and technologies that have both civilian and military applications. These items are listed in the [Commerce Control List](#) (CCL) and categorised under [Export Control Classification Numbers](#) (ECCNs) based on technical specifications and national security concerns. Unlike ITAR, EAR provides a more flexible licensing framework, where many items can be exported without a licence under specific licence exceptions. However, licences are required if the destination, end-user, or end-use presents a national security risk. If an item does not appear on the CCL, it is designated EAR99 (a catch-all control), meaning it is generally unrestricted unless exported to embargoed countries or prohibited entities.
- 2.4** It is essential for New Zealand-based businesses operating in materials science, defence, aerospace, advanced manufacturing, or technology to understand U.S. export controls when engaging in transactions with U.S. entities or dealing with defence-related articles, services, and technical data.

¹ [22 U.S.C. 2778](#)

3. Overview of ITAR

- 3.1** ITAR requires prior authorisation, typically through an export licence, for any export, re-export, or transfer of defence articles, technical data, defence services, ‘specially designed’ and dual-use items. This includes ‘deemed exports’, which occur when controlled technical information is disclosed to foreign nationals within the U.S., even if no physical transfer takes place.
- 3.2** ITAR’s stringent requirements apply not only to those who manufacture, export, or broker defence-related items but also to anyone that handles, stores, or accesses ITAR-controlled technical data, regardless of whether a physical export occurs.
- 3.3** Key components of ITAR compliance include:
- a. Export Control²** – ITAR restricts the transfer of covered items and services to non-U.S. persons unless authorised by a licence or exemption.
 - b. Registration and Licensing –** Companies involved in manufacturing, exporting, or brokering defence articles and services must register with the DDTC and obtain export licences where required.
 - c. End-Use Monitoring (EUM)** – ITAR requires monitoring of the end-use and end-users of exported defence items to prevent unauthorised diversion. The Department of State carries out EUM through several programs, such as Blue Lantern (for direct commercial sales) and Golden Sentry for foreign military sales.
- 3.4** Non-compliance can result in heavy fines (e.g. up to \$1.2 million per violation or double the value of a transaction), restrictions on conducting business with U.S. entities, administrative sanctions, loss of export privileges, as well as reputational damage.³ Wilful misconduct breaching ITAR can also lead to criminal liability, including imprisonment for up to ten years, even for non-U.S. individuals or entities.⁴

² 22 CFR 120.13 and 120.14

³ 22 CFR 120.19

⁴ U.S. Immigration and Customs Enforcement “Former employee of New Jersey defence contractor sentenced for exporting sensitive military technology to China” – A Chinese national was sentenced to 70 months in prison, three years of supervised release, and ordered to pay a \$15,000 fine for exporting sensitive military technology to China in breach of ITAR.

4. Who must comply with ITAR?

- 4.1** Every entity and individual that engages with the U.S. in the business of manufacturing, supplying, exporting or temporarily importing specially used technologies, or items listed on the USML (i.e., defence articles, services or technical data) or receives such items from U.S. companies needs to comply with ITAR.

U.S. Persons

- 4.2** ITAR applies to every U.S. person, which includes:
- a.** companies registered in the U.S. that manufacture, export, or broker defence articles or services;
 - b.** U.S. citizens and permanent residents working with ITAR-controlled defence articles or technical data, even if located overseas; or
 - c.** government agencies and military contractors handling defence articles or providing defence services.⁵

Foreign Persons

- 4.3** ITAR also applies to 'foreign persons'. A 'foreign person' is any individual who is not a lawful permanent resident of the U.S. or any entity that is not organised under the laws of the U.S.⁶

This includes foreign entities outside the U.S. that are owned or controlled by U.S. persons. In particular, foreign persons (e.g., New Zealand companies) will be subject to ITAR if they:

- a.** receive defence articles, defence services, or technical data from a U.S. company or person (see section 5.1);
- b.** manufacture or integrate components that include or use defence articles or technical data, provided the resulting item meets the criteria of a defence article under the USML or remains subject to ITAR (it does not matter whether the business is engaged in export or what the intended use of the defence article or service is)⁷;
- c.** broker transactions involving defence articles or defence services, including financing, transportation, or arranging exports⁸; or
- d.** re-export or re-transfer ITAR-controlled defence articles or technical data to another foreign entity or location without U.S. government authorisation.

Example: A New Zealand company using ITAR-controlled technical data to develop a military communication system must register with DDTC, even if the final product is not exported to the U.S.

⁵ 22 CFR 120.62

⁶ 22 CFR 120.63

⁷ 22 CFR 122.1

⁸ 22 CFR 120.13

5. What does ITAR cover

5.1 ITAR controls operate under two key frameworks: positive controls and catch-all controls. Positive controls apply to specific defence articles, technical data, and defence services explicitly listed on the USML, meaning they are subject to ITAR regardless of their end use or destination.

5.2 In contrast, catch-all controls⁹ extend ITAR restrictions to items not explicitly listed but still requiring authorisation if the DDTC determines they are being exported, re-exported, or transferred for a military end use or to a military end user, extending ITAR's application to items that are intended for a restricted use or recipient.

5.3 Positive controls

USML controlled items

- a.** The following categories of items are positively controlled under ITAR:

Defence Articles¹⁰

- firearms and related articles;
- guns and armament;
- ammunition/ordnance;
- launch vehicles, guided missiles, ballistic missiles, rockets, bombs, and mines;
- explosives and energetic materials, propellants, incendiary agents, and their constituents;
- surface vessels of war and special naval equipment;
- ground vehicles;
- aircraft and related articles;
- military training equipment and training;

⁹ 22 CFR 120.11

¹⁰ 22 CFR 121.0



Defence Articles¹⁰

- personal protective equipment;
- military electronics;
- fire control, laser, imaging, and guidance equipment;
- materials and miscellaneous articles;
- toxicological agents, including chemical agents, biological agents, and associated equipment;
- spacecraft and related articles;
- nuclear weapons-related articles;
- classified articles, technical data, and defence services not otherwise enumerated;
- directed energy weapons;
- gas turbine engines and associated equipment;
- submersible vessels and related articles; and
- articles, technical data, and defence services not otherwise enumerated.

Defence Services¹¹

Suppliers of defence services will be subject to ITAR if they provide:

- foreign persons with assistance or training on anything related to defence articles (including their use, development, design, engineering, destruction, processing, maintenance, or repair);
- foreign persons any technical data that is regulated by ITAR;
- military training of foreign units and forces, irregular and regular, including formal or informal instruction of foreign persons, or by technical, educational or information publications and media of all kinds, training aid, orientation, training exercise, and military exercise.

Technical Data¹²

- information other than software for the design, development, manufacturing of military equipment, including blueprints, drawings, photographs, instructions, plans or documentation;
- classified information about the items and services listed above; and
- software directly related to defence products.

¹¹ 22 CFR 120.32

¹² 22 CFR 120.32





5.4 Examples of positively controlled activities include:

- manufacturing defence articles listed on the USML;¹³
- exporting or temporarily importing defence articles or technical data;¹⁴
- providing defence services to foreign persons, including training and consulting;¹⁵
- transferring technical data to foreign persons (even within the U.S.), known as a deemed export;¹⁶
- re-exporting or retransferring defence articles or technical data outside the U.S.; and¹⁷
- brokering defence transactions, including financing or arranging sales of defence articles.¹⁸

5.5 Catch-all controls

‘Specially designed’ technologies

- a. ITAR also regulates items that are ‘specially designed’ for military use. This will include any dual-use technology, or items with civil and military applications—for example, navigation algorithms specially designed for military jets that may also be adapted for civilian drone applications.

- b. The specially designed determination under ITAR operates within a ‘catch and release’ construct:

- i. **Catch Criteria:** An item is initially considered ‘specially designed’ if it:
 - A. has properties that are peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions outlined in the relevant USML category; or
 - B. is a part, component, accessory, attachment, or software for use in or with a controlled commodity or defence article.¹⁹
- ii. **Release Criteria:** An item may be released from the ‘specially designed’ designation if it is:
 - A. subject to the EAR following a [commodity jurisdiction determination](#),
 - B. standard hardware like fasteners (e.g., screws, bolts, nuts), washers, spacers, insulators, grommets, bushings, springs, wires, or solder;
 - C. bears identical function, performance capabilities, and form and fit as items in production not listed on the USML;

¹³ [22 CFR 120.31](#)

¹⁴ [22 CFR 120.50](#), [120.53](#)

¹⁵ [22 CFR 120.32](#)

¹⁶ [22 CFR 120.17](#)

¹⁷ [22 CFR 120.51](#), [120.52](#)

¹⁸ [22 CFR 129.2](#)

¹⁹ [22 CFR 120.41](#)

- D. developed with knowledge that it would be used with both USML-designated defence articles and non-USML items; or
- E. developed as general-purpose commodities or software without specific application to a particular item or type.²⁰

Further, items readily available in the commercial market and primarily designed for civilian applications, or lacking dual-use characteristics or features (i.e., it is inherently civilian) are unlikely to be considered 'specially designed'.²¹

'Space-qualified' items

- c. The term "space-qualified" appears throughout the USML to refine the scope of certain control provisions, similar to how 'specially designed' is used.
- d. An item is considered space-qualified if it is designed, manufactured, or qualified through successful testing for operation at altitudes greater than 100 km above the surface of the Earth.²²
- e. If an item is classified as space-qualified based on its design or manufacturing, the 'catch and release' framework that applies to specially designed items also applies.
- f. However, the classification of an item as space-qualified solely through testing does not extend to other units within the same production run or model series unless they are individually tested. For example, successfully testing a single chip intended for terrestrial use in a space environment does not make the entire product line space-qualified or subject to enhanced export controls.

5.6 Self-assessment

- a. ITAR requires a self-assessment to determine whether an item is classified under the USML. This obligation typically applies to manufacturers, exporters, brokers, and others dealing with items subject to ITAR. As such, ascertaining whether an item is or is not ITAR controlled will require careful consideration of the regulatory framework.
- b. Before engaging in any activity involving a potentially ITAR controlled item, it is important to have a clear understanding of the relevant product, service, or technology, as well as any business activities that may involve non-U.S. nationals or operations. A thorough assessment should detail:
 - i. the item being exported;
 - ii. the interim and end destination of the item;
 - iii. the interim and end recipient of the item;
 - iv. why the item is needed and how it will be used by the interim and end recipients.
- c. The following strategies, based on official guidance, provide a practical framework for ITAR self-assessment:²³

USML

- Checking the USML for a specific listing of the item is an essential first step. If an item is explicitly identified within the list, it is subject to ITAR.
- If the item does not appear on the USML, further assessment is needed.

²⁰ 22 CFR 120.41

²¹ How to Determine if a Commodity is Not "Specially Designed"

²² 22 CFR 121.1

²³ Satellite Export Control Regulations – Office of Space Commerce

EAR

- If an item is not on the USML, it may instead fall under the CCL within the EAR.
- A review of the CCL can help determine whether the item is controlled under EAR rather than ITAR.

Other lists

- If an item is not covered by the USML or the CCL, it may be classified under other ECCNs.
- If no classification applies, then the item may be classified as EAR99, meaning it is not specifically controlled but may still require a licence depending on the destination, end-user, or end-use.

Use available classification tools:

- BIS provides [online interactive tools](#) that can assist in evaluating whether an item falls under ITAR or EAR.

'Specially Designed' Catch-and-Release Criteria

- The DDTC provides an online [decision-making tool](#) to assist with ITAR determination.

U.S. Content in Foreign-Made Items (De Minimis Rule)

- For items manufactured outside the U.S. that contain U.S. -origin technology, it is important to evaluate whether ITAR applies based on the percentage of controlled U.S. content.
- Some foreign items incorporating minimal U.S. content may fall outside ITAR jurisdiction under the de minimis rule.

Special Considerations for Certain Technologies

Some categories of technology require additional scrutiny due to their sensitivity, including:

- space-qualified items (which may be controlled under USML Category XV);
- military avionics, encryption, and navigation systems, which may be subject to both ITAR and EAR regulations; and
- dual-use goods, which may require further analysis to determine their appropriate classification.

Regulatory Guidance

- If classification remains uncertain, submitting a Commodity Jurisdiction request to the DDTC can provide an official ruling.
- Consulting with legal or export compliance professionals can also help clarify classification and compliance requirements.

Methodical approach

- Taking a methodical approach to self-assessment helps ensure that items are classified correctly and that export activities comply with applicable regulations. If questions arise, engaging with regulatory authorities or seeking expert guidance can help mitigate risks and support compliance efforts.



6. Registration Requirements



6.1 After a self-assessment, if it is concluded that the relevant item or service that is intended for export, re-export, or deemed export is subject to ITAR, registration with the DDTC is required unless already completed. New and renewal registrations are valid for 12 months from the date of issuance. Registration is a prerequisite for export licensing approval and does not confer export privileges.

6.2 The following businesses intending to export or re-export ITAR controlled items must register with the DDTC, even if it involves only one occasion of ITAR-controlled activity:²⁴

- a. manufacturers, even if they do not engage in exporting;²⁵
- b. exporters and temporary importers – any U.S. entity handling USML defence articles;²⁶
- c. brokers – US companies facilitating defence-related transactions, even if they do not manufacture or export; and²⁷
- d. entities engaging in a single transaction – ITAR registration applies even for one-off activities.²⁸

6.3 Anyone who needs to access registration, licensing, and other DDTC online applications, must enrol with the State Department's Defense Export Control and Compliance System (**DECCS**). If a business already has an ITAR registration with DDTC,

the registration code will be requested during enrolment.

6.4 A three-tier registration fee system applies (as of March 2025):

- a. **Tier 1 (\$3,000):** Applies to first-time registrants, stand-alone brokers renewing registration, entities without approved licenses in the past 12 months, and qualifying non-profits (with proof). A one-year discount reduces the fee to \$2,500 for eligible registrants from January 9, 2025;
- b. **Tier 2 (\$4,000):** For registrants with 5 or fewer approved licenses or authorisations in the past 12 months; and
- c. **Tier 3 (Variable Fee):** For registrants with more than 5 approved licenses in the past 12 months. The fee is \$4,000 + (\$1,100 per approval over 5), with a cap at 3% of total approved application value. A discount may apply for high-volume, low-value applications.

6.5 The review process for new and renewal registrations may take up to 30 days. Renewal applications may be submitted 60 to 30 days in advance of the renewal expiration.

²⁴ This registration is a prerequisite for obtaining export licences or other ITAR approvals.

²⁵ [22 CFR 122.1\(a\)](#)

²⁶ [22 CFR 122.1](#)

²⁷ [22 CFR 122.1](#)

²⁸ [22 CFR 122.1](#)

7. Licence and Approval Requirements



Defence Articles

7.1 Once registration with DDTC is complete, entities subject to ITAR can apply for a licence or authorisation from the DDTC for the ITAR-controlled item or activity. The four types of [ITAR licence forms](#) for defence articles, set out below, depend on the nature of the transaction and classification of ITAR-controlled items.²⁹

License	Purpose
DSP-5 Permanent Export Licence (Unclassified)	<p>Licence for exporting unclassified items that will not be returning to the U.S.</p> <p>May cover unclassified defence articles (hardware and technical data) listed on the USML, as well as technical data for marketing activities, software sales, and offshore procurement of hardware items.</p>
DSP-5 Permanent Export Licence (Unclassified)	<p>Licence for temporarily importing unclassified ITAR-controlled items into the U.S.</p> <p>May cover any items on the USML, including U.S. goods sold to foreign persons that are being returned to the U.S. for upgrades, enhancements, or improvements. This licence will also apply to foreign-manufactured defence articles temporarily imported for trade shows or demonstrations, as well as any USML-listed items entering the U.S. for processing or transiting.</p>

29 [22 CFR 123.1](#)

License	Purpose
DSP-73 Temporary Export Licence (Unclassified)	<p>Licence for temporarily exporting unclassified ITAR-controlled items.</p> <p>May cover any activities such demonstrations, material processing, form/fit evaluation, repairs, and public trade show displays of defence articles. The licence is typically limited to one geographic region. If marketing activities go beyond public domain information, a DSP-5 license is also required for marketing or demonstration purposes.</p>
DSP-85 Classified	Licence for permanently or temporarily exporting or importing any classified ITAR-controlled items.

7.2 Typically, the DDTC will review and determine licence requests within 60 days of receiving them, unless national security exceptions apply.³⁰ Certain circumstances, based on the regulatory threshold value of a sales contract and SME designation of items being sold, also require the DDTC to notify Congress prior to approving a licence application.³¹

7.3 If the DDTC rejects a licence request, the applicant make a written submission for the DDTC to reconsider the request. The request must be submitted within 30 days of the decision. As part of this request, the applicant is also given an opportunity to present additional information for consideration by the DDTC.³²

7.4 Each licence is valid for four years or until the authorised value or quantity has been shipped.³³ If a licence expires before all items have been exported, a new application must be submitted referencing the expired licence to cover the remaining balance.³⁴

7.5 New Zealand businesses may need to consider various issues in relation to licensing and approval requirements, such as:

- a. eligibility to receive the ITAR-controlled items by ensuring that the business meets any conditions or restrictions associated with the license;
- b. requirements to provide and execute any necessary documentation for its U.S. partner to obtain a licence or other approval; and
- c. re-export and re-transferring restrictions to avoid unauthorised dissemination of controlled items or technologies.

³⁰ [Introduction to U.S. Export Controls for the Commercial Space Industry](#)

³¹ [22 CFR 123.15](#): For instance, certification from Congress is required for transactions involving the export of major defence equipment sold under a contract amounting to \$25 million or more, or for defence articles and defence services sold under a contract amounting to \$100 million or more, to New Zealand.

³² [Introduction to U.S. Export Controls for the Commercial Space Industry](#)

³³ [22 CFR 123.21](#)

³⁴ [22 CFR 123.21](#)

Providing Supporting Documentation

- 7.6** When engaging in transactions that involve ITAR-controlled items, New Zealand businesses may need to provide documentation as part of a U.S. exporter's licence application to the DDTC. Permanent export licence applications may require New Zealand businesses to provide supporting purchase documentation, such as purchase orders, contracts, letters of intent, and other supporting technical data, brochures documentation.³⁵
- 7.7** All ITAR licence applications, re-transfer or re-export requests require a signed letter from an empowered official stating;³⁶
- a.** whether any party to the export (including the entity receiving defence articles) has been convicted of violating any U.S. criminal statutes or is ineligible to contract with or to receive a license, from the U.S. government;
 - b.** whether the person signing the application is a foreign person making a request for prior approval of a proposed reexport, retransfer, or change in end-use or end-user of a previously exported defence article.^{37 38}
- 7.8** An empowered official is a dedicated compliance officer, authorised by the business to sign and process licence applications on behalf of that business, and if necessary, refuse to sign any licence application without fear of retribution.³⁹

³⁵ [22 CFR 123.1](#)

³⁶ [22 CFR 126.1](#)

³⁷ [22 CFR 123.9](#)

³⁸ [22 CFR 126.13](#)

³⁹ [Introduction to U.S. Export Controls for the Commercial Space Industry](#)



8. Approval Requirements for Defence Services

- 8.1

While defence articles require a DDTC licence for exporting or importing, defence services require a DDTC-approved ‘agreement’. For instance, if a New Zealand company receives ITAR-controlled defence services or training, the U.S. provider must secure DDTC approval before supplying them.⁴⁰
- 8.2

The main types of agreements and approvals depend on the nature of the transaction, and are set out below:⁴¹

License	Purpose
Technical Assistance Agreement (TAA)	<p>Agreement between a U.S. person or entity and a foreign person or entity that governs the transfer of technical data and defence services.</p> <p>TAA’s cover activities such as training, design assistance, and technical support related to defence articles and services. TAA’s are essential for ensuring that controlled technical data is not shared with unauthorised parties and are used only for authorised purposes.⁴²</p>
Manufacturing Licence Agreement (MLA)	<p>Agreement between a U.S. company and a foreign entity that authorises the foreign entity to manufacture defence articles using technical data provided by the U.S. company. MLAs are crucial for controlling the production of defence-related items abroad, while maintaining oversight and adherence to ITAR.⁴³</p>

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[22 CFR 120.14](#)

41

[22 CFR Part 124](#)

42

[Navigating the ITAR: Understanding the Different Kinds of Agreements](#)

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[Navigating the ITAR: Understanding the Different Kinds of Agreements](#)

License	Purpose
Warehouse and Distribution Agreement (WDA)	<p>Agreement related to the storage, distribution, procurement, and resale of defence articles by foreign entities.</p> <p>WDAs specify the responsibilities of parties involved in storing and distributing ITAR-controlled items, with strict adherence to ITAR requirements.⁴⁴</p>

8.3 Once a defence services agreement is approved by the DDTC, the defence services covered in the agreement can generally be provided without additional licencing, provided that defence services unless the agreement involves the export of technical data; or the recipient intends to re-export or retransfer the defence service.

Non-transfer and use certificate

8.4 For any MLA or TAA which relates to significant military equipment (SME) or classified defence articles, including classified technical data, a non-transfer and use certificate must be submitted to the DDTC.⁴⁵

8.5 The non-transfer and use certificate must be signed by both the applicant (i.e., a U.S. party) and the foreign entity (e.g., New Zealand company) prior to submission to the DDTC.⁴⁶

8.6 For agreements that do not involve SME or classified defence articles, the DDTC may still require a non-transfer and use certificate be provided in conjunction with an agreement.⁴⁷

Exports of technical data

8.7 For New Zealand businesses involved in ITAR-governed agreements, certain exports of technical data may be permitted without

a license, provided they align with an approved MLA or TAA.

8.8 A licence is not required for the export of unclassified technical data if:

- the export is in accordance with an approved MLA or TAA;
- the technical data does not exceed the scope or limitations of the agreement; and
- where the technical data exceeds the scope of the agreement, the parties seek DDTC approval before exporting.

8.9 The export of classified technical data in accordance with an approved MLA or TAA does not require additional DDTC approval, provided that:

- the transmission of classified technical data is explicitly covered under the agreement;
- the U.S. party certifies to the DDTC that the classified technical data does not exceed the technical or product limitations in the agreement; and
- the U.S. party complies with the requirements of the [Department of Defense National Industrial Security Program Operating Manual](#).⁴⁸

⁴⁴ [Navigating the ITAR: Understanding the Different Kinds of Agreements](#)

⁴⁵ [22 CFR 123.10](#)

⁴⁶ [22 CFR 124.10](#)

⁴⁷ [22 CFR 124.10](#)

⁴⁸ The Department of Defence National Industrial Security Program Operating Manual concerns the transmission of classified information (unless such requirements directly conflicts with guidance provided by the DDTC, in which case the latter guidance must be followed) and any other requirements of U.S. departments or agencies.

9. Re-exports and Re-transfers

- 9.1** Under ITAR, New Zealand businesses cannot re-transfer or re-export defence articles of U.S. origin without approval from the DDTC, unless an exemption applies. For instance, if a New Zealand business wishes to transfer USML-controlled items onward to another foreign person (e.g., a subcontractor), both parties must be authorised under the export licence.
- 9.2** Access to USML-items by dual-national and third country national employees of a foreign organisation is also considered a re-transfer to the employees' other countries of nationality and must be authorised by the DDTC prior to them gaining access.
- 9.3** Key requirements for re-exports and re-transfers include that:
- a.** the designated country of ultimate destination must not change, and
 - i.** the end-use and end-user of the ultimate destination must match the details on the original export licence;⁴⁹ and
 - ii.** DDTC approval must be obtained before reselling, transferring, reexporting, transshipping or disposing of defence articles to any unauthorised parties or destinations;⁵⁰ and
 - b.** the U.S. person or foreign person requesting approval from the DDTC for reexport, retransfer, or a change in the end-use, end-user or ultimate destination must provide the following documentation:⁵¹
 - i.** licence number, authorisation, or exemption under which the defence article or defence service was originally exported from the U.S.;
 - ii.** a precise description, quantity, and value of the defence article or defence service;
 - iii.** a description and identification of the new end-user, end-use, and destination; and
 - iv.** for items initially exported under ITAR exemptions for the U.K. or Australia,⁵² a written request must be submitted to the DDTC by either the original U.S. exporter (with a request from an Australian or U.K. Community member) or directly by an Australian or U.K. Community member, including required certifications.

⁴⁹ 22 CFR 123.9

⁵⁰ 22 CFR 123.9

⁵¹ 22 CFR 123.9(c)

⁵² 22 CFR 126.15 and 22 CFR 126.16

- 9.4** However, re-exports or re-transfers of U.S. origin components incorporated into a foreign defence article do not require prior DDTC approval when transferred to:⁵³
- a.** NATO countries, NATO allies, a government of a NATO country; or
 - b.** governments of Australia, Israel, Japan, New Zealand or South Korea; and
 - c.** the U.S. origin components must be previously authorised for export by a licence, authorisation or other exemption;⁵⁴
 - d.** the U.S. origin components are not classified as SME;
 - e.** the items do not fall under the Missile Technology Control Regime items (MTCR); and
 - f.** the value of the contract does not exceed US\$25 million for major defence equipment or US\$100 million for defence articles or defence services.

Import Certificates and Delivery Verification Procedure

- 9.5** The import certificates and delivery verification procedure ensures that defence articles imported into participating countries are not diverted, transhipped or reexported without approval under the importing country's export control regulations.⁵⁵

- 9.6** For certain exports of defence articles to non-government entities, the DDTC may require US exporters to submit both⁵⁶:
- a.** an export licence application; and
 - b.** an original import certificate issued by the government of the importing country.
- 9.7** The import certificate must:⁵⁷
- a.** be authenticated by the government of the importing country (e. g., New Zealand government);
 - b.** verify that the foreign importer complies with local import regulations; and
 - c.** confirm the importer will not divert, tranship or reexport the material without the government's.
- 9.8** After the defence article is delivered, the DDTC may require US exporters to provide delivery verification from the New Zealand government. This documentation must confirm that the delivery occurred in accordance with the approved export licence terms.⁵⁸

53 [22 CFR 123.9\(e\)](#)

54 [22 CFR 123.9\(e\)\(1\)](#)

55 [22 CFR 123.14](#)

56 [22 CFR 123.14](#)

57 [22 CFR 123.14](#)

58 [22 CFR 123.14](#)

10. Special Licencing and Exemptions

Special Licencing for Commercial Communications, Satellite Components, and Technical Data to U.S. Allies

- 10.1** New Zealand, as a major non-NATO ally of the U.S., benefits from a special licencing regime for the export of commercial communication satellite components, systems and technical data under ITAR. This framework allows registered U.S. exports to apply for multiple permanent or temporary export licences without needing to meet standard documentary requirements.
- 10.2** Requirements for special licencing include that exports or re-exports must be exclusively to NATO countries or designated U.S. allies (which includes New Zealand⁵⁹) and must be linked to one or more satellite programs listed publicly by the DDTC.⁶⁰
- 10.3** Exports cannot include:⁶¹
- a.** MDE exceeding \$14 million;
 - b.** defence articles or services exceeding \$50 million (as items exceeding these thresholds require separate licenses for Congressional notification); and
 - c.** articles must not include:
 - i.** detailed design, development, manufacturing or production data; or
 - ii.** overseas manufacture of significant military equipment.

Exemptions for Intra-company, intra-organisation, and Intra-governmental transfers to employees who are dual nationals or third-country nationals.

- 10.4** No approval is needed from the DDTC for the transfer of unclassified defence articles to or within a foreign business entity, foreign governmental entity or international organisation that is an authorised end-user or consignee (including approved sub-licensees).
- 10.5** This includes the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user, when those individuals are:⁶²
- a.** regular employees of the foreign business entity, foreign governmental entity, or international organisation;
 - b.** nationals exclusively to countries that are members of NATO, the European Union, Australia, Japan, New Zealand, or Switzerland;
 - c.** within the physical territories of countries that are members of NATO, the European Union, Australia, Japan, New Zealand, Switzerland or the U.S. during the re-export;

⁵⁹ 22 CFR 123.27(a)(1)

⁶⁰ 22 CFR 123.27(a)(2)

⁶¹ 22 CFR 123.27

⁶² 22 CFR 126.18

- d. signatory to a Non-Disclosure Agreement, unless their employer is a signatory or sublicensee to an agreement listed at 8. 3 authorising those defence articles or defence services; and
 - e. is not the recipient of any permanent transfer of hardware.
- 10.6** Further, no licence is required for the re-transfer or re-export of classified defence articles to citizens of Australia or the U.K., provided such individuals:⁶³
- a. are dual nationals of another country;
 - b. are authorised users or regular employees of an authorised user of the ITAR exemption for defence trade and cooperation among Australia, the U.K., or the U.S.;⁶⁴
 - c. holds a security clearance approved by Australia, the U.K., or the U.S. that is equivalent to the classification level of SECRET or above in the U.S.; and
 - d. are either:
 - i. within the physical territory of Australia, the U.K., or the U.S; or
 - ii. a member of the armed forces of Australia, the U.K. or the U.S. acting in their official capacity.
- 10.7** The transfer of defence articles pursuant to this exemption must:
- a. occur entirely within the physical territory of the country where the end-user is located, where the governmental entity or international organisation conducts official business or where the consignee operates; and
 - b. be within the scope of an approved export licence, export authorisation or licence exemption.
- 10.8** As a condition of transferring defence articles to foreign person employees, the foreign business entity, foreign governmental entity, or international organisation must have effective regulations to prevent diversion to destinations, entities or for purposes other than those authorised by the applicable export license or other authorisation.⁶⁵ The end-user or consignee may satisfy this condition, prior to transferring defence articles, by requiring:⁶⁶
- a. a security clearance approved by the host nation government for its employees; or
 - b. a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defence articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries.⁶⁷
- 10.9** End-users and consignees must maintain a technology security or clearance plan that includes procedures for screening employees for such substantive contacts and maintain records of such screening for five years.⁶⁸

63 [22 CFR 126.18\(e\)](#)

64 [22 CFR 126.7](#)

65 [22 CFR 126.18](#)

66 [22 CFR 126.18](#)

67 [22 CFR 126.1](#): These countries include Afghanistan, Cyprus, Ethiopia, Haiti, Iraq, Lebanon, Libya, Nicaragua, Russia, Somalia, South Sudan, and Zimbabwe.

68 [22 CFR 126.18](#)

11. Certification Requirements for Certain Transactions

11.1 ITAR also requires congressional certification (per the Arms Export Control Act) prior to the DDTC granting any licence or other approval for certain transactions involving:⁶⁹

- a.** a licence for the export of:
 - i.** major defence equipment sold under a contract in the amount of US\$14 million or more; or
 - ii.** defence articles and defence services sold under a contract in the amount US\$50 million or more, to any country is not a member of the North Atlantic Treaty Organisation (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea that does not authorise a new sales territory; or
- b.** a licence for export to a country that is a NATO member, or Australia, Israel, Japan, New Zealand, or the Republic of Korea of:
 - i.** major defence equipment sold under a contract in the amount of US\$25 million or more; or
 - ii.** defence articles and defence services sold under a contract in the amount of \$100 million or more, and provided; and
 - iii.** provided the transfer does not include any other countries; or
- c.** A licence for export of defence articles controlled under Category I paragraphs (a) through (g) of the USML, in an amount of \$1 million or more.

11.2 New Zealand businesses should be aware of these thresholds when negotiating such contracts, as large-scale defence purchases from the U.S. may trigger congressional review which will affect the approval and timeline for these transactions.

69 22 CFR 123.15

12. ITAR Compliance for New Zealand businesses

- 12.1** Overall, New Zealand businesses must be aware of ITAR controls because it can significantly impact their ability to engage in defence-related trade and technology exchanges with U.S. entities. These controls apply not only to physical items but also to intangible transfers, including deemed exports to foreign nationals, even within New Zealand.
- 12.2** The extraterritorial reach of ITAR means that New Zealand companies handling ITAR-controlled *defence articles* or *technical data*—whether through manufacturing, integration, servicing, or brokering—may require U.S. government authorisation before engaging in certain transactions.
- 12.3** Non-compliance can result in significant penalties, including civil and criminal liability, debarment from US markets, and reputational damage. New Zealand businesses operating in sectors such as defence, aerospace, and advanced technology must conduct thorough due diligence, ensure compliance with both U.S. and New Zealand export control laws, and implement strict internal controls to mitigate regulatory risks.
- 12.4** The DDTC strongly recommends any parties engaged in defence trade to establish and maintain an ITAR compliance program to reduce the risk of violations, with [detailed official guidance](#) on what may constitute an effective ITAR compliance program. Generally, an effective ITAR compliance program should be clearly documented in writing, tailored to the business and its ITAR-controlled activities or risk areas, regularly reviewed or updated, and fully supported by management.⁷⁰

70 [Bureau of Political-Military Affairs - ITAR Compliance Program Guidelines](#)



12.5 Key elements of an effective ITAR compliance program for New Zealand businesses may include:

- a.** Ensuring management's commitment to ITAR compliance, in:
 - i.** designing and maintaining an ITAR compliance program;
 - ii.** providing sufficient resources (i.e., time, funding, training for the implementation of an ITAR compliance program; and/or
 - iii.** creating and maintaining an Export Compliance Management Commitment Statement that is communicated to all employees and emphasises the business's commitment to ITAR compliance.
- b.** Ensuring that the ITAR compliance program clearly explains registration, jurisdiction, and classification requirements for the business.
- c.** Maintaining proper record-keeping in relation to the manufacture, acquisition, and disposition of defence articles (including technical data), the provision of defence services, and brokering of ITAR activities. ITAR mandates that those required to register with the DDTC need to retain such records for at least five years and provide them to the DDTC upon request.⁷¹
- d.** Developing employee policies and procedures that ensure the early detection, reporting and disclosure of any inadvertent or intentional ITAR violations to the DDTC,⁷² as failure to report violations can result in fines,

criminal penalties and disbarment from ITAR-related activities.⁷³

- e.** Implementing comprehensive, tailored training programmes to ensure that employees understand their duties and responsibilities under ITAR.⁷⁴ These training programmes should be periodically reviewed and comprise a tiered program based on each employees' responsibilities within the organisation.⁷⁵
- f.** Developing risk assessments that identify and analyse the likelihood of ITAR violations that may occur, which then allow the business to use that data to allocate resources and amend the ITAR compliance program appropriately to prioritise and mitigate those risks.⁷⁶

⁷¹ 22 CFR 122.5

⁷² Bureau of Political-Military Affairs - ITAR Compliance Program Guidelines, p 30.

⁷³ 22 CFR 127.12

⁷⁴ Bureau of Political-Military Affairs - ITAR Compliance Program Guidelines, p 25.

⁷⁵ Bureau of Political-Military Affairs - ITAR Compliance Program Guidelines, p 25.

⁷⁶ Bureau of Political-Military Affairs - ITAR Compliance Program Guidelines, p 40.

13. Final Comments

- 13.1** Ensuring compliance with ITAR is a critical responsibility for any business involved in the export, transfer, or handling of defence-related articles and technical data. Given the complexity of the regulatory landscape, businesses must remain vigilant with their compliance efforts to avoid significant legal and financial consequences.
- 13.2** An effective ITAR compliance program requires a thorough understanding of key regulatory requirements, robust internal controls, and a commitment to ongoing training and monitoring. Businesses should implement clear policies and procedures to manage export-controlled data, conduct regular risk assessments, and ensure that employees understand their responsibilities.
- 13.3** Further, ITAR is subject to updates and modifications in response to evolving security concerns and geopolitical developments. New Zealand businesses must stay informed about these changes to ensure their compliance efforts remain current and effective. Working with experts can help businesses navigate these complexities and mitigate potential risks.
- 13.4** If your business requires guidance on ITAR, export licensing, or ITAR compliance program development, our team is here to assist.

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