

State/DDTC New Guidance on Unauthorized Temporary Imports of Defense Articles

Temporary Import Violations

Temporary imports of defense articles require the recipient to obtain a DSP-61 (Temporary Import License) or to claim the exemption under 22 CFR 123.4. In order for the temporary import exemption to be claimed at the time of re-export, the article being returned must have been declared at the time of import on the appropriate U.S. Customs and Border Protection document.

The Directorate of Defense Trade Controls (DDTC) has seen an increase in the number of instances where a foreign person temporarily returns a defense article for repair or replacement without authorization to a U.S. person without the U.S. person's prior knowledge. In this situation, the U.S. person is unable to coordinate the return and obtain the requisite DSP-61 license or claim the regulatory exemptions under §123.4(a)(1) of the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130).

DDTC has established new guidance regarding these unauthorized temporary imports and the subsequent exports to return the items. When this situation occurs, the U.S. person should investigate the nature and cause of the violation and determine if the U.S. person had any responsibility for the violation.

If the U.S. person determines they did not have any responsibility for the violation, then in lieu of submitting a separate Voluntary Disclosure in accordance with ITAR §127.12, the U.S. person can submit a DSP-5 license application to return the defense article to the foreign person. A transmittal letter, signed by the Empowered Official, must be submitted with the application, explaining the reasons why the applicant does not believe they have any responsibility for the violation and the steps taken to make this determination; the identities and addresses of all persons known or suspected to be involved in the activities giving rise to the unauthorized temporary import; and any measures taken to prevent a reoccurrence.