

**Defense Trade Cooperation Treaty
with the United Kingdom
DFARS Case 2012-D034
Draft Interim Rule
Procedures, Guidance, and Information**

PGI 225—FOREIGN ACQUISITION

[PGI 225.7X—EXPORT CONTROL

PGI 225.7X02 Defense Trade Cooperation Treaty with the United Kingdom.

The following documents are accessible at: <http://pmddtc.state.gov>:

UNITED KINGDOM

- Treaty
- Implementing Arrangement
- The provisions of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.17 (United Kingdom)) pertaining to the Treaty
- List of Defense Articles Exempted from Treaty Coverage (also in 22 CFR 126 Supplement No. 1)
- List of Approved Community Members
- Definitions

PGI 225.7X02-2 Purpose.

1. Background.

a. The U.S. Government controls exports of defense articles, technical data, and defense services. The controls are imposed by the Arms Export Control Act (AECA) and the Department of State regulation that implements the AECA. That regulation is the ITAR. See PGI 204.7302(2)(i) for more information about the ITAR.

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b. Under the ITAR, the Department of State manages an export licensing system in which government approvals are often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware or transfer know-how to one another, and even sometimes to move engineers and other personnel within branches of the same company located in different countries. This process can be challenging for U.S. exporters and for foreign firms in their supply chains.

c. Given the close allied relationship between the United States and the United Kingdom, the President and the Prime Minister decided to reform the defense trade system between their countries with the goal of facilitating the exchange of certain defense articles, technical data, and defense services between their militaries and security authorities, and their industries. They negotiated a bilateral Defense Trade Cooperation Treaty (“Treaty”) to achieve this goal. This bilateral Treaty establishes permissions for export without export licenses for each country, if an export meets the Treaty requirements. Other exports remain under the AECA and the ITAR. The Treaty is intended solely to waive certain requirements of the ITAR for specific transactions within the scope of the Treaty –it does not remove any requirements for contractors to comply with domestic U.S. law.

d. The Department of State regulations implementing the Treaty is in the ITAR.

2. How the Treaty Works.

a. The Treaty establishes an Approved Community. The “Approved Community” for the Treaty is defined in DFARS 252.225.70YY. Exports of most U.S. defense articles, technical data, and defense services are permitted to go into and to move within the Approved Community, without the need for government approvals and export licenses, when in support of the following:

- Combined U.S.-U.K. military or counterterrorism operations.
- U.S.-U.K. cooperative security and defense research, development, production, and support programs.
- Specific security and defense projects that are for U.K. Government use only.

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- U.S. Government end-use.

b. Under the Treaty, instead of a U.S. exporter preparing and requesting Department of State approval of an export license or other written authorization for a project, the exporter may elect to use the Treaty if Treaty conditions are met. If using the Treaty, the exporter will check the Department of State web- site (<http://pmdc.state.gov>) or other appropriate reference and verify that—

- The U.K. partner is on the list of approved companies/facilities (i.e., a member of the Approved Community);
- The effort is in support of at least one of the scope areas identified in paragraph (a) above; and
- The defense article is not on the exempted technology list. (Also in 22 CFR 126 Supplement No. 1).

If all three conditions are met, then the U.S. exporter and the U.K. partner may use the Treaty exemptions in the ITAR to move qualifying defense articles without the need to obtain export licenses or other written authorizations.

c. A company using the Treaty, in addition to checking the three lists (as explained in paragraph b, above), must also comply with requirements in the Treaty and the Implementing Arrangements, and the provisions of the ITAR pertaining to the Treaty. These include marking and recordkeeping requirements to ensure that export-controlled items are recognized as such and treated accordingly. For example, instead of normal ITAR requirements, the provisions of the ITAR pertaining to the Treaty establish the requirements that apply. Similarly, DFARS 225.7X02 implements requirements that relate to exports that a prospective contractor may make under a DoD solicitation or that a contractor may make in performance of a DoD contract. The company must continue to comply with domestic laws and regulations, including those pertaining to the movement of defense articles within the United States.

PGI 225.7X02-4 Procedures.

1. Since the Treaty applies only to eligible items, a solicitation or contract falls within the scope of the Treaty, and is thus eligible for Treaty coverage (i.e., falls within the scope of the Treaty) if it will acquire at least one defense article that is not otherwise exempt from the Treaty and is required for—

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(a) U.S. and U.K. combined military or counterterrorism operations as described in the Implementing Arrangements;

(b) U.S. and U.K cooperative security and defense research, development, production, and support programs that are identified pursuant to the Implementing Arrangements;

(c) Cases where the Government of the United Kingdom is the end-user in mutually agreed specific security and defense projects, that are identified pursuant to the Implementing Arrangements; or

(d) U.S. Government end-use under a solicitation or contract.

2. Since the Treaty applies only to eligible items, a solicitation or contract falls within the scope of the Treaty and is thus eligible for Treaty coverage when it will acquire at least one Defense Article that is Treaty-eligible and the contract falls within the scope of the Treaty .Article 3, section (2) of each Treaty and Section 4 of each Implementing Arrangement require the Treaty Participants to maintain lists of defense articles to be exempted from the scope of the Treaty. These exempted technology lists are incorporated in Supplement No. 1 to 22 CFR 126.16 and are accessible at: <http://pmdtdc.state.gov>.

3. The Treaty does not apply to defense articles initially being acquired pursuant to the U.S. Foreign Military Sales (FMS) program, although, once the defense articles are acquired by the United Kingdom under an FMS case, the Treaty applies as though the defense articles were exported under the Treaty.

4. If a company obtains an export license, or other authorization, for the export of defense articles that might otherwise have been eligible for export without a license under the Treaty, the terms of the export license, or other authorization, shall apply unless and until the company obtains approval to transition to Treaty coverage. The process and requirements for transition are described in 22 CFR 126.16.

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