



# ITAR & EAR COMBOS and CONFLICTS

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**Presented by:**

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Advisor**

**Schulz Trade Law PLLC**

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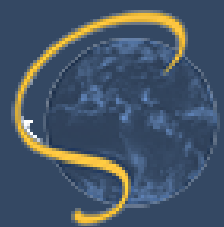
# AGENDA

- ❖ Brokering
- ❖ Congressional Notification
- ❖ Deemed Export
- ❖ Defense Service
- ❖ See-through Rule
- ❖ Foreign Military Sale
- ❖ DDTC Export Authorization
- ❖ Export Compliance Program



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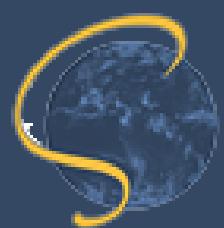
# Poll #1



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22 CFR § 129.2 (2024).

# Poll #2



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22 CFR § 129.2 (2024).

# Poll #3



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22 CFR § 129.2 (2024).

# Brokering

NOT just ITAR





# Brokering

- ❖ Action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin



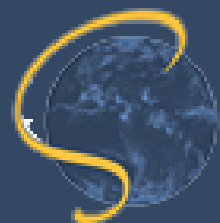
# Brokering

## ❖ USMIL – U.S. Munitions Import List

- Category 1—firearms (a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive.....

## ❖ CCL – Commerce Control List

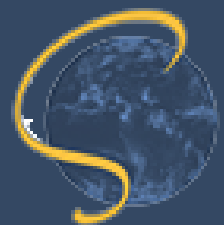
- 0A501—Firearms (a) Non-automatic and semi-automatic firearms equal to .50 caliber (12.7 mm) or less.





# Congressional Notification

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# Congressional Notification

- ❖ Notification to Congress prior to licensing or other approval for transactions of certain items depending on the end use country and value of the transaction.



# Congressional Notification

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Italy and UK to support the maintenance, repair, overhaul, training, base activation, and general operational support of the F135 propulsion system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.



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<https://www.federalregister.gov/documents/2022/11/29/2022-26038/bureau-of-political-military-affairs-directorate-of-defense-trade-controls-notifications-to-the>

# Congressional Notification

## ❖ ITAR

- Certain defense articles based on a value threshold and country of end use.

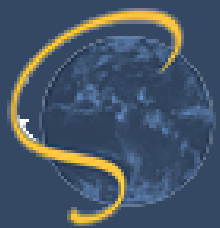
## ❖ EAR

- Semiautomatic firearms in ECCN 9A501.a based on a value threshold and country of end use



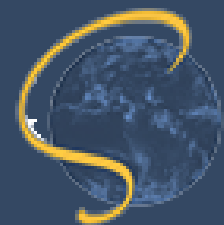
# Deemed Export

NOT just EAR



# Deemed Export

- ❖ Release of Technical Data/Technology to a foreign person while in the U.S.





# Deemed Export

## ❖ ITAR

- To all countries in which the foreign person has held or holds citizenship or holds permanent residency

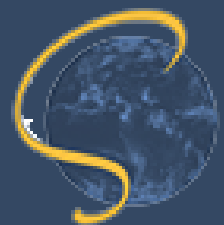
## ❖ EAR

- To the foreign person's most recent country of citizenship or permanent residency



# Defense Service

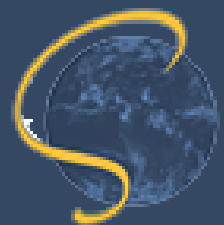
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# Defense Service

## ❖ ITAR

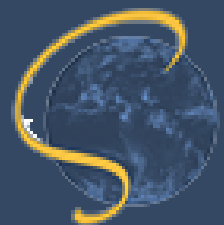
- Provide assistance to a foreign person in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles
- Provide technical data to a foreign person
- Provide military training



# Defense Service

## ❖ EAR

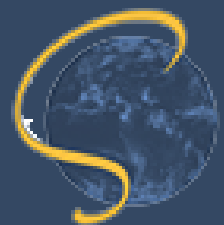
- Does not control defense services as defined in the ITAR.
- DOES control the release (export) of technology (technical data) to a foreign person which could occur while performing any of the following activities (services) as listed on the ITAR  
design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, processing, or use



# Defense Service

## ❖ EAR

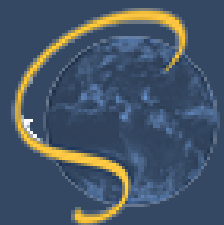
- Prohibition Seven
  - ..... or the performance of any contract, service, or employment (including, but not limited to: ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, or transporting, freight forwarding, or conducting negotiations in furtherance of).....



# Defense Service

## ❖ EAR

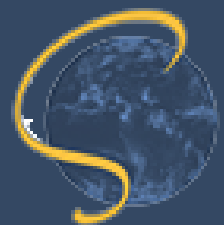
- Prohibition Ten
  - Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur)
  - You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service





# See-Through Rule

JUST for ITAR



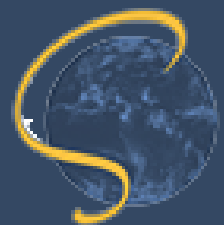
# See-Through Rule

## ❖ ITAR

- Jurisdiction/Classification follows the item
  - Defense article installed in a larger system or end-item that is EAR controlled item causes the entire item to be controlled on the ITAR

## ❖ EAR

- The item loses its classification once installed into a higher item



# See-Through Rule

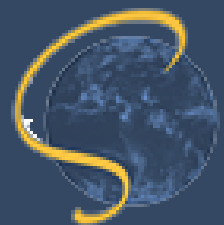
## ❖ ITAR Exception to the See-through rule

- ECCN 9A515 controlled spacecraft and other enumerated items remain subject to the EAR even if a defense articles, such as a hosted payload, is integrated into the item.



# FMS sale

NOT just ITAR



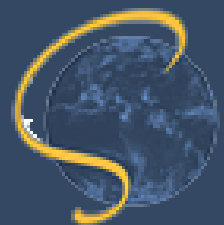
# FMS sale

- ❖ Foreign Military Sale (FMS)
  - Government to Government Sale



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# FMS sale

## ❖ Foreign Military Sale

- EAR - Items that are subject to the EAR that are sold, leased or loaned by the Department of Defense to a foreign country or international organization under the FMS Program of the AECA pursuant to a Letter of Offer and Acceptance (LOA) authorizing such transfers are NOT “subject to the EAR,” but rather, are subject to the authority of the Arms Export Control Act

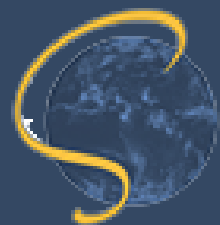




# FMS sale

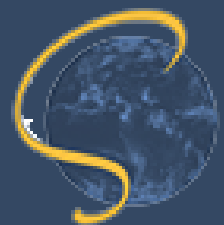
## ❖ Foreign Military Sale

- When exported under FMS authority, these items are “defense articles” under section 47 of the AECA (22 U.S.C. 2794) but are not defense articles described on the USML.



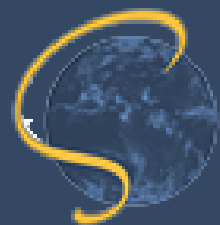
# DDTC Export Authorization

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# DDTC Export Authorization

- ❖ DDTC authority to license EAR items
  - May only be used to export an item subject to the EAR that is for use in or with a defense article and is included in the same shipment as any defense article



# DDTC Export Authorization

- ❖ DDTC license for EAR commodities, software, and technical data:
  - The CCL items must be for use "in or with" a defense article(s) proposed for export;
  - Include purchase documentation (e.g., purchase order, contract, letter of intent, or other appropriate documentation) that contains both USML and CCL controlled commodities;
  - Must separately list, with the ECCN, the CCL commodities, software, and technical data on the license application.



# DDTC Export Authorization

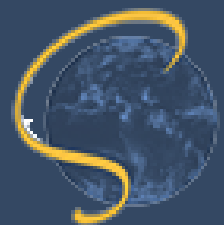
## ❖ .X paragraph

- The license application separately enumerates the commodities, software, and technical data subject to the EAR in a U.S. Munitions List “(x)” paragraph entry.



# DDTC Export Authorization

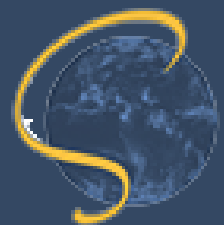
- ❖ Category VIII(x)      Commodities, software, and technical data subject to the EAR used in or with defense articles.
  - Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).





# Export Compliance Program

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# Export Compliance Program

## ❖ EAR Elements of an Export Compliance Program (ECP)

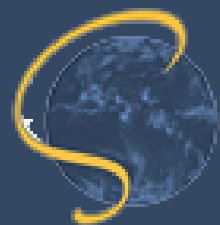
1. Management Commitment
2. Risk Assessment
3. Export Authorization
4. Recordkeeping
5. Training
6. Audits
7. Handling Violations and Corrective Actions
8. Build and Maintain Your Export Compliance Manual



# Export Compliance Program

## ❖ DDTC Elements of an ITAR Compliance Program (ICP)

1. Management Commitment
2. Registration, Jurisdiction, Classification, Authorizations & Other Activities
3. Recordkeeping
4. ITAR Training
5. Risk Assessment
6. Audits & Compliance Monitoring
7. ITAR Compliance Manual



# Schulz Trade Law



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