

ALERT

DDTC Issues Open General Licenses Authorizing Retransfer, Reexport of Unclassified Defense Articles to Australia, Canada, UK

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On July 20, 2022, the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) published two open general licenses (OGLs) authorizing certain retransfers and reexports of defense articles as part of a new pilot program to "assess the viability and appropriateness of the open general license concept." The OGLs permit the retransfer and reexport of unclassified defense articles to the governments of, and certain persons within, Australia, Canada, and the United Kingdom, subject to specified requirements, limitations, and provisos.

The OGLs, which are similar to authorizations administered by certain other allied countries, are the first such authorizations to be issued by DDTC under the International Traffic in Arms Regulations (ITAR). According to DDTC, implementing "the pilot program is consistent with DDTC's mission of ensuring that commercial exports of defense articles and defense services advance U.S. national security and foreign policy objectives, in part by facilitating legitimate defense trade with partners and allies while denying adversaries access to sensitive U.S. technology."

Open General License 1 authorizes the retransfer – i.e., generally, a change in the end use/end user or temporary transfer to a third party of a defense article within the same foreign country – of unclassified defense articles to the governments of Australia, Canada, and the United Kingdom as well as members of the Australian and United Kingdom communities (specified United Kingdom and Australian

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Practice Areas

Export Controls and Economic Sanctions
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government and non-governmental entities authorized to use the current country-specific exemptions in the ITAR) and Canadian-registered persons (as defined in the ITAR's Canadian exemption). Open General License 2 authorizes the reexport – i.e., generally, a shipment/transmission from one foreign country to another foreign country – of unclassified defense articles to and among the same entities.

Importantly, the authorizations are limited to reexports and retransfers and do not apply to exports of defense articles. The terms and conditions for the OGLs are summarized below:

- **Eligible Defense Articles:** The defense articles to be reexported or retransferred must have been originally exported from the United States pursuant to a DDTC license or approval. The OGLs do not apply to classified defense articles, nor do they apply to defense articles originally exported under the Foreign Military Sales Program. Defense articles listed on the Missile Technology Control Regime (MTCR) Annex or identified as Missile Technology (MT) items on the ITAR's U.S. Munitions List (USML) also are ineligible for the OGLs. Further, technical data may only be reexported or retransferred for organization-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article.
- **Permissible End Uses:** Other than with respect to technical data, the OGLs only authorize retransfers and reexports for end use by, or operation on behalf of, the Governments of Australia, Canada, or the United Kingdom. The OGLs specifically do not authorize retransfers or reexports to support the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, or processing of a missile, UAV, space-launch vehicle, item listed on the MTCR Annex, or item listed as MT on the USML.

There are additional end use limitations regarding reexports and retransfers of major defense equipment valued at \$25 million or more, as well as any defense article or related training or other defense services valued at \$100 million or more (in terms of the original acquisition cost) that were originally subject to congressional notification requirements.

- **Authorized Transfer Territory:** To take advantage of the OGLs, retransfers must take place wholly within the physical territory of Australia, Canada, or the United Kingdom. Reexports must take place wholly within or between the physical territories of the three countries.
- **Use Requirements and Restrictions:** To utilize an OGL, the transferor must include the ITAR's destination control statement and other information required by 22 C.F.R. § 123.9(b) on their commercial invoice, maintain detailed records of each retransfer/reexport, make those records available to DDTC upon request, and use the OGL number as the license, other approval number, or exemption citation. The OGLs cannot be used by prohibited/ineligible parties under the ITAR.
- **Validity Period:** Under the pilot program, the OGLs are valid for one year from August 1, 2022, through July 31, 2023, but they may be extended further.

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