



MINISTRY OF DEFENCE

# **US-UK DEFENCE TRADE CO-OPERATION TREATY**

**UK procedures for applications to re-transfer or re-export  
items to Non-Approved Community entities in the UK or  
overseas**

**MARCH 2012**

Published by:

# **BIS**

**Department for Business  
Innovation & Skills**

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## General

1. This note primarily concerns requests from UK Approved Community companies to re-transfer or re-export items received from the United States under the US-UK Defence Trade Co-operation Treaty<sup>1</sup> to Non-Approved Community entities in the UK or overseas, as described under Section 9 of the Treaty Implementing Arrangement of 14 February 2008<sup>2</sup>.
2. Recognising that the Treaty Parties have established a framework for the protection of the Parties' essential security and defence interests requiring the movement of items (US Defense Articles<sup>3</sup>) to be within an Approved Community<sup>4</sup>, the Treaty requirements as detailed in the UK Government's Security Policy Framework<sup>5</sup> reflect that re-transfers from a UK Approved Community facility to a UK Non-Approved Community facility shall only be considered in exceptional circumstances.
3. Where a UK Approved Community facility has a requirement to re-transfer an article under the Treaty to a Non-Approved Community entity in the UK or re-export to a Non-Approved Community entity overseas that company will need to obtain the necessary US approval before seeking UK approval.

## Re-transfer to a Non-Approved Community entity in the UK

4. A UK Approved Community facility that proposes to re-transfer items received under the Treaty to a Non-Approved Community entity in the UK is required to have approval from Ministry of Defence (MOD) using the MOD Form 680 Procedure<sup>6</sup>. MOD will only process the application if it is accompanied by a copy of the U.S. State Department agreement to the re-transfer of the item to a Non-Approved Community entity.

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<sup>1</sup> The US-UK Defence Trade Co-operation Treaty was published in Command Paper 7213 in the UK Parliamentary Session of 2006-7 and is available from the Foreign and Commonwealth Office at: [http://www.fco.gov.uk/Files/kfile/378820\\_CMND\\_7213.pdf](http://www.fco.gov.uk/Files/kfile/378820_CMND_7213.pdf) and <http://www.fco.gov.uk/en/publications-and-documents/treaty-command-papers-ems/explanatory-memoranda/explanatory-memoranda-2007a/us-defence>. See also: <http://www.state.gov/t/pm/rls/othr/misc/92770.htm>

<sup>2</sup> See: [http://www.pmdtdc.state.gov/treaties/documents/UK\\_Implementing.pdf](http://www.pmdtdc.state.gov/treaties/documents/UK_Implementing.pdf)

<sup>3</sup> 'Defense Articles' mean items or technical data designated in Ch 121.1 of the US ITAR regulations. This includes technical data, recorded or stored in any physical form (including electronic transfers), models and mock ups.

<sup>4</sup> The Treaty document defines all terminology including 're-export' and 're-transfer'. The UK's 'approved community' is also specifically defined in Article 4(1).

<sup>5</sup> See: <http://www.cabinetoffice.gov.uk/resource-library/security-policy-framework>

<sup>6</sup> For more details about making an MOD F680 application see: <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1084276622>

5. The UK facility can request US approval for the re-transfer through the original US exporter or direct from the U.S. State Department's Directorate of Defense Trade Controls (DDTC).
6. The written application should be made in accordance with the International Traffic in Arms Regulations (ITAR) s123.9<sup>7</sup>. In the case of Treaty articles that are being moved out and back in to the Approved Community the application should include details of the reason for the transfer and the duration for which approval will be required.
7. Once written approval has been obtained from DDTC, the UK facility should submit the request to the MOD using the MOD Form 680 Procedure attaching DDTC's written approval. MOD's Export Policy and Assurance (EPA) will issue a decision letter.
8. The facility proposing the transfer will also need to adhere to the protective security requirements for the transmission of US classified Defense Articles in the UK as described in the Security Policy Framework.

### **Re-export to a Non-Approved Community entity overseas for return to a UK Approved Community entity**

9. A UK Approved Community facility that proposes to re-export items received under the Treaty to a Non-Approved Community entity overseas is required to have approval from MOD using the MOD Form 680 Procedure. MOD will only process the application if it is accompanied by a copy of the U.S. State Department agreement to the re-export of the item to the overseas Non-Approved Community entity.
10. The UK facility can request US approval for the re-export through the original US exporter or direct from the U.S. State Department's Directorate of Defense Trade Controls (DDTC).
11. The written application should be made in accordance with the International Traffic in Arms Regulations (ITAR) s123.9. It should include details of the reason for the transfer and the duration for which the approval will be required.
12. Once written approval has been obtained from the DDTC, the UK company should submit a request to the MOD using the MOD Form 680 procedure and attaching DDTC's written approval. The UK company should state whether the Treaty item from the US remains a stand-alone item or has been incorporated into another item.

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<sup>7</sup> ITAR is the set of United States government regulations that control the export and import of defence-related articles and services on the US Munitions List (USML).

13. EPA Casework will issue a decision letter, which should be used by the company concerned in support of obtaining UK export licensing coverage from the Department for Business Innovation and Skills (BIS)<sup>8</sup>.
14. In the case of an individual export licence application to BIS, the facility should confirm that the goods were received under the Treaty and that they have the relevant US Government and MOD approval. Where an Open General Export Licence is used the UK facility must maintain a record of evidence of the relevant US Government and MOD approval for compliance.
15. If the re-export is in respect of a requirement to sub-contract, collaborate or team with the overseas Non-Approved Community entity, the UK facility proposing the re-export must also adhere to the protective security requirements for sub-contracting etc (MOD F1686) and for the transmission of US classified material overseas, both of which are detailed in the Security Policy Framework.

### **Re-export to a Non-Approved Community entity overseas for its end-use**

16. Given that Article 3 of the Treaty of 21 June 2007 explains that its scope applied to Defense Articles required for:
  - a. United States and United Kingdom combined military or counter-terrorism operations as described in the Implementing Arrangements
  - b. United States and United Kingdom co-operative security and defense research, development, production and support programs that are identified pursuant to the implementing Arrangements
  - c. Mutually agreed specific security and defense projects where Her Majesty's Government is the end-user that are identified pursuant to the Implementing Arrangements; and
  - d. United States Government end-use
17. Requests to re-export for third party end-use would be expected to occur only on an exceptional basis.
18. An Approved Community facility that proposes to re-export items received under the Treaty to a Non-Approved Community entity overseas for their final end-use is required to gain approval from MOD using the MOD Form 680 Procedure. MOD will only process the application if it is accompanied by a copy of the U.S. State Department agreement to the re-export of the items to the Non-Approved Community entity overseas for its end-use.

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<sup>8</sup> For details of export licensing procedures please refer to <http://www.businesslnk.gov.uk/exportcontrol> and to apply for a licence, you should access: <https://www.spire.bis.gov.uk>

19. The UK company should request US approval for the re-export through the original exporter of direct from the U.S. State Department's Directorate of Defense Trade Controls (DDTC).
20. The written application should be made using the procedure detailed in the International Traffic in Arms Regulations (ITAR) s123.9(c).
21. Once written approval has been obtained from DDTC, the UK company should submit a request to the MOD using the MOD Form 680 Procedure, attaching DDTC's written approval. The UK company should state whether the Treaty item from the US remains a stand-alone item or has been incorporated into another item.
22. EPA Casework will issue a decision letter, which should be used by the company concerned in support of obtaining UK export licensing coverage from the Department for Business, Innovation and Skills (BIS).
23. In the case of an individual export licence application to BIS, the UK facility should confirm that the goods were received under the Treaty and that they have the relevant US Government and MOD approval. Where an Open General Export Licence is used the UK facility must maintain a record of evidence of the relevant US Government and MOD approval for compliance.
24. If the re-export is in respect of a requirement to sub-contract, collaborate or team with the overseas Non-Approved Community entity, the UK facility proposing the re-export must adhere to any existing protective security requirements for subcontracting etc (MOD F1686) and the transmission of US classified material overseas both of which are detailed in the Security Policy Framework.

### **Re-export by MOD to a Non-Approved Community entity overseas for its end-use**

25. Given that MOD usually acquires equipment for its own end-use and recognizing Article 3 of the Treaty of 21 June 2007, requests to re-export Treaty items for third party end-use would be expected to occur only on an exceptional basis.
26. An MOD entity (Defence Equipment & Support's Disposal Services Authority has sole responsibility for the disposal of equipment which has been taken out of service and declared surplus) that proposed to re-export items received under the Treaty to a Non-Approved Community entity overseas for its final end-use would be required to secure approval from EPA using the MOD Form 680 Procedure. EPA will only process the application if it is accompanied by a copy of the U.S. State Department agreement to the re-export of the items to a Non-Approved Community entity overseas for its end-use.
27. The MOD entity should make a written application for the re-export using the procedure detailed in the International Traffic in Arms Regulations (ITAR) s123.9(c).

28. Once written approval has been obtained from DDTC, the MOD entity may submit a request to EPA using the MOD Form 680 Procedure and attaching DDTC's written approval. The MOD entity should state whether the Treaty item from the US remains a stand-alone item or is incorporated in another item.
29. EPA Casework will issue a decision letter and the MOD entity would also need to advise its third party customer to obtain UK export licensing coverage from BIS.
30. In the case of an individual export licence application to BIS, the applicant should be advised to confirm that the goods were received under the Treaty and that they have the relevant US Government and MOD approval. Where an Open General Export Licence is used the applicant must maintain a record of evidence of the relevant US Government and MOD approval for compliance.

## Reference Material

<http://www.pmdtc.state.gov/treaties/index.html>

## Points of Contact

- **General Policy Issues**

Claire Greenway, Export Policy and Assurance, Policy 1, 2<sup>nd</sup> Floor, Zone D, Main Building, Ministry of Defence, London SW1A 2HB

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- **Casework Issues**

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