

## **DDTC Publishes Guidance on Temporary Imports of Defense Articles**

By Bruce H. Leeds

bruce@globaltradelaw.net

Defense articles subject to International Traffic in Arms Regulations (ITAR) controls are frequently imported temporarily for repair, calibration, testing, etc. The entry presented to US Customs & Border Protection (CBP) must indicate the DSP-61 Temporary Import License or the exemption in Part 123.4 of the ITAR that serves as the authority to temporarily import and subsequently re-export the articles.

What if this isn't done? This is something that happens all too often. Without a declaration against the license or notation of the exemption on the entry, the articles cannot be re-exported. The importer may request CBP to amend the entry to add the license or exemption after the fact; however CBP normally requires the importer to first file a voluntary disclosure with the Directorate of Defense Trade Controls (DDTC) as a condition of amending the entry.

On Nov. 25, 2009, DDTC published a web notice with guidance that should help this situation. If the US importer can demonstrate they did not have any responsibility for the violation, DDTC will accept an application for the DSP-5 Permanent Export License for the articles to be re-exported. A voluntary disclosure will not be required under these circumstances.

In the web notice DDTC stated the following:

“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.”

Obviously companies will need to perform appropriate due diligence to verify they do not have any responsibility for not declaring the license or exemption on the CBP entry, and will need to explain the corrective actions being taken to prevent recurrence. However this DDTC guidance offers some relief for what may be a frequent and troublesome situation.