

Department of State

§ 120.38

§ 120.33 Defense Trade Cooperation Treaty between the United States and Australia.

Defense Trade Cooperation Treaty between the United States and Australia means the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007. For additional information on making exports pursuant to this treaty, see § 126.16 of this subchapter.

[78 FR 21526, Apr. 11, 2013]

§ 120.34 Defense Trade Cooperation Treaty between the United States and the United Kingdom.

Defense Trade Cooperation Treaty between the United States and the United Kingdom means the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington DC and London, June 21 and 26, 2007. For additional information on making exports pursuant to this Treaty, see § 126.17 of this subchapter.

[77 FR 16597, Mar. 21, 2012]

§ 120.35 Australia Implementing Arrangement.

Australia Implementing Arrangement means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Washington, March 14, 2008, as it may be amended.

[78 FR 21526, Apr. 11, 2013]

§ 120.36 United Kingdom Implementing Arrangement.

United Kingdom Implementing Arrangement means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington DC, February 14, 2008, as it may be amended.

[77 FR 16597, Mar. 21, 2012]

§ 120.37 Foreign ownership and foreign control.

Foreign ownership means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons (as defined in § 120.16). Foreign control means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Foreign control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage.

[76 FR 45197, July 28, 2011]

§ 120.38 Maintenance levels.

(a) *Organizational-level maintenance* (or basic-level maintenance) is the first level of maintenance that can be performed “on-equipment” (directly on the defense article or support equipment) without specialized training. It consists of repairing, inspecting, servicing, calibrating, lubricating, or adjusting equipment, as well as replacing minor parts, components, assemblies, and line-replaceable spares or units. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF)) and does not enhance the basic performance or capability of the defense article.

(b) *Intermediate-level maintenance* is second-level maintenance performed “off-equipment” (on removed parts, components, or equipment) at or by designated maintenance shops or centers, tenders, or field teams. It may consist of calibrating, repairing, testing, or replacing damaged or unserviceable parts, components, or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF)) and does not enhance the basic performance or capability of the defense article.

(c) *Depot-level maintenance* is third-level maintenance performed on- or off-

§ 120.39

equipment at or by a major repair facility, shipyard, or field team, each with necessary equipment and personnel of requisite technical skill. It consists of providing evaluation or repair beyond unit or organization capability. This maintenance consists of inspecting, testing, calibrating, repairing, overhauling, refurbishing, reconditioning, and one-to-one replacing of any defective parts, components or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (e.g., an increased mean time between failure (MTBF)) and does not enhance the basic performance or capability of the defense article.

[78 FR 40927, July 8, 2013]

§ 120.39 Regular employee.

(a) A regular employee means for purposes of this subchapter:

(1) An individual permanently and directly employed by the company, or

(2) An individual in a long term contractual relationship with the company where the individual works at the company's facilities, works under the company's direction and control, works full time and exclusively for the company, and executes nondisclosure certifications for the company, and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license).

(b) [Reserved]

[76 FR 28177, May 16, 2011]

§ 120.40 Affiliate.

An *affiliate* of a registrant is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such registrant.

NOTE TO § 120.40: For purposes of this section, "control" means having the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is rebuttably presumed to exist where there is ownership of 25 percent or more of the outstanding voting securities if

22 CFR Ch. I (4–1–14 Edition)

no other person controls an equal or larger percentage.

[78 FR 52686, Aug. 26, 2013]

§ 120.41 Specially designed.

(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software (*see* § 121.8(f) of this subchapter) is specially designed if it:

(1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph; or

(2) Is a part (*see* § 121.8(d) of this subchapter), component (*see* § 121.8(b) of this subchapter), accessory (*see* § 121.8(c) of this subchapter), attachment (*see* § 121.8(c) of this subchapter), or software for use in or with a defense article.

(b) For purposes of this subchapter, a part, component, accessory, attachment, or software is not specially designed if it:

(1) Is subject to the EAR pursuant to a commodity jurisdiction determination;

(2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;

(3) Has the same function, performance capabilities, and the same or "equivalent" form and fit as a commodity or software used in or with a commodity that:

(i) Is or was in production (*i.e.*, not in development); and

(ii) Is not enumerated on the U.S. Munitions List;

(4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or

(5) Was or is being developed as a general purpose commodity or software, *i.e.*, with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).

NOTE TO PARAGRAPHS (a) AND (b): The term "commodity" refers to any article, material,