



ICCPA

International Compliance Professionals Association

TRADE WINDS - JANUARY 2011

Importing ITAR Articles

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There is plenty of information available about the International Traffic in Arms Regulations (ITAR) and how to apply for licenses to export ITAR-controlled defense articles and technical data. But what about importing unclassified ITAR articles – how do you handle that?

This can be an area of some confusion. It can also be an area of risk. US Customs & Border Protection (CBP) may strictly enforce ITAR import requirements, so you need to be careful. Let's look at the basic requirements and how to deal with them.

The first thing to determine is whether an article imported into the US is subject to the ITAR. It must be described on the US Munitions List in Part 121 of the ITAR (22 CFR Part 121). Many of the Munitions List categories are written in broad, inclusive language and may not exactly describe the article you are importing. Generally an article is subject to the ITAR if it is designed, modified or adapted for a defense purpose. In many

instances articles made for space applications, including commercial satellites, are also subject to the ITAR. The US Government tends to interpret the Munitions List broadly. In the absence of a Commodity Jurisdiction determination clearly placing an article under the Commerce Export Administration Regulations, the prudent approach is that when in doubt to assume an article to be ITAR-controlled.

Imports are covered in Part 123 of the ITAR. Part 123.2 states that "The Department of State regulates the temporary import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives under the direction of the Attorney General." So, temporary imports are controlled under the ITAR and permanent imports by the Bureau of Alcohol Tobacco Firearms & Explosives (ATF). We would add to this that the Directorate of Defense Trade Controls (DDTC) of

the Department of State also controls articles returned after being exported on a temporary export license (DSP-73). In this instance the DSP-73 license serves as authority to temporarily export the article and also to re-import it into the US.

Accordingly, DDTC controls temporary imports of ITAR-controlled articles. What is "temporary"? The first thing a prospective importer of ITAR articles should look at is their intention at the time of import. Is it genuinely intended to bring the article into the US for a legitimate purpose, then to re-export it after the purpose is accomplished? That would make it a temporary import and the ITAR rules will apply. There is a secondary issue also involved here: How long is temporary? The ITAR exemptions apply to temporary imports of up to 4 years and the DSP-61 Temporary Import License is valid for a maximum of 4 years; thus "temporary" must mean remaining in the US up to 4 years.

Temporary imports of ITAR-controlled articles must be declared against either an approved license or an appropriate exemption at the time of CBP clearance. A DSP-61 Temporary Import License is required for temporary imports of unclassified ITAR-controlled articles not eligible for an exemption. The DSP-61 license can authorize a single import or series of imports, providing the license covers the description, quantity and value of all the articles to be temporarily imported. CBP procedures may vary somewhat from port to port but generally require that the license be declared on the CBP entry and that the original license be presented to CBP at the time of clearance.

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Importing ITAR Articles—continued

The DSP-61 license also serves as authority to re-export the temporarily imported articles (assuming they were properly declared against the license at the time of import). The articles may be returned to the original country or sent to a third country, according to the authority granted by the approved license.

Temporary import exemptions are a source of both relief and consternation. They allow ITAR-controlled articles to be temporarily imported without a license. In some instances the same exemption also allows re-export of the temporarily imported articles.

The most commonly used exemption is in Part 123.4(a)(1) of the ITAR. It permits the temporary import of US-origin ITAR-controlled articles without a license for the purpose of servicing in the US. “Servicing” includes “inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modifications, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item.” Accordingly, temporary import of an article for repair or testing would qualify under the exemption in 123.4(a)(1) but modifying the temporarily imported article to improve its performance or capabilities beyond original specifications would not qualify. “US-origin” for the purpose of this exemption includes articles originally made in the US. It also includes articles manufactured outside the US under US Government approval, such as articles made by a foreign manufacturer under a DDTC-approved Manufacturing License Agreement. Thus it is possible to have an imported article that is considered “US-origin” for the purpose of the exemption in 123.4(a)(1) but foreign origin under CBP regulations. This is the result of different agencies having different regulations.

The exemption in Part 123.4(a) (1) also serves as authority to re-export the article. To use this exemption on export it must first be properly used on import and the exported article must be the same as what was imported (or be a one for one replacement).

Another useful exemption is in Part 123.4(b). It allows the temporary import of unclassified ITAR-controlled articles that “are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country.” This exemption applies to US and non-US articles and would apply to parts and subassemblies that are to be incorporated into a larger article which in turn will be exported. It would also apply to US and non-US ITAR-controlled articles that are to be modified into an improved or enhanced product in the US and then re-exported. The exemption only applies to the import transaction. A DSP-5 Permanent Export License is required for export of the larger article or the improved/enhanced article.

There are several requirements associated with using these exemptions for imports. The first is that the importer must be registered with DDTC. This in effect excludes non-US companies from being the importer of record of the ITAR-controlled articles – unless they have a subsidiary or agent in the US registered with DDTC that can act as the importer.

The next requirement is that the exemption must be indicated on the CBP entry. The statement “This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection)” also goes on the entry. Although this statement refers to the exemptions in Part 123.4(a) it is wise to include the same statement (appropriately modified of course) for entries claimed under the exemption in Part 123.4(b).

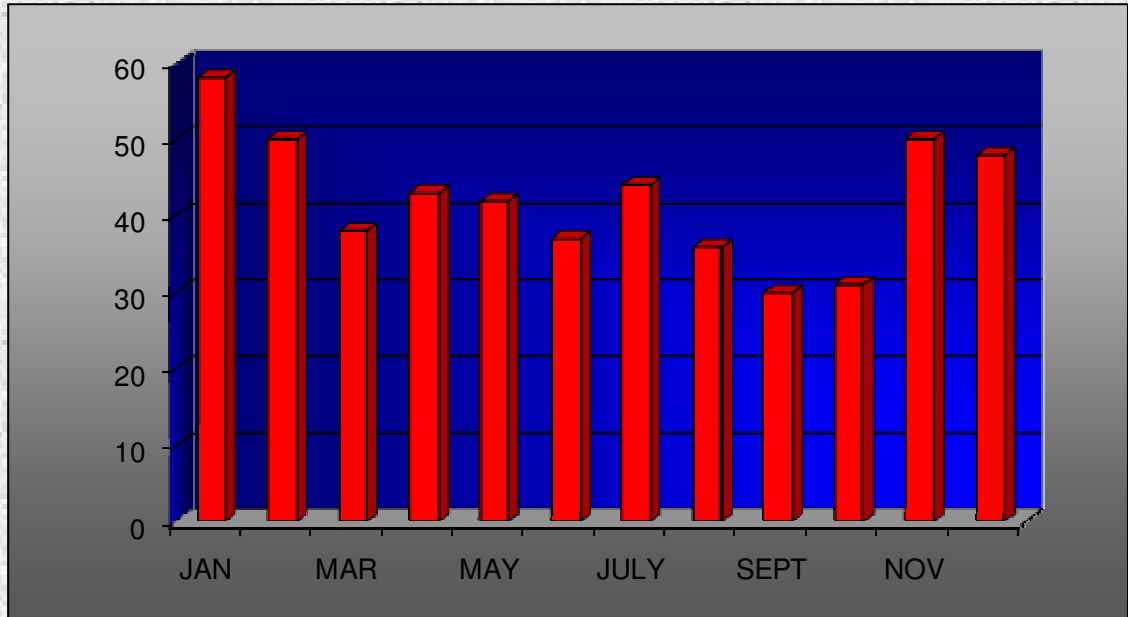
Many CBP ports require that entries using a DSP-61 license or one of the exemptions in Part 123.4 be filed hard-copy (not paperless). This means that the broker cannot use the Automated Broker Interface program to enter the shipment. Importers should check with CBP at the port of entry to verify what procedures are in effect for ITAR-controlled imports.

Finally some “what-ifs”:

- What if the importer or broker forgets to declare the license or exemption on import?
- What if the articles are imported via an express courier?
- What if it is a permanent import?
- What if CBP detains or seizes the import because the license or exemption was not used properly?

These “what-ifs” are all good questions but would require separate dissertations – so we will stop here.

ICPA New Member Growth—January through December 2010



Total New Members for 2010: 507

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2011 Elected Officers:**

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Ken Carlstedt

BOOK REVIEWS



You don't have to like football to appreciate the quality man that is Drew Brees. The story of his recovery from a serious injury to lead the New Orleans Saints to a Superbowl win is captivating and inspirational. While not a fan of NOLA, this book made me a fan of Drew Brees for life! Ladies, you will even like this book!! Kid friendly as well.

Coming Back
Stronger
- Drew Brees



This is a freakishly captivating look at the grandeur of the Depression-era circus with an uplifting sprinkling of sentimentality and a surprising twist ending. I loved it and can't even tell you why. Just an interesting read.

Water for Ele-
phants
- Sarah Gruen



We all remember when Somalia pirates captured a Maersk vessel in 2009. This is the story told by the ship's Merchant Marine Captain Richard Phillips. Full of action and suspense, this book really kept my attention. It would not surprise me to see a made-for-TV movie on this event. This book also presented an interesting look at the Merchant Marine profession in general.

A Captain's
Duty
- Richard Phillips

BOOK REVIEWS



Some where In-
side
- Laura & Lisa
Ling

Journalist Laura Ling wandered into a small river that borders (someplace in the middle) China and North Korea and was subsequently chased back into China by armed N. Korean border guards and taken prisoner. The book chronicles her capture, imprisonment and final release with US Government intervention. It's an interesting look into the politics of "prisoner" negotiations. It also shows the devotion and determination of her sister Lisa, who fought tirelessly to ensure her release.



Quiet Hero: Se-
crets from my
Father's Past
- Rita Cosby

I bought this book while I was on a trip in Europe to read on the plane home. It captivated me completely and I could not put it down. Rita Cosby's discovery of some WWII artifacts in her parents' attic begins the intimate story of a journey into her father's past growing up a young man in WWII Poland and part of the Polish Resistance. It is a remarkable look at history as well as a heart warming tale of forgiveness and newfound love and appreciation.

ICPA Members' Holiday Photos



Photo Submitted by Brian Helfer



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Holiday Photos continued



Photo submitted by Kristine Quick



Photo submitted by Lawrence Friedman



Photo submitted by Diane Sheetz



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Photo submitted by Renee Chiuchiarelli

Holiday Photos continued

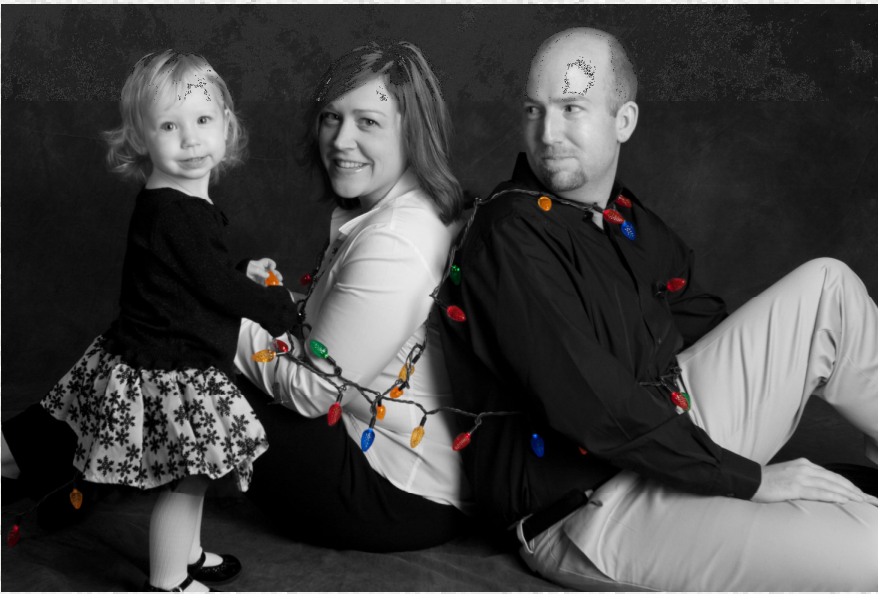


Photo submitted by Blane Carroll



Photo submitted by Steve Borcherding



Photos submitted by Sheriah Richardson

Holiday Photos continued



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