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U.S. Department of State Announces Changes to ITAR RE: Dual-Nationals:

FOREIGN WORKERS ALLOWED ACCESS TO U.S. ORIGIN/ITAR GOODS AND TECHNOLOGY UNDER CERTAIN CONDITIONS

Announcement:

Effective immediately, in a much-anticipated final rule published in the Federal Register on May 16, 2011, the Directorate of Defence Trade Controls, U.S. Department of State ("DDTC/DOS") is amending the *International Traffic in Arms Regulations* ("ITAR"). The changes are important as dual nationals and third-country nationals who are employees of DDTC/DOS approved end-users of the United States Munitions List ("USML") goods and technology (including technical data) will be permitted to have access to such goods without the prior approval of DDTC/DOS. Thus, foreign citizenship alone will no longer act as a reason to deny access to ITAR controlled defence articles.

The ITAR are an important element in the U.S. regime that is used to regulate the export of defence and aerospace articles, technology and materials from the United States. Authorisation or licensing must be obtained when any non-U.S. citizen or entity is to receive or handle items exported under ITAR and goods and services transferred to Canadian industry under ITAR are subject to the controls imposed on U.S. exporters. It should be noted that Canada is the only country to have an exemption under the ITAR, providing it with licence-free access to a limited range of U.S. defence articles to which the ITAR applies. Any ITAR article not covered under the Canadian Exemptions is accessed through the application of export licences or other export authorisations issued by DDTC/DOS.

This important amendment to the ITAR was made in the context of the U.S. Government's Export Control Reform effort launched by the Obama Administration in 2009. It is one of two regulatory changes made in an effort to address complaints from U.S. trade partners and the U.S. aerospace and defence industry with foreign operations, including those located in Canada.

The restrictive application of ITAR relating to access for Canadian citizens with dual nationality, as well as third-country nationals employed at Canadian-based firms, has become a significant issue. Under the previous ITAR

interpretation, DDTC/DOS used the "place of birth standard" in determining whether a foreign person working in a foreign country may have access to unclassified USML articles of U.S. origin. Complying with the ITAR dual-national restrictions often meant Canadian corporations risked complaints under federal and provincial human rights law and regulations.

Under the new rules, approved end-users must screen their employees to make sure that they do not pose a risk of "diversion of such articles to unauthorised end-users". Under the previous ITAR, Technical Assistance Agreements (TAA) and Manufacturing Licence Agreements (MLA) issued under ITAR required that all dual nationals working on a project be identified. This is no longer required, but foreign approved end-users and consignees will be required to vet their employees to make sure that they do not pose a risk of diversion of U.S. ITAR articles and technology to unauthorised end-users.

For details on the ITAR changes see:
<http://www.pmdtcc.state.gov/>

For more information or for those wishing to obtain a better understanding of these new rules please contact:

Heenan Blaikie LLP

Michael G. Woods
613 236.2705
mwoods@heenan.ca

Martha Harrison
416 360.3536
mharrison@heenan.ca

Dominique Babin
514 846.2286
dbabin@heenan.ca

Canadian Export Consulting Services

Chris Fauquier
705 325.7288

Thomas Jones
613 825.5080

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Heenan Blaikie offices

Montreal	514 846.1212
Toronto	416 360.6336
Vancouver	604 669.0011
Québec	418 524.5131
Calgary	403 232.8223
Sherbrooke	819 346.5058
Ottawa	613 236.1668
Trois-Rivières	819 373.7000
Victoria	250 381.9321
Paris	(0) 1 40 69 26 50
Singapore	65 6221 3590