

Frequently Asked Questions (FAQs)
Guidelines for Preparing Agreements
Section 3: General Guidance for Agreements

Dual/Third Country Nationals Pursuant to §124.16

Q: Are additional transfer/re-transfer authorizations required from the Department of State for defense articles, to include technical data, exported to the Ministry of Defense (MOD) of a country if the MOD end-user(s) are deployed on operations and/or training outside that specific country?

A: No, additional transfer/retransfer authorization is not required.

Q: With regard to individuals who are third country/dual national employees of the foreign signatory or its approved sub-licensees, §124.16 states that “The retransfer must take place completely within the physical territories of these countries or the United States.” Does this mean retransfer to third country/dual national employees (approved by DDTC pursuant to §124.16) is no longer authorized within the Ministry of Defense when the MOD end-user(s) are deployed on operations and/or training outside §124.16 specific countries?

A: Re-transfers to third country/dual national employees previously approved by DDTC are authorized to continue when Ministry of Defense (MOD) forces/elements are deployed on operations and/or training outside a previously approved country. However, re-transfer to third country/dual national employees of the country in which the forces/elements are deployed is not authorized without prior approval by the Department of State.

Q: Please explain what is meant in §124.16 by all transfers and/or retransfers must take place completely within the physical territories of these countries?

A: The foreign licensee or sublicensee must be physically located within the countries identified under §124.16 and the dual/third country national must be a national exclusively from a country under §124.16 for the transfer to take place. If the answer to one of these is no, §124.16 does not apply.

Q: Does approval of dual/third country nationals per §124.16 serve as an expansion of territory per §124.7 (4), thereby authorizing the export (transfer/re-transfer) of defense articles to any §124.16 country?

A: No. The approval of dual/third country nationals serves only as an export authorization to those specific employees of the foreign licensees/sublicensees. Any retransfer to a party not previously authorized by the agreement must be requested and

approved in a separate amendment. Although adjudicated by DDTC as an export, this is conducted solely to assess the risk to foreign policy and national security due to the increased risk of diversion of defense articles to the specified countries.

Q: Can §124.16 be used to authorize dual/third country nationals of §124.16 countries employed by the applicant or other US Signatories to the Agreement?

A: No. All foreign nationals employed by a US Person must be authorized on a DSP-5 for foreign national employment or as a signatory to an agreement.

Q: When an agreement involves the transfer of classified defense articles, can §124.16 still be used to authorize dual/third country nationals access to only unclassified defense articles associated with the agreement?

A: Yes, but the proposed amendment must specifically address that only unclassified defense articles apply. Failure to specify that the dual/third country nationals will only have access to unclassified defense articles will result in NO APPROVAL for dual/third country nationals.

Q: Section 17.3 of the Guidelines for Preparing Agreements provides guidance on how many copies of a proposed amendment should be submitted. Does a request to add dual/third country nationals per §124.16 require an original + seven copies of the proposal, or an original + one copy of the proposal?

A: All proposed amendments to add dual/third country nationals, regardless if the request is limited to §124.16, requires an original + seven copies of the amendment proposal.

Q: Per §124.12 (a)(10) “This agreement (does/does not) request retransfer of defense articles and defense services pursuant to §124.16.” Should this statement include a reference to technical data?

A: Per §120.6, defense article means any item or technical data designated in §121.1 of this subchapter.

Q: When requesting dual/third country nationals pursuant to §124.16, do we need to list all of the countries of the dual/third country nationals under §124.7 (4) or can we just say NATO/EU?

A: There is no need to list each country. In this case, the collective countries of NATO and the EU have been identified under §124.16.

Q: When is the last day I can submit a minor amendment pursuant to §124.1(d) to waive NDA requirements for dual/third country nationals that meet §124.16 requirements and were previously approved on an agreement by DDTC?

A: Minor amendments pursuant to 124.1(d) to waive NDA requirements for previously approved dual/third country nationals that meet §124.16 requirements must be received at DDTC prior to October 1, 2008.