

Frequently Asked Questions (FAQs)

Licenses “in Furtherance of” Agreements

Q: Why does DDTC require copies of the entire agreement file when processing a license “in furtherance” of an agreement?

A: We continue to rely on a paper system when processing requests involving agreements. The inclusion of electronic agreements in future D-TRADE versions is critical to the improved processing of agreements and related licenses. In the meantime, this requirement was implemented to facilitate the review by the licensing officer of the license application. Previously, the licensing officer would have to retrieve and audit voluminous files to compile the necessary information to confirm hardware authorization. After further review, **DDTC has reduced this requirement to copies of the agreement/ amendments and pertinent sections which relate to and authorize exports of hardware.** A little more effort required on the part of the applicant but it will significantly shorten the review time.

Q: Why does the first foreign consignee to receive the requested hardware have to be a foreign licensee or end-user on the subject agreement?

A: The intent of this requirement is to clearly place the exported hardware under the umbrella of the identified agreement before moving it on to other consignees. The foreign licensees as signatories to the terms and clauses of the agreement must fulfill their responsibilities of control and tracking of the hardware exported from the U.S. under the agreement.

Q: What is the process for “repair and replacement” license applications for hardware exported in furtherance of an agreement? Is the letter explanation required for repair and replacement license applications?

A: The applicant must reference the relevant agreement under which the hardware was originally exported in Block 23 and clearly state the application is for “repair and replacement” purposes. The phrase “in furtherance” should not be used but rather a statement along the lines of “The hardware was originally exported under (agreement number)”. The letter of explanation reference in Section 9.4 is not required for “repair and replacement” license applications.

Q: Where in the supporting documentation should the relevant agreement be identified?

A: The relevant agreement number must be provided in the supporting documentation from the foreign licensee. The identification can be in the purchase documentation or a separate end-use statement.

Q: Who should submit the letter of explanation? Will a non-agreement U.S. party be able to submit a license application on behalf of an agreement signatory, i.e., trading company?

A: The letter of explanation must be provided by the agreement holder of the relevant agreement. If another U.S. signatory to the agreement applies for a license, the application must be supported by a letter from the agreement holder which includes the section 5(c) certification. Only the agreement holder or another U.S. signatory may obtain a license in furtherance of an agreement. If a U.S. company wishes a trading company to obtain licenses in furtherance of an agreement that trading company must be a signatory to the agreement. This measure has been implemented to ensure that the agreement holder assumes full responsibility for all activities authorized under the agreement, in particular tracking hardware value to authorized thresholds.

Q: In what situation would no value in the supporting documentation be acceptable to DDTC?

A: The supporting documentation should identify value whenever available. DDTC recognizes there are situations when a traditional purchase order is not available because goods are not being purchased or sold under the agreement. In these situations a request for goods documents can be submitted as an “in lieu” purchase order not identifying value. It is the responsibility of the agreement holder to properly value the export under the agreement. This guidance is applicable only when applying for “in furtherance” licenses. All other license applications must provide value.

Q: Does referencing an agreement in Block 8(c) of a DSP-5 make a license “in furtherance” of the related agreement?

A: No. The applicant may reference an agreement as a precedent approval for or related to the overall license application. The identification of an agreement in this block does not assume “in furtherance” of status. If the license is truly “in furtherance” of an agreement this statement must be made in Block 20 “Specific Purpose”.

Q: Does the agreement/amendment authorizing hardware have to be executed prior to submission of a license?

A: The agreement/amendment does have to be approved by DDTC prior to submission of the license application. The agreement/amendment authorizing the hardware requested for export does not have to be executed in order to submit a license application. Proviso 3 of an agreement approval letter prohibits the shipment of the approved hardware prior to the execution of the authorizing agreement/amendment.

Q: Can a non-signatory U.S. party submit a hardware license “in support” of an agreement based on a purchase order from the foreign signatory?

Guidance updated July 1, 2008

A: Yes. This is the ideal scenario for an “in support” of transaction. The foreign signatory may identify an approved agreement in their purchase documentation however the applicant must determine if the transaction is truly “in support” or vice “in furtherance” of an agreement. If the manufacturer or source of the requested defense articles is the agreement holder or another U.S. signatory to the related agreement, DDTC considers that license to be “in furtherance”.