

## New Defense Trade Controls Broker Rules: I'm a broker, you're a broker.....



People and entities that engage in brokering of defense articles are required to register with the US Department of State's Directorate of Defense Trade Controls (DDTC). However, the current definition of a broker and brokering activities under Part 129 of the International Traffic in Arms Regulations (ITAR) is rather unclear and confusing. Following up on previous statements of its intention to do so, on November 25, 2009, DDTC made public a draft of a proposed rule to amend Part 129. Specifically, the draft rule changes and significantly broadens the very definition of "broker" and "brokering activities."

The new definition of a broker in the draft proposed rule is "any person who engaged in brokering activities," deleting the current phrase "who acts as an agent for others". Brokering activities are in part defined as "any action of an intermediary nature to facilitate the manufacture, export, re-export, import, transfer or retransfer of a defense article or defense service."

These new definitions for broker and brokering as proposed by DDTC are extremely broad, and if adopted, would mean a significant number of new entities will be captured by the regulation and would need to register as brokers, file annual brokering reports, and assess whether they need prior DDTC authorization for their work. Additionally, the examples DDTC provides of the types of activities considered brokering illustrate that the definition is intended to cover a broader range of activities. While individual DDTC officials have taken a broad reading of the old regulations, these views have not to date been official published views. If the draft rule is proposed and implemented in its current draft form, however, these broad views will become the law, affecting a number of persons both within and outside the United States.

In particular, foreign distributors, sales representatives, and potentially consultants who sell or market US defense articles are likely to be affected by this proposed rule. In turn, US exporters of defense articles and services will also be affected in their ability to conduct business with such parties if the foreign parties refuse to register as brokers. It is quite possible that many non-US companies and individuals will not understand the requirement and will be reticent to register.

The proposed rule is still in draft form and has not yet been published in the *Federal Register*, thus there is no public comment period open yet. However, look for the proposed rule to be published in the coming year.

Should you have any questions, please contact the Arent Fox attorney with whom you work or a member of Arent Fox's International Trade Practice Group.