

Major Revisions to U.S. Export Controls: How the New Regulatory Landscape Will Impact Your Clients

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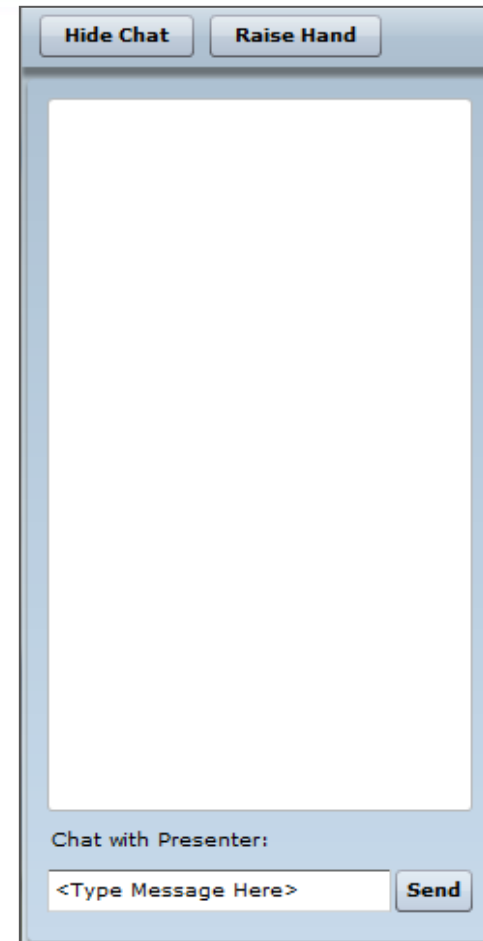
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Housekeeping Items

- All phones are muted
- Dial *0 at any time for technical support
- Questions may be submitted to the presenter via the Chat feature on the left-hand side of your screen
- Questions will be answered at the end of the presentation



Agenda

- **Overview of U.S. export controls**
- **What is export control reform and what does it mean for you**
- **Extraterritorial application of U.S. export controls**
- **Other U.S. trade related regimes and how they may impact your international activities**

Poll

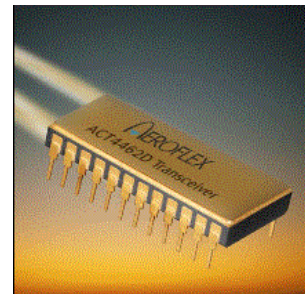
- **How frequently do you deal with U.S. export control issues?**
 - Very frequently (a few times a week)
 - Some what frequently (once to a few times a month)
 - Infrequently (less than once a month)
 - Rarely (one to a few times a year)
 - No experience at all
- **Are you currently involved in implementing compliance program changes as a result of export control reforms?**
 - Yes
 - No
 - Still trying to understand it all!



Overview of U.S. Export Controls

Why it Matters

- **U.S. Export controls are complex**
- **Determining correct jurisdiction and classification is critical**
 - Required
 - Dictates licensing requirements
 - Relied on by others
- A misstep can lead to significant penalties and other adverse actions
 - Consider recent Aeroflex Consent Agreement
 - \$8m for various violations including erroneous self-determination that products classified as EAR99
- **Increasing enforcement**
- **The government, customers, and competitors are watching**



Setting the Stage

- **International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130 (“ITAR”)**
 - Controls Defense articles, technical data, and defense services
 - Administered by Directorate of Defense Trade Controls, Dept. of State (“DDTC”)
- **Export Administration Regulations, 15 C.F.R. Parts 730-774 (“EAR”)**
 - Controls commercial and dual-use items and technology
 - Less sensitive items transferred from ITAR to EAR [the 600-series ECCN’s]
 - Administered by the Bureau of Industry and Security, Dept. of Commerce (“BIS”)
- **Office of Foreign Assets Control (“OFAC”) Regulations**
 - Bars transactions involving embargoed countries and certain individuals and entities
 - Controls *both* military and commercial
 - Administered by OFAC, Dept. of Treasury

What is an “Export” from the U.S.?

- **Any oral, written, electronic or visual disclosure, or any shipment, transfer, or transmission outside the United States to anyone, including a U.S. citizen, of any commodity, technology, or software**
 - Tangible / Physical
 - Email, telephone, fax
- **Deemed Exports**
- **Additional specific acts are covered under the ITAR (e.g., performing a defense service for a foreign person, whether in the U.S. or abroad)**

International Traffic in Arms Regulations

- **Defense article if:**
 - Meets the criteria of a defense article on the USML; or
 - Provides the equivalent performance capabilities of a defense article on the USML
 - *An article will be designated a defense article if it provides a critical military or intelligence advantage such that it warrants control*

ITAR – Technical Data & Defense Services

- **Technical data:**

- Information ... which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
 - In short, if it provides any form of “how to” information it is likely to be controlled technical data
 - Distinguish to narrower interpretation of controlled “technology” under EAR

- **Defense Services:**

- The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.

Export Administration Regulations

- **Commercial and dual-use items**
- **Less sensitive items transferred from ITAR to EAR "600 series"**
- **Items on multilateral regimes such as Wassenaar Munitions List**
- **Controls**
 - commodities (equipment, systems, components, parts, accessories, materials)
 - Software
 - Technology
- **Licensing analysis can be complex depending on control, destination, end user, end uses**

EAR

Commerce Control List Categories

0	Nuclear & Miscellaneous
1	Materials, Chemicals, Microorganisms and Toxins
2	Materials Processing
3	Electronics
4	Computers
5 Part 1	Telecommunications
5 Part 2	Information Security
6	Sensors and Lasers
7	Navigation and Avionics
8	Marine
9	Aerospace and Propulsion

Five Product Groups

A	Systems, Equipment and Components
B	Test, Inspection and Production Equipment
C	Material
D	Software
E	Technology

Is it on the CCL?
If not = EAR99



Still need to consider General Prohibitions

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738 page 14

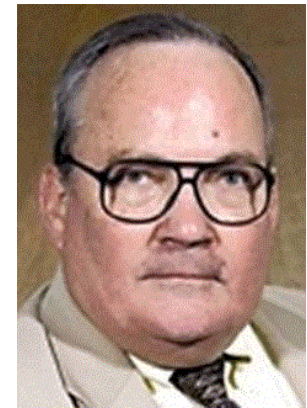
Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Misile Tech	Regional Stability		Firarms Convets on	Crime Control			Anti-Terroriam	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Spain ³	X					X		X	X							
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan ¹	X	X		X		X	X	X	X	X		X		X	X	X
Suriname	X	X		X		X	X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X		X		X		
Sweden ^{3,4}	X					X		X	X			X		X		
Switzerland ^{3,4}	X					X		X	X			X		X		
Syria	See § 746.9 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Taiwan	X	X	X	X		X	X	X	X	X		X		X		
Tajikistan	X	X	X	X		X	X	X	X	X		X	X			
Tanzania	X	X		X		X	X	X	X	X		X		X		
Thailand	X	X		X		X	X	X	X	X		X		X		
Timor-Leste	X	X		X		X	X	X	X	X		X		X		

Consequences of Non-Compliance

- Penalty authority has increased exponentially since 9/11
 - Individual criminal and civil liability for unauthorized exports and for misrepresentations
 - Fines up to \$1,000,000 per violation of ITAR/EAR
 - Fines up to \$10,000 per violation of AES rules
 - Seizure and forfeiture of attempted illegal exports
 - Corporate death sentences
 - Export license suspension and debarment
 - Federal contract suspension and debarment
- Impact on foreign parties?
 - Denial order, Extradition
 - U.S. travel issues (*in personum* jurisdiction)
 - Bad press, Customer issues



U.S. EXPORT CONTROL REFORM

Export Control Reform



America's decades-old, bureaucratically labyrinthine system does not serve our 21st-century security needs or our economic interests. Our security interests would be far better served by a more agile, transparent, predictable, and efficient regime.

- Secretary of Defense, Robert Gates, April 20, 2010

[T]he current export control system is overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes our ability to focus our efforts on the most critical national security priorities.

- Whitehouse Press Release, August 10, 2010.

Motivations and Goals


- **Make U.S. industry more competitive overseas**
- **Use government resources more efficiently**
- **Coordinate with allies better**
- **4 Singularities:**
 - Control list
 - Licensing agency
 - Enforcement agency
 - IT platform

Highlights – Realigned Control Lists

ITAR  EAR

- Many less sensitive items on the **simple** / **highly restrictive** International Traffic In Arms Regulations (ITAR) United States Munitions List (USML)
- Have or will move to the **complex** / **less restrictive** Export Administration Regulations (EAR) Commerce Control List (CCL)

Highlights – Revised Policy in ITAR 120.3

- Policy of Designated and Determining Defense Articles on USML
 - **Gone:**
 - Defense article if: (a) specifically designed, developed, configured, adapted, or modified for a military application; (i) no predominant civil applications; and (ii) no performance equivalent to article used for civil applications
- 
- **Replaced with:**
 - Defense article if: (1) meets the criteria of a defense article on the USML; or (2) provides equivalent performance capabilities of a defense article on USML
 - Future: If it provides a critical military or intelligence advantage such that it warrants control

Highlights – USML Positive Controls

- **Gone:** broad subjective catch all language

Category VIII — Aircraft and Associated Equipment

*(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: Gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training.

(h) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (d) of this category, excluding aircraft tires and propellers used with reciprocating engines.



Highlights – USML Positive Controls

- **Replaced with:** Express positive control criteria

Category VIII—Aircraft and Related Articles

(a) Aircraft (*see* § 121.3 of this subchapter) as follows:

- * (1) Bombers;
- * (2) Fighters, fighter bombers, and fixed-wing attack aircraft;
- * (3) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft;
- * (4) Attack helicopters;
- * (5) Unarmed military unmanned aerial vehicles (UAVs) (MT if the UAV has a “range” equal to or greater than 300km);
- * (6) Armed unmanned aerial vehicles (UAVs) (MT if the UAV has a “range” equal to or greater than 300km);
- * (7) Military intelligence, surveillance, and reconnaissance aircraft;
- * (8) Electronic warfare, airborne warning and control aircraft;
- (9) Air refueling aircraft and strategic airlift aircraft;
- (10) Target drones (MT if the drone has a “range” equal to or greater than 300km);

(h) Aircraft parts, components, accessories, attachments, associated equipment and systems, as follows:

- (1) Parts, components, accessories, attachments, and equipment specially designed for the following U.S.-origin aircraft: the B-1B, B-2, F-15SE, F/A-18 E/F/G, F-22, F-35 and future variants thereof; or the F-117 or U.S. Government technology demonstrators. Parts, components, accessories, attachments, and equipment of the F-15SE and F/A-18 E/F/G that are common to earlier models of these aircraft, unless listed in paragraph (h) of this category, are subject to the EAR;
- (2) Face gear gearboxes, split-torque gearboxes, variable speed gearboxes,

(6) Bomb racks, missile launchers, missile rails, weapon pylons, pylon-to-launcher adapters, unmanned aerial vehicle (UAV) launching systems, external stores support systems for ordnance or weapons, and specially designed parts and components therefor (MT if the bomb rack, missile launcher, missile rail, weapon pylon, pylon-to-launcher adapter, UAV launching system, or external stores support system is for a UAV, drone, or missile that has a “range” equal to or greater than 300 km);

(7) Damage or failure-adaptive flight control systems specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(8) Threat-adaptive autonomous flight control systems;

(9) Non-surface-based flight control systems and effectors (*e.g.*, thrust vectoring from gas ports other than main engine thrust vector);

Highlights – Creation of 600 Series

- **Items no longer listed on revised USML will become subject to EAR 600 Series ECCN's**
- **Still controlled as military items**
- **License will be required to export and re-export most 600 series Worldwide (except Canada) unless:**
 - EAR license exception applies; or
 - Enumerated in .y subparagraph
 - ITAR 126.1 country embargoes remain (including China) and countries listed in Country Group D:5

Highlights - Anatomy of an ECCN

ECCN 9A610

Export Control
Classification Number

Category 9 –
Aerospace &
Propulsion

Group A –
Systems,
Equipment, and
Components

Reason for Control

Generally tracks Wassenaar
Arrangement Munitions List

Reasons for control

- 0 = national Security
- 1 = Missile Technology
- 2 = Nuclear Nonproliferation
- 3 = Chemical & Biological
- 5 = National Security and Foreign Policy
- 6 = Wassenaar Arrangement Munitions List or USML
- 9 = Anti Terrorism, Crime Control, Regional Stability, Short supply, UN Sanctions etc

600-Series ECCN

9A610 Military aircraft and related commodities.

License Requirements

Reason for Control: NS, RS, MT, AT, UN

<i>Control(s)</i>	<i>Country chart</i>
NS applies to entire entry except 9A610.u, .v, .w, and .y.	NS Column 1
RS applies to entire entry except 9A610.y.	RS Column 1
<i>Control(s)</i>	<i>Country chart</i>
MT applies to 9A610.u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

a. ‘Military Aircraft’ “specially designed” for a military use that are not enumerated in USML paragraph VIII(a).

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete canopies, harnesses, platforms, electronic release mechanisms “specially designed” for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and “equipment” “specially designed” for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

600-Series ECCN

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities “specially designed” for a military use, as follows:

- y.1. Aircraft tires;
- y.2. Analog cockpit gauges and indicators;
- y.3. Audio selector panels;
- y.4. Check valves for hydraulic and pneumatic systems;
- y.5. Crew rest equipment;
- y.6. Ejection seat mounted survival aids;
- y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);
- y.8. Filters and filter assemblies for hydraulic, oil and fuel systems;
- y.9. Galleys;
- y.10. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, nutplates, and brackets;
- y.11. Lavatories;
- y.12. Life rafts;
- y.13. Magnetic compass, magnetic azimuth detector;
- y.14. Medical litter provisions;
- y.15. Mirrors, cockpit;
- y.16. Passenger seats including palletized seats;

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified on the USML or the CCL.

License required to most countries except Canada or license exception applies

Controlled for AT Reasons only. NLR to most countries except Cuba, Iran, N. Korea, Syria, Sudan



Other Highlights

- **Harmonized definitions – i.e. Specially Designed**
- **Ability to include EAR items on ITAR license**
- **For items that transition to the EAR:**
 - License exceptions
 - Many re-exports subject to EAR *de minimus* rules
 - No requirement for TAA's and MLA's

Final Rules

Eff. Date	USML	Description	EAR
10.15.2013	VIII	aircraft	ECCN 9A610 – 9E610
10.15.2013	XIX	Gas turbine engines	ECCN 9A619 – 9E619
01.06.2014	VI	Vessels	ECCN 8A609 – 8E609
01.06.2014	VII	Vehicles	ECCN 0A606 – 0E606
01.06.2014	XIII	Aux. military equipment	ECCN 0A617 – 0E617
01.06.2014	XX	Submersibles	ECCN 8A620 – 8E620 (no C)
07.01.2014	IV	<i>Missiles</i>	<i>ECCN 0A604 – 0E604 (no C)</i>
07.01.2014	V	<i>Explosives</i>	<i>ECCN 1B608 – 1E608 (no A)</i>
07.01.2014	IX	<i>Training Equipment</i>	<i>ECCN 0A614 – 0E614 (no C)</i>
07.01.2014	X	<i>Protective Equipment</i>	<i>ECCN 1A613 – 1E613 (no C)</i>
07.01.2014	XVI	<i>Nuclear</i>	

Proposed Rules

Date	USML	Description	EAR
7.25.2013 (2)	XI	Electronics	ECCN 3A611 – 3E611 ECCN 4A611 ECCN 5A611 ECCN 6A611 ECCN 7A611 ECCN 9A620 – 9E620
	XII	Sensors	
	XIV	Chem/Bio	
07.08.2013	XV	Satellites	ECCN 9A515 – 9E515
	XVIII	Directed Energy	

CHALLENGES

Determining Jurisdiction & Classification

- **Review USML**

- Is it specifically enumerated
- Is it within a catch-all control

- **If not, Review CCL**

- Determine CCL category and product group
- Review 600 series
 - Is it specifically enumerated in .a through .w
 - Is it specifically enumerated in .y
 - Is it specially designed in .x
- Review non-600 series ECCN

- **Software and Technology**

- If item on USML = software and technical data on USML
- Otherwise EAR 600 Series Group D (software) or Group E (technology)
- If classified technical data re: USML and 600 Series = USML



Commerce Control List (CCL) Order of Review Decision Tool

(The tool is effective for exports on or after October 15, 2013)

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Specially Designed

- Needed to clearly define what was caught by the catch-all controls – especially for items moving to CCL from USML
- “enforceable and capable of being prosecuted.”
- Design intent leads to inconsistent results
 - Subjective
 - Times change – may no longer warrant strict control
 - Determining design intent may be difficult

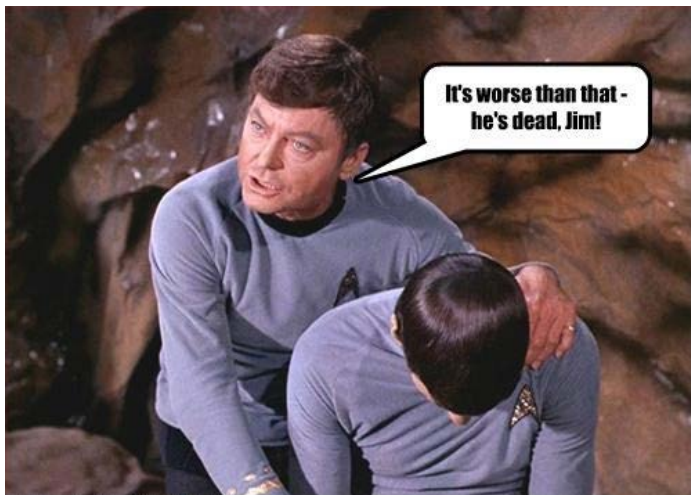


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Specially Designed – Catch

Paragraph (a)	Except for items described in (b), an item is specially designed if:
(1)	<p>As a result of development, the item has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant:</p> <p>ITAR definition: USML paragraph EAR definition: ECCN paragraph or USML paragraph</p>
(2)	<p>Is a part, component, accessory, attachment, or software for use in or with a:</p> <p>ITAR definition: a defense article EAR definition: a commodity or defense article enumerated or described on the CCL or the USML</p>

Specially Designed – Release

Paragraph (b)	A part, component, accessory, attachment or software that would be controlled by (a) is not specially designed if:
(1)	<p>ITAR definition: a CJ establishes item is subject to EAR EAR definition: a CJ or interagency-cleared CCATS (EAR 748.3(e)) says the item is controlled in an ECCN that does not use specially designed as a control parameter or EAR99 (EAR)</p>
(2)	<p>Both: the item is a fastener (e.g. screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder</p>
(3)	<p>the item has the same function, performance capabilities, and same or equivalent form and fit as a commodity or software used in or with an item that is or was in production that:</p> <p>ITAR definition: is not enumerated on the USML EAR definition: is either not enumerated on the USML or CCL, or is described in an ECCN controlled for AT only</p>

Specially Designed – Release

Paragraph (b)	A part, component, accessory, attachment or software that would be controlled by (a) is not specially designed if:
(4)	<p>It was or is being developed with knowledge that it would be for use in or with:</p> <p>ITAR definition: both defense articles enumerated on the USML and also commodities not on the USML</p> <p>EAR Definition: commodities or software (i) described in an ECCN and (ii) also commodities or software either not enumerated on CCL or USML or commodities or software described in an ECCN controlled for AT reasons only</p>
(5)	<p>Both: the item was or is being developed as a general purpose item, i.e. with no knowledge of use in or with a particular item or type of commodity</p>
(6)	<p>EAR only: the item was or is being developed with knowledge that it would be used in or with commodities or software (i) described in an ECCN controlled for AT reasons only and EAR99 commodities or software, or (ii) exclusively for use in or with EAR99 item</p>

Need contemporaneous documents to support design intent in (b)(4)-(6)

Specially Designed – Recap in Plain English

- **Not specially designed if:**

(1) a CJ or CCATS establishes that it is not specially designed;

(2) if is low level part such as a fastener;

(3) it is used in both controlled and uncontrolled / lowest level controlled item;
or

(4)-(6) You have contemporaneous documents to show developed as dual-use
or general purpose item

Specially Designed Classification Requests

- **New §748.3 (e) – Confirmation you’re not “specially designed”**
- **For parts, components etc.**
- **Limited to situations where:**
 1. Fit has been modified, can’t say is equivalent and there’s good chance the government would find tweak insignificant; or
 2. Same performance capabilities of item that is not specially designed per (b)(3)

Determining Appropriate Controls

- **ITAR – license / approval required**
 - unless Canada or limited License exemptions apply
 - TAA or MLA may be needed for overseas collaboration
 - Foreign Person – need to consider dual / third country nationals
- **EAR – license may or may not be required**
 - Depends on whether on CCL, reasons for control, where it is going
 - 600 series, other ECCN's, EAR99, General Prohibitions
 - A number of broad license exceptions
 - Reexports may / may not be controlled
 - *De minimus* may apply
 - Foreign Product of 600 series technology may be controlled
 - Foreign Person – citizenship only

Transition Considerations

	Contains only items transitioning to CCL	Contains both transitioning and non-transitioning
DSP-5	Can use up to 2 years after effective date unless license expired or returned. May amend after effective date on case-by-case basis	Valid for all items until expiration. May amend on a case-by-case basis.
DSP-61; DSP-73	Valid until expiration. May amend after effective date on case-by-case basis.	
TAA; MLA; WDA	May use for up to 2 years after effective date unless expires before. May amend on case-by-case basis.	May use for up to 2 years after effective date unless expires before. May be kept valid beyond 2 years by submitting amendment to authorize transitioning items under §120.5(b).

Transition Considerations

- **Items subject to the EAR authorized under §120.5(b)**
- **AES filing required for all 600 series regardless of value and for STA**
 - New “DY6” for .y 600 series except low value and Canada
- **Prior CJ’s**
 - ITAR and item transitioned – CJ superseded
 - EAR ECCN classification not classified 600 Series
 - Unless ECCN XX018
- **Registration not required**
 - if all transitioned
 - Not using existing licenses

Opportunities

De Minimus

- **Under ITAR – “see through rule” resulted in ITAR taint**
 - Causing foreign markets to design out U.S. ITAR controlled items
- **Under EAR - *de minimis* rules may apply**
 - A foreign made item located outside the U.S that incorporates controlled U.S. origin content that does not exceed the applicable *de minimis* percentage is not subject to the EAR.
 - 25% for most countries except D:5
 - 0% for country group D:5 (Afghanistan; Belarus; Burma; China; Congo; Cote D’Ivoire; Cuba, Cyprus; Eritrea; Fiji; Haiti; Iran; Iraq; N. Korea; Lebanon; Liberia; Libya; Somalia; Sri Lanka, Sudan; Syria; Venezuela; Vietnam; Zimbabwe)

Strategic Trade Authorization

- **License Exception STA** - authorizes the export, re-export and transfer (in-country) of specified items on the CCL to destinations posing a low risk of unauthorized or impermissible use
- **Instead of licensing, STA requires the exporter to undertake certain administrative requirements**
 - Notification
 - Prior Consignee Statement
 - Notification to consignee of STA shipment

License Exception – STA

- §740.20(c)(1) - STA 36 Countries (Group A:5):

Argentina	Australia	Austria	Belgium	Bulgaria	Canada
Croatia	Czech Republic	Denmark	Estonia	Finland	France
Germany	Greece	Hungary	Iceland	Ireland	Italy
Japan	Latvia	Lithuania	Luxembourg	Netherlands	New Zealand
Norway	Poland	Portugal	Romania	Slovakia	Slovenia
South Korea	Spain	Sweden	Switzerland	Turkey	United Kingdom

- If reasons for control are national security (NS); chemical or biological weapons (CB); nuclear nonproliferation (NP); regional stability (RS); crime control (CC), and/ or significant items (SI)
- Unless excluded in “License Exceptions” list within applicable ECCN

License Exception – STA

- **§740.20(c)(8) – STA 8 Countries (Group A:6):**

Albania	Hong Kong	India	Israel
Malta	Singapore	South Africa	Taiwan

- If reasons for control are national security (NS) only
- Unless excluded in “License Exceptions” list within applicable ECCN

License Exception – STA

- **Can be used for most 600-series to Country Group A:5 subject to:**
 - Not available if relevant ECCN excludes STA;
 - Group A:5 only
 - Ultimate government end use, return to U.S., or in connection with existing authorization
 - Must: (i) acknowledge government end use; and (ii) permit U.S. Government end use checks
 - Foreign parties previously approved on a license issued by BIS or DDTC
 - No STA for certain end items without prior determination by BIS

Other Exceptions - 600 Series

- **Available license exceptions listed in §740.2(a)(13):**
 - LVS (§740.3)
 - TMP (§740.9)
 - RPL (§740.10)
 - GOV (§740.11)
 - TSU (§740.13)
 - STA (§740.20)
- **Restrictions on license exceptions for 600 series:**
 - Not to D:5 countries (except §740.11(b)(2) of GOV)
 - Certain 600 series
 - 600 Series Major Defense Equipment
 - MT controls
 - As restricted in specific section of license exception within ECCN

Next Steps

- Existing products – review your product matrix
- New products – revise your jurisdiction and classification procedures – order of review
- Understand the license requirements & tech controls
- Maximize use of license exceptions
- Consider overseas business opportunities from *de minimus*
- For dual use products in development = create documents



EXTRATERRITORIAL APPLICATION OF U.S. EXPORT CONTROLS

The *Oddity* of U.S. Export Controls

- U.S. is the only country that extends its export control jurisdiction beyond its boundaries
- U.S. law potentially attaches to U.S. origin products and technology wherever they are located around the globe
- Controls are based upon U.S. oriented foreign policy and national security goals / concerns
- **RESULT:** Non-U.S. recipients of U.S. origin goods and technology may need to comply with U.S. export control laws

Activities Abroad Impacted by U.S. Export Controls

- **Activities of U.S. citizens, permanent residents or asylees located abroad**
 - Services; Engineering; Facilitation
- **Activities of subsidiary of U.S. entity, located abroad**
- **Activities of branch office of U.S. entity, located abroad**
- **Retransfers / reexports of U.S. origin goods abroad**
 - But note de minimus rule under EAR
 - Beware see through rule under ITAR
- **Use of U.S. origin technology to produce products abroad**
- **Incorporation of U.S. origin components into products produced abroad, and subsequent retransfers / reexports**

De Minimis Rule Under EAR

- **Applies to retransfers (in-country) and reexports (third country) of foreign produced products that incorporate EAR controlled content**
- **If value of U.S. controlled content is “low”, U.S. export controls over the foreign produced product is released**
 - 25% controlled technology for most reexports (10% in certain circumstances)
- **Not applicable to certain sanctioned countries (e.g., Iran)**
- **Not applicable to items that incorporate “600 series” parts and components to D:5 countries**

See-Through Rule Under ITAR

- **Any ITAR controlled part or component incorporated into a foreign produced product, even a commercial product (e.g., medical imaging device), will trigger ITAR control of the product into which it was incorporated**
 - This means that the foreign party will need to obtain U.S. State Department permission to transfer or export their product
 - Big issue for non-U.S. manufacturers
 - Note effort by EU to produce “ITAR free products”
 - But note Thales claim of ITAR free satellite bus, and subsequent (and ongoing) investigation by U.S. State Department

Other Trade Related Regulatory Issues

- **Broker Rules under the ITAR**
 - Applies to U.S. and non-U.S. parties that facilitate in any way U.S. defense trade for a fee or commission
 - Requires non-U.S. parties to register with the U.S. State Department, pay an annual fee, and submit annual reports of brokering activity

Other Trade Related Regulatory Issues

- **Anti-Boycott**
 - Embodied in EAR
 - Requires U.S. persons and some foreign persons to refuse to participate in unsanctioned foreign boycotts
 - Beware certain types of questions and requirements
 - Countries of particular concern: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, UAE, and Yemen

Other Trade Related Regulatory Issues

- **CFIUS**
 - Foreign Investment and National Security Act of 2007
 - Applies to foreign investment in, or acquisition, of U.S. businesses
 - Voluntary process, but beware post-acquisition rewind
 - National security focus, but recent cases evidence broadening reach

Other Trade Related Regulatory Issues

- **FCPA**

- Prohibits U.S. companies and their shareholders, directors, officers, employees and ***agents/representatives*** from paying or authorizing the payment of any money or anything else of value directly or indirectly to a foreign official for purposes of influence
- ***Applies equally to third parties (including non-U.S. parties) that represent U.S. interests***
- Requires careful vetting of third parties, appropriate contract clauses and oversight, and adequate internal accounting

Q&A

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