

U.S. Export Control Overview

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Introduction to the Export Regulations Topics to Be Covered:

- A. Scope of the EAR
- B. The Ten General Prohibitions
- C. ECCN Classification
- D. Penalties and Enforcement
- E. Export Licensing
- F. AES/Census
- G. Recordkeeping

A. Scope: Exports and Reexports of Items Subject to the EAR

- ITEMS - generally, merchandise, commodities, technical data, technology, software, information

- EXPORT - shipment or transmission of items subject to the EAR out of the United States; or release of technology or software subject to the EAR to a foreign national in the United States

Exports and Reexports of Items Subject to the EAR

- o REEXPORT - an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States

Exports and Reexports of Items Subject to the EAR

- o RELEASE OF TECHNOLOGY OR SOFTWARE -
 - a. Visual inspection by foreign nationals of U.S. origin equipment and facilities
 - b. Oral exchanges or information in the United States or abroad
 - c. Application to situations abroad of personal knowledge or technical experience acquired in the United States

Items Subject to the EAR

1. All items in the U.S., FTZ's or in transit;
2. All U.S. origin items wherever located;
3. U.S. origin parts, components materials or other commodities incorporated abroad into foreign-made products, U.S. origin software, and U.S. origin technology commingled with foreign technology exceeding de minimis levels

Items Subject to the EAR (Contd.)

4. Certain foreign-made direct products of U.S. origin technology or software;
5. Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S.-origin technology or software;
6. Items specified on the CCL; and
7. Certain items not specified on the CCL - EAR99

Items Specifically Not Subject to the EAR

1. Items exclusively controlled by other agencies such as State, OFAC, or NRC
2. Phonograph records, newspapers, printed books, etc.;
3. Publicly available technology and software that: a) are published, b) arise from fundamental research, c) are educational or d) are included in certain patent applications, and
4. Foreign made items that have de minimis U.S. content, provided they are not subject to the foreign-made direct product rule

1. Export and reexport of Controlled Items to Listed Countries

> You may not, without a license or license exception, export any item subject to the EAR to another country if -

Exports and Reexports

- A. Controlled for reason in ECCN
- B. Destination/Country Chart
- C. License exceptions

2. Reexport and export from abroad /de minimis

- > Foreign made items incorporating more than de minimis amount of US content
- > Licensing

3. Reexport and export of foreign-produced direct product

- > Foreign produced direct product of US technology and software

4. Engaging in Actions Prohibited by a Denial Order

- Do not engage in exports, reexports or certain other transfers to persons listed on the Denied Persons List.
 - A. Individuals or companies denied export privileges
 - B. Publication in the Federal Register, Internet

5. Export for Prohibited End-Uses or to Prohibited End Users

- Do not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end use that is prohibited

Prohibited End Uses

- A. Certain nuclear end uses
- B. Certain chemical and biological end uses
- C. Certain maritime nuclear propulsion end-uses

6. Export or Reexport to Embargoed or Special Destinations

- Do not, without a license or license exception, export or reexport any items subject to the EAR to an embargoed destination

7. Support of Proliferation Activities

- Do not, without a license, contract with or engage in finance, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities

Proliferation Activities

- A. Nuclear explosive devices
- B. Missile technology
- C. Chemical or biological weapons
- D. Chemical weapons precursor plants

8. In Transit Shipment

- > You may not, without a license or license exception export or reexport and item through or transit through: Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam

9. Violation of any Order, Terms and Conditions

License Terms and Conditions

10. Proceeding with Knowledge

- > You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan dispose of, transport, forward, or otherwise service with knowledge a violation is about to occur or is intended to occur.

Red Flags -Diversion Risk

- Customer or purchasing agent reluctant to offer information about the end use (or end user) of a product.
- Product's capabilities do not fit the buyer's line of business;

Red Flags

- Product ordered incompatible with the technical level of the country to which the product is being shipped.
- Customer with little or no business background.
- Customer willing to pay cash for a very expensive item when the terms of sale call for financing.

Red Flags

- Customer unfamiliar with the products performance characteristics but still wants the product.
- Customer unreasonably declines routine installation, training or maintenance services.
- Delivery dates vague, deliveries to out of the way destinations.

Red Flags

- Freight forwarding firm listed as the product's final destination.
- Shipping route abnormal for the product and destination.
- Packaging inconsistent with the stated method of shipment or the destination.

Red Flags

- Buyer evasive or unclear about whether the purchased product is for domestic use, export or reexport.
- Customer uses only "P.O.. Box" address or has facilities that appear inappropriate for the items ordered.

C. ECCN Classification

- Commodity Control List
 - Categories 0 through 9
 - A. Systems, Equipment And Components
 - B. Test, Inspection And Production Equipment
 - C. Materials
 - D. Software
 - E. Technology

Example: 5D992

- A. "Software" specially designed or modified for the "development," "production," or "use" of equipment controlled by ECCN 5A992.a or 5A992.b.
- B. "Software" having the characteristics, or performing or simulating the functions of the equipment controlled by ECCN 5A992.a or 5A992.b.
- C. "Software" that BIS has received an encryption registration or that have been classified as mass market encryption software in accordance with § 742.15(b) of the EAR.

Category 5 Reasons For Control

- o NS – National Security
 - o Covers all destination countries except Canada
- o AT – Anti-Terrorism
 - o Covers Cuba, Iran, North Korea, Sudan, Syria
- o EI – Encryption Items
 - o Special controls described in §742.15 of EAR

D. How BIS Polices Export Compliance

- o Document review (pre- and post-shipment)
- o End-use checks abroad (pre- and post-shipment)
- o **Voluntary disclosures** (exporter, competitors, etc.)
- o Administrative sanctions (EAR sec. 764)
- o Criminal sanctions (EAR sec. 764)
- o In transit detentions/seizures/forfeitures

Administrative Sanctions

- Denial of export privileges
- Fine up to \$250,000 per violation (BIS and OFAC)
- Fine up to \$1000 per violation (Census)
- Fine up to \$500,000 per violation (State)

Criminal Sanctions For Non-Willful Violations (BIS)

- Fine of up to the greater of 5 times value of exports or \$50,000, AND/OR
- Imprisonment of individual for up to 5 years

Criminal Sanctions For Willful Violations (BIS)

- Fine of up to the greater of 5 times export value or \$1 million (\$250,000 for an individual), AND/OR
- Imprisonment of individual for up to 10 years

Other Criminal Sanctions (BIS)

- 18 U.S.C. 371 (Conspiracy)
- 18 U.S.C. 1001 (False Statement)
- 18 U.S.C. 1341 *et seq.* (Mail Fraud)
- 18 U.S.C. 1956 *et seq.* (Money Laundering)

E. Export Licensing

- BIS-748P or Application in SNAP-R
- Licenses Generally Issued for a Period of 24 Months and a Specific Quantity
- Contains Blocks for Specific Information and Additional Space for Other Material Facts
- All Material Facts and Parties Must Be Disclosed

License Applications

- Certification
 - "Making any false statement or concealing any material fact in connection with this application or altering in any way the license issued is punishable by imprisonment or fine, or both, and by the denial of export privileges under the Export Administration Act of 1979."

Parties to the Transaction

- Applicant
- Purchaser- The person abroad who has entered into the transaction to purchase an item for delivery to the ultimate consignee. Purchaser and ultimate consignee may be the same.

Parties to the Transaction

- Intermediate Consignee- The person that acts as an agent for a principal party in interest and takes possession of the items for the purpose of effecting delivery to the ultimate consignee. May be a bank or forwarding agent.

Parties to the Transaction

- Ultimate Consignee- The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end user.

Parties to the Transaction

- End-User- The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee

License Applications

- Form BIS-748P: Multipurpose Application Form
 - Classification request
 - License for export or reexport
- Form BIS-711: Statement by Ultimate Consignee and Purchaser
 - Required for certain NS controls
 - Required for our applications

Changes to Information on License Application

- What to do when information submitted on a license application changes during the application process or during the life of the license?
- Application statements are considered to be continuing representations

Changes to Information on License Application

- If a license has been issued and the changes are not excepted by regulation the changes "must be reported immediately" to the BIS, even though shipments against the license may be partially or wholly completed

Changes to Information on License Application

- Examples of non-material excepted changes-
 - Decreases in unit price or total value
 - Certain increases in price
 - Certain changes in intermediate consignee
 - Change in address of purchaser or ultimate consignee if the new address is located with the same country shown on the license

F. Recordkeeping

- Documents to be retained
 - Licenses and any information submitted in support of application
 - Memoranda, notes, correspondence, contracts, invitations to bid regarding export transactions
 - Books of account, financial records
- Documents to be retained in form in which received or created

Recordkeeping

- Five year period of retention from the latest of
 - Export from the United States
 - Any known reexport, transshipment or diversion
 - Any other termination of the transaction, whether formally in writing or by any other means

Recordkeeping

- Documents may not be destroyed if they have been requested by BIS or any other government agency regardless of whether they are outside the required time period

Key Terms: Electronic Export Information (EEI)

- > Must be filed for exports over \$2500 per HTSUS or Schedule B classification
- > Shipments to foreign countries
- > Shipments between U.S. and Puerto Rico and from U.S. to U.S. Virgin Islands
- > All licensable commodities (regardless of value)

U.S. Principal Party in Interest (USPPI)

- > The U.S. entity that receives the primary benefit from the export
- > Usually the seller
- > Could be a foreign party while in the U.S. when purchasing for export

Foreign Principal Party in Interest (FPPI)

- > The party who takes final delivery or end-user
- > May be the ultimate consignee

Authorized U.S. Agent

- > A party in the U.S. (usually)
- > Who has written authorization to file the EEI
- > From the USPPI or FPPI

Standard (Plain Vanilla) Exports

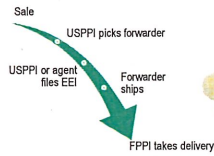
- USPPI: Seller
- Appoints forwarder (agent)
 - Gives POA to agent
 - Makes license determination
 - Submits EEI or has agent do so

- Agent
- Provides transport details
 - Submits EEI in AES if authorized by USPPI
 - Provides copy of EEI to USPPI



- FPPI: Buyer
- Sits and wait for delivery

Plain Vanilla Exports



Routed Export Transactions

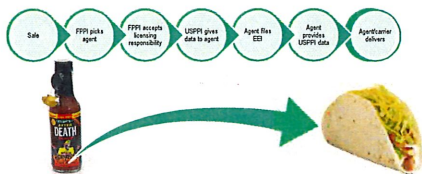
- FPPI: Buyer
- Selects and authorizes U.S. agent
 - Provides statement accepting licensing obligations
 - Sit and wait for delivery

- Agent
- Obtain authorization from FPPI
 - Gets info from USPPI
 - Submits EEI in AES
 - Provides copy of data to USPPI



- USPPI: Seller
- Provide agent for FPPI export and license information
 - May be the agent for FPPI
 - Entitled to data submitted by agent
 - Obtain writing that FPPI assumes responsibility for licensing under EAR

Routed Transaction



Notes on Agents

- > Must be in or subject to jurisdiction of US
- > Must have POA or written authorization to file EEL for USPPH or FPPI
- > May be the USPPH
- > Not necessarily the same as the Freight Forwarder, but often are the same

Correcting Export Information

- > Filer is responsible for correcting errors in data
- > Corrections, cancellations, or amendments must be made as soon as they are known

Enforcement

- > Failure to file or late filing
 - > Not more than \$1,100 for each day
 - > But no more than \$10,000 per violation
- > False or misleading information
 - > Not more than \$10,000 per violation
- > Plus, possible forfeiture