



SOCIETY FOR INTERNATIONAL AFFAIRS

Compliance with US Regulations *US Industry Best Practices and Tips*

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Strategic Compliance Plans



Assist US Party in Establishing a Strategic Compliance Plan



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- **What approvals will be needed when?**
 - Look for flexibility in licensing arrangements
 - Map out process
- **What kind of International interface will occur?**
 - Tech data exchanges, hardware re-exports, dual nationals, subcontracting, sub licensing, etc...
- **Who will be involved?**
 - Identify all the parties, not just End-User and/or Customer
 - Identify Ultimate End-Users, Partners, Integrators, Subcontractors – US and Foreign, Translators, etc...
- **Ensure Communication**
 - Communicate w/program and stay abreast of changes
 - Communicate w/ US counterparts



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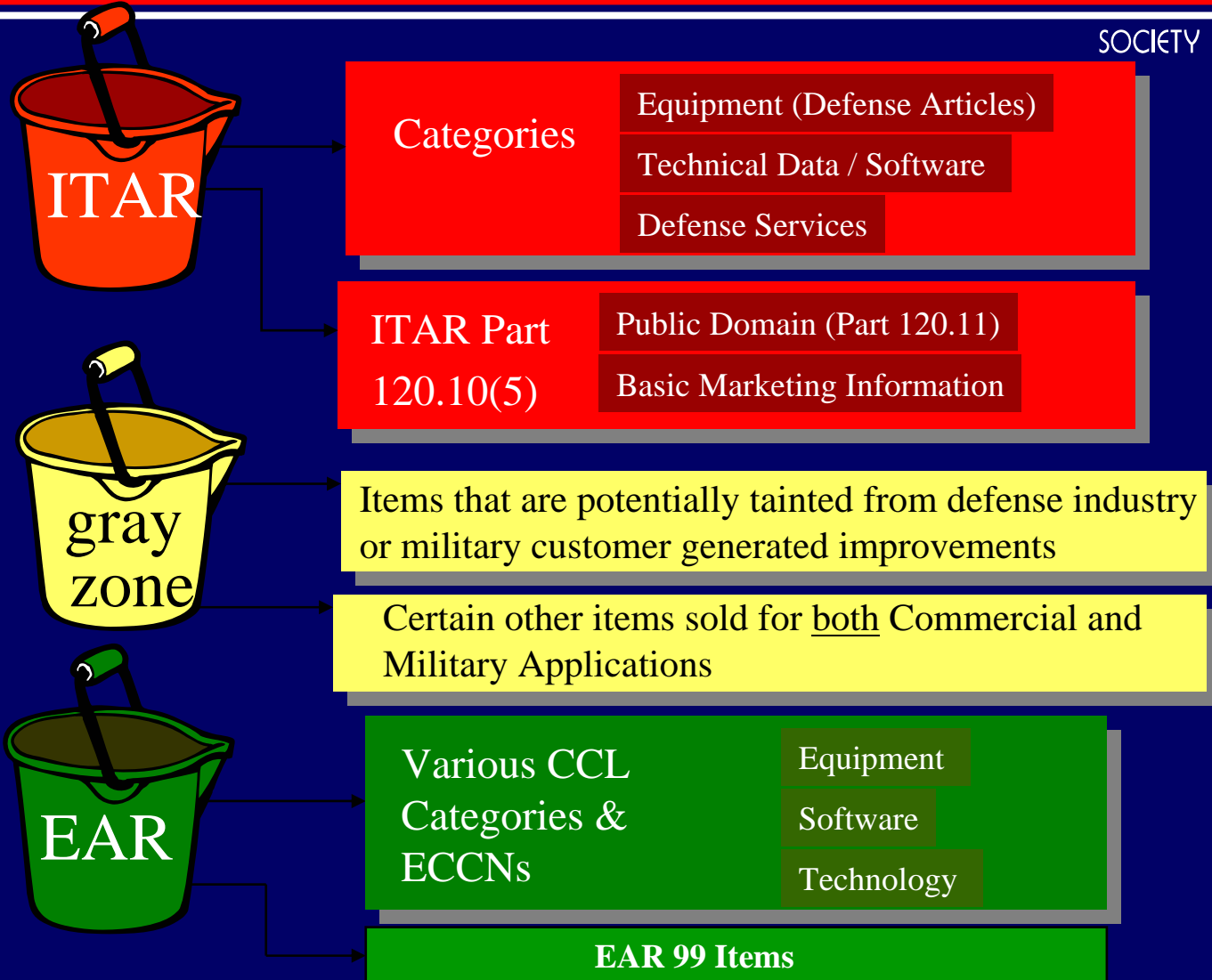
Jurisdiction - Products and Technology



Export Jurisdiction Logic



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**Jurisdiction
Determination
Case-by-Case
Basis**



What if you do not know the export jurisdiction?

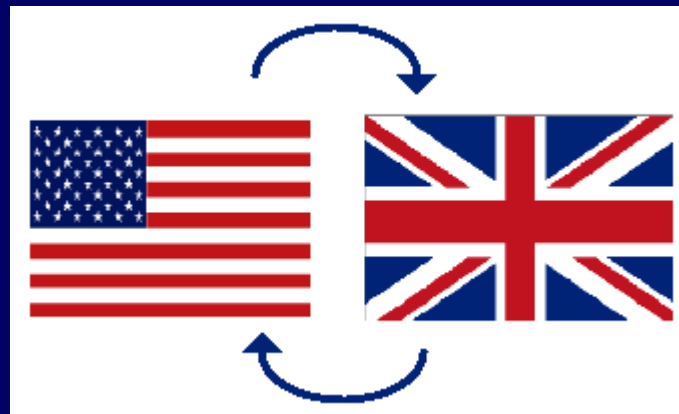


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- **Ask your US Supplier/Party!!!**
- **In contracts - require US parties to identify jurisdiction of products;**
- **Look on websites (many US Companies have listed Export info on websites)**
- **If you are still uncertain - examine the paperwork you originally received with the item:**
 - **Compare Destination Control Statements**
 - **Look for reference to State Department License Numbers (e.g., 795438, T059812, or C083746) or exemption citations such as 22 CFR 126.4)**
 - **Look for reference to Commerce Department License Numbers (e.g., D023240 or Exceptions like NLR, TMP, GBS, CIV or ECCN numbers like 9A001 and EAR 99**



Re-exports





Who May Apply For Re-transfer/Re-exports?



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- **Either U.S. Or foreign person may apply 123.9(c)**
- Registration not required for foreign person
- Written request to PM/DTCL Licensing – No fax/email
- If it is an Agreement – it must be amended
- Information requirements
 - Original Export Authorization
 - Description/quantity/value
 - Identification of new end use and/or new user
- Supporting documentation from foreign parties
- DSP-83 and/or Congressional Notification may apply
- **Need written approval from DTC prior to transfer**



Re-export Summary



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- **Inform US Supplier/Partner of Re-export/Retransfer Intentions**
 - Provide US party with a full description of the proposed re-export path
 - Provide US party with the Answers to the “Five Ws”
 - Who, What, Where, When & Why
 - Must have a purchase order from buyer to support request
- Clarify in writing who has responsibility
- Review the 123.9 Re-export request required elements
- Mark US controlled data or hardware in your facilities with prohibition against unauthorized Re-export/Retransfer
- Obtain copy of Re-export authorization obtained on your behalf
- Ask US party to provide clear information about specific parties, countries, articles and limitations that have been authorized for Re-export



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Joint Development



Joint Development



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- **Current practices encourage joint development and cooperative programs**
- Ensure program is designed to address the sharing of technology
- **May need to make adjustments to shop floor** area to ensure compliance
 - Separate room with storage for ITAR data
- **Caution** - Watch for transfer of UK technology into US
 - E.g., storage of data in the US, hand carries to US
 - Data that enters US is subject to US regulations



Co-mingling of Technology



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- **US re-export regulations apply to US technology, not to UK technology**
- Ensure that the US technology is not co-mingled with the UK technology or know how
- Ensure that you do not incorporate US specifications or characteristics directly into the UK documentation
- **If US specifications, technology, etc... are incorporated into the data, it is likely to be covered under US regulations**



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Summary of Best Practices



Steps for Compliance



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- Ensure you understand the export jurisdiction and classification of the US origin product or technology
- Coordinate activity with your US Counterparts
- Ensure US party is informed of ALL parties to the transaction
- Work with US Party to establish Licensing Strategy **early** in program
- Understand proviso and limitations on export/re-export authorizations





Steps for Compliance



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- Ensure a process exists to safeguard US origin technology and/or hardware
- Ensure all controlled technical data is properly marked
- Use Re-export exemption when applicable – but follow up with proper paperwork
- Work with US parties to obtain re-export authorization when needed
- **If there is a violation, inform US party**





Questions



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