

Navigating U.S. Export Controls

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Commerce

- Work under the authority of Export Administration Act of 1979 as amended
- International Emergency Economic Powers Act, as amended
- Jurisdiction over exports and reexports of civil and dual use “items”
- Broad jurisdiction but narrow license requirements.



What is Subject to the EAR?

- All items in the U.S.
- U.S. origin items wherever located
- Certain foreign made items incorporating controlled US content
- Certain foreign made direct products
- Activities of U.S. persons



Reasons for Export Controls

- To meet international commitments
- To ensure national security
- To meet U.S. foreign policy objectives

Commerce Control List based on



- Wassenaar Arrangement
- Missile Technology Control Regime
- Australia Group
- Nuclear Suppliers Group
- Unilateral controls



Steps to Follow in Determining if A Commerce License is Required

- Is Item Subject to EAR
 - Jurisdiction
 - Published information and software
- Classification
- Reasons for Control
- Country Chart---is there an "x" in the block
- License exceptions
- License submission

Country Chart Structure

Supplement 1 to Part 738

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738—page 7

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	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
	Japan	X					X		X	X						
Jordan	X	X	X	X		X	X	X	X	X		X		X		
Kazakhstan	X	X	X	X		X	X	X	X	X		X	X			
Kenya	X	X		X		X	X	X	X	X		X		X		
Kiribati	X	X		X		X	X	X	X	X		X		X		
Korea, North	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X
Korea, South	X					X		X	X	X		X		X		
Kuwait	X	X	X	X		X	X	X	X	X		X		X		
Kyrgyzstan	X	X	X	X		X	X	X	X	X		X	X			
Laos	X	X		X		X	X	X	X	X		X	X			
Latvia	X	X				X	X	X	X	X		X	X			
Lebanon	X	X	X	X		X	X	X	X	X		X		X		
Lesotho	X	X		X		X	X	X	X	X		X		X		
Liberia	X	X		X		X	X	X	X	X		X		X		

License Exceptions



- An authorization that allows you to export or reexport under stated conditions
- List driven
- Transaction driven
- Part 740

General Prohibitions

Part 736

- 1-3 License required by virtue of reasons for control
- 4—Denial orders
- 5---prohibited end users
- 6---embargoed destinations
- 7---proliferaton activities
- 8---In transit and/or unladen
- 9---Violation of terms license
- 10—Proceeding with knowledge of potential violation



Subject to Reexport Controls

- Items located outside the United States:
 - U.S. Origin items wherever located
 - Certain foreign-made items, if:
 - The value of the U.S. content exceeds the de minimis percentage
 - Supplement 2 to part 734 - de minimis calculation
 - The foreign product is the direct product of U.S. technology or software.



How to Comply with Commerce Requirements

- Rules for reexport are same as for export---if items are subject to EAR
 - US origin item
 - De minimis US content
 - Direct Product of U.S. Data
- Most license exceptions apply



Reexport of Foreign Made Items

- Exports of foreign-made items from one foreign country to another may be subject to the EAR if the foreign-made items:
 - Have controlled U.S.-origin content, or are produced from controlled U.S.-origin technology or software



De Minimis for Reexports

- Foreign-made items incorporating, commingled with, or drawn from controlled U.S origin items
 - exceed 10% for Cuba, Iran, Libya, North Korea, Sudan, & Syria
 - exceed 25% for all other destinations
- No mixing among commodities, technology, and software
- Same percentages for commodities, technology, or software
- One time report---Technology and software



De Minimis one time report

- Prior to reliance upon your calculations
- Includes:
 - Classification (ECCN)
 - Performance characteristics and features
 - Percentage of U.S. content
 - Calculations
 - Method for calculating the Fair Market Value
 - Contact info: name, title, address, phone, fax



EAR99 and De Minimis

- Reminder:
 - EAR99 items are calculated as controlled for U.S. content when exporting to an embargoed destination.
 - Most EAR99 items are calculated as controlled for U.S. content when exporting to Syria.



Foreign Produced Direct Product

- Of U.S. technology or software
- Of a complete plant or any major component of a plant if such plant or component is the direct product of U.S. technology



Foreign Produced Direct Product

- U.S. technology or software must require a letter of assurance for a license, or a License Exception TSR
- Foreign-produced direct product is controlled for national security reasons
- Require a license for reexporting to D:1 and E:2 countries



How Do I Apply For a Reexport License?

- Via Courier
 - Office of Exporter Services
U.S. Department of Commerce
14th & Pennsylvania Ave. N.W., Room
2705
Washington, DC 20230
- Electronically
 - Internet via the Simplified Network
Application Process (Snap)



The BIS Applications forms

- Multipurpose Application BIS-748P
- Item Appendix BIS-748P-A
- End-user Appendix BIS-748P-B



Helpful Hints

- Leave Non-Applicable blocks **Blank**
 - Do Not Use N/A or None
- Contact Person/Phone Number/email address
- Support Documentation
- Parties to the Transaction
- Description of Items/ECCN
- Specific End Use of Items
- Signature



Support Documentation

- International Import Certificate (Section 748.10)
- BIS-711, Statement by Ultimate Consignee and Purchaser (Section 748.11)
- Technical Specifications/brochures



Technology and Software Transfers

- Classification
- Reasons for Control
- License requirement
- License exception
- General Prohibitions
- Letter of explanation
- Validity periods

Summary of license requirements for reexports of items subject to the EAR to terrorist supporting countries

- Reexports of EAR99 items to Iran?
 - by non-U.S. persons See BIS
 - by U.S. Person See OFAC
- Reexports of CCL items to Iran? See OFAC
- Reexports of all items to Libya? See BIS
- Reexports of all items to Sudan? See OFAC
- Reexports of CCL items to Sudan? See BIS & OFAC
- Reexports of all items to Cuba? See BIS
- Reexports of all items to Syria? See BIS
- Reexports of all items to North Korea? See BIS



Cuba

- Cuba is the most stringently embargoed country of the three U.S. embargoed destinations. A license is required, with few exceptions.
- BIS and Treasury's Office of Foreign Assets Control (OFAC) share jurisdiction:
 - BIS licenses exports & reexports of goods and technology subject to the EAR, including temporary sojourns of vessels and aircraft
 - Treasury (OFAC) licenses travel, financial activities, services for U.S. persons



Iran

- Under U.S. embargo.
- Treasury/OFAC has licensing jurisdiction, but BIS has “deemed exports”.
- OFAC licenses exports of agricultural commodities, medicines, and medical devices under Trade Sanctions Reform and Enhancement Act (TSRA).



Sudan

- Under an embargo.
- There is dual licensing jurisdiction and licenses from OFAC and BIS may be required.
- A BIS license is required for any item on the CCL and an OFAC license is required for any item subject to U.S. jurisdiction.
- In general, humanitarian items are approved by either agency. Commerce will also approve CCL items for United Nations peacekeeping activities (OFAC has exemptions for UN activities).
- Both BIS and OFAC have regulations in place to facilitate humanitarian activities.



Syria General Order

General policy of denial – except case-by-case consideration of:

- U.S. Government's official use and for U.S. Government personnel;
- Civil passenger aircraft for safety of flight;
- Medicine on the CCL and medical devices;
- Telecommunications equipment and associated computers and software; and
- U.N. peacekeeping operations in Syria

Few license exceptions are available

- TMP, GOV, TSU, BAG, AVS (portions of each are available, not all)



North Korea

- Terrorist-designated country, but not embargoed.
- In June 2000, policy changed to authorize exports and reexports of most EAR99 goods without a license.
- Few CCL items reviewed on a case-by-case basis, including computers to 2,000 MTOPS and microprocessors to 500 MHz.
- Very little licensed trade due to North Korea's violation of the 1994 Agreed Framework, under which North Korea agreed to give up its WMD.
- The members of the Korean Energy Development Organization (KEDO) suspended KEDO's nuclear power project in December 2003 and that suspension remains in place.



Libya

- On April 23, 2004 the Iran-Libya Sanctions Act (ILSA) was terminated with respect to Libya.
- BIS has licensing jurisdiction for exports and reexports to Libya.
- A license is required for most items on the CCL.
- A license is not required for EAR99 items as long as no end-use/user concerns.



Iraq

- On July 29, 2004 the President signed an Executive Order ending the national emergency declared in Executive Order 12722 -
 - Export licensing jurisdiction reverted to BIS (see BIS rule published on July 30, 2004 in *Federal Register*)
 - The U.S. lifted its sanctions on Iraq and trade is normalizing
- On June 8, 2004 the UN Security Council adopted Resolution 1546 -
 - Prohibitions related to the sale or supply to Iraq of arms and related materiel under previous resolutions shall not apply to such items required by the Interim Government of Iraq or the Multinational Force
 - On October 20, 2004, the Secretary of State lifted Iraq's designation as a state sponsor of terrorism.



China

- Positive
 - Market with vast potential for expanded trade
- Negative
 - Under arms embargo—Tiananmen Square
 - Modernization of conventional military
 - Access to potential end users for verification



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