

# Export Compliance and Controls

Massachusetts Export Center

Evening Export School

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# Overview

- What is an export?
- Export Control Authorities
  - Treasury
  - State
  - Commerce
- Export Enforcement
- Steps for Compliance

# Definition of Export

- Actual shipment or transmission out of the U.S.
- “Deemed exports”: Release of U.S.-origin technology or software to foreign persons in the U.S. or elsewhere
  - Visual inspection
  - Oral exchanges
  - Application of knowledge or experience
- Regulations also apply to re-exports from abroad
- Trans-shipments are deemed to be exports to the intended destination

# Export Control Authorities

- Treasury Department
  - Office of Foreign Assets Control
- State Department
  - Office of Defense Trade Controls
- Commerce Department
  - Bureau of Industry & Security
- Other U.S. Agencies
  - DEA, FDA, DOE, NRC
- Foreign Government Export Authorities
  - Wassenaar Arrangement
  - Missile Technology Control Regime

# Treasury Department Office of Foreign Assets Control

- Administers U.S. embargo programs
- Restrictions on financial transactions may affect imports, exports, payment, and travel
- Licenses required for virtually all exports to
  - Cuba Iran Iraq
  - Libya Sudan Syria
  - Taliban
- Restrictions extend to national and Specially Designated Nationals, Terrorists & Narcotics Traffickers
  - <http://www.treas.gov/ofac/t11sdn.pdf>

# State Department Office of Defense Trade Controls

- Administers Int'l Traffic in Arms Regulations (ITAR) under Arms Export Control Act
- Licenses required for “defense articles” and “defense services” with substantial military applicability
- Arms embargoes against 26 countries
- Exceptions are narrow
- Exporters and manufacturers must register

# State Department Office of Defense Trade Controls

- ITAR controlled items are described on the “Munitions List”

Firearms

Artillery

Ammunition Naval vessels

Tanks/Vehicles Aircraft/Equipment

Training Protective gear

Electronics Guidance systems

Auxiliary equip. Toxicological

Radiological Spacecraft

Classified items Submersibles

- ODTC will issue “commodity jurisdiction” rulings (“CJs”) to assert or decline jurisdiction

# Commerce Department Bureau of Industry & Security

- Administers Export Administration Regulations (EAR) under Export Administration Act
- Formerly Bureau of Export Administration
- Regulates “dual use” commodities, materials, software and technologies with both civil and military applications
- Many exceptions and special rules



# Commerce Department Bureau of Industry & Security

- Types of BIS export controls
  - “List-driven” controls
    - Technical specifications
    - Country of destination
    - Special encryption controls
  - End-use controls
  - Entity controls
  - Controlled activities
  - Antiboycott

# Commerce Department

## “List-Driven” Controls

- Commerce Control List (CCL) assigns Export Control Classification Numbers (ECCNs) (e.g., “3A001”)
- ECCN Categories
  - 0 Nuclear
  - 1 Materials, chemicals, microorganisms, toxins
  - 2 Materials processing
  - 3 Electronics
  - 4 Computers
  - 5 Telecommunications & information security
  - 6 Sensors & lasers
  - 7 Navigation & avionics
  - 8 Marine systems
  - 9 Propulsion systems & spacecraft

# Commerce Department “List-Driven” Controls

- Each ECCN specifies “reasons for control”
  - NS National security
  - MT Missile technology
  - NP Nuclear proliferation
  - CB Chemical/biological proliferation
  - XP High-performance computers
  - AT Anti-terrorism
- Lowest numbered ECCNs are most restricted
- Catchall ECCN “EAR99” is least restricted
- License requirements are derived from ECCN and country of destination (“Country Chart”)

# Commerce Department “List-Driven” Controls

- License Exceptions
  - 16 broad exclusions from licensing rules
  - Eligibility varies by ECCN and Country Group
  - Examples
    - LVS Limited Value Shipments
    - GBS Group B Countries
    - TSR Restricted tech./software
    - CTP High-performance computers
    - TMP Temporary exports
    - BAG Personal baggage

# Commerce Department Special Rules for Encryption

- BIS controls exports of commercial encryption for confidentiality of text or data
  - Encryption for authentication or access control is not restricted
- Strength (key length) is no longer decisive
- Exports allowed for non-government users
- Licenses needed for most government users
  - “EU + 8” countries are less restricted
- Administrative requirements
  - One-time technical review by BIS and NSA
  - Semi-annual reporting requirements

# Commerce Department End-Use Controls

- EPCI: Enhanced Proliferation Control Initiative
- Nuclear activities
- Missile projects (“D:4” countries)
- Chem/bio weapons (“D:3” countries)
- Certain foreign aircraft/vessels
- “Knowledge” standard
  - Actual knowledge
  - Awareness of a high probability

# Commerce Department Entity Controls

- Denied Persons
  - <http://www.bxa.doc.gov/DPL/thedeniallist.asp>
  - May be U.S. persons
  - Barred from any role in export transaction
- Entity List
  - Known involvement in proliferation projects
  - <http://www.bxa.doc.gov/Entities/Default.htm>
  - Currently limited to China, India, Israel, Pakistan, Russia

# Commerce Department Controlled Activities

- U.S. persons may not “support” nuclear, missile, or chem/bio activities
  - Financing
  - Service
  - Transport
- “Is informed”
  - License required when exporter “is informed” by BIS that an activity is problematic



# Commerce Department Antiboycott

- Refusals to do business
  - With a boycotted country (Israel)
  - With an entity blacklisted for boycott reasons
- Discriminatory actions
  - Race
  - Religion
  - Sex
  - National origin
- U.S. persons may not comply or furnish info in furtherance of a foreign boycott
- Requests must be reported to BIS and IRS

# Commerce Department Export Clearance

- Shippers Export Declaration (“SED”) Automated Export System (“AES”)
  - Any tangible export under a license
  - Most tangible exports over \$2,500 under License Exception or No License Required
- Destination Control Statement
  - “These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”

# Export Enforcement

- Administrative penalties
  - Mandatory export compliance programs
  - ITAR debarment or suspension
  - Suspension of export privileges
- Civil penalties
  - Fines up to \$100,000 per violation
- Criminal penalties
  - Corporate fines up to \$1,000,000
  - Individual fines up to \$250,000
  - Prison up to 10 years

# Steps for Compliance

- Administrative measures
- Customer screening
- Product-country screening
- Diversion risk screening
- Proliferation screening
- Antiboycott screening

# Steps for Compliance: Administrative Measures

- Adopt an export compliance policy
- Designate an export administrator
- Complete & retain export records for 5 years
- Provide training to employees
- Conduct periodic internal compliance reviews
- Establish an escalation procedure for resolving export questions
- Coordinate with HR to handle deemed exports to foreign workers
  - Clarify export eligibility as a job requirement where necessary

# Steps for Compliance: Customer Screening Procedures

- Denied Persons List
- Specially Designated Nationals
- Entity List

# Steps for Compliance: Product-Country Screening

- Determine the ECCN of the item to be exported
- Determine the applicable reasons for control
- Determine the country of destination
- Country Chart matrix shows whether a license requirement is presumed
- Determine whether a License Exception applies

# Steps for Compliance: Diversion Risk Screening

- Consider Red Flags for diversion
  - <http://www.bxa.doc.gov/Enforcement/redflags.htm>
- Customer is evasive about end-use
- Ordered items do not “fit” customer or country
- Lack of knowledge about industry or product
- Payments in cash
- Routine services declined
- Remote ship-to address/vague schedule
- Freight forwarder listed as final destination
- Unusual shipping arrangements or packaging
- Customer facilities do not “fit” items



# Steps for Compliance: Proliferation Screening

- Consider the intended end-use
  - Nuclear
  - Missile technology
  - Chemical/biological

# Steps for Compliance: Antiboycott Screening

- Refusal to do business
  - Any references to Israel
- Discriminatory terms and conditions
  - Any references to race, religion, sex, national origin
- Request for information about business relationships or discriminatory practices

# Questions?

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