



# Export Controls and ITAR: An Overview

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# Export Controls and ITAR: An Overview

- Introduction to Export Controls
- Introduction to ITAR
- Export Controls vs. ITAR
- Technology and Other Issues
- Conclusion/Discussion



# Introduction to Export Controls

- Bureau of Industry and Security (BIS)
- Export Administration Regulation (EAR)
- EAR regulates export/re-export of most commercial items
- Dual-use items – both commercial and military applications



# Introduction to Export Controls

- Items sent from U.S. to foreign destination
- Items include commodities, software, equipment, blue prints, design plans, and technical information
- Mode of transport does not matter – all inclusive
  - Shipping
  - Via Internet
  - Temporary is still an export



# Introduction to Export Controls

*License Determination: Do I need a license?*

- What are you exporting?
- Where are you exporting?
- Who will receive your item?
- What will your item be used for



# Introduction to Export Controls

*What are you exporting?*

- Export Control Classification Number (ECCN)
- Commerce Control List
- BIS can issue ECCN Determination

## Commerce Control List Categories

- 0 = Nuclear materials, facilities & equipment
- 1 = Materials, Chemicals, Microorganisms & Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecom & Information Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Propulsion systems, Space Vehicles & Related Equipment



## Five Product Groups

- A. Systems, Equipment & Components
- B. Test, Inspection & Production Equipment
- C. Material
- D. Software



# Introduction to Export Controls

*What are you exporting?*

6A004 Optics.

## License Requirements

Reason for Control: NS, AT

Control(s)

Country Chart

NS applies to entire entry

NS Column 2

AT applies to entire entry

AT Column 1

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

## License Exceptions

LVS: \$3000

GBS: Yes for 6A004.a.1, a.2, a.4, b, d.2, and d.4

CIV: Yes for 6A004.a.1, a.2, a.4, b, d.2, and d.4



# Introduction to Export Controls

## *Where are you exporting?*

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738—page 3

### 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
Burma	X	X	X	X		X	X	X	X	X		X		X		
Burundi	X	X		X		X	X	X	X	X		X		X		
Cambodia	X	X		X		X	X	X	X	X		X	X			
Cameroon	X	X		X		X	X	X	X	X		X		X		
Canada	X										X					
Cape Verde	X	X		X		X	X	X	X	X		X		X		
Central African Republic	X	X		X		X	X	X	X	X		X		X		
Chad	X	X		X		X	X	X	X	X		X		X		
Chile	X	X		X		X	X	X	X	X	X	X		X		
China	X	X	X	X		X	X	X	X	X		X		X		
Colombia	X	X		X		X	X	X	X	X	X	X		X		
Comoros	X	X		X		X	X	X	X	X		X		X		
Congo (Democratic Republic of the)	X	X		X		X	X	X	X	X		X		X		
Congo (Republic of the)	X	X		X		X	X	X	X	X		X		X		

Export Administration Regulations

September 12, 2007





# Introduction to Export Controls

## *Who will receive your item?*

- Entity List – A list of organizations engaged in activities related to proliferation of weapons of mass destruction. May need a license where one is not otherwise required.
- Treasury Department Specially Designated National and Blocked Persons List – Maintained by OFAC. Individuals and organizations deemed to represent restricted countries or known to involved in terrorism, etc.
- Unverified List – BIS unable to complete an end-use check.
- Denied Persons List – Export privileges denied by BIS



# Introduction to Export Controls

- NLR – No License Required
  - Most exports do not require a license
  - Item shipped is not on the CCL – it's EAR99
  - Item is on the CCL, but there is no “X” in the box for the country chart
- License Exceptions
  - LVS – Shipments of Limited Value
  - GBS – Shipments to Group B countries
  - CIV – Civil End-Users
  - TMP – Temporary exports, reexports, imports
- License
  - Must apply to BIS for license
  - SNAP-R process online



# Introduction to ITAR

- International Traffic in Arms Regulations (ITAR)
- Administered by the Directorate of Defense Trade Controls (DDTC), U.S. State Department
- Items and services covered by the U.S. Munitions List
- Export a defense article, defense service or technical data of such generally under ITAR



# Introduction to ITAR

## THE U.S. Munitions List (USML)

- Category I - Firearms, Close Assault Weapons and Combat Shotguns
- Category II - Materials, Chemicals, Microorganisms, and Toxins
- Category III - Ammunition/Ordnance
- Category IV - Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Category V - Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- Category VI - Vessels of War and Special Naval Equipment
- Category VII - Tanks and Military Vehicles
- Category VIII - Aircraft and Associated Equipment
- Category IX - Military Training Equipment
- Category X - Protective Personnel Equipment
- Category XI - Military Electronics
- Category XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII - Auxiliary Military Equipment
- Category XIV - Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV - Spacecraft Systems and Associated Equipment
- Category XVI - Nuclear Weapons, Design and Testing Related Items
- Category XVII - Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Category XVIII - Directed Energy Weapons
- Category XX - Submersible Vessels, Oceanographic and Associated Equipment

Source: Directorate of Defense Trade Controls/U.S. Department of State [pmdtc.state.gov](http://pmdtc.state.gov)



# Introduction to ITAR

- Registration with DDTC is Required
- Annual fee of \$1,750
- No set time for issuing license
  - Just registering can take 3-4 weeks if all documents are in order



# Export Controls vs. ITAR

- Dual-use vs. Strictly Defense Items/Services
- Different coding systems (USML vs the EAR/CCL)
- Ultimately, DDTC trumps BIS (even if BIS issues a license)
- Commodity Jurisdiction Request is Vital





# Export Controls vs. ITAR

## Commodity Jurisdiction Request

- DDTC determines if item is subject to ITAR
- Must be registered with DDTC to get a CJ
- Best way to make determination
- Can self-assess or get legal opinion



# Technology and Other Issues

- What is “Technology”?
- Technical Data, Manufacturing Processes, Manufacturing Equipment, Software, Testing Instruments
- Mirrors vs. Technology to Make Mirrors
- Deemed Exports





# Technology and Other Issues

## What is Technology?

Per Part 772 of the Export Administration Regulations (EAR), "technology" is specific information necessary for the "**development**," "**production**," or "**use**" of a product. The General Technology Note states that the "export of technology, is controlled according to the provisions of each Category." It further states that "technology required for the development, production, or use of a controlled product remains controlled even when applicable to a product controlled at a lower level." Please note that the terms "required," "development," "production," "use," and "technology" are all defined in Part 772 of the EAR. Controlled technology is that which is listed on the Commerce Control List



# Technology and Other Issues

## What is a Deemed Export?

An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a *foreign national within the United States*.



# Technology and Other Issues

## Key Issues and Getting Assistance

- There is no “one-size fits all”...each case is unique
- Allow some time (months not weeks)
- Be proactive, not reactive
- Get assistance from trained legal professional
- Hire and/or create an Export Compliance unit
- Utilize BIS and DDTC resources
  - *ECCN Determinations*
  - *Commodity Jurisdiction Requests*
  - *Contact information on websites*



# Technology and Other Issues

## Key Issues and Getting Assistance

- Bureau of Industry and Security: [www.bis.doc.gov](http://www.bis.doc.gov)
  - *Guides to Export Controls*
  - *EAR and CCL Online in various format*
- Directorate of Defense Trade Controls: [pmddtc.state.gov](http://pmddtc.state.gov)
  - Guides to DDTC
  - USML Online
  - Contact information for categories
- Training programs
  - Both agencies have courses (BIS more regular)
  - Private sector such as law firms



# Export Controls and ITAR Overview

*QUESTIONS/DISCUSSION*

*Thank you!*