Overview of the U.S. Dual Use Export and Re-export Controls

| Overview of the EAR | Classification of Items on the CCL | License Requirements Based on ECCN and Destination | Determining Other Licensing Requirements | License Exceptions | License Process |

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How Do We Control Exports?

- Export Administration Act (EAA) of 1979, as amended.

- BIS is responsible for implementing and enforcing these laws which regulate export and reexport of most commercial items as well as some military items.

- The EAA is implemented by the Export Administration Regulations (EAR).

- BIS regulates exports, reexports and certain transfers of items "subject to the EAR."

Code of Federal Regulations   15 CFR 730-774

Available on-line: www.bis.doc.gov

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Why Do We Control Exports?

- National Security

- Foreign Policy

- Anti-Terrorism

- Crime Control

- Regional Stability

- Nonproliferation

- Nuclear Weapons

- Chemical/Biological Weapons

- Missiles/Rocket Systems and Unmanned Air Vehicles

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What is an export?

- An export is an actual shipment or transmission of items out of the United States.

What is a reexport?

- A reexport is an actual shipment or transmission of items subject to the EAR from one foreign country to another.

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What is an Item?

Commodity   Software   Technology

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"Subject to the EAR"
Some items outside the United States

- 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 *de minimis*
      - 25 % *de minimis* for most destinations
      - 10% *de minimis* for Cuba, DPRK, Iran, Sudan, Syria
      - 0% *de minimis* for 600-series (defense) items to China, Cuba, DPRK, Iran, Sudan, and Syria
  - The foreign-made item is the direct product of certain U.S. technology or software

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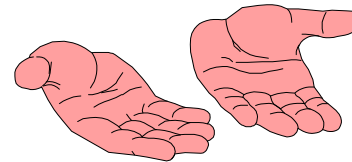BUREAU OF INDUSTRY AND SECURITY

Facts in Hand
Must know for every export transaction
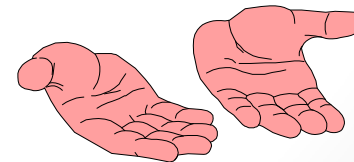
- What is my item?
- Where is it going?

ECCN and Destination

(General Prohibitions 1-3)

- Who will receive it?
- What will be the end use?

Other License Requirements

(General Prohibitions 4-10)

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The Structure of the ECCN

1	C	350

1	• Category
C	• Product Group
350	• Type of Control

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Categories of the Commerce Control List

0	Nuclear Materials, Facilities & Equipment (Miscellaneous Items)
1	Materials, Chemicals, Microorganisms, and Toxins
2	Materials Processing
3	Electronics
4	Computers
5	Part 1 – Telecommunication
5	Part 2 – Information Security
6	Sensors & Lasers
7	Navigation & Avionics
8	Marine
9	Aerospace & Propulsion

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Product Groups of the Commerce Control List

A	Systems, Equipment & Components
B	Test, Inspection & Production Equipment
C	Materials
D	Software
E	Technology

ECCN Numbering System
Showing Reasons for Control (as of 10/15)

- 000-099 – National Security
- 100-199 – Missile Technology
- 200-299 – Nuclear Nonproliferation
- 300-399 – Chemical and Biological
- 500-599 – National Security or Foreign Policy
- 600-699 – Wassenaar Arrangement Munitions List (WAML) or former US Munitions List (USML)
- 900-999 – Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

Most of the time related items are grouped in series

3A001

Equipment, assemblies and components

3B001

Test, inspection and production equipment

3C001

Materials

3D001

Software

3E001

Technology

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EAR99 Items

- Items that are not specifically listed on the Commerce Control List yet subject to the EAR, use the designation EAR99 in place of an ECCN.

- This designation may be found at the end of every category of the CCL:

> "EAR99   Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99."

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How can you obtain the ECCN of your item?

- Ask the manufacturer, but verify...

- Self-classify

  - Work with company engineer or someone who knows the item

- Submit formal classification request to BIS:

  https://snapr.bis.doc.gov/

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Does the Export Require a License?

- Check whether the reason for control for the ECCN requires a license to the destination country

- Use the Commerce Country Chart

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Structure Commerce Country Chart
When the Destination and the Reason for Control Meet, Ask Yourself…

Commerce Control List Overview and the Country Chart

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
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania[2,3]	X	X		X		X	X	X	X							
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia[3]	X					X		X	X							
Austria[3,4]	X					X		X	X			X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		

No License Required ("NLR")

- You may use **NLR** for:
  - ECCNs where there is no "X" on the Country Chart under reason(s) for control; **or**
  - EAR99 items, **if**
  - the transaction does not require an export license based on end-use/user or restricted destinations

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End-User/End-Use Based Controls

- Entities listed on the SDN List, the Unverified List or the Entity List: http://apps.export.gov/csl-search (includes entities designated for terrorism reasons)

- End users involved in WMD activities or means of delivery;

- Certain unauthorized military end uses/end users (China, Russia, Venezuela)

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License Requirement due to... a Country Sanction under the EAR

- Comprehensive Embargo
  - **Iran – §746.7 & §742.8 (no recent changes)**
  - Cuba – §746.2
  - Sudan – §742.10
- Sanctioned
  - Syria – §746.9 & Supp. No. 1 to part 736
  - N. Korea – §746.4 & §742.19
- UN Arms Embargo
- Iraq – §746.3

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Check for Red Flags!
Part 732, Supplement 3

- Possible indicators that an unlawful diversion might be planned by the customer

- Abnormal or suspicious circumstances
    - Product capabilities do not fit buyer's business
    - Buyer evasive about destination or use
    - Routine on-site service is declined

License Exceptions
Part 740

- An authorization that allows you to export or re-export, under stated conditions, items subject to the EAR that would otherwise require a license.
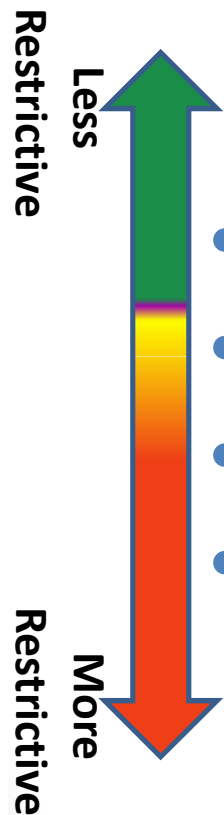
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The way the EAR sees the world... Country Groups

Supplement 1 to Part 740

Less Restrictive

More Restrictive

- Group A: Regimes and Allies (including Hungary)
- Group B: Most of the World
- Group D: Countries of Concern
- Group E: Terrorist Supporting

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License Exceptions

Availability Based on ECCN and/or type of transaction

- Limited Value Shipments (**LVS**)

- Strategic Trade Authorization (**STA**) – for allies and regime partners, including Hungary

- Repairs/replacements (**RPL**)

- Temporary exports (**TMP**)

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Submitting a License Application

- U.S. **and foreign** parties can submit applications online through SNAP-R at https://snapr.bis.doc.gov/registration

- Respond to the confirmation email to receive a company identification number and administrator account

- Provide supporting documents specified in Section 748 of the EAR

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The License Process:

- Initial Review and Technical Analysis (9 Days)

  - Applicant may be contacted for additional information

  - Classification of items is verified

  - Return application (RWA) if license not required

- Staffed to other Agencies for review and recommendations (30 Days)

  - Departments of State, Defense and Energy

  - Must provide regulatory basis for denials

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Escalation Procedure

- If interagency disagrees on the disposition of a license application, there is an escalation process:

  - Operating Committee (OC)

  - Advisory Committee on Export Policy (ACEP)

  - Export Administration Review Board (EARB)

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For More Information:

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