



TENCATE

materials that make a difference

Export Control Training

The Basics

Agenda

- Importance of Export Control
- The ITAR- Department of State
- The EAR-Department of Commerce
- Export Control Reform
- Questions

Importance of Export Control

- To ensure and protect United States national security
- To forward the United States foreign policy efforts
- To continue to promote better business and refrain from being placed on the debarred parties list

Importance of Export Controls

- **Setting up and maintaining a compliance program**
 - Sign in sheets for visitors, name badges
 - Recordkeeping- All records must be retained for 5 years (both State & Commerce). Company may retain longer
 - Identification of products- Knowing what products require licensing and from who (State or Commerce)
 - Retransfer- Ensuring foreign customers inform us of product retransfer/re-export and apply for proper paperwork
 - Audits and Training- Keeping everyone informed to governmental changes to export control. Maintaining the company is following established export control procedures
 - Documentation- Have access to the Export Control Policy at each location



ITAR-History



- **International Traffic in Arms Regulations (ITAR)**
 - **Enacted in 1976 during the Cold War**
 - Section 38 of the Arms Export Control Act (AECA) authorizes the President to control the export and import of defense articles and services
 - Executive Order 13637 delegated the responsibility of the export and temporary import of defense articles and services to the Department of State
 - Within the Dept. Of State the Sec. of State delegated these responsibilities to the Directorate of Defense Trade Controls (DDTC) within the Bureau of Political-Military Affairs
 - ITAR can be found in the Code of Federal Regulations (C.F.R) section 22 parts 120-130

ITAR-What's the point?!

- To ensure our Nation's national security
- To adhere to and advance our Nation's foreign policy efforts



ITAR-Definitions

- **Defense Article (120.6)**- Any item or technical data designated in section 121.1 (USML)
- **Defense Service (120.9)**- (1)The furnishing of assistance (including training) to foreign persons, whether in the US or abroad in the design, development, engineering, manufacture, modification, operation, production, assembly, testing, repair, maintenance, operation, and destruction of defense articles. (2) The furnishing to foreign persons of any technical data.

ITAR-Definitions (cont.)

- **Technical Data (120.10)**- Information, other than software as defined in 120.10 (a)(4) which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photos, plans, instructions or documentation.
- **Public Domain (120.11)**- Information which is published and which is generally accessible or available to the public.
- **Export (120.17)**- (1)Sending or taking a defense article out of the US in any manner, except be mere travel outside of the US by a person whose personal knowledge includes technical data.

ITAR-United States Munitions List (USML)

- Section 121.1 of the ITAR. Contains the 21 different categories that make up the control list for defense articles and technical data
- Categories include: I-Firearms; II-Artillery; III-Ammunition; IV-Launch Vehicles, Missiles, Bombs, and Mines; V-Explosives and Energetic Materials, Propellants, Incendiary Agents; VI-Surface Vessels of War and Special Naval Equipment; VII-Ground Vehicles; VIII-Aircraft and Related Articles; IX-Military Training Equipment; X-Personal Protective Equipment; XI-Military Electronics; XII-Fire Control/Sensors/Night Vision; XIII-Materials and Miscellaneous Articles; XIV-Toxicological Agents; XV Spacecraft and Related Articles; XVI-Nuclear Weapons Related Articles; XVII-Classified Articles, Technical Data, and Defense Services; XVIII-Directed Energy Weapons; XIX-Gas Turbine Engines and Associated Equipment; XX-Submersible Vessels and Related Articles; XXI-Articles, Technical Data, and Defense Services Otherwise Not Enumerated

ITAR-Licenses

- DSP-5: Permanent export of a defense article or technical data
- DSP-73: Temporary export of a defense article
- DSP-61: Temporary import of a defense article



ITAR-Licenses (cont.)

- **Technical Assistance Agreement (TAA)**- An agreement between US company/person and foreign company/person to share technical data and or defense service
- **Manufacturing License Agreement (MLA)**- An agreement between US company/person and foreign company/person to manufacture defense articles

ITAR- Penalties

- **Debarment-** Government has the right to prohibit any person from participating in the export of defense articles, defense services, and technical data
- **Fines-** Depending on how egregious the violation the fines could reach the millions of dollars
- **Prison-** Depending on how egregious the violation, prison time can be served

ITAR- What's the Point for US?!

- Keeps us out of jail
- Keeps us off the debarment list
- Keeps us from having to pay fines
- It's the LAW



ITAR- What you need to know

- Always have **ITAR** in the back of your mind
- If an item/defense article is controlled, it will need an export license from State (DDTC/ITAR)
- If the product is **modified specifically for military application**, that item is controlled
- Know the customers needs and end use (required by DDTC)

ITAR- What you need to know (cont.)

- **Re-exporting product needs to be approved by DDTC first (Ensure foreign customer knows this)**
- **When marketing products that are designed for military application to **foreign** customers, only discuss information that can be released in the **public domain** (general information)**
- **Foreign persons **can not be exposed** to ITAR controlled articles or technical data without a license**

ITAR- What you need to know (cont.)

- For all agreements- **STAY WITHIN THE SCOPE**
- License holders must know their licenses
- DDTC website is as follow:
www.pmdotc.state.gov

ITAR-License Exemptions

- Authorization from the Department of State/DDTC that allows the export without a license of defense articles and services
- Not as many license exemptions to use for defense articles
- The most used license exemption is 123.4 (a) (1)
- **123.4 (a) (1) Repair and Replace-** temporary import and subsequent export of defense articles without a license for defective parts

ITAR-License Exemptions cont.

- **123.16 (b) (4) Exports of Models and Mockups-** export without a license a mockup/model that is nonoperable and does not reveal any technical data
- **123.16 (b) (5) Export to Public Exhibitions or Trade Shows-** temporary export without a license of defense articles to any public exhibition, trade show, or air show that has previously been licensed



EAR



- Export Administration Regulation (EAR)
- Regulated by the Department of Commerce, Bureau of Industry and Security (BIS)
- EAR regulates the export and re-export of commercial products manufactured in the US
- EAR is more flexible in regulating commodities

EAR-CCL

- Commerce Control List (CCL)
- Used to create ECCN's to determine if an export license is required
- CCL contains over **2200** items
- CCL is BIS's version of the USML from the DDTC

EAR-ECCN

- Export Control Classification Number (ECCN)
- ECCN are alpha numeric codes used to identify each commodity on the CCL
- ECCN identifies whether licensing is required for a particular item

EAR- EAR 99

- EAR 99- No License Required
- Low level technology ex. pens, cups
- **Just because an item is EAR 99 does not mean you can export the item anywhere**
- BIS website can be found at www.bis.doc.gov

EAR-License Exceptions

- Authorization from Department of Commerce/BIS that allows the export of material without a license of certain ECCN's
- 18 different license exceptions to choose from
- Main license exception that are used: GBS, LVS, TMP, RPL

EAR-License Exception cont.

- **Group B Countries (GBS)**- License exception that authorizes exports and re-exports to Country B when the “GBS” states “yes” on the CCL
- **Limited Value Shipment (LVS)**- License exception that authorizes the export and re-export of a single shipment in a limited value
- **Temporary Export and Re-export (TMP)**- License exception that authorizes the temporary export and re-export of qualified items
- **Repair and Replace (RPL)**- License exception that authorizes export and re-export of one-to-one replacement of parts, components, accessories, and attachments



ECR



- Export Control Reform (ECR)
- 2009 President Obama directed a broad-based interagency review of the U.S. export control system with the goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats and adapting to the changing economic and technological landscape.

ECR- What You Need To Know

- Means items that were once regulated under the USML (DoS) will now be regulated under the EAR (DoC)
- Categories that have been transitioned already: CAT IV (missiles), V (explosives), VI (vessels of war), VII (tanks & vehicles), VIII (aircrafts), IX (training), X (PPE), XI (electronics), XIII (materials), XV (spacecraft), XVI (Nuclear), XVII (classified), XIX (gas turbine engines), XX (submersible vessels), XXI (misc.)

ECR- What You Need To Know

- The U.S. Government is turning the USML into a “Positive” list
- All items that have been moved off the USML (ITAR) onto the CCL (EAR) are in the “600 series”
- Main goals of ECR- Create a single regulated parts list, create a single IT system, and create a single licensing agency

The Lists

- Department of State, Department of Commerce, and Department of the Treasury are the three US governmental departments responsible for export.
- Each Department has a debarred list: DoS/DDTC- Country Policies and Embargoes, Statutorily Debarred Parties; DoC/BIS- Denied Persons List, Unverified List, and Entity List; Treasury Department/OFAC- Specially Designated Nationals List (SDN)

The List Cont. (DoS-DDTC)

- **Country Policies and Embargoes-** Countries the United States has embargoes and specific policies against regarding the export and re-export of defense articles and services.
- **Statutorily Debarred Parties-** Entities and individuals prohibited from participating directly or indirectly in the export of defense articles, including technical data and defense services. Pursuant to the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR), the AECA Debarred List includes persons convicted in court of violating or conspiring to violate the AECA and subject to “statutory debarment” or persons established to have violated the AECA in an administrative proceeding and subject to “administrative debarment.”

The List cont. (DoC-BIS)

- **Denied Person(s) List-** Individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order are prohibited.
- **Unverified List-** End-users who BIS has been unable to verify in prior transactions. The presence of a party on this list in a transaction is a “Red Flag” that should be resolved before proceeding with the transaction.
- **Entity List-** Parties whose presence in a transaction can trigger a license requirement supplemental to those elsewhere in the Export Administration Regulations (EAR). The list specifies the license requirements and policy that apply to each listed party.

The List cont.

Department of the Treasury-OFAC

- **Specially Designated Nationals List (SDN)**-Enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States

Questions?

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- For more up to date information please go to our Export Controls website at:
<http://www.tencate.com/amer/public-and-government-relations/itar/default.aspx>