



COMPLYING WITH U.S. EXPORT CONTROLS IN AN UNPREDICTABLE GLOBAL MARKETPLACE

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Agenda

- Introduction to Export Control Principles and Compliance Practices
- Special Export Compliance Topics
 - Deemed Exports
 - Intracompany Exports
 - Supply Chain Management
- Recent Restrictions and Effects
 - Huawei, 5G, and Semiconductor Manufacturing Restrictions
 - AI and Surveillance Restrictions
 - Russia Sanctions

Why is Export Control Important?

Why is Export Control Important?

- Applies more broadly than just companies that export physical goods overseas
 - Applies to companies that employ foreign nationals
 - Applies to companies that use overseas manufacturing
 - Applies to companies that do joint development or technical research with foreign companies
 - Applies to any exchange of technical information with a non-U.S.A entity
- Violations of the rules create absolute liability
- Penalties can be high

Consequences of Violation of Export Controls Regulations

State Department

- Criminal: up to \$1,094,010 per violation, up to 10 years imprisonment
- Civil: seizure and forfeiture of the articles and any vessel, aircraft, or vehicle involved in attempted violation, revocation of exporting privileges, fines of up to \$500,000 per violation

Commerce Department

- Criminal: \$50,000 to \$1,000,000 or up to 5 times the value of the export, whichever is greater per violation (range depends on the applicable law), up to 20 years imprisonment
- Civil: loss of export privileges, fines up to \$250,000 per violation or up to twice the value of the export

Treasury Department

- Criminal: up to \$1,000,000 per violation, up to 10 years imprisonment
- Civil: \$55,000 to \$250,000 fines (depending on applicable law) per violation

Recent Cases of Interest

Yantai Jereh Oilfield Services Group Co., Ltd.

- Violations: exports of oilfield equipment worth \$383,882 to Iran; false statements made to the agency during the investigation by its then-vice president.
- \$600,000 civil penalty to Department of Commerce
- \$2,774, 972 civil penalty to Department of Treasury

Eric Baird, founder and CEO of Access USA Shipping LLC.

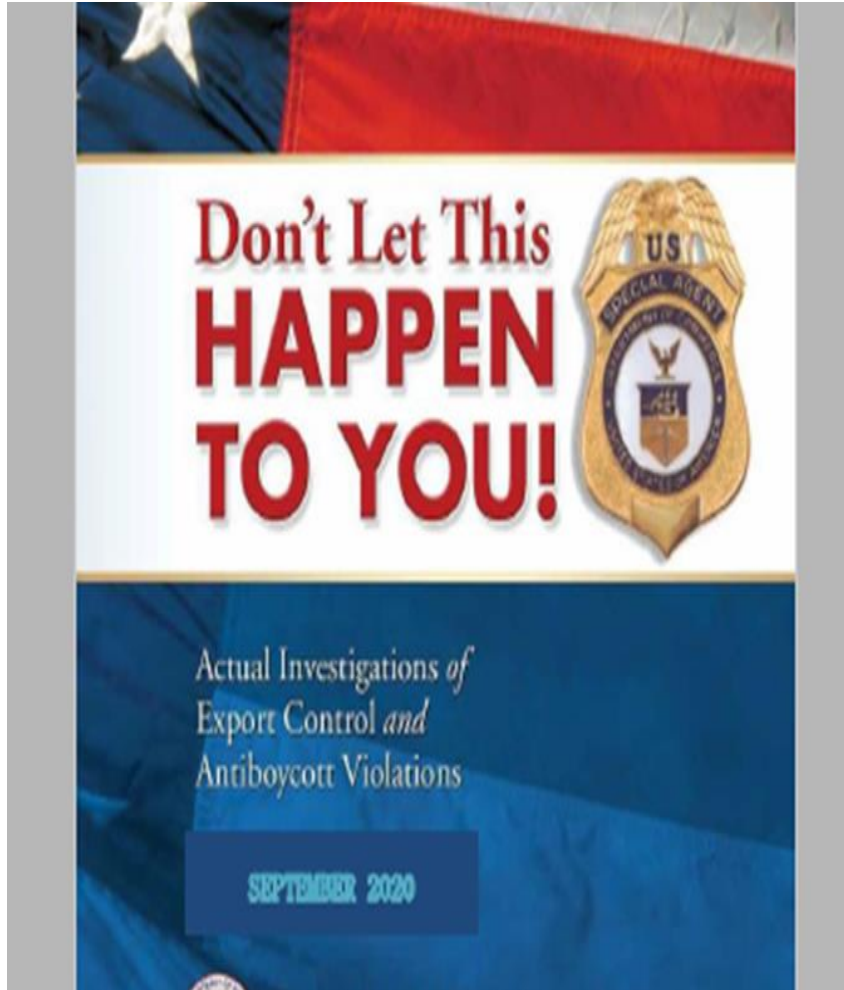
- Violations: 144 violations related to undervaluing uncontrolled items and 22 violations relating to unlicensed exports and attempted unlicensed exports of controlled firearm items.
- Baird: \$17 million civil fine; 2 years of probation
- Company: \$27 million civil fine

Recent Cases of Interest

Multiwire Laboratories, Ltd

- Violations: exported real-time back reflection Laue Camera Detectors and Accessories valued at \$177,156 to the University of Electronic Science and Technology of China, an entity listed on BIS's Entity List, without the required licenses.
- \$80,000 civil fine

Don't Let This Happen to You!



<https://www.bis.doc.gov/index.php/documents/enforcement/1005-don-t-let-this-happen-to-you-1>

Overview of Export Control Principles and What Is Required for Effective Compliance

Three U.S. Export Licensing Programs



U.S. Department of State ([Office of Defense Trade Controls](#)) controls defense articles, defense services, and related technical data, including most space-related articles.



U.S. Department of Commerce ([Bureau of Industry and Security](#)) controls “dual-use” items – goods and technology with both civilian and military/strategic uses.



U.S. Department of the Treasury oversees U.S. trade embargoes ([Office of Foreign Assets Control](#)) and enforces all three programs at U.S. borders through U.S. Customs Service.

Law and Regulations

Commerce Department	State Department	Treasury Department
Export Administration Act	Arms Export Control Act	Trading with the Enemy Act, Int'l Emergency Economic Powers Act, & Others
Export Administration Regulations (“EAR”) 15 C.F.R. Parts 700-799	International Traffic in Arms Regulations (“ITAR”) 22 C.F.R. Parts 120-130	Iraq Sanctions Regulations, Terrorism Sanctions Regulations, & Others 31 C.F.R. Parts 500-599
Commerce Control List	U.S. Munitions List	List of Specially Designated Nationals & Blocked Persons

EAR

- “Dual Use”/Commercial
- Controlled items appear on Commerce Control List
- A number of exceptions available
- Examples of EAR Controlled Items:
 - semiconductors
 - telecommunications
 - high speed computers
 - manufacturing equipment
 - encryption
 - many others

ITAR

- Military/Space
- Controlled items appear on U.S. Munitions List
- ITAR controlled items:
 - Specifically,
 - designed
 - modified
 - adapted
 - configured
- ...for military/space application

What is an Export under EAR?

EAR 734.2

- An actual shipment or transmission of items subject to the EAR (commodity, technical data, or software) out of the United States
- Releasing (including oral or visual disclosure) “technical data” or software “source code” to a “Foreign Person” in the United States (“Deemed Export”)
- Re-exporting from foreign countries U.S.-origin goods, goods incorporating U.S. components, or goods manufactured from U.S. technology or re-exporting U.S.-origin “technical data” or software

Items Subject to the EAR

- ALL Items in the United States except for:
 - Publicly available technology & software (excluding encryption)
 - Items subject to the exclusive jurisdiction of another federal department or agency
 - Literary publications, such as newspapers or literary works (non-technical in nature)
- Some items located outside the United States:
 - U.S.-origin items wherever located
 - Certain foreign-made items, if:
 - the value of the control U.S. content exceeds the de minimis percentage
 - the foreign-product item is the direct product of controlled U.S. technology or software

Technology Not Subject to the EAR

- Publicly available (EAR § 734.7)
 - Generally accessible to the interested public
 - Periodicals, books, print, electronic, other media forms
 - Libraries (university, public, etc.)
 - Released at open conferences
- Product of fundamental research (EAR § 734.8)
 - Basic and applied research where resulting information is ordinarily published and broadly shared within scientific community

Technology Not Subject to the EAR

- Educational information (EAR § 734.9)
 - Released by instruction in catalog courses
 - Associated teaching laboratories of academic institutions
- Patent information (EAR § 734.10)
 - Public information available on patent application
- Technology subject to the exclusive export licensing jurisdiction of another agency
 - Directorate of Defense Trade Controls
 - Nuclear Regulatory Commission
 - Department of Energy

Examples of Exports

SHIPPING OUT of U.S.

- Physical shipments or hand-carried items
- Release of technical data or software in a foreign country

RELEASING INFO in U.S. (Deemed Exports)

- Release of source code to a foreign national in the U.S.
- Release of technical data to a foreign national in the U.S.
- Inspections of U.S. equipment and facilities by a foreign national

Examples of Exports

- Consultations and discussions
- Phone conversations
- Instructions
- Conferences and seminars
- Application of knowledge
- Visual inspections
- Electronic data and communications, including via Internet, e-mail, fax, etc.

How to Determine What Is Controlled?

- Government has compiled a list of controlled technologies (Commerce Control List or CCL).
- The CCL includes groupings of export control classification numbers that define the technology category, product group and reason for export control. Collectively, these factors identify the countries to which export is restricted such that an export license is required.

Categories of the CCL

0	Miscellaneous & Nuclear Materials
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

Product Groups of the CCL

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

**0A979 Police helmets and shields; and parts,
n.e.s.**

License Requirements

Reason for Control: CC

Control(s)

Country Chart

CC applies to entire entry

CC Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the
ECCN heading.

Country Chart in Supp. 1 to Part 738 (excerpt)

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	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		
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			

EAR99 Items

- Items that are not specifically listed on the Commerce Control List yet are “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.”*
- NO LICENSE REQUIRED

Entity List (Supplement No. 4 to Part 744 of the EAR)

- The BIS contains a list of names of certain foreign persons – including businesses, research institutions, government and private organizations, individuals, and other types of legal persons – that are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items.
- The Entity List specifies the license requirements that it imposes on each listed person. Those license requirements are independent of, and in addition to, license requirements imposed elsewhere in the EAR.

Subsidiaries, parent companies, and sister companies of listed entity

- The licensing and other obligations imposed on a listed entity by virtue of its being listed do *not per se* apply to its subsidiaries, parent companies, sister companies, or other legally distinct affiliates that are not listed on the Entity List.
- Not okay if, such a company, or even an unaffiliated company, acts as an agent, a front, or a shell company for the listed entity in order to facilitate transactions that would not otherwise be permissible with the listed entity

Special Topics

Special Topics Agenda

- Deemed Exports - Recruiting International Talent
- Intracompany Exports between US and Foreign Divisions of a Company
- Supply Chain Management Issues

Deemed Exports - Critical Considerations for Recruiting International Talent

“Deemed Export” – What Is It?

- A release or transfer of technology or technical data to a Foreign Person in the U.S.
 - Physical export out of U.S. is NOT required.
 - Transfer takes place in the U.S.
 - “Release” could occur by providing technical data stored on shared network drives.
- “Deemed” to be an export to the Foreign Person’s “home country.”
- May require a U.S. government export license or other approval.

How Can a “Deemed Export” Occur?

- Providing drawings to a Foreign Person employee
- Technical conversations/ collaboration with Foreign Persons
- Telephone conversations
- Technical training
- Working with Foreign Person interns or consultants
- Collaborations w/ U.S. customers’ Foreign Person employees
- Access to database that contains controlled technology

Who Is a “Foreign Person”?

- Any Person who is not:
 - a U.S. citizen;
 - a U.S. lawful permanent resident (Green Card holder);
 - a person granted asylum;
 - a refugee; or
 - a temporary resident granted amnesty.
- Foreign National includes persons with status such as H-1B, H-3, L-1, J-1, F-1 Practical Training, L-1, etc.

Deemed Export Best Practices

- Identify the Risk
 - What Technologies will employees interact with?
 - Are projects or products controlled?
 - Classify Technologies to identify whether controls exist.
 - Where are foreign persons from?
 - Identify countries of citizenship of foreign persons and confirm if technologies controlled for those countries.

Deemed Export Best Practices

- Address the Risk - determine access control
 - Will Foreign Person be working on other projects or products?
 - Screen from controlled technologies if they do not need access.
 - Provide electronic and physical controls and staff that controlled projects should not be discussed outside of controlled teams.
 - If Foreign Person needs access, a foreign export license (deemed export license) is required.
 - Apply for a license through BIS
 - Build-in time for licensing process
 - Screen Foreign Person until license is approved.

Special Issues with Deemed Export Licenses

- Once you receive an approved deemed license from BIS, be aware of the following:
 - Deemed Export licenses are specific to company, person, and technology described in application:
 - Need to apply for new license if new person is hired, even from the same country for the same technology;
 - Need to apply for a new license even if foreign person had a Deemed Export license as part of previous employment;
 - May need to apply for a new license if Foreign Person moves to a different controlled technology;
 - Describe all technologies that may be encountered in license application to provide broadest scope in license.

Facility Visits by Foreign Nationals

- Short Term Visitors (e.g., customers, suppliers, maintenance persons who are foreign nationals)
 - Deemed export restrictions still apply to short term visitors
 - Apply for license, even if for a short time
 - If not sufficient time to obtain license, visitor may need to be screened from controlled technologies
 - Ensure screens are electronic and physical
 - Ensure staff trained to not discuss controlled technology until license obtained

Intracompany Exports - How U.S. and foreign divisions of a company should communicate to comply with Export Control Law

Are Transfers Within a Company Exports?

- Yes - Any transfer of goods, software, technical data or know-how across borders is an export (**Intracompany Exports**) and may require an export license, even if the transfer is between divisions or departments of the same company.
- Additionally, any access to goods, software, technical data, or know-how by a foreign person present in the U.S. is an export and may require an export license, even if the access is by a supervisor, manager, or executive of a company accessing information provided by a subordinate or colleague at the same company.

Examples of Intracompany Exports

- Members of coordinating research teams in different countries sharing technical data, software, and/or know-how via email, through a shared network drive, or over a video/teleconference.
- Project status reports from a U.S.-based research and development division to a foreign-based management team.
- Transfer of product specifications and design details from a U.S.-based design division to a foreign-based manufacturing division.

Intracompany Export Best Practices

- Classify projects and products to determine if any projects or products require a license to be exported to other divisions of company.
 - Reassess classifications regularly
- Evaluate whether any license exception may apply and document application of license exception if applicable.
- If license required, gather all required information and apply for license early.
- Train Staff - Both in U.S. and Overseas
- Have a chain of command for questions from staff and to evaluate new projects/products

Supply Chain Management Issues associated with Export Control

Supply Chain and Export Control

- Hardware may be designed in the U.S. and exported to contract manufacturers and/or end customers.
- Export to the contract manufacturers may include hardware designs, know-how or confidential information.
- Contract manufacturer may combine U.S.-based technology with additional components to produce an end product that is in turn exported to an end customer

Supply Chain and Export Control – Huawei Case Study

- U.S.-based hardware designers faced the following issues:
 - Dealing with contract manufacturers
 - For end customers generally, obtaining a letter of assurance to comply with the BIS listing.
 - Where end customers include listed Huawei entities, requesting suspension of export.
 - Contractual obligations with Huawei and/or contract manufacturers
 - Suspension or termination of contracts
 - Compliance with notice provisions
 - Internal compliance and training (e.g., executives, sales liaisons, etc.)
 - Determination of *de minimis*-related issues and calculation of FMV

Strategic Considerations for Hardware Supply Chain

- Know your exports (ECCN, end user, end country)
- Know your contract manufacturer and include export control provisions in contracts
- Know your end user and the end use
- Have “break glass” plan for when entities are listed by BIS
 - How to suspend export/sales
 - How to confirm *de minimus* and FMV
 - How to obtain assurances

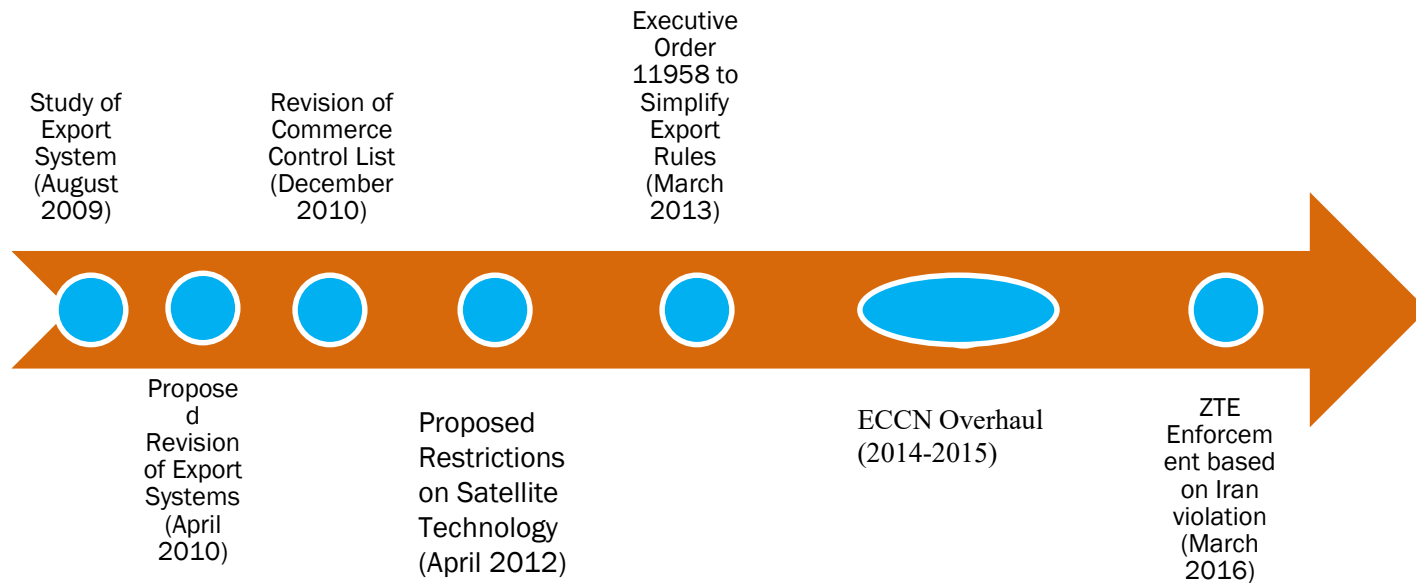
Recent Export Developments

Recent Export Developments - Agenda

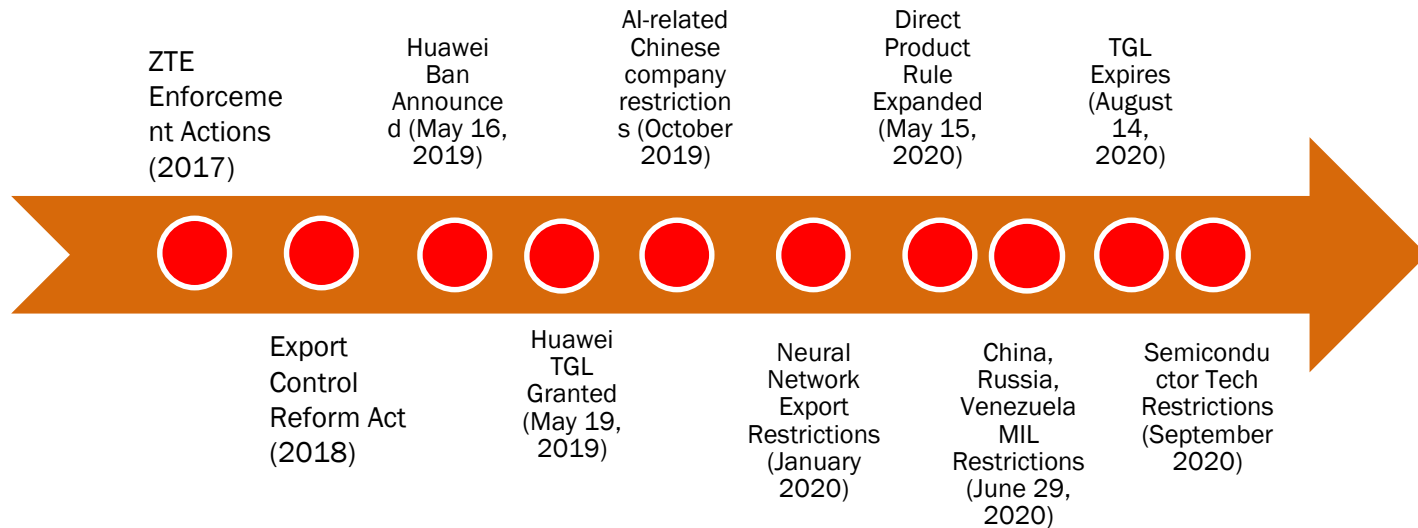
- Huawei, 5G, and Semiconductor Manufacturing Restrictions
- AI and Surveillance Restrictions
- Tightening of Restrictions on Exports to Certain Countries
- Russia Sanctions

China-Related Export Controls

Export Control under President Obama (2009-2016)



Export Control under President Trump (2017-2020)



Huawei - Banned from Receiving U.S. Exports

- May 16, 2019: BIS listed Huawei and 60+ related entities in various countries on the list of prohibited entities
 - U.S.-originating technology cannot be exported to any of these entities without an Export License.
 - U.S. companies required to suspend all business with the listed Huawei entities, including:
 - physical exports;
 - electronic exports of software and technical data; and
 - transfers from foreign locations to Huawei of previously exported US goods, software and technology and certain foreign manufactured goods and software.
- These rules have evolved

Huawei - General License Granted for Limited Purposes

- May 19, 2019: BIS issued a limited temporary general license (TGL) that permits continued export for the following four types of transactions:
 - Continued operation of existing networks and equipment;
 - Support to existing handsets;
 - Cybersecurity vulnerability and vulnerability disclosure; and
 - 5G standard development by a recognized standard body.
- TGL was allowed to expire August 2020
 - Sole exception is exports associated with cybersecurity vulnerabilities associated with equipment owned by Huawei or its affiliate

BIS Creates Special Rule Allow Huawei Participation in Standard Setting Groups

- June 18, 2020: new rule allows technology (data and know-how, not hardware) to be shared with Huawei and other entities under limited circumstances:
 - Release of technology or technical information is being “released for the purpose of contributing to the revision or development of a standard” as part of Standards Organization; and
 - The technology is EAR99 (export classification catch-all for unrestricted technology) or a classification restricted for exported based only on anti-terrorism (AT1) reasons (lowest level of restriction used by the U.S. Government).

Direct Product Rule Changes for Huawei, 5G and Semiconductor Restrictions (Previous Rule)

- Pre- May 2020 Direct Product Rule – U.S. Export Control Law applies to foreign manufactured goods if:
 - (i) Goods are a “direct product” (“immediate product (including processes and services) produced directly by the use of technology or software”) of certain U.S. technologies;
 - (ii) The U.S. technology is one of certain specific technologies that are restricted for national security control reasons.
 - This rule only restricted transactions involving foreign manufactured products based on the most restricted technologies and did not apply to many technologies used in telecommunications, semiconductor manufacturing, and computer hardware.

Direct Product Rule Changes for Huawei, 5G and Semiconductor Restrictions (New Rule)

- May 15, 2020 - Direct Product Rule modified to restrict transactions involving additional U.S. technologies, including:
 - “Microprocessor microcircuits,” “microcomputer microcircuits,” and microcontroller microcircuits having any of the following: a.1. A performance speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more; (ECCN 3A991)
 - “Digital computers,” including equipment of “signal processing” or image enhancement,” having an “Adjusted Peak Performance” (“APP”) equal to or greater than 0.0128 Weighted TeraFLOPS (WT); (ECCN 4A994)
 - Telecommunications equipment used in standard cellular communications networks through the world.
- Modified Direct Product Rule only applies to certain prohibited entities specifically identified by the U.S. Government.

BIS Restrictions on AI and Surveillance Equipment Companies

- October 2019: BIS adds additional group of entities to the prohibited lists
 - Focused on roughly 50 Chinese entities involved with AI
 - Technology areas: automated surveillance, drone, and facial recognition technologies.
- September 2020: BIS expands the prohibition
 - the number of entities expanded to several hundred
 - technologies expanded to include semiconductor and others

BIS Restrictions on AI and Surveillance Equipment Companies

- January 2020: new BIS restriction on neural network training software prohibits exports anywhere except Canada
- This rule Applies to Tech that include all of:
 1. Provides GUI that enables user to identify objects from within geospatial imagery and point clouds to extract positive and negative samples of an object of interest
 2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples
 3. Trains a Deep CNN to detect the object of interest from the positive and negative samples
 4. Identifies objects in geospatial imagery using the trained Deep CNN by matching the rotational pattern from the positive samples with the rotational pattern of objects⁶ in the geospatial imagery

Elimination of License Exceptions for Civil End-Users

- Prior to this rule:
 - Certain technologies, including encryption technologies restricted for export for National Security Reasons, could be exported to D1 countries (including China);
 - Exporter was required to verify that the recipient was a civilian end-user and to provide accountings of exports to the U.S. Government on an annual basis.
- Effective June 29, 2020, this license exception is eliminated:
 - U.S. Government has determined there is an increased integration of civilian and military technology development;
 - U.S. Government must now pre-approve transactions based on a license application.

Expansion of Military End Use Restrictions for China, Russia, and Venezuela – June 29, 2020

- Expansion of technologies to include the following additional technologies:
 - Materials processing
 - Electronics
 - Telecommunications
 - Information security (encryption)
 - Sensor and laser
 - Propulsion
- These technologies would not otherwise be restricted for China, Russia and Venezuela

Practice Tip: Expansion of Military End Use Restrictions for China, Russia, and Venezuela

- Determine whether you are dealing with entities having an association with the militaries in China, Russia and Venezuela.
 - The U.S. Government maintains a list of entities determined to have associations with militaries and this list should be used regularly to check and re-check customers to ensure compliance.
 - The U.S. Government has begun to broadly construe associations between companies and militaries

Russia Sanctions

Introduction

- The Final Rule, effective immediately on February 24, 2022, implements a sweeping series of new export control measures under the Export Administration Regulations (“EAR”) against Russia and Russia-related entities.
 - Expanded to Belarus on March 2, 2022
- The Final Rule contains seven main parts.

List of Russia-Related BIS Rules

- **February 24, 2022:** Export Restrictions on Russia : <https://go.usa.gov/xzZAe>
- **March 2, 2022:** Belarus added February 24, 2022 Rules: <https://go.usa.gov/xzZAz>
- **March 4, 2022:** Actions to Target Russian Strategic Industries and Enablers : <https://go.usa.gov/xzZAS>
- **March 7, 2022:** Republic of Korea Exclusion Rule: <https://go.usa.gov/xzk2C>
- **March 11, 2022:** Restrictions on Export of Luxury Goods to Russia and Belarus, and Russian and Belarusian Oligarchs and Malign Actors : <https://go.usa.gov/xz5MP>
- **March 18, 2022:** Commerce Department Identifies Commercial and Private Aircraft Exported to Russia in Apparent Violation of U.S. Export Controls: <https://go.usa.gov/xzyCd>
- **March 30, 2022:** Commerce Department Identifies Commercial and Private Aircraft Exported to Russia in Apparent Violation of U.S. Export Controls: <https://go.usa.gov/xu3Dm>
- **April 01, 2022:** Commerce Adds 120 Entities in Russia and Belarus to the Entity List, Further Limiting the Russian and Belarusian Militaries' Access to Items That Support Aggression Against Ukraine: <https://go.usa.gov/xu3Dn>

List of Russia-Related BIS Rules

- **April 07, 2022:** BIS Takes Enforcement Actions Against Three Russian Airlines Operating Aircraft (Aeroflot, Azur, Utair) In Violation of U.S. Export Controls: <https://go.usa.gov/xucvk>
- **April 08, 2022:** Commerce Announces Addition of Iceland, Liechtenstein, Norway, and Switzerland to Global Export Controls Coalition: <https://go.usa.gov/xucvk>
- **April 09, 2022:** Commerce Department Expands Restrictions on Exports to Russia and Belarus in Response to Ongoing Aggression in Ukraine: <https://go.usa.gov/xuczS>
- **April 14, 2022:** Commerce Department Identifies First Belarusian and More Russian Aircraft Exported to Belarus and Russia in Apparent Violation of U.S. Export Controls: <https://go.usa.gov/xuTq6>
- **April 21, 2022:** BIS Takes Enforcement Action Against Russian Cargo Airline Operating in Violation of U.S. Export Controls: <https://go.usa.gov/xukmj> Link to Aviastar Temporary Denial Order: <https://go.usa.gov/xukKs>
- **May 09, 2022:** Commerce Increases Restrictions on U.S. Exports to Russian Industrial and Commercial
- **May 20, 2022:** BIS Issues Temporary Denial Order Against Fifth Russian Airline and Names Second Abramovich Aircraft Violating U.S. Exports Controls: Press Release Link to Rossiya Temporary Denial

Deemed Exports/Reexports Excluded

- The Final Rule does not apply to deemed exports.
 - No licensing obligations on the release of source code or technology subject to the Final Rule if released to *nationals* of Russia or Belarus in the United States or countries, located *outside* of Russia or Belarus.

Final Rule Part I – Expansion of Covered ECCNs

- New Commerce Control List (CCL)-based license requirements for Russia, including new license requirements for all export control classification numbers (ECCNs) in Categories 3-9. Some of the impacted items not previously controlled to Russia include microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment, aircraft components.

Final Rule Part II – Foreign Direct Product Rules

- Two new foreign direct product rules:
 - Foreign direct product (FDP) Rules for all of Russia (“Russia FDP Rule”); and
 - Foreign direct product rule for Russian military end users (“Russia-MEU FDP Rule”)

Final Rule Part II – Foreign Direct Product Rules

- The Russia FDP Rule establishes a control over foreign-produced items that are:
 - (i) the direct product of certain U.S.-origin software or technology subject to the EAR; or
 - (ii) produced by certain plants or major components thereof which are themselves the direct product of certain U.S.-origin software or technology subject to the EAR.
- This control does not apply to foreign-produced items that would be designated as EAR99 (items not listed on the CCL), which includes consumer items that may be used by the Russian people.

Final Rule Part II – Foreign Direct Product Rules

- The Russia-MEU FDP Rule applies to foreign-produced items that are:
 - (i) the direct product of any software or technology subject to the EAR that is on the CCL; or
 - (ii) produced by certain plants or major components thereof which are themselves the direct product of any U.S.-origin software or technology on the CCL.
- It applies to all items, including those designated EAR99, with certain exceptions, and impose a license requirement for Russian military end users.

Final Rule Part II – Foreign Direct Product Rules (Partner Countries Excluded)

- However, exports, reexports, and transfers (in-country) from “partner countries” identified in Supplement No. 3 to Part 746 are excluded from the Russia FDP rule and the Russia-MEU FDP rule.
- The “partner countries” currently include Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.
 - **South Korea added effective March 10, 2022 (FR Doc. 2022-05025)**

Final Rule Part III – Review Policy of Denial

- A license review policy of denial applicable to all of the license requirements being added in this rule, with certain limited exceptions. BIS may review certain license applications in limited technologies on a case-by-case basis to determine whether the transaction would benefit the Russian government or defense sector.

Final Rule Part IV – Limitation on EAR Exceptions

- Restriction on the use of EAR license exceptions. Only certain sections of license exceptions are available for exports to Russia in very specific and limited situations

Final Rule Part V – Expansion of MEU Scope

- Expansion of the existing Russia “military end use” and “military end user” control scope to all items “subject to the EAR” other than (i) food and medicine designated EAR99, or (ii) items classified as ECCN 5A992.c and 5D992.c so long as they are not for Russian “government end users” and Russian state-owned enterprises (SoEs).

Final Rule Part VI – Entity List Additions

- Transfer of forty-five Russian entities from the Military End-User (MEU) List to the Entity List, with an expanded license requirement of all items subject to the EAR (including foreign-produced items subject to the Russia-MEU FDP rules), and addition of two new Russia entities and revise two Russia entities to the Entity List.
 - **Expanded on March 4, 2022 to 91 Additional Entities**

Final Rule Part VII – DNR, LNR, Crimea Conformance

- Comprehensive export, reexport and transfer (in country) restrictions for the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republics (LNR) regions of Ukraine (“Covered Regions of Ukraine”) and makes conforming revisions to export, reexport transfer (in-country) restrictions for Crimea Region of Ukraine provisions.

Take-aways

Take-aways

- Know Your Export Control Risk
 - Classify your projects and products so you know what restrictions apply to your technology.
 - Identify the export destinations, including exports of physical goods, digital software, technical information.
 - Track the Nationalities of your employees and visitors (Deemed Export Tracking).

Take-aways

- Plan for Your Risk
 - Have an Export Control Plan and Written Export Policies based on the risks.
 - Train your Employees about the importance of Export Control Compliance and How to comply with Company Policies.
 - Include Export Control Compliance requirements in your supplier, vendor, and customer agreements, as feasible.
 - *Have a “Break Glass” policy for what to do if there is a sudden change in export control policy for your technology or one of your customers/vendors/suppliers becomes listed as a prohibited entity.

Take-aways

- Confirm and Maintain Your Plan
 - Regularly Check that Your Plan is in compliance with evolving US Restrictions.
 - Regularly Confirm that Your Procedures is being Followed by Employees, Vendors, and Suppliers.
 - This Regularly Checking and Confirmation can be done through Regular Audits of Your Plan and Procedures.
 - Audits may be Annual or more frequently depending on your risks.

Thank you!

Questions? Please feel free to contact us any time for guidance.



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