



US EXPORT CONTROLS and Current EAR Updates in ASIA

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Bureau of Industry and Security

U.S. Department of Commerce
Where Industry and Security Intersect



BIS licenses dual-use items: Items with both commercial and military or proliferation applications. As well as **certain military items.**

Use of Concern

Gas centrifuge,
Fabrication of WMD



Missile Components



Mustard Gas



Machine
Tools

Carbon
Fibers

Thiodiglycol

Legitimate Use

Parts & components
of various machinery

Golf club shafts,
Fishing rods

Plastics, Dyes, Inks



Basic Jurisdiction (Items)

Items “Subject to the EAR” – the U.S. Export Administration Regulations.

Does **not** include items subject to the exclusive jurisdiction of other agencies.

Does **not** include informational materials or certain publicly available technology and software.



Basic Jurisdiction (Items)

Items “Subject to the EAR” – the U.S. Export Administration Regulations.

Includes commodities, software, and technology:

- Located in the United States
- U.S.-origin items, wherever located
- Certain direct products of U.S. technology
- Foreign-made items abroad with controlled U.S.-origin content that exceeds *de minimis* levels,
 - Greater than 10% if destined to Iran, North Korea, Sudan, or Syria
 - Greater than 25% if destined to any other country



Basic Jurisdiction (Transactions)

Export: an actual shipment or transmission of items subject to the EAR out of the United States

In country transfer: an actual shipment or transmission of items subject to the EAR within one foreign country.

Reexport: an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country

“Release” of Technology to foreign national is deemed to be an export or reexport



The Commerce Control List (the CCL)

The United States maintains a **control list** derived from the multilateral export control regime lists, with some additional items that are controlled unilaterally.

- Used to determine Export Control Classification Number (ECCN)
- Used to determine license requirements



What is an ECCN?

Export Control Classification Number on the Commerce Control List

1

- Category

C

- Product Group

350

- Type of Control

- 1C350 = ECCN

- Subject to the EAR but not listed on the CCL = EAR99



Commerce Country Chart

Reason for Control

	Chemical and biological weapons			Nuclear nonpro.		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	CC 1	CC 2	CC 3	AT 1	AT 2
Australia ³	X					X		X	X						
Burma	X	X	X	X		X	X	X	X	X	X		X		
Cambodia	X	X		X		X	X	X	X	X	X	X			
China	X	X	X	X		X	X	X	X	X	X		X		
Hong Kong	X	X		X		X	X	X	X	X	X		X		
India	X	X		X		X	X	X	X	X	X		X		
Indonesia	X	X		X		X	X	X	X	X	X		X		
Japan ³	X					X		X	X						
Korea, North ¹	See Sections 742.19 and 746.4 of the EAR to determine whether a license is required.														
Korea, South ³⁴	X					X		X	X	X	X		X		
Laos	X	X		X		X	X	X	X	X	X	X			
Macau	X	X	X	X		X	X	X	X	X	X		X		
Malaysia	X	X		X		X	X	X	X	X	X		X		
Mongolia	X	X	X	X		X	X	X	X	X	X	X			
Philippines	X	X		X		X	X	X	X	X	X		X		
Singapore	X	X		X		X	X	X	X	X	X		X		
Taiwan	X	X	X	X		X	X	X	X	X	X		X		
Thailand	X	X		X		X	X	X	X	X	X		X		
Timor-Leste	X	X		X		X	X	X	X	X	X		X		
United Arab Emirates	X	X	X	X		X	X	X	X	X	X		X		
Vietnam	X	X	X	X		X	X	X	X	X	X	X			



Export Licensing: applications

- **Export:** Only a person in the United States may apply for a license to export items from the United States. (may be duly authorized U.S. agent of the foreign principal party in interest).
- **Reexport:** The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to re-export controlled items from one country to another.
- **In country transfer:** A foreign principal party in interest may apply for a license to transfer items subject to the EAR within the foreign country.



License Exceptions

An **authorization** that allows you to export or reexport, under stated conditions, items subject to the EAR that would otherwise require a license.

The criteria for using each license exception is different. Exporters must be careful to read license exception requirements carefully.



Commerce Control List-Based License Exceptions

Availability Based on ECCN

- Strategic Trade Authorization (**STA**)
 - Shipments to B Countries (**GBS**)
 - Technology and Software Restricted (**TSR**)
 - Shipments of Limited Value (**LVS**)
 - Civil End Users (**CIV**)
 - Encryption (**ENC**)
- Country Group A:5 or A:6
- Country Group B
- Country Group D-1, except North Korea
- Except Country Group E-1 and E-2. Restrictions on government end-users



Catch-All Controls

- Catch-All Controls may involve transactions involving any item subject to the EAR, and not just items on the CCL.
- End-Use: prohibited end uses include certain end uses related to chemical, biological, or nuclear activities or facilities
- End-User: prohibited end-users include persons and companies that . . .
 - impose a risk of diverting items into programs related to weapons of mass destruction (WMD), or
 - are contrary to national security and/or foreign policy interests.
 - US Trade Sanctions require additional license requirements if destined to Iran, Syria, Cuba, DPRK and Sudan. Affects most items subject to EAR.



End-Users—Lists to Check

Department of Commerce – Bureau of Industry and Security

- **Denied Persons 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.

Department of State – Bureau of International Security and Non-proliferation

- **Nonproliferation Sanctions** - Parties that have been sanctioned under various statutes. The linked webpage is updated as appropriate, but the Federal Register is the only official and complete listing of nonproliferation sanctions determinations.

Department of State – Directorate of Defense Trade Controls

- **AECA Debarred List** – 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."

Department of the Treasury – Office of Foreign Assets Control

- **Specially Designated Nationals List** – Parties who may be prohibited from export transactions based on OFAC's regulations. The EAR require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO", "IRAQ2" or "NPWMD".

<https://www.export.gov/article?id=Consolidated-Screening-List>



DIVERSION AND FRONT COMPANIES

Diversion of U.S. origin items through front companies is major challenge in transshipment hubs - including Hong Kong. There is a large infrastructure of corporate secretary firms and forwarding companies that contribute to this problem. ***(EXPORTERS BE AWARE OF THESE FIRMS)***

The use of front companies, virtual offices, and logistics firms (especially in concert with one another) presents a challenge to exporters and to authorities who need to determine the actual end user, end use and end destination. This model is exploited by proliferators to avoid export control laws and continue doing business with sanctioned nations (e.g., North Korea, Iran, Syria), unauthorized military and proliferation programs, as well as terrorist or criminal organizations.

Many transshipment hubs allow individuals to establish a business quickly and inexpensively. Proliferators have been known to exploit these laws by establishing and deregistering entities very quickly. **(DO YOUR DUE DILIGENCE AND RESEARCH)**

By using corporate secretary firms and/or small forwarding companies, diverters add multiple layers of consignees in an export transaction. It can be a major challenge for BIS to determine the ultimate end user and end destination of U.S items



Red Flag Indicators

- Company did not register in destination country
 - Company (purchaser or end user) claimed their office in a specific country, but the local authority has no registration record
- Phone number or office address is co-shared with multiple companies
 - Secretary company or business center or logistics agent may allow their client to list their office address or phone number
- Purchaser contact did not match with the company website or public source
 - Eg. Hong Kong company address, but the phone and fax number is in another country such as phone numbers that have China country code (86); Hong Kong company is owned by mainland nationals or shows signs of being a shell company.



Red Flag Indicators (Continued)

- End-user address looks incomplete.
 - No unit number, no floor number, no building name, no district name; Address appears to have mailbox number in addition to unit number.
- Suspicious or vague End-User Statements.
 - Norm in Hong Kong is to stamp official documents. Ensure documents actually signed. Watch out for alias names, like “Kevin” with no surname.
- Shipment’s details don’t make sense
 - Purchaser located in Asia, but the Intermediate Consignee is located in the UAE; training and installation refused when normally part of your sales.
- Deal too good to be true.
 - Priced above market rate, or sale does not follow typical negotiation pattern



Red Flag Indicators (Continued)

- The consignee has little or no business background.
- The consignee is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the consignee.
- Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.
- A freight forwarding firm is listed as the product's final destination.
- Secretarial firms and freight forwarders are NOT Ultimate Consignees
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the consignee is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.



Potential Consequences of a Violation

- **Consequences of violations may include:**
 - **A Warning Letter**
 - **Civil Enforcement**
 - Fine
 - Denial of export privileges
 - Exclusion from practice
 - **Criminal Prosecution (Jail and/or Fine)**
 - **Placement on the Entity List, UVL DPL**
 - **The type of enforcement action depends primarily on the natures and scope of the violations**



Expectations of Industry

- Be knowledgeable of U.S. export controls when trading in items subject to U.S. export controls
- Only export with U.S. authorization- if no license required, under License Exception, or by license
- Diligently follow license conditions and recordkeeping requirements
- Maintain good relations and cooperation with BIS officials



Best Practices – Hong Kong

- Understand the local market in places where you do business.
 - DETERMINE WHETHER YOUR CUSTOMER IS THE ACTUAL END USER.
- Know your client – use public sources to help verify what your client is telling you. (CHECK USG ENTITY LIST, UVL, SDNL)
- Seeing is believing – visit your customers to see where they operate. A phone call may also be a good method
 - Third-party verification services are an option.
- Your AES filing should identify the end user as the Ultimate Consignee. (MAJOR POINT: FILL OUT AES DATA CORRECTLY)
 - Secretarial firms and freight forwarders are NOT Ultimate Consignees. (US EXPORTERS VALIDATE WHEN POSSIBLE AND IDENTIFY WHO YOU ARE REALLY SHIPPING TO)
- Obtain a copy of the Hong Kong import license and Hong Kong export license for multilaterally-controlled items. (BIS 2017 FINAL RULE ON HK)



Best Practices - Regional

- Japan
 - Use of License Exception STA (Country Group A:5) conditioned upon the creation/exchange by transaction parties of notifications and statements designed to provide assurance against diversion to other destinations. **Authorized for items controlled for NS, CB, NP, RS, CC, SI.**
 - A major destination for 600 series items.
- Philippines
 - The new strategic trade law (STMA,) is being instituted and will likely include both import and export license requirements.
- Taiwan
 - Use of License Exception STA (Country Group A:6) conditioned upon the creation/exchange by transaction parties of notifications and statements designed to provide assurance against diversion to other destinations. **Authorized for items only controlled for NS.**
 - Strong domestic industry; many business ties with Mainland China which is treated differently under the EAR. **Watch for transshipment and migration of manufacturing.**
- Thailand
 - As with other countries in SE Asia, manufacturing is often for export, so be aware of other forward export destinations.
- Macau
 - EAR treats like the PRC; largely a service economy without the strong transshipment or finance industry of Hong Kong.



Regional Resources

- Business Registration Search & Companies Registry Search
<https://www.gov.hk/en/business/registration/businesscompany/index.html>
- Hong Kong Customs:
www.customs.gov.hk/en/trade_controls/control/index.html
- Hong Kong Export Control Ordinance/Regulations (Chapter 60): www.legislation.gov.hk/eng/home.htm
- Hong Kong – Trade and Industry Department has specific import and export requirements
www.stc.tid.gov.hk/eindex.html, www.tid.gov.hk/eindex.html
- Japan – Ministry of Economy, Trade and Industry has its own prohibited end-user list:
www.meti.go.jp/english/press/2014/0401_01.html
- Taiwan – Bureau of Foreign Trade www.trade.gov.tw/english/



Developments On US Export Controls You Need TO Know

- BIS 2017 Final Rule on Hong Kong published January 19, 2017. Went into effect April 19, 2017.
- Rule requires persons intending to export or reexport to Hong Kong any items subject to the EAR and controlled on the CCL for NS, MT, NP1 or CB reasons to obtain prior to such export or reexport a copy of a Hong Kong import license or a written statement from the Hong Kong Government that such a license is not required. It also requires that any persons intending to reexport from Hong Kong the items previously mentioned, obtain a Hong Kong export license or a written statement from the Hong Kong Government that such a license is not required.
- This rule does not impose any new license requirements.
- On a basic level, just follow Hong Kong Government Strategic Trade Control Laws already in effect.



Export Control Reform Act of 2018

The Export Control Reform Act of 2018 (ECRA) has three main components

1. Provides permanent statutory authorization for the current Commerce-lead export control system.
2. Establishes a formal interagency process to identify and control emerging and foundational technologies that are essential to U.S. national security.



ECRA 2018 (Cont.)

3. Continues export control enforcement authorities (e.g. subpoenas; arrests; firearms; criminal and civil penalties) and expands others (e.g. surveillance and undercover operations)

ECRA retains current provisions for weapons of mass destruction (WMD) sanctions and anti-boycott provisions.



ECRA 2018 (Cont.)

Identification of Emerging and Foundational Technologies:

Hypersonics, Robotics, Advanced materials, Advanced surveillance technologies, Brain-computer interfaces, Biotechnology, Artificial Intelligence, Position, Navigation and Timing technology, Microprocessor technology, Advanced computing technology, Data analytics technology, Quantum information and sensing technology, logistics technology, and additive manufacturing.

BIS will only issue ECCN controls that are essential to national security of United States and only very specific technology in a category will be controlled, not the entire broad technology category group



Additional Resources:

Individualized Help

Outreach and Educational Services Division:

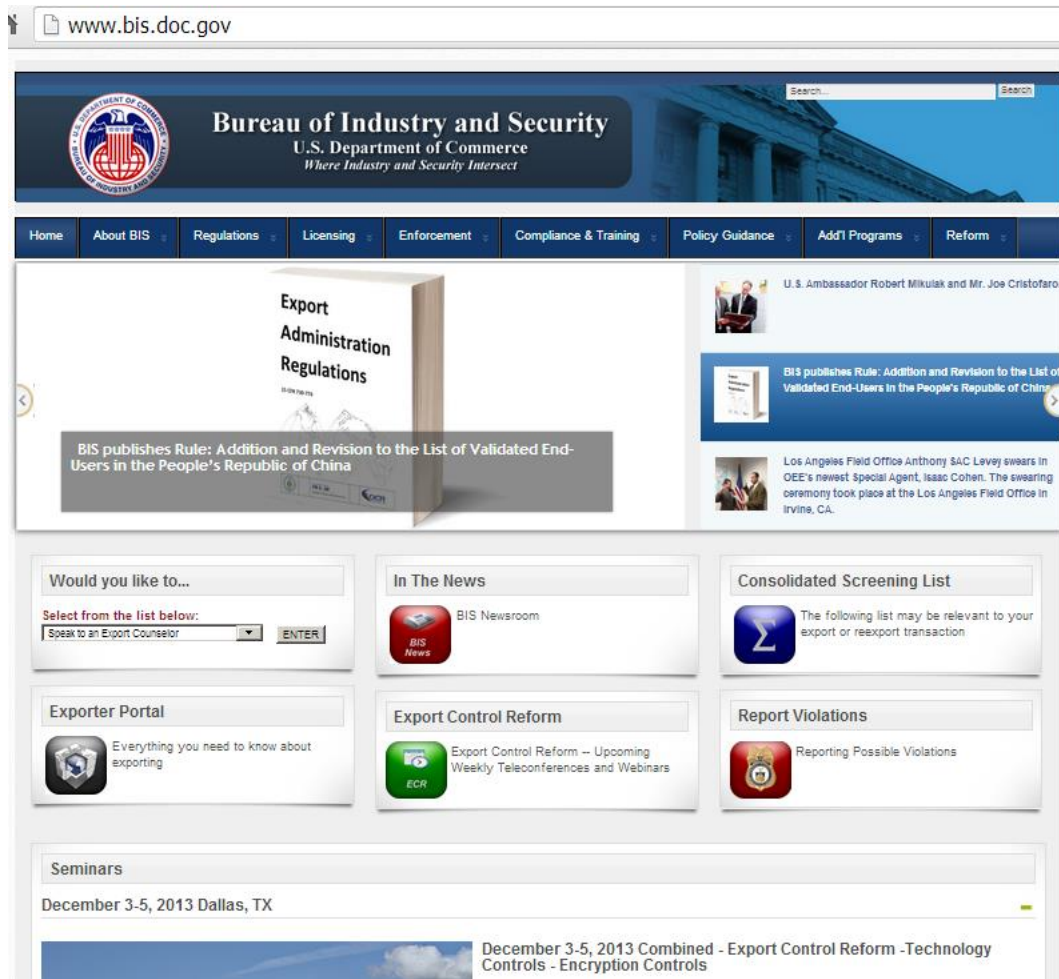
- ECDOEXS@bis.doc.gov
- Washington, DC: +1-202-482-4811
- Western Regional Office: +1-949-660-0144
- Northern California Branch: +1-408-998-8806

Regulatory Policy Division

- RDD2@bis.doc.gov
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BIS Website



www.bis.doc.gov

Examples of Info:

- Policy Information
- Press releases
- Significant Speeches
- Training Materials
- Advisory Opinions
- Contact Information
- Much, much more!



Thank You

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