

# Export Control Reform Initiative

## 17 May 2017

# Export Control Reform

- **According to the State Department, the Export Control Reform “initiative is designed to better protect America's most sensitive defense technologies, while reducing unnecessary restrictions on exports of less sensitive items.”**
- **While it has simplified many requirements, in practice it has created new complications and increased the compliance burden on many exporters.**

# ITAR Coverage

- **The International Traffic in Arms Regulations (“ITAR”) are administered by the State Department to regulate trade in munitions, including “defense articles” and “defense services”.**
- **Defense articles are commodities or technical data that are identified on United States Munitions List (“USML”).**
- **Items on the USML are not “subject to the EAR” (Export Administration Regulations).**

# ITAR Coverage

- **All USML hardware and related technical data require ITAR licenses for export, with limited exceptions.**
- **Under pre-reform ITAR, articles that qualified as “parts of defense articles” were treated identically to end products and major components, regardless of program and country of destination.**
- **Product distinctions applied at license application stage, not in whether a license is required.**

# ITAR Coverage

- **ITAR require a license for most USML items, which included “specifically designed or modified” minor parts and components, leading to extra work and cost for State and exporters.**
- **The dividing line between EAR and ITAR coverage is not always clear and often is confusing.**
- **To reduce regulatory burdens and permit State to address items of primary concern, the Obama administration adopted an export control reform program.**

# Export Control Reform

- **ITAR are amended to retain only articles that provide the United States with a critical military advantage or otherwise warrant coverage on the USML.**
- **Other items, including most “specially designed parts and components”, are removed to Commerce Control List (“CCL”) and placed in a new category of former USML articles.**
- **Certain items transferred to CCL are no longer subject to license requirements for specified qualifying destinations and consignees/end users.**

# Removal from ITAR

- **Three primary changes to the ITAR:**
  - **USML restructured as a “positive” list, meaning that, with limited exceptions, articles must be specifically identified in it to be covered.**
  - **New approach to “specially designed or modified” “parts and components”, with specific guidance regarding when items are covered or excluded.**
  - **Items not specifically covered are transferred to the EAR, meaning no more “catch-all” provisions unless explicitly stated.**

# Removal from ITAR

USML Category		Key Milestones		Federal Register Notice(s)	
No.	Description	Effective Date	Transition End Date	Final Rule	Correction Rule
I	Firearms	TBD	TBD	TBD	TBD
II	Artillery	TBD	TBD	TBD	TBD
III	Ammunition	TBD	TBD	TBD	TBD
IV	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines	07/01/2014	06/30/2016	<a href="#">79 FR 34</a>	<a href="#">79 FR 36393</a>
V	Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents	07/01/2014	06/30/2016	<a href="#">79 FR 34</a>	<a href="#">79 FR 36393</a>
VI	Surface Vessels of War and Special Naval Equipment	01/06/2014	01/05/2016	<a href="#">78 FR 40922</a>	<a href="#">79 FR 26</a>
VII	Ground Vehicles	01/06/2014	01/05/2016	<a href="#">78 FR 40922</a>	<a href="#">79 FR 26</a>



# Removal from ITAR

VIII	Aircraft and Related Articles	10/15/2013	10/14/2015	<a href="#">78 FR 22740</a>	<a href="#">78 FR 61750</a>
IX	Military Training Equipment	07/01/2014	06/30/2016	<a href="#">79 FR 34</a>	<a href="#">79 FR 36393</a>
X	Personal Protective Equipment	07/01/2014	06/30/2016	<a href="#">79 FR 34</a>	<a href="#">79 FR 36393</a>
XI	Military Electronics	12/30/2014	12/29/2016	<a href="#">79 FR 37536</a>	<a href="#">79 FR 77884</a>
XII	Fire Control/Sensors /Night Vision	12/31/2016	12/30/2018	<a href="#">81 FR 70340</a>	TBD
XIII	Materials and Miscellaneous Articles	01/06/2014	01/05/2016	<a href="#">78 FR 40922</a>	<a href="#">79 FR 26</a>
XIV	Toxicological Agents	12/31/2016	12/30/2018	<a href="#">81 FR 49531</a>	TBD

# Removal from ITAR

XV	Spacecraft and Related Articles	11/10/2014	11/09/2016	<a href="#">79 FR 27180</a>	<a href="#">79 FR 66608</a>
XVI	Nuclear Weapons Related Articles	07/01/2014	06/30/2016	<a href="#">79 FR 34</a>	<a href="#">79 FR 36393</a>
XVII	Classified Articles, Technical Data, and Defense Services	10/15/2013	10/14/2015	<a href="#">78 FR 22740</a>	<a href="#">78 FR 61750</a>
XVIII	Directed Energy Weapons	12/31/2016	12/30/2018	<a href="#">81 FR 49531</a>	TBD
XIX	Gas Turbine Engines and Associated Equipment	10/15/2013	10/14/2015	<a href="#">78 FR 22740</a>	<a href="#">78 FR 61750</a>
XX	Submersible Vessels and Related Articles	01/06/2014	01/05/2016	<a href="#">78 FR 40922</a>	<a href="#">79 FR 26</a>
XXI	Articles, Technical Data, and Defense Services Otherwise Not Enumerated	10/15/2013	10/14/2015	<a href="#">78 FR 22740</a>	<a href="#">78 FR 61750</a>

# Case Study -- Aircraft

- **Revised USML Category VIII covers specified military aircraft, for example:**
  - (1) Bombers;**
  - (2) Fighters, fighter bombers, and fixed-wing attack aircraft;**
  - (3) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft;**
  - (4) Attack helicopters;**
  - (5) Unarmed military unmanned aerial vehicles (UAVs)**

# Case Study -- Aircraft

- **Revised USML Category VIII covers specified military aircraft, for example:**
  - (15) Aircraft not enumerated in paragraphs (a)(1) through (a)(14) as follows:**
    - (i) U.S.-origin aircraft that bear an original military designation of A, B, E, F, K, M, P, R, or S; or**
    - (ii) Foreign-origin aircraft specially designed to provide functions equivalent to those of the aircraft listed in paragraph (a)(15)(i) of this category.**

# Case Study -- Aircraft

- **All specially designed parts and components for B-1B, B-2, B-21, F-15SE, F/A18E/F, EA-18G, F-22, F-35, and future variants thereof; or the F-117 or United States Government technology demonstrators remain covered by ITAR.**
- **Related technical data to these aircraft also continues under ITAR.**
- **Certain aircraft and their parts previously on the ITAR were moved to the EAR (for example cargo aircraft, trainers).**

# Case Study -- Aircraft

- **Certain aircraft subsystems and parts are specifically named on the USML.**
  - (3) Tail boom folding systems, stabilator folding systems or automatic rotor blade folding systems, and specially designed parts and components therefor;**
  - (4) Wing folding systems, and specially designed parts and components therefor, for:**
    - (i) Aircraft powered by power plants controlled under USML Category IV(d); or,**
    - (ii) (ii) Aircraft powered by gas turbine engines with any of the following characteristics: . . .**

# Case Study -- Aircraft

- **Certain aircraft subsystems and parts are specifically named on the USML.**
  - (5) Tail hooks and arresting gear, and specially designed parts and components therefor;**

# Continuation on ITAR

- **Those parts not named on USML are moved to EAR.**
- **Specified military vehicles (Category VII) and vessels of war (Category VI) remain on the USML as well as specifically-identified parts and components and related technical data.**
- **Similar changes to other USML categories have been adopted or proposed.**



# EAR Coverage

- **The EAR include the CCL of items subject to Commerce controls; items not on CCL are designated “EAR99” and are considered non-controlled.**
- **CCL has 10 categories divided into product-specific Export Classification Control Numbers (ECCNs)**
- **Aircraft are covered in CCL category 9.**
- **CCL is revised to cover articles transferred from the USML.**

# EAR Coverage

- **Each ECCN identifies the reason(s) why products it covers are controlled.**
- **Unlike ITAR, not all CCL items are controlled to all destinations; instead, controls apply only to those destinations that are subject to the applicable reasons for control**
- **A new series of ECCNs, called the “600 series”, has been established for articles moved from the ITAR.**

# EAR Coverage

- **Commodities removed from the ITAR that are “specially designed” for a military aircraft are covered by ECCN 9A610, “Military Aircraft and Related Commodities.”**
- **Certain aircraft parts and components are specifically named in ECCN 9A610.**
  - **e. Mobile aircraft arresting and engagement runway systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a.**
  - **f. Pressure refueling equipment and equipment that facilitates operations in confined areas, “specially designed” for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.**

# EAR Coverage

- **The residual provision, ECCN 9A610.x, covers “any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was ‘specially designed for a military aircraft.’”**
- **Articles covered by ECCN 9A610.x are controlled for National Security (NS) 1, Regional Security (RS) 1, and Antiterrorism (AT) 1 reasons.**
- **NS1 and RS1 reasons for control apply to all destinations except Canada, while AT1 controls apply only to Iran, North Korea, Sudan and Syria.**

# EAR Coverage

- **ECCN 9A610.y covers specifically named aircraft parts; these are controlled only for AT1 reasons:**
  - **y.1. Aircraft tires;**
  - **y.2. Analog gauges and indicators;**
  - **y.3. Audio selector panels;**
  - **y.4. Check valves for hydraulic and pneumatic systems;**
  - **y.5. Crew rest equipment;**
  - **y.6. Ejection seat mounted survival aids;**

# EAR Coverage

- **Most ITAR items moved to CCL remain controlled to nearly all destinations.**
- **License Exception Strategic Trade Authorization (“STA”) (codified at 15 C.F.R. § 740.20) authorizes exports without a license of NS1 and RS1 commodities to certain destinations.**
- **For a shipment to qualify for STA coverage, the exporter must obtain a compliance statement from its consignee.**

# EAR Coverage

- **Eligible STA destinations: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey and the United Kingdom.**

# EAR Coverage

- **Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa and Taiwan are STA-eligible for certain products.**
- **All other destinations would require an export license.**



# Technical Data

- **Technical data relating to products that remain in the ITAR would likewise continue to be covered under the ITAR.**
- **Technology for ECCN 9A610.x items would be classified in ECCN 9E610.y.**
- **Other new ECCNs have similar provisions.**
- **Such technology also is controlled for NS1, RS1 and AT1 reasons, and is eligible for export under license exception STA.**

# Specially Designed

- **“Specially designed” is the standard used to determine the classification of parts and components.**
- **ITAR and EAR definitions have been harmonized.**
- **“Catch and release” approach: the new definition will include affirmative definitions of “specially designed” but exclude items meeting specified criteria from scope.**

# Specially Designed

- ***§120.41 Specially designed.***
  - **(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software (see §120.45(f)) is specially designed if it:**
    - **(1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph; or**
    - **(2) Is a part (see §120.45 (d)), component (see §120.45(b)), accessory (see §120.45(c)), attachment (see §120.45(c)), or software for use in or with a defense article.**

# Specially Designed

- **(b) For purposes of this subchapter, a part, component, accessory, attachment, or software is not specially designed if it:**
  - **(1) Is subject to the EAR pursuant to a commodity jurisdiction determination;**
  - **(2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;**
  - **(3) Has the same function, performance capabilities, and the same or “equivalent” form and fit as a commodity or software used in or with a commodity that:**

# Specially Designed

- (i) Is or was in production (*i.e.*, not in development); and
- (ii) Is not enumerated on the U.S. Munitions List;
- (4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or
- (5) Was or is being developed as a general purpose commodity or software, *i.e.*, with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).

# Transition and Timing

- **Typically, there is a six-month phase-in period before a revised rule applies.**
- **Aircraft rule effective October 15, 2013.**
- **Vehicle and vessel rule effective January 6, 2014.**
- **Explosives rule effective July 1, 2014.**
- **Existing ITAR authorizations (licenses, agreements) may remain in effect until expiration or replaced by EAR authorization at exporter's option.**
- **Mixed exports of ITAR and EAR items subject to ITAR licensing jurisdiction.**

# Reexports

- **Items moved to CCL are eligible for “de minimis” treatment following export and incorporation into another article.**
- **Qualifying for de minimis removes the foreign article from U.S. export control jurisdiction entirely.**
- **To qualify, the item must account for 25% or less than the value of the finished foreign product.**

# Reexports

- **Specified arms-embargoed countries are ineligible for de minimis treatment and will require a license for a foreign-made product incorporating any CCL-covered munition controlled to that destination.**
- **Contrast EAR approach with ITAR “see through” rule that subjects USML items to State controls even when incorporated into another product abroad.**



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