

U.S. Department of Commerce
Bureau of Industry and Security

BIS WEBCAST, MAY 29, 2013: FOREIGN EXPORTS OF US ORIGIN ITEMS IN ACCORDANCE WITH THE
INITIAL IMPLEMENTATION OF EXPORT CONTROL REFORM RULE

Today's focus is going to be on the reexport aspect of the new regulation and changes to existing regulations. We're going to record it so it can be used elsewhere by those not on today and also make slides we use today available on our web site.

Today's topics begin with background on Export Control Reform.

For some of you who have heard this before, it will not be new, but for those tuning in for the first time or just for the reexport side of things, it may be new so I wanted to get it down first, and then we will go into discussing reexports or transfers of items incorporating U.S. content and reexports or transfers of the direct product of U.S. technology or software.

Before I get into the content of today's presentation, there are a couple things to report on.

October 15th, 2013, is going to be the date the initial implementation rule that we published in April will become effective.

As you may recall there's a six-month delay in effective dates so that companies and individuals can get used to the new requirements.

I've already gotten a handful of questions so far that I'll try to answer at the end of the prepared materials, and if there are any questions we don't get to in the webinar we'll add those in the next weekly export reform teleconference on June 5th.

We generally hold them on Wednesdays at 2:30. If, by the way, any of our listeners have questions or suggestions for other topics that we can do in these webinars or weekly phone calls, let us know. This has been a useful tradition we've developed, so I hear from exporters and others.

It saves a lot of time and is very efficient because you get a chance to hear directly what the regulations mean and for us to connect the dots and also to ask and have answered questions that are specific to particular fact patterns that are of interest to you.

I don't know if we have a set schedule for other topics, but we plan on continuing this weekly approach as long as we can.

Anyway, another development is the progress on remaining categories. On May 24th, the State Department published proposed revisions to U.S. Munitions List Category XV, and Commerce published EAR proposed changes pertaining to satellites.

The State Department rule proposes what a more positive list would be for Category XV, and the new 9x515 ECCNs would describe that which would move over to the Commerce list. We're seeking comments, and I encourage you to comment on the State rule. There are three ways to comment on the Commerce rule.

You may send e-mails to publiccomments@bis.doc.gov or go to www.regulations.gov and find the regulation and submit your comment that way, or the old fashioned way by writing on paper and sending it to the Commerce Department. Comments by whatever means must be received on or before July 8th, 2013, which is the end of the period.

Anyway, so now we're going to do as you see on your slides here and discuss the background on export control reform (ECR), and the policy objectives to the effort are, as stated on this slide, to enhance national security.

We needed a fundamental reform of the export control system, and this was laid out in the speech that Secretary of Defense Gates gave in September 2010.

What he did in defining national security was to make three points – the system needed to be reformed to increase interoperability with NATO and other close allies, to reduce current incentives under the ITAR for companies in non-embargoed countries to design out or avoid U.S.-origin content, and to allow the Administration to focus its resources on transactions of greater concern.

In order to be able to do this, in order to be able to follow through on those objectives laid out by the secretary and then adopted by the White House and the President [the process] is to identify the sensitive items on the U.S. Munitions List that warrant individual State Department licensing under the controls of the Arms Export Control Act, even for ultimate end use by NATO and other regime allies.

We needed to amend the EAR and Commerce Control List to have a place to control all formerly USML items that will no longer be identified on the revised USML so they could still be controlled as military items.

When we say that nothing is being decontrolled, this is what we are referring to, but for one small exception on nuts and bolts and insignificant items. Everything that is today USML-controlled that isn't described in the revised or positive USML categories will be controlled on the CCL with worldwide license obligations with the availability of some license exceptions.

And essentially what I just said is on this slide with respect to the first and second bullet.

The primary license exception, as referenced in this third bullet here, and this is equally applicable to exports and reexports, which is what we're going to be focusing on today, is the new license exception STA. For these new 600 series items that move over from the USML, the exception will be available for exports and reexports to a group of 36 countries, NATO plus multilateral regime allied countries if a series of conditions are met. The three primary conditions are that the export or reexport be for the ultimate end use by a government of one of those 36 countries or the United States for return to the United States such as in joint development or joint production, which is not listed here but I should

probably add in; if it's for the purpose of something for ultimate end use of the governments of one of those 36 or the United States; or in connection with an existing authorization.

That is if you have a license from Commerce or State authorizing an item to be transferred from one of the 36 to outside the group of 36, then STA with some conditions is eligible for export from the U.S. to one of the 36 or for reexport by, among, and between that group of 36.

Anyway the ultimate objective of this effort is to make defense trade in the supply chain for NATO and other close allies more efficient - - also collateral benefits for some trade with the rest of the world minus embargoed countries. But the focus of the effort is with respect to making defense trade in the supply chain to NATO countries more efficient to accomplish objectives.

This is a long way of getting to ultimately the objective of creating a single list under a single agency with the single IT system and a single export coordination center, and all of the same work would need to be done, even if we have the statutory authority to do that [four singles] we're trying to accomplish, the policy objectives that have been laid out within the existing system provide a way of working toward that ultimate objective.

On the next slide here it essentially lays out that which I've already described, which is the State Department, as a result of work done by the Defense Department over the course of the last couple of years, is going category by category on the U.S. Munitions List in identifying those items that warrant control on the USML and trying to state it in a more positive way.

What I mean by positive is that, except in unusual circumstances or when we can think of no other way around it, not using big catch-all phrases like parts, components, or accessories specifically modified, but describing what those items are.

On the Commerce side -- we publish those rules for public comment as I mentioned earlier. We've already published the first final rule, which included aircraft and engines, and we'll be coming out in the next couple of months with the next group of final revisions to categories.

Other things we've been doing, again this is all by way of background for those new to this for the first time, we're trying to harmonize the definitions and terms used in both the ITAR and EAR and to get up to the point where there could be a single list with a single set of regulations, and it makes sense for export control regulations that have similar or overlapping controls to be defined, interpreted, and applied in a consistent way. Just because it's from the State Department or Commerce Department doesn't mean the same words should have different meanings. That's an ongoing exercise.

Another aspect of the background is that we understand that what we're doing is a significant change to a lot of people and that there is going to be disruption in the short term so that's why both State and Commerce have created various grandfathering provisions, which I'll describe in some detail later.

In addition, a part of the implementation unrelated necessarily to the list-based changes is to try to harmonize some of the licensing exceptions and the licensing structures between the ITAR and EAR.

The two sets of regulations have evolved in different directions over the years, and Commerce and State are trying to take the best of each other's set of regulations and make amendments to both.

All of the changes to the jurisdictional status of items require congressional notification as required by section 38(f) of the Arms Export Control Act. None of the changes that we make will be made absent complying with that obligation. There's also an Executive Order that came out a couple of months ago – E.O. 13637, which cleans up the delegation of authority by and between different departments on aspects of export controls. That Executive Order was the authority to address something that was a common concern from some of the earlier public comments about what's sometimes been referred to as dual licensing, to try to limit situations where for the same transaction a license would be required by both the State Department and the Commerce Department.

We'll get into later what that means with the Executive Order setting out the President's delegation between State and Commerce that allows that change to take place.

Going on to the next slide. So, again for those of you who are comfortable with the EAR and have used it in the past then this shouldn't be new. But for some of you who maybe have only worked with the ITAR or are new to export controls generally, I thought it might be useful to very briefly walk through how an Export Control Classification Number is structured because I'll be using some of the terms and phrases later when describing reexport obligations. With every new item that moves over from the U.S. Munitions List, it'll be put into a 600 series ECCN.

There's no magic to 600 series other than it's a reference to where in the list of items the Commerce Department controls formerly U.S. Munitions List items, and that's reflected by the third digit in the ECCN.

On the screen as an example ECCN, for military aircraft and related commodities, 9A610, the third digit will tell you whether it's a multilateral regime controlled item or something that only the U.S. Government controls and there's a number code that goes along with that, and the "6" was unused so we picked that to be the place where these formerly USML items would be controlled.

The first digit refers to the category that describes the type of item at issue. "9" refers to aircraft. The second digit is the product group, so whether it's going to be an item that would be equipment or parts or components in "A," test or production equipment in "B," materials in "C," software in "D" relating back to one of those items, or technology in "E."

So if you have a 9A or 9B or 9C, that will tell you that it's an aircraft propulsion item. I've already told you what the third digit means. The last two digits track -- with one exception so far -- the Wassenaar Arrangement Munitions List numbering system.

A lot of what the U.S. Government regulates and controls for export are there as a result of agreements and understandings with one of four multilateral arrangements, one of which is called the Wassenaar Arrangement, which controls both military items and dual use items.

The Wassenaar Munitions List is a two-digit code for its types of items. The U.S. Munitions List never followed that code or didn't change to that code, so what we're trying to do is combine the numbering structures so that they track.

"10" will tell you where the corresponding controls are on the Wassenaar Munitions List. In the box down below under licensing requirements, it will describe various reasons for control whether it's NS standing for national security or RS standing for regional stability, MT standing for missile technology, AT standing for antiterrorism, or UN standing for United Nations.

The Commerce Department breaks out different reasons for control because different items that are controlled differently warrant different controls to different destinations or different end uses.

So that leads then to this structure of reasons for control and then in the Commerce Country Chart, it tells you what countries have an "x" in the box and thus require a license based on what column it is.

There's a whole hour presentation on any one of these slides, so I'm doing this in summary fashion in order to get to the main topic of today's discussion and answer questions, which is the reexport topic. NS1, RS1 all require licenses worldwide except for Canada. And then within those ECCNs it will be subparagraphs a-x which describe the types of items controlled where .a will generally be the end item, .b, .c, .d, and other paragraphs will be specific items that move from the USML or are identified on the Wassenaar Munitions List.

".x" will be the big catch all for any other parts or components that aren't otherwise specified but are specially designed for military items.

And then for varying significant items that are specially designed for military applications, we've listed some of those out in the dot y paragraph which will have the lowest level of control of antiterrorism control, which means no license absent General Prohibition requirements, such as for exports to the five embargoed countries. We see what the license requirements are then you see what the license exceptions available are, and those are identified below so I have a slide on each of those later but LVS stands for limited value shipment, GBS which is Country Group B which isn't available, CIV, civil end users isn't available.

The main one is under License Exception STA, and you see where it refers to paragraph (c)(1) of section 740.20. That's laying out the conditions under which countries that are eligible to receive 600 series items under license exception STA can receive them. That's the STA-36.

And then for those of you who have been following STA, we implemented it a couple of years ago with most other CCL items and two country groups -- the (c)(1) countries group of 36 and then a group of eight countries which is the (c)(2) group in that section, which are not relevant to 600 series ECCNs.

When I speak about (c)(1) countries, that is also sometimes referred to as the A:5 countries, which I'll get to in a bit.

Anyway, so now I'm on the next slide, now I'm getting to the reexport topic. That was a summary description of the policy and structure of the reform effort and structure.

Now I'm getting to reexport or non-U.S. person specific issues. So first bullet point -- if you have a 600 series item and it's U.S. origin, such as a generator for military aircraft that was made in the United States, that generator always remains subject to the EAR regardless of how many times it is reexported, transferred or sold.

This is not a new concept. This has always been the concept between the EAR and ITAR that U.S.-origin items subject to those regulations are always subject to those regulations when they're in their stand-alone state. I'll get to that in just a moment.

So I make this point in order to make a distinction on something people get confused by which is that saying something is subject to the EAR doesn't necessarily mean that that item requires a license for reexport.

All it means in that second bullet there is that there are questions the party, in this case the non-U.S. party, has to ask before engaging in a reexport or in-country transfer of a U.S.-origin item to determine whether that reexport or transfer would be in accordance with the EAR.

Do I need to license from the U.S. Government to transfer this generator from France to Russia?

Do I need to go through particular paperwork obligations and certification obligations set out in the EAR to satisfy the use of an exception to transfer that generator from France to Germany or Sweden or any one of the other 36 STA countries?

Also, are there red flags I need to worry about?

You ask those questions as we'll go through today if the item is subject to the EAR.

You don't ask questions like that on the BIS side if the item is not subject to the EAR. The last bullet there – the Commerce Department regulations do not have a see-through rule as does the ITAR.

By see-through, that means that regardless of what the item is, you look into all of its individual parts or components to determine whether or not any of those parts are controlled. However, in the EAR, we have a *de minimis* concept, which means that small amounts of U.S.-origin content are no longer subject to the EAR when incorporated into foreign-origin items.

The EAR has a smaller version of the direct product rule which is for certain non-U.S.-origin items made from certain U.S.-origin technology or software. Those foreign-made items can nonetheless be subject to the EAR for exports to certain countries. So that's just a summary of some of the issues to be discussed.

Now I'm going into a little more detail. So if you're a non-U.S. Person or anybody outside the United States there are basically, after October 15th, three ways in which you can receive legally 600 series items.

The first way is under a grandfathered DDTC approval. They handle ITAR licensing, and this is described in the State Department rule that came out at or about the same time as our rule.

If you have an authorization in place, you can continue or the person engaging in the transaction can continue to operate and engage in transactions within the scope of that authorization for up to two years after October 15th.

That's the first way in which 600 series items could be transferred legally.

Please note that it doesn't mean it's still an ITAR controlled item. It just means it's subject to the EAR and that State authorization is still valid to cover the export and reexport.

Another way is described in the initial implementation rule from last month which is if you have an item subject to the EAR and it is for use in or with an ITAR item, and you've identified that in a paragraph of the relevant category, under this delegation of authority that I mentioned with respect to the Executive Order, someone can legally ship those items subject to the EAR under a license that the State Department issues.

Again, I won't get into the State Department rule here, but there are certain obligations that go with that such as the need to identify to the State Department which of the items are subject to the EAR and identify to the consignee which items are subject to the EAR and what the ECCN is.

The third way in which someone can receive outside the United States a 600 series item is the most traditional -- a license from the Commerce Department or receiving it under a valid use of one of the various license exceptions that the Commerce Department has, and we're going to go through those.

Or in some circumstances when no license is required, and for 600 series items, that's largely going to be limited to situations involving exports to Canada for use in Canada, which is very, very similar to the Canadian exemption on the ITAR, with the difference being you're not using an exemption but rather a situation where a license isn't required for 600 series items. For these types of transactions, there are going to be various obligations to identify on the relevant export control document, such as the invoice or bill of lading what the 600 series ECCN is. We're imposing this new requirement on exporters, which should benefit compliance and education of non-U.S. persons receiving these items to know what applicable controls apply. And the obligation of the U.S. party is going to be to identify what the ECCN is.

On the next slide a chart goes into a little bit more detail on what I've already said. This goes into a little bit of detail for those of you who know the ITAR.

DSP-5s can be used for up to two years after the effective date, which is October 15th, unless it expires before then or is returned or you've used it up, or exceeded the value or the quantity for some reason.

When coming in to get a new authorization, if it's with respect to an item that is now subject to the EAR, a 600 series item, then you won't be able to get a license from State, unless it's for use in or with something being exported as a defense article. But otherwise, you would need to come in and start

fresh with the Commerce Department and either apply for and receive a license or apply one of the license exceptions in the EAR.

For 61s and 73s, which are temporary, State has said those are valid until expiration. Unlike the State Department, the Commerce Department doesn't control the temporary import as such.

We do control the shipment of items out of the United States but we don't add an extra control in the act of importing something temporarily into the U.S. But nonetheless, these authorizations, particularly the 73s for temporary exports, may continue to be used so long as they're effective and valid until their expiration on their own terms. For those involved in the export of data or services or production overseas or Warehouse Distribution Agreements, what State has said is those may also be used for up to two years after the October 15th date, unless for whatever reason the agreement expires. And to the extent that you need to make an amendment, such as a new party or new item or items that were within the scope of an agreement have now moved over the 600 series including technology, by the way. Then what you would do would be to start fresh with either the Commerce system and Commerce license or Commerce exception, or use the new 120.5(b) provision I mentioned earlier.

In fact, I have a whole slide on it, which is next. For questions pertaining to the State Department, you really need to refer and contact the State Department.

This is a very, very general summary of what State requires, but again for questions about the State rule, contact State. In its new 120.5, and there are some other provisions that basically have these elements, that if you want to ship something subject to the EAR out under the authorization, or for a non-U.S. person to receive it under a State authorization as opposed to Commerce authorization, the applicant needs to include a description of what those items are in its application. Also they must be for use in or with the ITAR controlled item, and the applicant must state what the EAR items are, so if you have EAR controlled aircraft parts, those would be described in USML VIII(x).

Okay we're now going through and listing different ways in which a non-U.S. person can receive legal items.

The first one is under a State authorization. The second one is under a BIS authorization. BIS, Bureau of Industry and Security, that's us at the Commerce Department responsible for export controls.

That's in one of three ways - license, license exception or situation where simply no license is required. Keep in mind that for some licenses, and this is not new, that there may be conditions that apply. So for example, if there is a license, you need to read all the way through it because sometimes certain end uses or certain types of activities are limited as a condition of issuing the license.

It may say, for example, that you can't transfer production technology but you can transfer certain manufacturing technology. You need to look at them to see how broad or narrow the situation is.

In addition, BIS may issue authorizations for non-U.S. origin items that incorporate U.S.-origin content and this is where the *de minimis* analysis will come in. We'll discuss this later if you have more than a *de minimis* amount, then even that non-U.S. origin item, just like it is today in the ITAR, will require

Commerce Department authorization to transfer, but if it does contain a *de minimis* amount, you won't require that BIS authorization.

Finally with respect to some small group of countries, the direct product of U.S. origin technology or software -- foreign-made items that are made from U.S.-origin technology -- can't be transferred without BIS authorization to certain destinations, and I've got slides on that later.

We'll talk about items in the form received such as a generator, and then we'll talk about items incorporated into foreign-made end items.

For situations where an item that's outside the United States is in the form that was shipped from the United States and hasn't been incorporate into another item, then generally the reexports and in-country transfers of those types of items require the same type of authorization as the original export - either a license or an exception.

A U.S. party would need to ship it directly from the United States, as described in that first bullet. Reexporters, that is, the non-U.S. persons overseas wanting to ship that U.S.-origin item to another non-U.S. country, also have the authority to request from the Commerce Department a license to ship. But they also have the authority to ask the U.S. exporter at the time of the initial application to make sure that that initial authorization has authority in it for export and reexports to various destinations.

So that's the second and third bullet there, just to repeat.

A non-U.S. person can ask the Commerce Department for a reexport license. So if you're in France, you have the generator, U.S. Origin, 600 series generator and want to transfer the generator to a non-STA 36 country, a license is required from the Commerce Department to do so.

If this wasn't contemplated at the time the generator was shipped, the non-U.S. person would come to the Commerce Department and seek that authorization.

What's not on this slide is that there's a bit of flexibility within the EAR in that also a U.S. person can seek an authorization that would allow the non-U.S. parties to that transaction to retransfer it in a way that was contemplated as well.

There's a great deal of flexibility of providing to non-U.S. persons the authority under U.S. law to transfer legally items subject to the EAR that are in the form in which they are received to other countries when a license is required.

Next slide here.

So how does one apply for a license? I'm outside of the United States, and it's the same way that someone in the United States would apply for license.

We have the SNAP-R system, where one submits applications and provides supporting documents.

We can do another presentation later on SNAP-R, but just suffice for now that the application form is called the 748P form, and there are various appendices that can be attached to that for multiple end users. In part 748, there are details on how to apply for a reexport license.

With the initial implementation rule, we become more like the State Department's regulations in that Commerce licenses have a four-year validity period, which is what the default setting is for the State Department rules.

MLAs and TAAs have ten-year validity periods. Generally, our experience is they need to be updated, revised certainly within the four-year period, so that may be a moot point. But if there is an unusual situation where for some reason that isn't obvious to us that beyond four years is warranted and relevant and useful and of no concern to the U.S. Government, U.S. and non-U.S. parties can request an extended validity period.

What's also useful is if there have been prior DDTC approvals. So by all means, provide that information to us either by license number, generally, or some other way of identifying it, and that will help speed the process by which applications are considered. To go off script here for a moment and to sort of echo something that my Defense Department colleagues say if they were here and they repeat at similar conferences, how quickly a license application moves through the system is generally a function of how complete and clear and crisp and correct the information in the application is.

So the best way to have a good application move through the system is to answer all the questions that are required and have it really quite crisp in a good, clean package.

A lot of license applications get delayed because the information coming in wasn't complete or we have to go back and ask a lot of questions, and that creates significant delays.

Anyway, back on script.

So as described on this slide here, unlike in the State Department system, the Commerce Department doesn't charge for license applications. We don't charge to register, and we don't require registration as a general matter.

Under our reexport licenses, they can have multiple end users. If you have ten different parties in a joint development production by and among ten different countries and individuals, you can in the application identify all of those end users and the authorization you get back will allow for exchange of technology and described items by and among those users.

The Commerce Department doesn't require purchase orders but rather just the description of the potential end user and other relevant information, and we think that this is a benefit because it allows for companies that are doing pre-plans or planning with respect to potential transactions to get rid of the issue of whether the authorization would be required or granted and have that in place assuming the order comes through.

That way it's already effectively been vetted by the U.S. Government and authorized so that if the order does come through, then you have that step in place. But if it doesn't come through, there's no harm as you have an authorization you won't be shipping against.

Also in terms of benefits, reexport authorizations from Commerce for technology are generally a lot shorter and we believe a lot easier to understand and comply with and complete. We don't have all the complexities of manufacturing licenses agreements or technical assistance agreements. We require the basic same information, but in a format we believe is simpler, where you describe end user, destination, and the other questions that are on the application.

During the six-month interim period, exporters and reexporters can pre-position licenses. They can come in today and say I know your regs aren't in effect yet, but come October 15th, we want the authority to be able to ship these 600 series items from this country to that country, and here is the application. What Commerce will do is hold that and then not issue it until the regulations become effective, but at least you can go through the paperwork of getting everything done.

With respect to classification determinations, you can, however, come in now and not have to wait for an answer until October 15th and ask how something is controlled on the new 600 series.

Now if there is no doubt, if it's obviously not listed on the U.S. Munitions List and it's a defense article that is no longer going to be a defense article but rather become a 600 series military item, we ask that you not come in and make that request if there is no doubt. But if there is doubt for some reason and you need the guidance from the Commerce Department or you don't quite really believe the information provided to you by the U.S. party, then you can come in, even a non-U.S. party, and seek from the Commerce Department what's called a classification determination where you describe what the item is, how it was designed, whether it is or isn't designed for a defense article, and we can give you back an official response about whether it is or isn't a 600 series item or some other item on the Commerce Control List.

So on the next slide here -- there are restrictions on using license exceptions that are generally applicable to all 600 series items or almost all of them.

So for example, in 740.2(a)(13) is a list I'll go through on the next slide of only those license exceptions that are available for 600 series items.

The EAR has lots and lots of exceptions for different reasons that have evolved over time to accommodate particular policy objectives.

We've limited the scope of what those exceptions are with respect to 600 series items: LVS for limited value shipments, TMP for certain kinds of temporary exports; TSU is limited in term of situations involving releases of technology to certain foreign persons on campuses in the United States.

Later on we're going to get into another exception involving BAG for baggage when we get to body armor controls, but we'll address that later. Types of exceptions not eligible for use under the 600 series are APR, CIV and GFT. Additionally, a significant limitation of 600 series items is that they may not be

exported to Country Group D:5, which within the Commerce regulations is a group of countries that are embargoed or limited for various reasons. In response to public comment to the initial proposed rule, we created this new Country Group D:5. It's basically to be identical to the country group in the ITAR section 126.1, which describes embargoes.

Our new group D:5 tracks the ITAR list in 126.1. Similarly, there are a handful of entries or particular subparagraphs throughout various ECCNs where for those types of items only, License Exception STA was not eligible, and that generally is in situations involving technology, I think actually almost exclusively involving technology or software.

The reason for that is as the Defense Department and other agencies were going through the list of items that we move off of the USML, we came across situations where the consensus was that the license exception should be eligible for the physical item, for example, but not for the technology for its production or development. The government still needed to have visibility and individual licenses for particular transactions, even for ultimate end use by the governments of the STA-36.

So as not to split jurisdiction of technology off from the jurisdictional status of the item to which it relates, we kept the technology and physical item to which it relates in the same set of regulations, but we excluded the availability of License Exception STA for export or release to foreign persons generally. You'll see that in 9D610.b for example, and there are some types of software that still require a license notwithstanding its export to governments or nationals of the group of 36.

In the last bullet, there are items controlled for MT reasons that are not eligible for license exceptions.

We're probably going to do another training session later in the year just on license exceptions beyond STA, but these are the primary ones other than STA that are eligible. LVS, TMP, this is not a new concept, we've just adopted the same exception that was already in the ITAR.

RPL for replacement parts is in 740.10, and that will walk you through what the conditions and limitations are on RPL, such as it needs to be one-for-one replacement, with no stockpiling and no enhancing the quality of the item.

License Exception GOV, not just limited to the 600 series, but it also has some provisions that allow for the Department of Defense to direct orders, and for particular shipments to go on behalf of the U.S. Government.

License exception STA is eligible in the EAR not just with respect to the 600 series but also with respect to other types of items subject to the EAR. And we're basically talking about two STA groups of countries -- the group here in the middle and the group of eight, which is not eligible for 600 series ECCNs.

STA can be used if STA is authorized in the ECCN and none of the other general prohibitions I just described are applicable. So for non-U.S. parties, this is a really important slide to jot down, slide 20, because this lays out what you, the non-U.S. person, needs to do. It's also pretty much exactly what the

U.S. person in the United States would need to do, in order to be able to use License Exception STA to transfer items from one country to another, from one of the group of 36 to another of the group of 36.

Today, under the ITAR, a license transfer request authorization is required for all retransfers regardless of significance and destination, but what we have done is maintained in the new structure reexport authorization to the group of 36; allowed for the availability of an exception if all of these conditions are met.

So number one on the upper left, reexporter, the person in France or Switzerland wanting to transfer the item to Sweden or Germany or one of the other 36 countries needs to provide the classification number to the party on the other end of the transaction.

That is the new, for example, 9A610.x for parts or components for military aircraft not identified on the USML or CCL. That's task number one and obligation number one.

The party receiving the 600 series items needs to provide back to that shipper, to the reexporter, the information described in the box there on the right that he understands that the items will be shipped under this exception, that he's been informed of what the ECCN is, that there's no use of License Exception APR (a) or (b) for shipment outside of the group of 36, agrees not to do anything in violation of the EAR, and agrees to provide upon request any and all of those documents to the U.S. Government.

Once the statement is made, the reexporter needs to get a copy of that statement to have it because it needs that in hand in order to be able to use this exception to notify the concerned that the exception is being used.

The reexporter needs to keep all the records to each of the consignee statements, and the consignee also needs to maintain those records and any pertaining to any subsequent reexport or transfer.

Remember that STA is just an option. If for whatever reason it is more efficient to accomplish the same transaction with the same parties under a license that Commerce would issue, then the parties may agree to do that as well.

What we've done here is for transactions to countries of less concern for the types of items that we're dealing with and for end uses about which we have little concern, we have created availability of a license exception because our records show these are types of transactions that are generally and historically approved without too many issues.

If the nature of the transaction is such that it would be simpler and more efficient to apply for and receive a license, the Commerce Department won't reject the license application. What we'll do is say again, like what I just said, you have the option of STA or coming in and applying for and receiving a license, whichever is the most efficient to accomplish the same transfer.

Also, to satisfy the conditions of STA for 600 series items, it has to be, number one, for the ultimate end use of the U.S. Government or one of the governments in the group of 36. This is also the new Country Group A:5.

Or it has to be either for the return to the United States or, one thing we need to add in to this slide, if it's technology it has to be production or end use of the government of one of these 36 or the United States Government.

Or finally the U.S. Government has issued a specific license authorizing its use. So let's say you have a license from the State Department to transfer aircraft parts as part of a foreign military aircraft from Sweden or France to a third country outside the group of 36.

If the non-U.S. party making the certification to the U.S. party allowing for use of STA provides a copy of that authorization, then STA can be used to ship that to that third country. Or similarly, if the reexporter provides the same information to one of the transferors in the group of 36, then STA can be used then as well, but it requires identification of the existing authorization for transfer outside the group of 36 to be able to use STA to or within the group of 36, if not for ultimate end use by a government of one of the 36 or the Government of the United States.

Another condition of using STA that's equally applicable to reexporters as it is to U.S. exporters is that all of the non-U.S. Parties to the transaction have been previously approved or authorized within a State Department or Commerce license.

It doesn't have to be for the same transaction, but it has to be, as a general matter, that the parties have gone through the State or Commerce licensing process and have been on an approved authorization. Now, the policy reason for this is that license exception STA is meant to apply to types of transactions where it's the same items for the same end users for the same types of uses where they're generally approved over and over.

It wasn't intended to apply where it's a new party or type of transaction. It was meant for regular relationships, and if you have a new party to a transaction that you've never traded with or who has never been subject to a Commerce or State Department license, then STA isn't the vehicle for that.

That's the policy behind this obligation, so that we will have vetted the items, end uses, and parties to the transaction in one way or another.

The Consignee Statement must also address that the ultimate end user in the transaction would have to agree to end-use checks.

To the extent that anybody is involved in transfers of end item aircraft, those are not automatically eligible -- a license is required for all destinations except Canada, and STA is only available if there's an application to the U.S. Government to use STA and the three departments agree.

For those of you who are ITAR experts, you can see a translation chart for how we've translated into the EAR license exceptions, various exemptions that are today in the ITAR.

This is all part of the effort to harmonize the substance and eventually the words used between the two sets of regulations.

I won't go into any of that, but you have these slides, and all I'm doing is confirming the general principle that if there was an exemption in the ITAR that applied to defense articles, to the extent that EAR version was worded differently, we have tried to accommodate that in the EAR and have the same scope, but using the EAR terminology, which are the various license exceptions.

As I mentioned the EAR -- unlike the ITAR -- does not have a see-through rule, but what we do have is a *de minimis* rule, which is a function of the percentage of value of the U.S.-origin controlled content in a foreign-made item.

On this third bullet, a foreign-made item located outside the United States that incorporated controlled U.S.-origin content that does not exceed the applicable *de minimis* percentage is not subject to the EAR.

Remember what I said about the meaning of "subject to the EAR" is whether you have to look to the EAR to see whether a license is required or some other condition needs to be satisfied. If something is not subject to EAR it means exactly that, you don't need to look to the EAR for the subsequent transfer.

However, there are situations where a foreign-made item located outside the U.S. that incorporates U.S. controlled content exceeds that amount. Those will require U.S. authorization to retransfer, and those non-U.S.-origin items are subject to the EAR.

Similarly, there are new situations where for 600 series items, the *de minimis* value is zero. It's 25% with the exception of arms embargoed countries. That 25% is the value of the controlled content below which the item is no longer subject to the EAR unless it is destined to one of the D:5 countries, which are the arms embargoed countries such as China, where the value is zero.

This maintains the status quo that exists today under the ITAR, where the value is zero, but what we're doing is maintaining that rule to just the arms embargoed countries. If you have, for example, a non-U.S.-origin defense article, and you have one item in it specially designed -- it's U.S.-origin, subject to the EAR, that's going to be a six hundred series item -- U.S. authorization is required to transfer that foreign-made item to China, for which we have a denial policy.

Whatever the rules are yesterday for the transfer of foreign-made items to China and other countries subject to embargo will be the same tomorrow. And in Supplement Number 2 to our part 734, we have guidelines for the *de minimis* rules, and I think I've already said the rest.

If you have an item that does contain U.S.-origin controlled content and it is subject to the EAR, then you determine the licensing requirement based on the classification of the foreign-made item. If you have a piece of military aircraft, then you ask yourself what would be the requirement for transferring that item from France to Russia?

If a license would be required to export it, then a license for the non-U.S. party would be required to reexport from France to the non-STA 36 country. With respect to other types of technology, as described in the rule, if you commingle it with non-U.S.-origin technology there is a one-time report that must be submitted to BIS.

The direct product rule... under the State Department rules, they don't use this phrase, but there's effectively a direct product rule for the whole world, and if you look at ITAR provision 124.8, paragraph five, which is a required clause in all MLA's and TAA's, it says that all items, all non-U.S.-origin items, even with no U.S.-origin content, that are produced or manufactured from U.S. technology or services are ITAR controlled forever.

That means they would need State Department authorization to transfer from one country to another if U.S.-origin technology was used to build them or U.S.-origin services were used to produce or build them.

Under the Commerce rule, what we have done is realize that is too extreme for the types of items that were at issue here, so we've down shifted that direct product concept into a series of countries where the rule doesn't apply unless the non-U.S.-origin item that was made from 600 series technology or software is destined to one of those countries.

This slide gives you basically what the questions are to ask to know whether a non-U.S.-origin item is subject to the EAR even if it contains no U.S.-origin content, merely by virtue of being produced by U.S.-origin technology or 600 series technology or software.

Ask yourself: number one, is the item a foreign-produced direct product of U.S.-origin 600 series technology or software, or a plant or major component of a plant that is a direct product?

If yes, then you ask, is the foreign produced product a 600 series item?

Item specially designed for military aircraft?

If the answer is yes, then you ask, is it going to one of the group of countries listed in D:1, D:3, D:4, D:5, or E:1?

You'll have to look at what those groups are, but it's essentially a lot of countries in the Middle East, former Soviet republics, countries subject to embargoes, and U.S. Embargoes broadly.

You may notice D:2 is not there, that's with respect to nuclear items, and that's not being moved in the 600 series.

If the answer to all three questions is yes, then that non-U.S.-origin item is the direct product of U.S.-origin technology, and if it's retransferred to one of those D or E group countries will require Commerce Department authorization do so.

If you have more questions, here is contact information.

What I'm going to do now is go to the questions that have come in, and we are certainly not going be able to get to all of them but I'll pick them up next time we have a weekly conference call.

First question, may I submit a commodity classification request to Commerce for an item that I manufactured that incorporates U.S.-origin 600 series items?

Yes.

We'd hope you'd be able to tell whether it is or isn't controlled and does it contain more or less content depending on where it's going. But for whatever reason if there is an ambiguity, submit a request.

You don't have to be a U.S. Person to submit a classification request and don't have to wait until October to do this.

So, next question.

I've been told by the U.S. -- this is also from someone outside the United States. I've been told of a 600 series item that the item has been classified by CCATS request because it is considered a specially designed component. I have however incorporated this item into a non-military end item, can I use paragraph (b)(3) of the definition of specially designed -- they don't word it this way but ask whether it's specially designed.

It depends.

The way in which paragraph (b)(3) in the definition of specially designed works, it's something as common to a controlled item, a 600 series item, and an essentially uncontrolled item such as an EAR99 item or something controlled only at the lowest level for antiterrorism reasons.

If it really is common as described in more detail in paragraph (b)(3), then that as part of your definitional analysis allows you the non-U.S. Party as well as any other party, including the U.S. Party, to conclude that that item is in normal commercial use and thus not considered specially designed.

Whether a license is or isn't required depends upon a lot of other things, which is whether it may be listed somewhere else on the CCL, or whether the type of transaction is such that this item subject to the EAR would be subject to a general prohibition.

But to answer the question, yes.

The way in which we structured the definition of specially designed is one can apply that definition when determining whether something is or isn't at the time of export or reexport specially designed.

As foreign buyer, how can I be certain of the classification of the item I receive from the U.S. supplier? If I have questions or doubts about the classification based upon my reading who should I turn to in the U.S. Government?

If the question is about whether it is or is not on the U.S. Munitions list as an ITAR-controlled item, your course is submit a commodity jurisdiction request. If there's no doubt that it's not listed on the new munitions list now and the question is whether something falls on the Commerce Control List, the response is to submit a classification request to the Commerce Department.

Again if it's with respect to 600 series items, you don't need to wait until October, you can ask that earlier.

So here's a good question. Previously received -- this is also from a non-U.S. Party --

I have previously received under a DSP-5 a USML VIII(h) part and still have it in my inventory. I've received exactly the same part under BIS authorization.

One of those authorizations is incorrect.

So the way to resolve it today would be to look to the USML to decide whether it has been specifically designed or modified for a defense article and if there is doubt, then you should submit a CJ to resolve that doubt and that'll tell you whether you need State authorization or Commerce authorization to retransfer it. After October 15th it'll be the same rule, but our hope is that for most of these types of parts, exclusively those not listed on the U.S. Munitions List, that the answer would be that you would review just the EAR to determine any restrictions available or applicable to the reexport of those items.

Next.

License exceptions.

Can I use license exception STA even though I received the item via a license from the U.S. Exporter?

Well, it depends.

It's an option. Remember I said that not everybody may want to ship under the exception and may actually use a license, but if a reexport to another STA-36 country primarily satisfies all those conditions that I just walked through in terms of documents and certifications and agreeing to an end use check for the U.S. Government and making documents available to the U.S. Government, etc., then, yes, license exception STA would be eligible.

Just to repeat, assume you satisfy all the conditions of the exception.

If not, whether you received it under a license or under an exception to begin with, it would still require Commerce authorization.

Here's a really good question. This is also from a non-U.S. Party.

Can I use *de minimis* to reexport my 600 series item outside the STA-36 countries?

That's a trick question.

Because -- no -- the condition of using STA to get something into one of the STA 36 countries is that it is for ultimate end use of one of the governments of the 36, or for return to the U.S., or for when the U.S. Government has already authorized its retransfer -- for 600 series.

I'm limiting this to six hundred series items. And if the plan was to ship under STA something to an STA 36 country and then incorporate it into an item for a destination outside of the group of 36 without one of those authorizations, then no, that's not the point of STA and STA isn't eligible for that type of activity.

If that's your plan, what you the non-U.S. Party will need to do is, even for exports to one of the 36 countries, you're still going to need a license. That is, if you, the non-U.S. Party want to buy things from the U.S., bring them into the 36 countries, incorporate them to non-U.S.-origin items and ship them around the world, that's going to need to be described in a license application that the U.S. Shipper provides to ship it to you in your STA-36 country.

By the way, that's not changed. That's exactly the rule now with respect to those items now as ITAR controlled. Not an increase in burden, that's just maintaining the status quo for something that doesn't satisfy the STA exception.

Next question.

As the reexporter using STA, do I need a prior Consignee Statement from the recipient before reexporting the 600 series item?

Yes.

In order to use the exception, you, the non-U.S. Party, needs to get information in writing as I described earlier about the end use, end user, description of the ECCN before retransferring something using this license exception.

Do I need to keep this Statement?

Yes.

There is an obligation to maintain this in your records and make it available to the U.S. Government upon request.

Next question, do need to provide this Statement to the original U.S. Exporter of the six hundred series?

No.

If the U.S. Exporter had nothing to do with that retransfer, there's no legal requirement to share that information.

Next question.

Where do I look for export restrictions on 600 series items and what information am I obligated by U.S. Law to pass on to my foreign customers?

Well, I think I've sort of described them already. So I've already answered that question.

Next question.

If I reexport technology do I still need to get a TAA from the State Department?

Well, if it's 600 series technology that is being transferred, you either apply the conditions of STA such as to nationals out of the group of 36, or if it's outside that group it would be a BIS reexport authorization for that technology.

Question goes on to say, what if I'm already providing technical assistance, what they mean by that is a defense service.

Well, yes, we're not State Department. State has recently proposed -- just last week, in fact -- proposed changes to the definition of defense service, and if you're using certain kinds of technology, controlled or otherwise, for providing assistance to the end article that would still be a defense service.

The Commerce Department rules are meant to apply to things of less significance and generally not the major end items.

So the question is going to be whether the service is with respect to 600 series parts such as landing gear or whether it's with respect to the entire aircraft where you're making modifications into the larger ITAR controlled defense article.

Really, to answer this question, what I would recommend that the reader do is look at the revised definition of defense services that State published last week, think through it, prepare any comments and that will answer this question on a going forward basis.

Next question.

Are any other ECCN numbers required on airway bills or is that just the six hundred series?

Just the 600 series.

This is a new experiment and I realize it imposes more burden, but we believe it's justified because it -- well, imposes more burden. It forces people to think through what the classification status is of these military items and more importantly to educate the parties to the transaction of their unique nature as military items under the Commerce control list and, for the benefit of the non-U.S. Persons, educate them and state explicitly, directly, and in correct terminology what the U.S. Law is that applies to those items for reexport.

That was the policy justification for applying the obligation to identify 600 series items. Whether we do this in the future, right now it's just applicable to 600 series items.

Next question.

Do 600 series models have -- meaning since they have 600 series [content], they are not excluded [from using *de minimis*] based on percentage of U.S. content?

Well, it depends on the ultimate destination.

It's zero if it's to China or any of the D:5 countries; it is 25% with the respect to the rest of the world.

Next question.

For those TAA's where now one item is considered a 600 series and amendment is required to notify the new classification, can the amendment be considered a minor amendment in lieu of a full amendment.

I don't know; that's a State Department question.

Next question.

If an item was previously exported under VIII(h) but is now subject to 600 series and it is being returned for repair or replacement, should it be returned under Commerce or ITAR?

Terrific question.

If it's an EAR item, 600 series item, it's not going to be after October 15th listed on the new USML, then it's not ITAR controlled and the temporary import requirements under the ITAR are irrelevant. Since Commerce does not impose a temporary license as such then there's no longer that compliance trap of having to go through 123.4, of importing something into the U.S. Rather it can be brought into the U.S., however the outbound shipment leaving the U.S. going back does need to comply with RPL or one of the other exceptions or license requirements.

For example, and we can go through this in more detail when we do another training session, if you haven't upgraded or increased performance, and you haven't been stockpiling, and it was going back to the original end user, you can use then license exception RPL to ship it back out of the country. If you can't satisfy for such an item brought back in the terms of RPL or TMP -- such as, it's for permanent export and you've upgraded performance -- then the outbound is going to require a license, but from the Commerce Department.

The U.S. Government is basically getting at the same degree of visibility, but we think that it is more efficient because we're not imposing a requirement when it's coming into the United States.

Rather focus is on the outbound.

Will all U.S. Department of Commerce bureaus export licenses be valid for two or four years?

In the initial implementation rule, we changed that globally to four years.

We also left open the possibility for exceptions.

We left open the possibilities for exceptions in both directions where some circumstance where a longer validity period is warranted and some certain countries where maybe only a one year, but the default will be four years.

Referencing that slide 15, the second bullet, the question had to do with: you can ship to and among end users -- does that include the ultimate consignee? Generally there's only one ultimate consignee per license, and yes, the ultimate consignee is included in that shipment to and among.

So this is all going to be recorded, and it's being recorded now, and eventually going to be put up on the Commerce Department web site and with it will also be attached these slides, and so for those who didn't listen or if you want to listen for a second time, then you can do so as well as all of our other collections of presentations we're going to be creating for educational information. If there was something that wasn't clear, if I spoke too quickly or I didn't make sense, feel free, in fact we're encouraging you to put that question in for our next Wednesday or any Wednesday weekly conference call and we will answer it for the whole world to hear or anyway, whoever dials in.

Anything else?

Okay.

Well we're within time so thank you very much and look forward to seeing you and your comments on the satellite rule which was published last week.

Take care.