



U.S. and Israeli Export Controls

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AGENDA

- > What is under U.S. Oversight?
 - How/why U.S. controls are concern for Israeli companies (Yossi)
 - What's subject to U.S. law? de minimis, direct product, ITAR-controlled (Yossi)
 - U.S. export reform and enforcement trends (Kara)
- > Don't let it happen to you. Penalties for violations (Yossi)
- > Reclassification: What's defined as Export?
 - What is export/reexport? What is ITAR/EAR? (Kara)
 - How to get export licenses in U.S. and Israel (Yossi)
- > Exporting dual-use products (Amiram Halevi)
- > Embargoes and Restricted Destinations
 - Overview of U.S. sanctions and facilitation provisions (Kara)
 - Potential reach of U.S. sanctions to non U.S. companies and consequences for violations (Yossi)

> U.S. Export Reform and Enforcement Trends

U.S. Export Reform

Presidential initiative for complete overhaul of U.S. export system announce in 2009.

- > Single licensing agency to consolidate controls (in process)
- > Single Export Enforcement Coordination Center at DHS (March 7, 2012)
- > Single IT system shared among relevant agencies (in process)
- > Single export controls list (in process):
 - Review and re-classification initiative to revise USML and Commerce Control List (CCL)
 - Many USML items (particularly parts/components) will “migrate” to the CCL
 - Ultimate goal: create a single list (combining USML and CCL)

U.S. Export Reform: Practical Impact

- > “Higher fences around fewer items” – migration of many ITAR-controlled defense articles from USML to CCL (particularly parts and components)
- > Lessening of control (licensing requirements) for many items formerly subject to the ITAR
- > Streamlining of export process
- > Entities/individuals working exclusively with ITAR licensing may need to become familiar with the EAR

U.S. Export Reform: “600 Series”

- > Encompasses items that have migrated from the USML to the CCL
- > Identified by the third ECCN digit (e.g., 9A610)
- > *Rule of thumb*: LICENSE STILL REQUIRED
- > However, broad exceptions:
 - No license required for exports or reexports to Canada of 600 Series items
 - License exception Strategic Trade Authorization (“STA”) to 36 close U.S. allies:

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 United Kingdom

- Certain restrictions/exclusions remain even for STA countries

Most 600 Series items/destinations require a Commerce License

U.S. Export Enforcement Trends

- > Continued focus on diversion and reexports
- > Focus on unauthorized activities with Iran, Syria, China among others
- > Individual liability, imprisonment – no hiding behind corporation
- > Increased focus on non-U.S. Persons
 - Comasec SAS (French company)
 - reexports from U.S. to Iran via UAE
 - Smith (North Sea) Int’l Ltd. (UK company)
 - reexports to Syria
 - Arkenia (Netherlands)
 - reexports to Syria
 - Tysonic Enterprises/Chan Heek Loong (Singaporean company)
 - exports to Iran
 - 4 Singapore individuals –extradited to U.S.
 - commercial items diverted for IEDs used against U.S. forces

U.S. Export Enforcement Trends

- > Knowledge Standard and Willful Blindness:
 - Individuals and corporations will be liable for violations of the sanctions if they “know or have reason to know” that a violation is likely to occur
 - Knowledge is inferred from even the most remote of facts and circumstances
 - Concept of “knowledge” is designed to eliminate the “ostrich phenomenon” also known as “willful blindness”

U.S. Export Enforcement Trends

- > Penalties for violations may include:
 - Suspension or permanent denial of exporting privileges
 - Civil and criminal liability for both the corporation and its employees
 - Corporation:
 - Civil fines up to \$250,000 per violation, or twice the value of the transaction or benefit/gain received
 - Criminal fines up to \$1,000,000 per violation
 - Debarment from USG contracts
 - Intense public scrutiny and adverse media (can lead to divestment by shareholders, and pariah treatment by potential business partners or investors, termination of commercial contracts)
 - Employees:
 - Disciplinary action up to and including termination
 - Criminal fines up to \$1,000,000 per violation
 - Criminal conviction and Imprisonment (up to 20 years)
- > Remember that penalties may be imposed against non-U.S. (i.e., Israeli) persons and entities

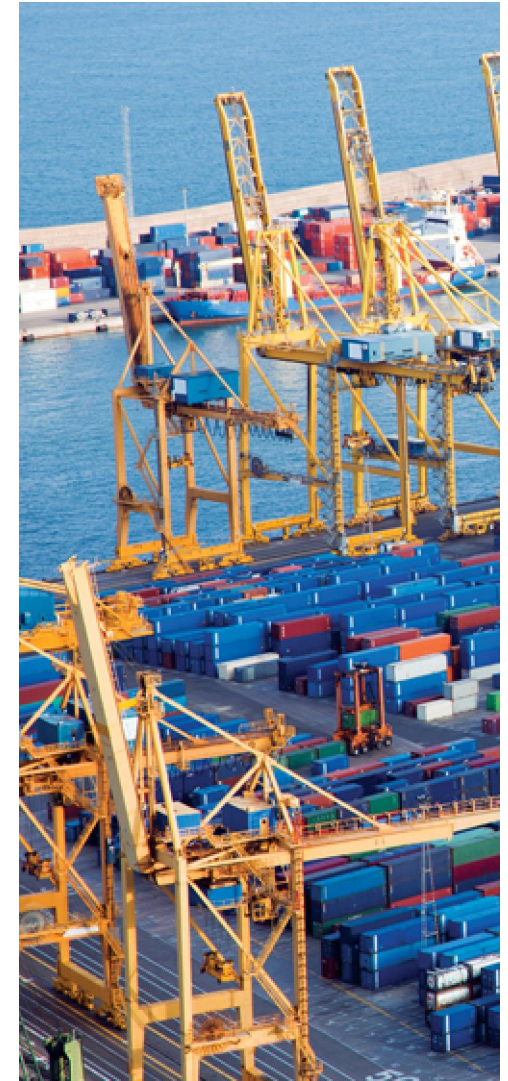
What's an Export/Reexport? What's the ITAR/EAR?

What is an Export?

- > Sending or taking articles out of the United States in any manner (*e.g.*, regular mail, hand carried on an airplane)
- > Sending or taking technical data outside the United States *in any manner*
- > Disclosing or transferring technical data to a foreign person *whether in the United States or abroad* (“Deemed Export”)
- > The performance of a defense service on behalf of, or for the benefit of, a foreign person *whether in the United States or abroad*
- > Any release of technical data in the United States or abroad with reason to know that the data will be provided to a foreign national

What is a Reexport?

- > The shipment or transmission of a commodity, software or technology from one foreign country (a country other than the United States) to another foreign country
- > Goods that transit through a country en route to another country are considered to be reexported to the in-transit country



What is Technical Data?

- > Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles
- > May included blueprints, drawings, photographs, plans, instructions, or documentation
- > Does not include general scientific, mathematical or engineering principals or information in the public domain

Handling Technical Data

- > Receipt of U.S. origin controlled tech data is subject to restrictions
 - U.S. Government license terms/conditions
 - Limited recipients
 - Limited purposes
 - No retransfers without U.S. Government authorization
 - Handle under Technology Control Plan or other protections
- > Tech data receipt/transfers may occur in various forms
 - Physical delivery or transfer
 - Electronic delivery or transfer
 - Meetings, phone calls, plant tours, trade shows, remote access to software and tech data, joint development projects, joint marketing projects

U.S. Export Law and Regulations

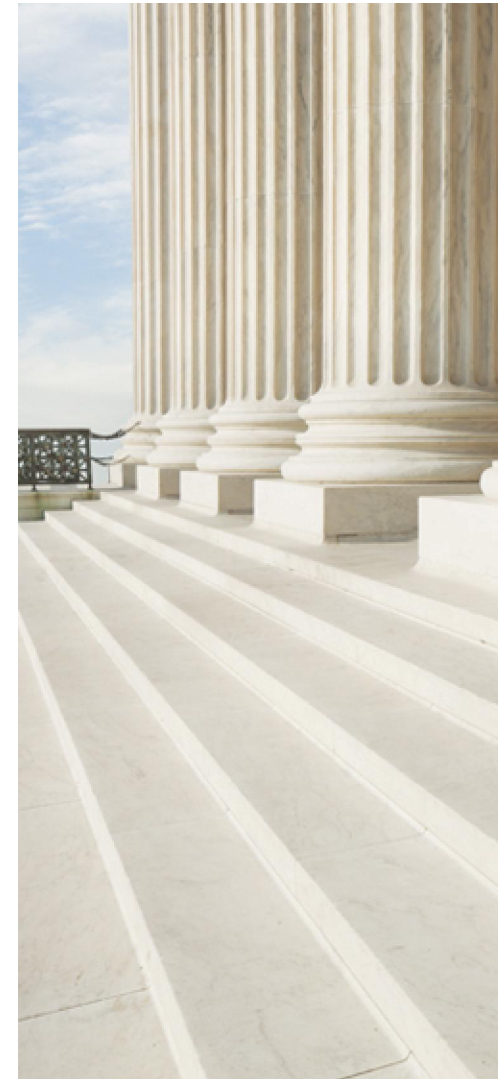
- > Arms Export Control Act (“AECA”)
 - International Traffic in Arms Regulations (“ITAR”)
 - U.S. Munitions List (“USML”)
 - Administered by the Department of State, Directorate of Defense Trade Controls (“DDTC”)

- > Export Administration Act (“EAA”)
 - International Emergency Economic Powers Act (“IEEPA”)
 - Export Administration Regulations (“EAR”)
 - Commerce Control List (“CCL”)
 - Administered by the Department of Commerce, Bureau of Industry and Security (“BIS”)

Department of State Controls

- > U.S. Munitions List (“USML”)
 - Defense articles (including firearms)
 - Defense services
 - Related technical data

- > Administered by the U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”)



Department of Commerce Controls

- > Commerce Control List (“CCL”)
- > U.S. origin items wherever located
 - Controls attach for the life of an item
- > Certain foreign-made items if:
 - The item exceeds certain de minimis U.S. content
 - The foreign-produced item is the direct product of U.S. technology and software
- > U.S. Persons & Foreign Nationals
 - Certain activities of U.S. persons
 - Deemed exports of technology and source code released to foreign nationals
- > Administered by the Bureau of Industry and Security (“BIS”)

EAR vs. ITAR

Export Administration Regulations (EAR)	International Traffic in Arms Regulations (ITAR)
More flexible licensing regime	More onerous licensing regime
EAR99 – means no license is generally required	If subject to ITAR, license always required
Licenses determined based on item/end use and destination	License always required, regardless of destination, unless exemption applies
Few completely prohibited destinations	Licensing policy of denial for many destinations
Many license exceptions	Limited exemptions, with difficult-to-satisfy criteria

Self-Classification

- Allowed to self-classify, but there is only one proper classification (and U.S. government has final say)
- First rule of thumb: rely on the OEM's self- or formal classification
- Second rule of thumb: only move to the EAR after ruling out an ITAR classification
- EAR (15 C.F.R. 730-774) available at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>
 - Commerce Control List (“CCL”) at Part 774 (Cats. 0-9)
- ALL U.S. items, technology, and software not subject to the ITAR are subject to the EAR
- EAR99 vs Export Control Classification Numbers (“ECCN”)

Self-Classification

Commerce Control List

Supplement No. 1 to Part 774

Category 9—page 15

c. On-Highway tractors, with single or tandem rear axles rated for 9 mt per axel (20,000 lbs.) or greater and “specially designed” “major components”.

9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

License Requirements

Reason for Control: AT, UN

Control(s) Country Chart
(See Supp. No. 1 to part 738).

AT applies to entire entry AT Column 1

UN applies to 9A991.a See § 746.1(b) for UN controls.

License Requirement Notes: There is no de minimis level for foreign-made aircraft described by this entry that incorporate commercial primary or standby instrument systems that integrate QRS11-00100-100/101 or commercial automatic flight control systems that integrate QRS11-00050-443/569 Micromachined Angular Rate Sensors (see § 734.4(a) of the EAR).

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: QRS11 Micromachined Angular Rate Sensors are “subject to the ITAR” (see 22 CFR parts 120 through 130), unless the QRS11-00100-100/101 is integrated into and included as an integral

“component” of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such a system, or is exported solely for integration into such a system; or the QRS11-00050-443/569 is integrated into an automatic flight control system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such a system, or are exported solely for integration into such a system. (See Commodity Jurisdiction requirements in 22 CFR Part 121; Category VIII(e), Note(1)) In the latter case, such items are subject to the EAR. Technology specific to the development and production of QRS11 sensors remains “subject to the ITAR” (see 22 CFR parts 120 through 130).
Related Definitions: N/A
Items:

a. Military aircraft, demilitarized (not specifically equipped or modified for military operation), as follows:

a.1 Cargo aircraft bearing “C” designations and numbered C-45 through C-118 inclusive, C-121 through C-125 inclusive, and C-131, using reciprocating engines only.

a.2 Trainer aircraft bearing “T” designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

a.3 Utility aircraft bearing “U” designations and using reciprocating engines only.

a.4 All liaison aircraft bearing an “L” designation.

a.5 All observation aircraft bearing “O” designations and using reciprocating engines.

b. Aircraft n.e.s.;

Once ECCN is identified, licensing requirements are based on destination

If no applicable ECCN in CCL, the item is “EAR99”

Self-Classification - Commerce Country Chart

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Conversion	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NF 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Iceland ³	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		
Iran ¹	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Iraq ¹	X	X	X	X	X	X	X	X	X	X		X	X			
Ireland ^{2,4}	X					X		X	X			X		X		
Israel	X	X	X	X	X	X	X	X	X	X		X		X		
Italy ³	X					X		X	X							
Jamaica	X	X		X		X	X	X	X	X	X	X		X		
Japan ³	X					X		X	X							
Jordan	X	X	X	X		X	X	X	X	X		X		X		
Kazakhstan	X	X	X			X	X	X	X	X		X	X			
Kenya	X	X		X		X	X	X	X	X		X		X		

U.S. Economic Sanctions and Restricted Countries

U.S. Economic Sanctions

- > Comprehensive U.S. Trade Restrictions
 - Cuba, Iran, Sudan and Syria
- > Limited U.S. Trade Restrictions
 - Balkans, Belarus, Burma (Myanmar), Cote d’Ivoire, the Democratic Republic of the Congo, Iraq, Liberia, North Korea (licenses required for all exports), Russia (“hold” on U.S. government export authorizations), Ukraine and Zimbabwe, Individuals and Entities worldwide designated under various programs (including WMD, terrorist organizations, narco-traffickers, “rogue” regimes)
- > Arms Embargo or Licensing Policy of Denial
 - Afghanistan, Belarus, Cuba, Democratic Republic of the Congo, Eritrea, Iran, Iraq, Libya, North Korea, Somalia, Syria, Vietnam, Burma, China, Cote d’Ivoire, Cyprus, Haiti, Lebanon, Sierra Leone, Liberia, Sri Lanka, Sudan, Venezuela, Yemen, and Zimbabwe

U.S. Economic Sanctions

- > U.S. Persons restricted from certain activities (both direct and indirect) with sanctioned countries/persons that may include, for example:
 - Selling, Buying, Exporting, Reexporting, Importing Goods & Services
 - Making New Investment
 - Approving, guaranteeing or otherwise assisting someone else to do business
 - Facilitating acts by non-U.S. Persons, Assisting or referring business to a non-U.S. Person, Structuring a company or company procedures to “avoid” or “evade” sanctions that apply to U.S. Persons

U.S. Economic Sanctions

- > Non-U.S. Persons may be expected to comply with U.S. sanctions
 - Certain reexport provisions, aiding/abetting, Foreign Sanctions Evaders, Iran sanctions on activities by non-U.S. persons with certain Iranian industries, etc.
- > U.S. companies and their affiliates are prohibited from complying with other countries' sanctions that are counter to U.S. policy (anti-boycott regulations)