

U.S. Export Regulations

Are your business...



Basics and More...

Yossi Adi.

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אחד הבנקים הגדולים בעולם ישלם קנס של 1.1 מיליארד דולר בגלל סחר עם איראן



התמא

הבנק הצרפתי ב.א.פי פריכה, שסגר את סניפו בארץ, ניהל עסקים עם איראן

ועונשו

ק ישלם לרשויות ארה"ב מיליארד דולר במסגרת הסדר שימנע סנקציות חריפות נגדו

סחר עם מדינות מתוך "הרשימה השחורה". מטה הבנק בפריז צילום: אי.בי.איי

אזולאי,

זילברשטיין ורועי ברגמן

הנהיג בצרפת, בי.א.פי פריכה, צמיח קנס של 1.1 מיליארד דולר לרשויות המסורתיות והחרי שימנע מארצות הברית סנקציות על הבנק הצרפתי שניהל עסקים המבצעים ברישומה השחורה של הממשל בראשן איראן. הבנק פעל בעבר בישראל רשמיים שגר את חסניו בארץ. מצאיים של החקירה, שהגיעו לבני זרק

טיימס, ניהל הבנק הצרפתי עסקים עם מדינות כמו איראן, קובה, מורן ומינאמה כאשר בחלק מהמקרים הוא השתמש במערכת הבנקאות האמריקאית כדי לבצע עסקאות אלו. חקירה משולבת של משרד האוצר האמריקאי והתובע הכללי של ארה"ב חשפו פעילות זאת לאחר חקירה שהתנהלה במספר חודשים ארוכים בכמה יבשות. לאחר שנאספו הממצאים איום הממשל האמריקאי להטיל סנקציות על הבנק הצרפתי שמשמעותן תמורה ביותר, שכן אחת מהסנקציות היא חסימת הפעילות הבנקאית של בי.א.פי בארצות הברית ואיסור על הבנק להשתמש במערכת הבנק

אמריקאית כדי לבצע פעילות בינלאומית. בנק בי.א.פי פריכה נחשב לאחד הבנקים הגדולים בעולם, עם נכסות ב"מדינות קרובות ל-190 אלף עובדים, מהם למעלה מ-145 אלף באירופה. הוא נחשב לאחד המובילים בנושאי חידוד ובעולם. לבנק הייתה פעילות רחבה בישראל והוא אף פתח סניף מקומי ב-1994, שהעסיק כ-60 עובדים. עם זאת, בשנת 2011 הודיע הבנק לסגור את הסניף. התוצאות השנתיות של הבנק פורסמו אתמול ולפיהן הבנק ירד ב-1.6%, חלק מאותה הירידה מגידושהו בעשורים שחלוו מנהליו שילצו לשלם לרשויות קנה מהחוב שצפויים מנהליו שילצו לשלם לרשויות

האמריקאיות. ההערכה היא שהתשלום יגיע ל-798 מיליון דולר לרשות האחריות ליישום הסנקציות, כסף שהבנק שומר בצד לתשלום הצפוי. במרכז החקירה עמדו, על פי פרסומים, פעולות סבוצו בוולריים בין 2002 ל-2009 עם מדינות שהיו תחת אמברגו אמריקאי, חלק גדול מהעסקאות המרובות נגע לאיראן. האמריקאים רדשו הסברים על אותן הפעולות כבר ב-2010 וכאז התגלה כריקה שהובילה אל הסכם חקי נס בגין המרות הסנקציות. מדובר בכספים גדולים יותר מסכומים שכבר שילמו על ידי מדינות אחרים בעבר ורשות דמות. בבנק סיבכו לבעלותו של התקשורת

הצרפתית אתמול לקבל פרטים נוספים, אך לפי הפירסומים המסא ומתן בין הבנק לרשויות האמריקאיות עדיין מתנהל. בעתידים הבנק שומר בצד את הסכום האסור לתשלום שצפוי לקראת סוף השנה האחרת. בהודעה שהוציאה הבנק נכתב כי "הבנק במסגרת רדיונים עם הרשויות בארה"ב ביצע במהלך מספר שנים בדיקה פנימית בנוגע לתשלומים בוולריים אמריקאים כיום ודי מעורבות מדינות או אנשים שעשויים להיות תחת סנקציות כלכליות". לרדיונים בדיקה החשבונית הצביעה על פעולות "שעשויות להחשב כדא מורשת בכל העוגע לחוקי ארצות הברית".

The Boston Globe

“ Federal agents raid Woburn defense firm ”

January 23, 2013

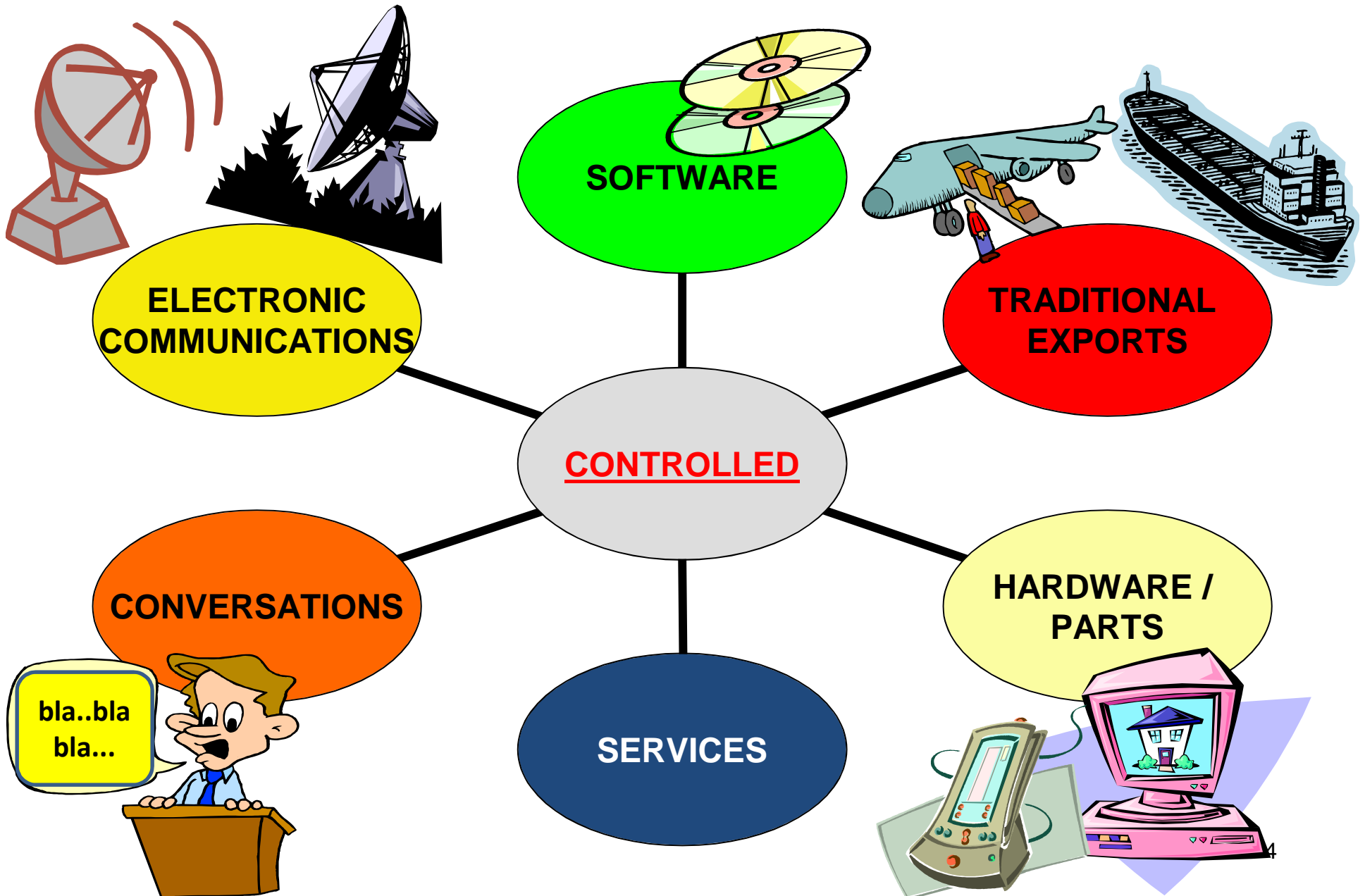
“A massive federal raid at Agiltron, a Woburn business, went on all day and into the evening. FBI agents worked alongside Homeland Security Investigators from U.S. Immigration and Customs Enforcement. Even though ICE is involved, the raid has nothing to do with illegal immigrants.

The agency also probes illegal exports. A source with knowledge of the probe told 7News that there are concerns executives at

Agiltron may have exported technology without the appropriate licenses.”



What is Controlled?



What is Controlled? Cont.

- US export regulations apply to all US origin hardware, tools, testers, materials, software, technology, and services **regardless of where in the world** they are designed, developed, produced, or delivered.



De minimis rules.

- If your foreign-made item abroad is a foreign-made commodity that incorporates controlled U.S. –origin commodities.
 - a foreign-made commodity that is ‘bundled’ with controlled U.S.-origin software.
 - foreign-made software that is commingled with controlled U.S.-origin software, or...
 - foreign-made technology that is commingled with controlled U.S. origin technology - Then...
- **It is subject to the EAR if the U.S. origin controlled content exceeds the *de minimis* levels described in Sec. 734.4 of the EAR.**



De minimis rules.

Calculating the 'de minimis' US content:

Percent (%) US content =

$$\frac{\text{US content 'value'}}{\text{Selling price of the product in the country of manufacture}} \times 100$$

US content 'value' =

Total value of US controlled parts, components, materials incorporated into the finished item plus any adjustment factors used for local customs valuation.

10% or less. ("bad" countries)

25% or less. (all the rest)



International Traffic in Arms Regulations (ITAR)

US Department of State (DOS), Directorate of Defense Trade Controls (DDTC).

- In accordance with US law and regulations, any export of a Defense Article or Defense Service to a Foreign Person, whether in the United States or abroad, requires prior export authorization before engaging in the activity.
- A defense article controlled under the ITAR is an item which is either specifically listed on the **United States Munitions List (USML)** or has been specifically designed, developed, configured, adapted or modified for military use.

This includes any information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of a Defense Article. The information can be in the form of blueprints, drawings, photographs, plans, instructions and documentation.

International Traffic in Arms Regulations (ITAR)

US Department of State (DOS), Directorate of Defense Trade Controls (DDTC).

- Such items are specifically designed, developed or modified for military purposes or are inherently military in character.
- Defense articles also include commercial items that are **specifically modified** for a defense program or military end use.

Proscribed Countries under the ITAR

Afghanistan, Belarus, Burma ,China (PR) ,Cote d Ivoire, Cuba
Cyprus ,Democratic Republic of the Congo, Eritrea ,Haiti
Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Rwanda
Sierra Leone, Somalia, Sri Lanka, Sudan, Syria ,Venezuela,
Vietnam, Yemen, Zimbabwe.

- In the case of a Defense Article approved for export under the ITAR, the item may not be shipped on a vessel, aircraft, or other means of conveyance which is owned or operated by, or leased to or from, any of the **countries listed above.**

Military End User/End Use

Objective:

To prevent the supply of goods to any customer situated in a country of concern who is involved with the manufacture or end usage of military goods.

Restricted Countries with known Military Users/Uses.



As long as the products is sold “As Is” and is defined as “COTS”-Commercial Of Shelf”, and no modifications made to suit military uses, than it should be no problem (as long as al other factors are checked destination, DPL etc.).

"600 series"

Items that are now defense articles but that are no longer listed on the **revised USML** categories will become subject to the EAR's "600 series" ECCNs.

- • Licenses from Commerce will still be required to export and reexport most 600 series items worldwide (exclude Canada), unless an EAR license exception is available.
- • New license exception STA will be available to authorize exports and reexports to 36 countries if (a) for ultimate end use by a government of such countries, (b) return to the US, or (c) in connection with an existing authorization.



Customer/End Uses eligibility

➤ **Know Your Customer Guidance.** (732 sup#3)

“Take into account any abnormal Circumstances In a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination.”

Know Your Customer- (Who's the bad guy?)



- **“red flags”**. (Diversion Risk Profile)

Possible indicators that an unlawful diversion might be planned by your customer include the following:

- *“You have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination”. (Sup. 3 chp.732)*

- **Do not self-blind.**



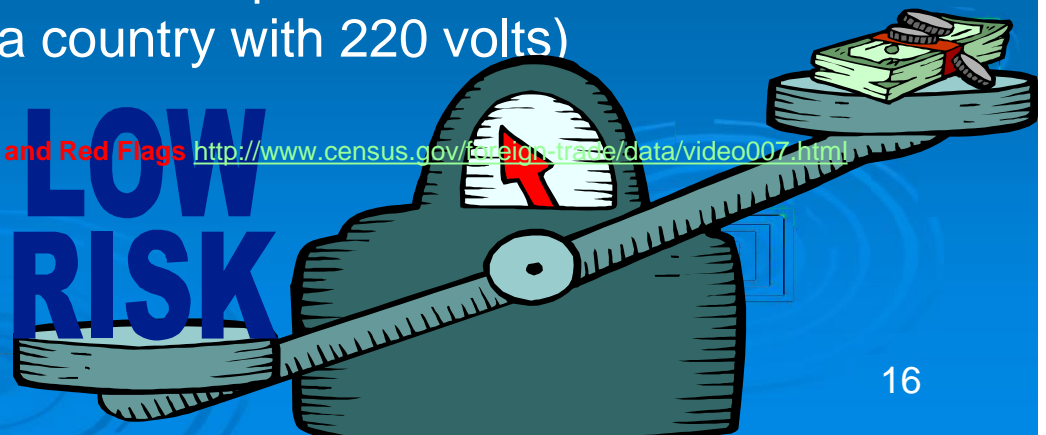
Red Flags....cont.



- The customer or purchasing agent is reluctant to offer information about the end-use of a product.
- The product's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers.
- The customer has little or no business background.
- Routine installation, training or maintenance services are declined by the customer.
- A freight forwarding firm is listed as the product's final destination.
- equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts)

Exporting EAR99 Items: Screening Your Transaction, Lists to Check and Red Flags <http://www.census.gov/foreign-trade/data/video007.html>

**LOW
RISK**



Denied Parties List (DPL) – Screening

Objective:

- To prevent unlawful transactions with any company or any individual who is named on the DPL

What is the DPL?

- A list of companies and individuals, identified by various U.S. Government Departments, with whom we generally cannot do business

- Denied Persons

- Entity List – (744, Supplement 4) .

- Treasury Department Specially Designated Nationals (SDN) and Blocked Persons List (764, Supplement 3)

- The Unverified List

- **And more...**



	Sligo, Ireland.	(See §744.11 of the EAR).	denial.	7/21/09.
	Thomas McGuinn a.k.a. Tom McGuinn, Cloonmull House, Drumcliffe, County Sligo, Ireland.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	74 FR 35797, 7/21/09.
ISRAEL	Ben Gurion University Israel.	For computers above the Tier 3 level described in Section 740.7(d) (i.e., Tier 3 under APP).	Case-by-case basis.	62 FR 4910, 2/3/97 65 FR 12919, 03/10/00. 75 FR 29884, 5/28/10.
	Nuclear Research Center at Negev Dimona, Israel.	For all items subject to the EAR.	Case-by-case basis.	62 FR 35334, 6/30/97.
JORDAN	Masoud Est. for Medical and Scientific Supplies, 74 First Floor, Tla'a Al Ali Khali Al Salim Street, Amman, Jordan 11118.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	77 FR 23114, 4/18/12.

Denied Persons List

A list of 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 is prohibited.

If you are being asked to participate in an export transaction that you believe may be illegal, or if you have information that such an illegal transaction may be about to occur, you are encouraged to contact BIS's Office of Export Enforcement immediately.

- **Screening customers: 1- before customer acceptance and 2. before delivery.**
- *Record keeping. !!!*

Proliferation

Objective:

Prevent deliveries of product/services for use in **Chemical & Biological weapons** activities prohibited **Nuclear activities** & **Missile projects** or for Missile end uses in countries of concern

Always ask yourself this question:

To the best of your knowledge or belief is your customer involved with the design, development, production or stockpiling of Weapons of Mass Destruction or Nuclear Industry/ CBW? Missile project or uses..?

Examples of Chemical & Biological, Missile and Nuclear Countries of concern:



China, Iran, Iraq, Pakistan,
Russia, Saudi Arabia,
Afghanistan, India, Cuba,
Egypt, Israel, North Korea, Libya,
United Arab Emirates etc.....



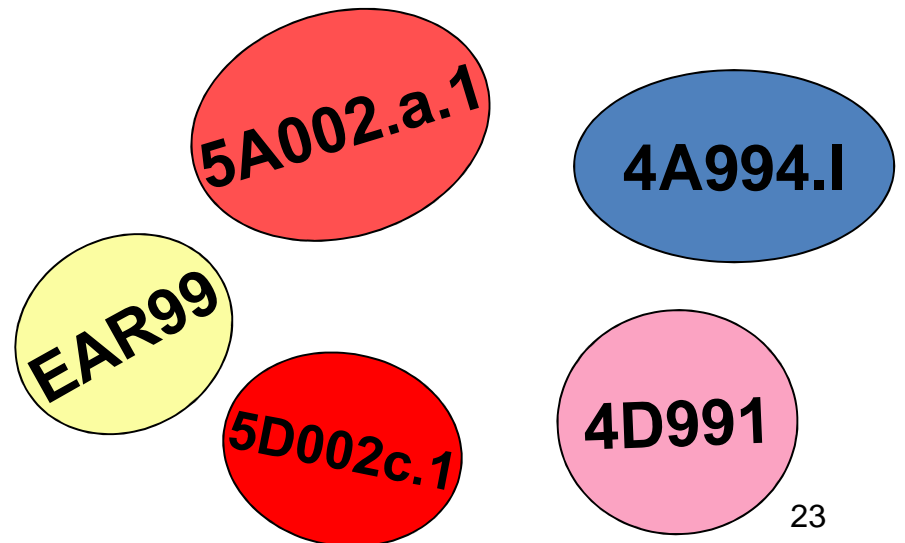
Determine If Export License Needed

- **What** are you exporting?
(*Product* eligibility)
- **Where** are you exporting?
(*Country* eligibility)
- **Who** will receive your item?
(*Customer* eligibility)
- **What** will your item be used for?
(*End-uses* eligibility)



Product eligibility

- Control on exports/reexports is done based on the “item” classification in the US **Commodity Control List (CCL)** this classification is known as **ECCN- Export Classification Control Number**.



COUNTRY ELIGIBILITY

COUNTRY GROUPS

(Sup 1 Part 740)

- The way the EAR sees the world...

Group A: Regime Members

Group B: Less Restricted

Group D: Countries of Concern

Group E: Terrorist Supporting



Terrorist Countries:

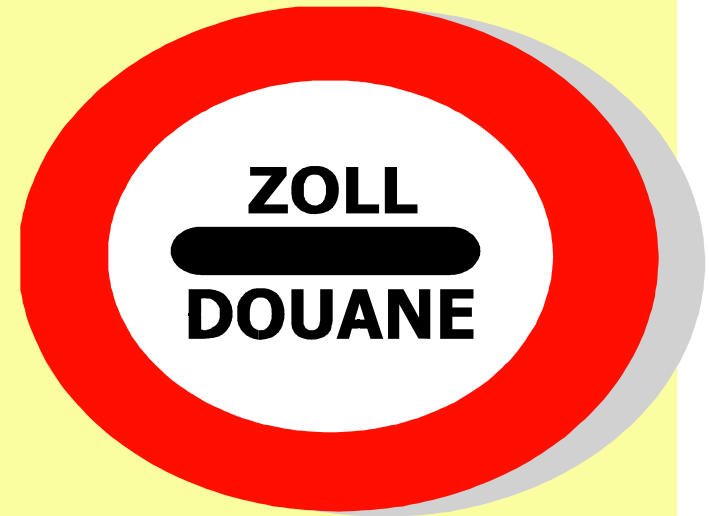
- which the U.S. has designated as supporting international terrorism, affecting U.S. persons and transactions with these governments.
- (Also known as E/T5): (Group E)
- Cuba, Iran, North Korea, Sudan, Syria.



Controlled Countries: (partial list)

Countries designated controlled for national security purposes

- Albania
- Armenia
- Azerbaijan
- Belarus
- Cambodia
- Georgia
- Kazakhstan
- Kyrgyzstan
- Laos
- Libya
- Macao
- Moldova
- Mongolia
- **People's Republic of China**
- **Russia**
- Tajikistan
- Turkmenistan
- Ukraine
- Uzbekistan
- Vietnam
- Iraq (Special Case).



Commerce Country Chart

Reason for Control

Countries	Reason for Control															
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania ^{2,3}	X	X		X		X	X	X	X							
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia ³	X					X		X	X							
Austria ^{3,4}	X					X		X	X			X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		

**“X” in the box= a license requirement.
No “X” in the box= NLR**

Export License...

- **BIS** is the primary licensing agency for dual-use exports
- **DDTC** for licenses **defense articles** and services.
- **License Exception** - In some cases. - Eligible User/Uses/Destination.

A ***“License Exception”*** is an authorization that allows you to export or reexport under stated conditions, items subject to the EAR that would otherwise require a license.

- **LVS** - SHIPMENTS OF LIMITED VALUE .
- **TSR** -TECHNOLOGY AND SOFTWARE UNDER RESTRICTION.
- **APP** - COMPUTERS.
- **TEMP** - TEMPORARY IMPORTS, EXPORTS,AND REEXPORTS.
- **ENC** -ENCRYPTION COMMODITIES,SOFTWARE AND TECHNOLOGY. (**U & R**)
- **And more....**

- **Allow 3 months for approval – Can be even longer...**



Criminal and Administrative Case Examples

Forwarder case

The Violation **DHL Express** (USA), Inc. unlawfully aided and abetted unlicensed exports to Syria, Iran and Sudan and failed in connection with numerous exports to these countries to comply with recordkeeping requirements of the EAR and OFAC regulations.

- **The Penalty:** In August 2009, **DHL Express** agreed to pay a civil penalty of **\$9,444,744** and conduct external audits covering exports to Iran, Syria and Sudan from March 2007 through December 2011.



Criminal and Administrative Case Examples

“deemed export.”

Atmospheric Glow Technologies, Inc./J. Reece Roth

- **The Violation:** Between January 2004 and May 2006, through the Tennessee-based company Atmospheric Glow Technologies, Inc., *J. Reece Roth*, a Professor Emeritus at the University of Tennessee, engaged in a conspiracy to **transmit export controlled technical data** to foreign nationals from the People’s Republic of China and Iran.

This controlled technical data was related to a restricted U.S. Air Force contract to develop plasma actuators for a military unmanned aerial vehicle.

On September 3, 2008, a federal jury in the Eastern District of Tennessee convicted Roth on 18 counts of Conspiracy and Arms Export Control Act violations.

- **The Penalty:** On July 1, 2009, Roth was sentenced to **48 months in prison** and two years of supervised release.



Criminal and Administrative Case Examples

Boeing case

The Violation: Exporting **technical data** to China with knowledge that it would be used for military activities.

- **The Penalty:** **\$32 million** fine (In March 2003).
- **7 million** of the settlement was earmarked for improvement of Boeing's export compliance programs and mandatory **outside oversight** of export compliance for 3 years.



ITT Case, 2007

- Technical know how of **ITT Night Vision** equip. to Singapore, finally ended in China... (Restricted for this Tech. "ITAR")

- Repetitive violations.

- ITT were aware but reluctant to stop it...

- **?!**

\$100,000,000



Australian case

In November 2005, the U.S. Department of Commerce (DOC) announced that the **export privileges** of Australian company Performance Medical Supplies have been **denied** for **five years** for violating and conspiring to violate the Export Administration Regulations (EAR) in connection with the **unauthorized export** of physical therapy equipment from the United States to **Iran** via Australia.

The ability to export is a **privilege** - not a right!



DON'T LET THIS HAPPEN TO YOU !

EXPORT ENFORCEMENT

The penalty guidance encourages parties to provide information to BIS that would be helpful in the application of the guidance to their cases.

Some factors are given “great weight” and are treated as considerably more significant than factors that are not so designated.

- **General factors for consideration include:**

- Destination of the export
- Degree of willfulness involved in violations
- Number of violations. Criminal charges



- **Mitigating factors include:**

- Voluntary Self-Disclosure of violations (“great weight”)
- Effective export compliance program (“great weight”)
- Cooperation with BIS investigation
- Assistance to other BIS investigations
- No previous record of violations

- **Aggravating factors include:**

- Deliberate effort to hide or conceal violations (“great weight”)
- Serious disregard for export compliance responsibilities (“great weight”)
- Item is significant due to its sensitivity or reason for control (“great weight”)
- History of violations
- High quantity or value of export



What are the U.S. government watch lists?

- **US Department of Commerce**
 - <http://www.bis.doc.gov/dpl/Default.shtm>
 - http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html
 - <http://www.bis.doc.gov/Entities/Default.htm>
- **US Department of Treasury**
 - <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>
- **US Department of State**
 - <http://www.pmddtc.state.gov/debar059.htm>
 - **DENIED** -BIS's Office of Enforcement Analysis at (202) 482-4255

* This list is non-exhaustive, and may therefore include others not listed herein.

- **DON'T LET THIS HAPPEN TO YOU!!!**



Thank You.



Yossi Adi