



U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

U.S. Export Control Reform and Impact on Re-export Controls

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Note: This presentation is merely a summary of official statements and final rules published by the Departments of Commerce and State. Final rules, as well as the Export Administration Regulations and International Traffic in Arms Regulations, must be reviewed to determine the full scope of any applicable requirements.

Date of Last Revision: Nov 30, 2016

Objectives



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-
- Export Control Reform
 - Background/Current status
 - Impact
 - License Exception Strategic Trade Authorization (STA)
 - Re-export Controls
 - Foreign production
 - *de minimis*
 - Direct Product Rule
 - Licensing trends under Export Control Reform

ECR Background



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- To enhance national security, the Administration determined that the export control system needed to be reformed to:
 - Increase interoperability with NATO and other close allies;
 - Reduce the current incentives for companies in non-embargoed countries to design out or avoid US-origin content; and
 - Allow the Administration to focus its resources on the transactions of greater concern.

ECR Background



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- In August 2009, President Obama directed the agencies involved in the U.S. export control system to conduct a broad-based review of export controls to identify additional ways to enhance U.S. national security.
- U.S. agencies began reviewing the U.S. Munitions List (USML) later in 2010 to determine what items no longer warranted control under the USML.
- In January 2013, President Obama signed the National Defense Authorization Act for FY2013, which authorized the President to review commercial satellites and related items controlled under USML Category XV.

ECR Background



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- To implement the objectives, the Administration needed to:
 - Identify the specific sensitive and other items on a more positive USML that warrant individual license reviews even for ultimate end use by NATO and other regime allies; and
 - Amend the EAR and the CCL to control all formerly USML items that would no longer be on the revised USML so that they still could be adequately controlled, but in a more flexible way regarding such allies.

ECR Background



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Framework:

- Items providing a significant military or intelligence capability are listed on the USML, which is now a more “positive” list.
- Military items no longer listed on the USML are subject to the EAR’s “600 series.”
- Commercial spacecraft items no longer on the USML are listed in the EAR’s 9x515 ECCNs.
- When items cannot be positively enumerated, they will be described using the defined term “specially designed.”

License Requirements:

- Licenses from BIS will still be required to export or reexport most 600 series items worldwide (minus Canada), unless an EAR license exception is available.

ECR Background



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- ***License Exception STA for 600/515 series:***
- Makes defense trade with allies more efficient by authorizing exports and reexports of 600 series items 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.
- Also allows for exports and reexports of 9x515 items to 36 countries under fewer conditions than those for 600 series.

Definition of “Specially Designed”



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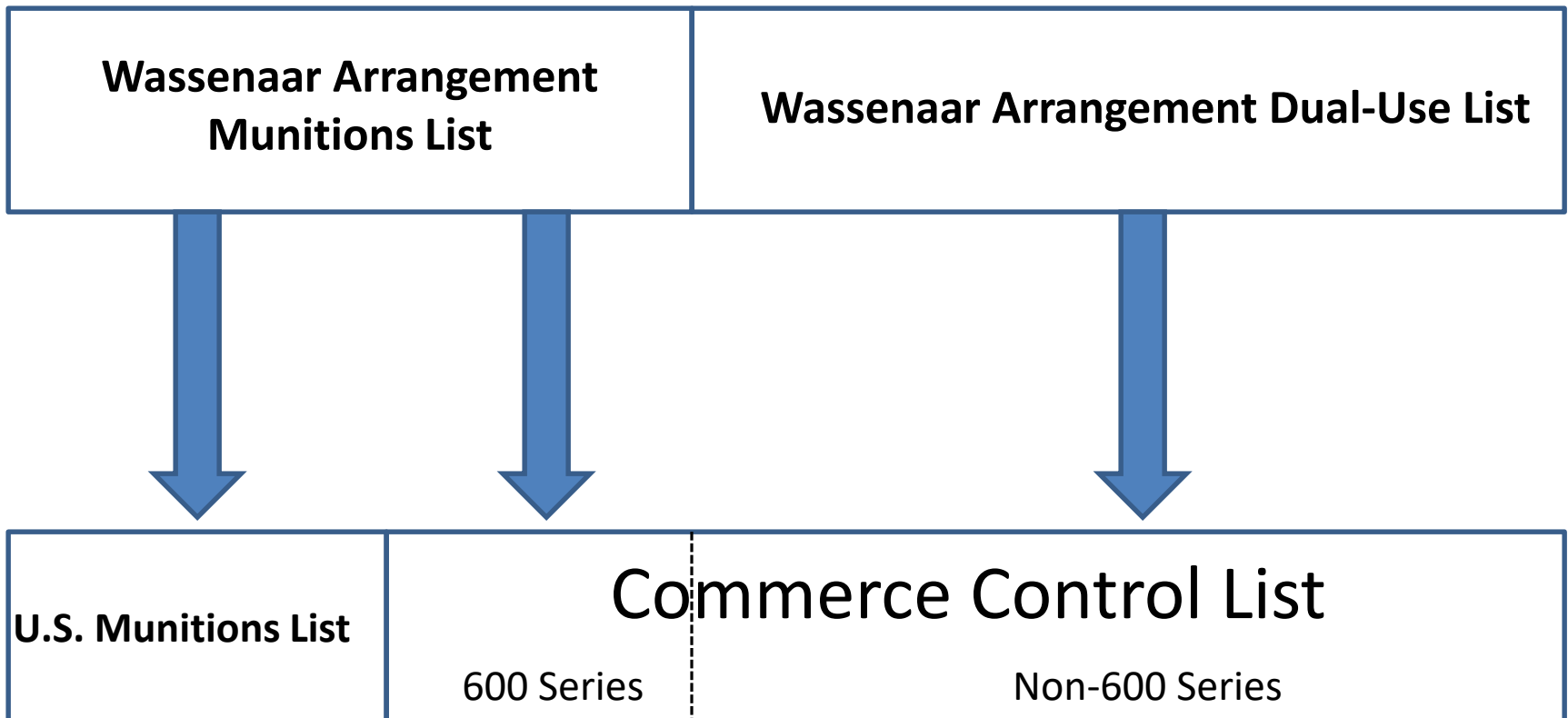
- New definition of “specially designed” is based on a catch-and-release construct
- Requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed”
- Definition is found in Part 772 of the EAR
- Online decision tree tool available at www.bis.doc.gov/index.php/specially-designed-tool

ECR Background



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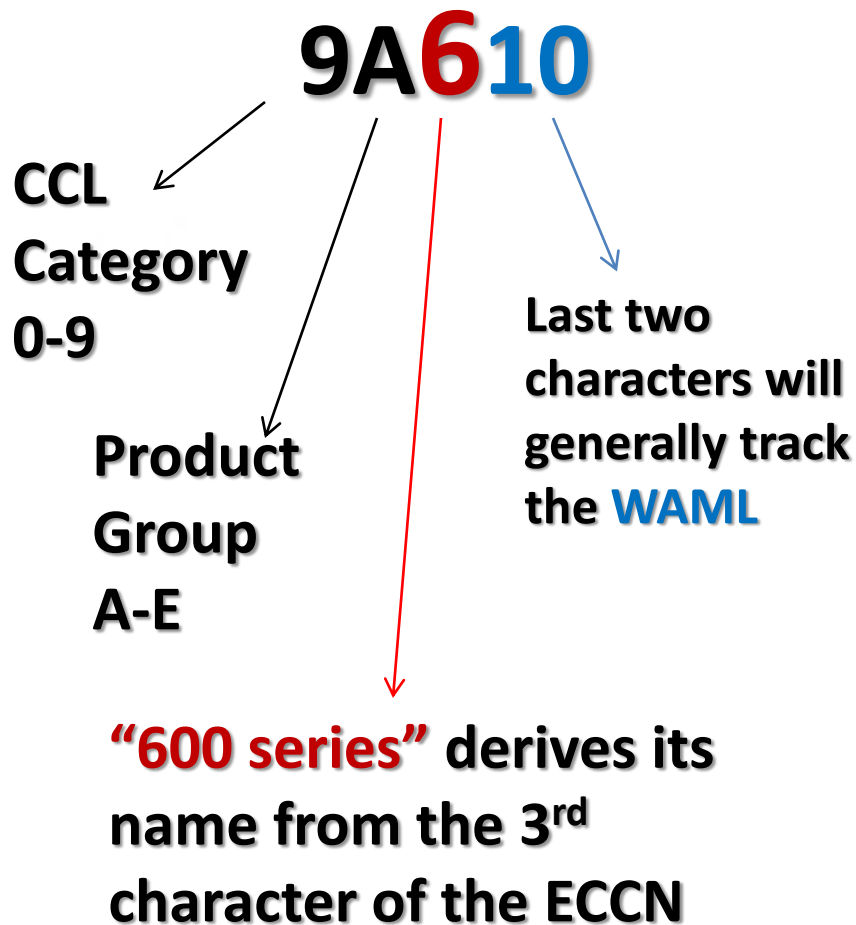
Comparison of ECR to Wassenaar Arrangement Control Lists



600 Series Framework



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Former USML items (and -018 items) listed in the “Items” paragraph.

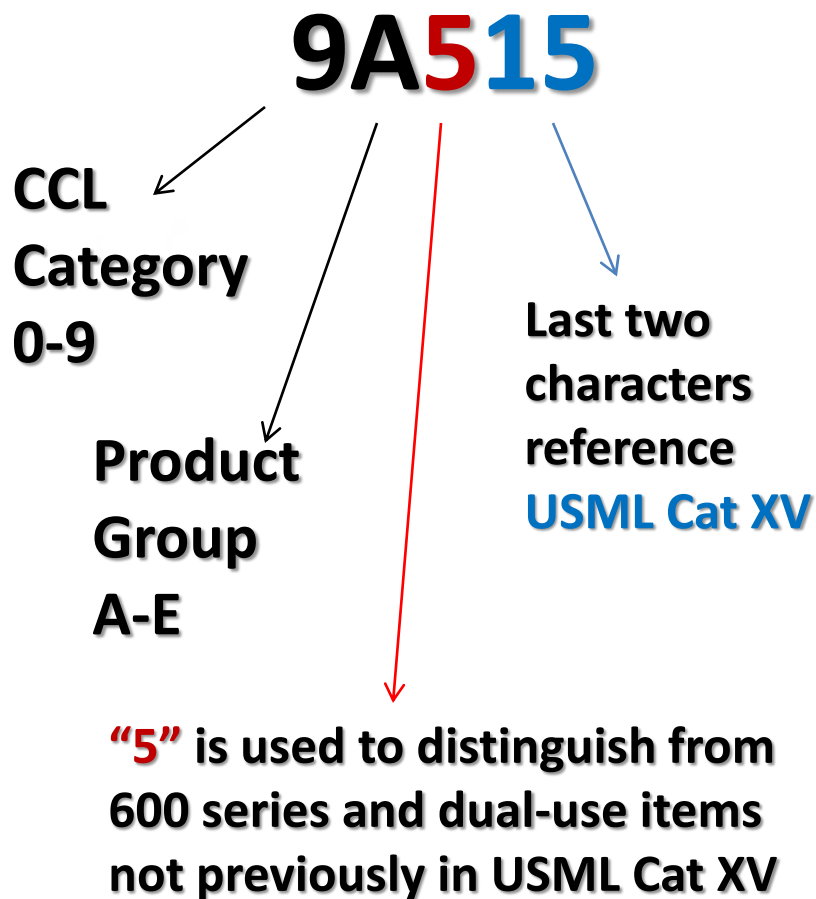
Order of review:

- .a - .w: specifically enumerated end items, materials, parts, components, accessories, and attachments
 - Some items may be “specially designed”
- .y: specifically enumerated commodities (primarily parts, components, accessories, attachments) that are “specially designed”
- .x: “specially designed” parts, components, accessories, and attachments that are not specifically enumerated

9x515 Framework



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- .a - .w: specifically enumerated end items, materials, parts, components, accessories, and attachments
 - Some items may be “specially designed”
- .x: “specially designed” parts, components, accessories, and attachments that are not specifically enumerated
- .y: items that would otherwise be within scope of 9A515.x but that have been identified in interagency-cleared CCATS (§ 748.3(e))
 - Currently one type of item listed in 9A515.y

Example: USML Category VIII and ECCN 9A610



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Revised USML

“A More Positive List”



- F-15, F-16
- Assembled engines
- Weapons pylons
- Mission systems
- Bomb racks
- Missile launchers
- Fire control computer
- Fire control Radar

Commerce Control List 600 Series

“.a-.w” items

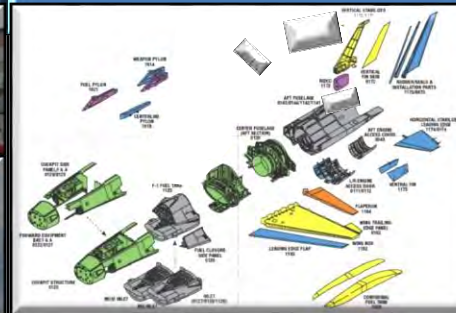
Specifically enumerated end-items, “parts,” “components,” “accessories,” & “attachments”



- Aircrew life support and safety equipment
- Parachutes/paragliders
- Controlled opening equipment of automatic piloting systems, designed for parachuted loads
- T-1 Aircraft

“.x” items

“Specially designed” “parts,” “components,” “accessories,” and “attachments”



- Wings, Rudder, Fin, Panels
- Fuselage – forward, center, aft
- Cockpit structure
- Forward equipment bay
- Control surfaces, activation and control systems

“.y” items

Specifically enumerated commodities (primarily “parts,” “components,” “accessories,” and “attachments”) that are “specially designed”



- Aircraft tires
- Hydraulic system filters
- Hydraulic and fuel hoses, fittings, clips, couplings, brackets
- Cockpit panel knobs, switches, buttons, dials

Example: USML Category XV and ECCN 9A515



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Revised USML Category XV

- Satellites/spacecraft
 - Providing unique military and intelligence functions, including nuclear detection, intelligence collection, missile tracking, anti-satellite or space-based weapons, classified operation or equipment, and navigation
 - Certain remote sensing with military applications
 - Man-rated habitats
- Certain ground control equipment
- Parts/components
 - 16 specific technologies critical to military functions
 - Any payload performing military function listed above
 - U.S. DoD funded payloads

ECCN 9A515

- Satellites/spacecraft
 - Commercial communication satellites
 - Lower-performance remote sensing satellites
 - Planetary rovers
 - Planetary and interplanetary probes
- Related systems for the above
 - Ground control systems; training simulators; test, inspection, and production equipment; non-critical software for production, operation, or maintenance; non-critical technology for development, production, installation, operation, or maintenance; radiation-hardened microelectronics
- Parts/components of satellite bus and payloads not listed on USML

ECR List Review Status



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USML Category	ECCNs	Status
I: Firearms	0x601	Proposed rule TBD
II: Artillery	0x602	Proposed rule TBD
III: Ammunition	0x603	Proposed rule TBD
IV: Launch Vehicles/Missiles	0x604 9x604	Final rule Jan. 2, 2014; Effective July 1, 2014
V: Explosives/Propellants	1x608	Final rule Jan. 2, 2014; Effective July 1, 2014
VI: Vessels of War	8x609	Final rule July 8, 2013; Effective Jan. 6, 2014
VII: Tanks/Military Vehicles	0x606	Final Rule July 8, 2013; Effective Jan. 6, 2014
VIII: Aircraft	9x610	Final rule Apr. 16, 2013; Effective Oct 15, 2013
IX: Training Equipment	0x614	Final rule Jan. 2, 2014; Effective July 1, 2014
X: Personal Protective Equip.	1x613	Final rule Jan. 2, 2014; Effective July 1, 2014
XI: Electronics	3x611 9x620	Final rule July 1, 2014; Effective Dec. 30, 2014

ECR List Review Status



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USML Category	ECCNs	Status
XII: Sensors/Night Vision	6x615 7x611	Proposed rule May 5, 2015 Second proposed rule Feb 16, 2016 Final rule Oct 12, 2016, Effective Dec 31, 2016
XIII: Miscellaneous	0x617	Final rule July 8, 2013; Effective Jan. 6, 2014
XIV: Toxicological Agents	1x607	Final rule Jul 28, 2016, Effective Dec 31, 2016
XV: Spacecraft/Satellites	9x515	Interim final rule May 13, 2014 Effective June 27, 2014 (for rad-hard ICs) Effective Nov. 10, 2014 (for all other items)
XVI: Nuclear	N/A	Final rule Jan. 2, 2014; Effective July 1, 2014
XVII: Classified	N/A	Final rule Apr. 16, 2013; Effective Oct 15, 2013
XVIII: Directed Energy Weapons	6x619	Final rule Jul 28, 2016, Effective Dec 31, 2016
XIX: Gas Turbine Engines	9x619	Final rule Apr. 16, 2013; Effective Oct 15, 2013
XX: Submersible Vessels	8x620	Final rule July 8, 2013; Effective Jan. 6, 2014
XXI: Not Enumerated	N/A	Final rule Apr. 16, 2013; Effective Oct 15, 2013

Export Control Reform Impact



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- From October 2013 through September 2016:
 - 57% reduction in monthly license volume at the Department of State for the newly implemented USML categories
 - Aircraft/gas turbine engines: 67% reduction
 - Spacecraft/satellites: 81% reduction
 - Over 37,000 license applications submitted to BIS for items that have moved from the USML to the CCL
 - Over 241,000 shipments valued at \$15.4 billion in exports have been shipped under BIS authorizations
 - *Top items (by value)*: 9A610 (aircraft items), 9A515 (spacecraft), 9A619 (gas turbine engine items), 3A611 (military electronics), 0A606 (ground vehicle items)
 - *Top Ten destinations (by value)*: Japan, Canada, French Guiana, United Kingdom, South Korea, Mexico, Australia, France, Israel, Germany

Export Authorizations Under the EAR



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- Licensed
 - X in the box on the Country Chart for the destination country for Reason for Control for an ECCN on the Commerce Control List
 - the destination country
 - End-use Concerns (Catch-all)
- License Exceptions
- No License Required (NLR)
 - EAR99
 - No X in the box on the country chart

The above authorizations also apply to reexports of items
“Subject to the EAR”

What is a License Exception?

Part 740



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- An authorization that allows you to export or reexport, under stated conditions, items subject to the EAR that would otherwise require a license.
- License exceptions also cover in-country transfers

When can't you use a License Exception?

§740.2



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-
- Authorization has been suspended or revoked
 - Export subject to a General Prohibition that is not eligible for License Exceptions.
 - Surreptitious Interception Devices
 - Crime Control items to most destinations
 - Most Missile Technology control items
 - Embargoed destinations, in most instances
 - Certain restrictions on 600 Series ECCNs

The way the EAR sees the world...

Country Groups



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Supplement 1 to Part 740

- Group A: Regimes and Allies
- Group B: Less Restricted
- Group D: Countries of Concern
- Group E: Terrorist Supporting



Commerce Control List-Based License Exceptions



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Availability Based on ECCN

- Strategic Trade Authorization (**STA**)
- Shipments to B Countries (**GBS**)
- Technology and Software Restricted (**TSR**)
- Shipments of Limited Value (**LVS**)
- Civil End Users (**CIV**)

**Country Group
A:5 or A:6**

Country Group B

**Country Group D-1, except
North Korea**

License Exception STA (§ 740.20)

(for all items subject to the EAR)



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Requirements for all items subject to the EAR:

- ECCN must authorize
- All reasons for control that apply to the transaction must be authorized to use STA
 - NS, CB, NP, RS, CC, SI: Country Group A:5 (§ 740.20(c)(1))
 - 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
 - NS only: Country Group A:6 (§ 740.20(c)(2)) [NOT available for 600 series items]
 - Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan

Note: countries that cannot receive items under STA may still be able to use STA to reexport to STA-eligible destinations.

License Exception STA

(for all items subject to the EAR;
additional requirements for 600 series ECCNs)



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	Exporter/ Reexporter	Consignee
1	Provide ECCN(s) to Consignee	
2		Provide Consignee Statement to Exporter/Reexporter
3	Obtain Consignee Statement	
4	Notify consignee that shipment (or specific items within a shipment) is (are) under STA	
5	Keep records showing which shipments belong to each consignee statement	Maintain Consignee Statement and records pertaining to subsequent reexport or transfer



Consignee Statement – Five Points

- Aware that items are to be shipped under STA
- Been informed of ECCN by _____.
- No subsequent License Exception APR (a) or (b) shipments
- Agrees not to ship or transfer in violation of EAR
- Agrees to provide documents to USG upon request

License Exception STA

(for 600 series items)



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- License Exception STA: additional requirements for 600 series items only
 - For ultimate end user that is the USG or government of country in Country Group A:5 (“STA-36” countries);
 - For development, production, or servicing of an item in A:5 or the United States that is:
 - Ultimately to be used by the USG or government of country in Country Group A:5; or
 - Sent to a person in the United States; or
 - If USG has otherwise authorized its use.

License Exception STA

(for 600 series items)



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- License Exception STA: additional requirements for 600 series items only
 - Non-U.S. parties must have been previously approved on a State or Commerce license
 - Consignee statement must also address ultimate end user restrictions for 600 series items and agree to end use check
 - Eligibility request required for end items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a

License Exception STA

(for 9x515 items)



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- 9x515 generally eligible for STA for Country Group A:5
 - Unlike 600 series, ultimate government end use is not required
 - Prior Consignee Statement requirements generally the same as for non-600 series items, but statement must allow for USG end-use check
 - Certain spacecraft in 9A515.a require eligibility request
 - Software in 9D515.b, .d, or .e and technology in 9E515.b, .d, or .e are not eligible for STA

License Exception STA



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	600 Series Items	9x515 Items	Other EAR Items
Ultimate government end use required?	Yes	No	No
Always limited to Country Group A:5?	Yes	Yes	No
Eligibility request required?	Yes, for end items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a	Yes, for certain spacecraft in 9A515.a	No
Must the foreign parties have been on a previously approved license?	Yes	No	No
Does Prior Consignee Statement require agreement to permit USG end-use check?	Yes, if the consignee is not the government of an A:5 country	Yes, if the consignee is not the government of an A:5 country	No

Reexporting Items Subject to the EAR



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- Generally, reexports or in-country transfers require same type of authorization as direct exports from U.S.
- BIS Authorizations:
 - No License Required (NLR)
 - Licenses*
 - License Exceptions

* Note the conditions on the license

Reexports of Items in the Form Received



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- If the item is a U.S.-origin item and subject to the EAR, it remains subject to the EAR regardless of how many times it is reexported, transferred, or sold.
- Therefore, any subsequent reexports or transfers (in-country) must be done in accordance with the EAR.

ECR Implications on Reexports



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- Unlike the ITAR, the EAR do not have a “see through” rule.
- The EAR include a *de minimis* rule based on the percentage by value of U.S.-origin controlled content in a foreign-made item.
- A non-U.S. made item located outside the U.S. that incorporates controlled U.S.-origin content that does not exceed the applicable *de minimis* percentage for a particular country is not subject to the EAR.
- A non-U.S. made item located outside the U.S. that incorporates controlled U.S.-origin content that exceeds the applicable *de minimis* percentage for a particular country is subject to the EAR.

Reexport or Transfer of Items Incorporating U.S. Content



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- *De minimis*
 - “Controlled content” = U.S.-origin items that require a license to the ultimate destination of the foreign product
 - EAR99 items may be controlled content to certain destinations; do not count content eligible for License Exception GBS or NLR (no license required) to new destination
 - Use fair market value of controlled content to calculate *de minimis* percentage

Reexport or Transfer of Items Incorporating U.S. Content



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- *De minimis*: U.S. items are “incorporated” when they are:
 - Essential to the functioning of the non-U.S. equipment;
 - Customarily included in the sale of non-U.S.-made items; and
 - Reexported with the non-U.S.-made items.

Reexport or Transfer of Items Incorporating U.S. Content



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- When reexporting non-U.S. made product subject to the EAR due to incorporation of U.S. controlled content (above de minimis) determine reexport licensing requirements by the classification of the non-U.S. origin item

Reexport or Transfer of Items Incorporating U.S. Content



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Legacy ECCNs (non-600 series and 9x515) *de minimis* rule

Item with U.S. content
reexported to all countries
except E:1

25% *de minimis* rule

E:1 (Terrorist Supporting
Countries)

10% *de minimis* rule

Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules

Note 2: If exceeds *de minimis*, the foreign made item is subject to the EAR.

Reexport or Transfer of Items Incorporating U.S. Content



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The 600 series and 9x515 *de minimis* rule – items identified in .a through .x paragraphs of 600 series ECCN

Item with U.S. content reexported to all countries, except D:5 (see also ITAR §126.1)

25% *de minimis* rule

D:5 (U.S. arms embargoed)

0% *de minimis* rule

Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules

Note 2: If exceeds de minimis, the foreign made item is subject to the EAR.

Reexport or Transfer of Items Incorporating U.S. Content



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The 600 series and 9x515 *de minimis* rule – items identified in .y paragraph of 600 series ECCN

Item with U.S. .y content only reexported to all countries, except E:1, E:2, and China

Not subject to the EAR

E:1, E:2, and China

0% *de minimis* rule

Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules

Note 2: If exceeds *de minimis*, the foreign made item is subject to the EAR.

Reexport or Transfer of Items Incorporating U.S. Content



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- U.S.-origin content not eligible for *de minimis*:
 - “600 series” when foreign-made items are destined to Country Group D:5
 - Certain 9E003 technology
 - Certain components of high performance computers
 - 5E002 technology and certain encryption commodities and software
 - QRS11 sensor in commercial standby instrument or flight control system, or aircraft with such a system
 - 6A003.b.4.b cameras when incorporated into a non-U.S. origin military commodity

Reexport or Transfer of Direct Products of U.S. Technology or Software



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- Under the EAR, certain foreign-made items that are located outside the U.S. that are the direct product of certain U.S.-origin technology or software are subject to the EAR when exported from abroad or reexported to *certain* countries.
- 600 series and 9x515 items are subject to a broader direct product rule (additional country and product scope) than other items subject to the EAR.
- Non-U.S. made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin.

Reexport or Transfer of Direct Products of U.S. Technology or Software



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Legacy ECCNs (non-600 series and 515 series)

Is the foreign-produced direct product of:
U.S.-origin technology or software requires a written letter of
assurance or a precondition for License Exception TSR?

Yes

Is the foreign-produced direct product subject to national
security controls as designated on the applicable ECCN of the
CCL?

Yes

Is the foreign-produced direct product being reexported or
exported from abroad to countries listed in Country Groups
D:1, E:1, or E:2?

Yes

Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.

Reexport or Transfer of Direct Products of U.S. Technology or Software



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The “600 series” direct product rule

Is the foreign-produced direct product of:

(i) U.S.-origin “600 series” technology or software or

(ii) a plant or major component of a plant that is a direct product of U.S.-origin “600 series” technology or software?

Yes

Is the foreign-produced direct product a “600 series” item?

Yes

Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:1, D:3, D:4, D:5, E:1, or E:2?

Yes

Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.

Reexport or Transfer of Direct Products of U.S. Technology or Software



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The 9x515 direct product rule

Is the foreign-produced direct product of:

(i) U.S.-origin 9x515 technology or software or

(ii) a plant or major component of a plant that is a direct product of U.S.-origin 9x515 technology or software?

Yes

Is the foreign-produced direct product a 9x515 item?

Yes

Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:5 or E:1?

Yes

Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.

Reexport or Transfer of Items Incorporating U.S. Content



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- For items above *de minimis*, determine licensing requirements by the classification of the non-U.S. made item.
- For commingled U.S.-origin and non-U.S. origin technology, a one-time report detailing calculations must be submitted to BIS before *de minimis* applies.

Reexporting Items Subject to the EAR



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- BIS Reexport Licenses
 - Reexport authority may be requested by U.S. exporter at time of application for export license, for shipment to and among multiple end users.
 - Reexport authority may be requested by non-U.S. companies.

Reexporting Items Subject to the EAR



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- BIS Reexport Licenses
 - Apply through SNAP-R
 - Use the form BIS-748P; appendices for additional items or end users
 - Guidance on applications and support documents in part 748 of the EAR
 - Four-year validity period; extended validity periods may be requested
 - Cite prior equivalent DDTC approvals if applicable

Licenses for Tangible Items, Software and Technology for the World by Count 2011-2015



Denied	130	157	168	321	306
RWA	3,252	3,267	3,758	5,202	5,429
Approved	20,353	19,376	20,182	25,935	29,283
Average Processing Time (Days)	28	26	25	23	22

Figures do not include deemed export licenses. In 2015, BIS reviewed 1,317 deemed export license applications. Approved deemed export licenses for all destination totaled 1,211 (92.0% of the total applications), an 23.8% (233) increase from 978 in 2014.

Licenses for Tangible Items, Software and Technology for the EU by Count 2011-2015



Denied	4	7	8	7	7
RWA	414	407	469	620	750
Approved	2,126	1,510	1,544	2,600	4,459
Average Processing Time (Days)	28	23	22	21	21

Impact of BIS Export Controls on U.S. – E.U. Trade



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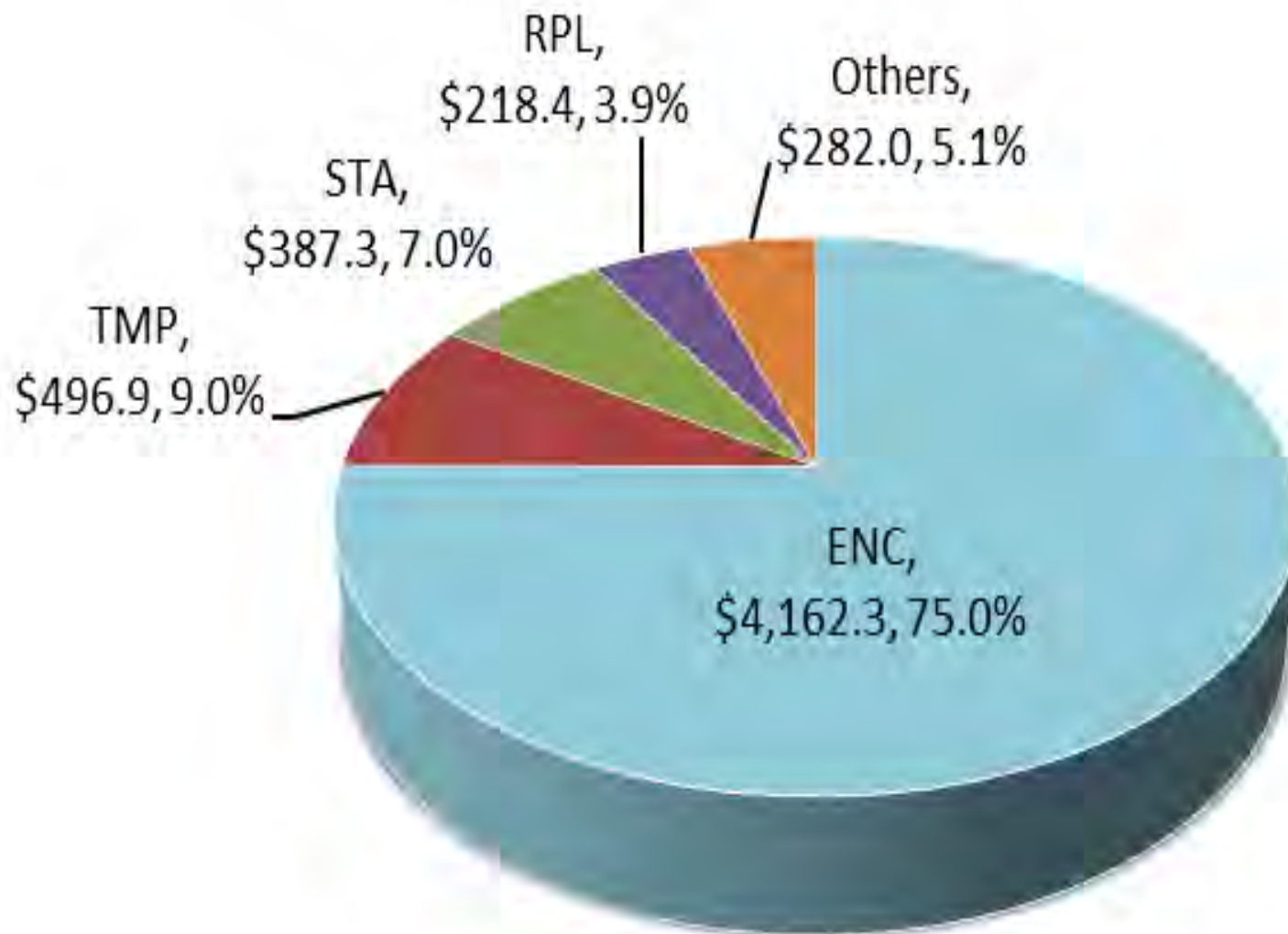
2015 U.S. Exports to the EU Listed on the CCL

Total U.S. Exports

Exports Listed on the CCL



2015 Exports to the EU by BIS License Exceptions (\$millions)



Top Four Exports by ECCN to E.U./Italy by Value--Licensed (\$millions) Jan-Jul 2016



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EU			Italy		
ECCN	Description	Value	ECCN	Description	Value
9A610	Military aircraft and related commodities	\$220.6	9A610	Military aircraft and related commodities	\$27.4
9A619	Military gas turbine engines and related commodities	\$95.9	9A619	Military gas turbine engines and related commodities	\$16.6
7A103	Instrumentation, navigation equipment and systems	\$75.5	9A001	Aero gas turbine engines	\$3.9
9A001	Aero gas turbine engines	\$58.5	3A611	Military electronics	\$3.5

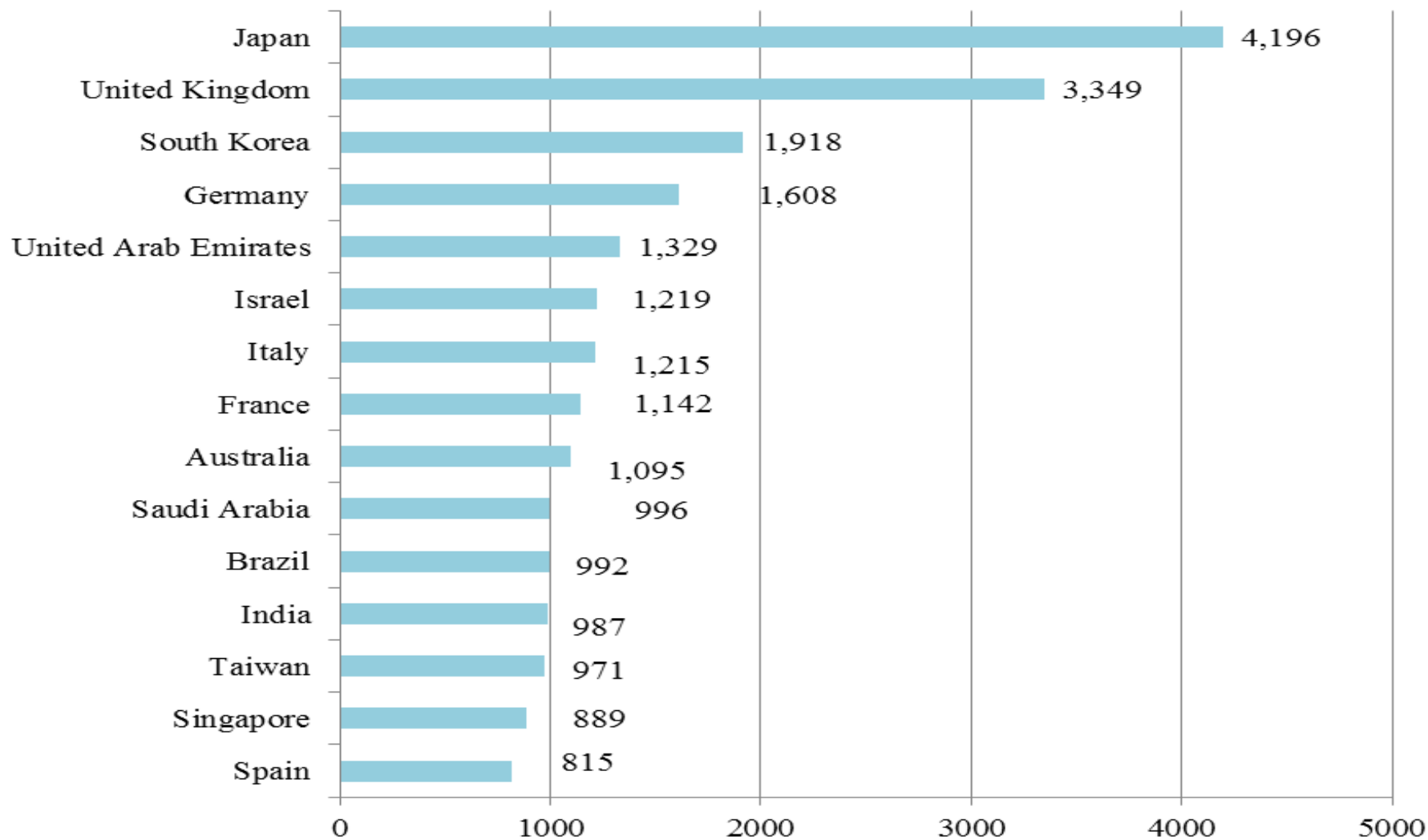
Top Exports by ECCN to EU/Italy by Value **License Exception** (\$millions)



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EU			Italy		
ECCN	Description	Value	ECCN	Description	Value
5A002 (ENC)	Information security systems, equipment and components	\$1,940.5	5A002 (ENC)	Information security systems, equipment and components	\$60
9A515 (STA)	Spacecraft and related commodities	\$236.7	9A619 (STA)	Military gas turbine engines and related commodities	\$20.3
9A610 (STA)	Military aircraft and related commodities	\$151.6	9A610 (STA)	Military aircraft and related commodities	\$9.9
9A619 (STA)	Military gas turbine engines and related commodities	\$136.6	3A611 (STA)	Military electronics	\$3.5

**Top Fifteen Destinations of BIS Approved Licenses for 600-Series
and 9x515 Items by License Count
October 15, 2013 - October 31, 2016**



**Top Fifteen Destinations of U.S. Exports of 600-Series and 9x515 Items by Value
under BIS Jurisdiction
October 15, 2013 to October 31, 2016**



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Country	Shipment Counts	% of Total Shipment Count	Value \$million	% of Total Value
Japan	23,438	10.1%	\$2,364.9	16.1%
Canada	20,685	8.9%	\$1,341.2	9.1%
French Guiana	38	0.02%	\$1,304.7	8.9%
United Kingdom	25,828	11.2%	\$1,935.2	13.2%
South Korea	17,539	7.6%	\$924.1	6.3%
Mexico	9,861	4.3%	\$551.6	3.8%
Australia	8,007	3.5%	\$529.5	3.6%
France	5,347	2.3%	\$501.4	3.4%
Israel	9,711	4.2%	\$476.6	3.2%
Germany	10,263	4.4%	\$455.0	3.1%
United Arab Emirates	9,257	4.0%	\$399.6	2.7%
Italy	7,003	3.0%	\$392.7	2.7%
Singapore	9,723	4.2%	\$328.1	2.2%
Spain	6,327	2.7%	\$298.1	2.0%
Saudi Arabia	4,234	1.8%	\$286.8	2.0%
Top 15 Total	167,261		\$12,089.5	
Top 15 Total/ Grand Total		72.3%		82.3%
Grand Total	231,324		\$14,697.0	

Note: The Guiana Space Center, run by France and European Union, is located in French Guiana.

Questions?



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