US Department of Commerce
Bureau of Industry and Security

Reexport Controls

• Office of Exporter Services  •  Outreach & Educational Services  •
Topics

- Reexport terms
- Reexports subject to the EAR
- License application & responsibilities
- License Exceptions
Definition – Export
§734.2(b)(1)

Export – An actual
shipment or transmission of an item *subject to the EAR* from the United States to a foreign country.
Definition – Reexport
§734.2(b)(4)

Reexport – An actual shipment or transmission of an item subject to the EAR from one foreign country to another.
Test Your Knowledge

- A US manufacturer exports an item to a Chinese company, who then sends the item to a Japanese company. Is that a reexport?
- A US manufacturer sends an item to a Chinese company. The Chinese company sends the item back to its subsidiary in the United States. Once in the US, the subsidiary sends the item to a customer in Japan. Is that a reexport?
Reexports Subject to the EAR

- U.S.-Origin items wherever located,
  - Unless they are:
    - Exclusively controlled for reexport by another U.S. Government Agency
    - Publicly available technology or software, except encryption
- Foreign produced items (in some cases)
  - De minimis rule
  - Direct Product rule
De Minimis
§§734.4 and 736.2(b)(2)

- Foreign-made items incorporating, commingled with, or drawn from controlled U.S origin items exceeding:
  - 10% for Cuba, North Korea, Sudan, Syria & Iran
  - 25% for all other destinations
**Controlled Content and De Minimis**

- “Controlled content” = US-origin items that would require a license for reexport to the ultimate destination of the foreign product
  - EAR99 items are considered “controlled content” for certain sanctioned countries
- Value of the “controlled content” is needed to calculate *de minimis* percentage
De Minimis

- Content that you don’t have to count:
  - License Exception GBS or NLR eligible items
  - Foreign manufactured items
    - 2nd incorporation of U.S. origin items
**De Minimis**

- *De minimis* percentage based on ratio of cost of U.S.-origin items to foreign product’s normal selling price.
- Compare:
  - commodities to commodities,
  - software to software,
  - technology to technology
Test your Knowledge

*De Minimis*

- Le Compu Inc., located in France, imported a chip manufactured in the United States. This chip is controlled for export to all destinations except for Canada. The cost of the chip is $20. The company intends to incorporate the chip into a circuit board and then sell French circuit board to a customer in the United Kingdom for $100.

- Is the circuit board subject to the EAR?
Test your Knowledge

*De Minimis*

- What if Le Computer imported U.S.-origin software (controlled to all destinations except for Canada) to be incorporated in the circuit board, would that make a difference?
De Minimis

Content that is not eligible for de minimis treatment:

- U.S. origin components of high performance computers (certain ones)
- Encryption 5E002
- QRS 11 if in commercial standby instrument system or commercial aircraft w/such system
De Minimis
Commingled Software or Technology

- One-time report required
  - Percentage of U.S. content by value
  - Description of your calculations
    - Values, assumptions, methodologies
  - Export price of U.S. content
  - For software, estimate of future sales
  - Description and fair market value of the foreign technology or software
If Over the *De minimis* Limit

- Classify the foreign product
- Determine ECCN and License Requirements
- Determine License Exception eligibility, if any
- Obtain any necessary authorization
Direct Product
§736.2(b)(3)

• Direct Product: technology
  • U.S. technology is National Security (NS) controlled
  • Foreign-made direct product is National Security (NS) controlled
  • Foreign-made direct product’s destination is D:1 or Cuba

• Direct Product: plant or equipment
  • Direct product of a complete plant or any major component of a plant that was ... (use criteria from first bullet)
Test Your Knowledge

*Direct Product*

- A US company sends NS controlled technology to an Italian manufacturing company for the production of a widget. The widget, if classified using the CCL, would be controlled for NS and Missile Technology (MT) reasons. The foreign made widget is destined for Ukraine.
  - Would this foreign-made item be subject to the EAR?
  - Would it make a difference if the technology was controlled for MT reasons only?
Test Your Knowledge

Direct Product

- If it was produced from US-origin NS controlled technology and destined to France, would it be subject to the EAR?
- If when it gets to France it is then reexported to Russia, would it be subject to the EAR?
Authorization to Reexport

- Licenses
  - Application
  - Responsibilities
License Application
§748.4(a)(3)

- Who can apply for a reexport license?
  - Foreign Principal Party in interest; or
  - U.S. agent of the foreign party
  - Original Exporter on behalf of the foreign party
Licensee Responsibility

- Communicate license conditions
- Obtain written acknowledgement of receipt of the conditions
  - When required
  - From the parties to whom those conditions apply
License Exceptions Useful for Reexports

APR §740.16
RPL §740.10
TMP §740.9
Additional Permissive Reexports (APR) §740.16

- Allows for reexports:
  - From, to, and among Country Group A:1 and cooperating countries (Supp. 1 to Part 740)
    - Commodities Only
    - Authorized by government of reexporting country
  - To a destination to which direct shipment from the US is authorized under an unused outstanding license
Servicing & Replacement of Parts and Equipment (RPL)
§740.10

- Authorizes the reexport of:
  - One-for-one replacement parts for previously exported equipment.
    - Previous export must have been lawful
    - Must destroy or return the replaced parts
    - Must not enhance item
  - US-origin commodities and software that were returned to the United States or a foreign party for servicing or replacement because they were unacceptable
Temporary Imports, Exports, and Reexports (TMP)
§740.9

- Authorizes the reexports of:
  - Tools of Trade
    - Must return within one year
  - Exhibition and Demonstration
    - Reexporter retains ownership and effective control
    - Maximum of 120 days at any one site
    - Must return within one year
No License Required (NLR)

- Types of items eligible for NLR:
  - EAR99 items
  - ECCNs where there is no “X” on the Country Chart under reason(s) for control;
- *But Only When* the transaction does not require a reexport license based on any other licensing requirement (e.g., end-use/user requirements)
Session Summary

- Reexport terms
- Reexports subject to the EAR
- License application & responsibilities
- License Exceptions
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Current 2008 Overseas Seminar Schedule

- March 25-26, 2008: Tokyo, Japan
- March 28, 2008: Osaka, Japan
- March 31-April 1, 2008: Hong Kong
- April 3-4, 2008: Singapore
- April 7-8, 2008: Kuala Lumpur, Malaysia

http://www.bis.doc.gov/seminarsandtraining/elsem.htm