

# Exportese: Speaking the Language of International Business

A Review of Some of the Export  
Laws that Apply to Aircraft Parts

# Disclaimer

- Export law is complicated and cannot adequately be addressed in a single hour-long presentation.
- This is an introduction to the applicable law but it is not meant to reflect specific legal advice
- This introduction covers only some of the issues that an exporter needs to know!

# Some Export Regulators

- **BIS – Bureau of Industry and Security**
  - Commerce Department office responsible for the regulation of most exports
- **DDTC – Directorate of Defense Trade Controls**
  - State Department office responsible for the regulation of exports of defense-related articles
- **OFAC - Office of Foreign Asset Control**
  - Treasury Department office responsible for certain additional export controls meant to advance particular interests of the United States

# Question

- Foreign Customer X ships a unit to your facility so you can manage the overhaul
- You have the overhaul performed
- You want to send the completed unit back to Foreign Customer X
- **Is this an export?**

# Definitions: Export

## *What is an export?*

- Actual shipment or transmission of items out of the U.S.
  - Includes software
  - Includes technology
  - Can include technical documents in some cases
  - Includes repaired items!
- Exposing a foreign national to export-restricted technology is also treated as an export!

# Consolidated Screening List

- Commerce, State, and Treasury lists
- [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)

*Please note that lists and regulations are updated frequently by the government, and should be checked for each transaction*

# OFAC Lists

- **Embargoed Destinations List:**
  - <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>
- **Specially Designated Nationals List:**
  - <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

# Sample SDN Parties

- **Aero Caribbean Airlines**
- **Aero Continente**
- **Butembo Airlines**
- **Cubana Airlines**
- **Gambia Millenium Airline**
- **Intercontinental de Aviacion S.A**
- **International Airline Consulting**
- **Santa Cruz Imperial Airlines**

# Nations Restricted by OFAC

*Current as of June 21, 2012*

- Balkans
- Belarus
- Burma (Myanmar)
- Cote D'Ivoire
- Congo (Dem.Rep.)
- Cuba
- Iran
- Iraq
- Lebanon
- Liberia
- Libya
- North Korea
- Somalia
- Sudan
- Syria
- Yemen
- Zimbabwe

# In Addition to OFAC, Who Else Regulates Export?

# Is it Regulated by the Commerce Department Under Current Rules?

- Distinguish the U.S. Department with export jurisdiction over the aircraft part
  - Is it a US Munitions List Item?
    - Aircraft parts designed, made or modified for use on a defense aircraft
    - State has export jurisdiction
    - Follow the ITARs
  - Otherwise subject to BIS restrictions
    - Identify the ECCN and follow BIS regulations
    - Commerce has export jurisdiction

# Major Overhaul of the Export Rules

- Rule Change IS NOT YET Final -

- **DDTC Rule**

- Limits the scope of USML, moving many aerospace items (including dual-use and single use items) to BIS export control
- Net result – ITARs should be mostly limited to defense-specific aircraft parts (“specially designed”)

- **BIS Rule**

- Establishes new export classifications [ECCNs] for certain items transferred from the USML

# Skipping ITAR

- Because of time constraints, we will skip ITAR requirements that apply to export of defense-related articles
- For more on ITAR, please be sure to attend an ASA Regulatory Workshop or an ASA Export Workshop

# How Is it Regulated by the Commerce Department?

- **What am I exporting? Is it classified under the Commerce Control List (CCL)?**
  - <http://beta-www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>
- **Examples:**
  - *CCL 2 - Material processing (e.g. bearings)*
  - *CCL 3 - Electronics*
  - *CCL 7 - Avionics*
  - *CCL 9 – Aerospace and Propulsion*

# Export Commodity Classification Numbers (for items on the CCL)

- **Determine ECCN**

- Peruse the CCLs for ECCNs that describe your export

- Alphabetical index to the CCL provides some help:

- [http://10.213.64.35/index.php/licensing/forms-documents/doc\\_download/13-commerce-control-list-index](http://10.213.64.35/index.php/licensing/forms-documents/doc_download/13-commerce-control-list-index)

- Ask the manufacturer

# Export Commodity Classification Numbers

- If it is not in the CCL, then a license may be unnecessary
  - But certain limits like denied parties or controlled usage may necessitate a license
- General item default for unlisted articles is EAR99
  - But aircraft part default is 9A991
- Call 1-202-482-4811 for U.S. Gov't ECCN help!

# Examples of Avionics ECCNs

Item	ECCN
• Avionics software	— 7D994
• GPS	— 7A005, 7A105
• Gyros	— 7A002, 7A102
• INS and other inertial systems	— 7A003
• Non-INS navigation instruments	— 7A103
• Nav-Comm Systems <u>Technology</u>	— 7E994
• Other nav/comm equipment not covered under another ECCN	— 7A994

# General Aircraft Parts ECCN

- **Other aircraft parts/equipment not covered under another ECCN are ECCN 9A991**
- Demilitarized items are restricted from export to Iraq, North Korea and Rwanda due to UN embargos
- Such items are restricted from export to some countries under anti-terrorism restrictions
  - Column AT1 on the CCL country chart
  - Current restrictions include: Sudan (by chart) and Cuba, Iran, North Korea, and Syria (by rule)

rear axles rated for 9 mt per axel (20,000 lbs.) or greater and specially designed parts.

**9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.**

**License Requirements**

*Reason for Control:* AT, UN

*Control(s)* Country Chart

AT applies to entire entry AT Column 1

UN applies to 9A991.a Iraq, North Korea, and Rwanda

**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).*

**License Exceptions**

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

**List of Items Controlled**

*Unit:* Number

*Related Controls:* QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the QRS11-00100-100/101 is integrated into and included as an integral part 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 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(c), Note(1)) In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.

*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. “Civil aircraft”;

**Note:** *Specify make and model of aircraft and type of avionics equipment on aircraft.*

c. Aero gas turbine engines, and specially designed parts therefor.

**Note:** *9A991.c does not control aero gas turbine engines that are destined for use in civil “aircraft” and that have been in use in bona fide civil “aircraft” for more than eight years. If they have been in use in bona fide civil “aircraft” for more than eight years, such engines are controlled under 9A991.d.*

d. Aircraft parts and components, n.e.s.

e. Pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

**9A992 Complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use.**

**License Requirements**

*Reason for Control:* AT

*Control(s)* Country Chart

AT applies to entire entry AT Column 1

**License Exceptions**

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

**List of Items Controlled**

*Unit:* Number

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

The list of items controlled is contained in the ECCN heading.

**B. TEST, INSPECTION AND PRODUCTION EQUIPMENT**

**9B001 Equipment, tooling and fixtures, specially designed for manufacturing gas turbine blades, vanes or “tip shroud” castings, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

*Control(s)* Country Chart

NS applies to entire entry NS Column 1

MT applies only to equipment for engines that meet the characteristics described in 9A001 MT Column 1

AT applies to entire entry AT Column 1

**License Requirement Notes:** *See §743.1 of the EAR for reporting requirements for exports under License Exceptions.*

**License Exceptions**

LVS: \$5000, except N/A for MT  
GBS: Yes, except N/A for MT  
CIV: Yes, except N/A for MT  
*STA:* License Exception STA may not be used to ship commodities in 9B001.b to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

**List of Items Controlled**

*Unit:* \$ value

*Related Controls:* For specially designed production equipment of systems, sub-systems and components controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to 9A109, 9A111, and 9A116 to 9A119 usable in “missiles” see 9B115. See also 9B991.

**9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.**

**License Requirements**

*Reason for Control:* AT, UN

*Control(s)*

*Country Chart*

AT applies to entire entry AT Column 1

UN applies to 9A991.a Iraq, North Korea, and Rwanda

***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).*

# Do You Need a Commerce Department License?

- Check the specific reasons for control in CCL
- Check the Export Control Country Chart (cross reference country and reason for control):
  - [http://www.bis.doc.gov/policiesandregulations/ear/738\\_supp1.pdf](http://www.bis.doc.gov/policiesandregulations/ear/738_supp1.pdf)
- If there is an “X” in the cross-reference, then you need a Commerce license for export

### Commerce Country Chart

#### Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Conventi on	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
	Spain <sup>3</sup>	X					X		X	X						
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan	X	X		X		X	X	X	X	X		X		X	X	X
Suriname	X	X		X		X	X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X		X		X		
Sweden <sup>3,4</sup>	X					X		X	X			X		X		
Switzerland <sup>3,4</sup>	X					X		X	X			X		X		
Syria	See § 746.9 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Taiwan	X	X	X	X		X	X	X	X	X		X		X		
Tajikistan	X	X	X	X		X	X	X	X	X		X	X			
Tanzania	X	X		X		X	X	X	X	X		X		X		
Thailand	X	X		X		X	X	X	X	X		X		X		
Timor-Leste	X	X		X		X	X	X	X	X		X		X		

# Do You Need a Commerce Department License?

- **What will the importer do with it? Certain end-uses are restricted:**
  - <http://www.access.gpo.gov/bis/ear/pdf/744.pdf>
  - Rocket systems and unmanned air vehicles may require licensing
  - These restrictions may drive a need to check third party country of registry and control (see “where is it going”)
- **What else does the receiver do? Certain types of conduct are prohibited without BIS license**
  - Supporting design, development or production of missiles or nuclear explosive devices or chemical weapons or biological weapons
  - Supporting (through financing or logistics) a transaction that would violate the licensing provisions if performed, directly
- **Who will receive it? Check the BIS prohibition lists ...**

# Forbidden Parties

- Department of Commerce's Bureau of Industry and Security (BIS) lists:
  - Denied Persons List
    - <http://www.bis.doc.gov/dpl/default.shtm>
  - Denied Entities List
    - <http://www.bis.doc.gov/entities/default.htm>

# What Is Denied?

- Denied Persons may NOT participate in any way in any transaction involving the export from the United States of any commodity, software or technology subject to Export Administration Regulations (EAR)
  - No license transactions
  - No negotiations
  - No benefit from any export transaction
  - May not be the principal nor the agent in an export transaction
  - No facilitation of exports
  - No facilitation of acquisition of an export item
  - No procurement of items from the US for servicing

# IDENTIFY “RED FLAGS”

- ‘Red flags’ have been designated by the BIS to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate export regulations
- Examples of ‘Red flag’ situations:
  - The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons
  - Unusual fact pattern leads to a suspicion of illegal conduct

# Unverified Persons or Entities

- Identify whether your customer might raise an automatic “red flag”
- Consult the Department of Commerce’s Bureau of Industry and Security (BIS) lists:
  - **Unverified List** (foreign persons who raise automatic “red flags” because of past verification issues)
    - [http://www.bis.doc.gov/enforcement/unverifiedlist/unverified\\_parties.html](http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html)

# What to Do if there is a Red Flag

- The exporter **MUST** inquire about the end-use or end-user or ultimate country of destination
- If you encounter a piece of information in the course of your dealings with the customer that raises a red flag:
  - Refrain from the transaction, OR,
  - Contact a regional BIS enforcement office. Office addresses & phone #s provided at:  
<http://www.bis.doc.gov/enforcement/report.htm>

# What to Do if there is a Red Flag

- **Voluntary anonymous reports of export issues may be made to:**
  - <https://www.bis.doc.gov/forms/eeleadsntips.html>
- **If you can adequately confirm that the red flag does not represent an actual legal issue or violation, then you may proceed with the transaction**
  - Use documents and keep them on file
  - Do not become “willfully blind” to issues

# Do You Need a BIS License?

- **BIS Licenses:**
  - A relatively small percentage of total US exports and re-exports require a BIS license
  - Licenses can be used to overcome exclusions
- **Apply for licenses using SNAP-R**

# Short-Circuiting the License Process

- Obtaining a license takes time
- This is inconsistent with AOG service
- There are certain exceptions that can sidestep licensing requirements and can be very useful for AOG situations

# BIS License Exceptions: Replacement of Parts (RPL)

- One-for one replacement of parts or servicing and replacement of equipment, e.g. exchange agreements.
- If an item is returned to the US for inspection, testing, calibration or repair (including overhaul and reconditioning)
- Read the exception – it has specific eligibility criteria – 15 C.F.R. § 740.10

# BIS License Exceptions: Civil Aircraft (AVS)

- If the aircraft on which the part is to be installed is identified, then you should consider the following:
  - The country in which the aircraft is located, and
  - The country in which the aircraft is registered, or will be registered in the case of an aircraft being manufactured, and
  - The country, including a national thereof, which currently owns, controls, leases, and/or charters the aircraft

# BIS License Exceptions: Civil Aircraft (AVS)

- Exports of equipment and spare parts for
  - Permanent use on an aircraft of any registry
  - Exports of equipment and spare parts to U.S. or Canadian airlines' installations or agents
  - Exports to a specific U.S. or Canadian registered aircraft for AOG
- Read the exception – it has specific eligibility criteria – 15 C.F.R. § 740.15

# Don't Forget the "Paperwork"

- **Electronic Export Information**
  - Must be filed on-line:  
<http://www.aesdirect.gov>
  - Keep copies of your documents for at least five years
    - Shipping document with the ITN
    - All other related transactional documents
  - There is a limited exception for non-licensed commodities valued at less than \$2,500

# Questions?

# Thank You

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