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*Revisions to U.S. Export
Compliance Regulations*

U.S. Export Overview

- Aerospace manufacturing is an important U.S. export
- U.S. seeks to protect and advance interests through export policy and regulation
 - National security
 - Foreign policy
 - Economic objectives
- Multiple agencies and laws to navigate

Export of Aircraft Parts

- Aircraft part manufacturers and distributors support both commercial and defense sectors
 - Majority of exports are regulated by BIS
 - Certain defense articles regulated by DDTC
 - Parties are regulated by Treasury's OFAC
- Applicable regulations and licensing requirements can be difficult to determine

Export Prior to October 15, 2013

- Exporter must determine if party is permissible
- Exporter must determine which U.S. Department has jurisdiction over the article
 - U.S. Munitions List items
 - Designed or modified for military use
 - Review ITARs and USML
 - If not a USML item, subject to BIS regulations
 - Review BIS regulations and CCL
 - Determine ECCN

Export Prior to October 15, 2013

- Challenges for companies and individuals exporting parts from the United States
 - Determining USML versus CCL was often challenging
 - Vague regulatory language (e.g. USML VIII(h)).
 - Unknown design history
 - Burdensome Commodity Jurisdiction process
 - Restrictive Re-export controls
 - Re-export license applications
 - No *de minimus* exceptions for ITAR-controlled parts

The October 15 Rule Change

- Export Control Reform Initiative
 - BIS and DDTC working together to reform the export control system
 - Remove items that no longer warrant export control on the USML to the CCL
 - This change was specific to aircraft, turbine engines, and related items

Objective of the Change

- Enhance U.S. national security
 - Amend USML to control only items that give the U.S. “a critical military or intelligence advantage”
- Reformed system will
 - Improve interoperability of U.S. forces with allies
 - Facilitate export of U.S.-origin articles by reducing “ITAR-free” goods
 - Focus resources on transactions of greatest concern

What Changed?

- Major changes
 - Revised USML category VIII to establish a clearer line between USML and CCL control
 - Created uniform definition of “specially designed”
 - Added the new “600 Series” to the CCL to accommodate most former USML items and consolidate 13 existing Wassenaar Arrangement Munitions List entries

ITAR Changes

- Category VIII changes
 - Published at 22 C.F.R. 121.1
 - Narrows types of aircraft/articles on USML
 - Change from generic categories to positive list
 - Exception: Parts, components, accessories and attachments specially designed for certain U.S.-origin aircraft
- Also creates new category XIX for gas turbine engines and equipment
- Clarifies definition of “specially designed”

USML Aircraft (old rule)

- Highly inclusive category
 - “Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter than air aircraft, which are specifically designed, modified, or equipped for military purposes”

USML VIII(h) list (old)

- Old VIII(h): “Components, parts, accessories, attachments and associated equipment . . . specifically designed or modified for the articles in paragraphs (a) through (d) of [category VIII].”
 - Generic list tied to aircraft listed in (a) thru (d).
 - Limited guidance

USML Aircraft (new)

- Bombers
- Fighters, fighter bombers, and fixed-wing attack aircraft
- Attack helicopters
- Certain UAVs
- Military intelligence, surveillance and reconnaissance aircraft
- Electronic warfare, airborne warning and control aircraft
- Air refueling aircraft, strategic airlift aircraft, and aircraft capable of being refueled in flight

USML VIII (new)

- New VIII establishes positive list
 - Certain articles and their parts for controlled aircraft
 - Inertial navigation systems (INS)
 - Inertial measurement units (IMU)
 - Attitude and Heading Reference Systems (AHRS)
 - DoD funded developmental aircraft and specially designed parts and components

USML VIII(h) list (new)

- VIII(h) establishes a positive list of defense-specific articles
 - 26 categories including:
 - Parts for B-1B, B2, F-15 S/E, F/A-18E/F/G, F-22, F-35, F-117 aircraft
 - Certain high-velocity gearboxes
 - Tail boom, stabilator and automatic rotor blade folding systems and components
 - Wing folding systems, tail hooks, bomb racks, missile rails
 - Flight control systems, radar altimeters, radomes

USML VIII(h) list (new)

- VIII(h) establishes a positive list of defense-specific articles
 - 26 categories including:
 - Printed circuit boards or patterned multichip modules for which the layout is specially designed for defense articles in this category
 - Any part, component, accessory, attachment, equipment or system that is classified, contains classified software, or is being developed using classified information

USML VIII lists (new)

- Additional lists in VIII
 - VIII(i) technical data and defense services related to articles enumerated in (a)-(h) and classified technical data related to 600 Series articles
 - VIII(x) commodities, software, and technical data subject to BIS regulations used in or with defense articles controlled in Category VIII

USML XIX (new)

- Gas Turbine Engines and Associated Equipment
 - Formerly covered in USML categories IV, VI, VII, and VIII
 - Supersedes IV, VI, VII
 - Controls turbofan/turbojet and turboshaft/turboprop engines with certain characteristics

USML XIX (new)

- Equipment designed for controlled turbofan and turbojet engines
 - Digital engine control systems (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) specially designed for gas turbine engines controlled in this category
 - Parts, components, accessories, attachments for certain engines, hot section components, blades, vanes, disks and other items for engines controlled by XIX
 - Technical data and defense services directly related to the defense articles enumerated in paragraphs (a)-(f) of this category and classified technical data directly related to items controlled in ECCNs 9A619, 9B619, 9C619, and 9D619 and defense services using the classified technical data

USML XI

- USML Category XI – Military Electronics
 - Was not amended by the October 15, 2013 rule
 - Currently undergoing revision
 - Second comment period closed in September 2013
 - Will clarify scope of Category XI and create positive lists
 - Will incorporate definition of “specially designed”
 - Will incorporate licensing procedure for articles subject to EAR exported with USML defense articles

“Specially Designed”

- New definition common to both ITAR and EAR
- “Catch” and “release” provision
 - Overly broad to “catch” all items not enumerated on USML that must be controlled
 - Six exclusions to “release” items not meriting control that are subject to the “catch” elements

“Specially Designed”

- “Catch”
 - Peculiarly designed to meet or exceed performance levels described in applicable CCL or USML entry
 - For use in an item described in the CCL or USML

“Specially Designed”

- “Release”
 - Commodity Jurisdiction or other determination
 - Select parts like fasteners, bushings, washers, springs and wire
 - Identical function as production part for non-controlled item
 - Simultaneous development for civil application
 - General purpose development
 - Development for EAR99 or AT-controlled items

“Specially Designed”

- Analysis is intended to be a linear series of yes/no answers
- BIS offers decision tree tools to assist in analysis:

<http://www.bis.doc.gov/index.php/specially-designed-tool>

600 Series

- Parts formerly controlled on USML that do not merit same degree of control; shift to CCL intended to ease export to close U.S. allies
- New “600 Series” ECCNs added to CCL Category 9
 - 9A610-9E610: Military aircraft and related commodities
 - 9A619-9E619: Military gas turbine engines and related commodities

600 Series

- 9A610.x: Parts, components, accessories, and attachments that are specially designed for a commodity subject to control in [9A610] or defense article in USML Category VIII and not elsewhere specified on the USML or CCL

600 Series

- 9A610.y: Specific parts, components, accessories, and attachments specially designed for [9A610] or a defense article in USML Category VIII and not elsewhere specified in the USML or CCL, and other aircraft commodities designed for military use, including
 - Analog cockpit gauges and indicators; audio selector panels; public address systems; galleys; life rafts; mirrors; steel brake wear pads; fire extinguishers; aircraft tires

600 Series *De Minimus* allowance

ITAR has no *de minimus* allowance

600-series loosens for ease of reexport

- No *de minimus* allowance for D:5 countries
- 25% *de minimus* allowance for all other countries

600 Series

- Most 600 Series ECCNs subject to National Security (NS1), Regional Stability (RS1), Anti-Terrorism (AT1) and UN controls
 - License will still be required for export to most countries (except Canada)
- AES reporting required for all exports
- Subject to U.S. arms embargoes

- BUT exporters can take advantage of some license exceptions

Strategic Trade Authorization

- STA revised to allow more efficient trade between U.S. and allies
- Former USML items now in 600 Series able to be exported under License Exception STA
- Requirements
 - Must satisfy all normal STA requirements (e.g., ECCN specifically allows, foreign consignee statements, etc.)
 - Additional “600 Series” requirements

Strategic Trade Authorization

- 600 Series requirements
 - Export, reexport, or transfer must meet one of three criteria
 1. Ultimate end-use by U.S. government or government of one of 36 countries in Country Group A:5 (NATO & close allies)
 2. Export for return to U.S.
 3. Export for shipping under existing license authorizing STA
 - Non-U.S. party must have been previously authorized on license issued by BIS or DDTC
 - Consignee statement must address ultimate end user restrictions for 600 Series items

Strategic Trade Authorization

- May be useful for companies that frequently export these items to NATO and close U.S. allies
- BIS compliance tool also available
<http://www.bis.doc.gov/index.php/statool>

Replacement Parts and Equipment

- License Exception RPL permits export for purpose of one-for-one replacement of parts
 - Scope has been expanded to include components, accessories, and attachments
 - Must be a replacement for item originally legally exported
 - Will also apply to items exported originally as USML that subsequently transitioned to CCL

600 Series Restrictions on License Exceptions

- May not use any exception other than GOV if article is destined to, shipped from, or was manufactured in D:5 country
- Items controlled for Missile Technology (MT) may not be exported, reexported or transferred under STA
- ECCN 9D610.b, 9D619.b, 9E610.b, and 9E619.b may not use any exception other than GOV

600 Series Restrictions on License Exceptions

- Exports to countries not identified in group D:5 may use only the following exceptions:
 - Limited value (LVS)
 - Temporary import or export (TMP)
 - Replacement Parts and Equipment (RPL)
 - Technology and software unrestricted (TSU)
 - Governments (GOV)
 - Strategic Trade Authorization (STA)

Existing Export Licenses

- Previously issued DDTC export licenses remain valid:
 1. If ALL items on license have transitioned from USML to CCL, license is valid for two years
 2. If SOME items on license have transitioned from USML to CCL, license is valid until expiration date

Brokering Rule Revisions

- Final Rule Issued October 25, 2013
- Clarified vague definitions of “broker” and “brokering activities”
- Changed registration requirements
- Narrowed prior approval requirements

Broker and Brokering Activities

- Formerly applied to “any person who acts as an agent for others” with respect to a defense transaction
- Broker is now limited to:
 - U.S. person
 - Foreign person in the U.S.
 - Foreign person outside the U.S. controlled by a U.S. person

Broker and Brokering Activities

- Brokering Activity formerly meant “acting as a broker” which was both broad and vague
- Brokering Activity now defined as “any action on behalf of another”
 - More akin to traditional brokering
 - Also lists activities not considered brokering
 - Activities by regular employees on behalf of employer
 - General administrative work
 - Promoting goodwill at trade shows
- Activities of Affiliates on behalf of another Affiliate are no longer considered brokering

Registration

- Manufacturers and Exporters no longer required to separately register as Brokers
 - List as Broker on Exporter/Manufacturer Registration
- Affiliates may also be listed as Brokers on the parent company's Registration
- No separate registration fee required

Prior Approval Requirements

- Formerly, prior approval was required before engaging in any brokering activity
- New rule requires prior approval only in limited circumstances
 - Foreign defense articles or services
 - Certain enumerated U.S. origin defense articles (such as aircraft, UAVs, and missile systems)

Conclusion

- USML items must be re-evaluated to determine proper jurisdiction
- If all your USML items have shifted to the CCL you will no longer be required to register with DDTC
- Export control reform is ongoing for other USML categories, notably Category XI
- If in doubt, consult export compliance professionals

Thank You

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