



Export Week!

**Aircraft Part Compliance: Distinguishing EAR Jurisdiction from ITAR Jurisdiction;
Identifying Your ECCN and Using it to Establish the Destination Restrictions**

Aviation Suppliers Association

October 8, 2024



Jason Dickstein



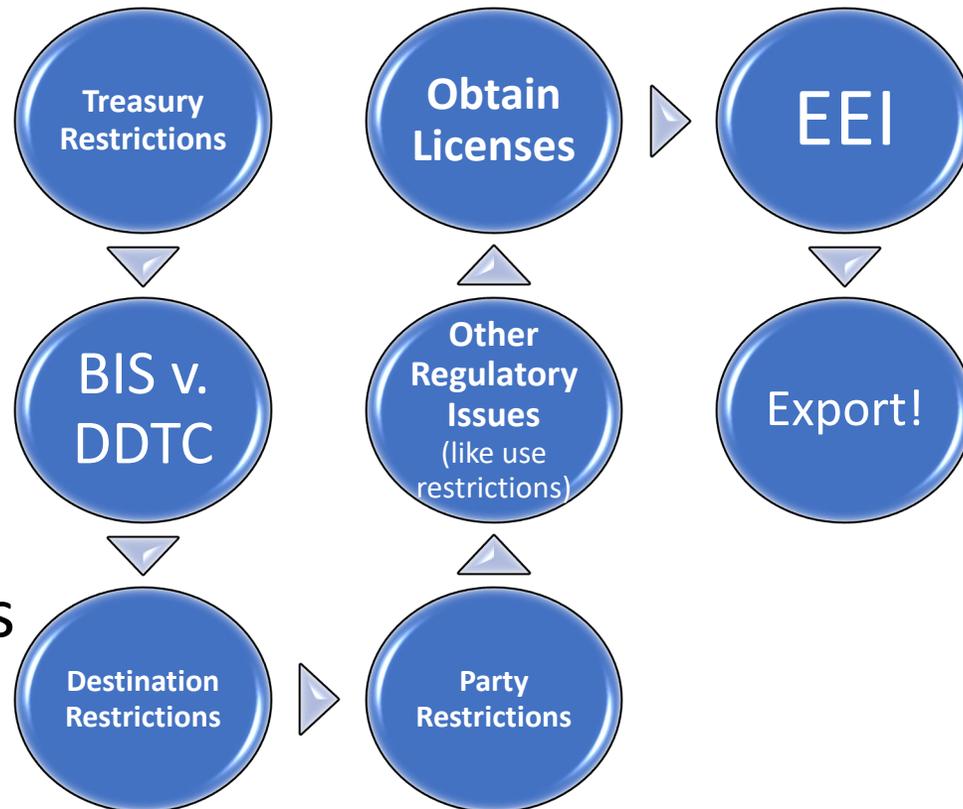
- Advising aviation companies since 1992
- General Counsel to the Aviation Suppliers Association since 1997
- Our law firm represents and counsels air carriers, manufacturers, repair stations and distributors
- Advise businesses on export and airworthiness compliance

Export Week!



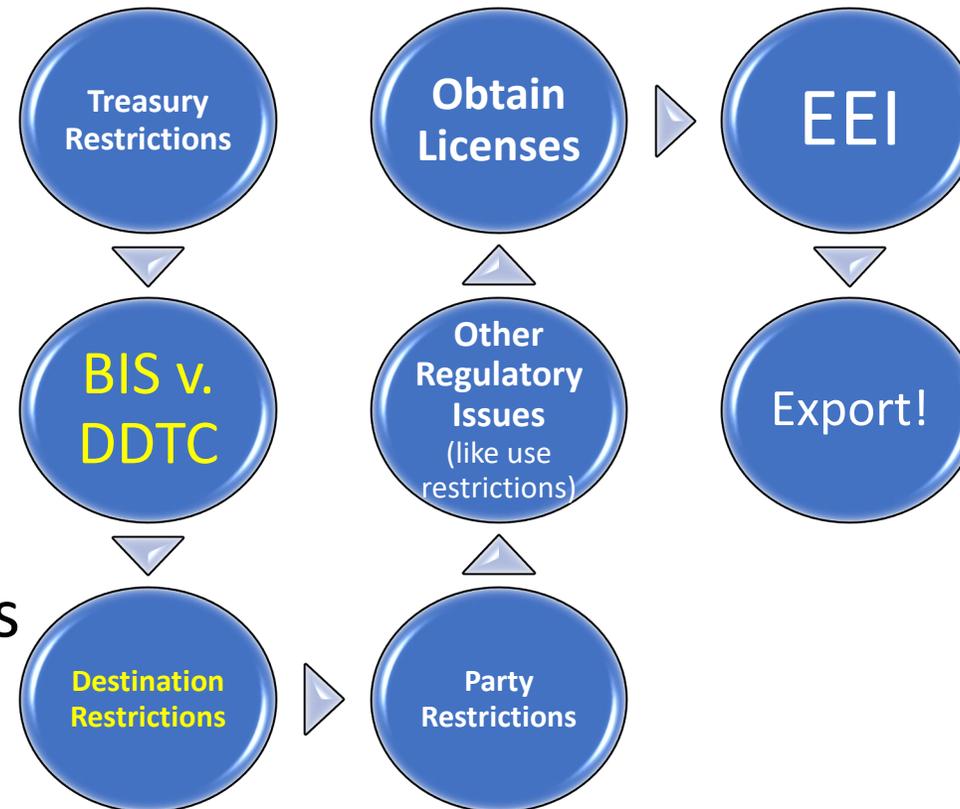
Compliance Can Be a Process

- Look at Treasury restrictions
- Identify whether the article is State or Commerce restricted
- Examine appropriate destination restrictions
- Check party-level restrictions
- Identify other regulatory issues
- Obtain licenses as necessary
- Document the transaction



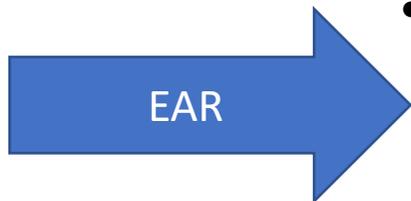
Compliance Can Be a Process

- Look at Treasury restrictions
- Identify whether the article is State or Commerce restricted
- Examine appropriate destination restrictions
- Check party-level restrictions
- Identify other regulatory issues
- Obtain licenses as necessary
- Document the transaction



Identify the Department with Jurisdiction

- Distinguish the U.S. Department with jurisdiction
 - Is it a US Munitions List Item? [STATE Department]
 - Defense articles (many dual-use items have been removed from the USML!!)
 - Check ITARs
 - State has export jurisdiction
 - Otherwise, controlled by BIS [COMMERCE Department]
 - Identify the ECCN
 - Check BIS export administration regulations
 - Commerce has export jurisdiction





Most Civil Aircraft Parts ARE NOT Covered Under the ITARs

- Effective October 15, 2013 many articles were removed from the ITAR and moved into the Commerce Department's regulations
 - Most dual use items were transferred to Commerce
 - Transferred items typically were assigned to "600" series ECCNs
 - E.g. 9A610 for military aircraft components; 9A619 for military engine components
 - All but the most insignificant 600 series articles tend to be subject to licensing
 - Licensing exceptions may be limited
 - This is for articles and components; complete defense aircraft typically remain on the USML (subject to ITAR)



Examples of USML Articles

- Parts for DoD-funded developmental aircraft
- Parts for B-1B, B-2, B-21, F-15SE, F/A-18E/F, E/A-18G, F-22, F-35, F-117
- Parts found in a positive list
 - Published at 22 C.F.R. 121.1 - VIII(h)
 - Articles with defense-specific purposes, like bomb racks, threat-adaptive flight control systems, tailhooks, certain wing folding systems, air-to-air refueling systems, etc.
- Guidance and navigation systems meeting or exceeding certain performance standards (*see, e.g.* Category XI – military electronics)
- Inertial measurement systems designed specifically for defense aircraft (*see, e.g.* Category XII – fire control, laser, imaging and guidance equipment)



Defense Item Analysis: What Next?

- If it is regulated by State Department
 - Register with State Department
 - Assess whether particular State Department Restrictions apply (which might limit licensing options)
 - Obtain appropriate licenses
- Most civil aircraft parts, including avionics for civil aircraft, will not be subject to ITAR



But What if it is Not a Munitions List Item?

If State Doesn't Regulate It, Then Commerce May
Most Civil Aircraft Articles will Fall Within Commerce's
Jurisdiction

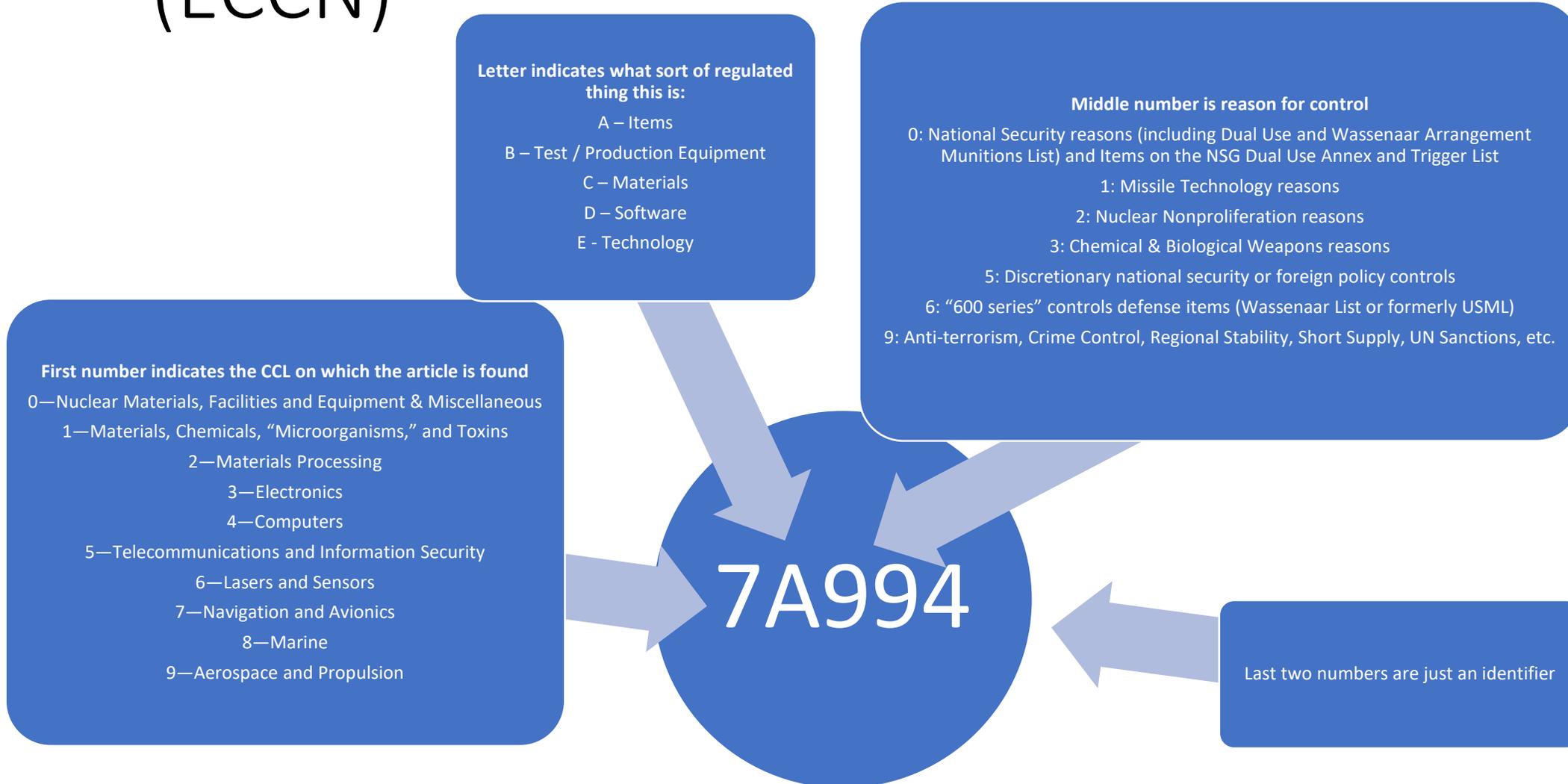


Is it Regulated by the Commerce Department?

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



Export Control Classification Number (ECCN)





Some Sample Aircraft Parts ECCNs

- This list provides common generalized classifications, but you should always check the ECCN – do not rely on this list for classifying any specific article
- Bearings – 1C999, 2A001, 2A101
- Civil Aviation Inertial Reference Units - 7A103
- Many other avionics are 7A994
- Civil avionics calibration and test equipment tends to be 7B001 or 7B994
- Defense aircraft parts – 9A610
- Defense engine parts - 9A619
- Parts “specially designed” for civil aircraft and their engines default to 9A991 if there is no better ECCN

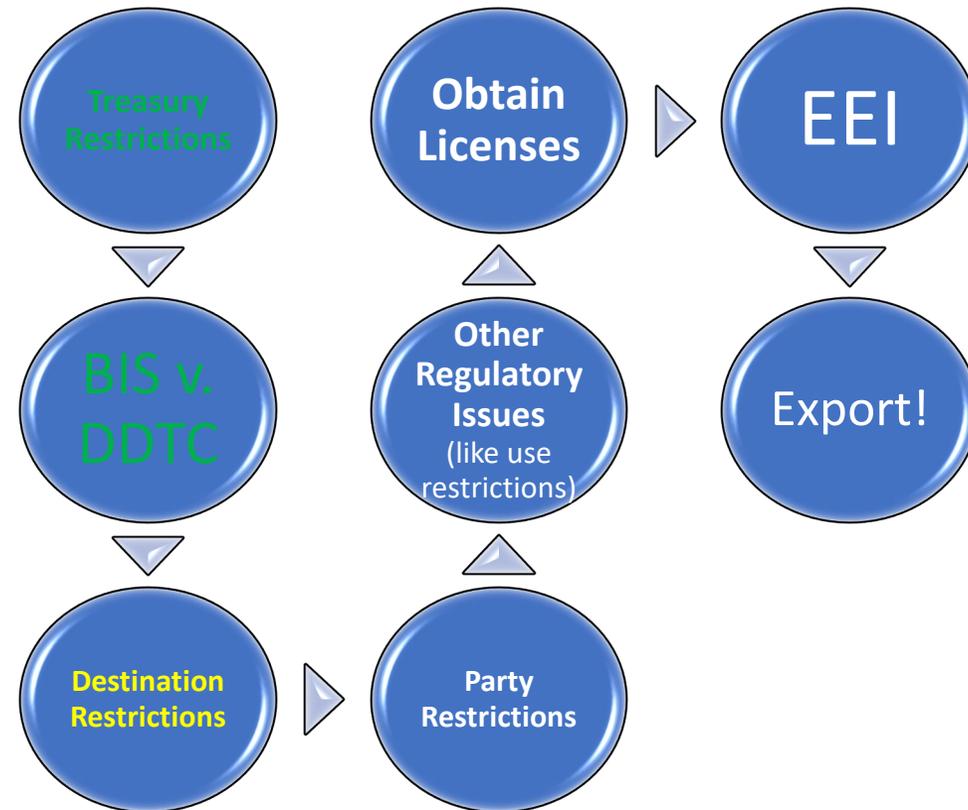
What is NOT Specially Designed

- Several of the ECCNs are limited to things that are “specially designed”
- There is a lengthy discussion of this term at 15 C.F.R. § 772.1
- “Specially designed” **does not** include:
 - Fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin)
 - Washer
 - Spacer
 - Insulator
 - Grommet
 - Bushing
 - Spring
 - Wire
 - Solder



Steps to Compliance

- Look at Treasury restrictions
- Identify whether the article is State or Commerce restricted
- Examine appropriate destination restrictions





Destination Restrictions

- The reasons for control associated with the ECCN help identify destination restrictions.
- Exports to certain destinations may require a license; if the policy is to deny licenses, then this may be a *de facto* prohibition on most exports.
- We use the ECCN from the Commerce Control List to determine reasons for control (e.g., NS1, RS1)
- Cross reference the reason for control against destination in the Commerce Country Chart



Destination Restrictions

Destination Process

1. Identify the correct ECCN

2. Find the ECCN in the CCLs

3. Identify the reasons for control from the CCL

4. Correlate the reasons for control against the destination in the Commerce Country Chart



Finding the Resources

- Commerce Control Lists
- Supplement No. 1 to Part 774
- <https://www.ecfr.gov/current/title-15/part-774>
- Commerce Country Chart
- Supplement No. 1 to Part 738
- <https://www.ecfr.gov/current/title-15/part-738/appendix-Supplement%20No.%201%20to%20Part%20738>



Example One

- You intend to export two aircraft parts that are each classified under ECCN 9A991.d for export purposes.
- You intend to export one part to Sudan
- You intend to export one part to Sri Lanka
- Do you need a license?



Related Controls: N/A
 Related Definitions: N/A
 Items:

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

9A990 Diesel engines, n.e.s., and tractors and “specially designed” “parts” and “components” therefor, n.e.s. (see List of Items Controlled).

License Requirements

Reason for Control: AT

Control(s)	Country Chart (See Supp. No. 1 to part 738)
AT applies to entire entry except 9A990.a.	AT Column 1
AT applies to 9A990.a only.	AT Column 2

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
 GBS: N/A

List of Items Controlled

Related Controls: N/A
 Related Definitions: N/A
 Items:

a. Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 Kpa and 25°)

b. Off highway wheel tractors of carriage capacity 9 mt (20,000 lbs) or more; and major “components” and “accessories,” n.e.s.

c. On-Highway tractors, with single or tandem rear axles rated for 9 mt per axle (20,000 lbs.) or greater and “specially designed” major “components”.

9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

License Requirements

Reason for Control: AT, UN

Control(s)	Country Chart (See Supp. No. 1 to part 738)
AT applies to entire entry	AT Column 1
UN applies to 9A991.a.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
 GBS: N/A

List of Items Controlled

Related Controls: N/A
 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. Aircraft n.e.s.;

c. Aero gas turbine engines, and “parts” and “components” “specially designed” 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. “Parts” and “components,” “specially designed” for “aircraft,” n.e.s.

e. Pressurized aircraft breathing equipment, n.e.s.; and “parts” and “components” “specially designed” 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 (See Supp. No. 1 to part 738)
AT applies to entire entry	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
 GBS: N/A

List of Items Controlled

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 Manufacturing equipment, tooling or fixtures, as follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart (See Supp. No. 1 to part 738)
NS applies to entire entry	NS Column 1
MT applies to equipment for engines controlled under 9A001 for MT reasons and for engines controlled under 9A101	MT Column 1
AT applies to entire entry	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting



9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

License Requirements

Reason for Control: AT, UN

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
AT applies to entire entry	AT Column 1
UN applies to 9A991.a.	See § 746.1(b) for UN controls.

9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

License Requirements

Reason for Control: **AT, UN**

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
AT applies to entire entry	AT Column 1
UN applies to 9A991.a.	See § 746.1(b) for UN controls.



List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items:

*Our parts are
not 9A991.a*

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. Aircraft n.e.s.;

c. Aero gas turbine engines, and "parts" and "components" "specially designed" 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. "Parts" and "components," "specially designed" for "aircraft," n.e.s.

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



Use the Commerce Country Chart

Countries	Chemical and 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
South Africa ²³⁴	X	X				X		X	X			X		X		
South Sudan, Republic of	X	X		X		X	X	X	X	X		X		X		
Spain ³	X					X		X	X							
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan ¹	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 ^{3 4}	X					X		X	X			X		X		
Switzerland ^{3 4}	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		



Use the Commerce Country Chart

Countries	Chemical and 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
South Africa ²³⁴	X	X				X		X	X			X		X		
South Sudan, Republic of	X	X		X		X	X	X	X	X		X		X		
Spain ³	X					X		X	X							
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan ¹	X	X		X		X	X	X	X	X		X		X		
Sweden ^{3 4}	X					X		X	X			X		X		
Switzerland ^{3 4}	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		

¹ See § 746.1(b) for United Nations Security Council Sanctions under the EAR. See § 746.3 for United Nations Security Council-related license requirements for exports and reexports to Iraq or transfer within Iraq under the EAR, as well as regional stability licensing requirements not included in the Country Chart.



Destination Restrictions

- Articles controlled for reason “UN” are restricted from export to the Central African Republic, Democratic Republic of the Congo, Eritrea, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, and Sudan due to UN Security Council arms embargoes (15 C.F.R. § 746.1(b)(2)) – *applies to 9A991.a*
- *9A991.d* articles are restricted from export to some countries under anti-terrorism restrictions
 - Column AT1 on the CCL country chart
 - *No current restrictions* as of October 3, 2023

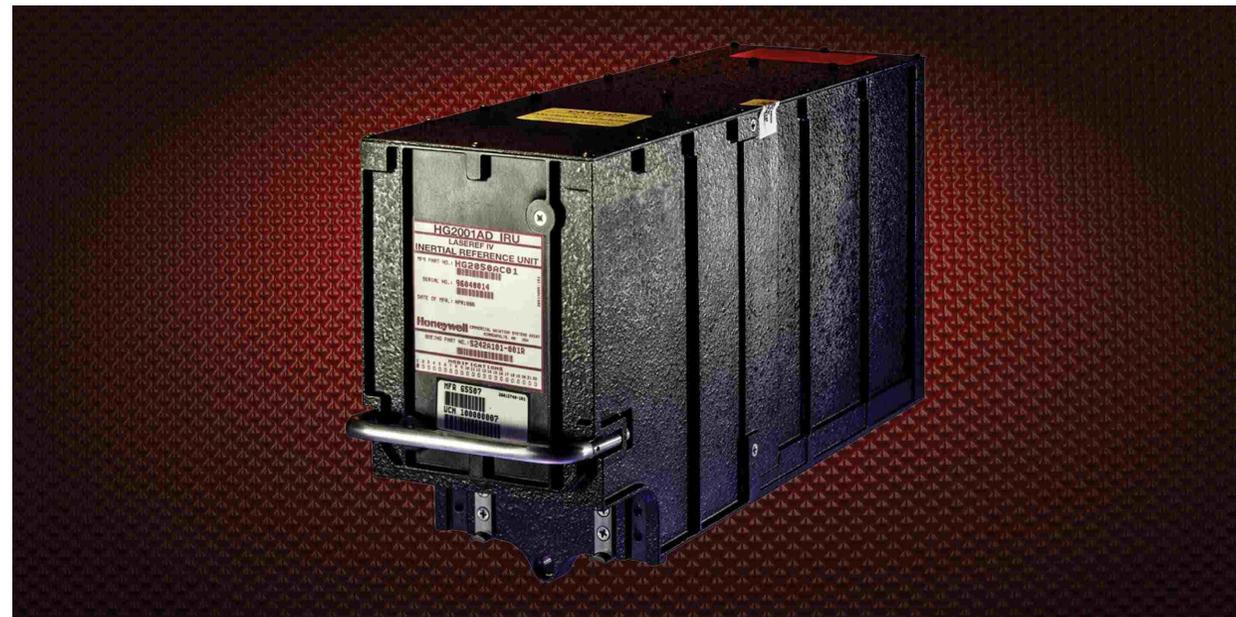


Example One - Answers

- You intend to export two aircraft parts that are each classified under ECCN 9A991.d for export purposes.
- You intend to export one part to Sudan – no license required based on destination (*demilitarized aircraft would be restricted*)
- You intend to export one part to Sri Lanka – no license required based on destination

Example Two

- You intend to export an Air Data Inertial Reference Units (ADIRU).
The unit bears part number HG2050AC01
- Classified under ECCN 7A103.a for export purposes.
- You intend to export the unit to the United Kingdom
- Do you need a license?





Identify the Reasons for Control from the Commerce Control List

7A103 Instrumentation, navigation equipment and systems, other than those controlled by 7A003, and “specially designed” “parts” and “components” therefor, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

Cross-Reference the Reason for Control and the Destination in the Country Chart



ECFR CONTENT

Countries	Chemical and 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
United Kingdom ³	X					X		X	X							
Uruguay	X	X		X		X	X	X	X	X	X	X		X		
Uzbekistan	X	X	X	X		X	X	X	X	X		X	X			
Vanuatu	X	X		X		X	X	X	X	X		X		X		
Vatican City	X	X		X		X	X	X	X	X		X		X		
Venezuela	X	X	X	X	X	X	X	X	X	X	X	X		X		
Vietnam	X	X	X	X		X	X	X	X	X		X	X			
Western Sahara	X	X		X		X	X	X	X	X		X		X		
Yemen	X	X	X	X		X	X	X	X	X		X		X		
Zambia	X	X		X		X	X	X	X	X		X		X		
Zimbabwe	X	X		X		X	X	X	X	X		X		X		

¹ See § 746.1(b) for United Nations Security Council Sanctions under the EAR. See § 746.3 for United Nations Security Council-related license requirements for exports and reexports to Iraq or transfer within Iraq under the EAR, as well as regional stability licensing requirements not included in the Country Chart.

² See § 742.4(a) for special provisions that apply to exports and reexports to these countries of certain thermal imaging cameras.

³ See § 742.6(a)(3) for special provisions that apply to military commodities that are subject to ECCN 0A919.



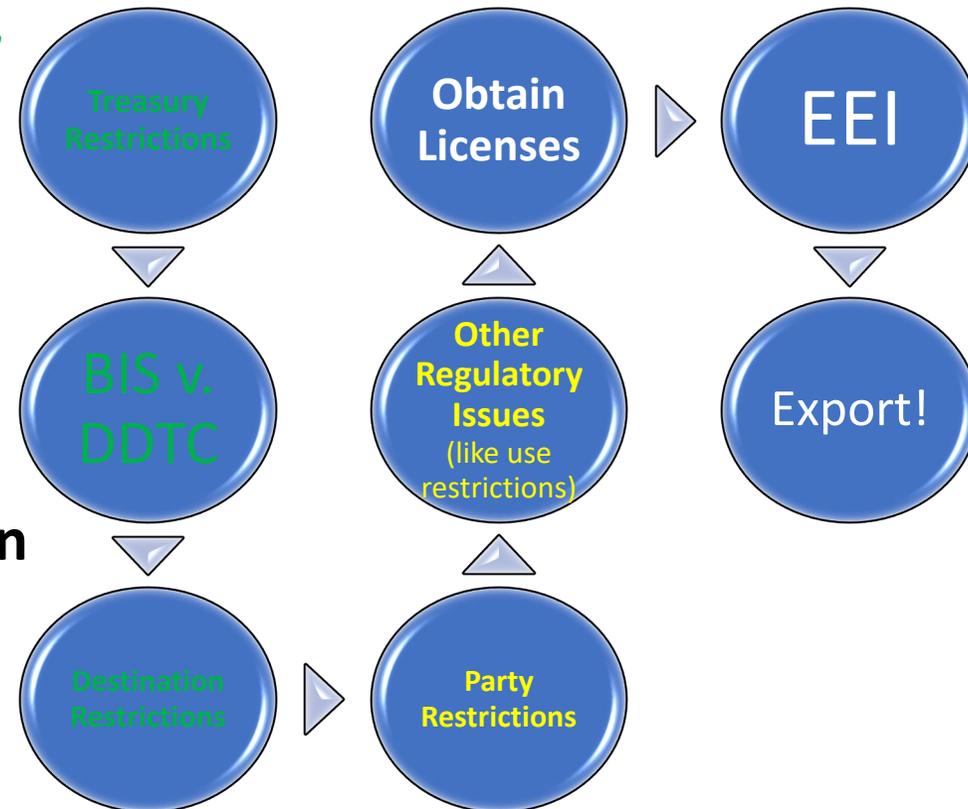
Stay Tuned for Solutions to Our Licensing Obligation

- It appears we need a license to export our ADIRU to the United Kingdom ...
- Tomorrow we will discuss party-level restrictions, use-based restrictions, and aviation-specific rules
- Thursday we will discuss country-based embargos and due diligence related to circumvention efforts
- Friday we will discuss license exceptions, which might help us overcome our need for a license on this transaction!

Steps to Compliance

- So far: Look at Treasury restrictions, distinguish BIS from DDTC and assess destinations

- **Tomorrow's topic:**
- **Aircraft Part Compliance: Forbidden Parties, Use-based Reasons for Control, Aviation-specific rules**





Thank You!



Jason Dickstein

*Aviation Suppliers Association
General Counsel*

Tel: (202) 628-6776

Jason@WashingtonAviation.com