

QUICK REFERENCE EXPORT GUIDE

WHAT IS AN “EXPORT”?

All of these transactions constitute an “export” under US law:

- Physical shipment of EAR-subject goods, technology, or technical data outside US Customs Territory, even when accompanying a traveler (e.g., lap top, CD-ROMs, printed materials, etc.)
- Downloads and emails of technology and technical data outside US
- “Sharing” technology with a foreign national, even on US soil (“deemed” export)

To avoid penalties and other enforcement actions, exporters must ensure that all export are in compliance with US export laws.

Note – if an exporter determines that goods are controlled by the International Traffic in Arms Regulations (ITAR), the requirements of ITAR should be followed instead of the requirements listed herein.

Export Prohibitions

Unless authorized by a U.S. export license or a license exception, it is unlawful to export or reexport an item that is subject to the Department of Commerce’s Export Administration Regulations (EAR) if any of the following prohibitions apply:

General Prohibition 1: No export or re-export of an item that is controlled by the U.S. Commerce Department and when the EAR states that a license is required.

General Prohibition 2: No export of any item made outside the U.S. that incorporates U.S. - origin commodities, software, or technology that is controlled to the export destination if that item: (1) incorporates more than the de minimis amount of controlled U.S. content as defined in the EAR; (2) is controlled for a reason indicated in the applicable export control classification number AND (3) is shipping to a destination that would require an export license as shown in the country chart of the EAR

General Prohibition 3: No export of an item manufactured abroad to Cuba, Libya, or a destination in Country Group D:1 (Supplement No. 1 to part 740 of the EAR) if the item: is the direct product of technology or software that requires a written letter of assurance AND is subject to national security controls as stated in the EAR OR is subject to national security controls AND is the direct product of a plant or component of a plant, where the plant or component is a direct product of technology that requires a letter of assurance

General Prohibition 4: No export in violation of a denial order issued under part 766 of the EAR.

General Prohibition 5: Under the Enhanced Proliferation Control Initiative, export to an end user or for an end use involving nuclear, missile, or chemical biological weaponry (as defined in part 744 of the EAR) is prohibited unless authorized by the U.S. Government. This prohibition is triggered if you "know" or even "have reason to know" of such end users or uses.

General Prohibition 6: No Exports are allowed to embargoed countries.

General Prohibition 7: No assistance with activities (e.g. financing, contracting, service, support) that promote proliferation of nuclear, missile, or chemical biological weaponry as defined in part 744 of the EAR. No rendering of technical assistance to persons outside the U.S. to develop or manufacture outside the U.S. certain encryption items as identified in the EAR.

General Prohibition 8: No export through or in transit through Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

General Prohibition 9: No violation of orders, terms, or conditions of a license or license exception.

General Prohibition 10: No sale, transfer, export, reexport, financing, order, purchase, loan, or servicing of any item subject to the EAR with knowledge that a violation of the EAR, order, license, license authorization has occurred, is about to occur, or is intended to occur.

**For full, current, official regulatory details, consult the U.S. Export Administration Regulations (15 CFR Parts 730-774).*

Thus, a number of “checks” must be run prior to export. In addition, unless an exception applies, exporters may need to complete certain export documentation prior to export (e.g., a Shipper’s Export Declaration, or “SED”).

WHAT CHECKS NEED TO BE CONDUCTED PRIOR TO AN EXPORT?

The initial “check “ preformed prior to an export is generally based on the type of product being exported, and involves obtaining an Export Commodity Classification Number (ECCN) in connection with the Commerce Control List (CCL) and cross-referencing the BIS Country Chart. This process is highly technical and commodity & country specific, and is beyond the scope of this Guide.

The remaining checks can be divided into the following steps:

STEP ONE:	WHERE IS IT GOING? (COUNTRY/REGION)
STEP TWO:	TO WHOM IS IT GOING? (PERSON OR ENTITY)
STEP THREE:	ARE THERE ANY SUSPICIOUS CIRCUMSTANCES?

STEP ONE: WHERE IS IT GOING? (COUNTRY/REGION)

Economic Sanctions

Our government imposes harsh penalties on violators of U.S. sanction laws. Compliance is difficult because sanction laws are complex, confusing, and ever-changing. An embargo against one country may not follow the same rules as an embargo against another country. A patchwork of statutes, regulations, treaties, and directives governs the area. More than one agency may have sanction jurisdiction over trade with an embargoed country.

The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is the agency with primary responsibility for administering our nation’s sanctions laws, but the BIS and DDTC also have jurisdiction over the export of dual-use and munitions items.

The current list of U.S. economic sanctions can be obtained from the OFAC Web site at: <http://www.ustreas.gov/ofac>

If a proposed export is destined for a country subject to US sanctions, the transaction must be suspended, and the company’s exporter compliance manager (ECM) or legal counsel must be informed immediately. Companies should investigate and decide whether to suspend or cancel the transaction, notify legal counsel, apply for an OFAC license, and/or notify the appropriate U.S. Government agencies.

If not, then proceed to STEP TWO.

STEP TWO: TO WHOM IS IT GOING? (PERSON OR ENTITY)

“Bad Guy” Screening Lists

Exporters must also make sure none of the parties involved in the export are on any of the various “Bad Guy” lists of the U.S. Government.

1. Denied Persons List

A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order is prohibited.

2. Unverified List

A list of parties where BIS has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a “Red Flag” that should be resolved before proceeding with the transaction.

3. Entity List

A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.

4. Specially Designated Nationals List

A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC’s regulations may prohibit a transaction if a party on this list is involved. In addition, the Export Administration Regulations require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO" or "IRAQ2".

5. Debarred List

A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.

6. Nonproliferation Sanctions

Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS’s license application denial policy described in §744.19 of the EAR (15 CFR §744.19).

7. General Order 3 to Part 736

This general order imposes a license requirement for exports and reexports of all items subject to the EAR where the transaction involves a party named in the order. This order also prohibits the use of License Exceptions to export or reexport to these parties. These

parties are currently located in: Dubai, United Arab Emirates; Germany; Syria; Lebanon; Malaysia; Iran; and Hong Kong.

Exporters must make certain to screen against only the latest list. The Government periodically updates these lists in the Federal Register. All these lists are published in hard copy and in electronic form. Exporters must check all names, address and principals of all known parties involved in an export.

These lists can be accessed from the following web page of the BIS web site:
<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

When there is a match on the restricted lists, the transaction must be suspended, and the company's ECM or legal counsel must be informed immediately. The ECM/attorney will investigate and decide whether to suspend or cancel the transaction, notify legal counsel, apply for an export license, and/or notify the appropriate U.S. Government agencies.

If not, then proceed to STEP THREE.

STEP THREE: ARE THERE ANY SUSPICIOUS CIRCUMSTANCES?

In addition to the above checks, exporters must not ignore any suspicious circumstances surrounding the export. While one should usually trust their instincts, the BIS provides some guidance via its list of "Red Flags" and in its "Diversion/Anti-Nuclear Proliferation Screening."

Red Flags

Exporters must not ignore suspicious circumstances, known as "Red Flags". If a Red Flag surfaces during a transaction, exporters may not proceed with the transaction. Exporters are under the "know" or "reason to know" standard, and cannot self-blind against export transactions that will violate U.S. export controls.

The following list is not all-inclusive, but should help exporters identify any situation that would constitute a "Red Flag":

1. The customer or its address is similar to one found on the BIS's list of denied persons.
2. The customer is reluctant to offer information about the end-use of the item.

3. The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
4. The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
5. The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
6. The customer has little or no business background.
7. The customer is unfamiliar with the product but still wants the product.
8. Routine installation, training, or maintenance services are declined by the customer.
9. Delivery dates are vague, or deliveries are planned for out of the way destinations.
10. A freight forwarding firm is listed as the product's final destination.
11. The shipping route is abnormal for the product and destination.
12. Packaging is inconsistent with the stated method of shipment or destination.
13. When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.

Also, exports should conduct the anti-diversion Diversion/Anti-Nuclear Proliferation Screening on the following page:

Diversion/Anti-Nuclear Proliferation Screening

Export screening personnel must ask each of the following questions when a foreign purchaser places a new order or requests a change to an existing order. If there is a “yes” answer for any of the questions, investigate the facts surrounding the order to ensure that no improper or illegal destination, end-use, and end-user are involved. If your investigation resolves all your doubts satisfactorily, proceed with the transaction. If your investigation fails to resolve your suspicions or concerns, ***DO NOT PROCEED WITH THE SHIPMENT AND IMMEDIATELY CONTACT THE COMPANY’S ECM OR LEGAL COUNSEL.***

- Y N Is the customer or purchasing agent reluctant to offer information about product's end-use or destination?
- Y N If questioned, the buyer is evasive or unclear about whether the purchased produce is for domestic use, export, or reexport?
- Y N Product ordered is incompatible with the technical sophistication of the country to which the product is being shipped (e.g., semiconductor manufacturing equipment for a country without an electronics industry)?
- Y N Customer has no (or little) business background?
- Y N Customer is willing to pay cash for a very expensive item when the terms of the sale call for financing?
- Y N Customer still wants the product even though product is unfinished or Customer is unfamiliar with product's performance characteristics?
- Y N Customer declines routine installation, training or maintenance services?
- Y N Delivery dates are vague, or deliveries are planned for out-of-the-way destinations?
- Y N The shipping route is abnormal for the product and destination?
- Y N Packaging is inconsistent with the stated method of shipment or destination?
- Y N A freight forwarding firm is listed as the product's final destination or customer uses only a P.O. Box?
- Y N Is there anything about the transaction to suggest the possible shipment or diversion to an illegal destination, end-use, or end-user?
- Y N Is there is anything about the transaction to suggest that it will in any way contribute to the proliferation, design, development, construction, testing, production, shipment, stockpiling, maintenance, reexport, use, or proliferation of nuclear, missile, biological or chemical weapon technology?

Person Performing Screen _____
Title _____
Person’s Initials _____ Business _____
Unit _____ Date _____
Customer/Order Party _____
New Customer? _____ Established Customer? _____