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**Building Blocks of Trade Compliance**

Week 3 – March 9, 2022  
Exporting

Instructor:  
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**EXPORT CONTROLS**



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**EXPORT CONTROLS DEFINED**

- Export Controls are government regulation of the export, reexport and transfer of products, software and information.
- They also include sanctions, including financial, travel and other trade prohibitions.
- Export controls may be unilateral or multilateral.



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### REASONS FOR EXPORT CONTROLS

- Restrict exports of articles with potential military application.
- Prevent proliferation of weapons of mass destruction (nuclear, biological, chemical).
- Prevent terrorism.
- Support foreign policy goals.
- Enhance regional stability.

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### REASONS FOR EXPORT CONTROLS

- In addition to multilateral export controls, the U.S. also imposes certain export and re-export controls for national security, foreign policy, and other reasons.
- Particular restrictions on countries designated as state sponsors of international terrorism.
- Restrictions as well on certain countries, entities and individuals subject to domestic unilateral or UN sanctions.
- Additional restrictions on certain trade and transactions with specified countries, entities, and individuals by U.S. persons or from the United States.

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### EAR ITEMS COVERED

- **The Bureau of Industry and Security (BIS) of the U.S. Commerce Department administers the Export Administration Regulations (EAR).**
- **The EAR cover “dual use” items (those having both civil and potential military applications), along with restrictions imposed for foreign policy and national security reasons.**
- **Articles falling under BIS jurisdiction are “subject to the EAR”.**

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**EAR ITEMS COVERED**

- Commodity: Any article, material, or supply except technology and software.
- Software: A collection of one or more programs or microprograms fixed in any tangible medium of expression.
- Technology (General Technology Note): Specific information necessary for the development, production, or use of a product.
- Includes "technical data" and "technical assistance".

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**EAR ITEMS COVERED**

- Technical data may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
- Technical assistance may take forms such as instruction, skills training, working knowledge, consulting services, and transfer of technical data.

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**EAR ITEMS COVERED**

- Export means an actual shipment or transmission of items out of the United States.
- Export of technology or software includes:
  - Any release of technology or software subject to the EAR in a foreign country; or
  - Any release of technology or source code subject to the EAR to a foreign national ("deemed export").

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### EAR ITEMS COVERED

- Technology or software is "released" for export through:
  - Visual inspection by foreign nationals of U.S.-origin equipment and facilities;
  - Oral exchanges of information in the United States or abroad; or
  - The application to situations abroad of personal knowledge or technical experience acquired in the United States.

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### U.S. AND FOREIGN PERSONS

- **U.S. person is defined as any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3) (asylum status).**
- **A foreign national is anyone other than a U.S. person.**

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### REEXPORT

- Reexport means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country.
- Reexport of technology or software means Any release of technology or source code subject to the EAR to a foreign national of another country is a deemed reexport to the home country or countries of the foreign national ("deemed reexport").

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### SUBJECT TO THE EAR

- “Subject to the EAR” is the term used to describe those commodities, software, technology, and activities over which the Bureau of Industry and Security (BIS) exercises regulatory jurisdiction under the EAR.
- Items within the exclusive jurisdiction of State, Treasury or Energy Departments are not subject to the EAR.
- Threshold question: is an item under another agency’s coverage?
- Requires review of International Traffic in Arms Regulations (ITAR) to determine the answer.

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### SUBJECT TO THE EAR

- “Subject to the EAR” includes all items in the United States and U.S.-origin items in third countries.
- Includes foreign-made items incorporating controlled U.S. origin commodities, software or technology.
- De minimis rule: foreign-produced items may be outside of EAR if controlled U.S. content is below specified value threshold.
- General rule: controlled U.S. origin item can account for no more than 25% of the foreign-produced item’s value.

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### SUBJECT TO THE EAR

- “**Foreign direct product rule**” applies to foreign-made direct products of U.S. origin technology or software controlled for national security reasons.
- It also covers commodities produced by any plant, or major component of a plant, located outside the United States that is a direct product of national security-controlled U.S.-origin technology or software.
- These provisions have been used to limit the supply of third-country semiconductors to Chinese telephone equipment manufacturer Huawei, as semiconductors and production equipment and software are subject to NS (national security) controls.

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### SUBJECT TO THE EAR

- Certain publicly-available information is excluded from EAR, including:
- Information and “software” that:
  - (i) Are published, as described in § 734.7;
  - (ii) Arise during, or result from, fundamental research, as described in § 734.8;
  - (iii) Are released by instruction in a catalog course or associated teaching laboratory of an academic institution;

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### SUBJECT TO THE EAR

- (3) Information and “software” that:
  - (iv) Appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order, or are otherwise patent information as described in § 734.10;
  - (v) Are non-proprietary system descriptions; or
  - (vi) Are telemetry data as defined in Note 2 to Category 9, Product Group E (see Supplement No. 1 to part 774 of the EAR).

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### SUBJECT TO THE EAR

- Unclassified “technology” or “software” is “published,” and is thus not “technology” or “software” subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following:
  - (1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information;
  - (2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents;

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**SUBJECT TO THE EAR**

- (3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public;
- (4) Public dissemination (*i.e.*, unlimited distribution) in any form (e.g., not necessarily in published form), including posting on the Internet on sites available to the public; or
- (5) Submission of a written composition, manuscript, presentation, computer-readable dataset, formula, imagery, algorithms, or some other representation of knowledge with the intention that such information will be made publicly available if accepted for publication or presentation:

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**SUBJECT TO THE EAR**

- (i) To domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications;
- (ii) To researchers conducting fundamental research; or
- (iii) To organizers of open conferences or other open gatherings.

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**SUBJECT TO THE EAR**

- "Technology" or "software" that arises during, or results from, fundamental research and is intended to be published is not subject to the EAR.
- Fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

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### SUBJECT TO THE EAR

- “Technology” or “software” that arises during, or results, from fundamental research is intended to be published to the extent that the researchers are free to publish the “technology” or “software” contained in the research without restriction.

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### SUBJECT TO THE EAR

- Determine whether U.S. origin item is controlled to the country of reexport; if it is not controlled to that destination, it is not necessary to include it in de minimis calculation.
- Must compare commodities to commodities, software to software, and technology to technology.
- Sanctioned countries (Iran, North Korea): 10% maximum.
- Syria: all items controlled and must be included in calculation.

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### SUBJECT TO THE EAR

- Certain articles ineligible for de minimis treatment, e.g.:
- “Supercomputer” semiconductors.
- Specified encryption technology.
- Specified instrument systems and automatic flight control systems.
- QRS-11 aircraft instrument sensors.
- Specified cameras used in military items.

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### SUBJECT TO THE EAR

- Certain activities of U.S. persons related to the proliferation of nuclear explosive devices, chemical or biological weapons, missile technology, and the proliferation of chemical weapons.
- Activities of U.S. or foreign persons prohibited by any order issued under the EAR.

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### SUBJECT TO THE EAR

1. Am I involved in an activity related to proliferation of nuclear explosive devices, chemical or biological weapons, "missiles," technical assistance with relationship to encryption; or activities prohibited by any order issued under EAR?
2. Is the item I am planning to export or reexport subject to **exclusive** jurisdiction of another U.S. Government Federal Department or Agency?
3. Does my export or reexport consist of prerecorded phonograph records, printed books, pamphlets, & miscellaneous publications as described in the EAR?

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### SUBJECT TO THE EAR

4. Is technology or software I am planning to export publicly available?
5. Is the technology or software I am planning to export publicly available & include encryption?
6. Is my item in the US?
7. Is my item outside of the US, but of US origin?

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### SUBJECT TO THE EAR

- 8. Does my foreign made item incorporate US origin items exceeding de minimis limits defined in 734.4 or Supp. No. 2 to part 734?
- 9. Is the foreign-made item a direct product of U.S. origin technology or software, 736.2(b)(3), & destination is Cuba or a destination in Country Group D:1?

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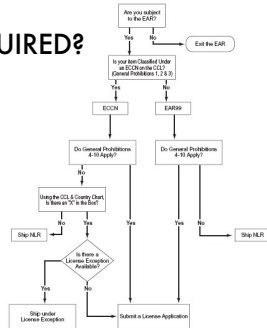
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### IS A LICENSE REQUIRED?

EAR Decision Tree



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### WHO IS THE EXPORTER?

- U.S. principal party in interest (PPI) is the seller or other party receiving primary benefit of transaction.
- Routed export is a transaction where the foreign PPI authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.
- The U.S. PPI is the exporter and must determine licensing authority and obtain appropriate authorization *unless* foreign PPI expressly assumes this responsibility and designates its U.S. agent as the exporter for EAR purposes.

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### GENERAL PROHIBITIONS

- 1. Export & reexport of controlled items to listed countries.
- 2. Reexport & export from abroad of foreign made items incorporating more than a de minimis amount of controlled US content.
- 3. Reexport & export from abroad of the foreign produced direct product of US technology & software.
- 4. Engaging in actions prohibited by a denial order.
- 5. Export or reexport to prohibited end-uses or end-users.

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### GENERAL PROHIBITIONS

- 6. Export or reexport to embargoed destinations.
- 7. Support of proliferation activities.
- 8. In-transit shipments & items to be unladen from vessels or aircraft.
- 9. Violation of any order, terms, & conditions.
- 10. Acting with knowledge of violation to occur.

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### COMMERCE CONTROL LIST

The Commodity Control List (CCL) comprises those commodities, software, and technology that BIS has specifically identified as subject to export and reexport controls. It identifies the item controlled, the reason(s) for control, the destinations to which the controls apply, and whether license exceptions are available for the item.

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## COMMERCE CONTROL LIST

The CCL is organized in 10 categories.

- 0 Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1 Materials, Chemicals, "Microorganisms" and Toxins
- 2 Materials Processing
- 3 Electronics
- 4 Computers
- 5 Telecommunications and Information Security
- 6 Lasers and Sensors
- 7 Navigation and Avionics
- 8 Marine
- 9 Propulsion Systems, Space Vehicles and Related Equipment

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## COMMERCE CONTROL LIST

Each category is subdivided as follows:

- A Equipment, Assemblies and Components
- B Test, Inspection and Production Equipment
- C Material
- D Software
- E Technology

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## CONTROLLED TECHNOLOGY

- Controlled technology is specific information necessary for the development, production or use of a product.
- Controlled technology nearly always relates to a specific product on the CCL.
- Does not include public information.

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## DEVELOPMENT

Related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

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## PRODUCTION

All production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

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## USE

Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

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**REASONS FOR CONTROL**

- Anti-Terrorism (AT)
- Chemical & Biological Weapons (CB)
- Crime Control (CC)
- High Performance Computer (XP)
- Missile Security (MT)
- National Security (NS)
- Nuclear Nonproliferation (NP)
- Regional Stability (RS)
- Short Supply (SS)
- United Nations Sanctions (UN)

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**TYPES OF CONTROLS**

CCL Based

- Is product covered by CCL?
- Reason for Control in ECCN
- Controlled for that reason to specific country?
- If so, is license exception available?

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**TYPES OF CONTROLS**

Proliferation Based

- Is product going to identified project?
- Is end user engaged in proliferation activities?

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### Country Group C

[RESERVED]

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### Country Group D

Country	[D-1] National Security	[D-2] Nuclear	[D-3] Chemical & Biological	[D-4] Missile Technology
Algeria			X	
Albania	X			
Armenia	X		X	
Australia	X		X	
Bahrain			X	X
Belarus	X		X	
Belize	X		X	
Canada	X		X	
China (PRC)	X		X	X
Cuba		X	X	
Egypt			X	X
Georgia	X		X	
India		X	X	X
Iran		X	X	X
Iraq	X		X	X
Israel		X	X	X
Jordan			X	X
Kazakhstan	X		X	
Korea, North		X	X	X
Kuwait			X	X
Kyrgyzstan	X		X	
Lebanon	X			

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### Country Group E 1

Country	[E-1] Terrorist Supporting Countries*	[E-2] Unilateral Embargo
Cuba	X	X
Iran	X	
Korea, North	X	
Sudan	X	
Syria	X	

\*In addition to the controls maintained by the Bureau of Industry and Security pursuant to the EAR, note that the Department of the Treasury administers: (A) a comprehensive embargo against Cuba, Iran, and Sudan; and (B) an embargo against certain persons, e.g., Specially Designated Nationals (SDN), Foreign Terrorist Organizations (FTO), Specially Designated Global Terrorists (SDGT), and Specially Designated Terrorist Transactions (SDTT). Please see part 744 of the EAR for controls maintained by the Bureau of Industry and Security on these and other persons.  
 †The President made applicable with respect to Iraq provisions of law that apply to countries that have supported terrorism.

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### TYPES OF CONTROLS

Purchaser/end user Based

- Types of Controls.
- Entities list, prohibited proliferation activities.
- Denied Persons List.
- Specially Designated Terrorists.
- Designated Foreign Terrorist Organizations.
- Specially Designated Nationals.

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### ECCN 9A001

- CATEGORY 9 - AEROSPACE AND PROPULSION
- A. SYSTEMS, EQUIPMENT AND COMPONENTS
- *N.B.: For propulsion systems designed or rated against neutron or transient ionizing radiation, see the U.S. Munitions List, 22 CFR part 121.*
- 9A001 Aero gas turbine engines incorporating any of the "technologies" controlled by 9E003.a, 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 to only to those MT Column 1 engines that meet the characteristics listed in 9A101

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### ECCN 9A001

- 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: See also 9A101 and 9A991
- Related Definitions: N/A
- Items:
  - a. Incorporating any of the technologies controlled by 9E003.a.; or

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### ECCN 9A001

- Note: 9A001.a. does not control aero gas turbine engines which meet all of the following:
- a. Certified by the civil aviation authority in a country listed in Supplement No. 1 to Part 743; and
- b. Intended to power non-military manned aircraft for which any of the following has been issued by a Participating State listed in Supplement No. 1 to Part 743 for the aircraft with this specific engine type:
  - b.1. A civil type certificate; or
  - b.2. An equivalent document recognized by the International Civil Aviation Organization (ICAO).

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### ECCN 9A001

- b. Designed to power an aircraft designed to cruise at Mach 1 or higher, for more than 30 minutes.

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### ECCN 9E003.a

- 9E003 Other "technology" as follows (see List of Items Controlled).
- License Requirements
- Reason for Control: NS, SI, AT
- Control(s) Country Chart
- NS applies to entire entry NS Column 1
- SI applies to 9E003.a.1 through a.11, and h. See §742.14 of the EAR for additional information.
- 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.

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**ECCN 9E003.a**

- License Exceptions
- CIV: N/A
- TSR: N/A
- List of Items Controlled
- Unit: N/A
- *Related Controls:* 1.) Hot section "technology" specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State.

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**ECCN 9E003.a**

- "Technology" is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department of Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.
- *Related Definitions:* N/A

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**ECCN 9E003.a**

- *Items:*
- a. "Technology" "required" for the "development" or "production" of any of the following gas turbine engine components or systems:
- a.1. Gas turbine blades, vanes or tip shrouds, made from directionally solidified (DS) or single crystal (SC) alloys and having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000°C) at a stress of 200 MPa, based on the average property values;

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**ECCN 9E003.a**

- a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540° C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;
- a.3. Components manufactured from any of the following:
  - a.3.a. Organic "composite" materials designed to operate above 588 K (315°C);
  - a.3.b. Metal "matrix" "composite", ceramic "matrix", intermetallic or intermetallic reinforced materials, controlled by 1C007; *or*
  - a.3.c. "Composite" material controlled by 1C010 and manufactured with resins controlled by
    - 1C008;

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**ECCN 9E003.a**

- a.4. Uncooled turbine blades, vanes, tip-shrouds or other components, designed to operate at gas path total (stagnation) temperatures of 1,323 K (1,050°C) or more at sea-level static take-off (ISA) in a 'steady state mode' of engine operation;
- a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path total (stagnation) temperatures of 1,643 K (1,370°C) or more at sealevel static take-off (ISA) in a 'steady state mode' of engine operation;

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**ECCN 9E003.a**

- a.6. Airfoil-to-disk blade combinations using solid state joining;
- a.7. Gas turbine engine components using "diffusion bonding" "technology" controlled by 2E003.b;
- a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;
- a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

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### ECCN 9E003.a

- a.10. Adjustable flow path geometry and associated control systems for:
  - a.10.a. Gas generator turbines;
  - a.10.b. Fan or power turbines;
  - a.10.c. Propelling nozzles; or
- *Note 1: Adjustable flow path geometry and associated control systems in 9E003.a.10 do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves, for compressors.*
- *Note 2: 9E003.a.10 does not control "development" or "production" technology for adjustable flow path geometry for reverse thrust.*
- a.11. Hollow fan blades;

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### ECCN 9A101

- 9A101 Turbojet and turbofan engines (including turbocompound engines), other than those controlled by 9A001, as follows (see List of Items Controlled).
- a. Engines having both of the following characteristics:
  - a.1. Maximum thrust value greater than 400 N (achieved un-installed) excluding civil certified engines with a maximum thrust value greater than 8,890 N (achieved un-installed), and
  - a.2. Specific fuel consumption of 0.15 kg/N/hr or less (at maximum continuous power at sea level static and standard conditions); or

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### ECCN 9A101

- b. Engines designed or modified for use in "missiles", regardless of thrust or specific fuel consumption.

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### Restricted Parties

The Entity List identifies persons involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons. The consequence of Entity List designation is that "exports, reexports, or transfers (in-country) of items subject to the EAR involving these entities" are prohibited without a BIS license.

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### Restricted Parties

Placement on the Entity List is increasingly used to target foreign commercial interests. Huawei and its affiliates, wherever located, are prohibited from exports, reexports and on-country transfers of any items subject to the EAR. The foreign direct product rule was expanded specifically to limit Huawei's ability to obtain foreign-made electronic components, and downstream products made with them.

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### Restricted Parties

The Denied Persons List identifies domestic and foreign parties that have had their export privileges revoked. In general, they are prohibited from exporting or receiving, respectively, any items subject to the EAR.

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### Restricted Parties

- Effective on June 29, 2020, the United States imposed export license requirements on specified electronics and other products to military end uses or end users in China, Russia and Venezuela.
- License requirements apply to exports, reexports, or transfers (in-country) of listed items, when the supplier has knowledge that the article is intended for a military end use military end user.
- The rule is an expansion of existing restrictions with three elements: recipient is either a military end user or will employ the product for a military end use, products are among those specifically identified for control, and they are subject to U.S. regulatory jurisdiction.

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### Restricted Parties

- "Military end use" means the article: will be incorporated into a military item identified in U.S. control lists of military products (U.S. Munitions List, Commerce Control List ), or supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of these items.
- This is a broad definition that encompasses production of weapons and related parts and components on U.S. control lists, as well as nearly all support services relating to weapons.
- "Military end use" activities may be performed by commercial entities as well as armed services.
- Suppliers should determine the applications for which their products will be used to meet the "knowledge" standard.

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### Restricted Parties

- "Military end user means: national armed services, national guard, national police, government intelligence or reconnaissance organizations, and any person or entity whose actions or functions are intended to support military end uses as defined above.
- Includes both armed forces and government and commercial entities that "support" military end uses, i.e., weapon production and services relating to weapons.
- "Support" provision applies to any entity engaged in those activities in its entirety, so its non-military activities also are covered.

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### Restricted Parties

- Products requiring licenses are identified on Commerce Control List and include (partial listing): electronic devices and components, general purpose electronic equipment (including electronic test equipment), equipment and specially designed parts thereof for the manufacture of electronic parts, components and materials, equipment for inspection or testing of electronic components and materials, digital computers, telecommunications test equipment, encryption hardware and software, and civil aircraft parts.
- Controls on these articles do not otherwise apply to China, Russia and Venezuela, and products that are not on the list of controlled articles fall outside the license requirement and may be supplied without regard to military end use/end user status.

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### Part 746—Embargoes & Other Special Controls

Part	Country	Products Affected
746.2	Cuba	All CCL and EAR99 items with limited exceptions.
746.3	Iraq	Arms and related materiel and their means of production, except items required by the Iraq Government to meet the United Nations Security Council Resolution 1546.
746.4	North Korea	All CCL and EAR99 items with limited exceptions.
746.5	Russian Industry Sector	Directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia or are unable to determine whether the item will be used in such projects.
746.6	Crimea Region of Ukraine	All CCL and EAR99 items with limited exceptions.
746.7	Iran	All CCL items with limited exceptions; EAR99 items under OFAC.
746.9	Syria	All CCL and EAR99 items with limited exceptions.

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### INTERNATIONAL TRAFFIC in ARMS REGULATIONS (ITAR)

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### ITAR Coverage

- ITAR are administered by the Directorate of Defense Trade Controls (DDTC) of the State Department to regulate trade in munitions, including “defense articles” and “defense services”.
- Defense articles are commodities or technical data that are identified on United States Munitions List (USML).
- USML identifies specific products (“artillery”) as well as equipment and technical data related to such products.
- USML also identifies items that are “Significant Military Equipment” (SME) and “Major Defense Equipment” subject to additional restrictions.

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### ITAR Coverage

- SME includes:
  - Category I, XVI, and XVII hardware.
  - Launch vehicles, missiles, rockets, and similar items.
  - Military explosives.
  - Warships and components, naval nuclear propulsion plants.
  - Armed, armored and amphibious vehicles.
  - Military aircraft, spacecraft, engines, ground effects machines, inertial guidance systems.
  - Fire control systems.
  - Chemical, biological, and radiological agents.

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### ITAR Coverage

- Defense Department has substantial role in ITAR administration as well, particularly in interpretations of the USML’s coverage and export licensing decisions.
- Defense Department components involved are relevant military branch, Defense Technology Security Agency (DTSA), Defense Security Service (DSS), and Defense Advanced Research Projects Agency (DARPA).
- Unlike the EAR, nearly every activity subject to ITAR requires DDTC authorization, in the form of a license, agreement, or general correspondence ruling.
- License exemptions are limited in number and narrow.

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### USML Coverage

- Starting point in export classification analysis is whether an item is on the USML; only if it is not do you review EAR.
- Not all items used in military applications are covered by ITAR.
  - "Off the shelf" commercial hardware used in an ITAR product or for other military purposes.
  - "Military" items not identified on USML, for example, uniforms.
  - Certain articles identified in EAR, for example, ECCN 9A018 vehicles.
- On the other hand, ITAR items used in non-military applications remain subject to ITAR.

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### USML Coverage

- USML covers certain commercial items (satellites) (substantially revised after export control reform).
- Products made with USML technical data also likely to be covered by USML.
- There is no time limit for ITAR coverage; instead, an article on the USML remains there until removed by DDTTC through regulatory change or Commodity Jurisdiction (C.J) determination.
- USML items incorporated into non-USML articles nevertheless remain subject to the ITAR, for example, military aviation sensors used in navigation equipment for civil aircraft ("see-through" rule).

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### USML Coverage

- Old rule for designation on USML considered whether a product or technical data:
  - (a) is specifically designed, developed, configured, adapted, or modified for a military application, and
    - (i) Does not have predominant civil applications, and
    - (ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or
  - (b) is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under [ITAR] is necessary.

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### USML Coverage

- Commodity Jurisdiction (CJ) process provides authoritative determination of whether a product or technology is covered by USML.
- Used to classify defense articles or disclaim USML jurisdiction.
- Also used to determine whether a previously-designated defense article should be removed from USML.
- CJ criteria are set forth in ITAR (22 C.F.R. 120.4).

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### USML Coverage

- The USML consists of 21 product categories (Category XVIII has been reserved for future use).
- I Firearms
- II Artillery Projectors
- III Ammunition
- IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
- V Explosives, Propellants, Incendiary Agents, and Their Constituents
- VI Vessels of War and Special Naval Equipment

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### USML Coverage

- VII Tanks and Military Vehicles
- VIII Aircraft and Associated Equipment
- IX Military Training Equipment
- X Protective Personnel Equipment
- XI Military Electronics
- XII Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII Auxiliary Military Equipment
- XIV Toxicological Agents and Equipment and Radiological Equipment

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### USML Coverage

- XV Space Systems and Associated Equipment
- XVI Nuclear Weapons Design and Test Equipment
- XVII Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII Directed Energy Weapons
- XIX [Reserved]
- XX Submersible Vessels, Oceanographic and Associated Equipment
- XXI Miscellaneous Articles

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### USML Coverage

- Each category also includes "components, parts, accessories, attachments and associated equipment specifically designed or modified" for the specific named items.
- USML coverage applies regardless of the intended recipient or end-use of the article. USML articles for use in civilian applications or exported to civilian entities remain covered.
- USML coverage does not distinguish between domestic and foreign commodities or technical data.

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### ITAR Coverage

- A U.S. person is a natural person who is a United States citizen, a lawful permanent resident (Green Card holder) under 8 U.S.C. § 1101(a)(20), or a protected individual under 8 U.S.C. § 1324b(a)(3), or any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States and any governmental (federal, state or local) entity.

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### ITAR Coverage

- Foreign person is defined as "Any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3); any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions)."

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### ITAR Coverage

- Technical data is defined as "Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation."
- Technical data does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain.

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### ITAR Coverage

- The public domain means "information which is published and which is generally accessible or available to the public," including such means as sales at newsstands and bookstores and through unrestricted subscriptions, availability in libraries or through patents, or disclosure at conferences.
- "Fundamental research" conducted in centers of higher education that is "published and shared broadly in the scientific community" is also part of the public domain, while research results with restricted dissemination under university or government grant requirements is not.

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### ITAR Coverage

- Technical data under the ITAR also excludes “basic marketing information on function or purpose or general system descriptions of defense articles.”
- Defense services are defined as “the furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.”

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### ITAR Coverage

- Defense services also include “the furnishing to foreign persons of any technical data controlled under” the USML, “whether in the United States or abroad.”

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### Activities Covered by ITAR

- Temporary imports of defense articles (but not technical data); origin is irrelevant.
- Temporary import means “bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination.”
- Retransfer or reexport of USML items, meaning “the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.”

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### Activities Covered by ITAR

- Transfers, retransfers and reexports of foreign-made items that incorporate previously-exported USML items (hardware), technical data, or defense services.

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### ITAR Coverage

- "Export" means "sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data."
- Thus, the temporary or permanent physical removal of a defense article from the United States is considered to be an export.

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### ITAR Coverage

- Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy or any agency or subdivision of a foreign government (e.g., diplomatic missions);
- Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad;
- Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

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### Forms of Export

- Sending of defense articles from the U.S. to another country on a temporary or permanent basis.
- Disclosure of technical data to foreign person in the U.S. or abroad.
  - Similar to EAR "deemed export" rule.
  - DDTTC considers mere access by foreign person to constitute an export of technical data. Embassy transfers included as well.
- Exports to U.S. government agencies (may be covered by license exemption).

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### Forms of Export

- Maquiladora shipments.
- Meetings with foreign persons.
- Sales or marketing proposals to prospective foreign purchasers.

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### License Requirements

- A license is required for the temporary or permanent exportation of defense articles.
- With limited exemptions, a license also is required for the temporary importation of defense articles into the United States.
- Exemptions include servicing, testing and repair, and require documentation with U.S. Customs.
- Permanent importation of defense articles is within jurisdiction of BATF, which uses a variant of the USML to determine whether a license is required.

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### ITAR Authorizations

- DSP-5 license for hardware exports and exports to foreign national employees.
- Technical Assistance Agreement (TAA) for export/disclosure of technical data to foreign purchaser or other foreign parties and defense services.
- Manufacturing License Agreement (MLA) for foreign production.
- Warehouse Distribution Agreement (WDA) for foreign distribution point.
- General Correspondence (GC) for other transactions requiring DDTC approval.

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### Registration

- Manufacturers, exporters and brokers of defense articles required to register with DDTC and renew annually.
- Registration identifies company and affiliates, corporate officers, and USML categories in which it deals.
- Registration unnecessary for U.S. government officials, persons that only produce unclassified technical data, activities subject to Atomic Energy Act, and producers of articles for research and development purposes only.

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### Registration

- Changes must be notified to State within specified period: 60 days for foreign company acquisition, 5 days for changes in ownership, executives, or other material information.
- Registrant must appoint Empowered Official (EO).
- EO is management level ITAR compliance, licensing and training officer who must have direct access to senior management and independent ability to review and if necessary halt proposed transactions without retaliation.

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## Registration

- EO signs ITAR documents (such as license applications) and is required to have knowledge of all ITAR subjects (jurisdiction, classification, licensing, record-keeping, training, laws and regulations, policies and procedures, shipping documentation and requirements, compliance monitoring and auditing, and corrective action plans.
- EO also provides management oversight to verify legality of transactions, limit corporate liability and prevent the potential loss of U.S. government contracts and export privileges.

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