TRADE INFORMATION CENTER Q&A

# ASK THE TIC

## GUIDE TO EXPORT CONTROLS

by the Trade Information Center, Trade Development

Most export transactions do not require specific approval from the U.S. Government. In order for certain export transactions to take place legally, however, an exporter must obtain, in advance, a special export permission called a license. Licenses are required in certain situations involving national security, foreign policy, short supply, nuclear non-proliferation, missile technology, chemical and biological weapons, regional stability, crime control or terrorist concerns.

Four U.S. Government agencies have primary export licensing responsibilities: the Departments of Commerce, Energy, State and the Treasury. The majority of exports requiring licenses are either controlled on the Commerce Control List (CCL), administered by the Commerce Department, or the U.S. Munitions List (USML), administered by the State Department. The CCL is used to regulate the export and re-export of items that have commercial uses, but also have possible military applications ("dual-use" items). The USML is used to control the export of defense articles, services and related technologies. The Defense Department is actively involved in the interagency review of those items controlled on both the CCL and the USML. The agencies work together when there is a question about whether a proposed export is controlled on the CCL or the USML. The Energy Department controls nuclear technology and technical data for nuclear power. These agencies collectively review certain proposed dual-use exports.

The Treasury Department is responsible for economic and trade sanctions against targeted foreign countries, terrorism-sponsoring organizations and international narcotics traffickers.

Several other federal agencies also have some licensing responsibilities. These are listed on the Commerce Department's website(www.bxa.doc.gov/reslinks.htm) along with a brief explanation of each agency's responsibilities.

The U.S. Government controls exports on a case-by-case basis, examining the following factors: the destination, the end-user, the product and the end-use. Those entities handling or servicing the sale of the product may also be a factor. When a company decides to export, it must review the following factors for each transaction.

### Q& THE DESTINATION: ARE THERE COUNTRIES TO WHICH I AM NOT PERMITTED TO EXPORT?

The United States severely restricts exports to several countries. Certain exports to those countries, however, may be approved with a license. The Office of Foreign Assets Control (OFAC) at the Treasury Department has information about embargoed countries on its website (www.treas.gov/ofac) or the office can be contacted at Tel: (202) 622-2426. Currently, U.S. persons are generally prohibited from exporting to Cuba, Iran, Iraq, Libya, North Korea, the Republic of Serbia (excluding the province of Kosovo), Sudan, the Taliban-controlled areas in Afghanistan, and prohibited from exporting arms and related material, and petroleum and petroleum products to the UNITA faction in Angola without a license. In most cases, licenses are issued for exports of agricultural goods, medicines and medical equipment to sanctioned countries. Other, less comprehensive export restrictions exist for most destinations, including those for China, India, Pakistan and Syria. The exact requirements vary dramatically based on the factors listed below.

### Q& THE END USER: ARE THERE ENTITIES TO WHICH I AM NOT PERMITTED TO EXPORT?

Exporters should screen all parties involved in an international transaction against the "Prohibited Parties Lists". The "Prohibited Parties Lists" is a term used to describe the following four lists of entities with which an exporter is prohibited from doing business under most circumstances.

- The Specially Designated Nationals (SDN) List is published by the Treasury Department's OFAC and can be accessed online at www.treas.gov/ofac. SDNs are individuals and entities located all over the world that are blocked pursuant to the various sanctions programs or that have been determined by OFAC to be owned or controlled by, or act for or on behalf of, targeted governments and groups. They may be front companies, parastatals, high-level government agencies or officials, or specifically identified individuals. The same prohibitions apply to SDNs as to the targeted governments or groups that own or control them, or on whose behalf they are acting. The SDN List also includes the names of persons and entities designated by OFAC as terrorists or narcotics traffickers.

- The Denied Persons List contains the names of persons who have been issued a denial order by the Commerce Department's Bureau of Export Administration (BXA). U.S. exporters and third parties in general are prohibited from dealing with denied parties in transactions involving U.S. items. The list can be accessed at http://www.bxa.doc.gov.

- BXA also maintains an Entities List, comprising foreign end-users engaged in proliferation activities. Since these entities pose proliferation concerns, exports to them are usually prohibited without a license. However, because the BXA guidelines are administered on a case-by-case basis, there are some listed entities that can still receive low-level technology without an export license. This list can be accessed online at www.bxa.doc.gov.

- The Debarred Parties List is maintained by the State Department. It lists the names of individuals denied export privileges under the International Traffic in Arms Regulations (ITAR). The information can be accessed online at www.pmdtc.org.

Even if a party is not a prohibited entity, the end-user will become an important factor if a transaction needs a license. The license issuing agency will want to screen the foreign customer's history and examine any prior violations of U.S. laws or placement on any of the lists mentioned above. The U.S. company applying for the license should also know not just who the customer is, but who owns the company.

## THOSE SERVICING THE SALE OF THE PRODUCT: WHAT ABOUT SHIPPING LINES, INSURERS AND BANKS?

It is important for exporters to take care in screening the parties involved in servicing the sale of the product. For example, an otherwise legitimate trade transaction may be a violation of sanctions if one of the banks involved in the financing is on OFAC's SDN List. Since the SDN List contains the names of banks, insurance companies, shipping lines and freight forwarders throughout the world, exporters need to be wary about all parties to a trade transaction, not just the buyer or the end user.

## THE PRODUCT AND ITS END USE: DOES MY PRODUCT REQUIRE A LICENSE?

Sophisticated and high technology products, short supply items, technical information and products that have defense, strategic, weapons development, proliferation or law enforcement applications can be subject to export licenses. Major factors in determining whether an export license is required include the destination and end-use of the product or service. Some chemicals that could possibly be used in weapons of mass destruction are subject to export controls. For example, "precursor chemicals" are prohibited to Syria. However, some exports may be subject to controls regardless of the function or the country to which they are shipped.

It is up to the exporter to determine whether the product requires a license and to research the end use of the product, in other words, to perform "due diligence" regarding the transaction. Exporters should learn which federal department or agency has jurisdiction over the item they are planning to export in order to find out if a license is required.

- The Commerce Department focuses primarily on dual-use items, i.e., items that can be used for both military/strategic purposes and commercial applications. Exporters should consult the Commerce Department's BXA and find out if the items or services they are planning to export are classified on the Commerce Control List (CCL). If a product appears on this list, it may require a license. In general, this list contains items controlled by the EAR because

they are considered to be "dual use" items.

- The State Department's Office of Defense Trade Controls (DTC) licenses defense services and defense munitions articles.

- The Department of Energy licenses nuclear technology and technical data for nuclear power and special nuclear materials. It licenses the export of electric power to Mexico and Canada. It also licenses the export of natural gas.

An exporter should request a "commodity jurisdiction" (CJ) determination to resolve any uncertainty regarding the export-licensing jurisdiction of an item or service. A CJ is used to determine whether an item or service is subject to the export licensing authority of BXA or DTC. Contact BXA at Tel: (202) 482-4811 for more details. Another option is to contact the Office of Defense Trade Controls at Tel: (703) 875-6644 or Fax: (703) 875-6647.

## WITH ALL THESE LISTS AND AGENCIES, WHERE SHOULD AN EXPORTER START TO ENSURE COMPLIANCE WITH THE VARIOUS EXPORT REGULATIONS?

The country to which a product is to be exported should be considered first. Potential transactions should be checked for compliance with the sanctions administered by the Treasury and Commerce Departments. If a transaction is subject to country-specific sanctions, it may be eligible for a license, depending on the goods involved. Call OFAC at Tel: (202) 622-2490 with any questions regarding country-specific sanctions and where to apply for a license.

The next step should be to obtain information about a customer and how that customer will use a product. Information about the customer's location, including complete street address (P.O. boxes are not enough) and phone number, the nature of its business, ownership and control, and information with regard to the final destination and use of the product is necessary for determining if the export is in compliance with U.S. law. Always check all parties against the Prohibited Parties Lists, including Treasury, Commerce and State. Don't forget freight forwarders, banks, shipping lines and insurers.

To determine whether a license is needed to export a particular product or service, an exporter must classify the item by identifying what is called an Export Control Classification Number (ECCN) for the item. Use BXA's website (www.bxa.doc.gov) to get help with the ECCN. Products under ECCN# EAR 99, a broad category, normally do not require a license when shipped to most destinations. For information on other categories, the exporter should contact BXA directly at Tel: (202) 482-4811. When in doubt about agency jurisdiction, the exporter can also contact BXA, as BXA will route the application to other agencies for a determination.

## WHAT ARE THE PENALTIES FOR NOT COMPLYING WITH EXPORT CONTROL LAWS?

Millions of dollars in civil penalties are imposed each year by the federal government for violations of export control laws. BXA's website contains real-world examples of civil penalties that have been imposed in the past. Civil penalties assessed by OFAC are $11,000 per prohibited transaction in most cases, but can reach $275,000 per infraction under the sanctions against Iraq, and $1,000,000 if they involve narcotics "kingpins". In cases where there is criminal intent to violate export control laws, criminal penalties can be imposed, resulting in significant corporate or personal fines as well as imprisonment.

## WHERE CAN I FIND MORE INFORMATION?

### Agency Export Control Contacts

- U.S. Department of Commerce—Bureau of Export Administration (BXA)

  BXA regulates exports of "dual use" items and enforces compliance with the Export Administration Regulations (EAR). Though most U.S. exports are subject to the EAR, most do not require a license. To find out if items subject to the EAR require a license, exporters may contact BXA at the numbers listed below or consult the BXA website. U.S. businesses may now apply for necessary BXA licenses online through the Simplified Network Application Process (SNAP).

Internet: www.bxa.doc.gov

Exporter Counseling Division
14th and Pennsylvania Avenue, NW, Room 1099D
Washington D.C., 20230
Tel: (202) 482-4811
Fax: (202) 482-3617

Western Regional Office
U.S. Department of Commerce
3300 Irvine Avenue, Suite 345
Newport Beach, CA 92660
Tel: (949) 660-0144
Fax: (949) 660-9347

U.S. Department of Commerce
Bureau of Export Administration
101 Park Center Plaza, Suite 1001
San Jose, CA 95113
Tel: (408) 998-7402
Fax: (408) 998-7470

- U.S. Department of Treasury—Office of Foreign Assets Control (OFAC)

OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers. The OFAC website provides information on these sanctions as well as the complete list of Specially Designated Nationals and Blocked Persons (the SDN List). Compliance and Licensing Officers are available at the numbers listed below.

Internet: www.treas.gov/ofac

Fax-On-Demand Service: (202) 622-0077

Compliance Programs Division
Tel: (202) 622-2490
Fax: (202) 622-2426

Licensing Division
Tel: (202) 622-2480
Fax: (202) 622-1657

- U.S. Department of State—Office of Defense Trade Controls (DTC), Bureau of Political Military Affairs

DTC controls the export of defense articles and services by taking final action on license applications and other requests for approval of defense trade exports and retransfers, and handling matters related to defense trade compliance, enforcement and reporting. All U.S. manufacturers and exporters of defense articles and/or services must register with DTC. Registration information may be requested by telephone or facsimile at the numbers listed below, and a registration booklet is also available online via DTC's website. Compliance specialists are available for assistance at the number listed below.

Office of Defense Trade Contracts Bureau of Political Military Affairs PM/DTC, SA-6, Room 200
Washington, DC 20522-0602

Internet: www.pmdtc.org
General Information: Tel: (703) 975-6644
Licensing/Management/Forms: Fax (703) 875-6647
Registration/Compliance: Fax (703) 875-5663

- U.S. Department of Energy, Office of Arms Controls and Nonproliferation, Export Control Division

Licenses nuclear technology and technical data for nuclear power and special nuclear materials.

Tel: (202) 586-2112
Fax: (202) 586-6977

- Department of Energy—Office of Fuels Programs

Tel: (202) 586-9482
Fax: (202) 585-6050

Licenses natural gas and electric power.

- Other agencies: View http:/www.bxa.doc.gov/reslinks.htm

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The Trade Information Center (TIC) is operated by the International Trade Administration of the U.S. Department of Commerce for the 20 federal agencies comprising the Trade Promotion Coordinating Committee. These agencies are responsible for managing the U.S. Government's export promotion programs and activities. You, too, can "Ask the TIC" by calling 1-800-USA-TRAD(E) toll free. Monday through Friday, 8:30-5:30. Or visit the TIC's website at http://tradeinfo.doc.gov.