



U.S. Department of Commerce
Bureau of Industry & Security

Export Control Reform & Small Business Defense Contractors

Stephen Hall- Senior Policy Advisor

Stephen.hall@bis.doc.gov

9th NDIA National Small Business
Conference-June 20-21, 2012
Chicago, Illinois



The Threat

Dangers of illegal technology transfers are very real:

- WMD Proliferation
- Weapon Design/Manufacture
- Industrial Espionage

U.S. economy damaged by illegal technology transfers.





The Threat

Significance: Both national security and U.S. economy can be seriously damaged by illegal technology transfers.

Damage to the economy can include loss of large amounts of proprietary R&D done over many years.

Loss of proprietary R&D can result in the establishment and/or enhancement of foreign competitors in leading edge technology sectors



What is being targeted ?

- Pharmaceuticals
- Nanotechnology
- Quantum Computing
- Advanced Materials
- Communication and Encryption Technology
- Weapons Systems yet unclassified
- Biotechnology



Methods Used to Target Technology

- Unsolicited emails
- Front companies
- Liaisons with universities that have ties to defense contractors
- Recruitment by foreign intelligence services
- National laboratories
- Compromise of laptop while traveling overseas
- Attending/Hosting conferences
- Relocating R&D facilities overseas
- Circumventing export control laws
- Visiting scientific and research delegations
- Hacking
- Downloading information from your network



Top Ten Categories Requiring Export Licenses from the U.S. Dept. of Commerce

1. Material Processing (motion simulators, detection devices etc.)
2. Materials, Chemicals, Toxins
3. Nuclear Materials
4. Electronics
5. Telecommunications & Information Security
6. Propulsion
7. Sensors and Lasers
8. Navigation and Avionics
9. Marine
10. Computers & Related Software & Technology



Do you need an Export License ?

- *What is my item- is it on the List ?*
 - *Get official notification from U.S. Dept. of State to see if on list and if so which agency*

Where is it going ?

Who will receive it ?

What are they going to do with it ?



Do you need an Export License ?

Remember- you cannot sell most items going to or ending up in:

Cuba

Sudan

North Korea

Syria

Iran



Subject to the EAR





Destination Control Statement

- Purpose– to prevent items licensed for export from being diverted while in transit

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to US law prohibited



What is Technology ?

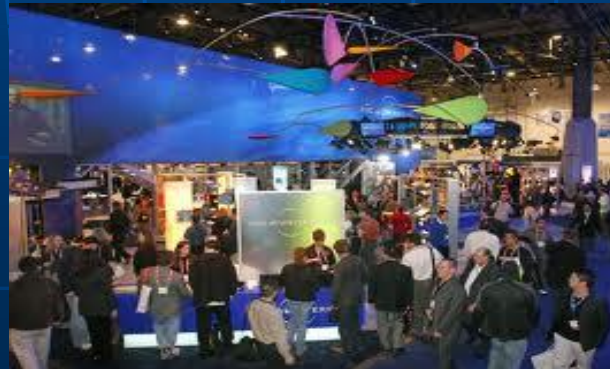
- In the EAR--“specific information necessary for the ‘development,’ ‘production,’ or ‘use’ of a product.”
- Seen in: blueprints, manuals, models engineering diagrams etc.





Publically Available Technology

- Through published patents and patent applications;
- Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;
- Through fundamental research in science and engineering where the resulting information is published and shared broadly in the scientific community





Deemed Exports

- The obligation to get a license *before* releasing controlled technology to a foreign person is informally referred to as the “deemed export” rule.
- Releases of controlled technology to foreign persons in the U.S. are “deemed” to be an export to the person’s country or countries of nationality.



Enforcement

Civil Penalties

- Fines up to \$250,000 per violation or twice the amount of the transaction;
- Denial of export privileges

Criminal Penalties

- Fines up to \$1 million
- Up to 20 years imprisonment

If you suspect a potential illegal export call 800-424-2980 or Chicago Field Office- BIS Export Enforcement- tel: 630-705-7010



Enforcement Example (1)

Violation

- Lattice Semiconductor Corp. unlawfully exported certain semi-conductor microchips and related technical data to China. (11 strict liability charges.)
- Items and technology were controlled for national security reasons.
- Released related technical data to Chinese national employees in the U.S. (1 strict liability charge.)

Civil Penalty

- \$560,000



Enforcement Example (2)

Violation

- Singapore individual Jianwei DING conspired to export and attempt to export high modulus carbon fiber material for an ultimate destination of the China Academy of Space Technology without the required licenses.
- Material was controlled for national security, nuclear non-proliferation and antiterrorism reasons.

Penalties

- Criminally sentenced to 46 months in prison and two years supervised release (Oct. 2009). Civil penalty of \$100,000 (July 2011).



Export Control Reform

- In August 2009, the President directed a broad-based interagency review of the U.S. export control system.
- The Administration determined that fundamental reform of the current system is necessary to enhance our national security by
 - (i) focusing resources on the threats that matter most;
 - (ii) increasing interoperability with our Allies;
 - (iii) strengthening the U.S. defense industrial base by reducing incentives for foreign manufacturers to design out and avoid using U.S. parts and components



Four Singulars of ECR

- In April 2010, Secretary of Defense Robert Gates identified four singulars for reform:
 - (1) Single IT system;
 - (2) Single control list;
 - (3) Single law enforcement coordination agency;
 - (4) Single licensing agency.



Use STA and Exceptions

- Your friend in export controls– you may not need a licenses- use an exception
 - saves time
 - quicker delivery
 - legal
- New Program- Strategic Trade Authorization- limited license review to 36 countries



For every export sale

- Check the customer !
 - Use Commerce, Treasury and State Department lists– bad boys
 - Available at www.bis.doc.gov



Indications of Potential Illegal Exports

1. Customer pays in cash
2. Customer makes payment in excess of item's market value
3. Customer is reluctant to provide information on end use of item
4. Item is incompatible with stated end-use
5. Item does not correspond with customer's line of business
6. Final consignee has no apparent connection to the purchaser
7. Packaging is inconsistent with shipping mode, destination or product description
8. Order is place by persons from foreign countries other than the country of the stated end-use
9. Shipping route is abnormal for the product or destination



Indications of Potential Illegal Exports

8. A freight forwarding firm is listed as a final destination
9. Customer denied installation, manuals or maintenance services
10. Customer is unfamiliar with the product
11. Transaction just does not make sense.



Keeping Compliant

Export Compliance/Management Plan:

Excellent method to keep track of export control requirements and achieve compliance

Internal record keeping documents- outlines responsibilities , control procedures e.g. foreign visitors, employees etc., exports of controlled items and technology





Upcoming Events

- Update 2012– Washington D.C.
- July 17-19

- Sponsored by the Bureau of Industry and Security
- Over 1,000 participants
- To register- www.bis.doc.gov



Contacting Us

U.S. Dept. of Commerce (dual-use licenses)

-Washington D.C. telephone- 202- 482-4811

-Irvine, CA office- telephone- 949- 660-0144

Web site – www.bis.doc.gov- has FAQ's for
deemed exports & upcoming workshops

U.S. Dept. of State (military-related licenses)

Telephone- 202-663-1282

Web site: www.pmddtc.state.gov



NDIA 9th National Small Business Conference: The “600 Series”

Mary Quach

Export Compliance Specialist

Munitions Control Division

Bureau of Industry and Security

U.S. Department of Commerce

Overview

I. How will this reform benefit small business?

II. How will this reform translate into the existing regulatory structure?

III. How can I get more information?



Overview

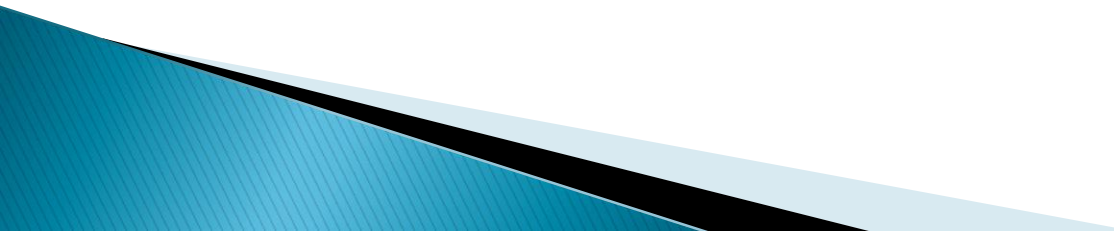
I. How will this reform benefit small business?

II. How will this reform translate into the existing regulatory structure?

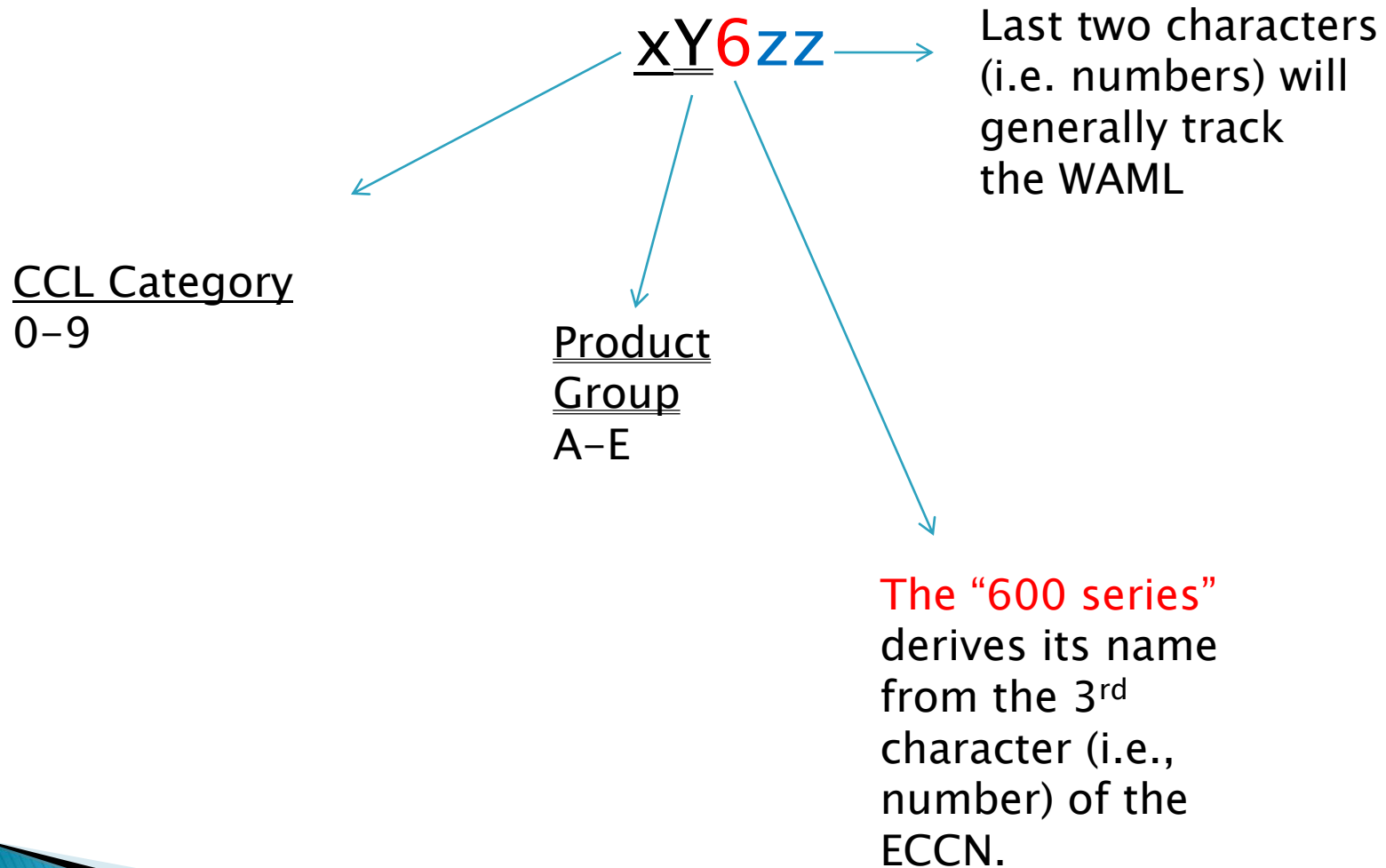
III. How can I get more information?



Key Benefits for Exporters

- **New U.S. Munitions List will be more transparent, based on specific, objective parameters**
 - **New Commerce Munitions List will include items transferred from the U.S. Munitions List**
 - End-items, parts and components specially designed for a military application and specifically identified defense end items that do not warrant stringent USML controls
 - No longer require licenses for thousands of items when destined to the governments of allies and partners
 - ▶ **New licensing mechanisms and greater flexibility will remove unnecessary obstacles to greater security cooperation**
- 

Anatomy of a “600 Series” ECCN



“600 Series” From USML to CCL

▶ Examples (as proposed):

Description	USML	WAML	ECCN
Vessels of War	Category VI	ML <u>9</u>	8A6 <u>09</u>
Military Vehicles	Category VII	ML <u>6</u>	0A6 <u>06</u>
Aircraft, Aircraft Engines	Category VIII	ML <u>10</u>	9A6 <u>10</u>



License Requirements for “600 series”

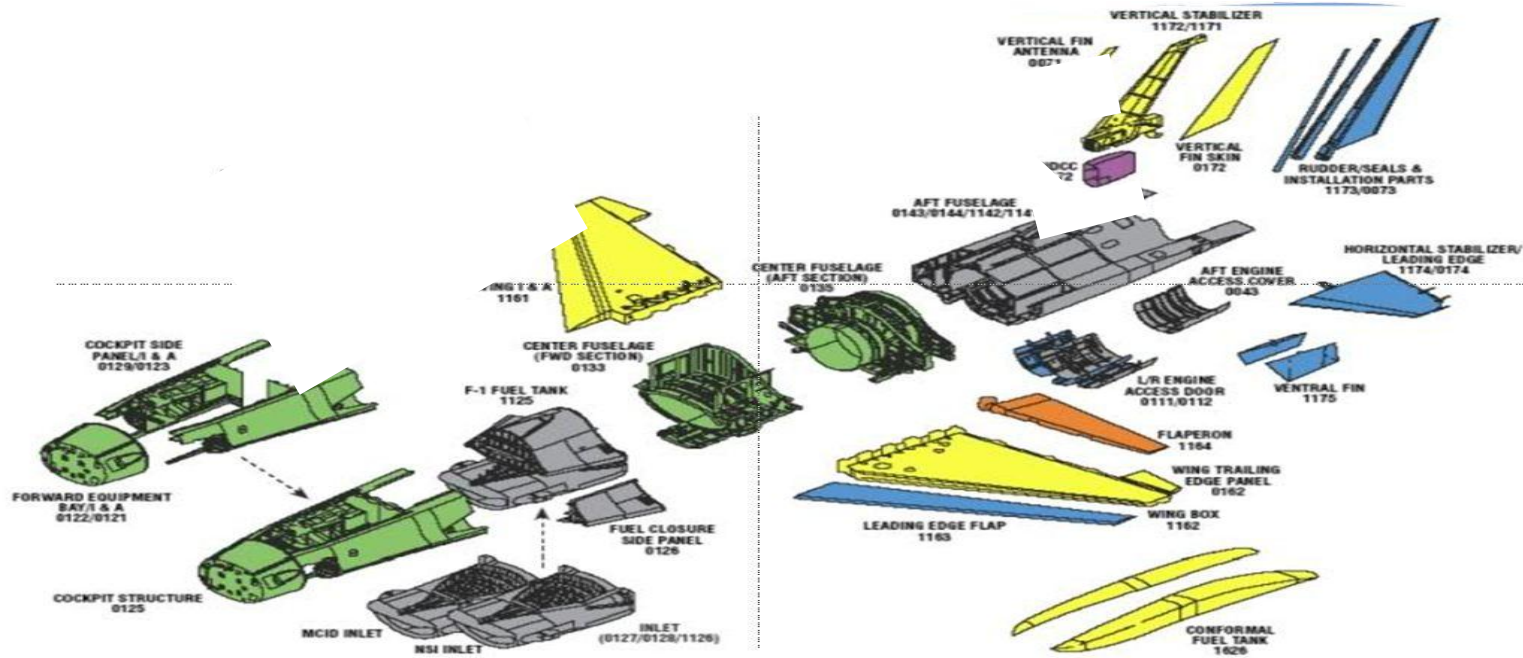
“600 series” items will generally be controlled for the following reasons for control:

- ▶ National Security column 1 (NS1); Regional Stability column 1 (RS1); Anti-terrorism column 1 (AT1).
- ▶ License required for export or reexport to all countries except Canada (excluding certain items controlled for MT, CB1 & FC reasons)
- ▶ Regime controlled items retain regime control
- ▶ STA (ultimate government end-use), MLX, GOV, RPL

Specific parts, components, accessories and attachments identified in .y paragraphs.

- ▶ Anti-terrorism column 1 (AT1)
- ▶ Restrictions on certain military end-uses in the PRC in §744.21, and other end-use and end-user controls as applicable.

ECCN 9A610 – F-16



Illustrative List

Only

- Wings, Rudder, Fin, Panels
- Fuselage – Forward, Center, Aft
- Cockpit structure
- Forward equipment bay
- Horizontal stabilizer
- Conformal fuel tank
- Cartridge Actuated Device, Propellant Actuated Device (CAD/PAD)
- Control surfaces, activation & control systems
- Internal & Exterior fuel tanks
- Engine inlets and ducting
- Wing box
- Flaperon
- Static structural members
- Exterior skins, Fairings, Radomes, Access doors
- Leading edge flap
- Landing gear
- Technology associated with above items

ECCN Example: 9A610

y. Specific “parts,” “components,” “accessories and attachments” “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities “specially designed” for a military use, as follows:

- y.1. Aircraft tires;
- y.2. Analog cockpit gauges and indicators;
- y.3. Audio selector panels;
- y.4. Check valves for hydraulic and pneumatic systems;
- y.5. Crew rest equipment;
- y.6. Ejection seat mounted survival aids;
- y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);
- y.8. Filters and filter assemblies for hydraulic, oil and fuel systems;
- y.9. Galleys;

Munitions Controls Division

- Team of 24 divided into 4 technology groups
- Will be processing “600 series” license applications and commodity classifications
- Perform outreach to industry
- Websites:
 - www.bis.doc.gov
 - <http://efoia.bis.doc.gov>
 - www.export.gov/ecr
- Questions?

• Division Chief – Todd.Willis@bis.doc.gov	(202) 482– 1447
• Firearms/Ammunition – Dale.Alford@bis.doc.gov	(202) 482– 3413
• Vehicles/Engines – Karen.DiBenedetto@bis.doc.gov	(202) 482 – 4524
• Aviation Components– Reynaldo.Garcia@bis.doc.gov	(202) 482 –3462
• Electronics/Sensors – Thomas.DeFee@bis.doc.gov	(202) 482 –3365