Determining License Requirements based on ECCN and Destination

Sheila Quarterman
Export Policy Analyst
Regulatory Policy Division
Topics of Discussion

• General Prohibitions 1-3

• Using the Reasons for Control and the Commerce Country Chart

• No License Required ("NLR")
Export Control

Decision Tree

(Supp. No. 1 to Part 732)

Subject to the EAR?
(See 734.2 - 1)

No → Exit the EAR

Yes →

ECCN →

Is your item classified under an ECCN on the CCL?
(General Prohibitions 1, 2, & 3)
(See Supp. No. 1 to Part 774)

Yes →

Do General Prohibitions 4-10 apply?
(See 734.2(4-10))

No → EAR99

Do General Prohibitions 4-10 apply?
(See 734.2(4-10))

Yes →

Is there an "X" in the box?
(Using the Commerce Country Chart and the CCL)
(Supp. No. 1 to Part 732 & Supp. No. 1 to Part 774)

No → "No License Required" (NLR)
(See 732.2(a)x(1)(ii), 738.1(a)x(iii))

Yes →

Is a License Exception Available?
(See Part 740, including 740.2 "incidents that apply to all license exceptions")

No → Use License Exception
(See 740.1)

Yes → Submit an application for license
(See Part 740)
General Prohibitions 1-3
Part 736

• You may **not** without a License or License Exception:
  – No. 1: Export or reexport controlled items to listed countries.
  – No. 2: Reexport foreign-made items incorporating more than de minimis amount of controlled U.S. content
  – No. 3: Reexport foreign produced direct product of U.S. technology or software (D:1 and Cuba)
Commerce Country Chart
Part 738, Supplement No. 1

• Reasons for Control/Country Chart

• If there is:
  – “X” in the box indicates a license requirement
  – No “X” in the box indicates no license requirement
Structure Commerce Country Chart
When the Destination and the Reason for Control Meet, Ask Yourself...
Is there an “X” in the box?

<table>
<thead>
<tr>
<th>Countries</th>
<th>Chemical &amp; Biological Weapons</th>
<th>Nuclear Nonproliferation</th>
<th>National Security</th>
<th>Missile Tech</th>
<th>Regional Security</th>
<th>Firearms Convention</th>
<th>Crime Control</th>
<th>Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Albania</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Algeria</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Andorra</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Angola</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Antigua &amp; Barbuda</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Argentina</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Armenia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Aruba</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Australia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Austria</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Bahamas, The</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Bahrain</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
No License Required
(“NLR”)

• You may use NLR for:
  – EAR99 items, or
  – ECCNs where there is no “X” on the Country Chart under reason(s) for control; and
  – When the transaction does not require an export license based on any other licensing requirement (e.g., end-use/user requirements)
Determining Licensing Requirements based on ECCN & Destination: Summary

• “X” in the box indicates a license requirement

• No “X” in the box indicates no license requirement
Classification Exercise

• For the items you have classified, review the Country Chart column indicators

• Cross reference with the Country Chart to determine license requirements for:
  – Germany
  – Brazil
  – Libya
  – Syria
Determining Other Licensing Requirements:  
*End-use/End-users, Parties to the Transaction, Activities and Prohibited Destinations*  

Sheila Quarterman  
Export Policy Analyst  
Regulatory Policy Division
Topics of Discussion

• General Prohibitions 4-10
• Prohibited exports based on knowledge about the transaction
  – End-use/end-user, parties to the transaction, activities
• Screening parties involved in the transaction
• Prohibited exports to destinations under embargo or with special controls
• Other Prohibitions
Export Control

Decision Tree

(Supp. No. 1 to Part 732)

Subject to the EAR?
(See 75.4-2.1)

No → Exit the EAR

Yes →

Is your item classified under an ECCN on the CCL?
(See Supp. No. 1 to Part 771)

Yes →

ECCN

No → EAR99

Do General Prohibitions 4-10 apply?
(See 75.29(4)-10)

Yes →

Do General Prohibitions 4-10 apply?
(See 75.29(3)-10)

No →

Is there an "X" in the box?
(Using the Common Country Chart and the CCL)
(Supp. No. 1 to Part 770 & Supp. No. 1 to Part 771)

Yes → "No License Required" (NLR)
(See 75.23(a)(1)(ii) & 758.1(a)(ii))

No →

Is a License Exception Available?
(The Part 740, including 740.2 “exceptions that apply to all license exceptions”)

Yes →

Use License Exception
(See 740.2)

No →

Submit an application for license
(See Part 740)
General Prohibitions 4-10
§736.2(b)

4. Denial Orders
5. Knowledge of end-use and end-user controls
6. Embargoed Countries
7. U.S. person support of proliferation
8. Transit through certain countries
9. Terms or conditions of licenses, etc.
10. Knowledge of a violation
Why are these considerations important?

- Awareness of other licensing requirements is important because:
  - Go beyond Commerce Control List licensing requirements
    • affect **ALL** items subject to the EAR.
  - Are a critical factor in analyzing and making licensing decisions
  - Are part of internal control screening process to prevent violations
  - Some controls are specifically based on information that is “known” to the exporter/reexporter or other relevant actor
What do we mean by “knowledge”?  
Part 772

- Includes:
  - “Positive” knowledge that a circumstance exists or is substantially certain to occur
  - An awareness of a high probability of its existence or future occurrence

Know = reason to know = reason to believe
License Requirement due to... End-user/End-use Controls Part 744

- Prohibits exports, reexports and transfers in-country of items for various reasons
  - Nuclear end-uses
  - unmanned vehicles
  - Chemical and biological weapons uses

- If you “know” or are “informed”

- “Knowledge” is defined in Part 772

- Entity List, Supplement No. 4 to Part 744
What are the Nonproliferation Control Policies?  
Part 744

- Certain nuclear end-uses (§744.2)  
  - i.e., nuclear explosive activities, unsafeguarded facilities, nuclear fuel activities

- Design, development production or use of certain rocket system or unmanned air vehicle (§744.3)

- Design, development, production, stockpiling or use of chemical or biological weapons, in or by any country or destination, worldwide (§744.4)
Other End-use Control Policies?

- Maritime nuclear propulsion – (§744.5)
- Certain foreign aircraft or vessels – (§744.7)
- Military end-use to the PRC (§744.21)
- Microprocessors to Military Users and Uses – Country Group D:1 (§744.17)
License Requirement due to...
Support of Proliferation Activities

• U.S. person may **not** support an export, reexport or transfer in-country related to a proliferation activity
  – Includes items that are not subject to the EAR
    • U.S. and Foreign-origin items
  – Support includes financing, transportation or forwarding
• Performance of contract, service or employment
A “US Person” includes...
Part 744

- Any person in the United States
- U.S. citizens, permanent resident aliens, or protected individuals wherever located
- U.S. organized firms and their foreign branches
Make Sure to Check the Parties to the Transaction!

**Lists to Check**
- Denied Persons
- Entity List
- Unverified List
- OFAC Lists
- Nonproliferation Sanctions
- Debarred List

- Changes are published in the Federal Register when issued.

Available at: www.bis.doc.gov
Who are Denied Persons?

- Parties denied export privileges under a denial order
- Most covered under a Standard Denial Order, but some have other terms
  - You can not violate the terms of a denial order
- To be informed of changes, subscribe to: BIS Email Notification Service
# The Denied Persons List

Note: Where the Expiration Date is blank the denial order has no expiration.

**Recent Changes Page | Return to Previous Page**

**Last Modified: Thursday, January 07, 2010**

<table>
<thead>
<tr>
<th>Name and Address</th>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>Type of Denial</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. ROSENTHAL (PTY) LTD. P.O. BOX 44198, 65 7TH STREET, DENMYR BUILDING, LINDEN, ZA</td>
<td>09/08/1997</td>
<td>09/08/2017</td>
<td>standard</td>
</tr>
<tr>
<td>Appropriate Federal Register Citations: 62 F.R. 43503 8/14/97</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. ROSENTHAL (PTY) LTD. P.O. BOX 97 292 INDEPENDENCE AVENUE, WINDHOEK, NA</td>
<td>05/20/1997</td>
<td>05/29/2017</td>
<td>standard</td>
</tr>
<tr>
<td>Appropriate Federal Register Citations: 62 F.R. 30841 6/5/97</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACE, IAN 4 MIMOSA WAY, PINELANDS, ZA</td>
<td>08/08/1997</td>
<td>08/08/2017</td>
<td>standard</td>
</tr>
<tr>
<td>Appropriate Federal Register Citations: 62 F.R. 43503 8/14/97</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACTION GLOBAL CO., LIMITED C/O WIN SINO FLAT 12, 9/F, PO HONG CENTRE, 2 WANG TUNG STREET, KOWLOON BAY KLN, HK</td>
<td>11/30/2009</td>
<td>05/29/2010</td>
<td>standard</td>
</tr>
<tr>
<td>Appropriate Federal Register Citations: 74 F.R. 62560 11/30/09</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACTION GLOBAL CO., LIMITED C/O WIN SINO FLAT/RM 1510A, 15/F HO KING COMM CTR, 2-16 FA YUEN STREET MONGKOK KL, HK</td>
<td>11/30/2009</td>
<td>05/29/2010</td>
<td>standard</td>
</tr>
<tr>
<td>Appropriate Federal Register Citations: 74 F.R. 62560 11/30/09</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACTION GLOBAL CO., LIMITED C/O WIN SINO 520 SIMS AVENUE, #02-04, SG</td>
<td>11/30/2009</td>
<td>05/29/2010</td>
<td>standard</td>
</tr>
<tr>
<td>Appropriate Federal Register Citations: 74 F.R. 62560 11/30/09</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADT ANALOG AND DIGITAL TECHNIK 8019 NIEDERSEEON, HOUSE 21, DE</td>
<td>09/10/1981</td>
<td></td>
<td>standard</td>
</tr>
</tbody>
</table>
What is the Entity List?
Part 744, Supplement 4

• Foreign persons for which there are concerns regarding
  – proliferation of weapons of mass destruction
  – acting contrary to the national security or foreign policy interests of the United States

• May require license for all items subject to EAR – requirements vary

• To be informed of changes, subscribe to: BIS Email Notification Service
Control Policy: End-User and End-Use Based

Supplement No. 4 to Part 744 - ENTITY LIST

This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>ENTITY</th>
<th>LICENSE REQUIREMENT</th>
<th>LICENSE REVIEW POLICY</th>
<th>FEDERAL REGISTER CITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANADA</td>
<td>Ali Bakhshien, 909-4005 Bayview Ave., Toronto, Canada M2M 3Z9.</td>
<td>For all items subject to the EAR. (See §744.11 of the EAR).</td>
<td>Presumption of denial</td>
<td>73 FR 54504, 9/22/08</td>
</tr>
<tr>
<td></td>
<td>Kitro Corporation, 909-4005 Bayview Ave., Toronto, Canada M2M 3Z9.</td>
<td>For all items subject to the EAR. (See §744.11 of the EAR).</td>
<td>Presumption of denial</td>
<td>73 FR 54504, 9/22/08</td>
</tr>
<tr>
<td>CHINA, PEOPLE’S REPUBLIC OF</td>
<td>13 Institute, China Academy of Launch Vehicle Technology, (CALT), a.k.a. 713 Institute or Beijing Institute of Control Devices.</td>
<td>For all items subject to the EAR.</td>
<td>See §744.3(d) of this part.</td>
<td>66 FR 24265, 5/14/01</td>
</tr>
<tr>
<td></td>
<td>33 Institute, a.k.a. Beijing Institute of Automatic Control Equipment.</td>
<td>For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are “999”. e.g.,</td>
<td>See §744.3(d) of this part.</td>
<td>66 FR 24266, 5/14/01</td>
</tr>
</tbody>
</table>
What is the Unverified List?

- Foreign parties to transactions, where post-shipment verifications or pre-license checks could not be conducted
- Raises “Red Flag” -- Supplement 3 to Part 732
- To be informed of changes, subscribe to: BIS Email Notification Service
Unverified List

September 10, 2008

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check (PLC) or a post-shipment verification (PSV) for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a Red Flag with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 C.F.R. Part 732. The Red Flag applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

If you would like to be informed when changes occur to the Unverified List, consider subscribing to the BIS Email Notification Service.

<table>
<thead>
<tr>
<th>Name</th>
<th>Country</th>
<th>Last Known Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lucktrade</td>
<td>Hong Kong Special Administrative Region</td>
<td>P.O. Box 9150 Tsim Sha Tsui Hong Kong</td>
</tr>
<tr>
<td>International</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brilliant Intervest</td>
<td>Malaysia</td>
<td>14-1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000</td>
</tr>
<tr>
<td>Dee Communications</td>
<td>Malaysia</td>
<td>G5/G6, Ground Floor, Jin Gereja Johor Bahru</td>
</tr>
<tr>
<td>M SDN. BH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peluang Teguh</td>
<td>Singapore</td>
<td>203 Henderson Road #09-05H Henderson Industrial Park</td>
</tr>
<tr>
<td>Lucktrade</td>
<td>Singapore</td>
<td>35 Tannery Road #01-07 Tannery Block</td>
</tr>
</tbody>
</table>
What are Red Flags?
Part 732, Supplement 3

- Possible indicators that an unlawful diversion might be planned by the customer
- Abnormal or suspicious circumstances
  - Product capabilities do not fit buyer’s business
  - Buyer evasive about destination or use
  - Routine on-site service is declined
“Know Your Customer” Guidance
Part 732, Supplement 3

- Decide whether there are “red flags”
- If there are “red flags” – inquire
- Do not “self blind”
- Reevaluate transaction
- Absent “red flags” or special EAR provision, there is no affirmative duty to “go behind” customer’s representations
License Requirement due to... a Country Sanction under the EAR

- **Comprehensive Embargo**
  - Iran – §746.7 & §742.8
  - Cuba – §746.2
  - Sudan – §742.10

- **Sanctioned**
  - Syria – §746.9 & Supp. No. 1 to part 736
  - N. Korea – §746.4 & §742.19

- **UN Arms Embargo**
  - Rwanda – §746.8
  - Iraq – §746.3
<table>
<thead>
<tr>
<th>Country</th>
<th>Exports and reexports to (Country)</th>
<th>BIS/OFAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cuba</td>
<td>Exports and reexports to Cuba</td>
<td>BIS</td>
</tr>
<tr>
<td></td>
<td>Financial transactions and personal travel to Cuba</td>
<td>OFAC</td>
</tr>
<tr>
<td>Iran</td>
<td>Exports of CCL and EAR99 items to Iran</td>
<td>OFAC</td>
</tr>
<tr>
<td></td>
<td>Reexports of CCL items to Iran</td>
<td>OFAC</td>
</tr>
<tr>
<td></td>
<td>Reexports of EAR99 items to Iran by U.S. Person</td>
<td>OFAC</td>
</tr>
<tr>
<td></td>
<td>Reexports of EAR99 items to Iran by non-U.S. persons</td>
<td>BIS</td>
</tr>
<tr>
<td>Sudan</td>
<td>Exports and reexports of CCL items to Sudan</td>
<td>OFAC &amp; BIS</td>
</tr>
<tr>
<td></td>
<td>Exports and reexports of EAR99 items to Sudan for most end-uses and end-users</td>
<td>OFAC</td>
</tr>
<tr>
<td></td>
<td>Exports and reexports of EAR99 items to Part 744 end-uses and end-users in Sudan</td>
<td>BIS &amp; OFAC</td>
</tr>
<tr>
<td>Syria</td>
<td>Exports and reexports to Syria</td>
<td>BIS</td>
</tr>
<tr>
<td>North Korea</td>
<td>Exports and reexports to North Korea</td>
<td>BIS</td>
</tr>
</tbody>
</table>
Other Prohibitions

• Some In-Transit Shipments

• Violation of orders, terms, and conditions

• Acting with knowledge that a violation of the EAR will occur (or has occurred)
Some In-Transit Shipments are prohibited

• In transit shipment and items to be unladed from vessels or aircraft
• No export, reexport, transit through Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam
  - Unless such export (reexport) is eligible to such country of transit without a license or with a license exception.

Extra Attention Forwarders!

General Prohibition 8
Orders, Terms, and Conditions

• May not violate:
  – Terms or conditions of a license or license exception
  – Any order under the EAR
  – Supplement No. 1 & 2 to Part 736 contain certain General and Administrative Orders
Acting with Knowledge...

- You may not proceed with transactions with knowledge that a violation has occurred or is about to occur.
- Relates to any item subject to the EAR – on the CCL or EAR99
- Exports, reexports, activities, e.g., financing, transferring, transporting, forwarding

General Prohibition 10
Summary: Other Licensing Requirements

- Licensing requirements based on knowledge of the end-use/end-user, parties to the transaction, activities and destinations
- Various lists published by BIS, and other USG agencies; “Know Your Customer” and “Red Flags” guidance
- Policies for each embargoed country differ, but in most cases, even exports of EAR99 items require a license
- General Prohibitions 4-10