



UPDATE 2014
CONFERENCE ON EXPORT CONTROLS AND POLICY

Case Studies in “Specially Designed”

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Topics

- Provide a high level overview of the definition of “specially designed.”
- Discuss questions related to the new definition by discussing a series of case studies to highlight application of the definition of “specially designed” in various contexts.
- Highlight other training resources available to assist understanding and application of “specially designed.”



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Definition of “Specially Designed”

- New definition of “specially designed” is based on a catch-and-release construct.
- Requires answering a series of yes/no questions that lead to an objective determination whether an item is “specially designed.”
- Definition is found in Part 772 and is described in an online decision tree tool published by BIS:

<http://www.bis.doc.gov/index.php/specially-designed-tool>

3



Paragraph (a)(1) ‘catch’

- Paragraph (a)(1) ‘catches’ any item that:

as a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant:

-ECCN, or

-U.S. Munitions List (USML) paragraph.

4



Paragraph (a)(2) 'catch'

- Paragraph (a)(2) 'catches' any "part," "component," "accessory," "attachment" or "software" that:

Is for use in or with a
 commodity or defense article
'enumerated' or otherwise described
 -on the CCL or
 -the USML.

5



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Understanding *the 'release'* - Introduction to Paragraphs (b)(1)-(b)(6)

- Paragraph (b) is only used for 'releasing' "parts," "components," "accessories," "attachments" or "software."
- A "part," "component," "accessory," "attachment," or "software" that meets the criteria of one or more of the paragraphs under (b) is 'released' from "specially designed."
- If you are reviewing a decontrol on the CCL that uses "specially designed," stop at paragraph (a) in your analysis.

– Do not review paragraph (b) for decontrols on CCL that use "specially designed."

6



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Quick cut questions for when *it may be beneficial* to review (b) first

| Quick cut question | It may be beneficial to review paragraph (b) first - if answer is "yes" |
|--|--|
| Was it identified in a past Commodity Jurisdiction (CJ) determination or approved interagency CCATS under EAR pursuant to Section 748.3(e)? | Yes <i>QUICK TIP: See (b)(1).</i> <i>Note: Also will need to review the CJ or CCATS in question.</i> |
| Is it a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, solder? | Yes <i>QUICK TIP: See (b)(2).</i> |
| Is it being used in or with an item in "production" that is lowest level (least controlled) commodities or software (EAR99 or AT-only ECCNs)? | Yes <i>QUICK TIP: See (b)(3).</i> |
| Was or is it being developed for use in or with controlled items as well as lowest level (least controlled) items (EAR99 or AT-only ECCNs)? | Yes <i>QUICK TIP: See (b)(4) and (b)(6). (b)(6) only if developed for AT-only and EAR99 or EAR99 only.</i> <i>Note: Requires documentation from development.</i> |
| Is it a general purpose commodity or software (meaning not for particular commodity or type of commodity)? | Yes <i>QUICK TIP: See (b)(5).</i> <i>Note: Requires documentation from development.</i> |

7

Example #1 – Understanding correct track of "specially designed" to review

- A company manufactures aircraft engines for use in a military transport aircraft. The engines are not subject to the ITAR, but because the engines are used in an aircraft on the USML, an analysis of 9A619 is being done.
- The company is trying to determine whether the aircraft engine is an end item or a component in order to determine whether they only review paragraph (a)(1) or do they also need to review paragraph (a)(2) and (b) 'releases.'



8

Response to Example #1

- An aircraft engine is a component. Therefore, the analysis of “specially designed” must take into account paragraph (a)(1) and (a)(2), as well as the paragraph (b) ‘releases.’
- Key terms, such as “components” and “end items” are defined in part 772.

Helpful tip: *Just because it is the commodity you produce, does not mean it is automatically an end item. Refer to other part 772 definitions as needed for guidance on these key terms.*



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9

Example #2 – Applying paragraph (a)(1) when technical parameter not included

- A company has developed an aircraft and is trying to apply paragraph (a)(1) to determine if the aircraft is classified under 9A610.a.
- They understand how to apply (a)(1) if a technical parameter is referenced, but want to know how to apply (a)(1) when all that is referenced is “specially designed” for a *military end use*, such as in 9A610.a?



10

Response to Example #2

- Military end use is the controlled characteristic that is being reviewed in this case of applying (a)(1).
- Analysis would determine whether as a result of “development” does the aircraft have properties that make it peculiarly responsible for being used for a military end use, such as:
 - hard points for later being able to mount weapons,
 - target designation, surveillance, and target detection, or
 - armored

Helpful tip: Paragraphs that use “military end use” or similar broadly worded characteristics or functions are intended to be a broad ‘catch’ under (a)(1) of “specially designed.”

11



Response to Example #2: An aircraft not “specially designed” for a military end use

- A military end user (or any other party) contacts an aircraft manufacturer to purchase a civil aircraft classified under 9A991.b and requests the aircraft be painted green with the country’s flag and military service emblem painted on the tail.
- In this case the “development” activity is specific to a military end use, but the characteristic is also common to non-military end uses, such as civil airlines requesting aircraft manufacturers to paint the aircraft in certain colors and in certain cases to paint a country’s flag or airline emblem on the tail.
- This is an example of not “specially designed” for a military end use.

12



Response to Example #2: An aircraft “specially designed” for a military end use

- If the military end user (or any other party) contacts the manufacturer and requests a special paint to reduce the observe ability of the aircraft on radar that would be a military specific characteristic and not common to non-military applications.
- Therefore, such an aircraft, if not controlled under the revised USML Category VIII(a) would be controlled under ECCN 9A610.a because it was “specially designed” for a military end use.

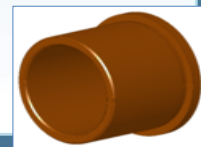


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13

Example #3: Applying paragraphs (a)(1) and (a)(2)

- A company manufacturers bushings for use in various vehicles (civil and military).
- One model of bushing is designed using requirements from a military vehicle manufacturer for use in track links on military vehicles. The bushing is not used for any other application.
- Should the item be evaluated under paragraph (a)(1) or (a)(2)?



14

Response for Example #3

- “End item” is defined as “a system, equipment or assembled commodity ready for its intended use. Only ammunition, fuel or other energy source is required to place it in an operating state.
- “Component” is defined as a “an item that is useful only when used in conjunction with an “end item.””
- The bushing is only useful when used in conjunction with the military vehicle. Although it has properties peculiarly responsible for utility in a military vehicle, it is a “component” for use in or with a military vehicle. Paragraph (b) must be considered to determine whether or not this bushing is “specially designed” because the bushing is ‘caught’ under (a).

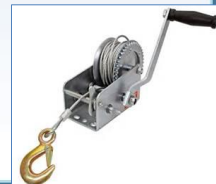
Helpful tip: *In this case the component meets (a)(1) and (a)(2), but even if it only met (a)(2), you would still need to review (b) for ‘release.’*



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Example #4: Component included in a past CJ determination

- An exporter is classifying a cable winch that is used on military transport vehicles that are classified under ECCN 0A606 – meaning it would be caught under (a)(2) for purposes of ECCN 0A606.x.
- The exporter contacts the OEM.
- OEM indicated although that model of the cable winch is only used on military vehicles the cable winch was determined to be not subject to the ITAR in a CJ determination from 2008 that determined the item was subject to the EAR and was designated as EAR99.



Response to Example #4

- Because the exporter has “knowledge” of the past CJ indicating that model of the cable winch was not subject to the ITAR and classified on the CCL in a paragraph that does not use “specially designed,” the exporter can rely on the (b)(1) ‘release.’

Helpful tips:

- If you “know” at the outset of the “specially designed” analysis that a paragraph (b) ‘release’ applies, then start your analysis there.
- (b)(1) is limited to that which was included in the CJ or 748.3(e) determination.



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17

Example #5: Applying (b)(2) for parts not specified, but similar to those parts

- An exporter is trying to determine whether fluid fittings (connectors) for use in military vehicles classified under ECCN 0A606 and USML Category VII can be ‘released’ from “specially designed” under paragraph (b)(2).
- The exporter sees in (b)(2) that ‘fastener’ includes an illustrative list and it trying to determine whether this part could be considered a fastener for purposes of (b)(2) because although they may not be a fastener, the fluid fittings (connectors) perform same type of fastening function.



18

Response to Example #5

- For purposes of paragraph (b)(2), fluid fittings (connectors) are *not* considered a fastener.
- This is because the fluid carrying capability is the primary design feature of the fluid connector.

Helpful tip: *In cases where a term is used, but not defined, such as the term “fastener,” you should rely on the dictionary definition or other established, industrial standards that define the term.*



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19

Example #6: Aircraft component modified for a reason other than ‘fit’

- A company manufactures two models of accumulators used in commercial aircraft hydraulic systems. One is sized at 100 in³ and the other is sized at 115 in³.
- A military aircraft manufacturer requests an accumulator sized at 110 in³, which is the volume needed to become an integral part of the military aircraft hydraulic system.
- The accumulator manufacturer is unsure whether the volume modification that would still be within the scope of the paragraph (b)(3) criteria for “specially designed.”



20

Response to Example #6

- The modification to the volume of the accumulator modifies the capacity of the device to deliver pressure to the hydraulic system.
- Although this modification is made only to accommodate the new hydraulic system, it exceeds the scope of 'fit,' which refers only to the physical juncture.
- Within range of commercial models, and/or less capable than the commercial model, does not make (b)(3) applicable.
- The accumulator is not released from "specially designed" by paragraph (b)(3).



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21

Example #7: An item modified solely for 'fit' purposes

- A microelectronics manufacturer supplies transient voltage suppressors for a variety of commercial uses.
- A manufacturer of military aircraft ground support equipment orders the same transient voltage suppressors but requests that they be modified to use a specific mount type.
- The microelectronics manufacturer is unsure whether this component is considered "specially designed" for military equipment.



22

Response to Example #7

- The transient voltage suppressor is 'caught' by paragraph (a)(2) because it is a component used in a piece of ground support equipment classified in ECCN 9A610.
- However, the component is modified from a transient voltage suppressor used in AT-only items that are in "production."
- The modified mount type modifies only the component's ability to physically interface with the military item.
- The component is released under paragraph (b)(3) because it has the same function, performance capability and 'equivalent' form and fit as the transient voltage suppressor used in the AT-only item in "production."

23



Example #8: A part where no paragraph (b) provisions apply

- A parts and components distributor has in their inventory a rectifier assembly that is used only in military aircraft ground support equipment. The distributor does not know whether any prior CJs exist for this rectifier assembly.
- The distributor does not know whether the component is used in any other applications.
- The distributor has no knowledge of the design history of the component.
- How does the distributor assess whether the component is "specially designed" for military aircraft equipment?



24

Response to Example #8

- Without knowing prior CJ history, (b)(1) cannot be applied.
- The component is not listed in (b)(2), so (b)(2) cannot be applied.
- Without “knowledge” of the component’s other applications paragraph (b)(3) cannot be applied, or “knowledge” of the design history of the component, paragraphs (b)(4) through (b)(6) cannot be applied.
- The component should be considered “specially designed” unless the applicant applies for and receives a “release from specially designed” interagency CCATS under section 748.3(e).



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25

Example #9: Another component where no paragraph (b) provisions apply

- Exporter is classifying a drogue chute used on military aircraft.
- The component is not enumerated or otherwise described on the USML.
- The exporter is not aware of the use of this drogue chute in any civil aircraft and it appears it was likely developed for use in military aircraft and is used exclusively in such items.



26

Response to Example #9

- Without knowing prior CJ history, (b)(1) cannot be applied.
- The component is not listed in (b)(2), so (b)(2) cannot be applied.
- Without “knowledge” of the component’s other applications paragraph (b)(3) cannot be applied, or “knowledge” of the design history of the component, paragraphs (b)(4) through (b)(6) cannot be applied.
- The component should be considered “specially designed” unless the applicant applies for and receives a “release from specially designed” interagency CCATS under section 748.3(e).

27



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Example #10: A component “specially designed” for an AT-only end item

- A microphone (PA) switch is used in both military and in civil aircraft.
- The component is not classified as 9A610 because it is not a “specially designed” “component” of military aircraft.
- The switch is then compared against ECCN 9A991.d: “Parts” and “components” “specially designed” for “aircraft” subject to the controls of 9A991.a or .b, n.e.s.”
- Is the switch released by (b)(3) by virtue of its use in a 9A991 item, which is controlled only for AT reasons?

28



Response to Example #10

- The Note to paragraphs (b)(3) and (b)(4) describes how to evaluate components of items controlled only for AT reasons.
- In order for the switch to be released under (b)(3) or (b)(4) in an AT-only ECCN (such as 9A991.d in this example), it must also be used in another item controlled for AT-only items, such as vessels under ECCN 8A992 or EAR99 designated item that is in “production” or was “developed” for use in such items.
- A PA system is only used in aircraft and is not released under (b)(3) or (b)(4).

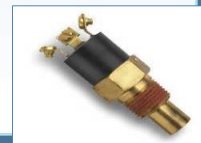


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29

Example #11: A catalog configurable component used in a military vessel

- A company manufactures temperature switches. Customers configure their switches using an order form where they provide 7 specifications: fitting, electrical output, electrical interface, temperature range, media temperature, pressure, and flow rate.
- All components are available to all customers.
- Would paragraph (b)(3) or (b)(5) apply to this component?



30

Response to Example #11

- If an end item is in “production” and uses a temperature switch configured identically or whose configuration differs only in terms of ‘fit’ (electrical interface and fitting, with no performance enhancements), then (b)(3) may apply.
- Paragraph (b)(5) releases “parts,” and “components,” developed with no particular commodity or type of commodity in mind. If documentation contemporaneous to the “development” of the temperature switches establishes that they were developed with no particular commodity or type of commodity in mind, then (b)(5) may apply.

31



Example #12: Applying (b)(4) when not the OEM

- A company is classifying a rotor head developed in the mid-1950s that was used in military helicopters classified under ECCN 9A610.a.
- OEM for this particular component is no longer in existence.
- However, company classifying this item has obtained documentation from “development” phase, including patent information and marketing materials indicating the OEM had “developed” the rotor head for use with military, as well as civil helicopters.



32

Response to Example #12

- The age of the component is not relevant in applying “specially designed.”
- Paragraph (b)(5) might be applicable, but more analysis would need to be done in regards to whether sufficient information was available from the “development” phase that indicated the criteria of (b)(5) was met.

Helpful tip:

-For components that are decades old that you believe were intended for use in AT-only or EAR99 items, reviewing (b)(3) first may be simpler.

-Although not dispositive, if a component was developed in the 1950s, but still has not made it into “production” of AT-only or EAR99 items, then likely (b)(4) is not going to apply, unless the documentation is in place that clearly indicates that was the intent.



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33

Example #13: A general purpose component

- A company developed a hydraulic piston to perform over a set range of performance parameters based on different hydraulic pressures.
- The company’s patent filing, market research materials and other documents from the development phase indicate the hydraulic piston was intended for use in machine tools, oil well platforms and vessels. However, the company’s first and only customer at this point is the U.S. military who have used the hydraulic piston in the new in-shore patrol vessel the Navy is developing.
- Does paragraph (b)(5) still apply to this component even though the only customer has been the U.S. Navy?



34

Response to Example #13

- Paragraph (b)(5) may still apply under this scenario, provided the person making the classification had “knowledge” that the documentation from the “development” phase demonstrated the (b)(5) criteria for the hydraulic piston.
- Criteria of paragraph (b)(5) is met during the “development” phase. Therefore, the information regarding the type of customer or the end use of the component is not relevant in applying “specially designed” in this case.

35



Training resources to assist your understanding of “specially designed”

- Various ECR FAQs, including 30 FAQs for “specially designed” are available on the BIS website:
 - www.bis.doc.gov
 - Select “Reform” and then
 - Select “ECR FAQs”
- BIS also included a copy of the 30 FAQs for “specially designed” as part of the hand-out materials for this session.

36



Training resources to assist your understanding of “specially designed”

- Two advisory opinions are posted on BIS website to assist your understanding of applying “specially designed.”

02/12/14 [ECCN 6A003.b.4.b Note 3](#)

12/13/13 [Application of “specially designed” to multipurpose die, standard packages, and integrated circuits comprised thereof](#)

- These two advisory opinions are available on the BIS website:
- BIS also included a copy these two advisory opinions as part of the hand-out materials for this session.

www.bis.doc.gov

- Select “Policy Guidance” and then
- Select “Advisory Opinions”



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37

Training resources to assist your understanding of “specially designed.”

- April 17, 2013, BIS webinar by Assistant Secretary Wolf for “*Export Control Reform Initiative- Implementation and Specially Designed*”
 - Includes detailed overview of “specially designed”
- May 15, 2013, BIS webinar by Timothy Mooney on “*Specially Designed*” in the Initial Implementation of Export Control Rule
 - Focuses on “specially designed” and CCL Order of Review decision tools.

www.bis.doc.gov

- Select “Reform” and then
- Select “ECR teleconferences”



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38

Specially Designed Decision Tool

- Posted on BIS website www.bis.doc.gov
- Click on “Exporter Portal” link.
- Then click on “Decision Tools” icon.

Specially Designed Decision Tool

Reset
Key Terms List

“Specially Designed” Decision Tool
(The tool is effective for exports on or after October 15, 2013)

Begin >>

39

Contact Information

Regulatory Interpretation and Transition Guidance:

- Regulatory Policy Division: rpd2@bis.doc.gov , 202-482-2440
- CCL Order of Review , “Specially Designed”, Decision Tools:
timothy.mooney@bis.doc.gov

Office of Exporter Services:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Washington, D.C. <ul style="list-style-type: none"> – Counseling: (202) 482-4811 – e-mail: ECDOEXS@bis.doc.gov | <ul style="list-style-type: none"> • Western Regional Office, Newport Beach, CA <ul style="list-style-type: none"> – Counseling: (949) 660-0144 • Northern California Branch, San Jose, CA <ul style="list-style-type: none"> – Counseling: (408) 998-8806 |
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