




Civil/Military End Use/End User Evaluation



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Region Overview

- Population
 - China: Approximately 1.36 billion
 - South Korea: Approximately 50 million
- Different trade and export control considerations across the countries.
- China and South Korea both have Strategic Trade Control Laws.

	<u>Country Group</u>
China	D:1, 3-5
South Korea	A:1-5, B

Country Groups: Supplement No. 1 to EAR Part 740
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We're Here To Help!

Team Commerce: GM/BIS/PTO/ENC

- International Company Profile (ICP)
- Intellectual Property Rights concerns
- Technology transfer concerns
- Understanding Tiananmen Square sanctions and Restrictions on Certain Military End Uses under Part 744
- Market Access
- Chinese MOFCOM Certificates



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Checking *Bona Fides* in China

- ICP – basic registration information and company profile available from the U.S. Commercial Service.
- Lawyers, consulting companies in China for full service inquiries.
- Ask for MOFCOM registration document.
- Ask for business cards, website address.
- What is the company's name in Chinese characters?
- Social Media Research (e.g., LinkedIn check of the company CEO).



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Case Study 1: Post-Shipment Verification of Concern

- Recent PSV on a State-Owned Enterprise (SOE) that focused on providing support to local start-up companies. Founding parent is an SOE tech university.
- 6 employees, and a company representative with the least amount of knowledge introduced the company to the ECO.
- No knowledge of export controls nor controlled equipment located in the facility.
- Company representative was unfamiliar with the license conditions and the End-User Statement submitted with the license application.
- Approximately one hour used to discuss, in vague terms, the company's testing.
- Company representative finally admitted that only the senior VP uses the portable, sensitive technology for the end use the ECO had inquired about.
- The representative had just spent the hour on unhelpful information and stating the company was not involved in this particular end use.
- The Senior VP works at tech university.
- Not all items were present for verification.
- No current customer base to carry out the end use stated on the license application.



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Case Study 2:

- South Korean medium size semiconductor manufacturing company.
- Ordered semiconductor automation equipment from an American manufacturer.
- Item was shipped under License Exception GBS to the South Korean company (end user) for use in manufacturing silicon wafers.
- End use check conducted four months after the item shipped.
- Check revealed upon receipt the item was immediately transshipped to another company located in another country.
- According to the South Korean company, the American manufacturer was not notified or aware of the reexport.
- South Korean company officials were unfamiliar with export controls, the EAR nor licensing requirements.
- No internal compliance program in place

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Diversion Concerns

Routine Questions asked during a PSV:

- ❖ WHO IS THE END USER AND WHAT IS THE INTENDED END USE?
- ❖ WHO ELSE HAS ACCESS TO THIS EAR ITEM?
- ❖ HOW WILL YOU CONTROL THIS ITEM?

- Research institutions conducting basic research
- SOE companies supporting growth in their communities

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Other Concerns

- Military/Civil (e.g., aviation) lines of production:*
- How are manufacturing lines separated?
- Has your company done an actual site visit?
- Can you articulate that your U.S.-origin item will not be used in military production?

***Need to conduct due diligence prior to exporting under License Exception CIV**

- ❖ Can company provide you with documentation confirming the supply chain?
- ❖ Who is the ultimate end user of your item?

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Best Practices for Informing Chinese Companies

- Educate your partners on export/reexport licensing requirements.
 - If the item is not exportable to China, explain why.
- Educate your SME clients on MOFCOM End Use Certificates.
 - Certificates take time and are critical to ensuring timely shipment of licensed items valuing \$50,000 or more.
 - Do NOT encourage purchases for multiple separate shipments of \$49,000 or less. *We will discover this scheme.*
- Educate your Chinese contacts on transparency.
 - Advise them that the U.S. government is here to assist (really!) when we visit to conduct an end-use check.
 - The purpose of ECO visits is often to obtain answers on behalf of interagency partners in order to facilitate the license application review process.
- If your Chinese customer has problems understanding the concept of U.S. export controls, provide them a copy of “*Don’t Let This Happen To You,*” also available in Chinese.
www.bis.doc.gov/index.php/about-bis/newsroom/publications



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South Korean Export Trends/Concerns

- Diversion concerns to sanctioned or unauthorized destinations and entities.
- Korean private sector companies may be unaware of U.S. reexport requirements.
- Large number of trading companies listed as ultimate “end users”.
 - Trading companies are NOT Ultimate Consignees.
- Limited cooperation on end-use checks.

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South Korea Trends

- Defense industry exports expanding.
- Defense companies generally informed on export law and licensing requirements.
- Part of Country Group A:5, eligible for License Exception STA for 600 Series items.
- Some companies still not taking advantage of STA and are applying for BIS license authorizations unnecessarily.

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Useful Resources

- U.S. Commerce Department
 - U.S. Commercial Service
 - » Doing Business in China: Country Commercial Guide
 - Bureau of Industry and Security
 - » Export Administration Regulations
 - Patent and Trademark Office
 - » Protecting Intellectual Property Rights in China
- American Chamber of Commerce
 - Export Compliance Working Group (ECWG)
 - www.amchamchina.org
 - www.amchamkorea.org
- Independent Consultants and Law Firms
- Ministry of Commerce, China
 - www.mofcom.gov.cn

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Thank You



谢谢

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