



UPDATE 2011
CONFERENCE ON EXPORT
CONTROLS AND POLICY

Implementing Export Control Reform

USML to CCL

Matthew Borman
Deputy Assistant Secretary
Bureau of Industry and Security
U.S. Department of Commerce
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Control of Items the President Determines No longer Warrant Control under the U.S. Munitions List

- Published July 15, 2011
- Framework for controlling militarily less significant defense articles, largely generic parts and components, on the Commerce Control List (CCL) rather than the United States Munitions List (USML).



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- USML to be revised into a “positive list.”
- “Positive List” - objective technical parameters rather than design intent to control items on USML.
- Items not meeting criteria to be on “positive” USML list would be transferred to CCL* and could include:
 - End-items;
 - Parts;
 - Components;
 - Accessories; and
 - Attachments.

* Requires congressional notification



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Benefits of Transferring Items from USML to CCL

- Provides U.S. exporters and foreign end-users with flexibility and simpler controls.
 - 10% *de minimis* rules apply
 - See through rule no longer applies
 - Purchase orders are no longer required
- Eliminates ITAR registration.
- Ends MLA/TAA requirements to share data and services.
- Reduces jurisdictional reviews.
- Expands availability of former USML items



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Commerce Munitions List (CML)

- **“600 series”**
 - Former USML *end items* not identified on the revised USML or in another existing ECCN controlled for more than AT reasons only
 - Wassenaar Arrangement Munitions List (WAML) items
 - Generic parts, components, accessories, and attachments not specifically listed on the revised USML
- **Distinct Export Control Classification Numbers (ECCN) will be identified in each CCL category - xY6zz**
 - x = category 0-9; Y = group A-E
 - zz corresponds to the WAML category to make it easier for exporters and government officials to track items



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CML Reasons for Control

- **End items and parts, components, accessories and attachments –**
 - National Security column 1 (NS1); Regional Stability column 1 (RS1); Anti-terrorism column 1 (AT1); United Nations Embargo (UN)
 - 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
 - Items previously on the CCL retain reasons for control
- **Specific parts, components, accessories and attachments having little or no military significance**
 - Anti-terrorism column 1 (AT1)



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CML Licensing Review Policy

- General policy of denial when destined for a country subject to a U. S. arms embargo
 - Section 740.0(a)(12)
 - List drawn from section 126.1 and State *Federal Register* notices



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0Y521

- Control category for items that warrant control but not yet specifically controlled, e.g., an emerging technology
- Temporary holding ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 for these items
- Subject to a nearly worldwide license requirement with a case-by-case review policy
 - **Regional Stability column 1 (RS1) reason for control**



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CML License Exceptions

- **Restrictions - §740.2**
 - (a)(12) - countries subject to U.S. arms embargo
 - **Only GOV §740.11(b)(2)(ii) is authorized**
 - (a)(13) - “600 series” End items
 - **Only the following LEs are authorized:
LVS, TMP, RPL, GOV (only §740.11(b)(2)(ii),
and (2)(iii) for §740.20(c)(1) countries), and
STA where identified and to an ultimate
government end use in a §740.20(c)(1)
country**


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CML License Exceptions

- (a)(13) - “600 series” Parts, components, accessories and attachments
 - **Only the following LEs are authorized:**
 - LVS, TMP, RPL, GOV (only §740.11(b)(2)(ii), and (2)(iii) for §740.20(c)(1) countries are authorized), and STA to an ultimate government end use in a (c)(1) country;
 - **Limitations in §740.20(b)(2)**


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CML License Exceptions

— (a)(13) - “600 series” Technology and software:

- **Only the following LEs are authorized:**
 - GOV (only §740.11(b)(2)(ii) and (2)(iii) for §740.20(c)(1) countries), TSU (§740.13(a) or (b)), STA to an ultimate government end use in a (c)(1) country;
- **Limitations in §740.20(b)(2)**

— (a)(14) - ECCN 0Y521

- **Items classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 are authorized only by GOV §740.11(b)(2)(ii)**



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Know Your Customer

- **Addition of two new “red flags” to provide additional compliance guidance.**
- **One red flag would refer to License Exception STA and the other to the “600 series.”**



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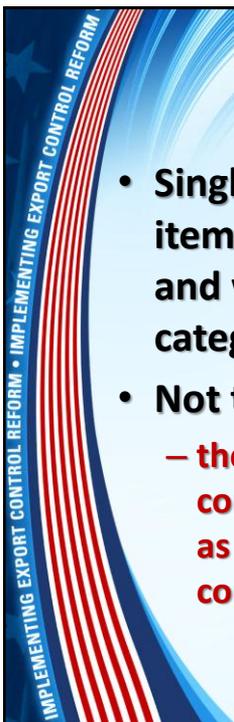
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De Minimis

- A more restrictive 10 percent (as opposed to 25 percent) *de minimis* rule would apply to reexports of CML items incorporated into foreign-made end items.

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Specially Designed

- Single definition applied to “600 series” items and existing ECCNs using the term and will be used in the revised USML categories
- Not the MTCR definition –
 - the reliance of the MTCR definition on the concept of “exclusively used” limits its utility as a single term for all of the items on the two control lists

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Specially Designed - Objectives

- Improve clarity
- Preclude overlapping controls
- Avoid use of design intent based controls
- Be consistent with international regimes
- Exclude simple parts
- Apply to both end items and parts/
components
- Apply to materials and software



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Specially Designed – End Items

- A “specially designed” item, other than a “part” or “component,” is an item that is ‘enumerated’ on the CCL and, as a result of “development” has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions of the referenced item identified in the CCL.



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Specially Designed – Parts and Components

- A “specially designed” “part” or “component” is a “part” or “component” of an item ‘enumerated’ in a category of the CCL or USML.
- ‘Enumerated’ on the CCL means an item that is controlled for more than AT reasons only.

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Specially Designed - Exclusions

- Items not separately ‘enumerated’ are excluded from “specially designed” if:
 - Single unassembled part used in multiple types of civil items;
 - Items specifically excluded from CCL control in the 600 series;
 - Part or component used in an end item in “serial production” and not ‘enumerated’ ; or
 - Part or component exchangeable with an EAR99 or AT-controlled only part or component on a one for one replacement basis

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Export Control Reform

Robert S. Kovac
Managing Director
Directorate of Defense Trade Controls
Bureau of Political Military Affairs



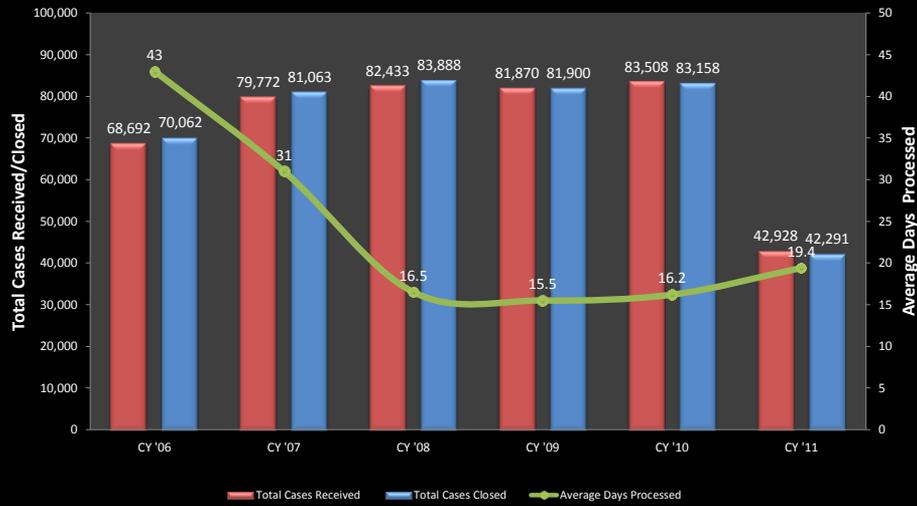
Directorate of Defense Trade Controls

Mission: Advance US national security and foreign policy through licensing of direct commercial sales in defense articles and the development and enforcement of defense trade export control laws, regulations and policies.



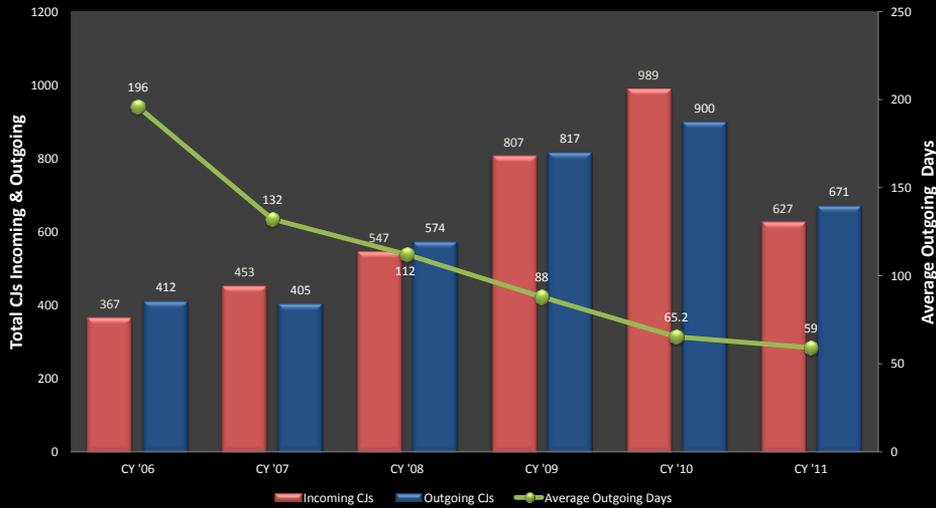
CY 06- CY 11 Licensing

CY 06 - CY 11 (as of JUN 30, 2011) License Decision



CY 06- CY 11 CJs

CY 06 - 11 (As of JUN 30, 2011) Commodity Jurisdiction Determinations





President's Export Control Reform Initiative

Announced in August 2009, jointly Chaired by the NSC and NEC.

In 2010, the plan approved by the President envisions:

- A Single Licensing Agency to receive and adjudicate licenses currently processed by State, Treasury and Commerce
- A Single Control List, tiered based on sensitivity of the commodity
- A Single IT system for submission, review and adjudication of licenses
- A Single Export Enforcement Coordination Agency

The Departments began action to reform the way the US does exports in 3 phases:

- I: Immediate improvements, create the framework
- II: Implement the new framework within existing structures/authorities
- III: Complete transition: Merge and consolidate

23



2010 Accomplishments

- Electronic licensing (99%)
- Electronic CJ submission
- Elimination of Prior Approval/Prior Notification requirement
- USML review guidelines
- Proposed Category VII rewrite

24



Ongoing Export Control Reform Actions

- New definitions of defense services and levels of maintenance*
- New policies on defense articles embedded in commercial items*, treatment of 3rd/dual nationals**
- New exemption for replacement parts*
- USML rewrite (all categories)
- Updated "by or for" the USG exemption
- USXports fielding
- USG program licenses
- Elimination of foreign party signature requirement on TAA's

25



Non ECR Actions

- 3 ongoing GAO Jobs
- Registration process improvements/fee authority
- Elimination of DSP-53
- New Brokering Regulations
- Update of 126.1
- Updated PPE exemption
- UK and AS DTCT implementation

26



Closing Comments

Reform of the US export control system has begun and will continue. But whatever changes take place in the near term must address the requirements of the AECA; the ITAR implements the AECA – it cannot change it.

Whatever changes are forthcoming will use US national security as the litmus test.

Any changes will undoubtedly impact established practices - it will be up to all of us to ensure that the changes are improvements.

27