

U.S. Export Compliance Factors: Scope, Eligibility, Screening, End Use, & Diversion

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U.S. Export Regulations

- *Do I only need to worry about shipping something to another country?*



- **I wish it was that easy!**

Scope of Export Controls

U.S. Export Controls govern (15 CFR 734):



➤ Exports

- Actual shipment or transport of items out of the U.S. to a foreign destination by any means (tangible or intangible).

➤ Re-exports

- Shipping any U.S. origin item from one foreign country to another foreign country.
- Releasing any U.S. origin technology to a foreign person outside the U.S.

➤ Deemed Exports

- An export of technology or source code is “Deemed” to take place when released to a foreign person within the U.S.
- If a foreign person reads or hears it, then it’s “deemed” to be an export to their country.

➤ All U.S. origin items wherever located

Examples of Export Activity

Physical Shipments to a Foreign Country

- Via a freight forwarder.
- Via a courier service (e.g., UPS, Fedex).
- Via U.S. mail.
- Via personal hand carry of item by traveler.



Intangible Transfers of Technology to a Foreign Entity *

- Via email, text message or fax.
- Via visual observation, Teams, Webex, or other video conference.
- Via posting of information to the internet.
- Via any electronic / wireless communication (FTP, VLAN, VPN).
- Via conversations (phone, meetings, informal, etc...).



* - Includes foreign persons located in the United States

Export Eligibility Factors

➤ What are you exporting?

- What is the Applicable Classification?
 - ✓ ECCN (Export Control Classification Number) per the CCL (Commerce Control List – 15 CFR 774)
 - ✓ USML (United States Munitions List) per the ITAR (Int'l Traffic in Arms Regulations – 22 CFR 121)

➤ Where are you exporting?

- Is the Destination Country Eligible to Receive?

➤ Who will receive the export?

- Is the Destination Entity/Individual Eligible to Receive?

➤ What will your export be used for?

- Is it associated with a Restricted End-Use?



Export Screenings

Country Screenings:

- Products cannot be exported or re-exported to the restricted or embargoed countries unless an export license is obtained.
- CCL Commerce Country Chart matrix (15 CFR 738)
- Embargoed Countries (15 CFR 746) : **Cuba, Iran, Iraq, North Korea, Syria, Crimea Region of the Ukraine.**



Denied Parties List (DPL) Screening:

- Can't export to persons or entities on any U.S. DPL.
- 11 lists issued by the Departments of Commerce, Treasury or State.
- Numerous other lists are issued by foreign countries.
- Screen all Customers, Vendors, Employees, Contractors.
- <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>



Exports - Restricted End Uses

➤ Common Examples:

- Military.
- Nuclear.
- Missile Development.
- Space Technology.
- Torture / Crime Control.
- Chemical / Biological Warfare.
- Unmanned Air Vehicles.
- Leading Edge High Technology Items.



Note: Refer to 15 CFR 744

Exports - Diversion Risk

➤ Objective

- To ensure products and technology are not subsequently diverted to unauthorized destinations or end users.

➤ Risk - Distributor or Customers redirect or resell to 3rd Party

- Can't be on Denied Parties List.
- Can't be to a Restricted or Embargoed Country.

➤ Direct knowledge of a Diversion is not necessary to be held liable

- US Government will use "Reason to Know" standard (i.e., no Red Flags).
 - ✓ Knowledge of the customer (including related publicly available information).
 - ✓ Knowledge of the industry.
 - ✓ Knowledge of the transaction details.
 - ✓ Unusual delivery or payment terms or other non-standard contractual language.

➤ Mitigation

- Background checks of Distributors / Customers.
- Review Distributor's website.
- Include U.S. export restriction language in Distributor / Customer contracts.
- DPL screening of all distributors / customers and drop ship entities.



Reference Material

➤ Classification Training (ECCN & HTS):

- Masters Method: International Trade Compliance Training: <https://www.mastersmethod.com/>

➤ Import/Export Newsletters:

- Full Circle – Jim Bartlett’s The Daily Bugle: <https://fullcirclecompliance.eu/our-services/export-import-daily-update/subscribe/>
- Sandler, Travis & Rosenberg – Trade Report: <https://www.strtrade.com/trade-news-resources/subscribe>
- Tuttle Law Newsletter: <https://www.tuttlelaw.com/register.html>
- Gary Stanley’s Defense and Export-Import Update: e-mail your name, title, company, and e-mail address to gstanley@glstrade.com
- International Freight Forwarder newsletters: (e.g., CH Robinson, Expeditors, UPS, etc.)

Contact Information

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Thank You!

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