October 2014 COGR Meeting Thursday Afternoon Presentation - Space Controls

Published Date: 10/23/2014
Export Control Reform
Spacecraft/Satellites

Note: This presentation is merely a summary of official statements and final rules published by the Departments of Commerce and State. Final rules, as well as the Export Administration Regulations and International Traffic in Arms Regulations, must be reviewed to determine the full scope of any applicable requirements.
Space Export Controls

Update

- After delivery of the 1248 Report to Congress (Apr 2012), Congress added language into the FY13 National Defense Authorization Act that:
  - Gave the President the authority to transfer certain satellites and related items to the Commerce Control List (CCL)
  - Prohibits export of CCL satellites and related items to China, North Korea, or any state sponsor of terrorism
- May 24, 2013: Published proposed rules for satellite sections in USML (Cat XV) and CCL (ECCN 9x515) – Public comment period closed July 8, 2013.
  - Effective date for radiation-hardened integrated circuits (and related software and technology): June 27, 2014
  - Effective date for all other items: November 10, 2014
Summary of Spacecraft Controls

Cat XV Before ECR

CCL Before ECR
Items Remaining on USML

• Satellites and spacecraft
  - Unique military and intelligence functions, including nuclear detection, intelligence collection, missile tracking, anti-satellite or space-based weapons, classified operation or equipment, and navigation
  - Certain remote sensing with military applications
  - Man-rated habitats

• Ground control equipment
  - Performs a uniquely military function for one of satellites above
16 Critical Technologies Remaining on USML

1) Certain specified antennas having particular capabilities
2) Certain space-qualified optics with particular properties
3) Space-qualified FPAs having particular peak response wavelength
4) Space-qualified mechanical cryocooler
5) Space-qualified active vibration suppression
6) Certain optical bench assemblies
7) Certain non-communication space-qualified directed energy systems
8) Space-based kinetic or charged particle energy systems
9) Certain space-qualified atomics clocks
10) High performance attitude determination and control systems
11) Certain space-based thermoionic converters or generators
12) Certain thrusters for orbit adjustment
13) Control moment gyroscopes
14) Certain space-qualified MIMICs
15) Certain space-qualified oscillators
16) Certain high performing star trackers
Services Remaining on USML

- Satellite integration and launch services
  - Provided by a U.S. person
  - To a foreign launch integrator or launch vehicle provider

- Launch support considered a defense service, includes furnishing assistance or information for:
  - Integration of satellite to vehicle
  - Launch failure analysis
Items Transferred to CCL

• **Satellites**
  - Commercial Communication Satellites
  - Lower-Performance Remote Sensing Satellites
  - Planetary Rovers
  - Planetary and Interplanetary Probes

• **Related systems for the above:**
  - Ground control systems
  - Training simulators
  - Test, inspection, and production equipment
  - Non-critical software for production, operation or maintenance
  - Non-critical technology for development, production, installation, operation or maintenance
  - Radiation hardened microelectronics

• **Parts and components of satellite bus and payloads not listed on USML**
  - Thousands of *types* of parts and subsystems
  - Hundreds of thousands of specific parts
Notes on Jurisdiction

- Spacecraft in 9A004 or 9A515.a remain subject to the EAR even when incorporating a hosted payload performing a function described in USML Category XV(a). All spacecraft incorporating primary or secondary payloads that perform a function described in XV(a) are controlled in XV(a).

- ITAR “see-through” rule does not apply to parts, components, accessories, attachments, equipment, or systems in XV(e) that are integrated into and included as an integral part of an EAR item prior to export, reexport, or transfer.
Non-Controlled Space-Related Technology

- Technology required for spaceflight passenger or participant experience, as described in Note 2 to 9E515, is not subject to the ITAR or EAR.

- Technical data is not subject to the ITAR or EAR when transmitted to or from a satellite or spacecraft, when limited to information about the health, operational status, or measurements or function of, or raw sensor output from, the spacecraft, spacecraft payload, or its associated subsystems or components (see Note 3 to 9E515).
Order of Review -
Spacecraft
(Supp. No. 4 to part 774)

Review USML Category XV

- Specifically enumerated items
- “Catch-all” controls and ITAR definition of “specially designed”

- If not on the USML, review the CCL
  - Review applicable 9x515 ECCN
    - Specifically enumerated items
    - “Catch-all” controls and EAR definition of “specially designed”

- Note: the following ECCNs supersede 9A515.x:
9A515 Framework

9A515

CCL Category 0-9

Product Group A-E

"5" is used to distinguish from 600 series and dual-use items not previously in USML Cat XV

Last two characters reference USML Cat XV

- .a - .w: specifically enumerated end items, materials, parts, components, accessories, and attachments
  - Some items may be "specially designed"
- .x: "specially designed" parts,
9x515 ECCN Framework

- Subject to same scope of controls as 600 series items
  - NS1, RS1, and AT1 generally
  - MT for some items

- License applications for Country Group D:5 reviewed consistent with ITAR § 126.1
  - Policy of denial for Country Group E:1 and China
9x515 and Restrictions in § 744.21

• Section 744.21 imposes a license requirement for exports or reexports of certain items subject to the EAR when one knows such items are intended, entirely or in part, for a military end use in China or for a military end use or military end user in Russia

• A license is required for all items classified under a 9x515 ECCN, including any items that may be added to 9A515.y, for China and Russia
License Exceptions

- 9x515 generally eligible for many license exceptions (e.g., LVS, TMP, RPL, GOV, TSU, STA)
  - Restrictions apply in § 740.2, including 9x515 items subject to MT control
  - However, 9A515 items controlled for MT reasons are eligible for certain provisions of TMP, RPL, TSU, or AVS if exported as part of a spacecraft in quantities appropriate for replacement parts (§ 740.2(a)(5)(i))

- Current restriction in § 740.2(a)(7) restricting use of license exceptions for certain space
License Exception STA

- 9x515 generally eligible for STA for Country Group A:5
  - Unlike 600 series, ultimate government end use is **not** required
  - Prior Consignee Statement requirements generally the same as for non-600 series items, but statement must allow for USG end-use check
  - Certain spacecraft in 9A515.a require eligibility request
  - Software in 9D515.b, .d, or .e and technology in
### License Exception STA

<table>
<thead>
<tr>
<th></th>
<th>600 Series Items</th>
<th>9x515 Items</th>
<th>Other EAR Items</th>
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</thead>
<tbody>
<tr>
<td><strong>Ultimate government end use required?</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Always limited to Country Group A:5?</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Eligibility request required?</strong></td>
<td>Yes, for end items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a</td>
<td>Yes, for certain spacecraft in 9A515.a</td>
<td>No</td>
</tr>
<tr>
<td><strong>Must the foreign parties have been on a previously approved license?</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Does Prior Consignee Statement require agreement to permit USG end-use check?</strong></td>
<td>Yes, if the consignee is not the government of an A:5 country</td>
<td>Yes, if the consignee is not the government of an A:5 country</td>
<td>No</td>
</tr>
</tbody>
</table>
Reexport Considerations – *De Minimis*

- 9x515 subject to same *de minimis* rule as 600 series

| Item with U.S. content reexported to all countries, except D:5 (see also ITAR §126.1) | 25% *de minimis* rule |
| D:5 (U.S. arms embargoed) | 0% *de minimis* rule |

*Note 1:* See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules

*Note 2:* If exceeds *de minimis*, the foreign made item is subject to the EAR.
Reexport Considerations – De Minimis

- 9x515 subject to same *de minimis* rule as 600 series

| Item with U.S. .y content only reexported to all countries, except E:1 plus China | Not subject to the EAR |
| E:1 plus China | 0% *de minimis* rule |

*Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules*

*Note 2: If exceeds de minimis, the foreign made item is subject to the EAR.*
Reexport or Transfer of Direct Products of U.S. Technology or Software

• Under § 124.8(5) of the ITAR, any defense article produced or manufactured from ITAR technical data or defense service requires DDTC approval prior to transfer to any non-U.S. person.

• Under the EAR, certain foreign-made items that are located outside the U.S. that are the direct product of certain U.S.-origin technology or software are subject to the EAR when exported from abroad or reexported to certain countries.

  9x515 items are subject to a broader direct product rule (additional country and product scope) than other items subject to the EAR.

  Foreign-made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin.
Reexport or Transfer of Direct Products of U.S. Technology or Software

<table>
<thead>
<tr>
<th>The 9x515 direct product rule</th>
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</thead>
<tbody>
<tr>
<td>Is the foreign-produced direct product of:</td>
</tr>
<tr>
<td>(i) U.S.-origin 9x515 technology or software <strong>or</strong></td>
</tr>
<tr>
<td>(ii) a plant or major component of a plant that is a direct product of U.S.-origin 9x515 technology or software?</td>
</tr>
<tr>
<td>Is the foreign-produced direct product a 9x515 item?</td>
</tr>
<tr>
<td>Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:1, D:5, or E:1?</td>
</tr>
</tbody>
</table>

*Note: If “yes” to all three questions, then the foreign made item is subject to the EAR.*
Contact Information

Technical and Licensing Questions on Satellites: Office of National Security and Technology Transfer Controls

- Mark Jaso, mark.jaso@bis.doc.gov
- Reynaldo Garcia, reynaldo.garcia@bis.doc.gov
- Dennis Krepp, dennis.krepp@bis.doc.gov

Regulatory Interpretation and Transition Guidance

- Regulatory Policy Division: rpd2@bis.doc.gov, 202-482-2440

Web: www.bis.doc.gov    www.export.gov/ecr