EVOLUTION OF EXPORT CONTROL RULES AND CONSEQUENCES FOR EEE COMPONENTS

Thomas Torloting, CNES
thomas.torloting@cnes.fr

March, 1st 2016

ESSCON 2016
EXCHANGE CONTROL RULES
- Principles
- Example: US Regulations

US EXPORT CONTROL REFORM
- ECR Objectives
- Consequences of the ECR

CONSEQUENCES ON EEE COMPONENTS
- What we need
- What we demand

CONCLUSIONS
- How to avoid mistakes?
- How to improve?
Global scale dialogues

- Between countries supplying proliferating technologies

- Coordinate and harmonize rules and measures to limit their proliferation:
  - **The Wassenaar Arrangement**: on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
  - **The Nuclear Suppliers Group (NSG)**: for the control of nuclear related technology

- …
Export Control is a tool at the disposal of the international community to address threats posed by weapons of mass destruction proliferation and their means of delivery.

Export Control is constantly evolving:

- **Technological** developments
- **Geopolitical** developments
- **Export Control Regulation** developments
**Export Control Regulations** apply to:

- Plenty of **tangible and intangible items** such as:
  - Component
  - Material and process
  - Software
  - Technology
  - Services, Emails, Agreements…

- Plenty of circumstances depending on the **End-Use/End-User, Intermediate Consignees**…

**Export Control Regulations** specify plenty of penalties:

- Criminal penalties
- Fees
- Blacklisting…
**EXPORT CONTROL RULES**

## U.S. Regulations

### Military Items
- DEPARTMENT OF STATE (DoS)
  - **I.T.A.R.**
    - International Traffic in Arms Regulations
  - **U.S. Munition List USML**
    - 21 categories
    - Military items
    - Traditionally all inclusive list

### Dual-Use Items
- DEPARTMENT OF COMMERCE (DoC)
  - **E.A.R.**
    - Export Administration Regulations
  - **Commerce Control List CCL**
    - ECCN (Export Classification Control Number)
    - Dual use items
    - Traditionally positive list
**ECR Objectives**

- **Reduce the incentive for “ITAR-free” foreign weapon and space systems** (U.S. space industry spearheaded the push for reform)

- **Increase interoperability** of weapons systems with allies

- **Focus licensing and controls** on truly sensitive technologies and hardware
ECR Objectives

- ECR (what is controlled and how) and “US openness” (delivering of license) are two different things
  - Still 0 license for China

- New rules are designed to boost US exports => better clarity and predictability than before in principle

- A great number of items have come off the USML to the CCL

- Dialogue with DoC is facilitated
ECR Objectives

- Objectives and behavior of Commerce is different than State
- Use of various license exception: De Minimis, STA, GOV...
- De minimized ITAR items in a non-US commercial satellite should be officially confirmed
- Beginning of a new process – Too soon to assess how US industry and administration are going to implement the rules
U.S. EXPORT CONTROL REFORM

Previous USML Category XV

New USML Cat XV
- Military Satellites & Satellites w/performance & ground equip
- GPS Receivers w/performance
- Services / assistance / technical data for USML & CCL satellites
- Parts critical for military functions
- 16 Critical Technologies

New CCL
- New ECCN 9x515
  - Spacecraft not in USML or other CCL & ground equipment
  - Specially designed AND hardened microelectronics w/performance
  - Parts /components specially designed for Cat XV & 515 articles
- Other ECCNs
  - Specific radar systems
  - GPS Receivers w/o performance

EAR 99
- Untold Story
- Space qualified components which are not specially designed or don’t meet performance criteria
- •STA for 36 countries
  •25% de minimis outside 36 (except for China for 9x515)
Exporter commodity identification process

1. Fits USML Cat XV criteria
   - Yes: ITAR controlled
   - No: Specially designed

2. Specially designed
   - For Cat XV or 515a items
     - Yes: 515.a controlled
     - No: Spacecraft

3. Spacecraft
   - Yes: 515 series controlled
   - No: AND meet technical performance

4. AND meet technical performance
   - Yes: CCL controlled
   - No: AND rated, advertised to meet this performance

5. AND rated, advertised to meet this performance
   - Yes: EAR 99
   - No: Fits another ECCN

6. Fits another ECCN
   - Yes: CCL controlled
   - No: EAR 99
CONSEQUENCES FOR EEE COMPONENTS

Example on a project

- A scientific satellite
  - Only european & NATO partners
  - Only European intermediate consignees
  - Launch from Kourou, France

- Pre-ECR procurement
  - Exhaustive End-User Statement
  - 95 ITAR licenses for EEE parts (over than 1800 references)
Example on a project

- Post-ECR synthesis
  - Classification from US manufacturers
  - 0 ITAR EEE parts (6 EAR99)
  - 0 license needed
CONSEQUENCES FOR EEE COMPONENTS

A summary

- **What are you exporting?**
  - Establish licensing jurisdiction
  - Determine the proper classification

- **Where are you exporting?**
  - It fixes licensing requirements

- **Who will receive your item?**
  - Check prohibited/restricted end-user lists

- **What will be the end-use of your item?**
  - End-use controls
What we need

- Complete definition of the product
  - Origin
  - Goal
  - Lifecycle

- Full description of the product
  - List of the constituents/equipments/GSE…

- Export risk analysis
  - Anticipating the controlled items
  - Having all the necessary informations
What we demand

- **Contract requirements**
  - Responsibility engaged:
    - From the signatories
    - From the receiving entity

- **Documentation requirements**
  - End-User Statement
  - CECC
  - Export plan

- **Stock control requirements**
How to Avoid Mistakes?

- Ask the export status to the manufacturer
- Don’t forget intermediate consignees in the EUS
- Secure and control the lifecycle of an ITAR item
- Check the entity lists
- Anticipate the license demands
How to Improve?

- **Stay in contact** with the US Gov helps both parties
- **Keep a valid database** of the export classification and export documents
- **Teach your partners** to avoid making mistakes
- **Create unique export documents** for european industries?