Destination Control Statements

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Related Content

A destination control statement and other information that the US Commerce Department's Bureau of Industry and Security (BIS) and the US State Department's Directorate of Defense Trade Controls (DDTC) require exporters to include on commercial invoices in order to comply with the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), respectively. This Standard Document has integrated notes with important explanations and drafting tips.

READ THIS BEFORE USING DOCUMENT

This Standard Document includes a destination control statement (DCS) and other information that exporters must include on certain commercial invoices that accompany export shipments of goods from the US to comply with:

- The Export Administration Regulations (EAR) (15 C.F.R. §§ 730.1 to 774.1), which are administered by the Bureau of Industry and Security (BIS) of the US Department of Commerce.
- The International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120.1 to 130.17), which are administered by the Directorate of Defense Trade Controls (DDTC) of the US Department of State.

The BIS and the DDTC mandate inclusion of the statement to put foreign end-users on notice that:

- The goods they are receiving are subject to US laws and regulations.
- The BIS, the DDTC, or another US agency may require that they obtain prior authorization for a reexport or retransfer.

Extraterritorial Application of US Export Regulations

The EAR, ITAR, and other US export laws and regulations have an extraterritorial application. Foreign end-users can be subject to US criminal and civil penalties if they reexport or retransfer an item without prior authorization from the appropriate US agency. For example, the EAR imposes license requirements on exports and reexports to Iran to address:

- Chemical and biological weapons.
- Non-proliferation.
- National security.
- Missile technology.
- Regional stability.
- Crime control.

(15 C.F.R. §§ 742.8 and 746.7).

In addition to exports, the ITAR restricts in-country transfers and reexports of defense articles and the performance of defense services without prior DDTC authorization.

The US Department of the Treasury's **Office of Foreign Assets Control** (OFAC) administers the Iranian Transactions and Sanctions Regulations (Iran Sanctions), a comprehensive embargo that covers certain exports and reexports to Iran (31 C.F.R. §§ 560.101 to 560.901). A foreign entity may need to obtain a license under the EAR and the Iran Sanctions regulations if it plans to either:

- Reexport an EAR-controlled item to Iran.
- Export a foreign-made item that contains more than de minimis levels of controlled US content to Iran.

(15 C.F.R. § 746.7 and 31 C.F.R. §§ 560.101 to 560.901).

For more information regarding the definitions of reexports and retransfers and the licensing requirements that can apply to foreign end-users under the EAR and ITAR, see Practice Note, Export Regulations: EAR, ITAR, and FTR: The Export Administration Regulations and The International Traffic in Arms Regulations. For a further discussion of US embargoes and sanctions programs, see Practice Note, Export Regulation: OFAC Economic and Trade Sanctions.

Penalties for Violations

If a company fails to include a DCS or other required information on a commercial invoice, it violates the EAR and ITAR (15 C.F.R. § 764.2 and 22 C.F.R. § 127.1). The BIS and DDTC have the authority to initiate an enforcement action, which can lead to:

- Civil penalties.
- Criminal penalties.
- The suspension of export privileges in certain egregious cases.

(15 C.F.R. § 764.3 and 22 C.F.R. § 127.10.)

Willful violations of export regulations can lead to additional civil and criminal penalties (see Practice Note, Core Elements of an Export Compliance Program: Civil and Criminal Penalties for Export Violations and Personal Liability for Violations of the US Export Laws and Regulations).

For more information on compliance with the diligence, prior authorization, and reporting requirements under the EAR, ITAR, and other US export regulations, see Practice Note, Core Elements of an Export Compliance Program.

Export Control Reform

As part of the President's Export Control Reform initiative, the BIS and DDTC reviewed and revised the EAR and ITAR to simplify and harmonize the export process. Before the review, the ITAR and EAR imposed DCS requirements that consisted of different prescribed language. As a result, companies whose product lines consisted of items subject to the EAR and items subject to the ITAR were required to insert the respective ITAR and EAR DCS on the same set of export documents to fully comply with both sets of regulations. Effective November 15, 2016, the BIS and DDTC revised the EAR and ITAR to:

- Harmonize the DCS in each set of regulations (15 C.F.R. §758.6 and 22 C.F.R. § 123.9).
- Eliminate the requirement that the DCS also appear on:
  - bills of lading;
  - air waybills; or
  - other shipping documents.

The EAR and ITAR now prescribe the same language for the DCS and mandate that it be inserted on commercial invoices. However, counsel should be aware that there are still important differences between the EAR and ITAR DCS requirements that can impact whether an invoice must include:

- The DCS.

- The EAR export classification for an item in the shipment.
- The destination country, the end user's name, and license number or license exception.

This Standard Document sets out the content requirements for commercial invoices to comply with the EAR and ITAR and describes when certain information must be included (see Drafting Note, Compliance with the EAR and Drafting Note, Compliance with the ITAR). Companies should ensure that their Enterprise Resource Planning systems include the DCS and any additional export classification information that may be required to be printed on their commercial invoices.

Assumptions

The scope of this Standard Document is limited to commercial invoices for the export of goods subject to the EAR or ITAR. It does not address other diligence requirements or filing obligations that are required in connection with exports. For example, it does not account for the exporter's obligation to file BIS license information in the Electronic Export Information filings (EEIs) in the Automated Export System (AES). For more information on EEIs and the AES, see Practice Notes, Export Regulations: EAR, ITAR, and FTR: The Foreign Trade Regulations and Core Elements of an Export Compliance Program: Forwarding Agent and AES Filing Agent Oversight. For more information on various compliance requirements, see Practice Note, Core Elements of an Export Compliance Program and Complying with US Export Control Regulations Checklist.

Bracketed Items

Bracketed items in ALL CAPS should be completed with the facts of the transaction, if applicable.

Commercial Invoice Content Requirements for Shipments Subject Only to the EAR

(a) These items are controlled by the US government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the US government or as otherwise authorized by US law and regulations.

(b) [ECCN 9x515 CLASSIFICATION or 600-SERIES ECCN.]

COMPLIANCE WITH THE EAR

The EAR requires exporters to include the DCS for shipments (tangible exports) from the US of items that are classified on the Commerce Control List **unless**:

- The item is classified as EAR99.
- The shipment is made under License Exception Baggage (BAG), which authorizes certain individuals, such as persons leaving the US either temporarily or longer-term, to take to any destination, as personal baggage, certain classes of commodities, software, and technology (15 C.F.R. § 740.14).
- The shipment is made under License Exception Gift Parcels and Humanitarian Donations (GFT), which authorizes exports and reexports:
  - of gift parcels by an individual to individuals or religious, charitable, or educational organizations; and
  - by groups or organizations of donations to meet basic human needs (15 C.F.R. § 740.12).

(15 C.F.R. § 758.6.)

The EAR require that exporters include the DCS on commercial invoices for all other shipments even when those items are exported as No License Required (NLR). While the EAR does not require the DCS for goods classified as EAR99, practitioners generally recommend that exporters include the DCS on the commercial invoice for all export shipments subject to the EAR as a best practice, regardless of an item's classification. For a discussion of export classification and license exceptions under the EAR, see Practice Note, Export Regulations: EAR, ITAR, and FTR: Category of Export and License Exceptions and Complying with US Export Control Regulations Checklist.

Section (b) reflects that exporters must also insert the Commerce Control List export classification on the commercial invoice for items classified either in:

- ECCN 9X515, which controls spacecraft and satellites.
- 600-series ECCNs, which control items that:
  - are on the Wassenaar Arrangement Munitions List, a controls list for a multilateral export control regime; or
  - were formerly on the US Munitions List (USML) but have been transferred to the EAR as part of the President's Export Control Reform initiative.

(15 C.F.R. § 758.6.)

Commercial Invoice Content Requirements for Shipments Subject to the ITAR

(a) These items are controlled by the US government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the US government or as otherwise authorized by US law and regulations.

(b) [DESTINATION COUNTRY.]

(c) [END USER'S NAME.]

(d) [LICENSE NUMBER OR LICENSE EXCEPTION.]

(e) [EAR EXPORT CLASSIFICATION.]

COMPLIANCE WITH THE ITAR

The ITAR require exporters include the DCS on commercial invoices for exports, reexports, and retransfers of defense articles in tangible form from the US (22 C.F.R. § 123.9 (b)(1)(iv)). The ITAR also requires that the exporter's commercial invoice include:

- The country of ultimate destination.
- The end-user's name.
- The license or approval number obtained from DDTC or the license exception that the exporter claims.

If an item that is subject to the EAR is included in the shipment with other ITAR-controlled items, the exporter must provide the EAR export classification information to the end-user (ECCN or EAR99). (22 C.F.R. § 123.9 (b).)

The ITAR does not require that the USML Category of the item be listed on the commercial invoice. For a discussion of the ITAR and the USML, see Practice Note, Export Regulations: EAR, ITAR, and FTR: The International Traffic in Arms Regulations. For a description of export classification under the EAR, see Practice Note, Export Regulations: EAR, ITAR, and FTR: Category of Export.

PRODUCTS

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