



U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

Developments in U.S. Export Controls and the Export Administration Regulations

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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.

Date of Last Revision: July 20, 2017

Discussion Topics

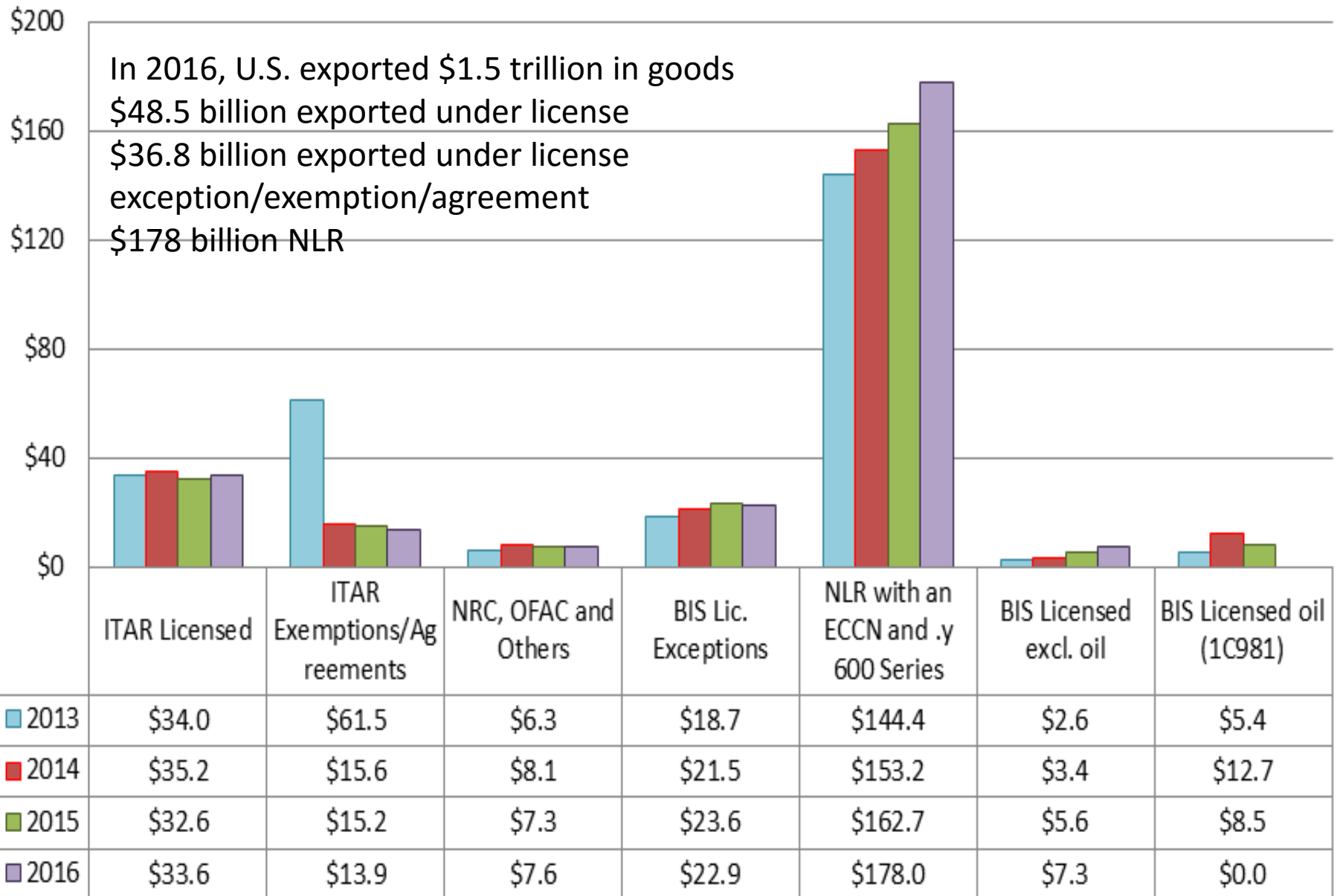


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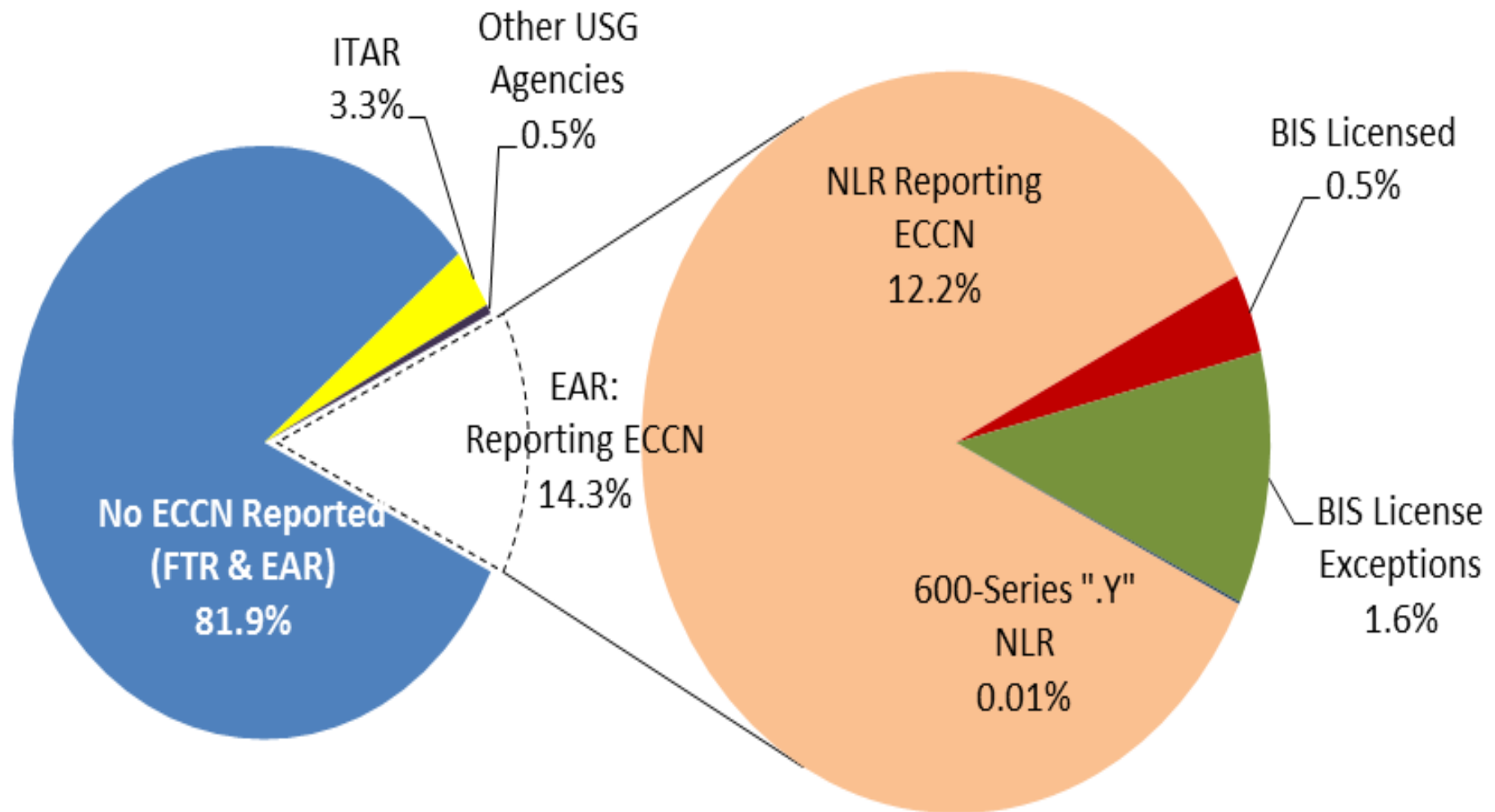
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- Exports subject to U.S. Government control
 - Trends in licensing under the EAR
 - US Munitions List to Commerce Control List Review
 - Re-export Controls
 - Is your reexport “Subject to the EAR”
 - Foreign production (*de minimis*)
 - Other Developments
 - Intangible Technology Transfers
 - Entity List and Catch-All Controls

U.S. Government Control on Exports CY 2013-2016

\$billion



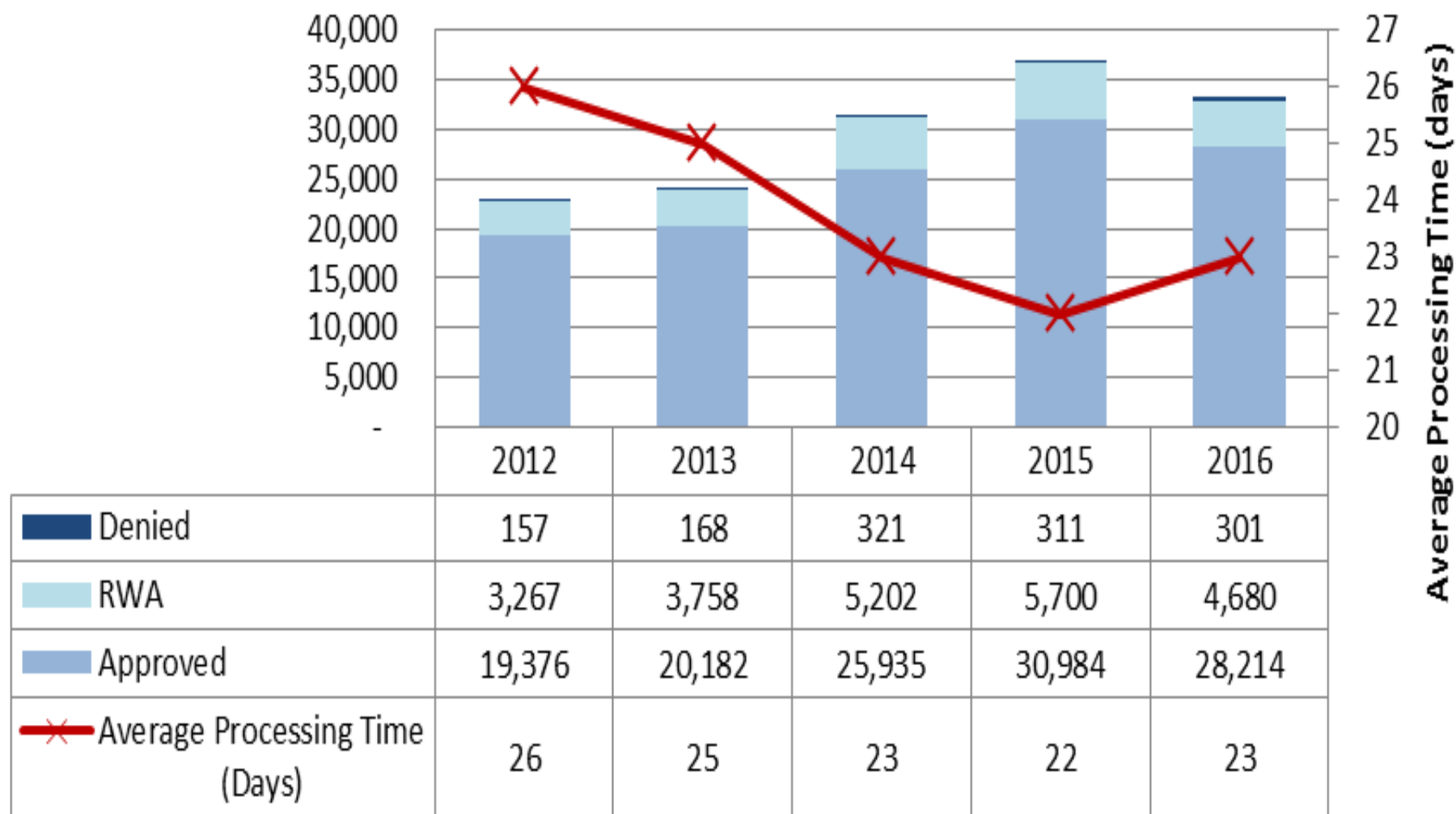
Primary Jurisdiction of 2016 U.S. Exports to World



Of the \$1.5 trillion in exports
2.1% were subject to a BIS license requirement
12.2% exported NLR with an ECCN

Source: Automated Export System February 10 2017

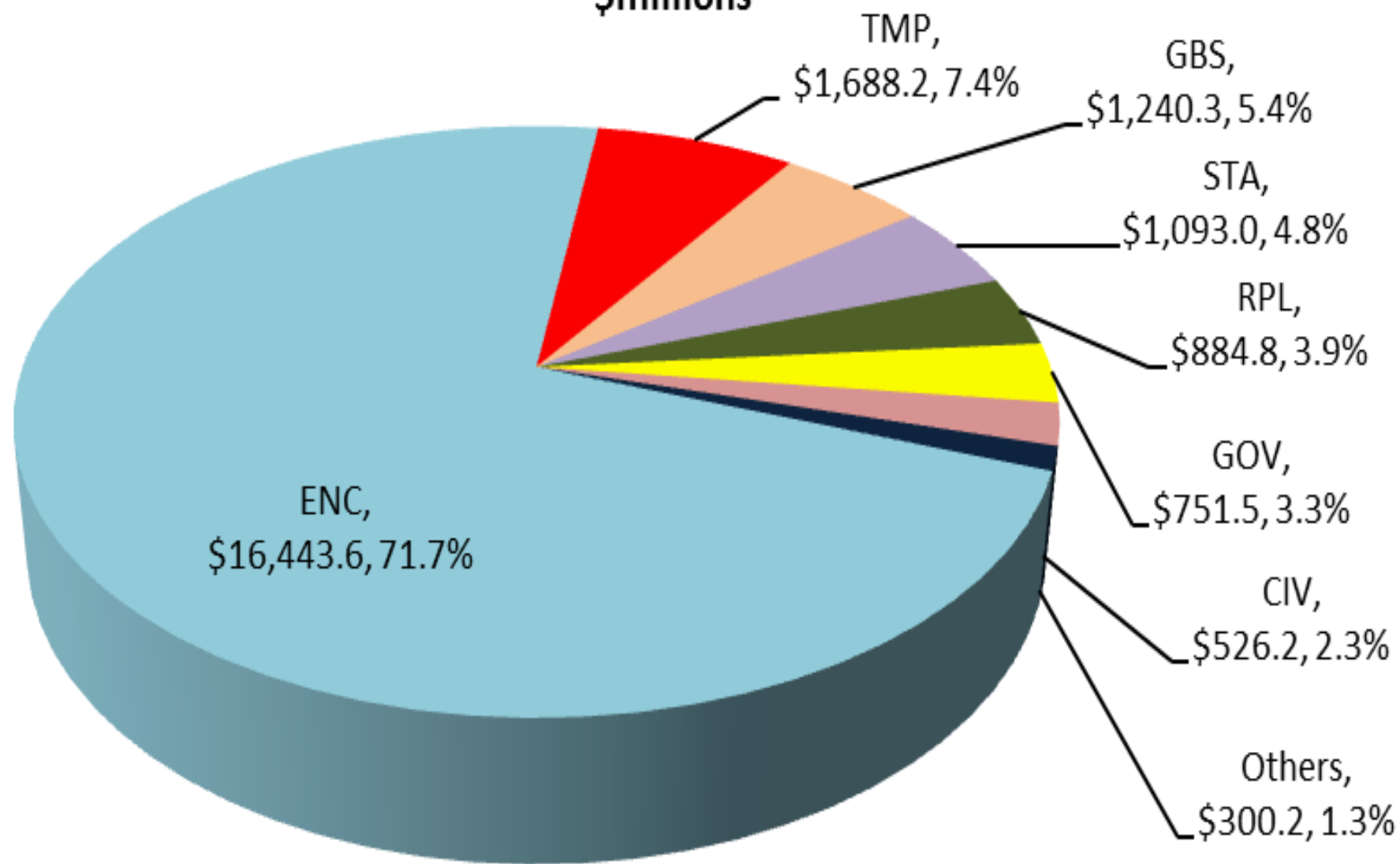
BIS Licenses for Tangible Items, Software and Technology for the World by Count 2012-2016



Figures do not include deemed export licenses.

2016 U.S. Exports by BIS License Exceptions

\$millions



Source: Automated Export System, March 6, 2017

USML to CCL Review Status



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USML Category	ECCNs	Status
I: Firearms	0x601	Proposed rule TBD
II: Artillery	0x602	Proposed rule TBD
III: Ammunition	0x603	Proposed rule TBD
IV: Launch Vehicles/Missiles	0x604 9x604	Final rule Jan. 2, 2014; Effective July, 1, 2014
V: Explosives/Propellants	1x608	Final rule Jan. 2, 2014; Effective July 1, 2014
VI: Vessels of War	8x609	Final rule July 8, 2013; Effective Jan. 6, 2014
VII: Tanks/Military Vehicles	0x606	Final Rule July 8, 2013; Effective Jan. 6, 2014
VIII: Aircraft	9x610	Final rule Apr. 16, 2013; Effective Oct 15, 2013
IX: Training Equipment	0x614	Final rule Jan. 2, 2014; Effective July 1, 2014
X: Personal Protective Equip.	1x613	Final rule Jan. 2, 2014; Effective July 1, 2014
XI: Electronics	3x611 9x620	Final rule July 1, 2014; Effective Dec. 30, 2014

USML to CCL Review Status



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USML Category	ECCNs	Status
XII: Sensors/Night Vision	6x615 7x611	Final rule Oct 12, 2016, Effective Dec 31, 2016
XIII: Miscellaneous	0x617	Final rule July 8, 2013; Effective Jan. 6, 2014
XIV: Toxicological Agents	1x607	Final rule Jul 28, 2016, Effective Dec 31, 2016
XV: Spacecraft/Satellites	9x515	Interim final rule May 13, 2014 Effective June 27, 2014 <i>(for rad-hard ICs)</i> Effective Nov. 10, 2014 <i>(for all other items)</i>
XVI: Nuclear	N/A	Final rule Jan. 2, 2014; Effective July 1, 2014
XVII: Classified	N/A	Final rule Apr. 16, 2013; Effective Oct 15, 2013
XVIII: Directed Energy Weapons	6x619	Final rule Jul 28, 2016, Effective Dec 31, 2016
XIX: Gas Turbine Engines	9x619	Final rule Apr. 16, 2013; Effective Oct 15, 2013
XX: Submersible Vessels	8x620	Final rule July 8, 2013; Effective Jan. 6, 2014
XXI: Not Enumerated	N/A	Final rule Apr. 16, 2013; Effective Oct 15, 2013

Impact of USML to CCL



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- From October 2013 through March 2017:
 - 56% reduction in monthly license volume at the Department of State for the newly implemented USML categories
 - Aircraft/gas turbine engines: 66% reduction
 - Spacecraft/satellites: 82% reduction
 - Almost 45,000 license applications submitted to BIS for items that have moved from the USML to the CCL
 - *Top items (by value)*: 9A515 (spacecraft), 9A610 (aircraft items), 9A619 (gas turbine engine items), 3A611 (military electronics), 0A606 (ground vehicle items)
 - *Top Ten destinations (by value)*: Japan, Canada, French Guiana, United Kingdom, South Korea, Mexico, Australia, France, Israel, Germany

Reexporting Items Subject to the EAR



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- Generally, reexports or in-country transfers require same type of authorization as direct exports from U.S.
- BIS Authorizations:
 - No License Required (NLR)
 - Licenses*
 - License Exceptions

*** Note the conditions on the license**

Reexports of Items in the Form Received



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- If the item is a U.S.-origin item and subject to the EAR, it remains subject to the EAR regardless of how many times it is reexported, transferred, or sold.
- Therefore, any subsequent reexports or transfers (in-country) must be done in accordance with the EAR.

USML to CCL Implications on Reexports



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- Unlike the ITAR, the EAR do not have a “see through” rule.
- The EAR include a *de minimis* rule based on the percentage by value of U.S.-origin controlled content in a foreign-made item.
- A non-U.S. made item located outside the U.S. that incorporates controlled U.S.-origin content that does not exceed the applicable *de minimis* percentage for a particular country is not subject to the EAR.
- A non-U.S. made item located outside the U.S. that incorporates controlled U.S.-origin content that exceeds the applicable *de minimis* percentage for a particular country is subject to the EAR.

Reexport or Transfer of Items Incorporating U.S. Content



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Legacy ECCNs (non-600 series and 9x515) *de minimis* rule

Item with U.S. content
reexported to all countries
except E:1

25% *de minimis* rule

E:1(Terrorist Supporting
Countries)

10% *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 Items Incorporating U.S. Content



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The 600 series and 9x515 *de minimis* rule – items identified in .a through .x paragraphs of 600 series ECCN

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 or Transfer of Items Incorporating U.S. Content



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The 600 series and 9x515 *de minimis* rule – items identified in .y paragraph of 600 series ECCN

Item with U.S. .y content only
reexported to all countries,
except E:1, E:2, and China

Not subject to the EAR

E:1, E:2, and 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.

Intangible Technology Transfer Controls



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-
- EAR final Definitions Rule published June 3, 2016 (81 FR 35586)
 - Harmonized and clarified common terms in EAR and ITAR
 - Significant implications on ITT Controls
 - Information and “software” not subject to the EAR § 734.3(b)(3)
 - Release – new § 734.15
 - Activities that are not exports, reexports or transfers—new § 734.18
 - Implications for cloud computing and storage providers
 - Activities that are not deemed reexports—new § 734.20

Entity List and Other Proscribed Lists



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- The USG maintains a consolidated screening list of proscribed parties at Commerce's "export.gov" website:

http://export.gov/ecr/eg_main_023148.asp

- Includes Treasury's Specially Designated Nationals List and BIS' Entity List

Entity List



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- Comprised of persons and companies that:
 - impose a risk of diverting items subject to export controls into programs related to weapons of mass destruction (WMD), or
 - are otherwise contrary to national security and/or foreign policy interests or are acting on behalf of such entities
- Coverage expanded to include terrorist related entities.
- Exporters/reexporters should be aware of modifications, additions and removals. 10-12 notices published annually
- The Entity List is a good mechanism to implement catch-all controls

Entity List



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- The Entity List was originally established to inform the public of entities whose activities imposed a risk of diverting items into programs related to WMD.
- Since then, the Entity List has expanded to serve U.S. foreign policy goals and include entities sanctioned by the State Department

The public is hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement (EAR, Part 744.1(c))

COUNTRY	ENTITY	LICENSE REQUIREMENT	LICENSE REVIEW POLICY	FEDERAL REGISTER CITATION
PAKISTAN	Abdul Qader Khan Research Laboratories (AQKRL), a.k.a., the following seven aliases: -Abdul Qadeer Khan Research Laboratories; -Dr. A.Q. Khan Research Laboratories; -Engineering Research Laboratories (ERL); -Institute of Industrial Control Systems (IICS); -Kahuta Nuclear Facility; -Kahuta Research Facility; and	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.

Catch-All Enforcement Best Practices



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- If an exporter ships without a license and was informed by BIS, knew, or should have known that items were destined for prohibited end use/user, BIS can take criminal/administrative enforcement action
- FY16 Enforcement Stats:

DETENTIONS/SEIZURES	362
“IS INFORMED” LETTERS	10
ENTITY LISTINGS	198
PREVENTIVE OUTREACHES	147

License Applications Identified by "Catch-All" Controls Indicators 2012-2016



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Entity List

Nuclear

Missile

Chem/Bio

	Approved	RWA	Denied	Approved	RWA	Denied	Approved	RWA	Denied	Approved	RWA	Denied
2016	66	13	13	21	2	3	3	3	1	0	0	0
2015	83	13	11	20	1	3	7	1	1	0	0	0
2014	46	12	15	23	9	3	10	2	0	1	0	0
2013	30	14	5	58	14	6	3	8	5	1	0	0
2012	12	8	6	35	7	5	10	7	3	2	0	1

Questions?



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BACKGROUND SLIDES

License Exception STA (§ 740.20)

(for all items subject to the EAR)



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Requirements for all items subject to the EAR:

- ECCN must authorize
- All reasons for control that apply to the transaction must be authorized to use STA
 - NS, CB, NP, RS, CC, SI: Country Group A:5 (§ 740.20(c)(1))
 - Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and United Kingdom
 - NS only: Country Group A:6 (§ 740.20(c)(2)) [NOT available for 600 series items]
 - Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan

Note: countries that cannot receive items under STA may still be able to use STA to reexport to STA-eligible destinations.

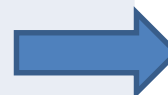
License Exception STA

(for all items subject to the EAR;
additional requirements for 600 series ECCNs)



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	Exporter/ Reexporter	Consignee
1	Provide ECCN(s) to Consignee	
2		Provide Consignee Statement to Exporter/Reexporter
3	Obtain Consignee Statement	
4	Notify consignee that shipment (or specific items within a shipment) is (are) under STA	
5	Keep records showing which shipments belong to each consignee statement	Maintain Consignee Statement and records pertaining to subsequent reexport or transfer



Consignee Statement – Five Points

- Aware that items are to be shipped under STA
- Been informed of ECCN by _____.
- No subsequent License Exception APR (a) or (b) shipments
- Agrees not to ship or transfer in violation of EAR
- Agrees to provide documents to USG upon request

License Exception STA

(for 600 series items)



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- License Exception STA: additional requirements for 600 series items only
 - For ultimate end user that is the USG or government of country in Country Group A:5 (“STA-36” countries);
 - For development, production, or servicing of an item in A:5 or the United States that is:
 - Ultimately to be used by the USG or government of country in Country Group A:5; or
 - Sent to a person in the United States; or
 - If USG has otherwise authorized its use.

License Exception STA

(for 600 series items)



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- License Exception STA: additional requirements for 600 series items only
 - Non-U.S. parties must have been previously approved on a State or Commerce license
 - Consignee statement must also address ultimate end user restrictions for 600 series items and agree to end use check
 - Eligibility request required for end items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a

License Exception STA

(for 9x515 items)



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- 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 9E515.b, .d, or .e are not eligible for STA

License Exception STA



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

Reexport or Transfer of Items Incorporating U.S. Content



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- *De minimis*
 - “Controlled content” = U.S.-origin items that require a license to the ultimate destination of the foreign product
 - EAR99 items may be controlled content to certain destinations; do not count content eligible for License Exception GBS or NLR (no license required) to new destination
 - Use fair market value of controlled content to calculate *de minimis* percentage

Reexport or Transfer of Items Incorporating U.S. Content



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- *De minimis*: U.S. items are “incorporated” when they are:
 - Essential to the functioning of the non-U.S. equipment;
 - Customarily included in the sale of non-U.S.-made items; and
 - Reexported with the non-U.S.-made items.

Reexport or Transfer of Items Incorporating U.S. Content



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- When reexporting non-U.S. made product subject to the EAR due to incorporation of U.S. controlled content (above de minimis) determine reexport licensing requirements by the classification of the non-U.S. origin item

Reexport or Transfer of Items Incorporating U.S. Content



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- For items above *de minimis*, determine licensing requirements by the classification of the non-U.S. made item.
- For commingled U.S.-origin and non-U.S. origin technology, a one-time report detailing calculations must be submitted to BIS before *de minimis* applies.

Reexporting Items Subject to the EAR



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- BIS Reexport Licenses
 - Reexport authority may be requested by U.S. exporter at time of application for export license, for shipment to and among multiple end users.
 - Reexport authority may be requested by non-U.S. companies.

Reexport or Transfer of Items Incorporating U.S. Content



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- U.S.-origin content not eligible for *de minimis*:
 - “600 series” when foreign-made items are destined to Country Group D:5
 - Certain 9E003 technology
 - Certain components of high performance computers
 - 5E002 technology and certain encryption commodities and software
 - QRS11 sensor in commercial standby instrument or flight control system, or aircraft with such a system
 - 6A003.b.4.b cameras when incorporated into a non-U.S. origin military commodity

Reexport or Transfer of Direct Products of U.S. Technology or Software



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- 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.
- 600 series and 9x515 items are subject to a broader direct product rule (additional country and product scope) than other items subject to the EAR.
- Non-U.S. 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



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Legacy ECCNs (non-600 series and 515 series)

Is the foreign-produced direct product of:
U.S.-origin technology or software requires a written letter of
assurance or a precondition for License Exception TSR?

Yes

Is the foreign-produced direct product subject to national
security controls as designated on the applicable ECCN of the
CCL?

Yes

Is the foreign-produced direct product being reexported or
exported from abroad to countries listed in Country Groups
D:1, E:1, or E:2?

Yes

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

Reexport or Transfer of Direct Products of U.S. Technology or Software



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The “600 series” direct product rule

Is the foreign-produced direct product of:

(i) U.S.-origin “600 series” technology or software or

(ii) a plant or major component of a plant that is a direct product of U.S.-origin “600 series” technology or software?

Yes

Is the foreign-produced direct product a “600 series” item?

Yes

Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:1, D:3, D:4, D:5, E:1, or E:2?

Yes

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

Reexport or Transfer of Direct Products of U.S. Technology or Software



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The 9x515 direct product rule

Is the foreign-produced direct product of:

(i) U.S.-origin 9x515 technology or software or

(ii) a plant or major component of a plant that is a direct product of U.S.-origin 9x515 technology or software?

Yes

Is the foreign-produced direct product a 9x515 item?

Yes

Is the foreign-produced direct product being reexported or exported from abroad to countries listed in Country Groups D:5 or E:1?

Yes

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

Reexporting Items Subject to the EAR



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- BIS Reexport Licenses
 - Apply through SNAP-R
 - Use the form BIS-748P; appendices for additional items or end users
 - Guidance on applications and support documents in part 748 of the EAR
 - Four-year validity period; extended validity periods may be requested
 - Cite prior equivalent DDTC approvals if applicable