



**Ocean Power Technologies, Inc.**

**INTERNATIONAL COMPLIANCE POLICY**

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## INTERNATIONAL COMPLIANCE POLICY

This International Compliance Policy was implemented by Ocean Power Technologies, Inc. (“OPT” or “Company”) on May 1, 2024.

### I. PURPOSE

To establish policies that will facilitate and ensure compliance by the Company and all of its domestic and foreign operations and subsidiaries (hereinafter collectively referred to as the “OPT Companies”) with respect to laws governing business transactions conducted in whole or in part outside of the country in which the OPT Companies are located (collectively, “International Laws”).

This International Compliance and Export Policy (“Policy”) is designed to provide guidance to Company personnel in the application of various United States export regulations to the Company’s activities, including the Export Administration Regulations (“EAR”) established under the U.S. Department of Commerce, and the International Traffic in Arms Regulations (“ITAR”) established under the U.S. Department of State (hereafter collectively referred to as the “U.S. Export Regulations”).

This Policy is intended to serve as a guide to Company personnel who receive, review, and distribute technical information. This Policy is intended to inform Company personnel of their responsibilities under the U.S. Export Regulations.

The U.S. Export Regulations govern how certain items, information, and technology are exported outside of the United States. These regulations ban or limit exporting certain items, information, and technologies (hereafter collectively referred to as “Controlled Technology”) to foreign countries, entities, or individuals. The Company may encounter Controlled Technology during the course of providing services under its federal contracts. Before sharing Controlled Technology, it is important to make sure the Company is compliant with all U.S. Export Regulations. Failing to comply with these regulations may result in penalties including civil fines, criminal penalties, imprisonment, loss of export privileges, imposition of compliance monitorships, reporting obligations to the U.S. Securities and Exchange Commission, and similar sanctions.

As this Policy will explain, exporting Controlled Technology includes transmitting controlled items, information, or technology overseas or sharing it with foreign persons living in the United States, including Company employees. Should OPT personnel ever be uncertain as to whether or how export controls or new laws and regulations apply in a particular situation, they should contact OPT’s Export Control Administrator for assistance. Following the process outlined in this Policy will ensure that no inadvertent export control violations occur and/or minimize the likelihood of occurrence.

## II. POLICY AND PROCEDURE

It is the policy of the Company that each of the OPT Companies complies fully with all applicable International Laws, and implement appropriate procedures to ensure compliance with such Laws. The procedures set out in this document focus on U.S. trade compliance laws, which affect business transactions by all OPT Companies.

This Policy is intended to be a guide in order to assist Company employees on properly sharing and disseminating information in compliance with the U.S. Export Regulations. Company will review, update and recirculate this Policy periodically as needed.

Company is committed to complying with all U.S. Export Regulations and may hold periodic trainings as needed to ensure employees are aware of their responsibilities with respect to the U.S. Export Regulations.

Additionally, OPT's Export Compliance Administrator will be responsible for conducting periodic reviews of its compliance program to ensure that the U.S. Export Regulations are being followed. The following checklist provides a macro-level list of the steps that all employees should apply prior to exporting any items.

### **SUMMARIZED CHECKLIST OF EXPORT CONTROLS STEPS**

The following steps should be followed to determine what Export Controls requirements may apply to OPT and a particular product. This checklist is a basic summary of the key questions to ask and analyses to perform, as further detailed throughout this Plan:

1. **Step No. 1: Export Product Classification.** Determine if the item at issues (hardware, software, or technology) is covered by ITAR or EAR and follow the appropriate procedures prior to exporting.
2. **Step No. 2: Export Country.** Analyze the export country at issue for restrictions or special requirements. Any proposed transactions involving an Embargoed or Restricted Country must be referred to the Legal Department for legal compliance review prior to any acceptance or agreements regarding such transactions.
3. **Step No. 3: End User.** Analyze the end user at issue for restrictions or special requirements. All parties to the transaction must be checked against the following lists of proscribed parties. The parties to be screened include customers, shipping companies, freight forwarders, agents, intermediate consignees, and banks. These lists are changed quite frequently, so it is essential that screening is done with lists that are fully updated. If there are any matches, the Legal Department must be contacted immediately, and the order may not be accepted.
  - Denied Parties List
  - Entity List
  - Unverified List
  - List of Specially Designated Nationals

- Debarred Parties List
  - Nonproliferation Sanctions Lists
4. **Step No. 4: End Use.** Analyze the end use at issue for restrictions or special requirements. All transactions must be screened for the “intended end use” of the items involved. The term “intended end use” covers both the direct end use of the product being ordered, as well as its broader end use or application. “Restricted end uses” relate to nuclear activities, chemical and biological weapons, or ballistic missile applications. If the customer is vague or there are other signs of a potential risk for a restricted end use, then a more detailed investigation needs to be undertaken and reviewed with the Legal Department before the order can be accepted.
  5. **Step No. 5: Boycott Requests.** Antiboycott Laws were adopted to encourage, and in specified cases require, U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction. Any proposed Domestic Export Transaction that appears to include a boycott request should immediately be reported to the Legal Department.
  6. **Step No. 6: Record Retention.** Maintain records on all export transactions. These records shall be retained for a period of at least six years from the date of the transaction. These records should include, but not be limited to the following: Export license; Application for an export license; Delivery Verification Certificate or similar evidence of delivery; Dock receipt or bill of lading issued by any carrier in connection with any export; certification of compliance; contract documents; payment receipts; and other pertinent documents.
  7. **Step No. 7: Final Review and Red Flags.** Violation of the export requirements can lead to civil or criminal sanctions. A violation can occur by merely making an in-country delivery of goods to a third party where there is knowledge or reason to know that such third party has violated or may violate applicable export laws and restrictions. All employees involved in domestic export transactions should seek additional information concerning these transactions if it appears that a potential violation of U.S. export law might occur. Any red flags should be referred to the Legal Department and do not proceed with the transaction.

### III. ANTI-BRIBERY LAWS

The OPT Companies shall comply fully with all applicable laws concerning anti-bribery and anti-corruption, including the United States Foreign Corrupt Practices Act (“FCPA”), the U.K. Bribery Act and similar laws in other countries (collectively, “anti-bribery laws”). The FCPA is an anti-bribery law enacted by the United States in 1977 in response to highly publicized disclosures of payments to foreign officials that were concealed on corporate books of over 400 American corporations. Below is a list of anti-bribery procedures that must be followed by all OPT Companies in further implementation of this Policy. The Legal Department should be consulted with any questions regarding these procedures.

Laws similar to the U.S. FCPA have been implemented in numerous other countries in recent years based on the Organization for Economic Co-Operation and Development (“OECD”) Antibribery Convention. In some cases, these local laws can be stricter than the FCPA. For example, the U.K. Bribery Act covers improper payments to private parties in addition to government officials. The OPT Companies shall comply fully with those local laws in addition to the following anti-bribery procedures. Failure to comply with anti-bribery laws may result in severe penalties for companies and individuals – including significant fines and imprisonment. Under these various laws, even when there is no clear intent to make a bribe, authorities responsible for enforcing anti-bribery laws may infer such an intent from surrounding circumstances. For example, even if a company does not explicitly direct a third party to make a payment that would benefit the company, enforcement authorities may conclude that the company “should have known” that the illegal action would occur.

- A. *Covered Parties.* Parties subject to the FCPA and its penalties include: (i) Company and its domestic U.S. subsidiaries, including their employees, officers, directors and agents regardless of nationality; (ii) U.S. nationals who are employees, officers, directors or agents of Company foreign subsidiaries; and (iii) Company foreign subsidiaries and their non U.S. employees, officers, directors or agents with respect to acts that occur in the United States or include use of interstate facilities (e.g., telephone, fax or e-mail) (collectively, the “Covered Parties”).
- B. *Anti-Bribery Prohibitions.* The Covered Parties shall not offer, promise or give money or anything of value,<sup>1</sup> directly or indirectly, through agents or intermediaries<sup>2</sup>, to any beneficiary with the knowledge that the thing of value might secure any improper advantage or influence the actions of these officials in order to obtain or retain business.

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<sup>1</sup> The prohibition against payments extends to the offering or giving of anything of value where the requisite criminal intent and business purpose are present. *The thing of value given can be of any kind, not just money, and there is no minimum amount or threshold of value that must be exceeded before the gift becomes illegal.*

<sup>2</sup> Payments by third parties on the company’s behalf are also unlawful. The term “third party” includes any agent, distributor, sales associate, consultant or other person or entity that assists in selling OPT products or services.

- C. *Beneficiary.* A “beneficiary” is the ultimate recipient of a payment, gift or benefit. The term includes customers, prospective customers, suppliers, business partners, third parties, and foreign government officials.
- D. *Foreign Government Official.* Any foreign official, which means any officer or employee of a foreign government or member of its armed forces or any department, agency, or instrumentality thereof,<sup>3</sup> or any person acting in an official capacity for or on behalf of any such government or department, agency or instrumentality;
1. Any officer or employee of an enterprise owned or controlled by a foreign government;
  2. Any foreign political party or official thereof or any candidate for foreign political office;
  3. Any officer, director or employee of a public international organization (i.e., an organization formed by two or more foreign governments and designated as such by Presidential Executive Order, e.g., the World Trade Organization, the European Union or the Organization for Economic Cooperation and Development); and
  4. Any person (including any consultant), while knowing (or being aware of a high probability) that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, any foreign political party or official thereof, or any candidate for foreign political office.
- E. *Prohibited Payments in General.* OPT personnel are prohibited from paying or offering anything of value, either directly or indirectly through a third party, to a beneficiary with the knowledge that the payment might improperly influence the beneficiary to provide a business advantage to OPT. A “beneficiary” is not limited to government officials; it includes anyone who may be in a position to influence the business of OPT.
1. Payments include cash, monetary payments or anything of value, including but not limited to providing meals, entertainment, trips and travel expenses, gifts and assisting with visa applications. Meals and entertainment may only be provided to beneficiaries only in connection with legitimate marketing and promotion of OPT’s products and services, and in a manner that is within the reimbursement guidelines established for OPT employees.

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<sup>3</sup> Although the FCPA does not define government instrumentality, the term should be construed to include entities wholly or partially owned by foreign governments and specially chartered private corporations entrusted with quasi-governmental functions, public international organizations (e.g., the World Bank), and any political party. Family members of such organizations also fall within the definition of a foreign government official.

2. A prohibited payment can take many forms, including through unusually large commission payments. OPT personnel should consult OPT's Export Compliance Administrator, for guidance regarding all payments, particularly payments that appear unusual.
  3. A business advantage to OPT includes, but is not limited to: (a) approval of a contract with OPT for the sale of products or services; (b) any regulatory approval of OPT products or services; (c) a reduction of customs duties, taxes or fees owed by OPT; or (d) other corporate or governmental action that is of benefit to OPT's business. The business advantage does not need to be with ,or coming from, the beneficiary.
  4. "Prohibited Payments" include what are sometimes referred to as "facilitation payments" or "grease payments," which are payments designed to expedite or secure the performance of routine government action. No such payment may be made without the express, advance written consent of the OPT General Counsel.
- F.** *Affirmative Defenses.* The FCPA permits exceptions for payments: (a) made in respect to "reasonable and bona fide" expenditures, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate that are directly related to the promotion, demonstration, or explanation of products or services or the execution or performance of a contract with a foreign government or agency thereof; and (b) to foreign officials that are expressly lawful under the written laws and regulations of the foreign official's country. **The Legal Department should be consulted prior to any such payments or expenditures being made.**
- G.** *Affirmative Duty to Take Action.* All directors, officers, employees and agents of the OPT Companies are required to report potential FCPA violations to the Legal Department. Willful ignorance is not excused. There may be circumstances under which an officer, director, employee or agent becomes aware of facts which should cause suspicion (i.e., so-called "red flags"). In these circumstances, if the individual fails to take steps to allay suspicion, he or she risks prosecution under the FCPA since the director, officer, employee or agent could be alleged to have had the requisite knowledge for a violation.
- H.** *Examples of Red Flags.* The following is a list of some typical examples of red flags of possible FCPA violations.
1. Unusual or convoluted payment patterns or financial arrangements, including requests that payments be made to third countries (e.g., a request for payment to a numbered account in the Bahamas for work performed in Russia may warrant further investigation by the company);
  2. Unusually high commissions;



3. Over-invoicing (i.e., an agent asks that a check be cut for more than the actual amount of expenses);
4. Requests that checks be made out to “cash” or “bearer,” that payments be made in cash, or that bills be paid in some other anonymous form;
5. Lack of transparency in expenses and accounting records;
6. Requests for unusually large credit lines, particularly if the beneficiary is new to the company;
7. Requests for unusual bonuses or extraordinary payments;
8. Requests for an unorthodox or substantial upfront payment;
9. Apparent lack of qualifications or resources on the part of a person to perform services offered;
10. Recommendation by a potential government customer of a person or a company to perform services;
11. A sales agent has family or business ties with a government official;
12. A person requires that his or her—or their company’s—identity not be disclosed;
13. Any odd request that reasonably arouses suspicion (e.g., requests that certain invoices be backdated or altered may warrant further investigation by the company);
14. An agent is new to his or her particular business;
15. A person or company’s “bad reputation”;
16. A history of corruption in a particular country (according to the Department of Justice, certain Middle Eastern and Asian countries and much of the former Soviet Union fit this description);
17. A history of corruption in a particular industry (according to the Department of Justice, the defense, aerospace, petroleum, and construction industries fit this description); and
18. A person’s refusal to certify that he or she will not take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official, or that he or she will not take any action that would cause the company to be in violation of anti-bribery or anti-corruption laws.

- I. *Required Controls.* The Company shall establish and maintain accounting and record keeping controls that will prevent the use of “slush funds” and “off-the-books” accounts as a means of facilitating and concealing questionable foreign payments. In particular, the FCPA requires the Company to establish and keep accurate books, records and accounts that accurately and fairly reflect its transactions and disposition of its assets. For these purposes, the term “records” includes items such as commission and subcontractor agreements and invoices from vendors.
- J. *Fines and Penalties.* The FCPA’s criminal penalties, as supplemented by the U.S. Sentencing Guidelines, include fines greater than \$2,000,000 for companies. ***The FCPA prohibits the Company from reimbursing a director, officer, employee or agent for the amount of the fine involved.*** Individuals can be subject to criminal liability under the FCPA regardless of whether the Company has been found guilty or has been prosecuted for a violation. In addition, any persons found to have been involved in any way in such activities will be subject to corporate disciplinary action, including, where appropriate, dismissal.

#### IV. ANTIBOYCOTTING LAWS

**Antiboycott Laws and Regulations.** The antiboycott laws are administered by Bureau of Industry and Security (“BIS”) in the U.S. Department of Commerce. The antiboycott laws of the United States impose various obligations on the Company and its subsidiaries in connection with their relations with customers, carriers/shippers, banks, contractors, subcontractors and suppliers of countries that participate in international boycotts. Below is a list of antiboycott procedures that must be followed in further implementation of this Policy. The Legal Department should be consulted with any questions regarding these procedures.

OPT Companies shall comply with the antiboycott laws and accompanying regulations of the United States. Accordingly, no officer, director or employee shall provide any information (oral or written) or engage in any conduct that would be contrary to such laws and regulations. Violations of antiboycott laws and/or corresponding regulations are subject to criminal and civil penalties and to corporate discipline, including dismissal in appropriate cases.

- A. *Applicable Law.* The U.S. antiboycott laws consist of two overlapping sets of laws: (a) the antiboycott provisions of the Export Administration Regulations administered by the U.S. Department of Commerce (the “Commerce Rules”); and (b) the antiboycott provisions of the Internal Revenue Code, as administered through guidelines issued by the U.S. Treasury Department (the “Treasury Rules”) (collectively the “Antiboycott Laws”). The Antiboycott Laws discourage and in some cases prohibit U.S. companies from supporting a boycott that has been imposed upon one foreign country by another foreign country. The Antiboycott Laws were originally adopted in response to the Arab League boycott of Israel. The Arab League boycotting countries currently include: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen. While Iraq is not included on this list, its status remains under review by the Treasury Department. Although the Antiboycott Laws were adopted in response to the Arab League boycott of Israel, they apply to any foreign boycott that is not supported by the United States.
- B. *Application to OPT Companies.* The Antiboycott Laws apply to U.S. companies, individuals, foreign subsidiaries, partnerships, affiliate, branch offices or other permanent foreign establishments “controlled in fact” by the U.S. company.<sup>4</sup> The Laws apply to activities of U.S. persons in interstate or foreign commerce involving the sale, purchase or transfer of goods or services (including information).
- C. *Prohibited Activities.* Some of the prohibited activities include refusing or agreeing to refuse to do business with a boycotted country or its nationals; refusing or agreeing to refuse to do business with “blacklisted” or “boycotted” firms; and providing information on a company’s activities with a boycotted

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<sup>4</sup> “Controlled in fact” consists of the authority or ability of a U.S. company to establish the general policies or to control day-to-day operations of its foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment.

country or with blacklisted companies or concerning the race, religion, sex, or national origin of personnel.

The receipt of most boycott requests requires reporting to the U.S. Government. The term “boycott request” is very broadly construed under the Antiboycott Laws. It includes any request, agreement, understanding or requirement in support of a boycott. It may be conveyed orally or in writing. It does not require response or affirmative action to trigger reporting requirements.<sup>5</sup> Common sources of boycott requests are bid inquiries, contracts, purchase orders, letters of credit, and conversations and meetings with customers.

**D. *Examples of Boycott Requests.*** The following is a list of some typical examples of boycott requests:

1. Boycott Questionnaires. Requests for information about relationships with particular firms or persons, including data about a company’s ownership, management, subsidiaries, and licensees. These requests are typically from boycott offices, customs, or other governmental authorities.
2. Requests for Negative Country-of-Origin Information. Requests for statements or certificates that goods or services are not of Israeli-origin parts or materials, or were not produced by an Israeli firm or with Israeli labor or capital.
3. Requests for Blacklisting Information. Requests for statements or certificates related to the “blacklist” status of any supplier, freight insurer, vessel, or other party associated with a transaction.
4. Requests for Vessel Eligibility Information. Requests for statements or certificates that goods are shipped on vessels eligible or qualified to enter the ports of the boycotting country.
5. Requests for National Origin. Requests for information about the religion, national origin, parentage or charitable or fraternal association of persons in the management or employment of a firm.
6. Requests To Comply with Boycott Requirements. Clauses that require compliance with the local laws, regulations, or practices of a boycotting country. These clauses may, but do not have to, refer specifically to the country’s boycott laws.
7. Requests Not To Do Business with Boycotted Countries. Requests not to do business with a boycotted country (or a particular named country) or with companies, nationals or residents of such country.
8. Requests To Exclude Blacklisted Firms. Requests to select a particular supplier or subcontractor, if there is knowledge or reason to know that

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<sup>5</sup> See 15 C.F.R. § 760.5(a)(5) for a list of requests excepted from reporting requirements.

blacklisted firms have been excluded in the selection process. Requests not to select a particular supplier or subcontractor known or believed to be blacklisted.

9. Requests to Select Whitelisted Firms. Requests to do business only with approved firms or persons.

The above list is not exhaustive. Boycott requests may appear in many other forms. In particular, any request that contains the words “boycott”, “blacklist” or “Hebrew” or any reference to Israel, Israeli goods, Israeli nationals, Jewish organizations, Zionism, or six-pointed stars, implicate a boycott request. If there is any doubt as to the proper classification of a request, the relevant facts should be communicated immediately to the Legal Department.

**E.** *Examples of Requests that are not reportable.* The following example requests are not reportable:

1. Carrier Ownership Security Measures. A request not to ship goods on a carrier of the boycotted country.
2. Carrier Routing Security Measures. A request that affirmatively describes a route of shipment that does not include a port in the boycotted country (e.g., Israel).
3. Positive Product Origin Requirements. A request to supply a positive certificate of product origin (e.g. a certificate that the goods are of French origin and contain no parts or materials which are not of French origin.).
4. Supplier/Carrier/Insurer Positive Identification. A contract request to identify by name the supplier of the goods and services, the carrier, and/or the freight insurer, even if the request is boycott based.

***The foregoing list of excepted requests is exclusive and is to be narrowly construed. A request is not excepted simply because it is expressed in positive rather than negative language. For example, a request to choose among a particular group of suppliers in circumstances where it is known that other potential suppliers have been excluded because of their blacklist status, even though stated positively, is a reportable boycott request with which the applicable OPT Company may not comply.***

**F.** *Required Reporting.* The Company is required to report the receipt of most boycott requests to the U.S. Department of Commerce on a quarterly basis and must file a boycott report annually with the IRS as part of its annual tax return. Accordingly, to ensure all boycott requests and related information is included in such reports, any officer, director or employee who has knowledge of facts or incidents of boycott request has an obligation to report such matter directly to the Legal Department. This applies to requests in any form, written or oral, and whether the request is from a governmental authority or from a private source. This also applies to requests for bids, even if a decision not to bid is made. When

the request is forwarded, the following additional information shall also be provided:

1. the date the request was received;
2. the location of the OPT Company operation receiving the request;
3. the type of document, if any, in which the request was received;
4. the name and location of the party making the request;
5. the name of the boycotting country from or on behalf of which the request emanated; and
6. the description, quantity and value (converted to U.S. dollars) of the commodities or services that are requested.

**G.** *Responsive Actions.* No action responsive to any boycott request shall be taken by any of the OPT Companies without the express advance approval of the Legal Department. Any action, including the furnishing of information, is considered to be responsive to a boycott request if it has the effect of: (a) providing the information sought; (b) ensuring that the action sought to be accomplished will be or has been taken; (c) ensuring that the action sought to be prevented has not been or will not be taken; or (d) ensuring that the agreement or undertaking sought has been or will be given. No employee may arrange for another person to carry out any act that the employee is prohibited from carrying out under this policy and procedure. ***Where boycott language calls for not taking a prescribed action - not using a blacklisted carrier or supplier), this is a reportable request under Antiboycott laws and regulations. It is not sufficient to ignore the directive and proceed with the transaction in the normal course. The transaction may not go forward until the objectionable directive has been effectively eliminated from the contract or other transactional document.***

## V. EXPORT LAWS AND REGULATIONS

With respect to transactions of the OPT Companies involving products intended for export from, or import into, the country in which the company is situated, the procedures described below must be followed in further implementation of this Policy. The Legal Department should be consulted with any questions regarding these procedures.

### A. Overview of Export Requirements

It is important to determine whether an “export” will occur pursuant to the relevant U.S. Export Regulations definition. If an export will occur, the Controlled Technology at issue must be classified pursuant to the U.S. Export Regulations relevant classification lists to determine whether an export license is required pursuant to the classification.

The U.S. Export Regulations have several goals as they relate to activities of the Company. The first is to ensure that Controlled Technology is not shipped outside of the U.S. without a proper export license. The second is to ensure that Controlled Technology is not diverted to unauthorized end-users. The third is to ensure that Controlled Technology is not handled or viewed by persons who are not U.S. Citizens or Permanent Residents. *The fourth is to restrict any discussions regarding the protected attributes of Controlled Technology with non-U.S. Citizens or non-Permanent Residents.*

The checklists included in this Policy should assist Company in analyzing whether an export will occur, and if so, what steps to take to ensure that export complies with the U.S. Export Regulations.

There are three sets of applicable regulations controlling exports, which are further summarized below in Sections B-D, and addressed in detail in Section VI.

### B. The Export Administration Regulations (“EAR”)

The EAR are administered and enforced by the BIS within the U.S. Department of Commerce. The EAR controls export of U.S.-origin dual use items (items that have both commercial and military applications) and purely commercial items. Items are assigned an export control classification number (ECCN) listed on the commerce control list (CCL), which sets forth policy reasons for their control. Dual use and commercial items that do not fall within the description of any particular ECCN will fall within a general “basket” ECCN, EAR99 which covers items “not elsewhere specified.” EAR99 items generally do not require export licenses, subject to restricted end use and end user considerations (including embargoed country concerns).

**U.S. items subject to the EAR** include goods, software and technology which are (i) items within the United States, including items moving in transit through the United States from one foreign country to another; (ii) U.S. origin items wherever located; (iii) foreign made commodities incorporating, commingled with or bundled with U.S.-origin software or

technology;<sup>6</sup> and (iv) certain foreign-made direct products of U.S.-origin technology or software.

### **C. The International Traffic in Arms Regulations (“ITAR”)**

ITAR is enforced by the U.S. Directorate of Defense Trade Controls (DDTC) within the Department of State. ITAR controls export of defense-related articles and services on the United States Munitions List (USML). Unless excepted, a license is required to export these items (this includes sharing materials and information with non-U.S. nationals).

### **D. The Office of Foreign Assets Control Regulations (“OFAC”) / List of Parties of Concern**

The OFAC regulations are enforced by the Office of Foreign Assets Control (“OFAC”) within the U.S. Department of the Treasury. The OFAC regulations regulate economic and trade sanctions against certain countries and persons based on U.S. foreign policy and national security goals. All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, and all U.S. incorporated entities and their foreign branches.

- 1. Embargoed Countries:** The U.S. currently maintains comprehensive trade embargoes (including an export ban) against Cuba, Iran, and Sudan (the “Embargoed Countries”). These embargoes prohibit U.S. persons from engaging in virtually all transactions with, including exports to, the Embargoed Countries, as well as from entering into any transactions, directly or indirectly, with entities wherever located that are owned or controlled by the governments of Embargoed Countries, or acting on their behalf, so-called “Specially Designated Nationals (“SDN”).”<sup>7</sup> U.S. persons are also prohibited from facilitating or participating in any transaction by non-U.S. persons involving any of the Embargoed Countries (including SDNs). These prohibitions apply regardless of the origin of the items involved.
- 2. Sanctioned Countries:** The United States also maintains certain limited sanctions against countries such as, Burma, Iraq, North Korea, and Syria. The OFAC’s Sanctions Program and Country Information can be accessed at: <https://ofac.treasury.gov/sanctions-programs-and-country-information>.
- 3. U.S. Items** subject to OFAC regulations include goods, software and technology which are (i) exported from the United States; (ii) wholly U.S.

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<sup>6</sup> Foreign-produced items are subject to the EAR if they contain greater than a *de minimis* level of U.S.-origin content by value. See 15 CFR § 734.3-4

<sup>7</sup> A list of SDNs and Other Blocked Persons is maintained by the U.S. Department of the Treasury, Office of Foreign Assets Control at: <https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.



origin; (iii) foreign-produced items containing greater than de minimis controlled U.S. content by value; or (iv) in some limited cases, foreign direct products of U.S. origin technology or software.

- (i) **Lists of Parties of Concern.** BIS and other export agencies maintain a list of individuals and entities that should be reviewed prior to engaging in an export transaction with a customer. <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>. Transactions with individuals and entities on these lists are prohibited. These lists include: Denied Persons List, Unverified List, Entity List, Military End User List and Consolidated Screening Lists.
- (ii) **OFAC Regulations / List of Parties of Concern Resources.** The following links allow companies to review the intended end user of an exported or imported product:
  - a. **Denied Persons List:** <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>
  - b. **Entity List:** <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>
  - c. **Unverified List:** <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>
  - d. **List of Specially Designated Nationals:** <https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>
  - e. **Debarred Parties List:** <https://www.cbp.gov/trade/trade-community/programs-outreach/blocked-denied-debarred>
  - f. **Nonproliferation Sanctions Lists:** <https://www.state.gov/key-topics-bureau-of-international-security-and-nonproliferation/nonproliferation-sanctions/>

If there are any matches, the Legal Department must be contacted immediately.

## **VI. EXPORT COMPLIANCE STEPS**

### **STEP 1: Determine whether EAR or ITAR Applies**

#### **A. EAR Regulations – Determine Whether EAR Applies**

##### **1. EAR Generally**

Articles that do not qualify as defense articles are subject to the export control of the U.S. Department of Commerce's Export Administration Regulations ("EAR"), unless otherwise excluded from the Department's control in accordance with the provisions of the EAR.

The export controls exercised by the U.S. Department of Commerce are contained in the Export Administration Act ("EAA") as promulgated by the EAR. In accordance with EAR Part 730, the Commerce Department has export control jurisdiction over items that do not have defense article status but that are "dual use items" or items that have solely civil or commercial use. In general, the term dual use items refers to items that have potential for both military and civilian/commercial uses, i.e., items that do not meet the tests for defense items status and are not, therefore, controlled for export by the State Department.

The Commerce Department now also controls certain defense items that have been moved from the U.S. Munitions List to the Commerce Department's Commodity Control List ("CCL") because it has been determined that these items are not critical to maintaining a military or intelligence advantage to the U.S. and require more flexible controls so that they can be easily exported to NATO countries and other U.S. allies. These items are listed in the new 600 series of the CCL. Licenses from the Commerce Department will be required to export and reexport most 600 series items worldwide unless an EAR license exception is available.

Unlike items subject to the export control of the State Department, items controlled for export purposes by the Commerce Department are subject to fewer export controls and, with the exception of the 600 series, require export licenses only in certain limited situations. Indeed, a very small percentage (estimated at five percent or less) of items subject to the export control of the Commerce Department are currently licensable in the case of export. These licensable items are distinguished from other items subject to Commerce Department export control in that they are assigned a specific Export Control Classification Number ("ECCN") by the Commerce Department and in that the export controls to which such licensable items are subjected are outlined in the CCL.

The fact that an item subject to the export control of the Commerce Department has a specific ECCN and is listed in the CCL does not, however, presume the need for a Commerce Department export license, as there are many exceptions to Commerce Department licensing requirements and as Commerce Department licensing requirements are not applicable to exports to certain countries. Exporters must therefore first determine whether any license exceptions apply to their proposed export of items subject to Commerce Department control and then consult the Commerce Country Chart (i.e., Supplement No. 1 to Part 738 of the EAR) to determine if a license is needed for a particular export.

## 2. Definition of “Export” Under EAR

The EAR’s definition of “export” is less stringent than the ITAR’s definition of export. Under the EAR, an export is defined in EAR Part 734.13 as follows:

- i. an actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner; or
- ii. releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States (a “deemed export”); or
- iii. transferring by a person in the United States of registration, control, or ownership of: a spacecraft subject to the EAR that is not eligible for export under License Exception STA (i.e., spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country; or any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country.

EAR-controlled transmissions through the Cloud, however, generally are not considered an “export” where the data is unclassified, encrypted end-to-end, the encryption is at least as effective as that compliance with Federal Processing Standards Publication 140-2 supplemented by procedures and controls according to the National Institute for Standard and Technology publications, and not intentionally stored in a D:5 arms embargo country or in Russia.

## 3. Assess Whether Product / Service / Data is Covered by CCL

Products that are subject to the export control jurisdiction of the Commerce Department are assigned an ECCN. An ECCN is a product reference number that functions as a code, which links each product entry in the CCL to specific export controls imposed by BIS. Each ECCN consists of five characters, four of which are numeric characters and one of which is an alpha character. The characters in an ECCN are arranged as follows: numeric character, alpha character, numeric character, numeric character, numeric character, for example, ECCN 5A992.

The CCL is contained in Part 774 of the EAR. In order to find the proper ECCN for your product, you should begin by reviewing the Alphabetical Index to the CCL. The alphabetical Commerce Control List Index is located in Supplement 1 to EAR Part 774, which is available for review at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2329-commerce-control-list-index-3/file>. This index is arranged by product name and indicates a specific ECCN for each product listed. Check the name of your product against the alphabetical Commerce Control List Index.

If you find an ECCN that appears to be appropriate for your product, take note of your product’s potential ECCN and review the individual ECCN entry in the CCL to make sure that the particular ECCN is relevant. The full CCL is available for review by individual ECCN category in EAR Part 774 which is located on BIS’s website at <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>. All amendments of the CCL must be reviewed to confirm use of the latest categories.

In reviewing a specific ECCN for relevancy, start with the section in the individual ECCN entry entitled: List of Items Controlled under the heading “**Items.**” In the List of Items Controlled, there are four headers or subsections: *Units, Related Definitions, Related Controls, and Items.*

The *Items* header lists the items or products controlled by a particular ECCN, and indicates which items are not controlled for a particular ECCN. It is important that you review this section carefully to determine whether a particular ECCN controls your product. Many times the list of what is controlled and what is not controlled is contained within the heading of the ECCN, and the *Items* header contains a note to direct you to that ECCN heading.

Other headings in the “List of Items Controlled” section that may be relevant to the determination of a proper ECCN for a new product are the headings “**Related Definitions**” and “**Related Controls**” as these headers identify other ECCNs that may be appropriate to consider or alternatively identify DDTC as the agency with jurisdiction for specified products. Additionally, you may find some further guidance in Part 770 of the EAR, which gives interpretations to various ECCNs and thereby assists in ECCN determination.

ECCNs in the “xY6zz” format on the CCL control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). These are the 600 series items. The “6” indicates the entry is a munitions entry on the CCL. The “x” represents the CCL category and “Y” the CCL product group.

If after you have reviewed all appropriate source materials you are certain that there is no specific ECCN that appears relevant to your product, you may be able to make the assumption that your product is classified as EAR99. EAR99 is sometimes referred to as a “basket ECCN” in that it covers all items not appearing in any other ECCNs that make up a particular category.

If you are unwilling to make this assumption, however, or if you are uncomfortable with the results of your ECCN analysis, you may want to apply to the BIS (Bureau of Industry and Security) for a Commodity Classification Request, which allows BIS to provide the Company with the appropriate ECCN for the specified product. The Commodity Classification Request can be submitted through SNAP-R as set forth at <http://www.bis.doc.gov/index.php/licensing/simplified-network-application-process-redesign-snap-r>.

The Department of Commerce has provided an export control classification interactive tool that can be used to understand the steps to follow in reviewing the CCL. The tool can be found at <http://www.bis.doc.gov/index.php/decision-tree-tools>

You may also be able to obtain the ECCN by contacting the manufacturer, developer or producer. The Department of Commerce has established a webpage where sources of publicly available information on commodity classifications can be found. This can sometimes assist in classification and can be found at <https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/publicly-available-classification-information>.

## **B. ITAR Regulations – Determine Whether ITAR Applies**

The export controls exercised by the U.S. Department of State Directorate of Defense Trade Controls (“DDTC”) are contained in the Arms Export Control Act (“AECA”) as promulgated by the International Traffic in Arms Regulations (“ITAR”). In accordance with Part 120.1 of ITAR, the State Department has exclusive jurisdiction over the export of defense items, i.e. defense articles, defense services, and related technical data (referred to herein as “Controlled Technology”).

Pursuant to Part 120.3 of ITAR, Controlled Technology’s inherent capabilities and design are considered in determining whether Controlled Technology should be given defense item status. A specific article or service is determined to be a defense article or defense service if it provides a critical military or intelligence advantage. The intended use (i.e. military or civilian) of an article, service, or technical data after export is not relevant for determining whether the article, service, or technical data is a defense item. ITAR provides that a specific article or service may be designated as a defense article or service if it:

- (1) Meets the criteria of a defense article or defense service on the U.S. Munitions List; or
- (2) Provides the equivalent performance capabilities of a defense article on the U.S. Munitions List.

### **1. “Defense Articles”**

The term “defense article” refers to items that are identified on the U.S. Munitions List found at Section 121 of ITAR. The U.S. Munitions List also provides interpretations, which should be reviewed for every classification. Please note that as part of the export control reform, the U.S. Munitions List is routinely being revised.

The term “defense article” also includes technical data (as defined below) and any items that reveal technical data directly relating to items on the U.S. Munitions List.

Many of the entries on the U.S. Munitions List are “catch-all entries” that control parts, components, accessories, or attachments (each of these terms is defined) if they are “specifically designed” for other defense articles listed on the U.S. Munitions List. Although the U.S. Munitions List does not define the term “specifically designed”, the term “specially designed” is used for the new categories of items of the U.S. Munitions List and has been defined, effective on October 15, 2013. For definition of “specially designed” and to determine whether an item is “specially designed,” please use the decision tree tool at the link below:

[https://www.pmddtc.state.gov/ddtc\\_public?id=ddtc\\_public\\_portal\\_dt\\_specially\\_designed](https://www.pmddtc.state.gov/ddtc_public?id=ddtc_public_portal_dt_specially_designed).

### **2. “Defense Services”**

Defense services are the furnishing of assistance or training related to defense articles by a U.S. person to a foreign person. Providing controlled technical data constitutes furnishing a defense service, as does any military training of foreign forces, whether regular or irregular, and irrespective of the formality of the instruction or mode by which it is offered.

### 3. “Technical Data” and “Software”

Technical Data is defined in ITAR Section 120.33 and encompasses the following:

- i. Information that is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation; or
- ii. Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List; or
- iii. Information covered by an invention secrecy order; or
- iv. Software (see § 120.40(g)) directly related to defense articles (includes, but is not limited to, system functional design, logic flow, algorithms, application programs, operating systems, and support software for design, implementation, test, operation, diagnosis, and repair).

The ITAR’s definition of technical data does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain, *i.e.*, information that is published and that is generally accessible or available to the public. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

### 4. Definition of “Export” Under ITAR

The determination of defense articles, services, technical data and software status is significant because exports of defense articles, services, technical data and software are subject to a broad range of controls. To know when such controls apply, however, it is first necessary to understand the meaning of the term “export.” ITAR defines the term “export” very broadly. According to ITAR Section 120.50, an “export” is defined as the following:

- i. An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner; or
- ii. Releasing or otherwise transferring technical data to a foreign person in the United States (a deemed export); or
- iii. Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to this subchapter by a U.S. person to a foreign person; or

- iv. Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States; or
- v. Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or
- vi. The release of previously encrypted technical data as described in § 120.56(a)(3) and (4).
- vii. Thus, according to ITAR, exports include disclosures and/or transfers of ITAR-controlled technical data to a foreign person even where such disclosures and/or transfers take place wholly within the United States. ITAR defines “foreign person” as follows:

A foreign person encompasses any natural or legal person who is not:

- i. a U.S. citizen;
- ii. a lawful permanent resident of the U.S. (i.e., a “green card holder”);
- iii. an individual whom the U.S. considers to be a “protected individual” (i.e., an individual to whom the U.S. has granted asylum for political or religious reasons); or
- iv. a U.S.-registered company.

Accordingly, resident aliens with temporary work visas, persons in the process of obtaining permanent resident status and persons unlawfully in the United States, are considered under ITAR to be foreign persons. The ITAR’s definition of a foreign person is found in ITAR Section 120.63.

## **5. Assess Whether Product / Service / Data is Covered by USML**

Once the Company determines which department has jurisdiction of the export, the next step is to classify the export pursuant to the relevant classification list.

Products that are subject to the State Department’s export control jurisdiction are assigned U.S. Munitions List categories.

U.S. Munitions List Categories: As of the date this section was written, there are twenty-one (21) separate categories on the U.S. Munitions List. These categories are as follows:

- |               |                               |
|---------------|-------------------------------|
| Category I:   | Firearms and Related Articles |
| Category II   | Guns and Armament             |
| Category III: | Ammunition and Ordnance       |

Category IV:	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
Category V:	Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
Category VI:	Surface Vessels of War and Special Naval Equipment
Category VII:	Ground Vehicles
Category VIII:	Aircraft and Related Articles
Category IX:	Military Training Equipment and Training
Category X:	Personal Protective Equipment
Category XI:	Military Electronics
Category XII:	Fire Control, Laser, Imaging, and Guidance Equipment
Category XIII:	Materials and Miscellaneous Articles
Category XIV:	Toxicological Agents, Including Chemical Agents, Biological Agents and Associated Equipment
Category XV:	Spacecraft and Related Articles
Category XVI:	Nuclear Weapons Related Items
Category XVII:	Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
Category XVIII:	Directed Energy Weapons
Category XIX:	Gas Turbine Engines and Associated Equipment
Category XX:	Submersible Vessels and Related Articles
Category XXI:	Articles, Technical Data, and Defense Services Not Otherwise Enumerated – <b>ONLY DDTC CAN ASSIGN THIS</b>

Each of these categories contains various subsections, which expand upon and further define the categories in which they are contained.

The U.S. Munitions List is included in ITAR as Part 121. In checking your product against the U.S. Munitions List, it is critical that you use the most current list, especially because the list is currently being revised. The most current U.S. Munitions List and its amendments is available on the Internet website for the State Department's Directorate of Defense Trade Controls at [https://www.pmdtcc.state.gov/ddtc\\_public?id=ddtc\\_kb\\_article\\_page&sys\\_id=70757839db30d30044f9ff621f961992](https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=70757839db30d30044f9ff621f961992). All amendments of the U.S. Munitions List must be reviewed to confirm use of the latest categories.

If it is possible that your product is encompassed by the U.S. Munitions List, take note of the U.S. Munitions List category that is assigned to your product and review such category within the U.S. Munitions List to determine the subsection that is most appropriate for your product. If you find a subsection that is appropriate for your product, take note of the relevant subsection reference. The complete and proper U.S. Munitions List categorization of your product should be comprised of a U.S. Munitions List category reference as well as a subsection reference [e.g., Category V(c) as opposed to V].

If you cannot find a U.S. Munitions List category and subsection that is appropriate for your product and if you suspect that your product should be included in the U.S. Munitions List, file a Commodity Jurisdiction Request with the Directorate of Defense Trade Controls at the State



Department. Guidelines for preparing and submitting Commodity Jurisdiction Requests are available on the State Department's website below:

[https://deccs.pmddtc.state.gov/deccs?id=ddtc\\_kb\\_article\\_page&sys\\_id=27faa6fdb55ff805c3070808c9619cb](https://deccs.pmddtc.state.gov/deccs?id=ddtc_kb_article_page&sys_id=27faa6fdb55ff805c3070808c9619cb).

On the other hand, if you have reviewed the U.S. Munitions List and feel certain that your new product is not and should not be included in the U.S. Munitions List, you may conclude that your product is not subject to State Department control. Your U.S. Munitions List category, therefore, will be "N/A."

## **STEP 2: Screen for Prohibited Country Destinations and Prohibited Buyers / End Users**

Screen ALL buyers and all end users using **the Company's EXPORT CONTROL SCREENING PROGRAM** or if the Company does not have such a program, provide to **Legal Counsel to screen.**

If the **Company's EXPORT CONTROL SCREENING VENDOR** screenings reveal that the name of a buyer and/or end user is included on any of the lists outlined below, the buyer and/or end user is a prohibited party.

**The Debarred Parties List (a.k.a. the Debarment List):** The individuals and entities on this list have been precluded by the State Department from participating in any transaction, either directly or indirectly, that requires a DDTC license or approval. They were placed on this list for violations of the Arms Export Control Act (AECA). Debarred parties cannot participate in any transaction involving the export of defense articles, defense services, or ITAR-controlled technical data. <https://www.cbp.gov/trade/trade-community/programs-outreach/blocked-denied-debarred>

**The Nonproliferation Sanctions Lists:** The Nonproliferation Sanctions List is promulgated by the State Department. It is a list of persons and entities (prohibited persons as well as restricted persons/entities) that are of concern to the State Department because these persons and entities are known to have participated in the proliferation of chemical/biological weapons, nuclear activities, and/or missile technology. Based on the State Department's concerns in this regard, the State Department has subjected the persons and entities on the Nonproliferation Sanctions List to export controls that take the form of either export prohibitions or export restrictions, i.e. export licensing requirements. <https://www.state.gov/key-topics-bureau-of-international-security-and-nonproliferation/nonproliferation-sanctions/>

**Denied Party List:** The Denied Party List (DPL) is promulgated by the Commerce Department and lists prohibited persons who have been denied export privileges by the Commerce Department because they have, or are believed to have, violated the Export Administration Act (EAA), or the Export Administration Regulations (EAR). No denied person can legally participate in any transaction that may involve the export of any item subject to the EAR unless authorization is specifically given by BIS. Denial orders are designed to cut off the access of denied persons to U.S.-origin items by denying such parties the right to export from the United States and the right to receive exports from the United States. Denial orders also cut off the access of denied persons to U.S.-origin items by prohibiting third parties from dealing with a denied party in a transaction involving U.S. items. Any person<sup>8</sup> who deals with a denied party in an export-related transaction involving U.S.-origin goods or technical data is subject to administrative sanctions and / or criminal prosecution.

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<sup>8</sup> The EAR defines "any person" in this case very broadly as including: (1) any natural person, including a U.S. citizen or a citizen from any foreign country; (2) any firm; (3) any government, government agency, or government department; (4) any labor union; (5) any fraternal or social organization; and (6) any other association or organization whether or not organized for profit. See 15 CFR Part 772.

**<https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list> / <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>**

**The Specially Designated Nationals List:** The Specially Designated Nationals' List (SDN List) is promulgated by the Treasury Department's Office of Foreign Assets Control (OFAC). The SDN List is comprised of persons and entities (i.e., prohibited persons and prohibited entities) with which U.S. persons are precluded from dealing. The individuals and entities on the SDN List are involved in or are associated with foreign terrorist organizations, international narcotics, or because they are owned or controlled by, or acting for or on behalf of, the governments of countries which the U.S. considers to be hostile to U.S. foreign policy or national security objectives. **<https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>**

### **STEP 3: Determine the Need for an Export License and the Possible Availability of a License Exemption /Exception**

#### **A. EAR Licensing Requirements**

1. Review the Commerce Control List (CCL) for your products' ECCN in Part 774 of the EAR or contact the manufacturer, developer or producer to obtain the ECCN.
2. Determine whether the item is a 600 series military item, a non-600 series item or an item designated as EAR99.
3. Is the item enumerated in the 600 series or a "specially designed" 600 series item? If yes, the item is classified in a military ECCN (600 series). The Department of Commerce has provided a decision tree tool available online to determine whether an item is "specially designed"  
<http://www.bis.doc.gov/index.php/specially-designed-tool>.
  - i. If no, is the item described elsewhere in the CCL? If yes, the item is a non-600 series ECCN.
  - ii. If the item is not described elsewhere in the CCL, then the item is designated as EAR99.
4. Consult the Commerce Country Chart in *Supplement No. 1 to EAR Part 738* (see BIS' website <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-738> and go to the specific country listing for the buyer's country/ultimate destination.
5. Review the columns under Reasons for Control (i.e. "chemical and biological weapons", "nuclear nonproliferation", etc.) and determine which reasons for control are marked with an "x" for your country destination.
6. If a BIS export license exception is available, an export license to export the product does not have to be obtained based on product specific export licensing requirements but you will still need to see if an export license is required based on end user. The license exceptions are available at <https://www.ecfr.gov/current/title-15/part-740>.
7. If a BIS export license exception is NOT available, **You MAY NOT PROCEED any further in processing the buyer's order until and unless you apply for and obtain an export license.**

**B. ITAR Licensing Requirements**

1. If the product, technology, or service that the buyer wishes to purchase qualifies as a U.S. Munitions List Item (it is specifically listed or falls within one of the catch-all categories), the Company will require an export license from the DDTC unless an export license exemption is available.
2. The Company's personnel who intend to rely on any ITAR license exemption, must first consult with the Company's Export Control Officer or Legal Counsel. If an Export License Exemption is NOT available, then the Company must:
  - i. Place the export on hold; and
  - ii. Apply for and obtain an export license from the DDTC.
3. The Company's personnel who intend to apply to DDTC for an ITAR license must first consult with the Company's Export Control Officer or Legal Counsel.
4. You **MAY NOT PROCEED** any further in processing the export until and unless you apply for and obtain an export license from the DDTC.

## **VII. DOMESTIC IMPORT LAWS**

It is the policy of the Company that all OPT Companies comply with applicable laws and regulations relating to the importation of products or materials into the country in which the company is situated. The following describes the type of controls required with respect to imports into the United States. OPT Companies importing into countries other than the United States should implement similar controls appropriate to ensure compliance with local customs laws.

Under the U.S. customs laws (primarily 19 U.S.C. § 1484, as amended by the Customs Modernization Act), the importer of record is responsible for exercising “reasonable care” over its import activities. In general, this means that the importer must develop, implement and maintain effective internal controls to ensure that reasonable care is exercised in planning for imports and preparing and presenting data to U.S. Customs and Border Protection (“U.S. Customs”). More specifically, the importer is required to properly enter, classify and determine the value, country of origin of, and country of origin marking of imported merchandise. The importer must also provide any other information necessary to enable U.S. Customs to properly assess duties, collect accurate statistics, and to determine whether other applicable legal requirements, if any, have been met.

An importer of record’s failure to exercise reasonable care could delay release of the products or lead to seizures. It could also result in the imposition of liquidated damages or penalties. If the violations are intentional, they could lead to criminal prosecutions.

In order to help ensure that the Company and its domestic subsidiaries comply with all U.S. customs laws and regulations, all personnel involved in the design, development, procurement and/or delivery of products imported into the United States must assist in the development, implementation and maintenance of effective internal controls over import matters (including planning for imports, preparing and presenting data to U.S. Customs, recordkeeping, etc.). In this regard, the person responsible for purchasing at each Company facility involved in importing into the United States is responsible for:

- A.** Designating a position to be responsible for import matters.
- B.** Ensuring that an internal control system is in place that will document independent oversight and review of the customs activities of the applicable OPT Company. This internal control system should, at a minimum, cover:
  - 1. Reviewing new products with knowledgeable personnel of the applicable OPT Company, or if more appropriate, a customs expert, prior to the initial importation to ensure that the proper Harmonized Tariff Schedule of the United States (HTSUS) classification, valuation, origin, etc. will be declared upon entry.
  - 2. Determining whether merchandise is subject to import regulations issued by agencies other than U.S. Customs--these regulations may be in the

form of restrictions, special labeling requirements, or permit or license requirements.

3. Determining whether merchandise qualifies for preferential treatment under free trade agreements (e.g., the North American Free Trade Agreement) or other trade preference programs (e.g., the Generalized System of Preferences) before making entry.
4. Reviewing customs brokers' entry submissions.
5. Periodically audit import procedures and substantive compliance with laws and regulations (e.g., auditing HTSUS classifications, import documents).
6. Retaining expert assistance in complying with customs requirements, when necessary.
7. Maintaining the required records for the time periods required by law.
8. Ensuring that employees with customs responsibilities attend an annual training regarding U.S. import laws and regulations.
  - a. Taking corrective action (e.g., on an entry basis by filing post-entry amendments, prior disclosures, etc. and on a larger basis by amending the internal control system) where necessary.

In addition, the Company is committed to ensuring that its supply chains are secure so that products destined for the United States cannot be adulterated and dangerous items cannot be introduced into legitimate shipments.

**The Legal Department should be consulted with any questions regarding these requirements.**