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EXPORT CONTROLS AND THE COMPOSITES INDUSTRY



**WILTSHIRE
& GRANNIS** LLP

Cecil Hunt

**Wiltshire & Grannis LLP
Washington, D.C.**

Who is Here Today?

First – some brief control basics

Then – composites industry export classification

Then – export control reform prospects

Then – smart compliance

Finally – your questions about export controls or other international trade and investment subjects

The World of Export Controls

Massive Regulations

Many Regulators

- ▶ **BIS:** Commerce Bureau of Industry and Security
 - **EAR:** Export Administration Regulations
 - “Dual-use”
 - **CCL:** Commerce Control List
- ▶ **DDTC:** State Directorate of Defense Trade Controls
 - **ITAR:** International Traffic in Arms Regulations
 - **USML:** United States Munitions List
- ▶ **MORE:** Other agencies, other governments, multilateral regimes


Help may be just a click away

See EAR part 730 and the references in the final slide.

Famous Last Words

- ▶ “Our product line is plain vanilla, so we don’t worry about export controls on high-tech.”
- ▶ “Our freight forwarder takes care of all of this.”
- ▶ “We don’t export. Our customers do.”

Consider the “what,” “where,” “who” and “how”?

- Bad countries
 - Bad people
 - Intangible “exports”
- 

Classification Systems

Watch out for that plural!!! – “systems”

EAR: “Dual use” is an elastic term

- Not statutory
- Not defined in EAR

ITAR: Note especially Sec. 120.3

- Designed ... for a military application and no “predominant civil applications” ...

OR

- Irrespective of civil applications, “has significant military or intelligence applicability” requiring its control.



Note especially EAR Sec. 734.2 “Subject to the EAR”

- ▶ Broad reach, but not everything that is “subject” requires a license:
 - In the United States
 - U.S. origin
 - Foreign made with more than *de minimis* controlled U.S. content (*etc.*)

- ▶ Technical data that is NOT “subject”
 - “Published” or “publicly available”
 - From fundamental research (But possible government contract restrictions.)

List Structure and Terms EAR CCL

For example:

ECCN IC010 **Certain Fibrous or Filamentary Materials**

First digit:	Product Category (zero through 9) “1” includes “Special Materials and Related Equipment...”
Letter	Five Groups in each Category A. Equipment, Assemblies, Components B. Test, Inspection, Production Equipment C. Materials D. Software E. Technology
Second digit	Control Type “0” for National Security 1 for MT 2 for NP 3 for CBW 9 for AT etc.
Third digit	“9” for Unilateral Nonproliferation control
Final digit	Sequential numbering within an ECCN

ITAR- USML Control List Structure

Nineteen specific Categories (do not track CCL) *plus*

- **Category XXI: Miscellaneous Articles**
and
- **Category XVII: Security Classified and
Not Otherwise Enumerated**

A composites example :

Category XIII “Auxiliary Military Equipment” includes subcategory (f)

- Certain “structural materials,” including carbon/carbon composites,
- “specifically designed for a military application”

Export Control Reform

“Four Singles”

- List
- Licensing Agency
- IT System
- Enforcement Coordination Center

ECR progress to date:

Congress	Arms Export Control Act	Sec. 38(f) notification
White House	?	?

ECR CONTROL LIST TRANSITION PROCESS

- ▶ Several USML Categories reviewed for possible transfers to CCL
- ▶ BIS proposes establishing new “**600**” series to receive transfers
- ▶ Both agencies have proposed “**transition**” provisions
 - License exceptions
 - Outstanding or pending licenses
 - “Specially designed”

LIST CHANGES OF SPECIAL INTEREST TO COMPOSITES INDUSTRY

USML Category XIII

- ▶ Would change title from “Auxiliary Military Equipment” to

- ▶ “Materials and Miscellaneous Articles”
 - New paragraph (d) would cover a range of ablative materials.
 - New paragraph (e) deletes “specially designed” and uses objective criteria to specify covered types of body armor.
 - Many more sub-categories would change.

See DDTC proposed rule, 77 FR 29575, May 18, 2012

What happens to the composite materials covered by current Category XIII(f)?

Some to CCL (Proposed **0C617**)

Others stay on USML

- ▶ But some moved to more specific categories, such as
 - Category VII Tanks and Military Vehicles
 - Category VIII Aircraft and Associated Equipment
 - Newly defined subcategories of materials in the proposed Category XIII

USML Category X

Protective Personnel Equipment and Shelters

- Subcategories (some composite) split between USML retention and transfer to CCL 600

Specially Designed

This topic really needs a separate presentation

- Complex history
- Voluminous public comments
 - “Catch and release” proposal
 - 77 FR 36409 (EAR), 36428 (ITAR), June 19, 2012
- We await the next iteration from the agencies

Parts and Components Standards

“As with the revision of other categories, the USML will not control all generic, non-specific parts, components, accessories, and attachments that are in any way specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage to the United States. These items would become subject to the new 600 series controls in Category I of the CCL”

- ▶ Dept. of State Category X Notice, 77 FR 33699, June 7, 2012

List Reform Is a Work In Progress


Stay Informed

- For example, the “ECR” tab on the BIS website

Get Involved

- Submit comments
- Connect with advisory committees and industry groups

Watch Out For

- Inadequate agency knowledge of size and scope of commercial applications
 - Movement of items to the CCL with a restrictive “ITAR legacy”
- 

Staying Out of Trouble

Have an Internal Control Program ...

That fits your business.

Consult the BIS Guidelines, but adapt

Smart Compliance- Highlights

Tailor compliance provisions and training to the job


IT: IT system administrators versus technology users

- Sensitive data access, transmission, storage, etc.
- Records retention requirements
- The “Cloud”

HR : Sensitivity to “deemed exports” rules

- Immigration – sponsoring and signing the I-129 form

Boss: Export control knowhow can **save** and **make** money

- Avoiding delivery delays
 - Easing compliance burdens for customers
- 

War Story

How control classification can be crucial

- **Analyze and press your case**

A Selection of Information and Help References

- ▶ www.bis.doc.gov
 - Policy Guidance/Advisory Opinions
 - CCATS re CF items
- ▶ www.export.gov
 - Beyond export control
 - ECR information
- ▶ www.pmdotc.state.gov
 - Commodity Jurisdiction/Tutorial
- ▶ www.tradepoint.org/index/trade-tutorials/17
 - My 2006 overview
- ▶ *Cloud Computing's Hidden Export Regulation Risks*, CORPORATE COUNSEL (February 2012) (available at www.wiltshiregrannis.com/siteFiles/News/6277E4F5146A461D9AFB1782C6E0C9E1.pdf)

Questions?

- ▶ Export controls
- ▶ Other international trade and investment legal matters

Cecil Hunt

Wiltshire & Grannis LLP

chunt@wiltshiregrannis.com

202-730-1309



WILTSHIRE
& GRANNIS LLP