



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

U.S. Export Controls Update

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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: Aug 30, 2016

Objectives

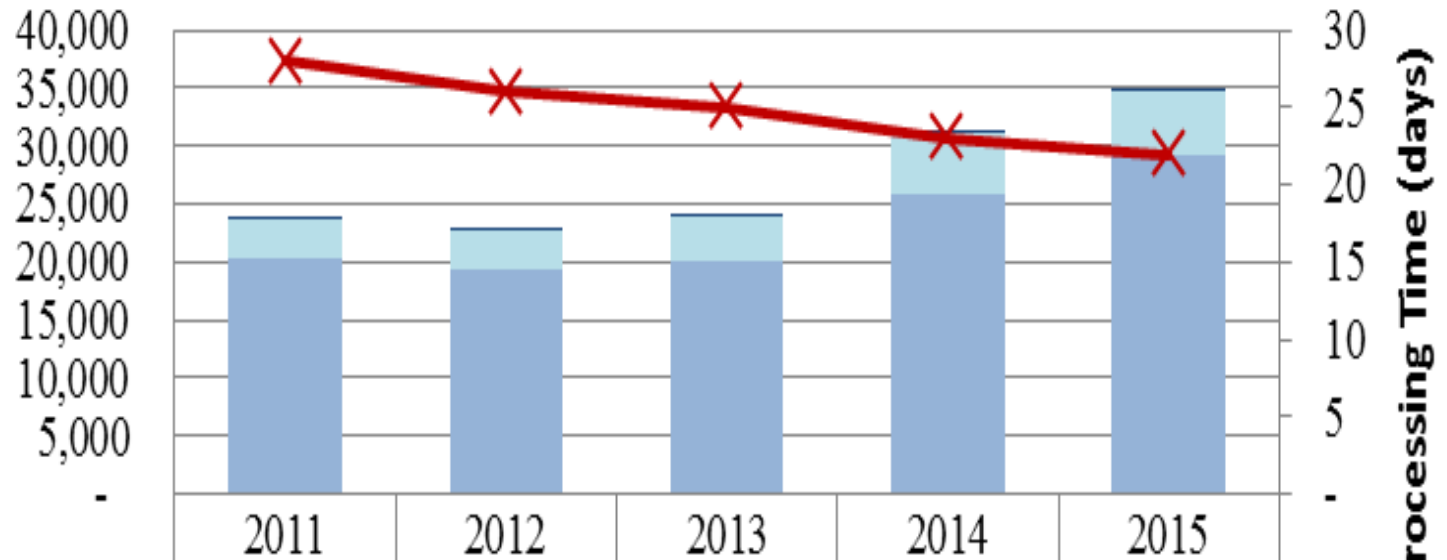


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- Licensing Trends
- Export Control Reform Update
- Re-export Controls
- License Exceptions
- Foreign production
 - Direct Product Rule
 - *de minimis*



Licenses for Tangible Items, Software and Technology for the World by Count 2011-2015



Denied	130	157	168	321	306
RWA	3,252	3,267	3,758	5,202	5,429
Approved	20,353	19,376	20,182	25,935	29,283
Average Processing Time (Days)	28	26	25	23	22

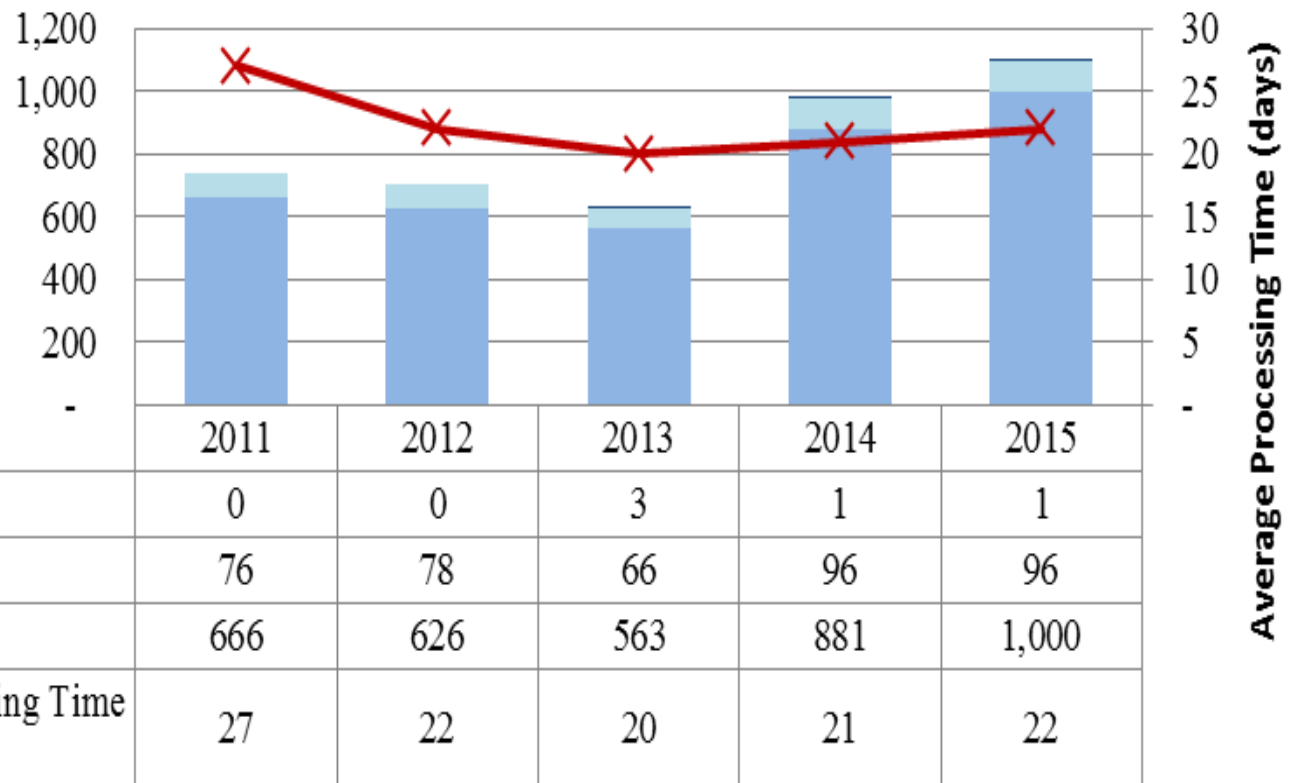
Figures do not include deemed export licenses. In 2015, BIS reviewed 1,317 deemed export license applications. Approved deemed export licenses for all destination totaled 1,211 (92.0% of the total applications), an 23.8% (233) increase from 978 in 2014.

Trends in Singapore Licensing



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Licenses for Tangible Items, Software and Technology By Count for Singapore
2011-2015

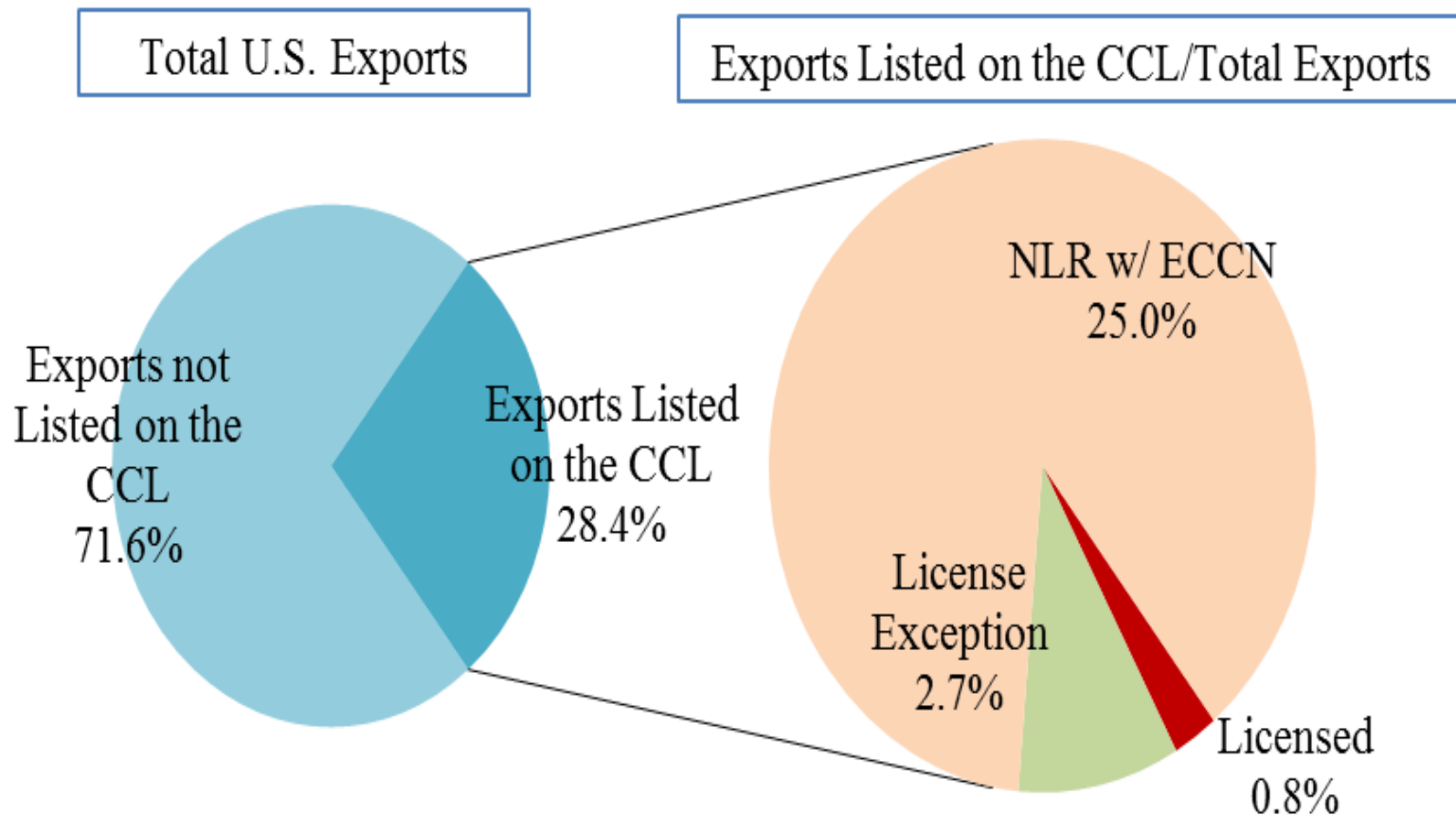


Impact of BIS Export Controls on U.S. – Singapore Trade



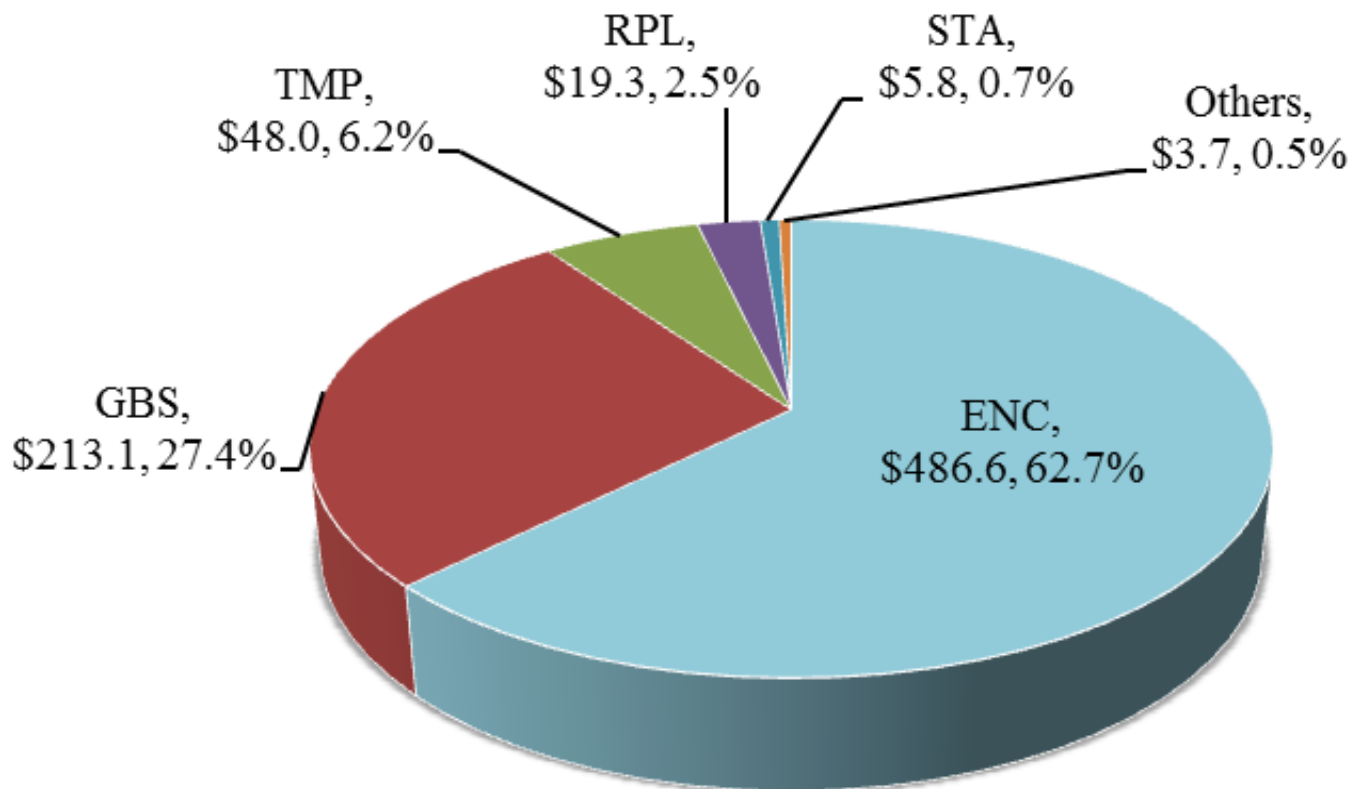
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2015 U.S. Exports to Singapore Listed on the CCL





2015 U.S. Exports to Singapore by BIS License Exception Smillions



Top Four Exports by ECCN to Singapore by Value--Licensed (\$millions)



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ECCN	Description	Value	World Rank by Value	Shipment Count	World Rank by Shipment Count
9A610	Military aircraft and related commodities	\$70.8	5	2,166	5
9A619	Military gas turbine engines and related commodities	\$23.7	7	732	7
2A983	Explosives or detonator detection equipment	\$14.2	2	138	1
3B001	Equipment for the Manufacturing of Semiconductor Devices	\$12.3	3	110	5

Top Four Exports by ECCN to Singapore by Shipment Count --Licensed (\$millions)



ECCN	Description	Value	World Rank by Value	Shipment Count	World Rank by Shipment Count
9A610	Military aircraft and related commodities	\$70.8	5	2,166	5
2B230	Pressure transducers	\$4.9	3	930	3
9A619	Military gas turbine engines and related commodities	\$23.7	7	732	7
2B350	Chemical manufacturing facilities and equipment	\$3.3	4	523	3

Top Four Exports by ECCN to Singapore by Value **License Exception** (\$millions)



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ECCN	Description	Value	World Rank by Value	Shipment Count	World Rank by Shipment Count
5A002	Information Security Systems Equipment	\$477.1	10	10,970	7
3B001	Equipment for the Manufacturing of Semiconductor Devices	\$177.8	3	1,116	2
2B350	Chemical manufacturing facilities and equipment	\$41.7	1	68	2
3A001	Electronic Components and Specially Designed Components	\$29.0	3	949	4

Top Four Exports by ECCN to Singapore by Value **NLR** (\$millions)



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ECCN	Description	Value	World Rank by Value	Shipment Count	World Rank by Shipment count
9A991	Aircraft and gas turbine engines	\$5,338.9	5	66,002	5
3B991	Equipment not controlled by 3B001 for the manufacture of electronic components and materials	\$317.5	5	16,017	2
5A991	Telecommunication equipment not controlled by 5A001	\$280.3	8	9,632	10
5A992	Low-Level Information Security Systems and Equipment	\$228.7	13	8,402	7

ECR List 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

ECR List Review Status



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USML Category	ECCNs	Status
XII: Sensors/Night Vision	6x615 7x611	Proposed rule May 5, 2015 Second proposed rule Feb 16, 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 (for rad-hard ICs) Effective Nov. 10, 2014 (for all other items)
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

Export Control Reform Impact



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- From October 2013 through June 2016:
 - 57% reduction in monthly license volume at the Department of State for the newly implemented USML categories
 - Aircraft/gas turbine engines: 66% reduction
 - Spacecraft/satellites: 81% reduction
 - Over 33,500 license applications submitted to BIS for items that have moved from the USML to the CCL
 - Over 210,000 shipments valued at \$13.2 billion in exports have been shipped under BIS authorizations
 - *Top items:* 9A610 (aircraft items), 9A619 (gas turbine engine items), 9A515 (spacecraft), 3A611 (military electronics), 0A606 (ground vehicle items)
 - *Top destinations (by value):* Japan, Canada, United Kingdom, South Korea, Mexico, Israel, Germany, UAE, Italy, Singapore

Export Authorizations Under the EAR



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- Licensed
 - X in the box on the Country Chart for the destination country for Reason for Control for an ECCN on the Commerce Control List
 - the destination country
 - End-use Concerns (Catch-all)
- License Exceptions
- No License Required (NLR)
 - EAR99
 - No X in the box on the country chart

The above authorizations also apply to reexports of items
“Subject to the EAR”

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

What is a License Exception?

Part 740



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- An authorization that allows you to export or reexport, under stated conditions, items subject to the EAR that would otherwise require a license.
- License exceptions also cover in-country transfers

When can't you use a License Exception?

§740.2



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- Authorization has been suspended or revoked
- Export subject to a General Prohibition that is not eligible for License Exceptions.
- Surreptitious Interception Devices
- Crime Control items to most destinations
- Most Missile Technology control items
- Embargoed destinations, in most instances
- Certain restrictions on 600 Series ECCNs

The way the EAR sees the world...



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Country Groups

Supplement 1 to Part 740

- Group A: Regimes and Allies
- Group B: Less Restricted
- Group D: Countries of Concern
- Group E: Terrorist Supporting



Commerce Control List-Based License Exceptions



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Availability Based on ECCN

- Strategic Trade Authorization (**STA**)
 - Shipments to B Countries (**GBS**)
 - Technology and Software Restricted (**TSR**)
 - Shipments of Limited Value (**LVS**)
 - Civil End Users (**CIV**)
- Country Group A:5 or A:6**
- Country Group B**
- Country Group D-1, except North Korea**

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

Benefits of LE STA for Singapore

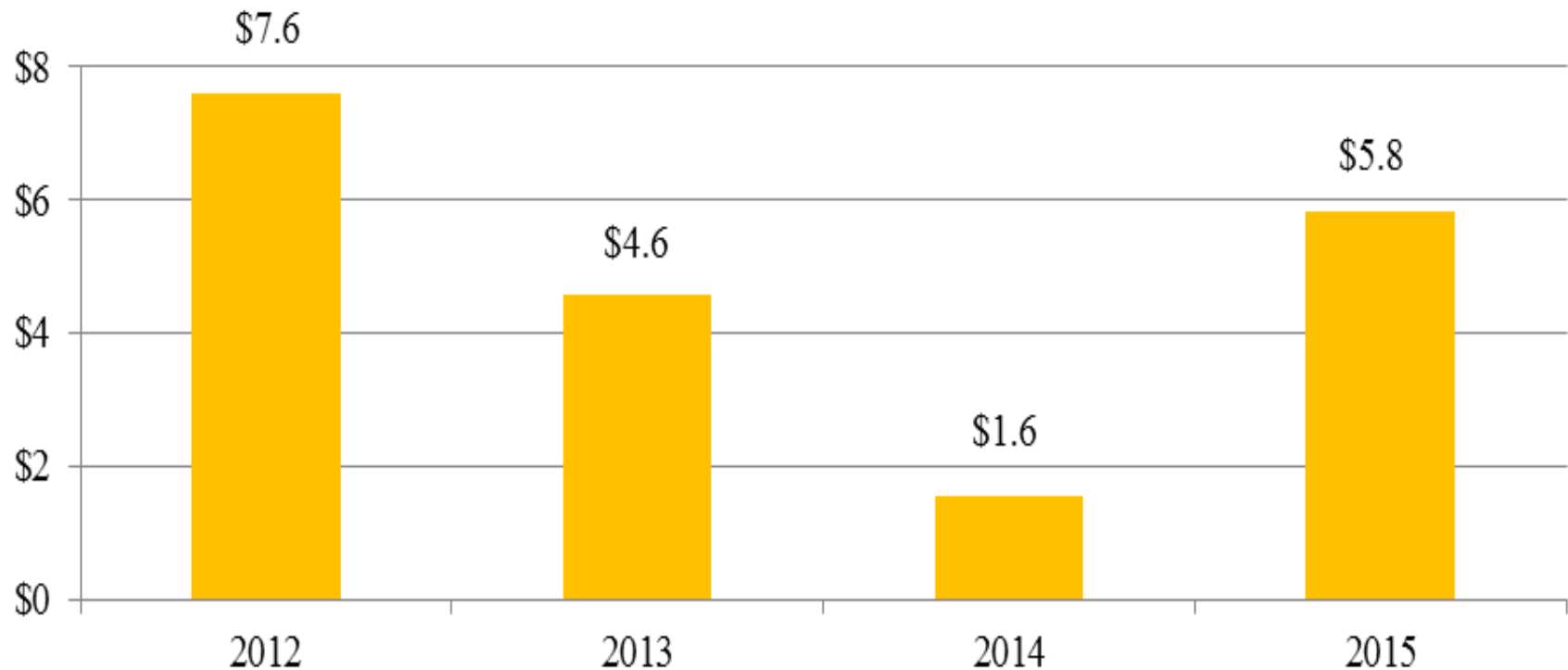


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- STA may be available for Items controlled for NS reasons only that are neither GBS or TSR eligible
- Examples:
 - 3B001.a.3 molecular beam epitaxial growth equipment
 - 3B001.e automatic loading wafer handling system
 - 3B001.f lithography equipment
 - 3C001 through 3C006 controlled materials for semiconductor manufacturing
 - 2B005 Specially designed coating equipment
 - 2E003 coating technology



The U.S. Exports to Singapore under Strategic Trade Authorization 2012-2015 \$millions



Transaction Based License Exceptions



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- **GOV** - Governments
- **TMP** - Temporary Imports, Exports & Reexports
- **RPL** - Service & Replacement of Parts & Equipment
- **TSU** - Technology & Software Unrestricted

Summary: License Exceptions



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- Make sure your transaction requires a license (i.e., there is an “X” in the box, or some other licensing requirement) before reviewing the License Exceptions.
- Before going to a specific license exception, make sure there are no general restrictions.
- Each exception is unique, make sure you meet of all of the criteria.

ECR 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.

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.

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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- *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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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.

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 Items Incorporating U.S. Content



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- For subject items, 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.

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
 - 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.

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

Questions?



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