



DDTC/BIS/DTSA: Licensing Scenario Review

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NOTE: All speaker comments are off-the-record and not for public release



SCENARIO ONE

The Facts:

- **Company X recently received a RWA for a DSP-6 to add manufacturers and sources to a DSP-5 “in furtherance of” a WDA**
- **The reason for the RWA was that all manufacturers and sources must be identified in the WDA prior to approval.**
 - **This was new information for Company X who had received several DSP-5s and DSP-6s for the same manufacturers and sources.**

Question(s):

- **Can DDTC provide clarification on this matter and where the requirement exists?**

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SCENARIO TWO

The Facts:

- **Company Y's DSP-5 has been staffed to five DoD stakeholders and four DoS stakeholders.**
- **After forty-five days all nine stakeholders have processed the application and it has been returned to the DDTC Licensing Officer. Two weeks go by and the application has yet to be released.**
- **Company Y's Compliance Officer has contacted the Licensing Officer to request a status update, but her calls go unanswered.**
- **Company Y has a meeting in a week that will require the approved license in order to be productive.**

Question(s):

- **Understanding the case loads at DDTC, how should the Compliance Officer proceed? Whom, if anyone, should she contact?**

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SCENARIO THREE

The Facts:

- After submitting a DSP-73, Company Z realizes that it made an inadvertent error while drafting the application. The error is not disastrous, but the application could be viewed as misleading and is not correctable via a DSP-74.
- The DSP-73 is halfway through the review process and the DDTC Licensing Officer does not appear to have noticed the discrepancy.

Question(s):

- How should the company proceed?
- What types of errors cannot be self-corrected through additions to the case file?

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SCENARIO FOUR

The Facts:

- **Company A is the parent company of two business units, Company A1 and Company A2.**
- **Company A1 has a contract with the USG which contains an Foreign Military Sales (FMS) component for \$50M. It has subcontracted to Company A2 via an Intercompany Transfer to perform \$3M worth of work.**
- **The parent company has retained a representative, A1 and 2 Representatives Ltd. who will make a commission on the \$50M contract.**

Question(s):

- **What is the best way to represent this scenario in a positive Part 130 report to State? Should both Company A1 and Company A2 submit a report?**

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SCENARIO FIVE

The Facts:

- **Company B is partnering Faraway, a company in the non-NATO country, Farawayonia.**
- **Company B is seeking to establish a Final Assembly and Check Out Facility for an end-item that is SME.**
- **Company B has a TAA in place with Faraway to furnish assistance with final assembly, testing and to export SME and non-SME hardware.**
 - **No manufacturing know-how will be exported or is necessary**
- **Faraway purchases non-SME components and assembles that are part of the final product.**
- **Faraway then sends the fully assembled end-item back to Company B.**
- **The value of the effort is \$200M. The agreement was notified under 36(c).**

Question(s):

- **At what point does Congressional Notification need to be made, if at all, under 36(d)?**

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GENERAL QUESTIONS

- **Inquiring Industry minds want to know:**
 - Who decides whether or not a case gets staffed to Missile Technology Export Committee (MTEC) and when is that decided?
 - There appears to be variation in staff times (normally within 9 days but some cases take up to 30 days), is there a reason for this variation? What can industry do to assist?
 - Marketing licenses can sometime linger for months only to be RWA'd for Foreign Policy reasons, why does it take so long and why is it RWA'd versus Denied?
 - What is something about your job that you think industry doesn't know or doesn't understand?

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Questions?

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BIS Licensing Observations

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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: April 17, 2017

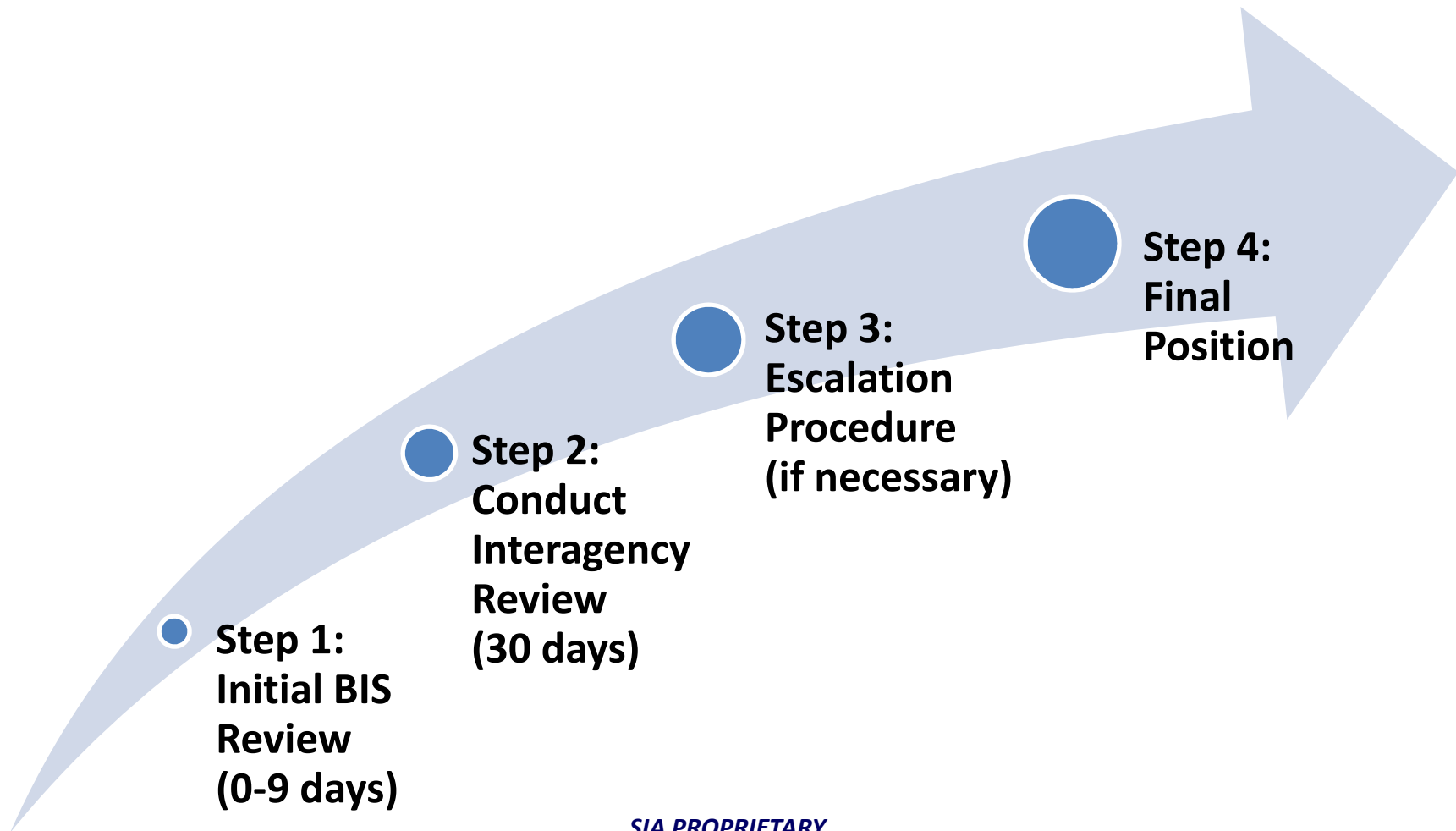
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BIS License Review Process



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3-Component Initial Review



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- **Policy Review**

- **License exception availability**
- **Foreign policy developments**
 - Country policies (regime members, countries of concern)
 - Regional policies

- **Compliance Review**

- Precedent authorizations
 - Attach or identify prior authorizations of relevant items or parties.
- All parties properly listed
- Parties without prior licensing history
 - Documentation of bona fides (business registrations, tax registrations, etc.)
- Major Defense Equipment (MDE) thresholds

- **Technical Review**

- Complete technical description of each item
 - Verify classification of the items listed (technical specification)
 - Address ECCN parameters, including “specially designed”
- Full description of end use
 - How will each party use the items listed?
 - Is the end use appropriate for the items listed?

- Letter of Explanation (recommended, required for technology)
 - Technology License - Part 748 Supplement 2 (o)
 - Provide greater detail on proposed transaction, parties, item(s) and prior transactions (DDTC or BIS)
 - Be proactive by anticipating and answering questions in advance, as much as possible.

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BIS RWA Reason #1



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Failure to respond to a USG request for additional information in a timely manner

- LOs generally will RWA an application if no response is received within 10 calendar days
- Additional information requests can include technical specifications, letters of explanation, information on parties to the transaction, and end-use clarification

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BIS RWA Reason #2



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Incomplete party information

- **P.O. Boxes**
- **Incomplete or erroneous addresses**
- **Additional parties not listed in application form**

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BIS RWA Reason #3



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Not Commerce jurisdiction

- **Items still described on revised USML or under jurisdiction of another agency with exclusive jurisdiction (U.S. Nuclear Regulatory Commission, Treasury Department Office of Foreign Assets Control, etc...)**
- **Otherwise not subject to the EAR**
 - Publically available information
 - Results of fundamental research
 - Items with less than *de minimis* quantity of U.S.-origin content

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BIS RWA Reason #4



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No license is required for the described transaction

- **600 series .y items to most destinations**
- **Exports of many 600 series items to Canada**
- **Items released by “specially designed” (nuts, bolts, screws, wire, etc...) to most destinations**
- **Note: No automatic RWA for license exception availability**

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BIS RWA Reason #5



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Applicant's request

- Applicant intends to export under license exception instead of license
- Applicant knows more than 10 days are needed to answer questions
- Applicant made errors on application during input

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600-Series Item CCATS

Elements of a Quality Submission



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- **Sufficient Technical Detail**
- **End Item, Platform, Subsystem**
- **Brochures, Technical Drawings, Spec. Sheets**
- **Commodity Jurisdiction Letters**
- **Letter of Explanation**

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Common Pitfalls for (b)(1) and (b)(3) Release CCATS Requests



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- **ITAR-Controlled Items**
- **Deficient Technical Specifications**
- **Broad Scope**
- **Timely Response**
- **Missing or Deficient Letter of Explanation**

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Letter of Explanation for (b)(1) and (b)(3) Release CCATS Requests

- **(b)(1) AND (b)(3) Releases**
 - Detailed Description of Item* to be Released
 - End Use, Platform, Subsystem
 - Specific Technical Parameters
 - Function of Item
 - Specially Designed Analysis
 - Order of Review
- **(b)(1) Releases**
 - Minor Changes in Form/Fit
 - Affect on Performance of End Item
- **(b)(3) Releases**
 - Compare/Contrast with Dual Use Item
 - Form, Fit, Performance SIA PROPRIETARY

**Releases from
“specially designed”
are limited to:
“parts”
“components”
“accessories”
“attachments”
AND
“software”*

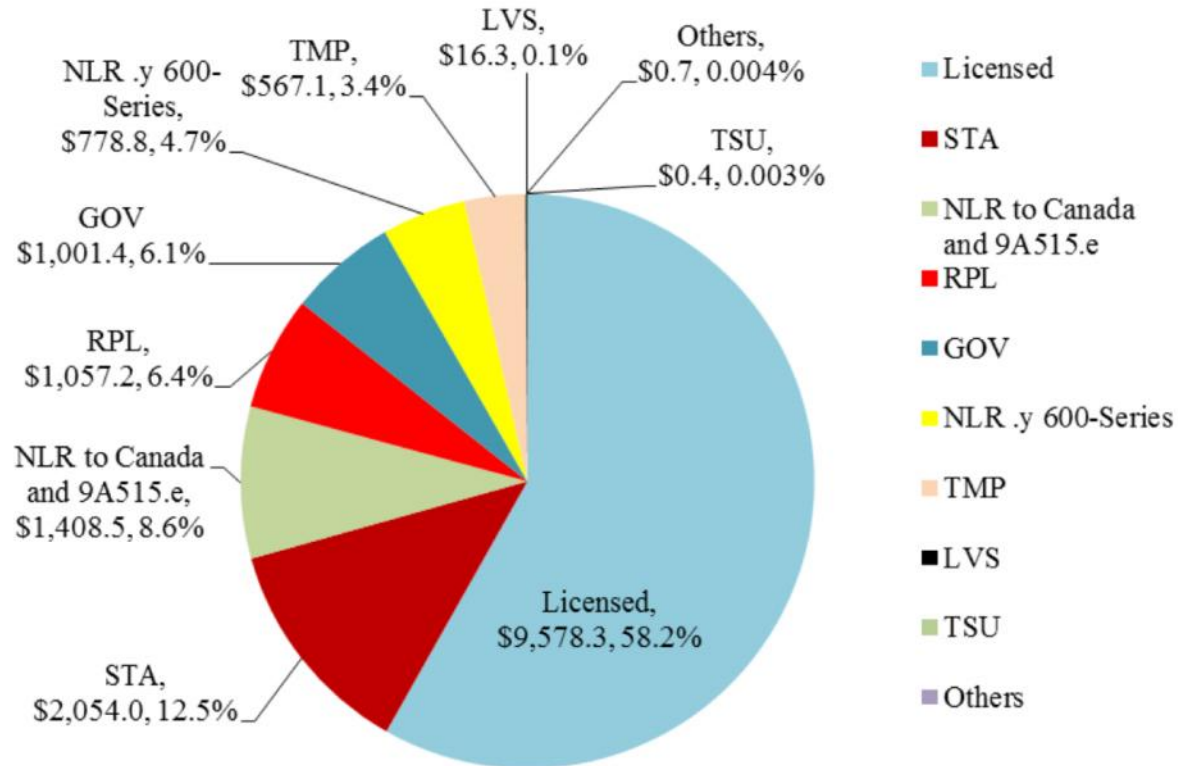
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Numbers/Stats



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The U.S. Exports of 600-Series and 9x515 Items
by BIS License Type
October 15, 2013 to December 31, 2016
Smillion



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Top Ten 600 Series and 9x515ECCNs by Value



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600 Series and 9x515 (10/13/2013-12/31/2016)

ECCN	Description	% of Total Shipment Counts	% of Total Value
9A610	Military aircraft and related commodities	58.1%	40.6%
9A515	"Spacecraft" and related commodities	2.4%	24.0%
9A619	Military gas turbine engines and related commodities	16.2%	16.9%
3A611	Military electronics	6.9%	6.7%
0A606	Ground vehicles and related commodities	9.0%	4.3%
1A613	Armored and protective "equipment" and related commodities	1.5%	1.5%
9B610	Test, inspection, and production "equipment" and related commodities "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A610 or USML Category VIII	0.8%	1.1%
0A614	Military training "equipment"	1.3%	1.0%
9A604	Commodities related to launch vehicles, missiles, and	1.1%	1.0%
8A609	Surface vessels of war and related commodities	0.4%	0.7%

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