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License Exception Strategic Trade Authorization: Understanding How It May Work for You

Venable's **International Trade and Customs Practice Group** is publishing a four-part series of Client Alerts to highlight the changes surrounding the ECR (Export Control Reform). Below is Part III of the series.

Part I: **State Department Publishes Long-Awaited Interim Final Rule Amending ITAR Brokering Provisions**

Part II: **October 15th Export Control Reform Changes Are Around the Corner: Take Time Now to Understand the Impact on Your Existing Licenses & Authorizations**

As part of the ongoing Export Control Reform (ECR), certain "600 Series" items will now be eligible for export, reexport, and in-country transfer without a license under the revised License Exception **Strategic Trade Authorization** (STA) of the Export Administration Regulations (EAR) as discussed in **Part II of Venable's ECR series**. These changes go into effect on October 15, 2013. Designed to facilitate trade between the United States and its allies, the revised License Exception STA may greatly benefit companies that regularly supply 600 Series items for end use by close U.S. allies. Notably, because the 600 Series consists exclusively of military items or items designed for military applications, License Exception STA will only be available for 600 Series items under proscribed circumstances. Companies using this License Exception should understand the associated compliance obligations. Learn more to see if it can positively streamline your business operations.

How to Use License Exception STA: General Requirements

At the outset, it is important to understand that License Exception STA is applicable to both "dual-use" and 600 Series items, *but* it is only relevant to exports, reexports, and transfers that require a license under the EAR. Thus, if the EAR does not impose an obligation to obtain a license before exporting, reexporting, or transferring your EAR-controlled item, STA is *not* relevant to your transaction. Further, License Exception STA is only available for specifically authorized export control classification numbers (ECCNs) on the U.S. Commerce Control List (CCL) when noted as a viable license exception. Finally, use of exception STA is voluntary. So, the question remains: Does it work for you?

For *all* items eligible for the License Exception STA (both 600 and non-600 Series items), exporters must undertake the following actions:

- Provide the consignee with the ECCN of each item shipped pursuant to the license exception;
- Notify the consignee that the shipment (or specific items within a shipment) are being exported pursuant to exception STA;
- Obtain a "Consignee Statement" *in writing*, prior to shipping the item, which must include specific language stating: (a) That the consignee is aware that the items are to be shipped under STA, (b) That the consignee has been informed of the ECCN by the exporter, (c) That he understands the item may not be subsequently reexported pursuant to License Exception Additional Permissive Reexports (APR), (d) The consignee agrees not to ship in or transfer in violation of EAR, and (e) He agrees to provide documents to the U.S. Government upon request regarding the subject transactions; and
- Maintain records demonstrating which shipments belong to each Consignee Statement.

How to Use License Exception STA: Additional Requirements for 600 Series Items

Revised License Exception STA imposes additional requirements for 600 Series items. To qualify for the exception, the export, reexport, or transfer of a 600 Series item must meet one of three purposes. Specifically, the export:

- . Must be for an ultimate end-use by the U.S. government or one of 36 U.S. government allies (*i.e.*, listed in new Country Group A:5);
- . Must be for development, production, installation, maintenance, repair, overhaul, or refurbishing of an item in A:5 *and* ultimately be returned to the U.S.; or
- . Must be for shipping under an existing license issued by the U.S. Government that authorizes the use of License Exception STA.

In addition to the above pre-requisites, the non-U.S. parties to the transaction (*i.e.*, purchaser, intermediate consignee, ultimate consignee, and end-user) must all have been *previously approved* on a license issued by BIS or the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). This requirement is designed to ensure that the foreign parties to the transaction have been vetted and approved as reliable by the U.S. Government. However, there is no requirement that the previous approval be for the same type of export.

Practice Tip: As BIS and DDTC licenses are not publicly available, companies wishing to take advantage of License Exception STA for 600 Series items should obtain written certifications from their foreign counterparts confirming that they have received a license in the past.

The Rule also requires that Consignee Statements for 600 Series items address ultimate end-user restrictions for those items. The foreign consignee must also agree to U.S. Government end-use checks regarding the exported items. Finally, the revised Rule may contain additional restrictions based on the specific ECCN as well as for "600 Series Major Defense Equipment" with a value exceeding U.S. \$25,000.

Can Your Business Take Advantage of Revised License Exception STA?

The following questions will help determine whether your business can utilize License Exception STA for 600 Series items:

- Is the item subject to the EAR?
- What is the ECCN for your item?
- Is your transaction subject to any end-use or end-user license requirements, or embargoes and other special controls of the EAR?
- What is the reason (*e.g.*, Anti-terrorism) for control of your item?
- What is the destination of your item?
- Will the item be reexported or transferred?
- Will the item be returned to the U.S.?
- Have the non-U.S. entities been parties to prior BIS or DDTC licenses?

Remember, the use of License Exception STA is *optional*. Companies already familiar with the License Exception STA, or those that regularly engage in transactions with U.S. allies involving 600 Series items, are best positioned to benefit from the revised License Exception STA. Companies that do not frequently engage in export activity covered by License Exception STA may prefer to seek a license when needed, rather than invest resources to meet the procedural requirements to use the exception.

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The ECR changes taking effect October 15, 2013, including the revised License Exception STA, present far-reaching changes to facilitate trade in controlled articles and items. As such, it is critical to fully understand these changes and assess how they might be used to benefit your global operations.

Venable is well positioned to guide your company through the pending rule changes as well as any other aspects of the Export Control Reform. Please contact any attorneys in our **International Trade and Customs Group** for assistance.