COMMENTARY

#. Ari Novis: "The J&C Booth"
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What's the Use?

Sorry that this column has been on hiatus so long – I was stuck on hold from my cable provider[1]. But this column is back, at least on an occasional basis.

One problem Trade Compliance Professionals ™ have with engineers[2] is the latter can't figure out why everything isn't EAR99. OK, maybe that death ray or nuclear submarine might require a license, but "we just build widgets, so what's the big deal?" The big deal is that in addition to the fact that Specially Designed Isn't Fair ©, the ITAR Isn't Fair© either. At the intersection Catch-alls.

We start our hypothetical with a supplier which is a fine purveyor of electrical transformers, a technology dating back to the late 1800's. While these are relatively simple, they are often very specific for an application. Say a French customer asks the supplier for a transformer built to their specs, just like every other customer. While transformers are found in electronics literally everywhere, this one is Specially Designed for this application (i.e., no paragraph (b) release.)

An "ordinary" transformer is EAR99. The supplier asks the customer for an End Use Statement (EUS) and it comes back that the transformer will be used in equipment for the Indian navy. Military is no big deal as "electrical transformers" are listed right there in ECCN 3A611.y.13,

[1] One sure way of knowing if you're calling a scam Customer Service number is that you get a human right away.
[2] I'm both, and the therapy bills are outrageous.

which is controlled only for AT and RS. As I like to say – Hold it right there, Bucko!

The ITAR is packed with dozens of Catch-alls, and "For the Indian navy" won't cut it. For example, the transformer ends up in a XII(c)(6)(vii) infrared imaging system – XII(e)(8) is the Parts and Components Catch-all for that entry, and poof! - transformer is ITAR-controlled. 3A611.y13 does you no good because the Order of Review won't let you get there. But XII(c)(6)(vii) has very specific performance requirements; if the Indian system's Ground Sampling Distance is greater than 0.5 meters, it isn't controlled by XII(c)(6)(vii) and XII(e)(8) doesn't apply, and the transformer likely falls off the ITAR and safely into 3A611.

Then again, the French customer may be using your transformer in a public address system for the Indian navy's new commissary. Back to EAR99. Same. Damn. Transformer[3].

Take another example – Mating electrical connectors between a VI(a)(5) missile and the launcher. The connector on the missile side – which is used "in or with" the missile, isn't listed in any ITAR catch-all, so it falls to the EAR. Since the connector isn't enumerated in 9A604, and 3A611.y,1 (electrical connectors) is enumerated and comes before the 9A604.x catch-all in the Order of Review, the connector on the missile side is controlled only for AT/RS.

The mating connector on the launcher side is a different story. An aircraft mounted launcher (VIII(h)(6) has a catch-all, so the mating connector is ITAR. If it's a ground or vehicle (Cat VII) based launcher, the connector falls to 3A611.y.1. If it's a surface vessel, we get to argue if the mating connector is for the "integration" of the Cat IV missile (either VI(f)(6) or 3A611.y.1.) If it's for a military submarine, see XX(c).

[3] This is why engineers HATE trade compliance people.

We have a mating connector pair, and the one on the pointy thing that goes Boom! is controlled for AT/RS and the one that Stays Behind either joins its mate in a relatively low control, or is ITAR – all depending on the Use. And there likely isn't a whit of technical difference between the two.

It started with a customer asking for a ordinary widget at the very beginning of a supply chain that ends up - somewhere. Was the End Use statement granular enough to get the information necessary? When the sales engineer first engaged with the customer to exchange design requirements, did they know enough to ask the detailed end use to determine if those specs were ITAR and if they were performing a defense service?

If you need a license, DDTC and BIS are not amused when the license application lists only a vague end-use, so once again, we're back to getting a detailed end-use, not a hand-wavy "military something."

As a further complication[4], I've found that military end-users are surprisingly reluctant to discuss the performance details of their weapon systems with people from other countries. And therein lies the rub – the information critical to the proper J&C and possible authorizations can be very hard to get. I've got no solution for that, other than telling the customer the detailed end-use is necessary to meet your legal obligations. If that means they go to a different supplier, that's a risk-based decision on your part. My advice when the VP of sales is pounding on your door about upsetting the customer is to point to the numerous penalties and Consent Agreements found in this very newsletter.

Got J&C questions? - please reach out to me at ArtOfJC@arinovis.com

[4] Because there is ALWAYS a further complication ©.