

International Traffic in Arms Regulation (ITAR) and Export Administration Regulations (EAR) and Standards Development

**Dan Bart, CTO and Advisor
to the President, TIA
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EAR and ITAR

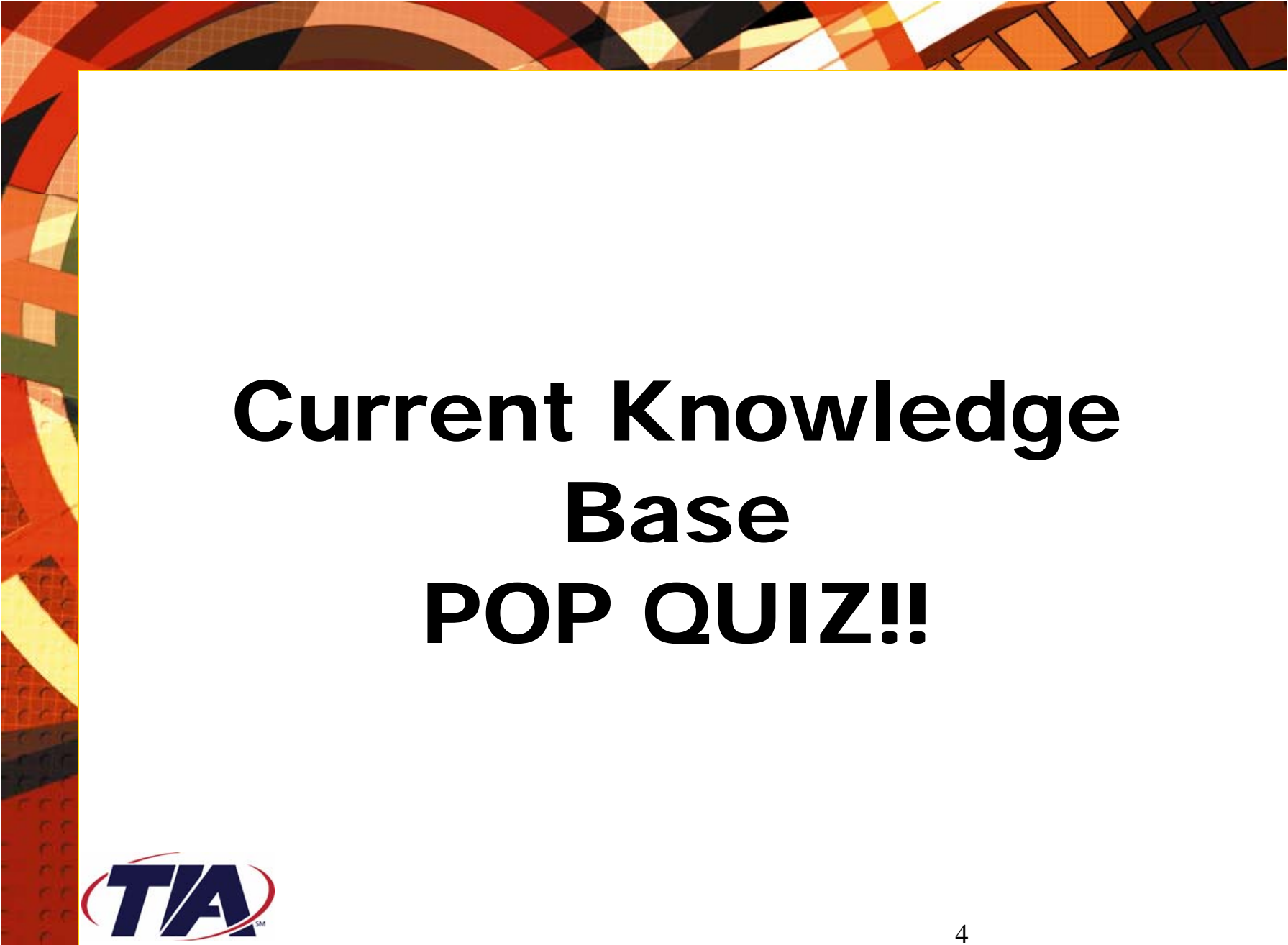
- **What are they?**
- **Why Do I Care?**



DISCLAIMER

- The export laws and regulations of the USA and other countries are very complex and difficult to understand and comply with.
- Violations are also severely punished.
- This presentation is NOT legal advice, nor am I or TIA providing such legal services, individuals with an export control issue should seek competent legal assistance.
- This is a simplified overview of many export control concepts and TIA's experiences as an SDO.





Current Knowledge Base POP QUIZ!!



Pop Quiz

- 1. What do we call it when you take something across the border without the government's permission?
- 2. True or False, in order to have an 'Export' the article or thing must leave the geographic area of the USA?
- 3. True or False, Export Controls have been around since Biblical time?



Pop Quiz

- **4. 'EAR' is a term used with or for:**
 - A. A part of your body
 - B. A way to count corn
 - C. Regulations dealing with Exports
 - D. All of the above

- **5. True or False, Regulating the Export of Technology to make a bullet is more important to your defense than regulating the shipment of the bullet itself?**



Answers

- Q1. What do we call it when you take something across the border without the government's permission?
- A1. **SMUGGLING!** And smugglers can go to jail.
- Q2. True or False, in order to have an Export the article or thing must leave the geographic area of the USA?
- A2. False, it can occur in the USA when control or possession is given to an alien



Answers

- **Q3. True or False, Export Controls have been around since Biblical time?**
- **A3. True, Biblical references to not having an enemy get technology for a weapon**
- **Q4. EAR is a term used with or for:**
 - A. A part of your body
 - B. A way to count corn
 - C. Regulations dealing with Exports
 - D. All of the above
- **A4. D, All of the answers are correct**



Answers

- **Q5. True or False, Regulating the Export of Technology to make a bullet is more important to your defense than regulating the shipment of the bullet itself?**
- **A5. True, and that is why we care and why this segment is on the agenda today!**





Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR)



CAVEAT

- **CAVEAT**: This is just an overview, in simplified terms. I strongly advise reading the applicable regulations for any specific issues that arise.
 - You do not want to be the reason your boss went to jail
- **Exporting is not a right, it is a privilege that can be restricted or revoked for reasons of:**
 - Foreign policy, National security, Short supply



Why and What?

■ **WHY DO WE HAVE EXPORT CONTROLS?**

- **National Security**: Broad Considerations: Terrorism; Weapons Control, Foreign Policy, DoS, DHS, and DoD concerns.
- **Trade Protection**: Specific Concerns: Supply Shortages, Crime Control, WMD Proliferation, Missile Technology, National Security, Regional Stability, Anti-terrorism, Instruments of Torture, High Performance Computers, Communications Intercepting Devices, “Significant Items, ” DOC and FBI concerns



Why and What?

- **WHAT'S THE EFFECT ON AN SDO?**
 - May involve controlled items or information (technology/technical data); or involve foreign nationals.



QUICK OVERVIEW - EAR

Export Administration Regulations (EAR) (15 C.F.R. § 730-774).

- Home Agency: Department of Commerce, Bureau of Industry and Security (BIS).
- What it regulates: Exports of commercial and dual-use (commercial and military) items and information (technology).
- User-Friendly Guide: 17 CFR § 732.1



EAR: Commerce Control List (CCL)

- **CCL** (15 C.F.R. § 774, Supp. 1):
 - Dual use items and technology subject to EAR.
 - Before exporting them – must have a license,
 - Unless an EAR exception applies.
- **EAR 99**: Other items/technology subject to EAR restrictions, *e.g.*, exports to embargoed countries; restricted end uses.



PROHIBITED COUNTRIES/USES

- **Terrorism/Weapons Mass Destruction**
 - **EAR**: Embargoed countries; Restricted Persons and Uses (17 CFR 744, 746; 764): Cuba, Iran, Iraq, Libya, N. Korea, Sudan, Syria.
 - **ITAR**: Prohibited Exports and Countries (22 CFR § 126.1). Belarus, Cuba, Iran, Iraq, Libya, N. Korea, Syria, Vietnam. Others: Arms embargoes; U.N. Sanctions...Check regulations for complete list.
 - **US Policy**: Generally, export licenses will be denied in these areas; exceptions inapplicable.



International Traffic In Arms Regulations (ITAR) (22 CFR § 120)

- **Home agency: State Department, Bureau of Defense Trade Controls.**
 - **What it regulates:** Export of **military** articles and information and defense services.
 - **Before export** – get a license, unless an ITAR exception applies.



ITAR – U.S. Munitions List (USML)

- **U.S. MUNITIONS LIST**: Defense Articles and Technical Data (22 CFR § 121.1).
- **DEFENSE SERVICES**: Furnish assistance or training re: USML articles/data (22 CFR § 120.17).
- **1999**: *Commercial* satellites from EAR to ITAR.
 - Major shift affecting university and the industry research.
 - ITAR complex and inconsistent definitions; more ambiguous than EAR
 - Higher risk – harsher penalties.



Definitions: WHAT'S AN "EXPORT" ?

- **UNDER BOTH EAR AND ITAR -- an export can occur in two ways:**
 - **ACTUAL** shipment or transmission of items outside of the U.S.; or
 - **DEEMED exports:** Release or disclosure to a foreign national within or outside U.S.
 - **Examples:** Disclosure at lectures, SDO or other meetings, conferences; Lab access; Release of source code; International collaborations.



Definitions: RE-EXPORTS

- **EAR**: Transfer of U.S. technology by an intermediary person or institution, to a national of a third country. Can be “actual” or “deemed.”
 - **Example**: SDO transfers controlled technology to Country A, which employs an individual who is a national of Country B.
- **BE AWARE**: Include applicable restrictions in sub-licensing agreements involving articles / information subject to export controls.



Definitions EAR: Technical Data

- **“May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering, designs and specifications, manuals and instructions written or recorded on other media such as disk, tape, read-only memories”**



JUST ONE MORE DEFINITION ...

- **Foreign National or Foreign Person:**
 - **A Company** or other entity **not** organized to do business in the U.S.
 - **An Individual** who is **not**:
 - A U.S. citizen; or lawful permanent resident (“Green Card”) - 8 USC 1101(a)(20); or
 - A “protected individual” (political asylum) - 8 USC 1324b(a)(3).



PUTTING IT TOGETHER: What does it all mean?

IF:

- The article or information is of a type listed on CCL or USML; or
- The SDO will train a foreign person in connection with military articles/data or defense services; or
- Actual or deemed export of EAR99 items to embargoed country, or for restricted use;



PUTTING IT TOGETHER: What does it all mean?

AND if **NO** exception is available under the applicable regulations,

THEN:

- **A LICENSE** must be obtained before any actual or deemed “export” occurs, **or**
- **NO EXPORT** allowed and foreign nationals must be excluded.



PUTTING IT TOGETHER: What does it all mean?

- **What if you mess up?**

- Loss of federal funding;
- Fines (\$1M personal liability under ITAR);
- Potential civil and criminal liability.



There are some Exceptions, e.g., Encryption Technology (EAR)

- **Applies to encryption technology and software source code.**
- **Changes “deemed export” rule to permit foreign employees of U.S. entities to work in the U.S. without a license.**

(See EAR License exception ENC, updated 1/14/2000)



Another Exception – Publicly Available Information

EAR

- Published information (print, film, recordings, etc.).
- Certain publicly available technology and software (subject to limitations).
- Under exclusive jurisdiction of another agency (e.g. patents / PTO).
- **Fundamental Research.**

ITAR

- Information in “public domain” (*i.e.*, “published and generally accessible”) through:
 - Sale, subscription, library
 - Unlimited distribution at public meeting, conference
 - Public release after government approval; or
 - **Fundamental Research.**



TIA's Experiences

- **Encryption Algorithms are used in mobile phones**
 - Protect signaling channel, minimize toll fraud
 - Voice channel for privacy of communications
 - Key Pad signaling for sending digits to computers
- **TIA Algorithms were originally controlled under ITAR as a munitions item**
 - Special handling at TIA
- **With liberalization of controls, became an EAR-controlled item, now can be posted on web site after notice to DoC.**
 - Close contacts with NSA and DoC



Bottom Line

- **In general, standards development activity (whether involving technical discussions or visual presentations) does not constitute an export because the information exchanged does not meet the definition of "technical data" as defined in ITAR 120.10:**
 - (1) Because the information involved is generally accessible or available to the public as defined in 120.11., or
 - (2) It often involves general scientific, mathematical or engineering principles commonly taught in schools, colleges, or universities.
- **For most SDOs, Export controls should not be viewed as impediments to standards development activities.**
- **BUT, if not sure, talk to knowledgeable attorney**



ITAR / EAR: ONLINE RESOURCES

- **EAR Compliance Information (Department of Commerce) - :**
 - <http://www.bxa.doc.gov/>
- **ITAR Compliance Guidelines (Department of State):**
 - http://pmdtc.org/docs/Compliance_Programs.pdf
- **U.S. State Department (ITAR):**
 - <http://pmdtc.org/reference.htm>
- **“Balancing Scientific Publication & National Security Concerns: Issues for Congress (1/10/03):**
 - <http://www.fas.org/irp/crs/RL31695.pdf>



OTHER ONLINE RESOURCES

- **DOT/OFAC: www.treas.gov/ofac**
- **DOD/DTRA: www.dtra.mil**
- **DHS/CBP: www.cbp.gov**



Dan Bart

CTO and Advisor to the President, TIA

Tel: +1-703-907-7703

Fax: +1-703-907-7727

DBart@tiaonline.org

**and those folks who held up their hands or
scored a 5 on quiz!**

