

What Every LTI Dealer and Sales Agent Should Know about the U.S. Export Controls

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Why do we have export controls?

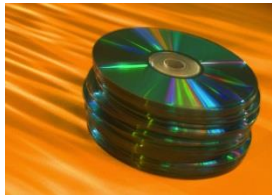
- Export control laws' principal objective:
 - To promote national security interests and foreign policy objectives
 - To prevent that products get into the “wrong hands”
- Why do U.S. export/re-export controls apply to LTI and its dealers and sales agents?
 - LTI's products are developed and manufactured in the U.S.
 - Most LTI products are U.S.-origin dual-use items
 - Some LTI items are U.S.-origin defense articles, but these are not yet sold internationally

What is an export?

What



- Product



- Software



- Technology

Where



- Person



- Territory

How



- Verbal



- Physical



- Electronic

Export

U.S. Export Control Laws apply to:

- **Exports** of goods and technology (by phone, fax, download, technical assistance, etc.) from the U.S. and
- **Re-exports**, which includes:
 - a) U.S.-origin goods and technology that are shipped from one foreign country to another
 - for example, from the UAE to Saudi Arabia
 - b) Foreign made items containing U.S. components

- Exports from other countries must comply with the export control laws of that country and U.S. export control laws

Jurisdiction applicable to LTI Products

- U.S. Department of Commerce
Products developed for commercial use only (EAR)
- U.S. Department of State
Products designed, developed or modified for military end use (ITAR)
- U.S. Treasury Department (OFAC)
All products are subject to U.S. embargoes
- Foreign Export Regulations
For the country from which the goods are shipped

Key Prohibitions

No sales or transfers of Commercial Products to or for:

1. Prohibited Destinations
2. Prohibited Persons
3. Prohibited End-Uses

No Sales to Prohibited Countries

- Exporting to embargoed countries is prohibited (Cuba, Iran, North Korea, Sudan and Syria - subject to change)
- Strong enforcement focus on Iran
 - In 2012, the U.S. imposed a \$450,000 fine for exporting nail polish to Iran
 - Aggravating factor: the fined company's website had Iran in the drop-down list of countries in forms on its website
- No exports to other sensitive countries without written LTI approval (e.g., Burma, Zimbabwe, Venezuela, Libya, Afghanistan, Iraq and Belarus)

No Sales to Prohibited Persons

- Exporting to certain listed persons or entities is prohibited even in non-embargoed countries
<http://www.bis.doc.gov/ComplianceAndEnforcement/ListsToCheck.htm>
- Rule: LTI Dealers and Sales Agents must screen *all* customers, freight forwarders , warehouse owners, and resellers of LTI products prior to each transaction
- Exception: Mass-market settings where EAR99 products are being sold at retail locations
- Use commercial screening software, e.g., Visual Compliance; keep screening records for 5 years

No Sales for Prohibited End-Uses

- No products, including commercial products, may be sold for a prohibited end-use
- Prohibited end-uses include using a commercial product on a UAV or missile or for nuclear, biological or chemical proliferation
 - Selling an LTI product, for example the S200 to a foreign party who has indicated that it wants to use it on a UAV
 - Under limited circumstances, LTI may be able to obtain an export license for this use depending on the destination and end-user, but the license needs to be obtained well ahead of time

When Exporting or Re-exporting LTI products you must...

- Know Your Customer!

<http://www.bis.doc.gov/Enforcement/knowcust.htm>

- Watch for Red Flags

<http://www.bis.doc.gov/Enforcement/redflags.htm>

- Note: The regulations change frequently. Each transaction may have different circumstances that need to be addressed.

Always consider the following...

- Do you really know your customer?
- Does your international customer know “its” customer?
- Will your customer “use” or resell your product?
- What is the end-use of your product?
- Are you sure your customer/end-user is not on one of the restricted end-users / end-uses lists?
- Who is the exporter/re-exporter of record?
- Have you obtained the required licenses?
- You have to keep all export-related records for 5 years and be ready to cooperate in case of an audit

End-User Certificates (EUC)

- No Laser Sensor Products may be shipped to anyone (including from a warehouse) until:
 - LTI receives an **EUC** that has been completed and executed by the prospective end-user; and
 - LTI **authorizes** the sale by fax, email or other written format.

Export Control Clause for LTI products

- **Always** include the following export control clause in (1) your T&C, order confirmation or invoice and (2) in the shipping documentation:
- “These commodities, technology and/or software are subject to export control laws, including the U.S. Export Administration Regulations. Exports and re-exports may require an export license from the U.S. and/or other governments. Diversion contrary to U.S. or other export control laws is prohibited. Buyer shall not use, export, re-export, or provide any item, or any product incorporating the item(s), in contravention of any U.S. or other export control laws or any end-user certificate provided by Buyer, including to an embargoed country (such as Iran, Syria, Sudan, North Korea and Cuba), to anyone listed on any prohibited persons list published by the U.S., or for a prohibited end-use (such as use or research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles; or nuclear explosive or fuel cycle activities or unsafeguarded nuclear activity). Buyer shall only use the item(s) for non-military, peaceful purposes, unless otherwise specifically agreed to in writing by Laser Technology. “

Facts In Hand Before Any LTI Product May Be Exported or Re-exported

- What is the LTI product – how is it classified?
- Where is it going?
- Who will receive it?
- Have I screened the end-user and anyone else involved in the sale/shipment?
- What will be the end-use?
- Have I received an EUC (for laser sensor products)?
- Has LTI authorized the sale (for laser sensor products)?
- Have I included the export control clause?

Fines and Penalties

- The U.S. government takes compliance with its export laws and regulations very seriously. The U.S. government rightfully expects the exporting community to partner with it to help protect national security. Companies both large and small face potentially large fines, civil penalties, and possible criminal prosecution if a violation of export laws occurs
- Violations are outlined in Sec. 764 of the Export Administration Regulations (EAR)

Penalties can include:

- Up to 20 years imprisonment
- Fines of up to \$1,000,000 upon criminal conviction
- Penalties of up to \$250,000 per violation for administrative offenses.
- These fines/penalties will come in addition to those of your country

Sanctions – Denial Order (DPL)

- The United States commonly imposes sanctions on foreign entities for violating U.S. export and re-export regulations.
- The extraterritorial reach of “denial orders” under the EAR is so extensive that it can affect the activity abroad of persons and companies who do not think of themselves as being involved with U.S.-origin products.
- A Denial Order can be imposed on persons or companies wherever located whether as a sanction for violation of the EAR or as a protective administrative measure when it is determined to be necessary to prevent an imminent violation.

Sanctions – Denial Order (DPL)

- The purpose of the Denial Order is not only to stop the denied person from exporting or re-exporting, but also to keep that person from acquiring goods, technology, or software that are subject to the EAR
- This is a very powerful and effective sanction
- If the U.S. issues a Federal Register Denial Order for a company that violated U.S. export or re-export control laws, all U.S. exporters and re-exporters of U.S. products are placed on notice not to do business with this company

Questions?

Please contact:

Chris Budden, Vice President Operations

Ph: +1 303.649.1000, Ext. 167

cbudden@lasertech.com

Roosevelt Rogers, Executive Vice President

Ph: +1 303.649.1000, ext. 134

rrogers@lasertech.com