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USML Working Group – “White Paper”

General Outline of the White Paper

- ❖ Part I “Objective” – states the overall goal of the “White Paper”
- ❖ Part II “Basic Rules” – provides the overall assumption that items controlled on the USML are governed by ITAR 120.3 and that the USML provides additional clarification
- ❖ Part III “Basic Problems” – provides examples to illustrate the need for a comprehensive update of the USML
- ❖ Part IV “Generic Considerations” – general top level guidelines for formatting USML Categories and designating items as SME or non-SME
- ❖ Part V “Criteria for USML Category Development” – provides criteria and guidelines that should be followed to support a comprehensive USML review.

Part I – Objective

Define the basic “rules” and general “principles” that can be used with minimal exceptions as a guide for a technical review of all ITAR Categories. The task is not to undertake a review of any one USML Category but rather to develop a simple roadmap that can be utilized to facilitate a comprehensive review of the overall USML, retaining items designed for or possessing a military utility and removing those with a commercial or inherently dual use capability, or those items supporting military equipment that possess no inherent military technology nor will yield insight into that military technology. In summary the USML should not control items based solely on the fact that they are used by the military but rather they are controlled because of their indigenous military applicability and tactical application.

An additional objective would be developing a consistent methodology for designating sub-item Categories as either Significant Military Equipment (SME) or non-SME. This should be based on a strict interpretation of the definition (ITAR 120.7) and sub-items identified as SME should not contain systems,

subsystems within the same sub-item that do not warrant the SME special status designation.

Part II –Basic Rules Governing Items To Be Controlled On The USML

- An article to be controlled on the USML is defined in accordance with ITAR 120.3 and its related technical data in accordance with ITAR 120.10.
- ITAR Part 121 (i.e. USML) provides additional clarification and categorization with respect to the control of articles that satisfy the ITAR 120.3 definition. The USML Part 121 is to assist exporters in providing additional clarification with respect to items that are subject to ITAR jurisdiction as well as assisting in determining the proper licensing category and identifying between SME and non-SME.

Part III - Basic Problems With The Current USML

- Use of generic descriptors or poorly defined terms such as:
 - Category VII: “*military recovery vehicles*” – Limited to just tanks or all military vehicles including trucks?
 - Category VIII: “*drones*” – limited to just drones or does this include UAVs?
 - Category XII: “*military television sighting and viewing units*” – lacks definition, it is assumed this relates to Category IV items?
 - Category XIII: “*structural materials*” – lacks definition, as written it could include nearly all raw materials used in the manufacture of Defense Articles
 - Categories I thru XX: “*components, parts, accessories, attachments and associated equipment ...*” – lacks definition, results in misclassification of numerous items
- Multiple definitions for the term “Defense Articles” – in some instances it means both hardware and technical data and in other circumstances it is limited to just hardware.
- Inconsistencies in the methodology used to designate items as SME such as:
 - Category IV – “grenades” and “blasting caps” are designated as SME but apparatus to support the control and handling of launch vehicles are not.
 - Category VIII – “cartridge activated devices” are designated as SME but next generation developmental aircraft and engines are not.

- The emphasis within each Category is to control hardware based on “design intent” rather than the inherent ability of the system, sub-system to satisfy a military requirement.
- General lack of discriminators to help exporters to distinguish between apparent overlaps in coverage between the USML and the Commerce EAR/CCL.
 - Unmanned air vehicles – Category VIII USML / Category 9 CCL
 - Coast Guard vessels such as ice-breakers – Category VI USML / Category 8 CCL
 - Body armor - Category X USML / Category 1 CCL
 - Closed and semi-closed (re-breathing) devices – Category XIII USML / Category 8 CCL

Part IV – Generic Considerations For Updating the USML

- Maintain as much as possible a consistent format across USML Categories such as:
 - Separate sub-items for the control of full up systems (end items) that are specifically designed developed, configured, adapted for the military for lethal purposes (e.g., missiles, F-16, F/A-18, C-130 configured as a gunship) from those that provide a non-lethal military capability (e.g., sounding rockets, military vehicles, C-130 cargo aircraft).
 - Separate sub-items for all major sub-systems that are specifically designed, developed, configured, adapted in such a fashion that they provide the capability that is required to achieve a specific military requirement (e.g., AESA radars, fighter engines, electronic warfare equipment).
 - Separate sub-items for systems and sub-systems that are subject to multi-lateral controls as to warrant additional review by the US Government (e.g., Missile Technology Control Regime, Chemical Weapons Convention).
 - A separate sub-item for the control of critical production equipment and tooling that is “required” in order to satisfy a military capability (e.g., mandrels/molds for the production of composite aircraft parts) where as such items that that are in normal commercial use (e.g., basic machine tools, alignment fixtures and handling devices) would not be controlled. An approach similar to that currently being utilized in Category XI(c).
 - A separate sub-item for the control of components, parts, accessories, attachments, and associated equipment specifically designed, or modified for controlled articles exclusive of those items which are based on widely available technology and which are not inherently military in nature and do not provide any unique military

capability (e.g., aircraft primary structure would be controlled but fasteners, brackets, lights, standard seats would not). A definitive determination of what constitutes “adapted” and/or “configured” for military use is needed. For example, if a part or component is only altered physically (as opposed to functionally) for purposes of integration into a defense article and provides no enhancement to the military end use, per se, it should not be considered to be military in nature.

- The inclusion of a “Note” at the end of each Category that highlights those items which have been previously determined not to be subject to the USML via the Commodity Jurisdiction process or by some other means.

Part V – Criteria/General Principles To Follow When Conducting a Comprehensive Review

- Criteria/General Principles for conducting a comprehensive review of the individual USML Categories.
 - Control of all systems, sub-systems that provide a uniquely military capability.
 - Control of all systems, sub-subsystems that are controlled on a multi-lateral basis as munitions items (e.g., Wassenaar Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group, CWC/BWC etc). Any exceptions should be based on a case-by-case review for unilateral control.
 - Systems, sub-systems including associated components, parts, accessories, attachments and associated equipment should not be controlled if they are based on acceptable standard industry practices with wide foreign availability such as electrical wiring harnesses, gaskets, electrical motors/generators, hydraulics, basic electronic cabinets, air conditioning units, heat exchangers etc. Use of technology parameters should be considered as applicable to distinguish between military and dual-use items (e.g., USML control of hydraulic equipment would be limited to only those systems designed for operation at 3500 psi and above).
 - USML controlled hardware which is embedded in end items subject to the control of the EAR/CCL would no longer be subject to the USML if removal from the EAR/CCL controlled item results in the destruction of the USML item (e.g., QRS-11).
 - Control of “raw materials” which are consumed in the production and manufacture of a defense articles should not be controlled as defense articles unless they are “required” to achieve a specific military requirement such as low observable / counter low observable techniques, design and/or materials (e.g., stealth). For

example the following would not fall under the jurisdiction of the ITAR/USML:

- Metals in the form of plates, extrusions, billets etc
 - Non-metallic's in the form of sheets, rough castings, composite pre-pregs, uncured products etc.
 - Chemicals such as adhesives, lubricants, sealants, fillers, paints, cleaning agents etc.
 - A side-by-side review of the USML and EAR/CCL needs to be conducted in order to identify any potential overlaps in coverage.
 - A comprehensive review of past Commodity Jurisdiction determinations needs to be conducted as a basis for developing explanatory notes at the end of each Category.
- Criteria to be considered when designating sub-items as SME on non-SME:
 - All sub-items that control lethal systems should be SME.
 - All sub-items that control major sub-systems that are “required” to achieve a specific military requirement should be SME.
 - Sub-items which are associated with multi-lateral control regimes should be a presumption of SME.
 - Sub-items which control critical production equipment and tooling should be a presumption of non-SME exclusive of any equipment and/or tooling that is classified.
 - Sub-items for the control of components, parts, accessories, attachments, and associated equipment should be a presumption of non-SME.
- Additional considerations when conducting a comprehensive review of the individual USML Categories
 - Parts and components supporting scientific and research endeavors, with no military end-use, should not be under USML control. This includes, but is not limited to, instrumentation that is part of a mission payload. This exclusion from USML control should not extend to the spacecraft or launch activities under Category XV.
 - When considering the inclusion of a “Note” at the end of each Category that highlights those items which have been previously determined not to be subject to the USML the review should also consider identifying non-lethal legacy systems that have been superseded by time and technology and no longer warrant the strict controls of the USML (e.g., radios, aircraft avionics, computers, etc designed >25 years ago).