



FedEx Regulatory Alerts & Updates

Regulatory Alert Update: U.S. Export Licensing Changes for Hong Kong

July 31, 2020

Background

On June 29, 2020, the U.S. State Department and the U.S. Commerce Department issued separate statements regarding the availability of export licenses and export license exceptions when exporting, re-exporting or transferring military or dual-use items to or within the territory of Hong Kong.

On July 31, 2020, the U.S. Commerce Department issued amendments to the U.S. Export Administration Regulations (EAR) formalizing their statement made at the end of June. The amendments suspend the availability of all license exceptions for Hong Kong that provide differential treatment as compared to the People's Republic of China (China).

What are the primary impacts of these announcements?

1. U.S. State Department Announcement

According to the State Department announcement, they will no longer grant licenses for export of U.S.-origin defense equipment to Hong Kong. Going forward the State Department will apply the same license determination for dual-use items and technologies for Hong Kong that they apply for China. The change is effective as of June 29, 2020.

2. U.S. Commerce Department Announcement

According to the Commerce Department announcement, regulations affording preferential treatment to Hong Kong over China, including the availability of export license exceptions, are suspended. Further actions to eliminate differential treatment are also being evaluated.

As a result, items subject to the EAR with an Export Control Classification Number (ECCN) for national security, chemical and biological weapons, missile technology and U.S. arms embargoes, will have more stringent licensing and fewer license exceptions when being exported, re-exported or transferred in-country to Hong Kong. The Commerce Department, Bureau of Industry and Security (BIS), posted notice of the change on its website on June 30, 2020 stating that the changes are effective, June 30, 2020. However, there is a savings clause for shipments on the dock for loading or en route aboard a carrier on June 30, 2020.

BIS issued its final rule amending the license exceptions for Hong Kong on July 31, 2020. In this final rule, BIS amends the EAR, 15 CFR Parts 730-744, to suspend the availability of the license exceptions for exports and re-exports to Hong Kong and transfers within Hong Kong of all items subject to the EAR that provide differential treatment from the license exceptions available to China. Specifically, the following license exceptions are suspended to the extent they allow

exports or re-exports to or from Hong Kong, or transfers within Hong Kong, when they may not be used for China:

- Shipments of Limited Value (LVS) (§ 740.3)
- Shipments to Group B Countries (GBS) (§ 740.4)
- Technology and Software under Restriction (TSR) (§ 740.6)
- Computers, Tier 1 only (APP) (§ 740.7(c))
- Temporary Imports, Exports, Re-exports, and Transfers (in-country) (TMP) (§ 740.9(a)(11), (b)(2)(ii)(C), and (b)(5))
- Servicing and Replacement Parts and Equipment (RPL) (§ 740.10(a)(3)(viii), (a)(4), (b)(1) except as permitted to Country Group D:5, and (b)(3)(i)(F) and (ii)(C))
- Governments (GOV) (§ 740.11(c)(1) – Cooperating Governments only))
- Gift Parcels and Humanitarian Donations (GFT) (§ 740.12)
- Technology and Software Unrestricted (TSU) (§ 740.13)
- Baggage (BAG) (§ 740.14) (except as permitted by § 740.14(d))
- Aircraft, Vessels, and Spacecraft (AVS) (§ 740.15(b)(1), (b)(2), (c))
- Additional Permissive Reexports (APR) (§ 740.16(a) and (j))
- Strategic Trade Authorization (STA) (§ 740.20(c)(2))

Re-exports of items subject to the EAR from Hong Kong under License Exception APR § 740.16(a) are also restricted. Finally, BIS amended paragraph (a) of § 740.2 – Restrictions on all License Exceptions – by adding a new paragraph (a)(23) to identify the suspension of the availability of these License Exceptions for exports to Hong Kong, re-exports to and from Hong Kong, and transfers within Hong Kong of all items subject to the EAR.

Q&A

Q1: Will exports, re-exports and transfers in-country to Hong Kong require a license?

A1: Customers exporting, re-exporting and transferring U.S.-origin items that have a Commerce ECCN classification or State U.S. Munitions List (USML) classification will have to review their analysis of the available licenses and license exceptions and apply the same regulatory requirements that are currently in place were the customer shipping those items to China. This may include applying for a license from the Commerce Department or State Department.

Q2: What is an ECCN?

A2: ECCN stands for Export Control Classification Number; it is used to classify goods, technology and software to determine whether an export license is required from the U.S. Commerce Department, BIS. If you need assistance with classifying your product or understanding these requirements, you should contact the export control officer at your company. BIS also has counselors that can assist you:

- Eastern Regional Office 202.482.4811
- Western Regional Office 949.660.0144
- Northern CA Branch 408.998.8806

Q3. What is the USML?

A3. USML stands for the U.S. Munitions List; it is a list of articles, services and technical data designated by the State Department as defense articles or services. Exporters who intend to export a defense article or service must obtain a license from the State Department or qualify for an exemption under the applicable regulations.

Q4. Who is responsible for determining whether a shipment is required to have an export license?

A4. **The exporter is responsible for ensuring that any export complies with U.S. laws and regulations.** As such, the exporter must classify the goods, technology or software being shipped to determine whether an export license is required.

References:

U.S. State Department Press Releases

<https://www.state.gov/u-s-government-ending-controlled-defense-exports-to-hong-kong/>

<https://www.state.gov/on-beijings-imposition-of-national-security-legislation-on-hong-kong/>

U.S. Commerce Department Press Release

<https://www.commerce.gov/news/press-releases/2020/06/statement-us-secretary-commerce-wilbur-ross-revocation-hong-kong>

BIS Guidance June 30, 2020

<https://www.bis.doc.gov/index.php/documents/pdfs/2568-suspension-of-license-exceptions-for-exports-and-reexports-to-hong-kong/file>

Federal Register July 31, 2020

<https://www.govinfo.gov/content/pkg/FR-2020-07-31/pdf/2020-16278.pdf>

RegAlert 21-009 US Export Licensing Changes for Hong Kong – posted on July 2, 2020

https://www.fedex.com/content/dam/fedex/us-united-states/International/images/2020/RegAlert_21-009_U.S._Export_Licensing_Changes_for_Hong_Kong.pdf