

Foreign Persons: Determining Item Classification and Jurisdiction FAQ

Published Date: 2015

Last Updated: 2015

Q.1: May a foreign person, such as an intermediate consignee or end user, “self-determine” (i.e., assess for itself) the jurisdictional and classification status of a commodity, item of software, or unit of technology under the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR), respectively, absent a U.S. government or other reliable determination pertaining to such items?

A.1: Yes. Absent such a determination, a foreign person may make a self-determination of an item’s jurisdictional and classification status. Indeed, a foreign person is obligated to know whether an item is subject to the ITAR or, if subject to the EAR, how it is classified before reexporting or transferring the item in order to ensure compliance with the ITAR’s and the EAR’s licensing and other obligations. The U.S. exporter is responsible for determining the jurisdictional and classification status of the items it is exporting. However, if reliable jurisdictional and classification information has not already been provided by another party, such as the original equipment manufacturer, then the foreign person may and, indeed, must make these determinations itself in order to avoid violating the ITAR or the EAR if it later reexports or retransfers the article or item. As a matter of due diligence, however, the foreign person should seek jurisdictional and classification information from the manufacturer of the items or the owner of the technology in question and resolve any potential differences in interpretation. If after reviewing the ITAR’s U.S. Munitions List (USML) and all relevant facts, doubt exists regarding whether the item is enumerated or otherwise described on the USML, the foreign person should request from DDTC a commodity jurisdiction determination pursuant to 22 C.F.R. § 120.4. If the item is clearly not enumerated or otherwise described on the USML and, after reviewing the EAR and all relevant facts, there is doubt regarding whether or where the item is enumerated or otherwise described on the EAR’s Commerce Control List, then the foreign person should request from the Department of Commerce’s Bureau of Industry and Security a commodity classification determination pursuant to 15 C.F.R. § 748.3.