



Export Compliance Reminder: Harmonized Destination Control Statement

By now, exporting companies already should have made revisions to their commercial invoices (sometimes referred to as a customs invoice) to include the new harmonized Destination Control Statement (DCS). The amended DCS is required as of November 15, 2016.

This will serve as a final reminder to those companies that might not have incorporated the new DCS into their commercial invoices yet or still need to ensure that carriers and outside vendors, which they might rely on to prepare commercial invoices for export shipments, have made the required changes.

The Harmonized DCS

By way of a brief background, as part of Export Control Reform (ECR), on August 17, 2016, the Department of Commerce, Bureau of Industry and Security (BIS), and the Department of State, Directorate of Defense Trade Controls (DDTC), issued final rules to harmonize the DCS.¹ The DCS is required under the Export Administration Regulations (EAR)² and the International Traffic in Arms Regulations (ITAR).³

¹ See Revisions to the Export Administration Regulations (EAR): Harmonization of the Destination Control Statements (BIS Final Rule), 81 Fed. Reg. 54721 (Aug. 17, 2016) (to be codified at C.F.R. pt. 758), and Amendment to the International Traffic in Arms Regulations: Procedures for Obtaining State Department Authorization To Export Items Subject to the Export Administration Regulations; Revision to the Destination Control Statement; and Other Changes (DDTC Final Rule), 81 Fed. Reg. 54732 (Aug. 17, 2016) (to be codified at 22 C.F.R. pt. 120, 123-126).

² 15 C.F.R. § 758.6 (2016)

³ 22 C.F.R. § 123.9 (2016)

The harmonized DCS will eliminate the need for two similar, but differently worded statements for export shipments, and require the DCS on the commercial invoice only, instead of requiring it on multiple documents. The harmonized DCS will particularly benefit exports containing both EAR- and ITAR-controlled commodities.

The DCS is designed to notify parties that the shipment contains commodities that are subject to U.S. export controls, and that any diversion of the shipment contrary to U.S. law is prohibited. The harmonized DCS language that must appear on commercial invoices for export shipments is as follows:

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.

Requirements for the DCS

As noted, the DCS will be required on the commercial invoice only and will no longer have to be included on the air waybill, bill of lading or other export control documents that accompany the shipment from the U.S.



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Under the EAR, the DCS is only required for shipments from the U.S. of tangible commodities that are subject to the EAR, including those that are exports authorized with No License Required (NLR). The DCS is not required for exports of items that are classified as EAR99 or commodities exported under License Exception BAG (Baggage) or GFT (Gift Parcels and Humanitarian Donations). Significantly, for exports of commodities classified at Export Control Classification Number (ECCN) 9x515 and “600 series” items, the ECCN of these controlled items must be specified on the commercial invoice.

In contrast, under the ITAR, exports of defense articles do not require the U.S. Munitions List (USML) category stated on the commercial invoice. However, under the ITAR, the country of ultimate destination, the end-user, and the license or other approval number or exemption citation are all required to be stated on the commercial invoice, along with the harmonized DCS.

Practical Points to Consider

Although the classification of other EAR-controlled items is not required to be included on the commercial invoice, BIS encourages exporters to do so as an export compliance best practice.⁴ Similarly, exporting

companies may want to include the DCS on commercial invoices where only EAR99 items are being exported, despite not being required under the EAR. Exporting companies should also consider including the DCS on commercial invoices to domestic (U.S.) customers also as part of its export compliance program, particularly if the U.S. customers are distributors that sell products internationally.

While BIS and DDTC final rules should benefit exporting companies, the harmonized DCS will undoubtedly lead to questions and some uncertainty. Like integration of other amendments to the EAR and the ITAR under ECR, exporters will need to exercise continued diligence to determine the appropriate jurisdiction and classification of commodities to be exported, and ensure compliance with the harmonized DCS requirement.

Additional Assistance

For questions regarding the harmonized DCS or any other export control matters, please contact Jon P. Yormick at jjormick@phillipslytle.com or (716) 847-7006. ■

⁴ See 81 Fed. Reg. 54721, 54730 (Aug. 17, 2016).



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