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# Essentials of a License Determination (LD)

By

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## Overview

- What is an LD ?
- LD and Export/Reexport
- LD Submission and Processing
- LD and EAR99 Items
- A Case Study
- Conclusion

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## What is an LD?

- An LD stands for License Determination.
- LDs are submitted
  - \* by U.S. Enforcement Agencies (ICE – Immigration and Customs Enforcement, CBP – Customs and Border Protection, FBI – Federal Bureau of Investigation, OEE – Office of Export Enforcement)
  - \* to the Bureau of Industry and Security (BIS).

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## What is an LD?

- The purpose of an LD is to have BIS determine:
  - (1) An item's classification on the Commerce Control List
  - (2) The reason(s) for control/export license requirements
  - (3) Possible applicable license exception(s)

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## LD and Export/Reexport

- An LD is submitted in the context of a violation or a suspected violation of the EAR (export/reexport or deemed export/reexport).
- The \$1M question to answer is:  
Was a license required for this export/reexport or deemed export/reexport?

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## LD Submission and Processing

An LD Electronic Request Form:

fields/rubrics should be fully completed (or as much as one can)

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## LD Submission and Processing

• From the submitted electronic application, a BIS licensing officer will try to figure out the following facts:

**(1) What is it?** What the item is, for export control purposes, depends on its *classification*, which is its place on the Commerce Control List (see part 774 of the EAR).

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## LD Submission and Processing

**(2) Where is it going?** The *country of ultimate destination* for an export or reexport also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

**(3) Who will receive it?** The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in §736.2(b)(4) and supplement No.4 to part 744 (Entity List) of the EAR for a reference to the list of persons you may not deal with.

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## LD Submission and Processing

**4) What will they do with it?** The *ultimate end-use* of your item cannot be an end-use of concern. See General Prohibition Five (End-Use End-User) in §736.2(b)(5) and part 744 of the EAR for general end-use and end-user restrictions.

**(5) What else do they do?** *Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in §744.6 of the EAR) may prevent you from dealing with someone.

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## LD Submission and Processing

Information Submitted by the Enforcement Agency:

**(1) Contact information:**

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## LD Submission and Processing

### **(2) Item information:**

- \* Manufacturer: important
- \* Product name: technical and/or commercial name (written on the product, from customer order paperwork, etc.) – no additional information necessary in this field.
- \* Model number, part number, serial number: important
- \* Commodity description: generally from customer order paperwork.
- \* Additional information/comment: here the enforcement agency can provide any other relevant information.

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## LD Submission and Processing

### **(3) Documents:**

- \* Pictures of the item, pictures that display
  - different views (side, front, rear, top, bottom, etc.)
  - writings on the item (names, numbers, etc.)
- \* Pages of user's manual or catalogue showing item's picture and/or technical specifications

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## LD Submission and Processing

**(4) Accuracy of information and document:**

→ the LD may be put on hold without action (HWA) to request clarification or additional information.

→ the LD may be returned without action (RWA) for resubmission.

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## LD Submission and Processing

End Result:

The end result of a proper LD submission is that a BIS licensing officer be able to visualize the item, identify its technical specifications, figure out the facts, and provide an accurate response to the \$1M question, which is....?

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## LD Submission and Processing

The \$1M question:

Was a license required for this export/reexport  
or deemed export/reexport?

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## A Case Study

- An exporter in the U.S. contacts a BIS Enforcement Officer in Los Angeles, CA, saying: “I need help, my cargo is stopped in Abu Dhabi, UAE, enroute to Beirut, Lebanon. I am desperate and need help.”



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## A Case Study

The BIS Enforcement Officer will start with fact finding:

**(1) What is it?**

Metal detectors, plastic gloves, water flow meters, radio holders, etc., → all of which are EAR99.

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## A Case Study

**(2) Where is it going?**

The *country of ultimate destination*, Lebanon, determines the licensing requirements (see parts 738 and 774 of the EAR)

- \* The country of origin is the United Kingdom (U.K.)
- \* Manufacturer is a U.K. company
- \* Products have no U.S. content

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## A Case Study

### (3) Who will receive it?

The *ultimate end-user* of these items is listed as the American Embassy in Beirut

### (4) What will they do with it?

The *ultimate end-use*: not identified

### (5) What else do they do?

No information provided – however one can search online what the U.S. Embassy in Beirut does.

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## A Case Study

### After fact finding:

- The BIS Enforcement Officer may elect to provide the customer with an opinion or to submit an LD to BIS
  - Opinion: the BIS Enforcement Officer should tell the customer that it is not an official BIS determination.
  - LD submission to BIS: the BIS Enforcement Officer has enough information to complete an LD form as fully as possible.

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## A Case Study

- LD submitted to BIS: Based on the information provided, BIS has determined that the items are not exported from the U.S., they are not U.S.-origin products, and they are not transiting through the U.S.

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## A Case Study

Case study result: the items are not subject to the EAR, no Commerce license is needed.

- Has the BIS determination solved the customer's problem?

-\* please discuss \*-

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## A Case Study

Has the BIS determination solved the customer's problem?

- Yes, a BIS determination will clarify or resolve the problem in most situations (especially in a case of a violation or a suspected violation of the EAR).
- But please note that in certain circumstances, country specific required documentation, which is outside of BIS jurisdiction, may need to be addressed by the exporter (which may apply to this case study).

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## Conclusion

- A License Determination (LD), used properly, is an important tool for BIS and other U.S. Enforcement Agencies to support compliance with EAR regulations.

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## Conclusion

- All exporters should be aware that export items are monitored and tracked globally, and therefore compliance with the EAR will minimize any chance of violations.

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## THANK YOU