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## **Do US Export Regulations Apply in Switzerland?**

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[Rz 1] If you have purchased hardware, licensed software or obtained services from a US company, then chances are that you have (over-) read that the US government also applies its export regulations to non-US individuals and entities located outside of the USA. This article provides an overview of selected US export regulations.

[Rz 2] As many other countries, incl. Switzerland<sup>1</sup>, the USA have regulated dual-use and commercial items. A dual-use item has both civil applications as well as terrorism and military or weapons of mass destruction related applications. The USA governs the export of dual-use and commercial items by the US Export Administration Act of 1979, as amended (EAA)<sup>2</sup> and the US Export Administration Regulations (EAR)<sup>3</sup>. The EAR are issued by the US Department of Commerce (DOC), Bureau of Industry and Security (BIS)<sup>4</sup>.

[Rz 3] The EAR regulate, among others, the export and re-export of hardware, software and technology (items). The terms export and re-export might not have intuitive meanings:

- *Export* means the actual shipment or transmission of items out of the USA. This is what one would expect from an export. However, according to the EAR, it also includes the release (i.e. visual inspection, oral exchange, or application of personal knowledge or technical experience) of technology or software *to a foreign national in the USA*. Hence, the technology does not leave US territory, but it is nonetheless *deemed an export*;<sup>5</sup>
- *Re-export* means an actual shipment or transmission of items from *one foreign country to another foreign country*. Hence, the EAR expands to items that have already been exported from the USA. In addition, any release<sup>6</sup> of technology or software subject to the EAR to a foreign national of another country is *deemed a re-export* to the home country of the foreign national.<sup>7</sup>

[Rz 4] The practical relevance of this is two-fold:

[Rz 5] First, if you are Swiss citizen or entity dealing with a US citizen or entity, your US contracting party will contractually impose the EAA and EAR on you because of the risk of penalties by the US government (e.g. fines<sup>8</sup>, imprisonment<sup>9</sup>) or denial of export privileges.

[Rz 6] Second, if you are dealing with citizens or entities of US controlled countries (so called Group D1 countries<sup>10</sup>), such as Russia or China (excl. Hong Kong), then you might — in the view of the US government — require an export license for transfers of US origin items even if you are, or your entity is, located in Switzerland.

[Rz 7] Whereas the USA do not have jurisdiction in Switzerland, not complying with the EAR could still have indirect consequences, such as, for instance, being flagged as denied party<sup>11</sup> of the US government. This means that you will not be granted US export licenses and that other

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<sup>1</sup> Federal Act on the Control of Dual-Use Goods and of Specific Military Goods (SR 946.202).

<sup>2</sup> Pub. L. 96-72, 93 Stat. 503, 50 USC app. 2401—2420; [tinyurl.com/pdxeguk](http://tinyurl.com/pdxeguk).

<sup>3</sup> 15 CFR Chapter VII, Subchapter C; [tinyurl.com/pcap8mm](http://tinyurl.com/pcap8mm).

<sup>4</sup> US DOC BIS, <http://www.bis.doc.gov>.

<sup>5</sup> 15 CFR §734.2(b)(1) and (2).

<sup>6</sup> See bullet above.

<sup>7</sup> 15 CFR §734.2(b)(4) and (5).

<sup>8</sup> E.g. up to USD 1 million; 50a USC §11(b)(1)(A) and (b)(2)(A) or §204(c).

<sup>9</sup> E.g. up to max. 20 years imprisonment (50a USC §204(c)).

<sup>10</sup> Different from US embargo countries (Group E): Cuba, Iran, North Korea Sudan, Syria. Note that Cuba remains an embargo country despite US president Obama's executive order of 16 January, 2015, [tinyurl.com/nxgnsxs](http://tinyurl.com/nxgnsxs).

<sup>11</sup> US DOC, BIS, Denied Party List, [tinyurl.com/kackjpw](http://tinyurl.com/kackjpw).

individuals or entities may not deal with (i.e. export to) you. As per 13 January 2015 eleven individuals or entities with residence or registered seat in Switzerland are listed as denied parties.

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