

The logo for Thompson Hine, featuring the company name in a white serif font on a red background. The letters 'T', 'H', and 'I' are significantly larger than the other letters, and the words are stacked vertically.

THOMPSON  
HINE

The SmartPath logo, which includes a small icon of a path with a red, yellow, and blue square above it, followed by the text 'SmartPaTH' and the tagline 'A Smarter Way to Work'.

SmartPaTH A Smarter Way to Work

A decorative graphic on the left side of the slide consisting of four overlapping squares: a purple square at the top left, a red square at the top right, a dark blue square at the bottom left, and a yellow square at the bottom right. A thin blue horizontal line runs across the slide, passing behind the text.

# Drones and Export Controls

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# Introduction

- Enforcement Agencies
- Export Controls Pertaining to Drones
- What is an Export?
- Deemed Exports
- Penalties

# Enforcement Agencies

OFAC, Treasury	BIS, Commerce	DDTC, State
<ul style="list-style-type: none"> <li>▪ Administers and enforces economic and trade sanctions based on US foreign policy and national security goals</li> <li>▪ Maintains SDN and Blocked Persons lists</li> <li>▪ Administers/enforces anti-money laundering laws (e.g., Patriot Act)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Advances U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system</li> <li>▪ Regulates commercial and “dual-use” items and technology</li> <li>▪ Maintains denied persons and entity lists</li> </ul>	<ul style="list-style-type: none"> <li>▪ Charged with controlling the export and temporary import of defense articles, technical data and defense services</li> <li>▪ Establishes certain country policies and embargoes</li> <li>▪ Maintains disbarred persons list</li> </ul>



# Export Controls Pertaining to Drones

- Civil and Commercial Applications
  - Security awareness, search and rescue, communication and broadcast, critical infrastructure monitoring, aerial mapping, agricultural uses
  - Controlled by Commerce Department's Bureau of Industry and Security
  - Export Administration Regulations
- Military Applications
  - Intelligence, surveillance and reconnaissance, precision target designation, combat search and rescue, armed strikes, resupply, potential for air combat
  - Controlled by State Department's Directorate of Defense Trade Controls
  - International Traffic in Arms Regulations



# Export Controls Pertaining to Drones ECCN 9A012

9A012 Non-military “Unmanned Aerial Vehicles,” (“UAVs”), Unmanned “Airships”, Related Equipment and “Components”, as Follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

<b>Control(s)</b>	<b>Country Chart (See Supp. No. 1 to part 738)</b>
NS applies to entire entry	NS Column 1
MT applies to non-military Unmanned Air Vehicle (UAVs) and Remotely Piloted Vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload, and 9A012.b.5	MT Column 1.
AT applies to entire entry	AT Column 1



# Export Controls Pertaining to Drones ECCN 9A012 (cont.)

- Any “aircraft” capable of initiating flight and sustaining controlled flight and navigation without any human presence on board.
- Items: a. “UAVs” or unmanned “airships”, designed to have controlled flight out of the direct 'natural vision' of the 'operator' and having any of the following:
  - a.1. Having all of the following:
    - a.1.a. A maximum 'endurance' greater than or equal to 30 minutes but less than 1 hour; and
    - a.1.b. Designed to take-off and have stable controlled flight in wind gusts equal to or exceeding 46.3 km/h (25 knots); or
  - a.2. A maximum 'endurance' of 1 hour or greater;



# Export Controls Pertaining to Drones

## ECCN 9D001

9D001 “Software” “specially designed” or modified for the “development” of equipment or “technology” controlled by ECCN 9A001 to 9A004, 9A012, 9A101 [ . . . ] 9A106.d. or .e, 9A110, or 9A120, 9B [ . . . ] or ECCN 9E003.

e. “Software” “specially designed” or modified for the operation of items specified by 9A012;

Reason for Control: NS, MT, AT

<b>Control(s)</b>	<b>Country Chart (See Supp. No. 1 to part 738)</b>
NS applies to “software” for equipment controlled by 9A001 to 9A004, 9A012, 9B001 to 9B010, and technology controlled by 9E003	NS Column 1
MT applies to “software” for equipment controlled by 9B116 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1



# Export Controls Pertaining to Drones

## ECCN 9E001

9E001 “Technology” according to the General Technology Note for the “development” of equipment or “software”, controlled by 9A001.b, 9A004, 9A012, [. . .], or ECCN 9D001 to 9D004, 9D101, or 9D104.

Reason for Control: NS, MT, AT

<b>Control(s)</b>	<b>Country Chart (See Supp. No. 1 to part 738)</b>
NS applies to “technology” for items controlled by 9A001.b, 9A004, 9A012, 9B001 to 9B010, 9D001 to 9D004 for NS reasons	NS Column 1
MT applies to “technology” for commodities controlled by 9A012, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B105, 9B106, 9B115, 9B116, 9B117, 9D001, 9D002, 9D003, or 9D004 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1





# Export Controls Pertaining to Drones

## Country Chart

### Supplement No. 1 to Part 738—Commerce Country Chart

[Reason for control]

Countries	Chemical and biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania <sup>2 3</sup>	X	X		X		X	X	X	X	X						
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua and Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X		X	X		X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia <sup>3</sup>	X					X		X	X							
Austria <sup>34</sup>	X					X		X	X			X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X		X		X		
Bangladesh	X	X		X		X	X	X	X	X		X		X		
Barbados	X	X		X		X	X	X	X	X	X	X		X		
Belarus	X	X	X			X	X	X	X	X		X	X			



# Export Controls Pertaining to Drones Country Chart

Belize	X	X		X		X	X	X	X	X	X		X		
Benin	X	X		X		X	X	X	X	X			X		X
Bhutan	X	X		X		X	X	X	X	X			X		X
Bolivia	X	X		X		X	X	X	X	X	X		X		X
Bosnia and Herzegovina	X	X		X		X	X	X	X	X			X		X
Botswana	X	X		X		X	X	X	X	X			X		X
Brazil	X	X				X	X	X	X	X	X		X		X
Brunei	X	X		X		X	X	X	X	X			X		X
Bulgaria <sup>3</sup>	X					X		X	X						
Burkina Faso	X	X		X		X	X	X	X	X			X		X
Burma	X	X	X	X		X	X	X	X	X			X		X
Burundi	X	X		X		X	X	X	X	X			X		X
Cambodia	X	X		X		X	X	X	X	X			X	X	
Cameroon	X	X		X		X	X	X	X	X			X		X
Canada	X										X				
Cape Verde	X	X		X		X	X	X	X	X			X		X
Central African Republic	X	X		X		X	X	X	X	X			X		X
Chad	X	X		X		X	X	X	X	X			X		X
Chile	X	X		X		X	X	X	X	X	X		X		X
China	X	X	X	X		X	X	X	X	X			X		X
Colombia	X	X		X		X	X	X	X	X	X		X		X
Comoros	X	X		X		X	X	X	X	X			X		X
Congo (Democratic Republic of the) <sup>1</sup>	X	X		X		X	X	X	X	X			X		X



# Export Controls Pertaining to Drones Country Chart

Germany <sup>3</sup>	X				X		X	X						
Ghana	X	X		X		X	X	X	X		X	X		
Greece <sup>3</sup>	X				X		X	X						
Grenada	X	X		X		X	X	X	X	X	X	X		
Guatemala	X	X		X		X	X	X	X	X	X	X		
Guinea	X	X		X		X	X	X	X		X	X		
Guinea-Bissau	X	X		X		X	X	X	X		X	X		
Guyana	X	X		X		X	X	X	X	X	X	X		
Haiti	X	X		X		X	X	X	X	X	X	X		
Honduras	X	X		X		X	X	X	X	X	X	X		
Hong Kong	X	X		X		X	X	X	X		X	X		
Hungary <sup>3</sup>	X				X		X	X						
Iceland <sup>3</sup>	X				X		X	X						
India <sup>7</sup>	X	X		X		X	X	X	X					
Indonesia	X	X		X		X	X	X	X		X	X		
Iran <sup>1</sup>	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.													
Iraq <sup>1</sup>	X	X	X	X	X	X	X	X	X	X		X	X	
Ireland <sup>34</sup>	X					X		X	X			X	X	
Israel	X	X	X	X	X	X	X	X	X	X		X	X	
Italy <sup>3</sup>	X					X		X	X					
Jamaica	X	X		X		X	X	X	X	X	X	X	X	
Japan <sup>3</sup>	X					X		X	X					
Jordan	X	X	X	X		X	X	X	X	X		X	X	



# What is an Export?

- **Export**
  - Shipment or transmission of items out of the United States
- **Reexport**
  - Shipment or transmission of items from one foreign country (intermediary) to another foreign country (end destination)
- **Deemed export**
  - Release of technology (including technical information) or software to a foreign national in the United States
  - “Release” may include oral or visual disclosure



## More on Deemed Exports

- Releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States (a “deemed export”);
- Any release in the United States of “technology” or source code to a foreign person is a deemed export to the foreign person's most recent country of citizenship or permanent residency.



# More on Deemed Exports

- “Technology” refers to specific information necessary for the development, production, or use of a product.
- This information takes the form of technical data or technical assistance.
- Technical data can be
  - blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, and read-only memories.
- Technical assistance can be
  - instruction, skills, training, working knowledge, and consulting services.



# More on Deemed Exports

- Sharing any of this information with a foreign national here in the United States is considered an export for which the “exporter” requires a license
- Foreign National
  - Visitors – *e.g.*, members of a trade delegation touring a facility or witnessing a demonstration where they obtain access to technical data or technical assistance
  - Employees who are not “U.S. persons” – *e.g.*, executives and others who are in the United States on a visa (see Part 6 of the H-1B visa application)
  - Sales personnel from a foreign country who would like to demonstrate their UAS-related product using your system
  - Subcontractors with any of the above



## More on Deemed Exports

- If any of the foregoing have access to technical data or technical assistance which allows for the use, production or development of UAS, an export has occurred
- If an export has occurred without the necessary government authorization-*i.e.*, a BIS license-there is a violation of the export control laws
- No export if the individual is a “U.S. person”
  - U.S. citizens
  - Green Card holders
  - Asylees





# Penalties – EAR

- Civil violation
  - Up to \$250,000 (or twice the value of the transaction) per violation
- Criminal violation
  - Up to 20 years in prison and/or
  - Up to \$1 million per violation



## EAR – Other Penalties

- Suspension of government contracts
- Seizure and forfeiture of goods and vessels
- Administrative measures:
  - Temporary denial orders = loss of export privileges
  - Revocation or suspension of licenses
  - License exception limitation



# How to Avoid Penalties

- Know the classification of your system so you can determine the controls
  - Manufacturers – Can self-classify or file a classification request
  - Operators – Coordinate with the manufacturer
- Have a Compliance Program in Place
  - Needs to come from top management
  - Adopt written policies and procedures
  - Distribute to relevant employees and train them
  - Obtain acknowledgements



# How to Avoid Penalties

- Compliance Program (cont'd)
  - Perform audits and update as appropriate
  - Allow for and encourage the reporting of mistakes or violations
  - Adopt a hotline or an open path for internal reporting
  - Consider the adoption of disciplinary measures up to and including dismissal for failing to comply with company policies and procedures



# Drones and Export Controls - Questions?

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