



Commerce imposes export licensing requirement on geospatial imagery software

International Trade Alert

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Effective January 6, 2020, the US Department of Commerce, Bureau of Industry and Security (BIS) has imposed new export controls on geospatial imagery software. Geospatial imagery software is used in such areas as self-driving vehicles, drone navigation, remote sensing, and analysis of earth imagery.

Specifically, this new export control, imposed under Export Control Classification Number (ECCN) 0D521 on the Commerce Control List, now requires that an export license be obtained for software specially designed to automate the analysis of geospatial imagery as more specifically defined below.

ECCN 0D521 No. 1

Geospatial imagery "software" "specially designed" for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds, and having all of the following:

- 1. Provides a graphical user interface that enables the user to identify objects (e.g., vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest;*
- 2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples;*

3. *Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and*
4. *Identifies objects in geospatial imagery using the trained Deep Convolutional Neural Network by matching the rotational pattern from the positive samples with the rotational pattern of objects in the geospatial imagery.*

Technical note: A point cloud is a collection of data points defined by a given coordinate system. A point cloud is also known as a digital surface model.

The quoted terms above have specific definitions in the Export Administration Regulations (EAR) that should be consulted for further analysis. The only license exception available for this software at present is for exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the US government that is within the scope of section 740.11(b)(2)(ii) of EAR License Exception GOV. Canada is also exempt from this new licensing requirement.

Companies that export their software and believe their software is described above should immediately take action to comply with the new export licensing requirement. Companies that need to continue exporting their software and believe their software is related to that described above, but not described above, should seek a written export control classification determination from BIS to ensure that such software is not misclassified into the new category of controlled geospatial imagery software.

CFIUS considerations

Companies that produce, design, test, manufacture, fabricate, or develop a software described above are now (if they were not previously) operating within the category of "critical technologies" as defined in the regulations of the Committee on Foreign Investment in the United States (CFIUS). Notably, however, BIS did not issue this new export control under the specific authority of Section 1758 Export Control Reform Act of 2018 (Emerging and Foundational Technologies), nor did it reference this control as an emerging or foundational technology control, but BIS has imposed a Regional Stability (RS) control on this software, so the new control meets the technical definition of "critical technologies" in the CFIUS regulations.

Comments on the new controls will be accepted by BIS through March 6, 2020.

Learn more about the implications of this development by contacting either of the authors.

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