

FRAGOMEN
EXPORT CONTROLS PRACTICE GROUP

Global Developments in Export Control Laws

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Today's Goals

1. Overview of global export control developments
2. Discuss impact on global movement of goods, people and technology
3. Strategic considerations for corporate compliance programs



Basic Overview



The Basics

Primary U.S. export control regulations:

- 1. International Traffic in Arms Regulations (“ITAR”)**
 - 22 C.F.R. Parts 120 – 130
 - Administered by U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”)
- 2. Export Administration Regulations (“EAR”)**
 - 15 C.F.R. Parts 730 – 774
 - Administered by U.S. Department of Commerce, Bureau of Industry and Security (“BIS”)
- 3. OFAC sanction regulations**
 - Administered by U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”)
 - Targeted at countries and/or individuals
 - Country examples include Cuba, Iran, Sudan



The ITAR

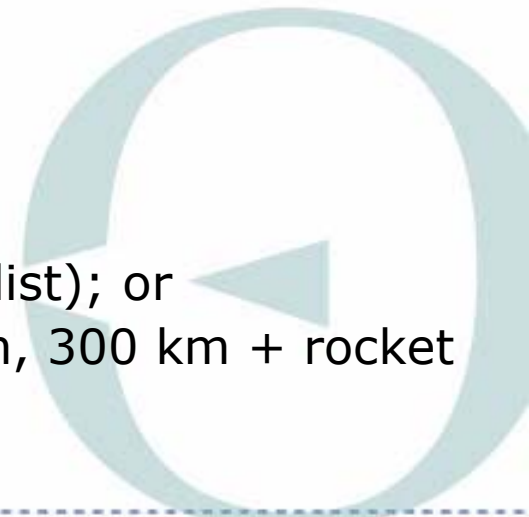
(22 CFR Parts 120-130)

- International Traffic in Arms Regulations
- Applies to:
 - Traditional military items
 - Space articles, including commercial communication satellites
 - Any component specifically designed, adapted, configured or otherwise modified for above items
- U.S. government approved export license in most cases

Export Administration Regulations

(15 CFR Parts 730-774)

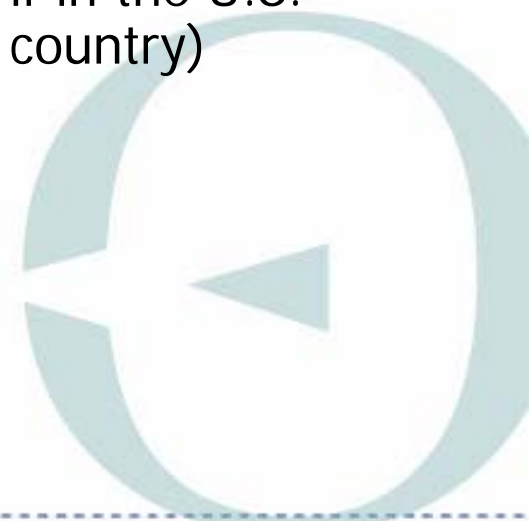
- Administered by Commerce Department's Bureau of Industry and Security (BIS)
- Controls commercial or "Dual Use" goods, technology and software
 - Commerce Control List (EAR § 774)
 - Items not on Commerce Control List ("EAR99")
- Export license requirement depends on –
 - Item in question + destination country;
 - End-user (whether appears on restricted party list); or
 - End-use (i.e whether nuclear, chem/bio weapon, 300 km + rocket system or unmanned air vehicle application)



Technology Transfer Exports

(applies to ITAR and EAR)

- Technology: technical data, drawings, know-how, training, intellectual property
- Exports include:
 - Transfer of technology to foreign country (including Canada!)
 - Transfer of technology to a foreign person, even if in the U.S. (“deemed” to be an export to the person’s home country)
- Foreign Person is anyone who is not:
 - U.S. citizen or national
 - Lawful Permanent Resident (Green Card Holder)
 - Person granted asylum or refugee status in U.S.
 - Temporary Residents granted amnesty



Export Control Implications

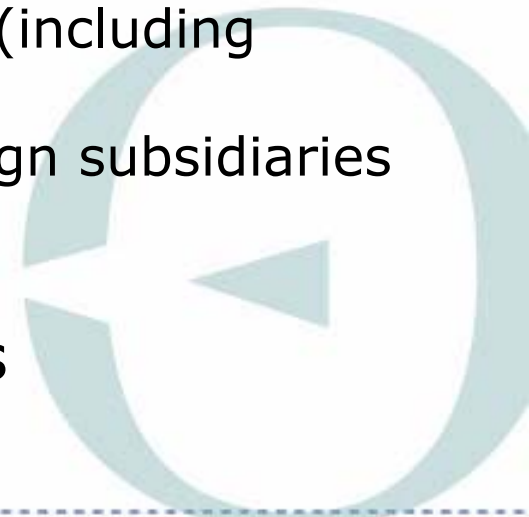
- U.S. government authorization (“License”) may be required prior to tech transfer
- License approval takes time (2 - 4+ months) and denial is possible
- Significant civil and criminal penalties
 - Civil penalties up to \$500,000 per violation
 - Criminal penalties up to \$1,000,000 per violation and 10 years in prison for each violation
 - Denial of export privileges
 - Debarment from U.S. government contracts

Recent U.S. Developments



Today's Reality

- The World is Shrinking
 - Many U.S. locations = design centers
 - Global sourcing of components
- Designs and processes transferred offshore
 - Product manufacturing
 - Constructing new manufacturing facilities (including establishing specs for equipment)
 - Joint research and development with foreign subsidiaries and partners
- Top engineers include foreign persons



Practical Consequences

- More expected out of Export Compliance Pros
 - Must think strategically and on a global scale
 - Understand what, where, and when of company operations and technologies
 - Utilize global workforce, supply chain & product delivery in compliance with global export control laws
- Requires implementation of global process triggers
 - Hiring and employee transfers, global resourcing
 - Engineering/R&D (new or modification of existing products)
 - Purchasing (offshore assembly, equipment purchases, etc.)
 - Geo-expansion teams
 - Sales & marketing

U.S. Developments

- Largest-ever U.S. export control fine (ITT, Mar '07)
 - Unauthorized export of night vision technical data to China, Singapore and U.K.
 - \$100 million penalty
 - \$2 million criminal fine
 - \$20 million to State Dept.
 - Forfeit \$28 million in profits
 - Must invest \$50 million in night vision technology (U.S. government retains ownership rights)
- “ITT Effect”
 - Large company fined, thereafter requires its thousands of suppliers and subcontractors to demonstrate compliance with export control laws

U.S. Developments (con't)

- Nat'l Export Control Coordinator (Jun '07)
 - Coordinates b/t DOJ and U.S. law enforcement, licensing and intelligence agencies
 - Will assist & monitor progress of export control cases nationwide
- Increased Penalties (Oct '07)
 - Applies to EAR and most OFAC sanctions regulations
 - Civil penalties of up to \$250,000 per instance (up from \$50,000) or 2x value of transaction
 - Criminal Penalties of up to \$1,000,000 per instance (up from \$250,000) and/or up to 20 yrs imprisonment (up from 10 yrs)

EAR: New China & India Rules

(Jun '07 & Oct '07)

- The Bad News for China
 - License required IF:
 - Item is one of 31 ECCNs; AND
 - Destined for “military end-use” (control based on “knowledge”)
- The Good News (applicable to China & India)
 - New License Exception: License is no longer required IF:
 - Item not controlled for MT or CC reasons; AND
 - End-user is a “Verified End-User” (VEU)
 - No additional impact on EAR99 items



U.S. Developments (con't)

- Securities and Exchange Commission (Nov '07)
 - Issues requests to certain companies to provide information on business with sanctioned countries
- Deemed Export Advisory Committee issues report (Dec '07)
 - “Trusted Entity” may share controlled technologies with non-U.S. persons
 - Control fewer technologies more tightly
 - Recommend “probable loyalty” test to determine license requirements



U.S. Developments (con't)

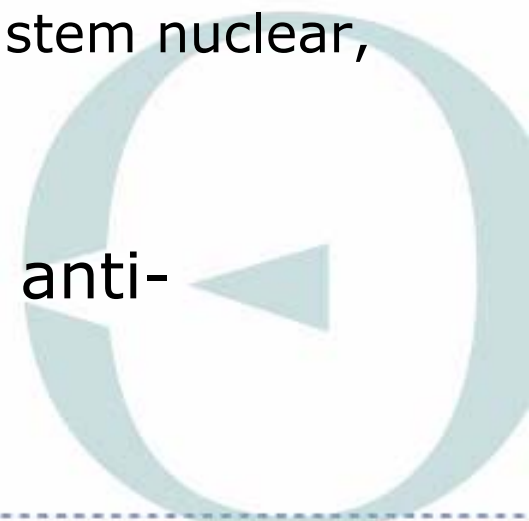
- Validated End-User Rule under Scrutiny (Jan '08)
 - Permits unlicensed exports to “Validated End-Users” located in China
 - Two of Five approved end-users alleged to have links to Chinese military
- Senate Bill to expand Iranian sanctions (April '08)
 - Would impose sanctions on U.S. parent companies if their foreign subsidiaries engaged in prohibited transactions with Iran
 - But Jan 2008 U.S. government General Accounting Office report questions effectiveness of sanctions

Global Developments



Key Global Drivers

- “Encouragement” by the U.S., EU, and Japan
 - Military support, other political pressure
 - Cooperation with enforcement
- United Nations Resolution 1540
 - Requires member states to adopt laws to stem nuclear, chem/bio weapon proliferation
- Global focus on non-proliferation and anti-terrorism efforts



You Might Be Subject to Foreign Laws if -

- Activities include:
 - Engaging in collaborations with foreign offices or partners
 - Manufacturing products in foreign country
 - Use of foreign supply chain
 - Moving or sourcing production lines to/from foreign countries
- And products, equipment, or technology is:
 - ITAR controlled
 - Subject to EAR and control on Commerce Control List is related to Wassenaar, Nuclear Suppliers Group, Australia Group (most controls other than EAR99, Anti-Terrorism, Crime Control or Short Supply)

Global Developments

- **United Kingdom**

- Initiated review of export control legislation
- Examining effectiveness, including enforcement
- Report to be issued in “Spring 2008”

- **South Korea**

- New export control legislation effective January 1, 2008
- Is conducting “outreach” to determine whether company goods are listed on the Strategic Goods List

- **Singapore**

- Updated Strategic Goods List effective January 1, 2008
- Adopted the control lists of the NSG, the AG, the MTCR and Wassenaar in their entirety

Global Developments

- **Israel:** adopted Wassenaar list (January 2007)
- **China:** added software and knowledge transfers to scope of Nuclear Dual-Use Export Regulations
- **Hong Kong:** updated export control schedules to reflect latest changes of multilateral regimes (not official member of the regimes)
- **Ukraine:** created commission to strengthen government oversight of export controls

Global Developments (con't)

- **United Arab Emirates**

- **Issued Federal Law No. 12 for 2007 regarding the commodities that are subject to import and export control**

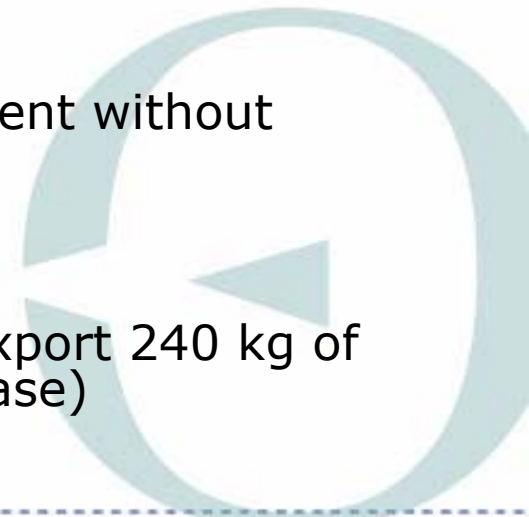
“It has virtually had no effect, to be honest,” said Nasser Hashempour, deputy president of the Iranian Business Council in Dubai. “If someone wants to move something — get it to Iran — it is easy to be done.”

- **Thailand**

- Lack of interest by Government and Industry to establish dual-use trade control program
- But is cooperating with U.S. and Japan on some enforcement cases (reported that it stopped chemicals at border for transshipment to N. Korea)

Global Enforcement

- *United States:*
 - 32 major criminal cases during 2007
 - Approximately 115 civil cases from Jan '07 to April '08
- *Japan:*
 - METI proposed “10 fold” increase in fines for export control violations and doubling of maximum prison term (2008)
- *Singapore:*
 - Fine M/S World Freight \$22K for \$13K shipment without required export license
- *United Arab Emirates (Dubai):*
 - Arrested man attempting to import and re-export 240 kg of zirconium for nuclear end-use (first known case)



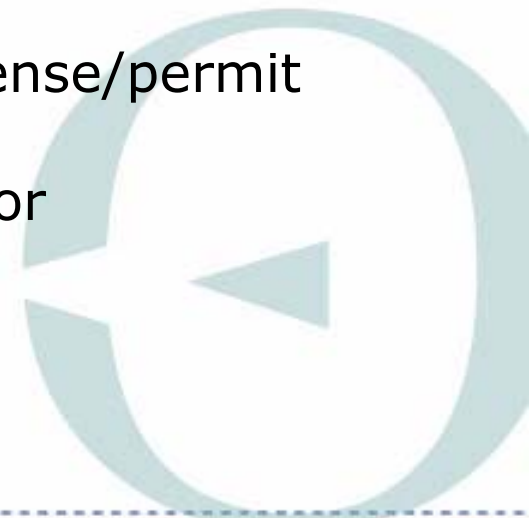
Looking Forward

- The global movement of controlled products and technology is becoming more difficult
- Must monitor global laws to identify new national export control legislation, adjust resources accordingly
- Consider political climate when making legal decisions (e.g., application of U.S. de minimis rules)



Global Program Considerations

- Understand export control laws in countries of key importance, monitor developments
- Develop basic compliance program checklists for quick design and implementation in new countries
 - Key elements for compliance program
 - In-country administrative resources for license/permit processing
 - Operational issues due to possible delays for licenses/permits



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