The Management of Technical Data, Software and Deemed Export Controls

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March 26-27, 2013
Philadelphia, Pennsylvania
Geopolitical Landscape

- End of Cold War
- Multipolar world
- State sponsors of terrorism
- Rise of individuals and terrorist groups
Commercial Environment

- A country or group of countries no longer has exclusive control over technology
- Growth of Manufacturing and Markets in emerging countries
- Sources of foreign availability
- Corporate structure extends internationally and work takes place on a “7/24” basis
Technology Developments

- Short product cycles and high capital costs
- Constant innovation with premium on R&D for emerging technologies
- International collaboration at commercial and R&D level, including academia
- Emergence of highly talented and mobile work force with emphasis on education
How is technology exported?

- An export takes place when there is an actual shipment or transmission from the US; or

- When there is any release of technology or source code to a foreign national *(Even in the US)*
Why is the U.S. Government concerned about the export of technology?

To whom are technologies controlled?

What technologies are controlled?

How are the technologies controlled?
Why are Items Controlled?

- Safeguard national security
- Foreign targeting of critical technologies
- Enhance U.S. competitiveness and technology leadership
- Therefore, prevent diversion of technology to bad people, bad place and bad end-uses.
To Whom are items controlled?

- Countries that pose a military threat re: conventional arms
- Proliferators of weapons of mass destruction
- State sponsors of terrorism
- Terrorist groups and persons
What Technologies are Controlled?

- Technologies for the “use”; “development”; and “production” of items on the Commerce Control List.

- Most technologies are based U.S. participation and administration of multilateral controls (e.g., Wassenaar)

- Anti-terrorism controls on 5 countries
How are Items Controlled?

- Licenses for items on CCL
- BIS 22,800 license in CY2012 with 85% approval rate
- Denial rate <1%
- Processing time under 30 days
- BIS educates exporters to increase compliance with the regulations
What is being targeted?

- Key Dual-Use Technologies
  - Biotechnology
  - Pharmaceuticals
  - Nanotechnology
  - Quantum Computing
  - Advanced Materials
  - Encryption & Communications
  - Electronics
Methods of Targeting

- Unsolicited emails
- Front companies
- Compromise of laptop
- Hacking
- Downloading information from network
- Visiting foreign delegations
- Circumventing export control laws
- Attending/hosting conferences

Other vulnerabilities: locating R&D overseas; foreign liaisons with university research labs
1994-1997: Initial Licensing regime and U.S. technology growth (700+ licenses),

1997-2004: Streamlining licensing,

2004-2011: Engagement with academic community; the DEAC; and ETRAC
Evolution of Deemed Exports

- 2011-Present: entrance of more universities and research institutes,
- Growth of Industry-University research partnerships.
- Increase in U.S.-foreign university collaboration on research
- University participation in Federally funded research
- Compliance Iceberg
Deemed Licenses Statistics

- Approved | Rejected
- 2011------ | 1,160 | 2
- 2012------- | 842 | 4

- Top Country and ECCN– China -5E001 with 622 approved licenses

- Universities not a major source of deemed license applicants
BIS/Academic Dialogue

- Conducted 29 deemed outreach activities in FY 2012, a record

- BIS is working with the academic community and the President’s Export Council Subcommittee on Export Administration Outreach Committee to expand the dialogue.

- Universities participate and support the work of the Emerging Technology Research Advisory Committee.

- Universities contributing comments to Export Control Reform

- We have gained useful information to update the Deemed Exports FAQ’s and Supplement 1 to 734 of the EAR at this conference.
Export Control Reform and Academia

- License Exception Strategic Trade Authorization and Deemed Exports
- Commerce’s proposed Transition Rule would among other things revise License Exception Technology and Software-Unrestricted:
  - “authorize the release in the United States of “technology” and source code that is subject to the EAR by U.S. university to foreign persons who are their bona fide and full time regular employees” subject to certain conditions.
  - Note: no release to foreign nationals from countries subject to U.S. Arms Embargo
Export Control Reform and Academia

- Expanded and focused outreach and compliance
  - Virtual training
- Interactive Compliance tools
- Export Control Reform - Public Comments
- Additional focus conferences such as this one and the August 2012 University of Washington – information gathering for policy changes
This conference offers the regulated community an opportunity to provide BIS with input on:

- Regulatory efficiency
- Expanded and refined educational activities
- Proactive compliance, including IT tools