U.S. Export Controls

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Bureau of Industry and Security

Mission

- Develop, implement, interpret U.S. export control policy for dual-use goods and technology
- Advance U.S. national security, foreign policy, and economic interests by regulating exports without impeding the flow of legitimate trade
Industry – Security Relationship

- Industry dependent on government
- Government dependent on industry
  - Government cannot monitor all exports and reexports
  - Industry evaluates new customers, provides resources for internal export controls, participates in policy making
Office of Exporter Services

- Provides guidance to industry regarding export control policies, regulations, procedures

- Staffing
  - Outreach and Educational Services
  - Export Management and Compliance Division
  - Western Regional Office
BIS Licensing Offices

- Office of Nonproliferation Controls and Treaty Compliance
  - Chemical and Biological Controls Division
  - Nuclear Technology Division
  - Missile Technology Division
- Office of Strategic Trade and Foreign Policy Controls
  - Strategic Trade Division
  - Information Technology Controls Division
  - Foreign Policy Controls Division
  - Deemed Exports and Short Supply Division
- www.bis.doc.gov
Export Administration Regulations

- Implement the Export Administration Act of 1979

- International Emergency Economic Powers Act

- Contain explanations of export control policies, authorizations available, recordkeeping, enforcement, and Commerce Control List (Supplement 1 to Part 774)
Policy Basis for Controls

- Regimes
  - Wassenaar Arrangement
  - Missile Technology Control Regime (MTCR)
  - Nuclear Suppliers Group (NSG)
  - Australia Group (AG)

- Embargoes
Commerce Control List

- Commodities
- Software
- Technology: Specific information necessary for the development, production or use of a product. The information takes the form of technical data or technical assistance. (Part 772)
Technology transfer

- Intangible technology
  - Technical data
  - Technical assistance
  - Exports via intangible means such as the internet, telephone, fax subject to same level of controls as exports via shipping or mailing

- Deemed exports
Deemed exports

- Release of technology or source code subject to the Export Administration Regulations to a foreign national.

- Release is “deemed” to be an export to the home country of the foreign national.

- Exceptions: LPR, refugee or asylum status
Are you subject to the EAR? (Parts 732 and 734)

- Items physically present in the U.S., with some exceptions
- U.S. origin items
- Certain foreign made items
  - Containing de minimis U.S. content
  - Direct product of U.S. technology or software
- Deemed exports
- U.S. Persons (Part 744.6)
Do you need an export license?

- Consider the Export Control Classification Number + the Country of Destination

- General Prohibitions (Part 736)
  - What is my item?
  - Where is it going?
  - Who will receive it?
  - What will be the end-use?
  - What else does my end-user do?
Asia Licensing FY2003
10-1-2002 to 6-30-2003

- Japan 658 $72m
- China 590 $1.3b
- Taiwan 459 $653m
- Germany 426 $15.4 m
- India 424 $40.4 m
U.S. Exports
10-1-2002 to 6-30-2003

- China $12,691.1m
- Taiwan $7,841.1m
- Japan $25,969.3m
- India $2,334.6m
- Germany $14,606.7m

Source: U.S. Census Bureau
India: Background

- 1998: Nuclear and missile sanctions
- September 2001: Sanctions waived
- October 2001: Implementing regulations lifted denial policy for export of items on the CCL for nuclear and missile technology-related concerns
- Entity list reduced
India: Export Control Policy

- Exports to Entity List companies require a license.

- Many items on CCL controlled for national security concerns may be exported under a license exception:
  - Authorization for export provided criteria are met (GBS, TSR, ENC)
  - Group B list (Supplement 1 to Part 740)
India Licensing

- License required to export items controlled for nuclear, missile, or chemical/biological weapons concerns
  - Reviewed on case by case basis
  - Criteria for review: would export make a material contribution to WMD program or pose unacceptable risk of diversion to WMD
India: Recent Developments

November 2002: BIS Under Secretary and Indian Foreign Secretary establish the U.S. – India High-Technology Cooperation Group

- Framework for discussing steps to stimulate bilateral high-technology commerce
- Will address economic, trade, and export control issues
China: Background

- Seventh largest U.S. export market
- Remains a security and proliferation risk
  - Chinese entities have exported sensitive items to countries of concern
  - Sanctions have been imposed
  - End use visits problematic, leading to the creation of the Unverified List
China: Export Control Policy

- License required to export items controlled for national security, nuclear, missile, or chemical/biological weapons concerns
  - Reviewed on case by case basis
  - Criteria for review: would export enhance the PRC’s ability to project military force, or make a material contribution to WMD program or pose unacceptable risk of diversion to WMD
PRC/Hong Kong: Licensing

- Hong Kong: “One country, two systems” formerly recognized under law

- Special status deriving from HK having been British dependent territory prior to 1997; contingent upon maintenance of integrity and autonomy of customs territory

- HK has long cooperated with the US on export control matters
Web Site Resources

- www.bis.doc.gov

- Introduction to Commerce Department Export Controls

- Guidance on Reexports and other Offshore Transactions Involving U.S.-Origin Items
Under Secretary Kenneth I. Juster addresses:

- October 2003: Update Export Controls and Policy Conference
- June 2003: Stimulating High-Technology Cooperation with India
- April 2003: Asian Security and Hong Kong’s Role in the War on Global Terrorism
How to contact BIS

Export Administration Offices:

- Orange County, CA        (949) 660-0144
- Silicon Valley, CA       (408) 998-7402
- Washington, D.C.         (202) 482-4811

Export Enforcement Offices:

- Northern California      (408) 291-4204
- Southern California      (949) 251-9001
- Nationwide               (800) 424-2980