



# Export controls and compliance: licensing and enforcement 2015

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# Export licensing and enforcement issues

- Licensing
  - Classification
  - False statements or material omissions
  - Multiple licenses for the same activity
- Enforcement
  - Multiple agencies
  - False statements or material omissions
  - Commerce versus State (“guns and badges” versus “compliance”)
  - Lessons learned from past enforcement actions: civil and criminal
  - Reasonable reliance



## Export licensing

- Classification – export reform results in constant change
  - Ensuring appropriate classification
  - Addressing shifting classification
  - Keeping timelines consistent
- False statements or material omissions
  - Thresholds vary depending upon agencies
  - Distinguishing and defining omissions – standards before State and Commerce
  - Recent focus of Commerce enforcement
  - Consistent State focus



## Export licensing (cont'd)

- Multiple licenses for the same activity
  - President attempted to address this through Executive Order
    - Did not account for the volume of licenses based on reform transitions from State to Commerce
    - Created the “.x” categories within the US Munitions List to address some of the issues
    - Now State has extended the validity period of existing licenses to alleviate the crush of licenses Commerce is unable to handle



# Export enforcement

- Commerce and State: different enforcement objectives
  - Commerce (Bureau of Industry and Security):
    - Focus on criminal and civil enforcement
    - More than 45% of the enforcement cases brought within the last 4 years involve Iran and the People's Republic of China



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - Commerce (Bureau of Industry and Security):
    - Primary product and technology targets include: aircraft parts and components, software, manufacturing equipment, night vision, and parts or components for other platforms
    - Areas of enforcement interest:
      - Acting with knowledge
      - Diversions
      - False statements
      - Failure to oversee export personnel
      - Individual liability



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - Commerce (Bureau of Industry and Security):
    - Utilizes suspension and debarment authority primarily against smaller companies, individuals or entities that do not respond to Commerce during investigations
    - Utilizes reciprocal denial authority – e.g., when Justice, Treasury or State take action against an entity for violating the Arms Export Control Act, the International Traffic in Arms Regulations or the Office of Foreign Assets Control Regulations, Commerce has issued denial orders



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - Commerce (Bureau of Industry and Security):
    - 2015 enforcement cases published by BIS fall below prior enforcement efforts at the same time last year and in 2013
    - Select cases of interest:
      - Dresser Italia, S.p.A. (2006)
      - PPG Industries (and related cases) (2010, 2011)
      - Enterysys Corporation (2012)
      - Amplifier Research Corporation (2013)
      - Intevac Inc. (2014)
      - Wind River Systems, Inc. (2014)
      - Teledyne LeCroy, Inc. (2015)





## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - State (Directorate of Defense Trade Controls):
    - Lacks independent criminal enforcement authority – works in tandem with the Federal Bureau of Investigation, the Immigration and Customs Enforcement agency and the Customs and Border Protection agency
    - Addresses civil or administrative authority – enforcement tools
      - Suspension of export licensing
      - Denial of exporting privileges
      - Cross-denial of government contracts privileges
      - Policy of denial
      - Fines
      - Intangible penalties – audits, reporting, compliance monitors
      - Forfeitures



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - State (Directorate of Defense Trade Controls):
    - Compliance organization handles more than investigations and disclosures
    - National security determinations are made in conjunction with the Department of Defense, including the constituent agencies (e.g., the military services, intelligence agencies, cyber organizations)



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - State (Directorate of Defense Trade Controls):
    - Relies on voluntary disclosures
    - Utilizes directed disclosures
    - Lacks administrative subpoena authority
    - Focuses on compliance rather than enforcement
    - Export reform may change the underlying principles given the basis for the reform – i.e., to include the “crown jewels” on the US Munitions List and transfer the remaining products and technology to the Commerce Control List



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - State (Directorate of Defense Trade Controls):
    - Areas of enforcement interest:
      - False statements and material omissions
      - Misclassification and export jurisdiction violations
      - Technical data and technology transfers
      - Failure to rely on reasonable representations
      - Personal liability



## Export enforcement (cont'd)

- Commerce and State: different enforcement objectives
  - State (Directorate of Defense Trade Controls):
    - Select cases of interest:
      - General Motors/General Dynamics (2004)
      - Goodrich Corporation/L-3 (2006)
      - ITT (2007)
      - United Technologies (2012)
      - Intersil Corporation (2014)
      - Esterline Technologies Corporation (2014)



## Export reform

**If you are agitated and  
confused, my work is done  
here!**



# QUESTIONS?

# Contacts



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# Thank you

The Dentons logo, consisting of the word "DENTONS" in white, uppercase, sans-serif font, enclosed within a purple arrow-shaped graphic pointing to the right.

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