Deemed Exports Overview

Annual Conference on Export Controls 2019

Agenda

• Deemed exports overview
• The threat
• Compliance
• License review
• Research case study
• Statistics
• Resources
Deemed Export Defined

- Releasing or otherwise transferring “technology” or source code (not object code) to a foreign person in the United States (a “deemed export”) (EAR 734.13 (a)(2))
- Any release in the Unites States of “technology” or source code to a foreign person is a deemed export to the foreign person’s most recent country of citizenship or permanent residency (EAR 734.13 (b))
- Deemed exports involve the release of “technology” subject to the EAR
- The deemed export rule has been in effect since implemented in 1994

The Threat

- Dangers of illegal technology transfers are very real:
  - WMD Proliferation
  - Weapon Design/ Manufacture
Origin of the Threat

• U.S Intelligence Community has noted:
  – Collection and acquisition activities from over 56 foreign nations
  – Use of clandestine and illegal methods to collect technology
• U.S. private sector studies estimate loss in the billions every year

What is being targeted?

• Biotechnology and pharmaceuticals
• Nanotechnology
• Quantum computing
• Advanced materials
• Submersible vehicles
• Acoustic communications and sensors
• Communications and encryption technology
• Satellites, spacecraft and related items
• Weapons systems yet unclassified
Deemed export snapshot

Deemed Export Licenses Processed by BIS
2013-2018

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>% Change from</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved</td>
<td>1,245</td>
<td>964</td>
<td>1,268</td>
<td>1,377</td>
<td>1,394</td>
<td>846</td>
<td>-39.3%</td>
</tr>
<tr>
<td>Rejected</td>
<td>13</td>
<td>18</td>
<td>18</td>
<td>13</td>
<td>24</td>
<td>11</td>
<td>-54.2%</td>
</tr>
<tr>
<td>RWA*</td>
<td>67</td>
<td>81</td>
<td>95</td>
<td>86</td>
<td>107</td>
<td>150</td>
<td>40.2%</td>
</tr>
<tr>
<td>Total</td>
<td>1,325</td>
<td>1,063</td>
<td>1,381</td>
<td>1,476</td>
<td>1,525</td>
<td>1,007</td>
<td>-34.0%</td>
</tr>
</tbody>
</table>

RWA: Return without action

Source: Commerce U.S. Exports Exporter Support System, retrieved on March 5, 2019

Note: All previously reported numbers are subject to revision based on changes in the source data on the retrieving date.

Deemed exports: what countries?

Top 15 Countries of Origin for Deemed Export Licenses

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Top ECCN 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>3E001</td>
</tr>
<tr>
<td>Iran</td>
<td>5E002</td>
</tr>
<tr>
<td>India</td>
<td>3E001</td>
</tr>
<tr>
<td>Mexico</td>
<td>9E610</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>3E611</td>
</tr>
<tr>
<td>Japan</td>
<td>9E002</td>
</tr>
<tr>
<td>Syria</td>
<td>5E002</td>
</tr>
<tr>
<td>Armenia</td>
<td>3E001</td>
</tr>
<tr>
<td>France</td>
<td>9E610</td>
</tr>
<tr>
<td>Vietnam</td>
<td>3E001</td>
</tr>
<tr>
<td>Russia Federation</td>
<td>3E001</td>
</tr>
<tr>
<td>Germany</td>
<td>0E606</td>
</tr>
<tr>
<td>Taiwan</td>
<td>3E001</td>
</tr>
<tr>
<td>Finland</td>
<td>0E982</td>
</tr>
<tr>
<td>Brazil</td>
<td>0E606</td>
</tr>
</tbody>
</table>
Deemed exports: what technologies?

Key Compliance Issues

- Communication between key compliance actors:
  - Export compliance personnel
  - Human resources
  - Hiring managers
- Also issues surrounding foreign visitors and need for enhanced compliance training
- Significant for high technology companies – investigations found effective programs for commodities that did not carry over in the area of technology
- Concerns for academia and government laboratories
Key Points for Discussion

• Successful deemed export compliance:
  – Incorporates correct classification of items, including commodities and required production, development and use technology
  – Requires management commitment to a holistic approach involving successful interaction between key stakeholders (export compliance personnel, hiring managers, and HR)
• Deemed export compliance benefits from a strong, established and well maintained Technology Control Plan, successful interaction between internal stakeholders, and meaningful annual assessments of its program
• Meaningful deemed export compliance also requires active partnership between government and all affected stakeholders

Technology Control Plan (TCP)

• An effective Technology Control Plan is the key to compliance
• Essential elements of a TCP:
  – Management commitment
  – Physical security plan
  – Information security plan
  – Personnel screening procedures
  – Training and awareness program
  – Self-evaluation program
• Meaningful compliance is a “win-win”
  – Protects national security
  – Allows a company to protect its proprietary technical data essential to R&D and bring new and timely products to market
The Deemed Export Application

- Comprehensive resume
- Complete job description
- Foreign national’s particular qualifications
- Detailed letter of explanation
- Visa status
- Safeguards to limit access (Technology Control Plan)

Helpful Information

- Does the foreign national:
  - Have strong ties to the U.S. (e.g., family here, home ownership, etc.) and / or
  - Intend to become a U.S. citizen?
- What ties does the foreign national have to his / her country of origin?
- What special benefits or expertise does the foreign national bring to the applicant?
BIS - Application Review

- Verify classification of technology
- Review licensing requirements & license exceptions based on home country
- Assess appropriateness of job description, responsibility, and title
- Assess appropriateness of education level and field to technology & end-use
- Determine reasons for control for correct interagency referrals
- Technology Control Plan
- Verify visa status

Case Study: H5N1 Dual Use Research of Concern

Research

**INPUT**
- Basic science results intended to be published
- Previously published research (not subject to the EAR)
- Collaboration offshore

**OUTPUT**
- Results of research published (Not Subject to the EAR)
- Concerns resolved
- Concern raised by NSABB results of research voluntarily withheld from publication (subject to the EAR)
- Licenses issued to facilitate discussion with WHO officials in Europe and in U.S.
- Research results submitted for publication
H5N1 Dual Use Research of Concern Outcomes

- Greater sensitivity to export control requirements for USG sponsors of domestic research
- Established USG policy for oversight of life science dual use research of concern*
- Established institutional policy for oversight of life science dual use research of concern**


Case Study: Microprocessor Technology for Use in 5G

- A company submitted multiple license applications for category 3 technology
- As submitted, the license applications included only limited details
  - TCP was not submitted
- The license applications took over a year to process
  - escalation and de-escalation to the Operating Committee
  - interagency company site visits
Microprocessor Technology for 5G: What would have helped?

• A meeting, in advance of application submission, between the company and the interagency

• Detailed information including:
  – The company’s road map
  – Technology Control Plan
  – IT and physical security plans

Resources


