



# **WORKSHOP 1 – U.S DEVELOPMENTS**

Wednesday 26 September

# **U.S. Developments**

## **Regulatory and Export Controls**



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# Yesterday...

- January 2017 – January 2018
  - Regulatory freeze
  - Department of State hiring freeze

(and not much else...)

# ...Today

- January 2018 – Present
  - Notices of Inquiry/Reviews of USML Categories V, VI, VII, IX, X, XI, XIII, XX
  - New DDTC website
  - NTIB expansion study
  - Conventional Arms Transfer (CAT) Policy update
  - UAS Policy update
  - Categories I-III proposed rule
  - CAATSA (Russia, North Korea, Iran and China sanctions)
  - End of DOS hiring freeze (?)
  - India joins Tier 1/Group A:5
  - NDAA 2019
    - **Export Control Reform Act (ECRA)**
    - **Foreign Investment Risk Review Modernization Act (FIRRMA)**

# Arms Transfer Policy

## CAT Policy

- 5<sup>th</sup> edition since Carter Administration
- Little real change, but tweaking of language to ensure balance in assessment of criteria
  - Protection of national/economic security objectives

## UAS Policy

- Updated 2015 policy
- Allows MTCR Cat I sales via FMS
- No more presumption of denial – Case by Case review
- Laser designator no longer subject to scrutiny

# ECRA

- Successor to Export Administration Act (EAA)
  - First permanent statutory authority for EAR since 2001
- Codification of existing law and regulation with one significant new provision:
  - Emerging Technologies
    - Section 1758: mandate to prioritize identification of, and potential new national security based controls for, “emerging and foundational” technologies
      - Interagency review process
      - Input from industry and public
  - Section 1756: Impact on defense industrial base

# ECRA

## Emerging Technologies

- Aerospace (primarily aircraft integration)
- Artificial Intelligence (“AI”)
- Augmented/virtual reality
- Automated machine tools and additive manufacturing
- Autonomous vehicles
- Battery technology
- “Big data”
- Biomedicine and biotechnology
- Cloud computing
- Command, control, communications, computers and intelligence (C4I)
- Cybersecurity/Cyberwarfare
- Display technology (new)
- Distributive energy supply
- ETC. (dozens more)

**Harmonization with FIRRMA/CFIUS**

# NTIB Expansion

- National Technology and Industrial Base (NTIB) proposed for expansion to include ~~United Kingdom~~ and Australia as part of US NDAA 2017, Section 881
- Still in “study” phase
- US-UK defense trade task force (DTTF) studying means of accomplishing “seamless integration” called for in NDAA
- Possible expansion of ITAR 126.5 “Canadian Exemptions” to include UK and Australia
- ~~Political will?~~ Legislative change to AECA Section 38(j)



# DDTC Stats

- 2018 Licenses slightly up (circa 39,000 estimated)
- Average license processing August 2018: 34 days
  - Anecdotally seems higher!
  - 2012 average: 18.6 days
- Cases staffed: 60%
- Approved licenses with provisos 2017: 51.3%
  - 2013 (pre-ECR): 40.5%

# DDTC Observations

- 34% staffing shortage in licensing; 40% staffing shortage overall
  - Impact: license slow downs, also affects commodity jurisdictions, advisory opinions, etc.
- Leadership turnover and lack of Political Appointment
- Foreign policy: MENA/Persian Gulf challenges

# Commerce/BIS Observations

- Underuse of license exceptions, particularly for non-US companies
- Better off than State/DDTC in terms of political leadership (BIS A/S Ashoo in place)
- ECRA implementation impacts?
  - E.g., new licensing considerations (industrial base impact) and process for covering “emerging and foundational” technologies

# General Observations

- Focus on promotion of U.S. defense exports and industrial base protection
  - Economic-National Security merge
  - Increased FMS (and FMS reform?)
- Concern about FDI and specifically PRC
- Sanctions and Tariffs!
- Regulatory “reform” – negative impact for defense exports



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