

# Emerging Technologies and Export Controls

# Background

## The Export Control Reform Act of 2018

- As part of the larger effort to reform the authorities governing the Committee on Foreign Investment in the United States (CFIUS), the Act effectively requires BIS to lead an interagency, regular order process to identify and add to the EAR controls on “emerging” and “foundational” technologies that are “essential to the national security of the United States.”
- Section 1758 of the Act gives the administration a statutory mandate to make the effort a priority. This statutory instruction evolved in response to concerns about a key element of the CFIUS reform legislation, which, as introduced, would have given CFIUS jurisdiction over outbound investments, such as overseas joint ventures, by U.S. critical technology companies that would involve the transfer of intellectual property and associated support.

# EGADD Comments



On 7 January 2019 EGADD offered comments including:-

- The UK and the US are the closest possible collaborators in major joint international defence research & development programmes. Thus, the defence industrial ties that bind the two nations together are profound and deeply-rooted.
- To facilitate a more in-depth dialogue, suggest that BIS might consider ways in which it could receive information for this exercise that would not, at the end of the day, result in it being made publicly available.
- EGADD Members have noted that they already employ some emerging technologies where it is useful to do so. The techniques that these technologies have currently offered have been as a means to an end and not an end in themselves. For instance, AI or advanced data applied to a controlled item would already be controlled. We wonder whether protecting the technology for all uses by placing limitations on acquisition of the technology holder by foreign companies may be better achieved by means other than export control.

# EGADD Comments

- The process envisioned by the Act could lead to a lengthy period of unilateral US controls. We cannot see how this would serve the best interests of either US national security or its economic interests. Unilateral US controls would create disincentives to locating key operations and investments in the US or collaborating with non-US companies.
- Should consider the implications of foreign availability of emerging technologies with partner governments in the export control regimes. Any regulatory approach would need to be couched in a way that could reasonably be adopted by those partners. Complex or unique terms would need to be defined in a manner that fully described the level of control.
- In summary, we believe that any new controls should not inhibit cross-border research and development efforts. Any new rules should avoid disrupting R&D collaboration between non-US entities based in allied and partner nations, on the one hand, and US companies and subsidiaries, on the other. Any lack of coordination with partner governments could massively disrupt supply chains and US competitiveness.

# Emerging Technology Technical Advisory Committee



- In August 2018 BIS announced that it was recruiting new candidates to serve on the Emerging Technology Technical Advisory Committee (ETTAC) to advise the Department of Commerce and other agency officials on emerging technologies with potential dual-use applications. This advice would include the following.
- Identifying such technologies as early as possible in their developmental stages both within the U.S. and abroad
- Assessing and providing information on emerging technologies, potential “chokepoint technologies” (e.g., technologies that, if developed by an adversary prior to development by the U.S., could present grave threats to U.S. national and/or economic security) and trends in technologies of particular interest to BIS
- Assessing the potential impact of the Export Administration Regulations on research activities, including technical and policy issues relating to controls under the EAR, revisions of the Commerce Control List (including proposed revisions of multilateral controls in which the U.S. participates), and the issuance of regulations

# Emerging Technology Technical Advisory Committee



- BIS notes that ETTAC will be forward-leaning in its work, focusing on the current state of emerging technologies and projecting their likely effects five to ten years into the future on national security, the U.S. defense industrial base, and the overall health and competitiveness of the U.S. economy.
- ETTAC would consist of experts drawn from academia, industry, federal laboratories, and pertinent U.S. government departments and agencies who are engaged in developing and producing cutting edge technology in areas key to maintaining a U.S. forward-leaning presence in the world economy. ETTAC members will be appointed by the Secretary of Commerce and will serve terms of two years, subject to a limit of four consecutive years.

# Latest news

- 80 candidates applied to join ETTAC, about 30 will serve, currently undergoing security checks.
- Understand that BIS are trying to avoid overly broad definitions. Draft proposals on artificial intelligence, quantum computing, additive manufacturing being promised within a few weeks. How detailed and how good these proposals will be remains to be seen.
- Next stop foundational technologies – could see calls to re-control technologies that have been de-controlled in the past.