



**Export Control Coordinators Organization
(ECCO) 2006 Annual Meeting:
Deemed Exports**

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Agenda

- Remember deemed exports?
- Deemed export statistics
- Policy Updates
 - Use
 - Country of birth vs. permanent residence/citizenship
 - Fundamental Research
- Did you think about...



Deemed Exports



“Deemed Export” Concerns

- The deemed export program, in place since 1994, remains an important mechanism to prevent the diversion of sensitive dual use technologies to countries and end users of concern.
- The deemed export program balances two concerns:
 - The vital role of foreign nationals in U.S. industry and academia, contributing to the strength of our industrial base and our high-technology advantage, and ultimately our national security;
 - Foreign countries seek to illegally acquire controlled U.S. technology that could be diverted to the development of weapons programs.



Foreign Nationals Not Subject to the Deemed Export Rule

- Any foreign national is subject to the deemed export rule except:
 - A foreign national granted U.S. citizenship;
 - A foreign national granted permanent residence status (i.e., “Green Card” holders);
 - A foreign national granted status as a “protected individual” under 8 U.S.C. 1324b(a)(3). Protected individuals include political refugees and political asylum holders.



Technology Not Subject to the EAR

- **Publicly available (EAR 734.7)**
 - Generally accessible to the interested public
 - Periodicals, books, print, electronic other media forms
 - Libraries (university, public etc)
 - Open patents
 - Open conferences
- **Fundamental Research (EAR 734.8)**
 - Basic and applied research where resulting information is ordinarily published and broadly shared within scientific community
- **Educational information (EAR 734.9)**
 - Released by instruction in catalog courses
 - Associated teaching laboratories of academic institutions
- **Patent information (EAR 734.10)**
 - Public information available on patent application



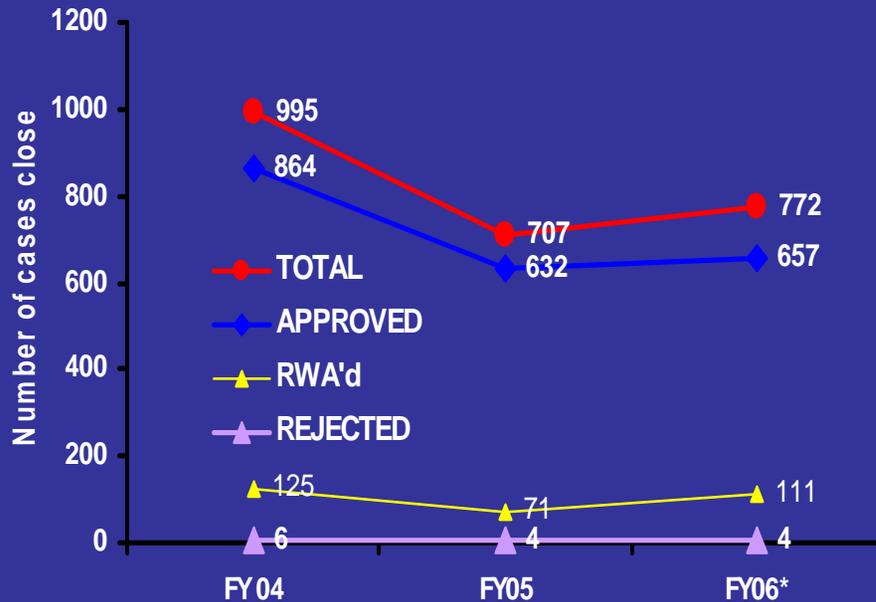
Deemed Exports By The Numbers



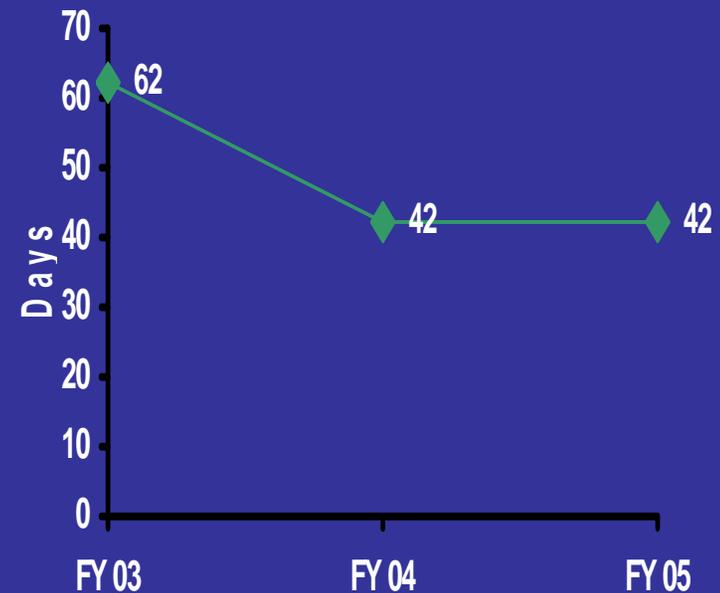
Deemed Export Statistical Summary

- In FY2005, the Bureau approved 89%, returned without action approximately 10%, and denied less than 1% of the total of 707 deemed export license applications.
- Almost 60% of the deemed export licenses processed are for PRC foreign nationals.
- Followed in descending order by foreign nationals from India (6.5%), Iran (4.5%), Russia (3.7%) and UK (2.7%).
- Most deemed export licenses are processed in 42 days.
- We expect a 10-15% increase in FY06 licenses based on current volume trends and the projected licensing renewal activity.

Deemed Export Licensing Trends



FY06 projected total based on 1/30/06 deemed export actuals



Most Common Deemed Exports:
Semiconductor & Electronics - Category 3
Telecommunications - Category 5
Computer Systems - Category 4



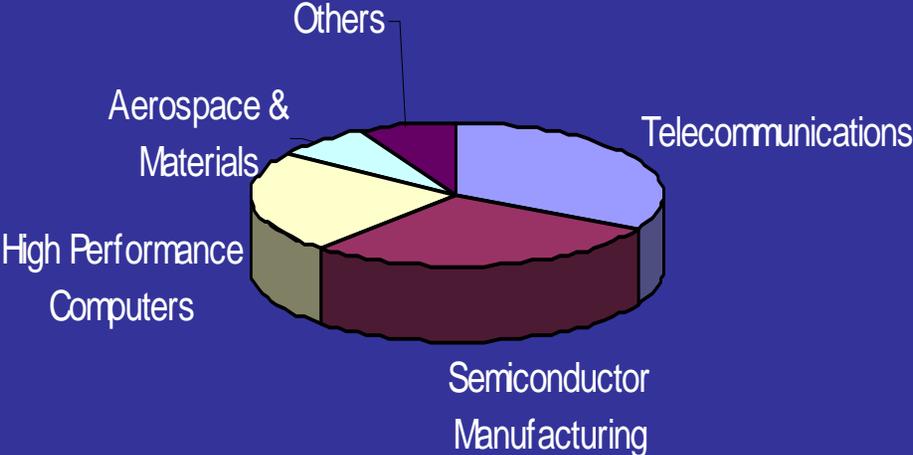
Breakdown of Largest Deemed Export License Holders

- Top industries and license holders:
 - Telecommunications (33%)
 - Semiconductor Manufacturing (29%)
 - High Performance Computers (23%)
 - Aerospace & Material (7%)
 - Others (8%)

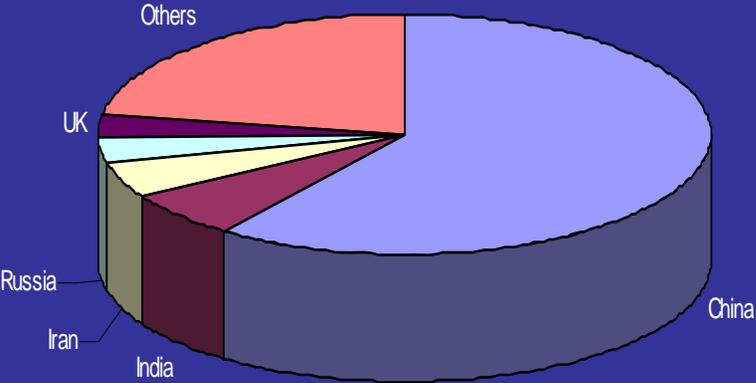


FY05 Licenses by Industry and Country

Licenses by Industry



Licenses by Country





Deemed Exports Policy Updates



Clarification of “Use” technology

- The regulatory definition of “use” is technology for “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.”
- The IG recommended the definition of controlled “use” technology be revised by changing “and” to “or” to clarify that a “use” technology control does not have to be related to all of these activities.



Clarification of “Use” technology

- The use of controlled equipment is not a deemed export. Deemed exports occur only if controlled technology is transferred.
- The term “technology” as used in the EAR refers to specific information “required” for the “development,” “production,” or “use” of specific product (e.g. computer, fermenter, machine tool, etc.).
- Refers only to that portion of technology which is peculiarly responsible for achieving or exceeding controlled performance levels, characteristics or functions.



Third Country Foreign National Licensing Policy

- Under current export licensing policy, a foreign national's recently established citizenship or residency is used to determine the licensing requirements.
- BIS intends to retain this policy.
- Guidance on this can be found at:
<http://www.bis.doc.gov/DeemedExports/DeemedExportsFAQs.html>



Scope of Fundamental Research

- Confusion exists over the scope of fundamental research.
- Some research entities believe fundamental research regulatory language provides relief from all export licensing consideration.



Fundamental Research Regulatory Language

- EAR 734.8- information resulting from fundamental research is not subject to EAR licensing requirements:

“Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.”

- This definition of fundamental research is echoed in NSDD-189, Presidential Policy Directive issued by President Reagan in 1985 and is still in effect today.



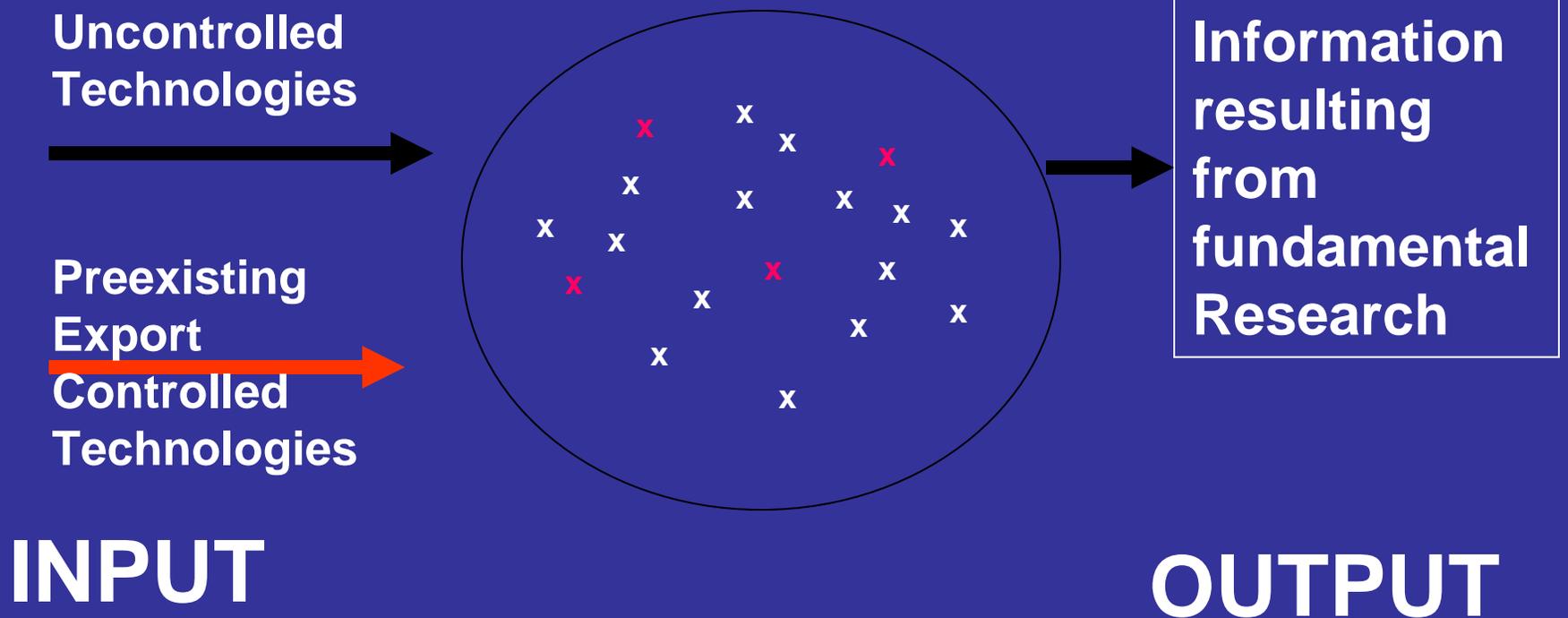
Fundamental Research

- **Fundamental research only applies to information that “arises during or results from” the research.**
- **There is no “blanket exemption” for all information that is transferred in the context of such research.**
- **If there is preexisting export controlled technology required to conduct the research then deemed export licensing implications must be considered.**



Fundamental Research

World of Research





Sequence of Analysis

U.S. Citizens/Green Card/Protected Immigrants

Published

Educational Information

Patents

Fundamental Research (FR)

EAR 99

License Exceptions

License



Did you think about....



Process Improvements

- BIS policy is to match the validity date of a deemed export license to the foreign national's visa expiration date.
- Interagency agreement to review “upgrade” applications in 20-days
- Automatic 6-month extension for current deemed export license if a renewal is submitted 45-days in advance of license expiration.



What are “Deemed Reexports?”

- The release of technology or source code subject to the EAR to a foreign national of another country is a deemed reexport to the home country of the foreign national.
- For example, a Russian foreign national requiring access to EAR controlled technology in the UK would require deemed reexport licensing authorization.
- Exporters of controlled technology need to know that there are deemed reexport implications for foreign national employees of other countries.



Technology Control Plan (TCP)

- TCPs are a standard condition found in deemed export and technology exports licenses
- A TCP should contain the following essential elements:
 - Corporate commitment to export compliance
 - Physical security plan
 - Information security plan
 - Personnel screening procedures
 - Training and awareness program
 - Self evaluation program
- *TCPs are a good practice for all holders of export controlled technology*



BIS Web site

www.bis.doc.gov

- **Licensing**

- **Deemed Exports**

- [Process Improvements](#)
 - [Licensing Guidance](#) (pdf)
 - [Frequently Asked Questions](#)



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