

# **OBSERVATIONS ON EXPORT CONTROLS: OVERVIEW OF 40 YEARS COVERING STRATEGIC TRADE**

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# Thank You and There Are Many

- Departments of Energy and Commerce
- U.S. exporting community
- Department of Energy Labs and Compliance structure
- My colleagues who are the force multiplier that makes it happen

# Strategic Trade and Export Controls

- Facilitate national security and foreign policy objectives with key allies.
- Strengthen defense industrial base.
- Focus scarce resources on critical areas to prevent the transfer/diversion of sensitive items to:
  - Bad places
  - Bad people
  - Bad end-uses

# Changes in Geopolitical Landscape since the 1970s

- End to the Cold War and the bipolar world
- Proliferation of Weapons of Mass Destruction
- Rise of State sponsors of terrorism
- Non-State Actor Terrorist Groups

# Commercial Environment

- A country or group of countries no longer has exclusive control over technology
- Growth of Manufacturing and Markets in emerging countries
- Diffusion of sources of foreign availability
- Corporate structure extends internationally and work takes place on a “7/24” basis

# Technology Environment

- Short product cycles and high capital costs
- Constant innovation with premium on R&D for emerging technologies
- International collaboration at commercial and R&D level, including academia
- Emergence of highly talented and global mobile work force with emphasis on education

# 4 Key Questions Re: Export Controls

- Why?
- Who?
- What?
- How?

# Export Controls & Grammar

## Conjugation of Controls

- Verbs = export, reexport or transfer
- Nouns = items (Products, equipment, materials, software, sources code, services).
- Direct Object = foreign ultimate consignee
- Indirect Object = foreign intermediate parties
- Prepositions/Purpose = internal use of consumption, development of product, etc.

# Export Licensing

- Jurisdiction
- Classification
- License Provisos
- Proactive communications among all parties

# The Three “Eees” of Export Controls

- Education
- Efficiency - regulatory
- Enforcement – proactive compliance

# End –Users: Trust But Verify

- Check Bona fides of parties
- Even if EAR99, vet DOC “consolidated end-user” data base
- Importance: Many low end items involve violations because they go to terrorist countries or countries subject to arms embargo.

# Export Control Issues – 2 Cases

- Historical: Soviet Natural Gas Pipeline
- Current: Foreign national and access to U.S. universities and national laboratories
- Significance: National security, foreign policy, competitiveness, compliance, tech transfer

# To Sum Up

- Strategic Trade and export controls involve:
  - national security and foreign policy
  - attention to detail on licensing
  - regulatory efficiency
  - compliance with the rules
- Dialogue with exporters (e.g., rules & licenses)
- The only bad questions in export controls are those that exporters and government compliance persons do not ask of themselves or their colleagues!