



Intangible Technology Transfer and Catch-All Controls



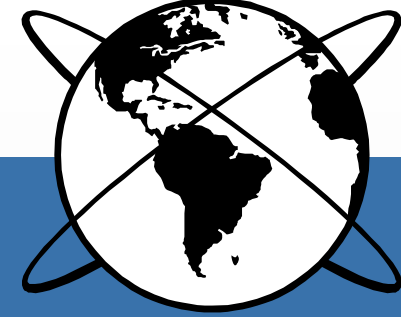
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Introduction to ITT

- Technology is specific information necessary for the “development,” “production” or “use” of a product
- ITT is the transmission or release of technology through intangible means
- There are 2 variations of ITT
 - Transfer of knowledge as technical assistance
 - instruction, skills training or consulting
 - Transfer of technical data in a non-physical form
 - blueprints, schematics, diagrams via e-mail, fax or on The Internet



Introduction to ITT

- ITT is increasing due to:
 - Globalization of businesses and organizations
 - Telecommunications and The Internet
 - Ease of international travel
- Presents significant challenges to export controls traditionally based on national boundaries
- Requires unique policies and practices for effective administration and enforcement



Examples of Possible ITT

- Publicly available encryption software
- Foreign worker employed in domestic corporation
- E-mail exchanges of documents related to integrated circuit production
- Consulting on the development and deployment of wireless telecommunications networks
- Ph.D. programs in microbiology

* These examples represent either Exports or Deemed Exports*





Exports & Deemed Exports

- ITT across a national boundary as a transmission or release out of the country is an export of technology
 - ITT Export controls in most cases are subject to the same authorization as a physical technology transfer
- ITT to foreign nationals within your country is a deemed export of technology
 - Release of a controlled technology to a foreign national is the same as a release or export to their country of citizenship
 - Unique authorization requirements

Deemed Export Authorizations



- Export Controls should require the following to protect against ITT that may result in proliferation
 - Explanation of the technology and justification for the release (LOE)
 - Breadth and scope of technology release
 - Specific information on the foreign national
 - Visa status or resident status and countries of citizenship
 - Personal background information (i.e. complete résumé with no gaps)
 - Reporting and screening by appropriate government agencies
 - Applicant's internal compliance measures



Export Control Challenges of ITT

- Increasingly integrated world
 - Economically/Politically/Socially
- Awareness
 - Which technology is controlled?
 - What are the requirements for authorization?
 - Who is seeking the controlled technology and Why?
- Legality
 - Appropriate export control legislation
 - Burden of proof in ITT
 - Enforcement
 - National Law vs. International Law (Jurisdiction)

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ITT & U.S. Export Controls



- Certain technology released from export controls
 - Technology arising from fundamental research
 - basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community
 - Publicly available technology and software
 - Generally accessible to the interested public in any form, including: publication in periodicals, books, print, electronic, or any other media available for general distribution (may include Internet postings)
 - Released at an open conference, meeting, seminar, trade show, or other open gathering
 - Patented technology

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ITT & U.S. Export Controls (cont.)



- Licensing is required for most controlled technology exports and deemed exports, including ITT via Technical Assistance
 - Example: (US EAR §744.9)
- License exceptions
 - Publicly available encryption source code software
 - Remains controlled, but releasable under US EAR §740.13(e)
 - Proprietary software in source or compiled versions available for download on WWW
 - May be eligible under US EAR §740.17 or §740.6
 - Export control compliance vs. business interests



Summary

- The policy goal
 - Economic growth via exports balanced with national / international security issues to mitigate proliferation
 - National environment allowing the exploration of new technology while maintaining civil liberties
- Export control regimes must:
 - Provide an open and transparent dialogue on policy
 - Ensure awareness of ITT and controlled technology
 - Helps develop appropriate compliance measures
 - Engage in intra- and inter-governmental cooperation and information sharing for effective enforcement



Catch-All Controls

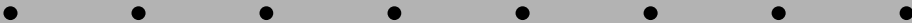


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Introduction to CAC's

- End-user and end-use based controls
- Called “catch-all controls” as they define controls on equipment, software or technology not elsewhere specified
- The controls are focused on:
 - to whom the item is shipped
 - for what purpose
- Requires a license for the export of any item subject to the EAR, regardless of performance, to any end-user or end-use related to nuclear, chemical or biological weapons or the missiles to deliver them (WMD)

Introduction to CAC's (Cont.)



- A license is also required for the export of any item subject to the EAR, regardless of performance, to any end-user as listed under the “Entities List” (§ 744, Supplement 4)
- Entity List is based on the Enhanced Proliferation Control Initiative (EPCI) of 1990
- These end users have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or the missiles used to deliver those weapons.

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Examples of WMD end-uses under EAR



- Nuclear
 - development, design, manufacture, construction of :
 - nuclear explosive device
 - nuclear fuel
 - facilities for the production of heavy water
- Missile
 - used in the design, development, production or use of missiles
- Chemical and biological weapons
 - used in the design, development, production, stockpiling, or use of chemical or biological weapons
- Includes ITT as “Technical Assistance”

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Summary

- The Goal
 - Protect national and international security by inhibiting the transfer of technology used in WMD and missiles to carry the chemical, nuclear or biological agents
- Export control regimes must:
 - Create a “catch-all” watch list of suspect end-users
 - Engage in intra- and inter-governmental cooperation and information sharing for effective enforcement
 - Ensure public and industry awareness of export control requirements
 - Pre-license checks, end-user screening and possibly post-shipment verification