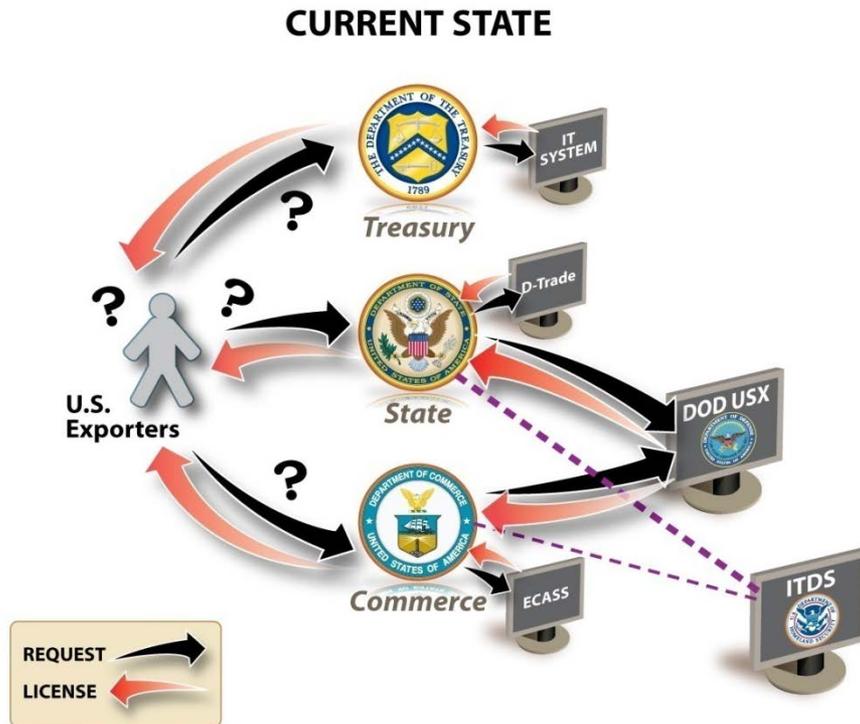


Export Control 101

Brandt Pasco

July 25, 2011

Basic Structure



- Three main licensing agencies
- Department of Defense (“DoD”) provides technical support to State and Commerce licensing process
- DoD technically not a licensing agency, but DoD views are very important

Three Main Statutes

- Arms Export Control Act
 - International Traffic in Arms Regulations

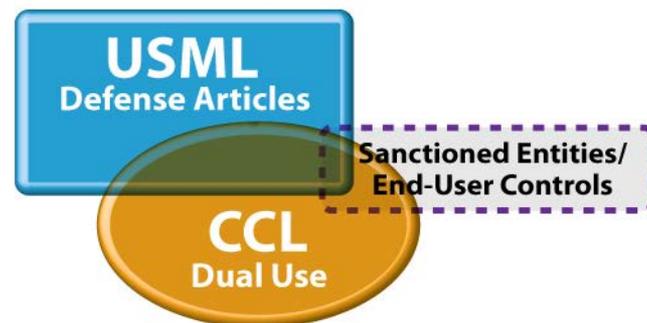
- Export Administration Act (Lapsed)
 - Export Administration Regulations

- International Emergency Economic Powers Act
 - Export Administration Regulations
 - Foreign Assets Control Regulations

Two Control Lists

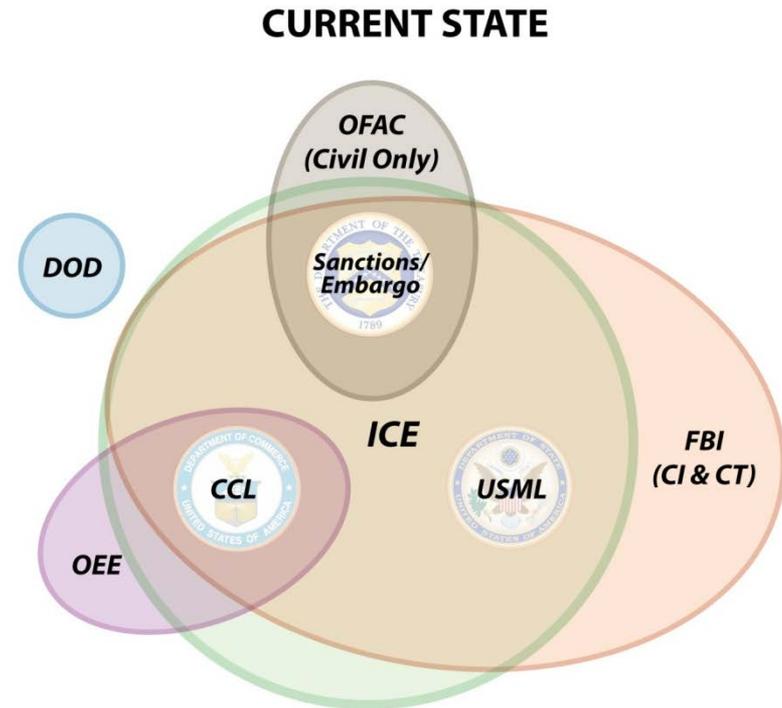
- The U.S. Government maintains two different primary control lists – administered by two different departments
 - United States Munitions List – controls defense articles and services
 - Commerce Control List – controls commercial “dual-use” items, those civil items that have military applications
- The Lists have:
 - fundamentally different structures
 - different levels of specificity
 - different definitions

CURRENT STATE



Enforcement

- There are a multitude of agencies and authorities involved in illegal export investigations.
- Immigration and Customs Enforcement (“ICE”) and the Federal Bureau of Investigation (“FBI”) have investigative enforcement authority for all three primary licensing agencies’ export control activities.
- Two of the three primary licensing agencies – Commerce and the Treasury – have their own enforcement authorities as well.
- State, with the largest volume of cases, works with ICE on most enforcement issues and also with the FBI, but it has no criminal enforcement branch of its own.
- The fragmented structure of the current U.S. export enforcement system, overlaid on an already fragmented licensing system, weakens the ability of the U.S. Government to enforce its controls.



Export Control Reform ...is a perennial, bipartisan failure

- Every Administration since forever has tried to do Export Control Reform, and mostly failed
- System is so complex, that it is difficult to make the process politically accountable
- President George W. Bush tried
 - National Security Presidential Directive 19
 - National Security Presidential Directive 55
 - National Security Presidential Directive 56
- President Obama deserves credit for carrying the effort forward with higher intensity
 - Presidential Study Directive 8

National Economic Council/National Security Council Task Force on Export Control Reform

How PSD-8 is different from previous efforts

- Broadly inclusive of agencies
 - Chaired by NSC, with representatives from State, Commerce, Defense, Treasury, Justice, Energy, Homeland Security, Office of the Director of National Intelligence
 - Agency representatives GS-15 technical experts, not turf owners
- Sustained high level interest
 - Regular NSC Principals and Deputies Committee meetings to bank progress
- “Take off your agency hats or go home.”
 - Task Force directly staffed NSC Deputies



KAYE SCHOLER LLP

Copyright ©2011 by Kaye Scholer LLP. All Rights Reserved. This publication is intended as a general guide only. It does not contain a general legal analysis or constitute an opinion of Kaye Scholer LLP or any member of the firm on legal issues described. It is recommended that readers not rely on this general guide in structuring individual transactions but that professional advice be sought in connection with individual transactions. References herein to “Kaye Scholer LLP & Affiliates,” “Kaye Scholer,” “Kaye Scholer LLP,” “the firm” and terms of similar import refer to Kaye Scholer LLP and its affiliates operating in various jurisdictions.