UT LAW CLE | THE UNIVERSITY OF TEXAS SCHOOL OF LAW

**PRESENTED AT**

32nd Annual Technology Law Conference

May 23-24, 2019
Austin, TX

# OVERVIEW OF AND RECENT KEY DEVELOPMENTS CONCERNING US EXPORT CONTROLS, ECONOMIC SANCTIONS & FOREIGN INVESTMENT

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# OVERVIEW OF AND RECENT KEY DEVELOPMENTS CONCERNING US EXPORT CONTROLS, ECONOMIC SANCTIONS & FOREIGN INVESTMENT

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This paper summarizes certain of the key U.S. statutory and regulatory developments from the past 12 months that affect United States global trade activities. It is important to note that the areas discussed herein are complex and evolving. This paper starts with an overview of the U.S. export control and economic sanctions legal regime, discusses U.S. Government regulation of foreign investment in U.S. businesses, and summarizes developments in each of these areas, including intersecting developments.

## I. OVERVIEW OF THE U.S. EXPORT CONTROL & ECONOMIC SANCTIONS REGIME

Administration of the United States export control and economic sanctions regime is divided among three primary Executive Branch agencies—the State Department, the Commerce Department, and the Treasury Department. The State Department has jurisdiction over military, or munitions list, items and technologies. The Commerce Department has jurisdiction over civil and dual use items and technologies. Finally, the Treasury Department, through its Office of Foreign Assets Control ("OFAC"), is responsible for administering the various economic sanctions programs of the U.S.

The Trump Administration is focused on protecting U.S. technology superiorities as a key element of national security, and as discussed below, these efforts are a work in progress. This focus follows a lengthy regulatory reform process begun by the Obama Administration in August 2009. Over the course of President Obama's two terms, the relevant U.S. Government agencies reviewed and revised the regulatory landscape with an eye towards reducing redundancies and simplifying the system, intending to implement reform in three phases. During the first two phases,

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the agencies reconciled definitions between the various regulations and revamped a number of concepts. One key facet of this effort resulted in the movement of a significant number of items and technologies from regulation by the State Department as military items to regulation by the Commerce Department as non-military items. The goal was to ultimately create in the third phase a single control list, which would be administered by one agency for purposes of licensing exports, as well as a coordination center for export enforcement activities. While much was accomplished with respect to simplifying the regulations and reducing complication across the regulations, specific proposals for the third phase were never developed and the one-regulation/one-agency concept was never achieved.

### A. The Arms Export Control Act & the International Traffic in Arms Regulations

The Arms Export Control Act ("AECA"), 22 U.S.C. §§ 2751-2781, is the main statute that establishes controls over munitions lists exports and international activities related to defense technologies. The International Traffic in Arms Regulations (the "ITAR"), 22 C.F.R. Parts 120-130, is the set of regulations implementing AECA. The Department of State, through the Directorate of Defense Trade Controls ("DDTC"), administers and enforces the ITAR. 22 C.F.R. § 120.1.

The ITAR requires that U.S. persons and companies engaged in manufacturing or exporting defense articles or technology related to defense articles must register with DDTC. 22 C.F.R. Part 121. The ITAR is a relatively short regulation based on broad concepts. If an item, technical data or defense service is described by one of the categories of the United States Munitions List ("USML"), 22 C.F.R. § 121.1, a U.S. person—subject to limited exceptions—is required to obtain a license before exporting that item, technical data or defense service. DDTC evaluates and rules on license applications for items, technical data and defense services on the

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32nd Annual Technology Law Conference session
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