



## US Export Controls: Barriers to Entry and Proven Solutions; Brief Update on US Export Control Reform in the New Era of President Trump

### George N. Grammas

Partner

Chair, International Trade / Global Import and Export Compliance

Squire Patton Boggs

[George.Grammas@squirepb.com](mailto:George.Grammas@squirepb.com) | [squirepattonboggs.com](http://squirepattonboggs.com)

2550 M Street, NW  
Washington, DC 20037  
United States

T +1 202 626 6234  
M +1 240 606 7026

7 Devonshire Square  
London  
EC2M 4YH  
England  
T +44 20 7655 1301





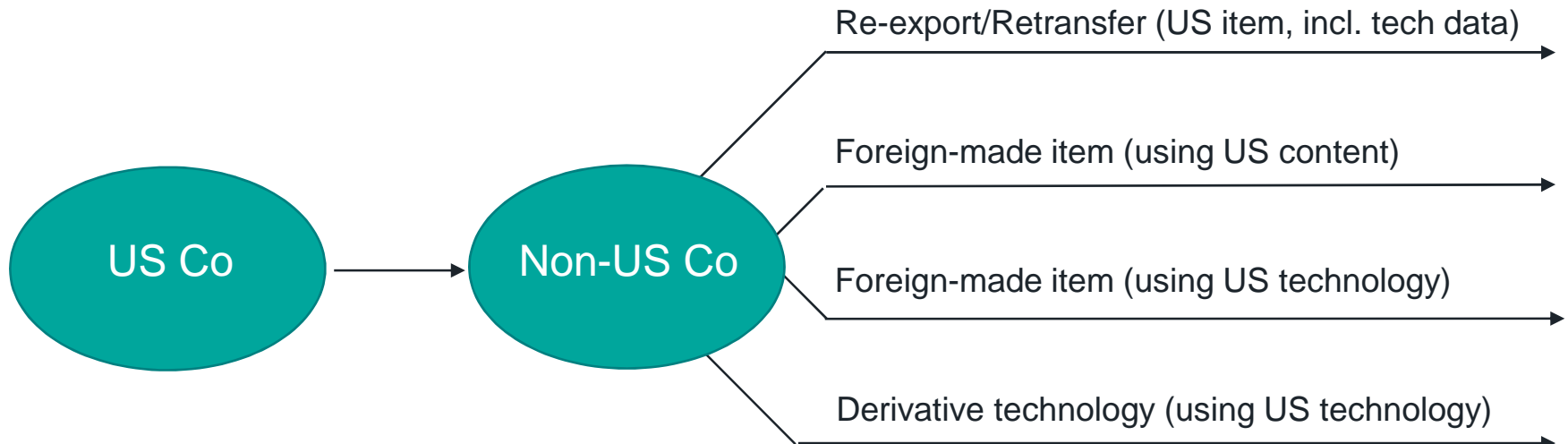
# Scope of US Export Controls

The application of US export controls depends on:

- WHERE: Place of export?
  - Every person in United States, including a UK national or UK company, is subject to US export controls
  - Every item in the United States, including UK made item, is subject to US export controls
- WHO: Nationality of the exporter?
  - A US national or a US company is subject to US export controls, even when all export activities occur outside United States
  - May also be subject to the local country's export controls
- WHAT: Origin of the goods and/or technology being exported?
  - US-origin items remain subject to US controls even after they leave the United States and even after incorporation into a UK product
  - May also be subject to the local country's export controls

# Scope of US Export Controls

- ITAR governs:
  - All exports from the United States
  - Reexports and retransfers of US-ITAR content
- EAR governs:
  - All exports from the United States
  - Certain, not all, reexports and retransfers of US-EAR content



# Laws, Regulations and Government Agencies

	<b>Defense Articles &amp; Services</b>	<b>Other Items</b>	<b>Dealings – Sanctioned Countries / Persons</b>
<b>Government Agency</b>	US Department of State, Directorate of Defense Trade Controls (DDTC)	US Department of Commerce, Bureau of Industry and Security (BIS)	US Department of the Treasury, Office of Foreign Assets Control (OFAC)
<b>Legal Authority</b>	Arms Export Control Act (AECA)	International Emergency Economic Powers Act (IEEPA), Export Administration Act (EAA) - lapsed	International Emergency Economic Powers Act (IEEPA), Trading with the Enemy Act (TWEA)
<b>Implementing Regulations</b>	International Traffic in Arms Regulations (ITAR)	Export Administration Regulations (EAR)	Sanctions Regulations 31 C.F.R. 501-599 North Korea, Cuba, Syria, Iran, Crimea SDN-driven programs (e.g., Russian Entities)
<b>Control List</b>	US Munitions List (USML)	Commerce Control List (CCL)	--
<b>Website</b>	<a href="http://pmdtcc.state.gov">pmdtcc.state.gov</a>	<a href="http://bis.doc.gov">bis.doc.gov</a>	<a href="http://treas.gov/offices/enforcement/ofac">treas.gov/offices/enforcement/ofac</a>

# Export Control Reform: Military Items Moved to the EAR

## Not Transitioned, Totally ITAR

- **Category I – Firearms, Close Assault Weapons and Combat Shotguns**
- **Category II Guns and Armament**
- **Category III – Ammunition/Ordnance**

## Transitioned, Moved to EAR

- Certain items and “specially designed” parts and components of the following:
  - Categories IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVIII, XIX and XX
- Administratively transitioned:
  - Categories XVII and XXI

Certain items from Cat. XVI, Nuclear Weapons Related Articles, transitioned to Department of Energy or the Nuclear Regulatory Commission

## AGENDA

- Overview of US Export Controls
- **Barrier to Participation in US Programs**
- Proven Solution
- US Export Controls under Trump



# Problem

- Participation in the US program requires access to ITAR technical data and/or ITAR defense services
  - Request for proposal
  - Requirements
  - Q&A
- Approval for access to ITAR technical data or ITAR defense services is 60-90 days
- Proposal period has passed or at least the non-US company is at an extreme disadvantage
  - Technical team outside the US is not involved or is involved late in the process



## Export

- An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner
- Releasing or otherwise transferring technical data to a foreign person in the United States (a “deemed export”)
- Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR by a U.S. person to a foreign person
- Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States
- Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad

## Reexport

- An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner
- Releasing or otherwise transferring technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release or transfer takes place (a “deemed reexport”)
- Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR between foreign persons

## Defense Article

- Items on the United States Munitions List including technical data

# Technical Data vs. Defense Services

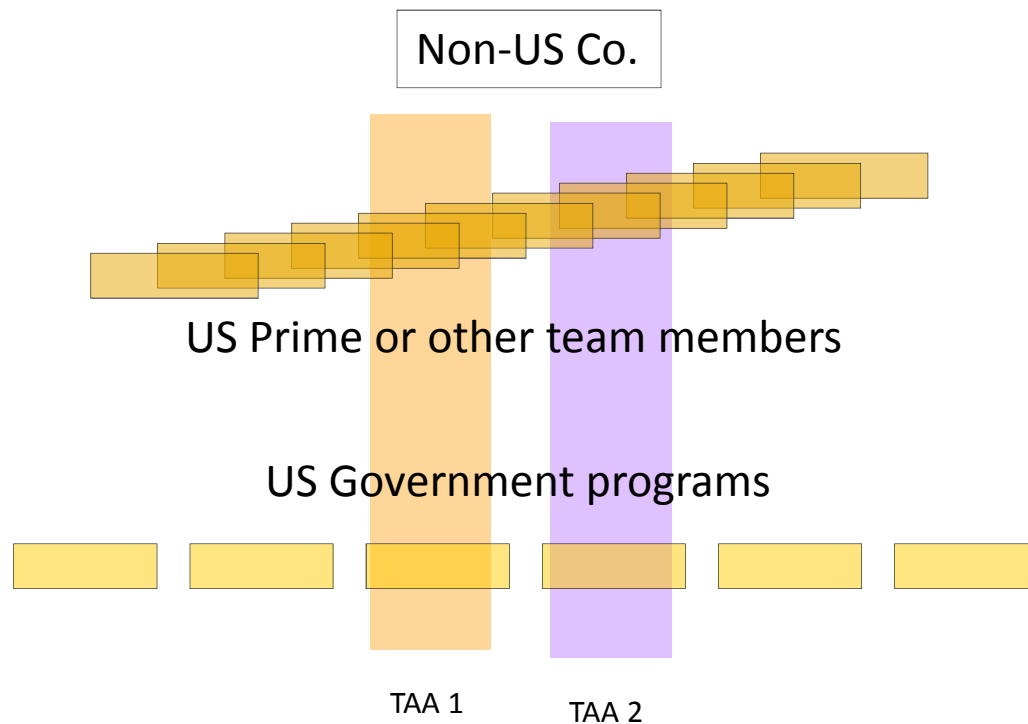
- DSP-5: 4 yrs
  - Export of Technical Data
- Technical data means
  - specific information that is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of a **defense article**.
- TAA: 10 yrs
  - Export of Defense Services and Technical Data
- Defense service means:
  - The furnishing of assistance (including training) to **foreign persons**, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of **defense articles**;
  - The furnishing to **foreign persons** of any **technical data** controlled under the ITAR, whether in the United States or abroad; or

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# TAA: Program-Specific Approach



Program-specific TAA covers:

- Proposal
- Contract performance
- Follow-on contacts (e.g., support)

Limited to:

- Specific program
- Specific government agency
- Listed primes or team members

# TAA: Business Development



BD TAA covers:

- Marketing/business development
- Proposal

Does not cover:

- Contract performance
- Follow-on contracts (e.g., sales, support)

Limited to:

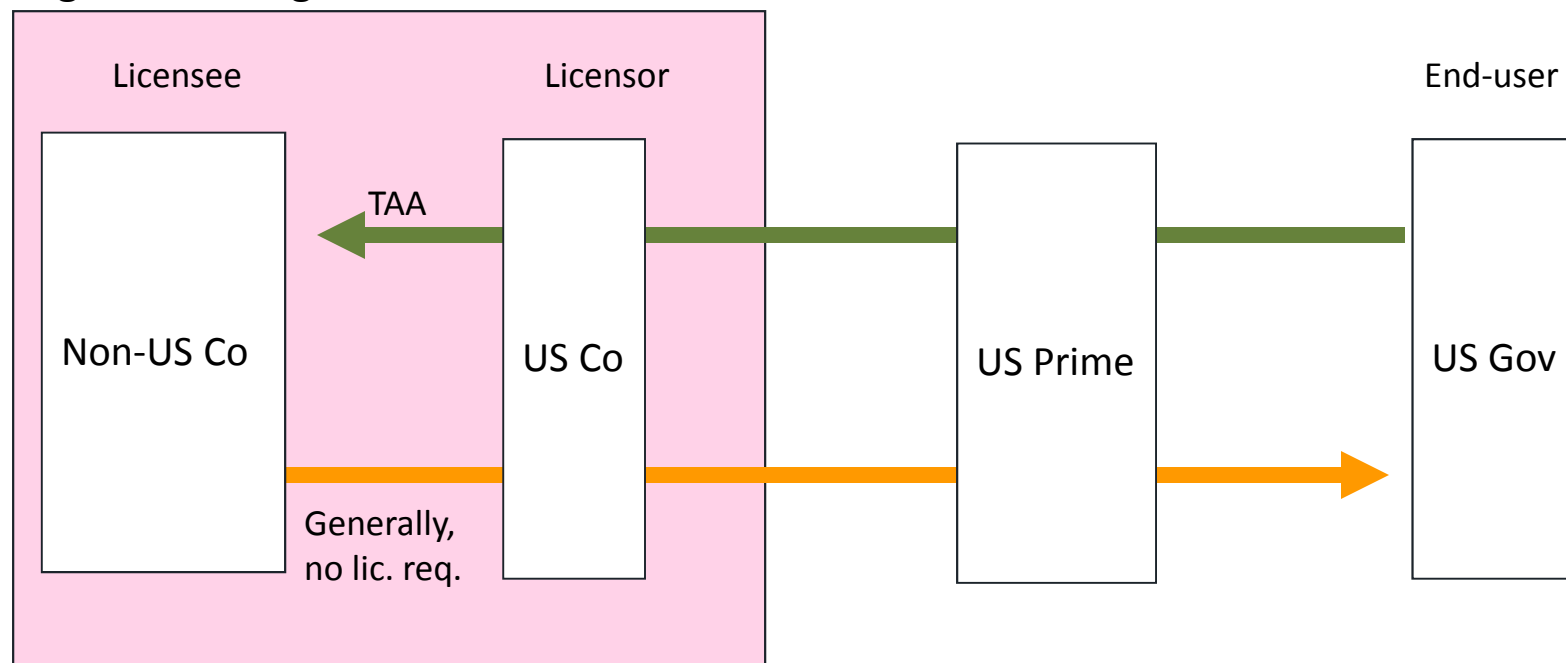
- Listed products or technology
- US Government

Not limited to:

- certain government programs or agencies

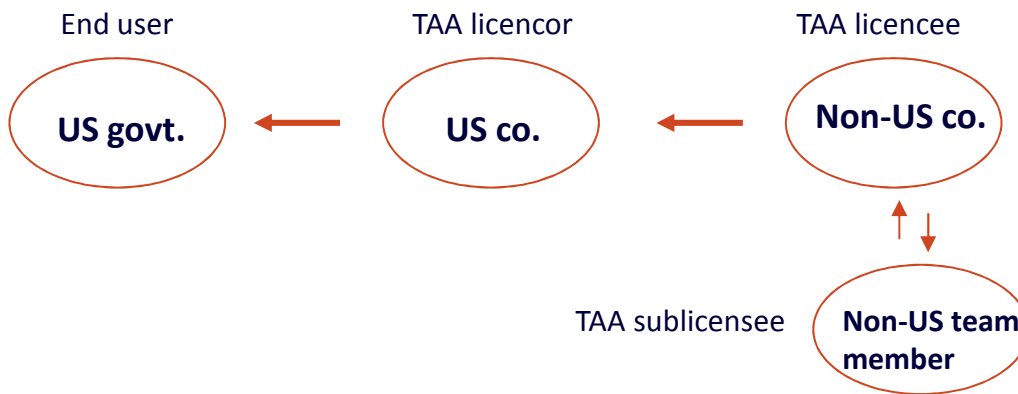
# Effective Use of Agreement to Promote Products in the US

## Agreement Signatories

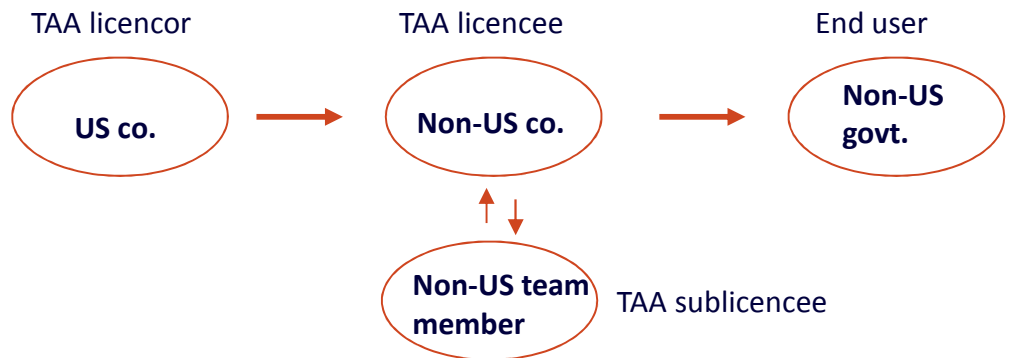


# Parties to the TAA

## Sales to US:



## Purchase from US:



- Non-US signatories—all entities that have direct technical interchange with a US party
- Sublicensees—non-US entities having technical interchange with a TAA licensee only
  - TAA must describe roles of the sublicensees and the technical data to be retransferred to the sublicensee
  - Sublicensee must be listed in TAA, sign NDA and be in territory of the TAA
- End-User Not a Party

# Documents

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- Intercompany, Business Development TAA
- Empowered Official Designation and Training
- Technology Control Plan



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- Confirmation Hearing - Wilber Ross, Secretary of Commerce.
  - Key advisor to Trump; helped shape the Trump economic agenda during the campaign
  - “Pro sensible trade, not trade that is detrimental to the American worker and to the domestic manufacturing base”
  - US cannot afford to engage in trading practices that are inherently bad for American workers and businesses, adding his biggest priority will be expanding U.S. exports.
  - NAFTA renegotiation is a top priority for the Trump Administration
  - How to deal with growing Chinese investment in the United States is “one of the most important questions facing us now”
- Could the UK participate in NAFTA or a NAFTA-like arrangement?
  - President Trump vowed to make the “special relationship” between the UK and the US even “closer” ahead of the meeting with PM Theresa May on Friday
- Could US export controls be used to slow Chinese development of its semiconductor manufacturing sector?
  - China is stepping up its support of domestic chip production to lessen its dependence on foreign technology. The government is telling local companies and Chinese news media that it plans to invest as much as 1 trillion yuan (\$161 billion) over 10 years to develop chip production capability in China.

# Tools to Strengthen Compliance

- The Trade Practitioner
  - ITAR Practitioner's Handbook
  - Updates on US and EU Export Controls and Sanctions
  - European Regulation
  - Trade Policy
  - CFIUS Actions

[www.TradePractitioner.com](http://www.TradePractitioner.com)

