

BIOGRAPHY

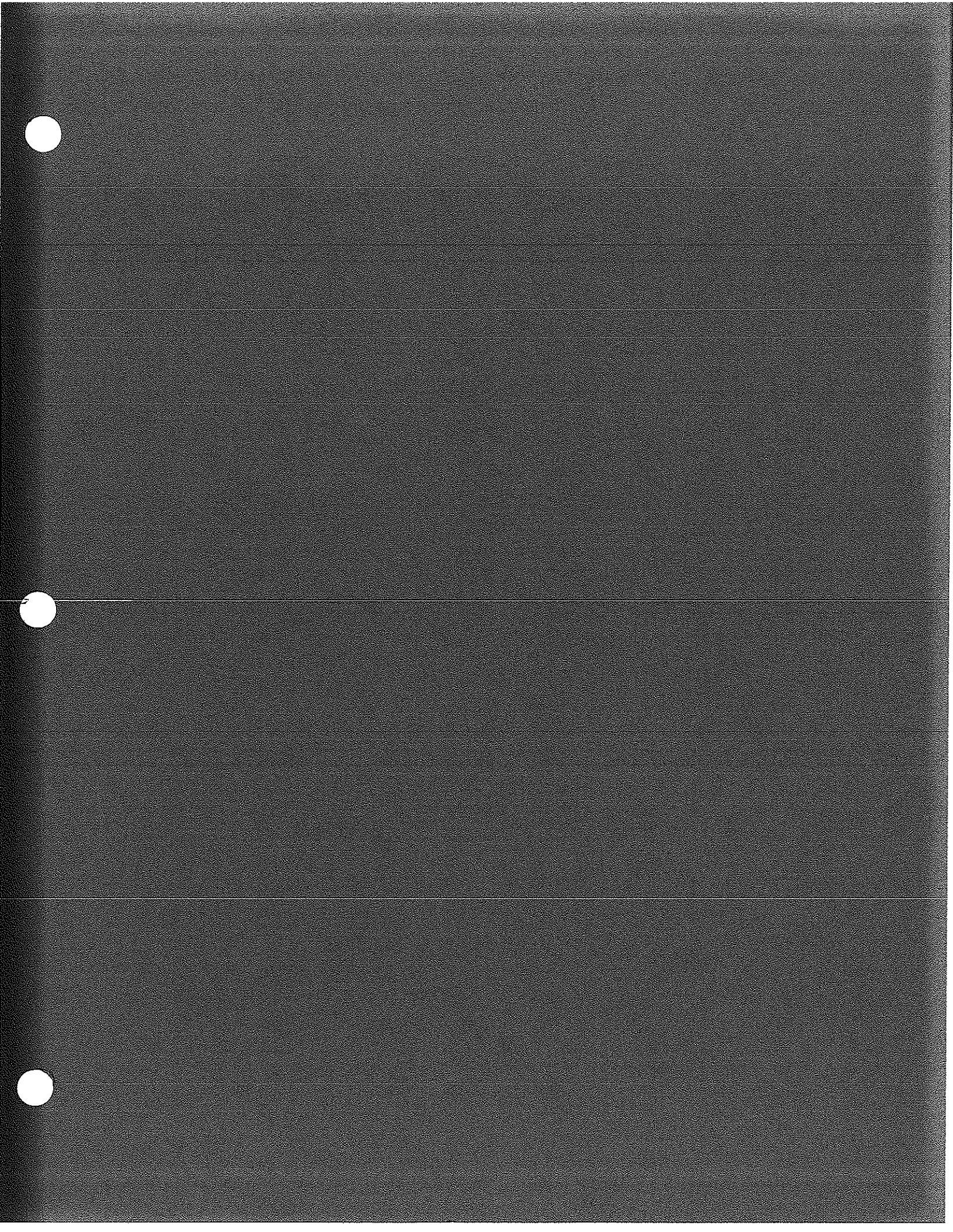
Ted MacVeagh is an associate at Bromberg & Sunstein LLP. His practice includes advising companies on technology transfer issues and representing high-tech start-ups. He also advises companies on compliance with U.S. export regulations. Mr. MacVeagh graduated from Wesleyan University with a degree in Philosophy. He received his law degree from the University of Michigan where he was *summa cum laude* and a member of the Michigan Law Review. Prior to joining Bromberg & Sunstein, he practiced law for Cleary, Gottlieb, Steen & Hamilton in New York and received a masters degree in Philosophy from the University of Pennsylvania. He is qualified to practice in New York and Massachusetts.

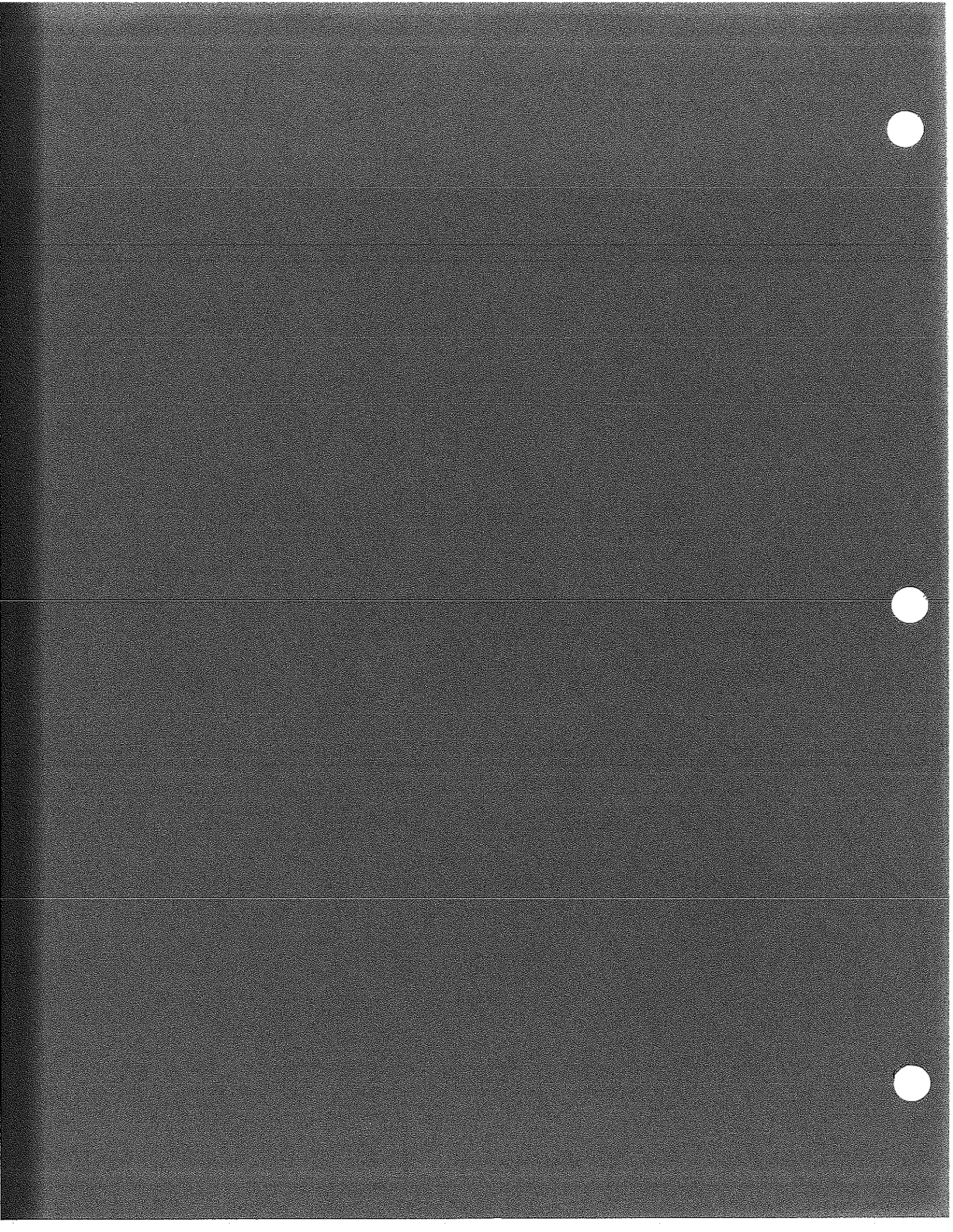
The first part of the report deals with the general situation in the country. It is noted that the economy is still in a state of depression, and that the government is struggling to meet its obligations. The report also mentions the need for further reforms and the importance of maintaining stability.

In the second part, the author discusses the social conditions. It is pointed out that the majority of the population is still living in poverty, and that there is a need for social welfare programs. The report also mentions the importance of education and the need for a more equitable distribution of resources.

The third part of the report deals with the political situation. It is noted that the government is still facing many challenges, and that there is a need for further reforms. The report also mentions the importance of maintaining a strong and stable government.

Finally, the report concludes with a number of recommendations. It is suggested that the government should continue to work on economic reforms, and that it should also focus on social welfare and education. The report also mentions the need for a more equitable distribution of resources, and the importance of maintaining a strong and stable government.





Export Control Law

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Presentation to

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Advanced Licensing Institute

by

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What is Export Control Law

Export control law is the body of law that controls the transfer of goods which may have military uses to certain non-U.S. persons and entities. These controls are based on shifting national security and foreign policy interests

Export control laws also control:

- Certain activities of U.S. persons and entities outside of the United States (e.g. activities relating to proliferation)
- Certain activities of foreign persons within the United States
- Certain transfers within the United States to foreign nationals
- Certain transfers within the United States to U.S. persons (1)

Relation of Export Control Law to Licensing

Export controls are imposed on technology (and raw materials used with the technology)

Export control law is (potentially) relevant to every technology transfer

Patent and software licenses generally contain a clause such as:

The Licensee shall not export, re-export or use the Materials or any copy thereof in violation of the export control laws of the United States of America

The clause becomes more than boilerplate if the technology is exported or intended for use outside the United States

The items controlled by the Department of Commerce include an array of items which are not obviously military in nature as well as objects that are used broadly in civilian contexts

Every technology company should be aware of controls relating to high performance computers, encryption software and deemed exports

Convincing Clients to Care

The cost of compliance with U.S. export laws can be high and clients may not perceive the value

It is very important for your clients to buy-in to any compliance efforts

Consider these points:

• Important transactions can be held up if export status of technology is not clear

• Penalties for failure to comply can be severe, including fines, loss of export rights, blacklisting, and criminal penalties

• More aggressive enforcement is likely in the current climate

• Headlines regarding a violation of U.S. Export law are a public relations nightmare

• Patriotism: certain exports may cause material damage to U.S. interests

Current Status of Export Control Law

**Pre 9/11 Conventional Wisdom:
Outdated cold war laws prohibiting
efficient global commerce, and
desperately in need of reform**

**Post 9/11 Conventional Wisdom: Vital
first line in the protection of our
national security interests, and
desperately in need of reform**

Some Historical Perspective

- 1775 - Continental Congress outlaws export of goods to Great Britain, establishing first American export controls
- 1949 - U.S. and 6 Western European nations create the Coordinating Committee for Multinational Export Controls (CoCOM) to prevent the transfer of militarily useful technology to communist countries - NOTE MULTILATERAL ORIGINS
- 1949 - U.S. passes the Export Control Act (ECA) giving the Dept of Commerce primary responsibility for enforcing controls on "dual-use" items
- 1970 - The ECA lapses and the Export Administration Act (EAA) took effect
- 1994 - The EAA lapses; Dept. of Commerce continues to act under Executive Orders (invoking authority under International Emergency Powers Act)
- 1995 - U.S. and 27 nations (including former communist block countries) establish the Wassenaar Arrangement as a successor to CoCOM to control the spread of dangerous military technology - CURRENT MULTILATERAL FRAMEWORK
- 1996 - Interim rule published in the Federal register simplifies the Export Administration Regulations (EAR), the first comprehensive rewrite in 40 years
- 2002 - The EAA is in the process of being rewritten

Some Policy Issues

1. **Despite recent efforts to change, policies are still shaped by a cold war that is not relevant to today's foreign policy concerns**
2. **Distinctions between military and civilian technology have been blurred**

Recent engagements (Iraq, Kosovo, Afghanistan) show value of technologies for sensors, geo-spatial location, signal processing and telecommunications over conventional military power
3. **Value of export controls to national security v. drag on U.S. economic interests**

If products are available outside U.S., U.S. loses market share with no appreciable gain in security

If regulations fail to keep up with technology, U.S. loses market share with no appreciable gain in security
4. **Rationalization of controls is necessary. Divided regime makes compliance difficult**
5. **Value of the multilateral structure**

Divided Authority of Current Export Control Regime

1. **Department of Treasury - Office of Foreign Assets Control (OFAC)**
2. **Department of State - Office of Defense Trade Controls (ODTC)**
3. **Department of Commerce - Bureau of Industry and Security (BIS) (previously known as the Bureau of Export Administration (BXA))**
4. **Other relevant agencies: Defense Department; Intelligence Agencies; Energy Department; NRC; DEA; FDA; PTO; Department of the Interior**

OFAC Responsibilities

There is no single authorizing statute for OFAC.

Much of its work is authorized under the International Emergency Economic Powers Act § 1701-1706

There is no single set of OFAC regulations. Rather they are contained in several parts in Title 31 of the C.F.R. (starting with Part 500)

OFAC administers and enforces economic sanctions programs against countries persons and entities subject to U.S. and U.N. embargoes. These include:

- financial sanctions, including investment bans and asset freezes
- export and import embargo
- travel and transportation b

Using the EAR - ECCN 4A002

4A002 "Hybrid computers" and "electronic assemblies" and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP
Control(s)

NS applies to entire entry

MT applies to hybrid

computers combined with specially designed "software",

for modeling, simulation,

or design integration of

complete rocket systems and

unmanned air vehicle systems

that are usable in systems

controlled for MT reasons

AT applies to entire entry

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies

XP applies to hybrid computers with a GTP greater than 28,000 MTOFS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

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Country Chart

NS Column 2

MT Column 1

AT Column 1

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Using the EAR - ECCN 4A002

License Exceptions

LVS: \$5000; N/A for MT
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; parts and accessories in \$ value

Related Controls: See also 4A102 and 4A994

Related Definitions: N/A

Items:

- a. Containing "digital computers" controlled by 4A003.
- b. Containing analog_to_digital converters having all of the following characteristics:
 - b.1. 32 channels or more; and
 - b.2. A resolution of 14 bits (plus sign bit) or more with a conversion rate of 200,000 conversions or more.

Using the EAR - Commodity Classification Requests

If there is any doubt about how a product should be classified, you should submit a Commodity Classification Request to the BIS.

Why is this necessary:

CCL may be difficult to interpret; often the standards it uses are not familiar to engineers

BIS may interpret CCL differently than is apparent from the written text based upon policy decisions

Classification Requests are fairly easy to prepare and submit

Using the EAR - Country Chart

Is the item's ECCN controlled to the particular country to which you are proposing to export it?

• Review the Country Chart at 15 C.F.R. § 738

• Is there an X across from the country to which you want to export under the reason for control identified under the ECCN under which your product falls?

• If not, no license is required

• If so, a license is required

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Using the EAR - License Exceptions

License exceptions are detailed at 15 C.F.R. § 740. In order to qualify for an exception, an export must meet the specific criteria required therefor. Important exceptions include:

- LSV - Shipments of Limited Value
- CIV - Civil End-Users
- TSR - Technology and Software Under Restriction
- CTP - Computers
- TMP - Temporary Imports, Exports, and Reexports
- TSU - Technology and Software - Unrestricted
- ENC - License Exceptions

Using the EAR - License Exceptions

Consider the TSR License Exception. This exception permits "exports and reexports of technology and software controlled to the ultimate destination for national security reasons and identified by 'TSR - Yes' in entries on the CCL" provided:

- **that the software or technology is destined for countries in Group B;**
- **a written assurance is received from the consignee that neither the technology/software or products of the technology or software will be delivered to certain countries in Group D1 and Group E; and**
- **certain reporting requirements are met**

Exports of Non-Encryption Software

Exports of software are governed like any other product by the CCL

However, there is an important exception for "mass market" software (other than encryption software) Software qualifies as "mass market" if it is generally available to the public by being:

sold from stock at retail selling points, without restriction, by means of: (1) over the counter transactions; (2) mail order transactions; or (3) telephone call transactions;

AND

designed for installation by the user without further substantial support by the supplier

Non-Encryption mass market software can be exported without a license under license exception TSU to any destination except the T-7 (Cuba, Iran, Iraq, Libya, North Korea, the Sudan, Syria) **BROMBERG & SUNSTEIN LLP**

Exports of High Performance Computers (HPCs) - CTP License Exception

For a long time the issue of the export of HPCs was a source of tension between regulators and industry

Regulations were always outmoded, lagged behind industry

In 1992, 1/3 of computer industry's overseas sales were subject to license review; in 1993, a computer with a performance of 12.5 million theoretical operations per second (MTOPS), equivalent of an Intel 486 chip, needed a license; manufacturers were preparing to mass produce computers with performance at 200 MTOPS (using Intel Pentium chips and DEC's Alpha AXP chip)

Mass-produced HPC technology was uncontrollable

U.S. industry was being harmed; losing market share and encouraging the development of a non-U.S.-based competitors

U.S. defense requires HPCs and would be harmed if the U.S. HPC industry ceased to be a world leader

Control of HPCs used to be justified because of use of HPCs in nuclear weapon design. If computer speed is no longer a critical choke point for nuclear weapon design, what is the justification for control?

Issues resolved by the creation of License Exception CTP and a commitment to revisit the policy on a regular basis

CTP License Exception Chart from BIS Web Page -
<http://www.bxa.doc.gov/HPCs/ctpchart.htm>

Computer Tier End-User CTP greater than CTP less than or equal to 1' All 28,000' No Limit

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Exports of Encryption Software

Until 1996 most encryption technology was still listed on the Munitions List, meaning that it could not be exported without a license from the ODTC

Similar story as with HPCs

- Rigorous controls were a source of tension between industry and regulators

- Wide industrial use of encryption and international availability made overbroad export control impracticable (Microsoft Office 2000 could not be exported without a license under 1999 rules)

- Compromise reached through a far-reaching license exception ENC which lifts most controls on technology

Encryption Software is still treated differently than other software (and other technology)

However, new rules issued in January, 2000, substantially loosened the controls

Exports of Encryption Software

START YOUR ANALYSIS WITH EAR § 742.15. Most exports require review or notice by BIS

Under License Exception TSU:

Free, publicly available source code can be exported without a license (upon notification of BIS)

Under License Exception ENC:

Any encryption products may be exported to foreign subsidiaries of U.S. corporations without review and classification by BIS

Any encryption products of any key length may be exported to any user in the EU+8 or any non-government user in other countries (other than the T7) after review and classification by BIS

Products designated as "retail" may be exported to any end user (other than in the T7) after review and classification

Be careful of cryptanalytic products or cryptographic products with open cryptographic interfaces

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Deemed Export Rule

EAR § 734.2(b)(2)(ii) defines export to include: "Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or home countries of the foreign national."

EAR § 734.2(b)(3) provides that the "release" of technology includes: "(i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities; (ii) Oral exchanges of information in the U.S. or abroad; and (iii) The application to situations abroad of personal knowledge or technical experience acquired in the U.S."

Foreign national includes anyone in the U.S. on nonimmigrant visa categories (B, E, F, H, J or L), but does not include permanent residents (green card holders) and "protected individuals" as defined in the Immigration and Naturalization Act (e.g. asylees)

BEWARE: ITAR has a similar rule for deemed exports of defense articles and there are almost no al

(see ITAR § 120(17)(a)(4))

Deemed Export Rule

Encryption "software" (source code and object code) is not subject to "deemed export" rule (possibly a reaction to Bernstein v. Department of State, 922 F. Supp. 1426 (1996)). See § 734.2(b)(9)

The deemed export rule would apply to encryption "technology" except that license exception ENC permits transfers of encryption technology to foreign nationals within the U.S. for internal company use (exception nationals of the T7)

Result of Deemed Export Rule:

- Companies must classify all technology, not just technology included in exports
- Companies have an obligation to determine the nationality or immigration status of all of its employees who may have access to controlled data

OFAC Responsibilities

Sanctions are administered against the following countries, entities and individuals:

- **Balkans, Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sierra Leone, Sudan, Yugoslavia**
- **Taliban, UNITA and its nationals (embargo against Syria is administered by BIS)**
- **Specially Designated Nationals (SDNs) and Blocked Persons which act as fronts for sanctioned governments**
- **Specially Designated Terrorists**
- **Specially Designated Narcotic Traffickers**

OFAC Responsibilities

OFAC's regulations are complex and ever-changing. Since September 11, there have been multiple changes to the list of Blocked Persons and a huge increase in the pressure to comply with regulations.

OFAC penalties are high, up to \$1,000,000 fines and 12 year jail terms.

Banks in particular are under pressure and have been struggling to comply with OFAC regulations designed to stop the flow of funds from or to Blocked Persons.

It is vital banks have a compliance in place to identify and stop transactions with Blocked Persons or using assets that have been

ODTC Responsibilities

The ODTC has jurisdiction over the export of “Defense Articles” and “Defense Services” Controls are contained in the International Traffic in Arms Regulations (ITAR) - 22 C.F.R. § 120 - 130

ITAR is promulgated under the Arms Export Control Act § 2778 - 2994

“Defense Articles” are those products included on the U.S. Munitions List (USML) - 22 C.F.R. § 122

“Defense Services” are military training services or services relating to the design,

development, production, PROMBERG & SUNSTEIN LLP

ODTC Responsibilities

In addition to overseeing exports of items off the USML, the ODTC has responsibility for the following:

- **Maintaining the USML (adding and subtracting items)**
- **The registration of persons engaged in manufacturing or exporting defense articles**
- **Licensing temporary imports of defense articles (permanent imports of such articles are under the jurisdiction of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms)**
- **Regulating the brokering of transactions involving defense articles or services, whatever the location or origin by a U.S. person**
- **Governing "deemed exports" of defense articles and services**

Defense Articles

Unlike the CCL (discussed below), the USML does not include detailed technical parameters

An article may be designated on the USML if the article:

- (a) is specifically designed, developed, configured, adapted, or modified for a military application (ii) does not have predominant civil applications and (iii) does not have equivalent performance to an item or service used for civil applications; or

- (b) is specifically designed, developed, configured, adapted, or modified for a military application, and has a significant military or intelligence applicability such that control by the State Department is necessary. 22 C.F.R. 120.3

ITAR defines "defense article" to include "technical data" which includes software "directly related to" defense articles (unlike the BIS regulations, which treat technology and software differently)

Commodity Jurisdiction Requests

Because of the broad categorizations used by the USML, it is not always possible to tell whether a particular product would qualify as on the USML or not. One entry reads:

- (a) military training equipment including but not limited to . . . operational flight trainers . . . and simulation devices related to defense articles.
- (b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.
- (c) Technical Data . . . directly related to the defense articles enumerated [above].

If you are selling electronics or software to the military for use in military flight schools, your products may fall on the USML

In order to determine whether an item or service is on the USML you can file a Commodity Jurisdiction (CJ) Request with the ODTC. If you file a Classification Request with BIS for an item predominantly sold to the military, the BIS may require that you file a CJ Request before they will rule on its classification

In reviewing CJ Requests, the ODTC pays particular attention to the origin of an item (military or not), its civilian applications and any character use of the item by the military.

BIS (BXA) Responsibilities

BIS has jurisdiction over the export and reexport of "dual use" items - items that may have both military and non-military uses

Controls are contained in the Export Administration Regulations (EAR) - 15 C.F.R. § 730-774

BIS is authorized to promulgate and administer the EAR under Executive Order; a successor to the EAA is in the process of being drafted

BIS also regulates:

activities of U.S. persons relating to spread of ABC weapons or missile technology

release of certain items of technology to foreign nationals within the United States (deemed exports)

sales of certain foreign-made items made with or incorporating U.S. technology

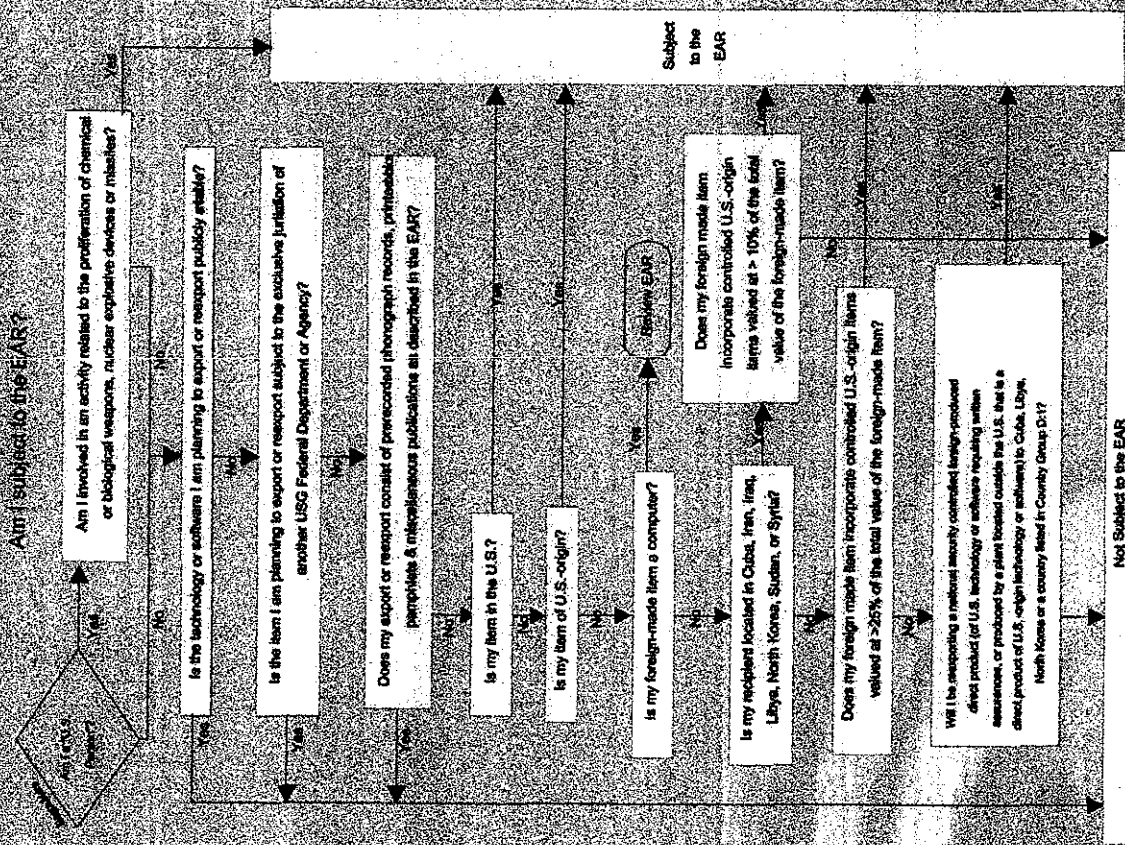
transmission of data and software electronically (e.g., via posting on web site without restrictions on access)

Using the EAR - "Subject to the EAR"

KEY CONCEPT: Is an export or activity "subject to the EAR"? See chart at 15 C.F.R. § 732 (Supplement 2)

- Is the export or activity related to the proliferation of ABC weapons or missile tech?
- Is the item publicly available?
- Does another agency have jurisdiction?
- Is the item in the U.S.?
- Is the item of U.S. origin?
- Does item have certain U.S. content or is it the direct product of certain U.S. technology?

15 C.F.R. § 732, Supplement 2



Using the EAR - Is a License Required?

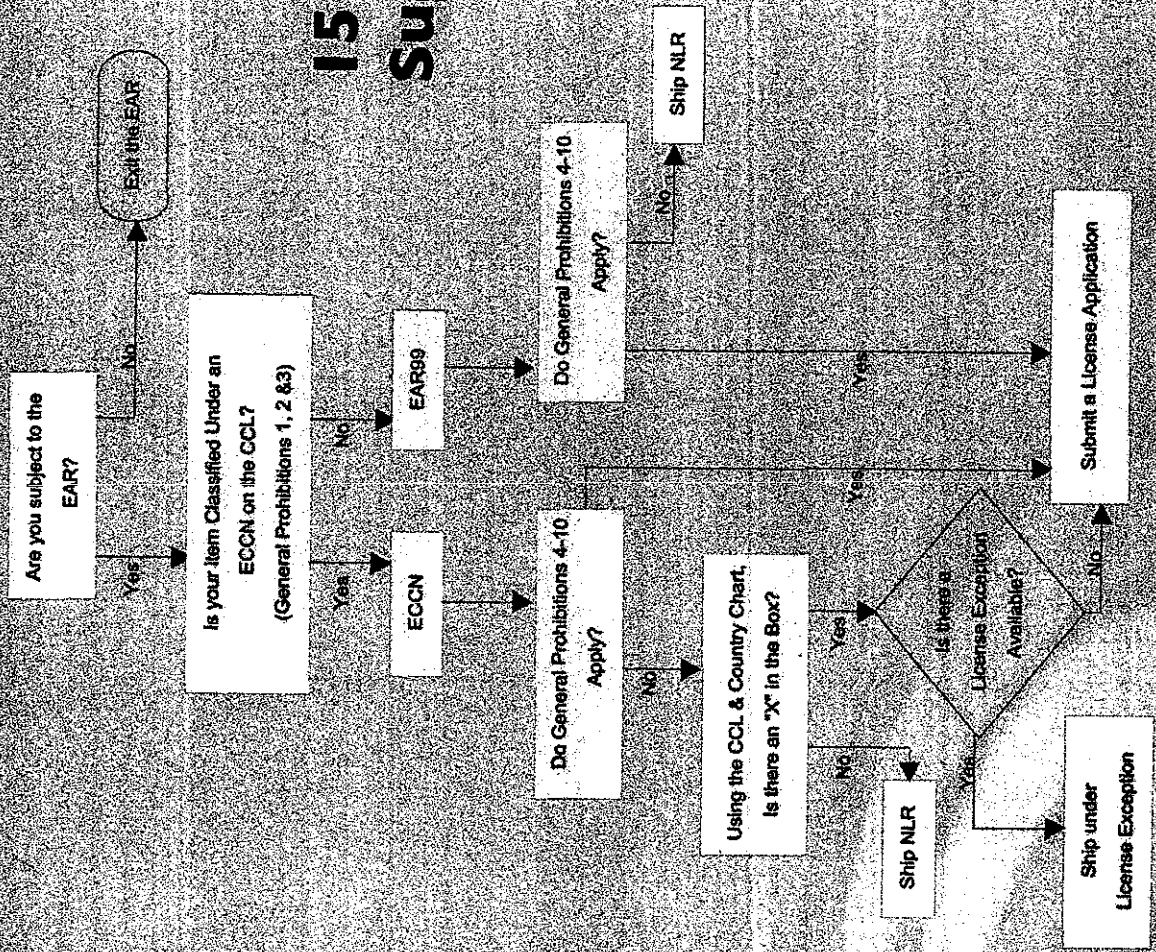
If an export is subject to the EAR, is a license required?

- Is the item classified under an ECCN on the CCL?
- Does a General Prohibition apply?
- Is there an "X" across from the proposed destination of the export in the Country Chart?

Does a license exception apply?

- Use the EAR Decision Tree at 15 C.F.R. § 732 (Supplement I)

Decision Tree



15 C.F.R. § 732, Supplement I

Using the EAR - General Prohibitions

15 C.F.R. § 736 lists 10 General Prohibitions relating to the export of goods

General Prohibitions 1-3 relate to the Commerce Control List and depend upon the nature of the product being transferred

General Prohibitions 4-10 focus on preventing proliferation of missile technology and nuclear, chemical and biological weapons and apply to the transfer to end-users or end-uses related to proliferation without regard to the nature of the products

Prohibition 4 prohibits transfers to persons on BIS's "Denied Person List"

Prohibition 5 prohibits transfers where the exporter "knows" of a specific link to proliferation activity. "Knowledge" includes a conscious disregard of the likelihood of a violation as well as positive knowledge

Obligations require companies to use and follow BIS's "Know Your Customer" guidance and be alert for "Red Flags" (Appendix A)

Using the EAR - Commerce Control List

The CCL has ten broad categories:

- 0. Nuclear Materials, Facilities & Equipment
- 1. Materials, Chemicals, Microorganisms & Toxins
- 2. Materials Processing
- 3. Electronics Design, Development and Production
- 4. Computers
- 5. Telecommunications Systems, Equipment and Components
- 6. Sensors and Lasers
- 7. Navigation and Avionics
- 8. Marine
- 9. Propulsion Systems, Space Vehicles and Related Equipment

Each category is divided into 5 subcategories:

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Materials
- D. Software
- E. Technology

Exporting with Confidence

1. You have checked your licensor/purchaser against the most recent OFAC list of SDNs and Blocked Persons and BIS's Denied Persons
2. You have submitted a Commodity Jurisdiction Request and received confirmation that your product is not a "defense article" under the jurisdiction of OTDC
3. You have submitted a Classification Request with respect to your product to the BIS and received an ECCN Number
4. You have checked the controls on the ECCN against the Country Chart and determined that there is no control for the country to which you are exporting
5. You have confirmed that you are not exporting your product in violation of any of the General Prohibitions, paying attention to the BXA "Know Your Customer" Guidelines
6. You have a process in place that will catch any Red Flags

NOW . . . EXPORT AWAY!

THANK YOU

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