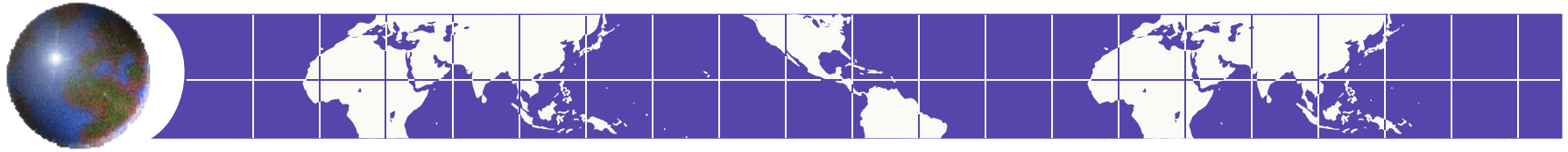


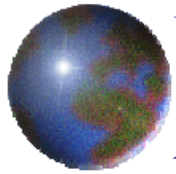
Export Controls

Christina Carey Howard
General Motors Company
May 18, 2011



Export Compliance at GM

- ⊕ 2004 Consent Agreement
- ⊕ Legal Staff
- ⊕ Global network of Export Compliance Officers
- ⊕ GM's "export" business



U.S. Export Control Laws

✿ Export Administration Regulations (EAR)

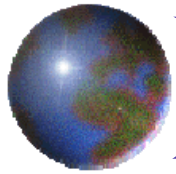
- ✦ Department of Commerce
- ✦ Controls “dual-use” items on Commerce Control List
- ✦ Antiboycott



✿ International Traffic in Arms Regulations (ITAR)

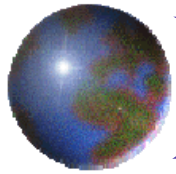
- ✦ Department of State
- ✦ Controls military items and technology on U.S. Munitions List





U.S. Export Control Laws

- ❖ Foreign Assets Control Regulations
 - ❑ Office of Foreign Assets Controls (OFAC)
 - ❑ Transactions
 - ❑ Embargoed destinations, denied parties
- ❖ International obligations
 - ❑ Wassenaar, UN
- ❖ Global export control laws

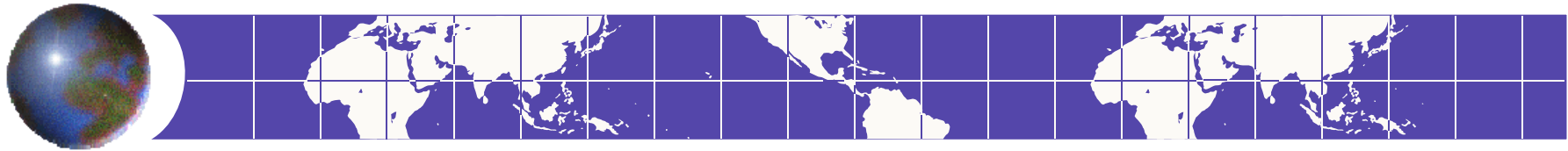


What is an Export?



- ❖ Shipment or transmission of hardware, software or technical data outside of a country
 - ❑ Physical shipment, email, fax, verbal, download or access to U.S. system
- ❑ “Deemed export” – allowing a foreign national access to, or the ability to access, technical data *within* the U.S.





Compliance 101

✚ *What* are you exporting?

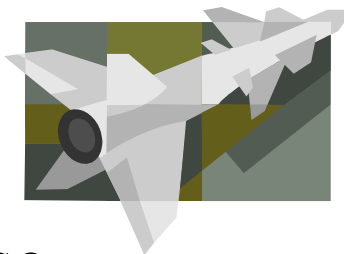
- ▣ Jurisdiction
- ▣ Classification

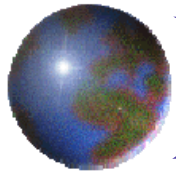


✚ *Where* are you exporting?

✚ *Who* will receive your item and what will it be used for?

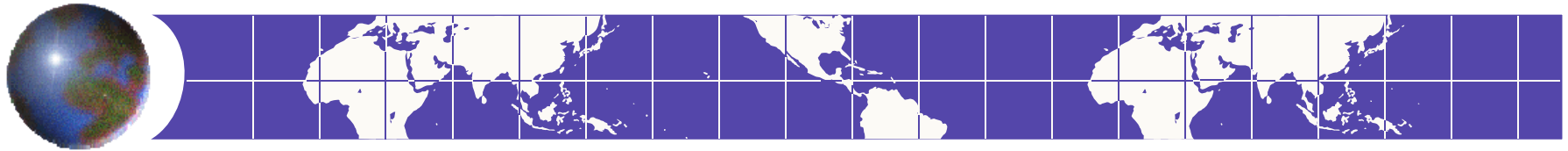
- ▣ Screening
- ▣ Prohibited end use





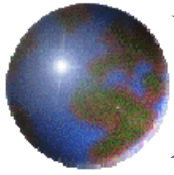
Global Operations

- ⊕ U.S. laws are extraterritorial
 - U.S. persons, items, services, transactions
- ⊕ Laws of other countries
- ⊕ Global technology/R&D collaboration
- ⊕ Privacy laws – screening, citizenship
- ⊕ 50/50 JVs in China – control?
- ⊕ Sanctioned country relationships of business partners



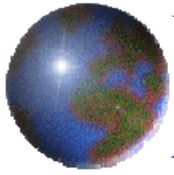
Recent Activities

- Overhaul of U.S. Export Controls
- One agency, one list, one license, etc.
- Sanctioned countries
 - Syria
 - Libya
 - Sudan
 - Venezuela
 - Cuba, Iran



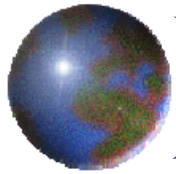
EU Export Controls

- EC regulation 1334/2000 – 428/2009
- Common EU rules on control of dual-use exports
 - Primarily exports from the EU
- Annex 1 – dual-use list
 - Some member states have add'l unilateral controls
- Licensing, enforcement and penalties left to Member States
- Military left to Member States
- Compliance with U.S. laws does not necessarily equate to EU compliance



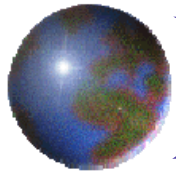
EU vs. US

- Annex 1 similar but not identical to ECCN
- No AT level controls
- Numerous national licenses, different penalties and levels of enforcement
- No re-export rules
 - But you must provide full information in license request
- No deemed export
- “Smart” sanctions, no complete embargoes
 - Some unilateral regimes (Burma, Zimbabwe, additional Iran)



Why Compliance Matters

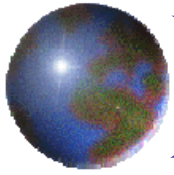
- General Motors \$20M
- Boeing \$15M, \$3M
- BAE \$79M
- ITT \$100M
- Consent Agreements
 - Audit
 - Special compliance officer



Why Compliance Matters

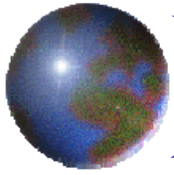
- ⊕ Voluntary disclosures
- ⊖ Civil and criminal penalties
 - ⊠ \$1M per violation
 - ⊠ Imprisonment
- ⊕ Denial of export privileges
- ⊖ Public image





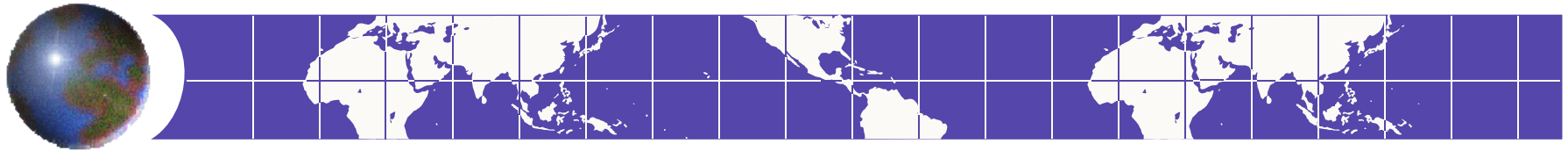
Free (and obvious) Advice

- Have a strong, up to date, export compliance program embedded in the business
 - You may be asked for it
 - Federal Sentencing Guidelines
 - Not just U.S.
- Pay attention to acquisitions and non-core business

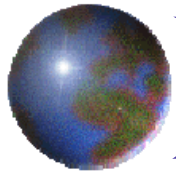


Free (and obvious) Advice cont.

- Outside counsel – if you aren't an expert, be knowledgeable enough to spot issues for your client and affiliate with someone who is
 - Not everything is in the regs or caselaw
- In house counsel – hire experienced export counsel
 - Especially when dealing with the government

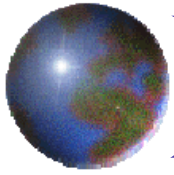


*CFIUS – Committee on
Foreign Investment in the
United States*



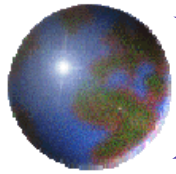
CFIUS

- ❖ Foreign investment in the U.S. involving certain investor countries, entities and U.S. industries are likely to trigger national security reviews by the Committee on Foreign Investment in the United States (CFIUS)



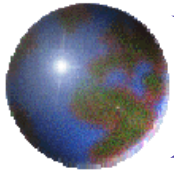
CFIUS

- Section 721 of the Defense Production Act of 1950 (“Exon-Florio” Amendment) authorizes the President to –
 - Review and investigate
 - acquisitions, mergers, takeovers and investments
 - by or with foreign persons
 - which could result in foreign control
 - of any person engaged in interstate commerce in the U.S.
 - Suspend and prohibit such a transaction based on a determination that it may impair U.S. national security or seek post-acquisition divestiture.



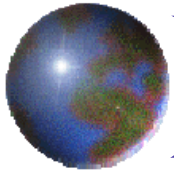
CFIUS

- CFIUS was established in 1988 to conduct these national security reviews and make recommendations the President.
- Exon-Florio was amended by the Foreign Investment and National Security Act of 2007(FINSA).
 - Prompted by high-profile, controversial transactions.
 - Sought to balance dual priorities of preserving U.S. open investment policy and protecting U.S. national security.
- December 2008 - Implementing regulations and guidance
 - 31 C.F.R. 800



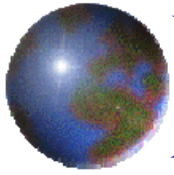
CFIUS

- Review can be initiated by voluntary notice from the parties or request by a CFIUS member.
 - Initial Review: 30-day period to identify whether national security issues exist and can be adequately addressed.
 - Investigation: 45-days based on determination that the proposed transaction threatens U.S. national security.
 - CFIUS Recommendation: Block, divest, stalemate.
 - Presidential Decision: within 15 days of formal CFIUS recommendation or request for action.
- CFIUS clearance provides safe harbor for the transaction.



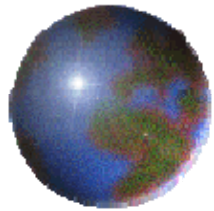
CFIUS – Typical Filers

- Foreign investors who make “controlling investments” in U.S. businesses that have national security considerations, such as:
 - Classified defense or homeland security-related contracts
 - Sole source or sensitive contracts with federal, state or local government
 - Critical or emerging technologies and infrastructure
 - Energy
 - Export control restrictions, including ITAR
- Foreign government-controlled investors who make sensitive investments



CFIUS

- ⊕ Informal notice prior to filing
- ⊕ Mitigation
- ⊕ Contemplate CFIUS in agreements
 - ⊕ CFIUS approval, best efforts, mitigation
- ⊕ China's national security review



Questions?
Thank you!

christina.c.howard@gmail.com