

Export Control Transparency Act: Words of Caution

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Yesterday, President Trump signed into law the [Export Control Transparency Act](#). While this new law includes a confidentiality provision, organizations submitting export license applications to the Commerce Department's Bureau of Industry and Security (BIS) should, in some cases, be concerned about the implications.

For certain types of license requests, the name of the applicant, end user, type of product/technology, value, and other details will be reported to Congress. In many cases, this information is quite sensitive. For example, suppliers may not be aware that their products are being exported to restricted end users, and may object to this (even if fully lawful), jeopardizing supply chains. Banks and other partners may increase scrutiny. Valuations on export license applications can be misleading and may give rise to hard questions. Of course, outside attention to business with restricted parties is typically not desirable, and companies probably won't be able to provide the proper context to explain the information being reported.

Therefore, a major looming question for organizations within this law's scope is the likelihood that members of Congress or their staff may publicly disclose the information that is reported to them or otherwise use it in unintended ways. Many organizations will not be comfortable with this risk and will look for alternative strategies. Some may reconsider opportunities to remove their exports from BIS's licensing jurisdiction. As a result, this law may further discourage U.S. exports and add another incentive for offshoring, reducing U.S. sourcing, etc.

However, the narrow scope of the law is helpful. It only covers applications for export, transfer, etc. "to covered entities," which must be both: 1) located in a U.S. arms-embargoed country (e.g., China), and 2) on the BIS Military End-User List or Entity List. With this in mind, only a tiny proportion of applications to BIS must be reported to Congress under this law.

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