

CLIENT ALERT

BIS Invites Comments on Effects of U.S. Export Controls on Foreign Business

January 5, 2009

Change is coming, or so we have been promised, and Commerce's Bureau of Industry & Security (BIS) apparently is not waiting for the new administration to take office. On January 5, 2009, [BIS published a Notice of Inquiry \[click for the PDF\]](#) seeking information from both foreign and domestic entities (including foreign governments) concerning the extent to which foreign manufacturers discriminate against U.S.-origin parts and components that are subject to U.S. export licensing requirements. For many years, beginning with certain European manufacturers' directives to their engineers to avoid use of U.S.-origin parts and components (and ITAR-controlled items in particular), U.S. industry has grumbled that export licensing burdens and delays cost them overseas business. While the EAR *de minimis* rules soften the burden on foreign purchasers of EAR-controlled items somewhat, licensing delays and reexport authorization requirements undoubtedly continue to deter foreign purchasers of U.S. export-controlled technology and goods. As part of a Presidential directive to review the effect of U.S. reexport controls on industry competitiveness, in October 2008 BIS revised rules affecting foreign-produced hardware that is bundled with U.S. software for export. The newly published Notice of Inquiry is broader in scope and consistent with the White House directive to BIS to continue exploring the effectiveness of U.S. reexport controls.

BIS's Notice presents an opportunity for U.S. industry (and its foreign affiliates and customers) to provide concrete data and examples of the deterrent effect that U.S. export controls (including but not limited to the EAR) have on efforts to expand overseas markets for U.S. products. While there have been past efforts to liberalize the export control regimes, participation in this survey will bolster BIS's efforts to examine the competitive obstacles resulting from U.S. reexport controls. Even though this inquiry stems from a broad presidential directive, BIS needs specific case studies and examples to argue to other agencies that reexport controls should be modified. Nor should industry be deterred from commenting by reluctance to share confidential business information, as the notice expressly provides for submission and protection of such information, provided the commenting party also submits a non-confidential version for the public record.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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