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The New Foreign Policy Go-to Weapon of Choice: Export Controls

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Whether it is tensions over the Russia-Ukraine War or concerns over the IP theft of high tech processes and chip manufacturing, we have witnessed here in 2023 the emergence of a new economic and trade weapon wielded by the United States—export controls.

Previously, the dominant tactic deployed by the U.S. government to coerce compliance was handled by the Treasury Department in the form of trade sanctions. We have seen these sanctions levelled at Nort Korea, Iran and Russia in recent times. Sanctions were the go-to response to all foreign policy challenges ever since the George W. Bush and Obama administrations' pioneering use of secondary sanctions on Iran and North Korea. Those types of sanctions allowed the U.S. to influence not just its adversaries but also third parties that might want to do business with them. Along the way, sanctions have been frequently criticized as an overused, perhaps tired element of U.S. power.

Export controls were traditionally important mainly to providers of defense components that were deemed "dual use," or valuable for both civilian and military applications. Now, export controls will impact a vast new set of companies. DEC members, and indeed SMEs and MMEs around the country, will need to overhaul their strategies to navigate this new development.

The focus up on the Hill and the White House is now rapidly shifting from sanctions to export controls. Highlighted by the Biden administration's new executive order establishing a first-of-its-kind set of U.S. outbound investment restrictions, exports controls are fast becoming the marquis foreign policy tool to deter adversaries and punish bad actors.

Like sanctions, export controls may ultimately be seen as an imperfect foreign policy tool. The Russia export restrictions epitomize the highs and lows of this new regime. Putin's military has been forced to scramble for basic parts, but, similar to sanctions, the impact of the policy has not been nearly as immediate as one would have hoped, and China has stepped in to fill the gap in some cases. Meanwhile, the burdens of complying with the new policy are burdening the private sector.

We are not seeing the expansion of traditional export controls beyond arms sales in the defense sector into the broader sector of sensitive technologies. Over the course of this past Summer, the Administration moved towards banning both technology transfers and capital flows to China in AI, quantum computing and semiconductors. This marked a substantial escalation in the use of export controls. Interestingly, this shift has bipartisan support.

The import of this tactical shift in foreign policy means that our DEC members, along with other companies, will need to make doubly sure that they do not run afoul of these broadening export controls, reaching into areas previously untouched.[1]

The other aspect of this foreign policy tactical shift is to enhance the importance and role of the Department of Commerce. There have been discussions at the NADEC Board and Trade Policy Committee level that this enhanced importance of the Commerce Department, as a small Federal Agency, increases the potential for it to be absorbed, in whole or in part, in any meaningful Federal government reorganization in the future. Simply put, Commerce may become a takeover target with both State and Treasury as likely suitors. The NADEC and its Regional DEC organizations will have to watch this situation carefully and be prepared to defend Commerce's role again, should the need arise.

[1] As a suggestion, an examination of the White House's list of critical and emerging technologies, which covers everything from renewables to biotech to autonomous systems, can serve as a useful road map or starter kit for the industries that should be paying attention.