





## U.S.A. 2015 Key trends and challenges in export controls and sanctions

A special report from WorldECR



*‘Some companies have only ever operated under the ITAR compliance requirements so they do not have the compliance infrastructure necessary under the EAR.’*

**Joseph Gustavus, Miller Canfield**

### **Beyond the beltway**

But it's not all one-way traffic. Investors into the United States are recognizing that they, too, need to understand export controls early in the acquisition process.

Miller Canfield is an international law firm that is headquartered in Detroit, whose world-famous car industry has spawned innovative businesses in a myriad of sectors. According to Joseph Gustavus, ‘Ours is quite different to a traditional beltway practice advising big domestic corporations. A lot of sectors that have grown out of Detroit's automotive bent, such as robotics, machine tooling, aerospace, software – that informs our practice not only locally but also internationally.’

Many of the companies that Gustavus advises (along with his colleague Jeffrey Richardson) are non- U.S. companies making inbound investments into this

fertile pool of enterprises – and seeking representation on some of the regulatory elements of doing so. Gustavus explains: ‘Sometimes the impetus is an acquisition, for which the buyer might seek CFIUS approval. We very much work in lockstep, advising on both regulatory compliance issues addressed at the same time. Having looked at CFIUS first, we'll look at compliance with U.S. export control laws in the context of a foreign parent collaborating with local company.’

Illustrative of that, a recent client instruction related to the purchase of a U.S. company by a publicly-traded Chinese company: ‘The client had a contract in place to supply items to the U.S. government,’ explains Gustavus, ‘Those items were set to transition to being under the jurisdiction of the EAR. But there were problems, because no one had experienced them being on the Commerce Control List.’ Paving the way for the acquisition to go ahead, say

Gustavus, meant ‘buttoning things up with the DDTC - and talking to the CFIUS liaison there to really try to get to grips with how they wanted us to deal with the export control issues.’

Jeff Richardson says that around 25% of the firm's practice relates to the automotive sector, but that it also underpins much else of what it does, if indirectly: ‘Software is another offshoot,’ says Richardson. ‘One of our clients is involved in time-capture software with adjunctive capabilities – i.e. workplace management. Look at the numbers of export controls that apply: First of all, there's encryption software held on servers all over the globe. Then the company hires programmers in Pakistan – and of course export of components, including items such as biometric readers. So we're on hand when to field questions, review contract arrangements – or provide advice on acquisitions.’



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At **Miller Canfield**, the export controls and sanctions practice is run out of the firm's Corporate Group. Key figures in the team are Joseph Gustavus, Principal, and Jeffrey Richardson, Senior Attorney. The team enjoys established contacts with the various U.S. administrative agencies, including the Department of State, Directorate of Defense Trade Controls, Department of Commerce, Bureau of Industry and Security, Bureau of Alcohol, Tobacco, and Firearms, Department of Defense, Department of the Treasury, and the Office of Foreign Assets Control.



Clients can be found in a wide range of industries, including aerospace, automotive, information technology, machine tools, robotics, software and telecommunications.

Examples of the varied and expert work the team carries out include:

- Assisting clients with registering under the ITAR or EAR;
- Analysing company product, service, and technology portfolios to identify and classify assets subject to export controls;
- Drafting commodity jurisdiction requests for government determination when export control law jurisdiction or controlled asset classification is at issue;
- Assisting clients with the development, implementation, monitoring, and improvement of tailored export control compliance programmes;
- Drafting ITAR and EAR export licence applications and supporting transmittal letters and documentation to permit the licensed export of controlled products, services, technology, and technical data;
- Drafting export control collaboration agreements for government approval, such as technical assistance agreements and manufacturing licence agreements;
- Advising on the qualification for export control exemption;
- Export control audit and benchmark reports;
- Undertaking targeted due diligence in M&A;
- CFIUS filing for foreign acquisitions of U.S. target companies with export-controlled assets;
- Counselling clients on post-acquisition integration of export control compliance programmes;
- Drafting export control compliance manuals and policy statements and technology control plans addressing export control compliance;
- Conducting on-site training on the ITAR, EAR, and other export control laws;
- Advising on making voluntary disclosures for potential export control violations.

# Miller Canfield

Based upon deep and diverse experience, Miller Canfield confidently and practically navigates through the International Traffic in Arms Regulations ('ITAR'), Export Administration Regulations ('EAR'), as well as the economic and trade sanctions administered and enforced by the Office of Foreign Assets Control. We have significant contacts and know how to work with various U.S. government agencies, including the Department of State, Directorate of Defense Trade Controls, Department of Commerce, Bureau of Industry and Security, Department of Defense, Department of the Treasury, and the Office of Foreign Assets Control.

## **industry insight; global relationships**

With offices throughout the world, we draw from our international resources to assist clients with export control matters from a global perspective. With our U.S. locations embedded in the dynamic manufacturing centers throughout Michigan and the Midwest, we offer global industry insight and legal counsel based upon over 160 years of experience in working with local manufacturing concerns. Clients in these targeted industries depend on our export controls team:

- |              |                 |                          |
|--------------|-----------------|--------------------------|
| 1 Aerospace  | 1 Machine tools | 1 Information technology |
| 1 Automotive | 1 Nuclear power | 1 Software               |
| 1 Defense    | 1 Robotics      | 1 Telecommunications     |

## **Export controls practice areas of focus**

With offices in the EU and China, Miller Canfield brings corporate and export controls expertise to foreign investors in the United States. During 2015, Miller Canfield expects Chinese clients with foreign direct investment in the United States to top the 1 billion dollar mark. This corporate experience with foreign inbound investment is coupled with traditional export controls practice areas such as compliance training, classification, as well as support for voluntary self-disclosures and investigations.

## **Competitive advantages for clients**

Our team provides complete Export Control and ITAR representation, from registrations and litigation to voluntary disclosures including:

- 1 Acquisition-Phase CFIUS Filings
- 1 Acquisition-Phase Export License, TAA, and MLA Transfers
- 1 Acquisition-Phase Facility Clearance FOCI Approvals
- 1 Post-Acquisition Integration of Export Control Compliance Programs

*We're proud of our work, our clients and our representative matters.*

## **Export controls contacts:**

Joseph D. Gustavus  
Principal  
+1.248.267.3317  
gustavus@millercanfield.com

Jeffrey G. Richardson  
Senior Attorney  
+1.248.267.3366  
richardson@millercanfield.com

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