

Lessons For Exporters from ITAR Consent Agreement

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In this article, Members Brian J. Fleming* and Timothy P. O'Toole and Counsel Christopher Stagg assert that the State Department's Directorate of Defense Trade Controls' (DDTC) recent settlement with Keysight "highlights the critical importance of companies ensuring the correctness of their jurisdiction and classification assessments – particularly with respect to the International Traffic in Arms Regulations' (ITAR) application to intangibles, such as software and technical data." The authors provide a summary of the Keysight case, observations, regulatory and policy notes, and key takeaways. They note "this consent agreement once again demonstrates that the DDTC continues to afford great credit as a mitigating factor to companies that cooperate with the government's investigation." Additionally, the Keysight case displays the numerous considerations that must be carefully examined when there is a jurisdiction and classification dispute with the government, including the heightened importance in this context of DDTC's commodity jurisdiction procedure for an official determination.

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