

# EXPORT ENFORCEMENT AND COUNTERINTELLIGENCE TRENDS

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# NATIONAL SECURITY PRIORITIES

- People's Republic of China remains the top foreign state actor of concern



# Theft of U.S. Made Intellectual Property

- 1 in 5 U.S. companies have been a victim of theft by China
- Trade secret theft costs U.S. economy 225 to 600 billion
- 60% of trade secret theft cases involve China

# Increased Emphasis on Trade Secret Theft and Economic Espionage Cases

- Nationwide increase in trade secret theft and EE cases being criminally prosecuted
- Expect this trend to continue
- Trade secret theft cases will be brought even where government cannot prove foreign government involvement
- Necessary to prove company has taken reasonable measures to protect trade secret however

# “Rob, Replicate, Replace”

“In [many of the cases we see], China’s strategy is the same: ROB, REPLICATE, and REPLACE. ROB the American company of its intellectual property, REPLICATE the technology, and **REPLACE the American company in the Chinese market and, one day, the global market.**”

Assistant Attorney General John C. Demers  
Testimony before the Senate Judiciary Committee  
December 12, 2018

# TALENT PROGRAMS



- Started by PRC government in 2008.
- The PRC government funds above-market salaries, advanced research facilities, and bestows titles and prestige to lure experts to China.
- Approximately 7,000 Chinese scientists have returned to China under the program.
- While association with a Talent Program is not illegal, it can create incentives to steal or violate export controls.

# No. 1 National Security Threat THE INSIDER THREAT



# Examples of Insider Threat Cases

- Jerry Chun Shing Lee (CIA)
- Candace Clairborne (Dept of State)
- Kevin Mallory (CIA)
- Ron Hansen (DIA)

# Export Control Reform Act of 2018

- Export Administration Act of 1979 expired in 2001
- Since that time, we have used International Emergency Economic Powers Act to prosecute violations of the EAR
- ECRA was included in the National Defense Authorization Act for Fiscal Year 2019 signed into law 8/13/18
- New act codifies Department of Commerce's authority to promulgate regulations – EAR
- Makes it a crime to violate any provision in the EAR
- Criminal penalty same as AECA – 20 years imprisonment and \$1,000,000 fine

# ENFORCEMENT TRENDS

- As number of entities added to DOC Entity List due to NS concerns, likely to increase number of prosecutions for sanctions/entity list violations
  - Review relationships, associations, or involvement of your organization with companies on DOC Entity List/prohibited end-users
- Increased emphasis on prosecution of unregistered agents under Foreign Agents Registration Act (FARA) and 18 U.S.C. § 951
  - Closely scrutinize your employees, researchers, consultants, partners, joint ventures, collaborations
- Expanded and broader role for Committee on Foreign Investment in the US (CFIUS)
  - Impact of Foreign Investment Risk Review Modernization Act of 2018



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