

Export Controls Amid Evolving Trump 2.0 Trade Dynamics: Policy Updates and Best Practices



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Today's presenters



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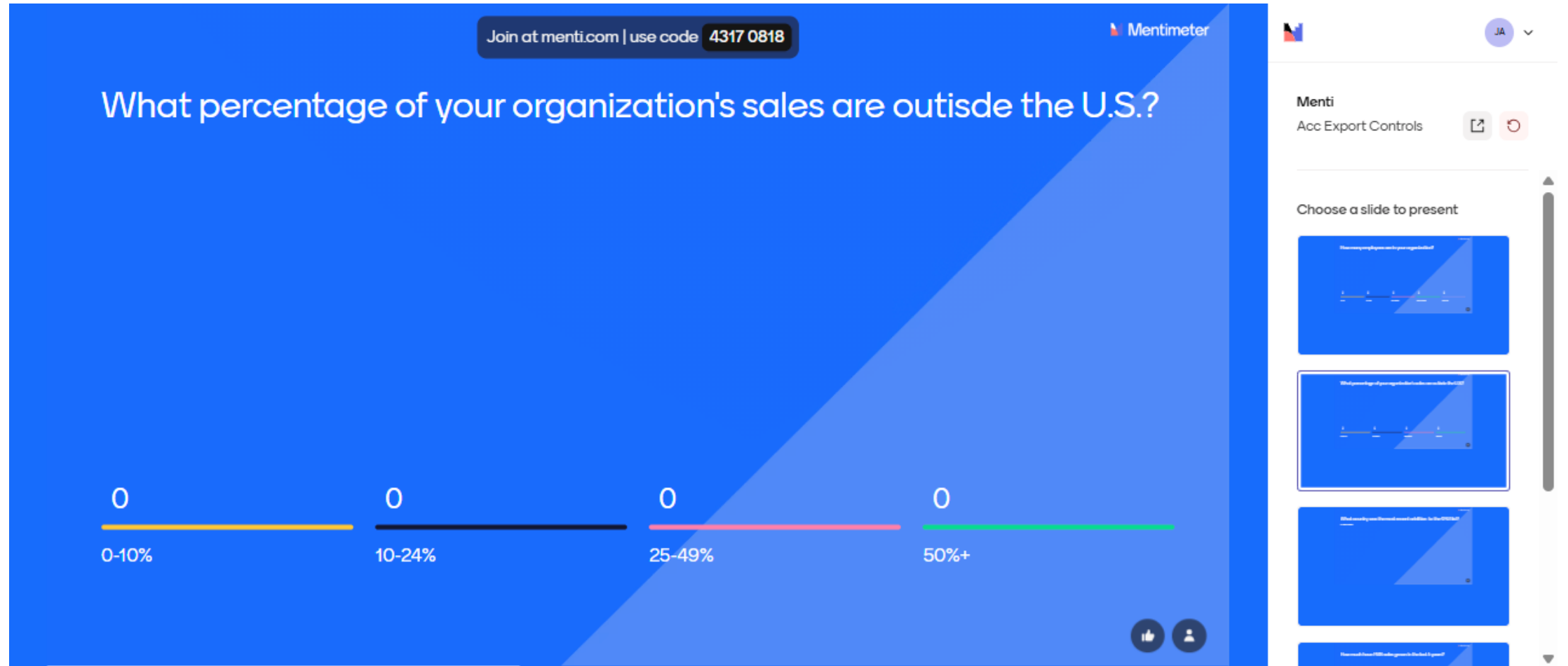
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Menti #2 (join at menti.com 4317 0818)



Agenda

- Part I: The geopolitical / trade landscape
- Part II: International trade updates
- Part III: Enforcement forecast
- Part IV: Legal risk matrix

Part I: The Geopolitical / Trade Landscape

Geopolitical State of Play

- Return of **great power competition** and blocs
- **Breakdown** of globalized world order, based on national security concerns and domestic politics
- **U.S.-China competition** at center stage
- **Reshoring / “friendshoring”**
- **War in Ukraine:**
 - Possible ceasefire / sanctions relief?
 - Shifting Euro security landscape / rearmament
- Hyperfocus on **technology security**:
 - Limiting key tech flow **to** “countries of concern”
 - Limiting key tech flow **from** such countries
- **President Trump’s “America First” Trade and Investment Policies**



Export Controls: Current Landscape

- Current trends started in Trump 1.0, continued in Biden Admin
- A key tool in U.S.-China tech competition
- Many Chinese companies on Entity List
- Sweeping, complex controls directed at:
 - Advanced semiconductors / computing
 - Semiconductor manufacturing equipment
- Broad export controls against Russia
- Far-reaching “foreign direct product” rules



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Impact of “America First” Trade Policy

- Trump 2.0 directed State and Commerce to review U.S. export controls and report to POTUS
- Reports submitted on 4/1
- Focus:
 - “maintain, obtain, and enhance our Nation’s technological edge”
 - “identify and eliminate loopholes in existing export controls — especially those that enable the transfer of strategic goods, software, services, and technology to countries to strategic rivals and their proxies”
 - export control enforcement policies and practices, and enforcement mechanisms to incentivize compliance by foreign countries



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Part II: International Trade Updates

ITAR

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International Traffic in Arms Regulations (ITAR): a refresher

- Statutory authority: Section 38 of the Arms Export Control Act (AECA)
- Regs at 22 CFR Parts 120-130
- Governs the export, reexport, temporary import, and brokering of **defense articles** (including technical data) and furnishing of **defense services**
- Key regulator: Directorate of Defense Trade Controls (DDTC)



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ITAR Basics – Licensing

The ITAR controls and establishes licensing requirements for:

- The export, reexport, retransfer, and brokering of **defense articles** (including technical data) and furnishing of defense services
- The temporary import of defense articles

Defense articles listed on the U.S. Munitions List (USML)



What Is an “Export”?

- An actual shipment or transmission ex-U.S., including the sending or taking of a defense article out of the U.S. in any manner
- Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR to a **foreign person**
- **Releasing** or transferring a defense article to an embassy or to any of its agencies or subdivisions (e.g., a diplomatic mission or consulate) in the U.S.
- The **release** of previously encrypted technical data as described in Section 120.56 of the ITAR

What is a “Deemed” Export?

Key ITAR concept: “deemed” exports

A covered export also includes a **release** or other transfer of controlled technical data to a **foreign person** in the US

Releases “deemed” to be exports to all countries in which the foreign person **has held or holds** citizenship, or holds permanent residency



High stakes....



ITAR violations subject to:

- **Civil penalties** per violation in the maximum amount of the greater of:
 - ~ \$1.3 million
 - 2x transaction value per violation
- **Criminal penalties** of either or both:
 - Fines of up to **\$1 million** per violation
 - **Imprisonment** of up to 20 years

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Proscribed Countries (“126.1” Countries)

Under Section 126.1 of the ITAR, licenses for exports of defense articles and services are unavailable to certain specified countries under certain circumstances, including:

Afghanistan

Belarus

Burma

Central African Republic

China

Cuba

Cyprus*

Democratic Republic of the Congo

Ethiopia

Eritrea

Haiti

Iran

Iraq

Lebanon

Libya

Nicaragua

North Korea

Russia

Somalia

South Sudan

Sudan

Syria

Venezuela

Zimbabwe

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ITAR Practice Tips – what is past, is prologue....

1. Know whether you have defense articles
2. If you do, what are they?
3. Embrace enhanced regulation/oversight

Biggest recent change: AUKUS

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What country was the most recent addition to the 126.1 list?

leader focus bold
creative
fast transpiration
inspiration

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Foreign Defense Sales

Foreign Defense Sales



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PRESIDENTIAL ACTIONS

Reforming Foreign Defense Sales to Improve Speed and Accountability

Executive Orders | April 9, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. To serve the interests of the American people, the United States must maintain the world's strongest and most technologically advanced military through a dynamic defense industrial base, coupled with a robust network of capable partners and allies. A rapid and transparent foreign defense sales system that enables effective defense cooperation between the United States and our chosen partners is foundational to these

- **Foreign Military Sales (FMS) program:**
 - Security assistance program that allows U.S. to sell defense articles to select ex-US partners
- **April 9, 2025 - Executive Order:**
 - Review export controls, including Category I items and items on the “FMS List”
 - Facilitate transfer of priority end-items to priority partners
 - Encourage cost sharing

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AUKUS Security Pact

- **Announced in September 2021**
 - US to sell nuclear subs to Australia
 - + deepen US-UK Indo-Pacific cooperation
- **Cooperation regarding:**
 - cyber capabilities
 - quantum technologies
 - artificial intelligence
 - hypersonics/counter-hypersonics
 - electronic warfare
 - undersea capabilities



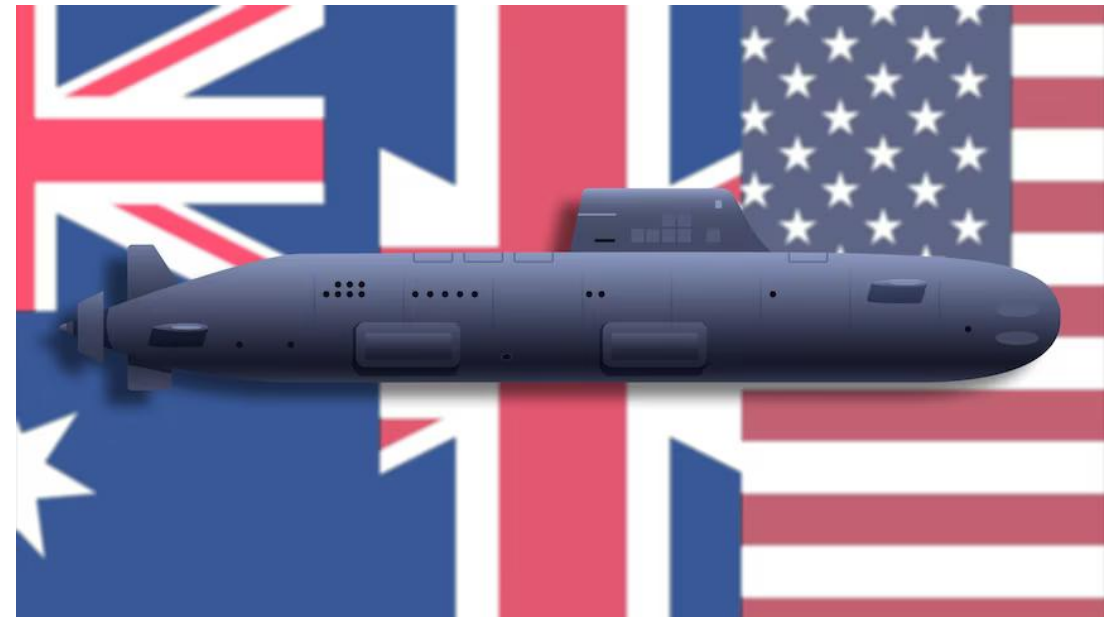
AUKUS ITAR Relief

- Key pillar of AUKUS
- ITAR relief needed to facilitate defense trade
- Australia and UK had to certify ITAR-equivalent controls
- Why? To protect U.S. defense tech
- Intensive deliberations / negotiations
- U.S. Congress stepped in because of delays
- Australia and UK passed new laws to match ITAR control
- U.S. State Department certified Australia / UK equivalence to ITAR
- **DDTC issued AUKUS exception effective September 2024**



AUKUS Exemption: ITAR § 126.7

- Authorizes:
 - export, reexport, transfer, and temporary import of defense articles
 - furnishing of defense services
 - brokering activities
- Must be between and among ***authorized users*** within Australia, the UK, and the US
- The relevant activity must be to or within the physical territories of Australia, the United Kingdom, and the United States



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Authorized Users



- Exemption limited to “authorized users”:
 - U.S. persons registered with DDTC
 - a U.S. government department or agency
 - Australian or UK Authorized Users identified in DECCS
- Australian / UK Authorized Users must seek such status from their own governments
- List available in DECCS online system

Possible Expansion of Exemption

Commenters proposed that the exemption cover exports:

- (1) to or within the physical territory of Australia, the United Kingdom, or the United States;
- (2) to members of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity or while on deployment;
- (3) to government employees of Australia, the United Kingdom, and the United States;
- (4) to § 126.7 authorized users deployed in support of such armed forces, to include maintenance, repair, and overhaul providers;
- (5) to international waters when in support of AUKUS testing or operations; and
- (6) by Australian, U.S., and UK persons to export or transfer defense articles for end use by the armed forces of Australia, the United Kingdom, or the United States outside of their physical territories

DDTC is considering this

Concerns over AUKUS Implementation

- Australia due to buy three Virginia-class subs in 2032

But issues loom....

- Reportedly owes the U.S. billions to pay for shipyard improvements
- Concerns over whether Australia would use the subs to defend Taiwan?
- Tariffs on Australia



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Defense Trade / Geopolitics

- How are shifting geopolitical alliances influencing MilTech?
- How will changes in U.S policy toward defense spending and towards NATO and Europe impact MilTech?
- The administration is seeking to reinvent / realign partnerships and pivot the U.S. national security focus to Asia. Impact on Europe?
- Defense trade implications

European Rearmament

- Major push in Europe to rearm
- German constitutional amendment / debt brake
- Will likely reconsider their approach to “Buy European”
- Will prioritize contractors that can deliver solutions “here and now”
- Will consider set up JVs of international primes including from the US with defense companies, “Ukrainian style”
- Increased venture investments in new technologies

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Export Administration Regulations

Export Administration Regulations (EAR)



- Codified at 15 C.F.R. Parts 730-774
- Administered by Bureau of Industry and Security (BIS) at the U.S. Department of Commerce (www.bis.doc.gov)
- Emerging as a top national security tool
- Related to sanctions, but different
- Focus on “dual use” items
- Control flow of sensitive goods, software, and technology
- U.S. export controls directed at China, Russia, etc.
- 600 series controls

What does the EAR cover?

- **Commodities**
 - Products
 - Hardware
- **Software**
 - Object code
 - Source code
- **Technology**
 - Technical data (drawings, blueprints, text)
 - Technical assistance
 - Know-how
- Various tech / performance levels



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EAR: Diversion Focus

- “Diversion” a key focus area for U.S. / G7 countries
- E.g., diversion of controlled goods to Russia
- Significant area of risk for companies in Asia



What Items Are “Subject to” the EAR?



- Any items located in the U.S.
- U.S.-origin items, wherever located
- Non-U.S. items containing more than a “de minimis” amount of controlled U.S. content
- Non-U.S. items that are the “direct product” of certain U.S. technology or software (or of a plant based on U.S. technology or software)

Penalties



- “Strict liability”
- Civil penalties– up to the greater of:
 - ~\$365,000 per violation
 - Twice the value of the transaction
- Criminal penalties– up to:
 - \$1 million per violation
 - 20 years in prison
- 5-year statute of limitations

How Are License Requirements Established?

- **License requirements are based on:**
 - Export classification
 - Destination
 - End use
 - End user
- **License exceptions may apply:**
 - Authorizations written into the rules
 - Can use for exports/reexports if conditions are met



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Semiconductor Export Controls: Controlled Items

- New Export Control Classification Numbers (“ECCNs”) 3A090, 4A090, and 3B090 (now moved to 3B001)
- Subject to “regional stability” destination-based controls and certain end-user controls
- **ECCN 3A090:**
 - Covers advanced integrated circuits (“ICs”), based on:
 - ***total processing performance*** (computer computations relative to processing units on a chip)
 - ***performance density*** (total processing performance divided by the area of silicon on a single integrated circuit)
 - Currently controlled ***for China and countries in Country Groups D:1, D:4, and D:5*** (but not A:5 / A:6)
 - Subject to ***worldwide controls*** (with exceptions) as of May 15, 2025
- **ECCN 4A090:**
 - Electronic assemblies / computers that incorporate 3A090 ICs– controlled to same extent as 3A090
- **ECCNs 3B001 and 3B002 (formerly 3B090):**
 - Certain equipment designed for epitaxial growth, etch equipment, deposition equipment and inspection equipment, and other semiconductor manufacturing equipment
 - Controlled for ***China and countries in Country Group D:5***

Semiconductor Export Controls: Foreign Direct Product Rule (“FDPR”)

- Expansion of FDPR is a signature aspect of new rules
- Non-U.S. items that are the “**direct product**” of:
 - Certain U.S. technology or software
 - A plant or “major component” of a plant that is the “direct product” of certain U.S. technology or software
- Semiconductor rules significantly expanded FDPR to sweep in a broad range of U.S. technology or software that can trigger the rule
- Intention is to leverage U.S. technical inputs into chipmaking to significantly expand export jurisdiction
- Highly complex / challenging to administer
- *Seagate* case: \$300M enforcement matter / FDPR

Semiconductor Export Controls: End-Use Controls

- Controls apply where exporter has “knowledge” of certain end-uses
- **Supercomputers**— ICs / computers:
 - for use in development / production / use of supercomputer in D:5, or
 - incorporation into, or development / production of component for, D:5 supercomputer
- **Advanced-node ICs:**
 - Any item use for development / production of ICs at a D:5 facility where “advanced-node” production occurs
 - Category 3 items destined to a D:5 facility if unsure of node
- **Advanced computing items:** Specified ECCNs for export to company HQ’d in D:5 or with ultimate parent in D:5
- **SME:** CCL items for development / production of front-end IC production equipment / components in D:5 or by entity w/ D:5 HQ / parent

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Please rank the countries below from *greatest (No.1)* to *least (No. 5)* risk for diversion compliance

| | |
|-----|-----------|
| 1st | Türkiye |
| 2nd | Singapore |
| 3rd | Vietnam |
| 4th | UAE |
| 5th | India |

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Export Controls: Recent Developments / Reports

- Secretary Lutnick: “Dramatic increase” in enforcement actions
- Reported pause / slowdown in Commerce (BIS) processing license applications
- Recently reported proposals:
 - Semiconductor export controls– streamline, simply, and strengthen
 - Controls for Chinese companies accessing U.S. cloud resources to train advanced AI
 - Restrictions on AI model weights
 - Ban of DeepSeek from USG devices
- For Defense Contractors: Section 1260H list compliance...



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EAR Practice Tips

- 1. Know your export classifications, destination countries, and end users**
- 2. Refresh counterparty screening**
- 3. Diversion risk a key current focus**

Pay special attention to 600 series items!

Tariffs

“America First” Trade Policy: Tariffs

Stated goal: “unfair and unbalanced trade”

- Reduce U.S. trade deficit
- Return manufacturing to the US
- Address national security concerns
- Raise tax revenue
- Advance foreign policy



Targeted Countries – So Far



- China
 - Mexico
 - Canada
 - April 2 - “Liberation Day”:
 - 10% baseline tariffs
- Reciprocal tariffs targeting 56 countries + EU
- Paused for 90 days...
 - Except for China

Executive Orders On Trade Related Issues

| Executive Order | Legal Authority | Action |
|--|-----------------|--|
| Canada- Fentanyl and Illegal Immigration | IEEPA | April 2 , 2025 - 25% tariff on all products from Canada (10% Energy or energy resources (exclusion for USMCA-compliant goods) |
| Mexico- Fentanyl and Illegal Immigration | IEEPA | April 2 , 2025 - 25% tariff on all products from Mexico (exclusion for USMCA-compliant goods) |
| China- Fentanyl | IEEPA | February 4, 2025 - 10% tariff on all products; additional 10% on March 4 |
| Copper – National Security | Section 232 | No date yet. |
| Timber, Lumber and Derivative Products – National Security | Section 232 | No date yet. |
| Shipping | Section n 301 | February 21, 2025 - USTR proposed possible remedies in a 301 action looking into China's targeting of the maritime, logistics, and shipbuilding sectors. April 8 issued EO basically kicking the can down the road. |
| Aluminum – National Security | Section 232 | 25% tariff as of March 12, 2025 , Ends all country exemptions, Phases out the specific product exclusion process |
| Steel – National Security | Section 232 | 25% tariff as of March 12, 2025 , Ends all country exemptions, Phases out the specific product exclusion process. |
| Autos– National Security | Section 232 | 25% tariff (March 26 executive order, effective April 3) |
| Reciprocal Tariffs | IEEPA | Tariffs intended to eliminate trade deficits with 56 countries + EU |

Section 232 Investigations

- Section 232 of the Trade Expansion Act of 1962, as amended
- Addresses imports which may “threaten to impair” US national security
- POTUS may “adjust imports” if Commerce finds, and the President agrees, that certain imports threaten to impair US national security.
- Action via tariffs or quotas



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Ongoing Section 232 Investigations

| Scope of Investigation | Initiation Date |
|--|-----------------|
| Copper | March 10, 2025 |
| Timber and Lumber | March 10, 2025 |
| Semiconductors and Semiconductor Manufacturing Equipment | April 1, 2025 |
| Pharmaceuticals and Pharmaceutical Ingredients | April 1, 2025 |
| Trucks | April 22, 2025 |
| Processed Critical Minerals and Derivative Products | April 22, 2025 |

ICTS Rules

ICTS Rules: Overview

- EO13873, issued May 15, 2019: *“Securing the Information and Communications Technology and Services Supply Chain”*
- Current rules codified at 15 C.F.R. Part 791
- Administered by Office of ICTS within BIS– **OICTS**
- Focus on supply chain for ICTS in certain key areas, e.g.:
 - Telecom
 - Sensitive personal data
 - Emerging tech
 - Critical infrastructure
- Commerce can “mitigate” or block ICTS transactions
- Focus on “undue risk” from “foreign adversaries”
- March 2025: Connected vehicles rule



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What Types of ICTS Are Covered?



Critical infrastructure: ICTS that will be used by a party to the transaction in a “critical infrastructure” sector, as designated in Presidential Policy Directive 21 (see further below)



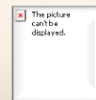
Network infrastructure: ICTS integral to WLANs, mobile networks, satellite payloads, satellite operations and control, cable access points, wireline access points, core networking systems, or long- and short-haul networks



Data hosting: ICTS integral to data hosting or computing services that uses, process, or retains sensitive personal data for more than one million U.S. persons in a 12-month period preceding the transaction



Internet connection / communication software: Software designed for connecting with and communicating via the internet that is in use by greater than 1 million U.S. persons in the 12-month period prior to the ICTS transaction, including desktop, mobile, web-based, gaming, and connected software applications



AI / quantum / drones / robotics: ICTS integral to artificial intelligence, quantum key distribution, quantum computing, drones, UAS, or advanced robotics

Designated Foreign Adversaries

- China
- Cuba
- Iran
- North Korea
- Russia
- Venezuela (Maduro regime)



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Practice Tips

- Do you have covered ICTS?
 - Telecom / networking
 - Surveillance tech
 - IoT
 - Cloud computing / IaaS
 - Drones
 - Communications / connected applications
 - Emerging tech (AI, robotics, quantum)
 - Critical infrastructure
 - Automotive
- Consider supply chain exposure to China / Russia
 - Where does tech development take place?
 - Where do parts / components come from?
 - Third-country risks (e.g., European subsidiary of Chinese company)



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Part IV: Enforcement forecast

Part IV: Enforcement forecast

A brief history lesson...

National Security Division (~ 2006)

- **Key focus areas:**
 - Terrorism
 - Export controls
 - Sanctions
 - Cybercrime
 - Espionage
- **Goals:**
 - Set consistent policy re: NatSec enforcement
 - Manage investigations across USAOs
 - Coordinate with DoD, IC, and State re: above



Shifting DOJ NatSec Landscape (the “3 D’s”)



- **Deprioritized:**
 - Criminal FARA enforcement
 - Corporate FCPA enforcement
- **Disbanded:**
 - NSD Corporate Enforcement Unit
 - Task Force KleptoCapture
- **Delegated:**
 - Investigative NatSec authority (to 94 USAOs)

What does the future hold for NatSec enforcement?

1. Expect sanctions and export controls enforcement to remain key to Trump 2.0 policy priorities
2. Growing focus on cartels and TCOs to raise risks for ex-U.S. operations
3. Civil enforcement to fill gaps



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A recent case study: tariff/customs enforcement

- *See U.S. ex. rel. Lee v. Barco Uniforms (E.D. Cal.)*
- First intervention by Trump 2.0 DOJ in customs-related FCA case...



General Compliance Program Practice Tips

- 1. Address emerging risk areas as part of compliance program review**
- 2. Pay increased attention to ex-U.S. operations**
- 3. Consider refreshed training on changing landscape**

Part V: Legal Risk Matrix

Legal Risk Matrix

| Legal Risk | Practical Impact |
|--|--|
| Sanctions | Sales / operations / sourcing from certain countries |
| Export controls | <ul style="list-style-type: none"> • Significant China restrictions (ITAR 126.1, MEUs, AI chips, etc) • R&D (cross-border or sharing with foreign nationals) |
| Cyber and technology supply chain (ICTS) | <ul style="list-style-type: none"> • CMMC • Sourcing IT / comms / connected apps from China |
| Inbound foreign investment review (CFIUS) | Government investment review |
| Outbound investment review | Review of outbound U.S. investments in China/linked companies |
| Human rights / import restrictions / supply chain | Sourcing content from certain regions; human trafficking |
| Industrial policy / localization / regionalization | <ul style="list-style-type: none"> • Manufacturing / domestic preferences • Sourcing of content |

Conclusion



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RESOURCES



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