



# Latest developments in export controls and sanctions

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# An increasing global complexity of export controls & sanctions





# A more traditional export







Today there's  
more electronic  
exports versus  
any other  
method





Where in the world is  
your technical data  
stored?





# Basic regulatory structure

**International  
Agreements  
and Treaties**

**U.S. National Security  
& Foreign Policy**



## Primary Export Controls

Export Administration  
Regulations (EAR)

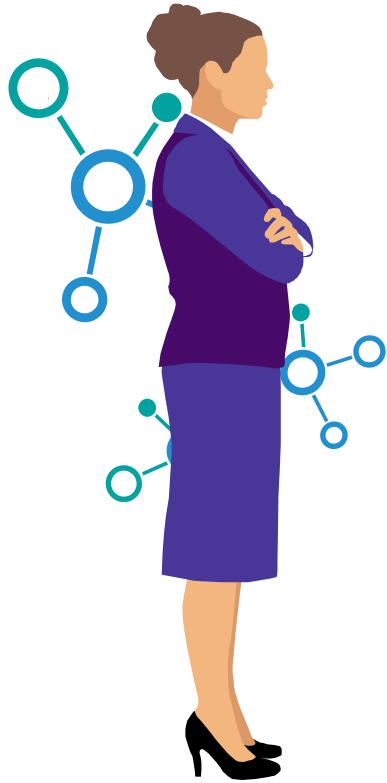
15 C.F.R. Part 730-774

International Traffic  
in Arms Regulations (ITAR)

22 C.F.R. Part 120-130

U.S. Dept of Treasury  
Office of Foreign Assets  
Control (OFAC)  
Sanctions Regulations

31 C.F.R. Part 500-599



# Regulatory focus

# WWW

Who are you dealing with?

What is being exported?

Where is the destination?

Who is the end-user?

What is the end-use?

*Ultimately, U.S. government authorization may be required prior to dealing with any party or exporting to a non-U.S. person or entity.*



# Regulations broadly apply

*Question is not whether the regulations apply, but how regulated a company might be*

## **Broad requirements -- applies to all companies regardless of industry**

- Dealing with entities or persons listed on a U.S. government restricted party list
- Dealing with sanctioned countries, such as Cuba, Iran, North Korea, Syria or the geographic area of Crimea
- Delivering any item for use in certain nuclear and rocket system applications

## **Tailored requirements specific to certain items**

- Items that appear on the U.S. Munitions list (generally inherently military and some space articles)
- Items that appear on the Commerce control list



# Current environment

## **Change in U.S. sanctions policy showing its might**

- Focus shifted from sanctioning entire countries to sanctioning individual parties and companies
- Significant increase in parties on the various U.S. restricted party lists
- Places greater burden on companies to screen and comply

## **U.S. sanctioned country policy is still having an impact**

- Developments for Iran, Russia, China, Venezuela
- Requires compliance by both U.S. and foreign companies

## **Export controls are becoming more substantial**

- New controls on “emerging” and “foundational” technology
- Increased reviews of foreign investment by Committee on Foreign Investment in the United States (“CFIUS”)



How will acquired  
technical know-  
how be used  
today?

Tomorrow?



# Made in China 2025

## What is “China 2025”?

- Established in 2015 by Chinese Premier Li Keqiang and his Cabinet
- Upgrade the domestic capabilities of Chinese industries
- Investing up to \$300 billion

## Key Focus

- Moving China up the value chain in core competencies
- Establish core competency in high-tech fields including the pharmaceutical industry, automotive industry, aerospace industry, semiconductors, IT and robotics among others

# U.S. Establishing Controls for “Emerging” and “Foundational” Technology

- Stems from Export Control Reform Act (ECRA) of 2018

## SEC. 109. REQUIREMENTS TO IDENTIFY AND CONTROL EMERGING CRITICAL TECHNOLOGIES IN EXPORT CONTROL REGULATIONS.

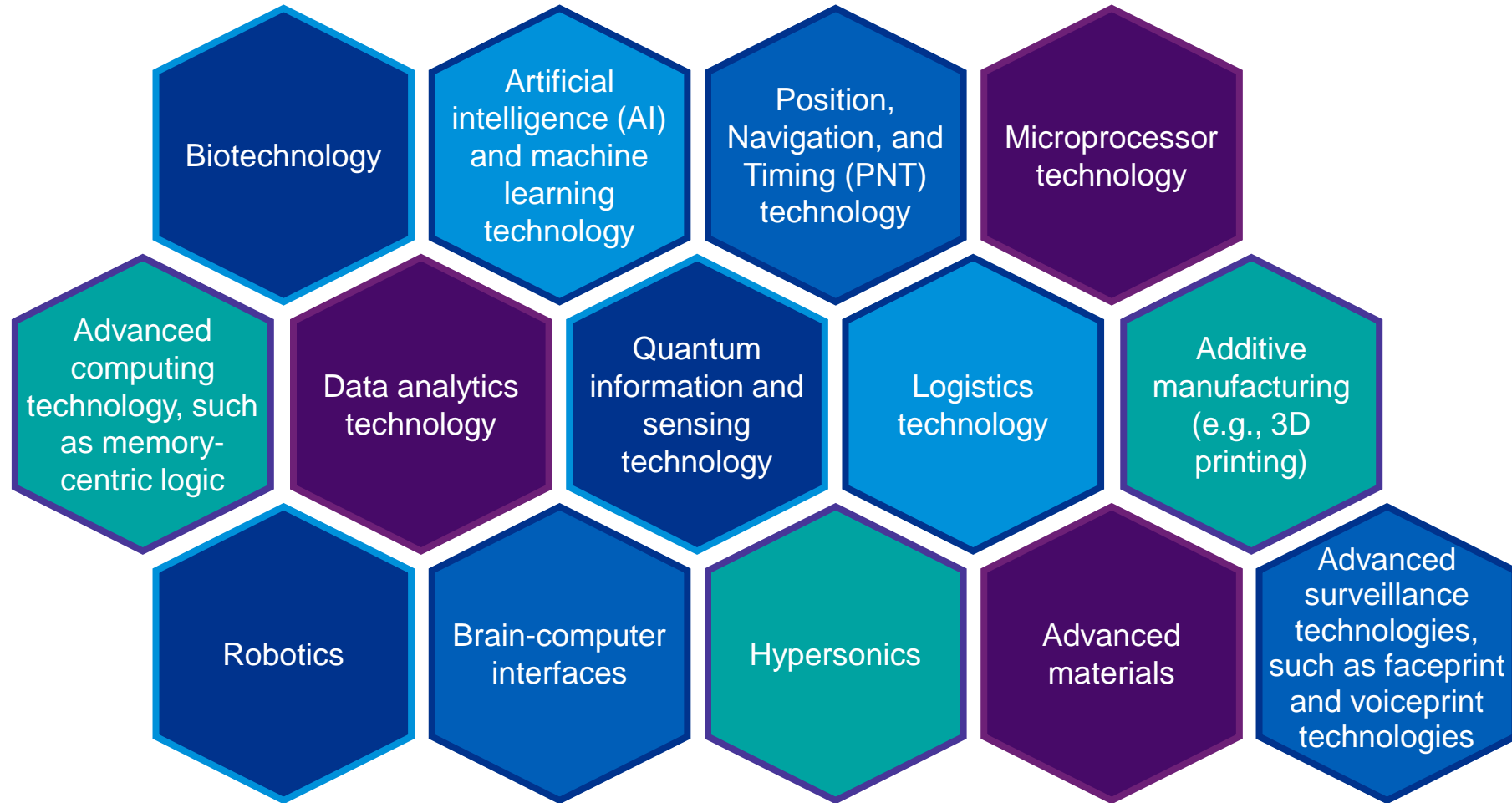
(a) IN GENERAL.—The President shall, pursuant to the delegation of authority in section 105, establish and, in coordination with the Department of Commerce, the Department of Defense, the Department of State, the Department of Energy, and other departments determined to be necessary, lead a regular, ongoing interagency process to identify **emerging critical technologies** that are not identified in any list of items controlled for export under United States law or regulations, but that nonetheless could be essential for maintaining or increasing the technological advantage of the United States over countries that pose a significant threat to the national security of the United States with respect to national defense, intelligence, or other areas of national security, or gaining such an advantage over such countries in areas where such an advantage may not currently exist.



# Emerging Technology - Key Aspects

- Focus is on “technology” rather than hardware or software
- “Technology” is defined to include technical information for the development, production, use, operation, installation, maintenance, repair, overhaul or refurbishing of an item
- Will be controlled for U.S. arms embargoed countries, including China
- Status
  - Advanced Notice of Proposed Rulemaking Issued by BIS (November 2018)
  - Industry provided comments (January 2019)

# Proposed Emerging Technology



# Other China Developments

## Department of Commerce is focused on China

- Continues to list Chinese entities of concern on the entity list
- Delays in processing deemed export license applications
- Issuing denials for proposed exports to certain Chinese entities

## U.S. Visa Processing for Chinese Foreign Nationals

- Greater scrutiny of Chinese students especially those studying in aviation, robotics and advanced manufacturing fields
- More questions on foreign national workers (e.g. H-1B visas)

# Russia Sanctions

- Since 2014, the U.S. Government has progressively increased sanctions on Russia in response to:
  - 2014 invasion of Ukraine
  - Election interference, malicious cyber-activities, human rights abuses, use of a chemical weapon, weapons proliferation, illicit trade with North Korea, and support to Syria
- Broad sanction on geographic area of Crimea
- Targets also include individuals, entities (including large Russian conglomerates), and certain industry sectors (i.e. oil and gas)



# Russia Sanctions Summary

Sanction Type	Summary
Sanctioned Parties	<ul style="list-style-type: none"><li>• OFAC Specially Designated Nationals (SDN) list</li><li>• OFAC Sectoral Sanctions Identifications (SSI) list and related Directives</li><li>• BIS Entity List</li><li>• Unverified List</li></ul>
OFAC 50% Rule	<ul style="list-style-type: none"><li>• Applies only to OFAC lists</li><li>• Focuses on whether an OFAC sanctioned party owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater ownership interest of that entity</li></ul>
Unique End Use	<ul style="list-style-type: none"><li>• Certain ECCNs/Schedule B numbers for oil/gas exploration or production projects</li><li>• Certain ECCNs for military end-users or end-uses</li></ul>

# Iran Update

## Joint Comprehensive Plan of Action (JCPOA)

- May 8th, 2018: U.S. announces it would take steps to cease participation in the JCPOA
- November 5, 2018: Comprehensive U.S. sanctions back into effect

## Secondary sanctions reinstated

- Targets foreign entities that may have no ties to the U.S.
- Allows for sanctions for those doing business with:
  - Certain Iranian industries
  - Specially Designated Nationals
- Consequences for violating secondary sanctions may include sanctions, fines, and/or penalties

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