

MAYER | BROWN

NAVIGATING GLOBAL EXPORT CONTROL CHALLENGES

DECEMBER 4, 2025

TODAY'S PRESENTERS



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POLICY AND LEGAL ENVIRONMENT: EXPANDING NATIONAL SECURITY TOOLKIT

Policy and Enforcement Environment

- Counter foreign adversaries (with focus on China) and bolster American technological competitiveness
- Expanded regulatory and enforcement toolkit / integration across regimes
- Tech competition / industrial policy lens – controls paired with industrial incentives
- US and Chinese use of export controls as a bargaining chip; increased intersection of national security and trade/tariff tools

Start – Pause – Snapback Dynamic

Broader Context

- International - unprecedented cooperation but increased complexity and divergence in key jurisdictions
- Aggressive expansion of jurisdictional reach
- “Surge” in enforcement resources and coordination across government, with extensive use of subpoena powers
- Focus on diversion, evasion, enablers and facilitators
- Surface-level permissiveness in some areas (notably AI) while shifting greater compliance burden to industry in practice

Key Tools in an Expanding Toolkit			
Outbound	Export Controls	prevent foreign adversaries from gaining sensitive US technology; align access to national security/foreign policy interests	<ul style="list-style-type: none"> - Aggressive expansion of jurisdictional reach - Targeted restrictions on advanced capabilities - US Person restrictions - Increasing areas of enhanced due diligence - Areas of allied coordination where possible (eg chipmaking tools) with willingness to do bilateral “deals”
	Outbound Investment Screening	Prevent US capital and expertise from enabling adversary military/dual-use sectors	<p>Covered sectors – advanced semiconductors, AI systems, quantum tech</p> <p>Notification requirements; possible prohibitions on certain high-risk transactions</p> <p>Focus: US private equity/VC funding in strategic PRC tech</p>
Inbound	CFIUS	Screen foreign investment for national security risk	<ul style="list-style-type: none"> - Expansive view of national security - Increased scrutiny on data-rich businesses (eg health, geolocation), AI/ML, semiconductors, telecom, critical infrastructure - Key tools – mitigation agreements, pursuit of non-notified transactions; power to unwind
	ICTS Supply Chain (BIS ICTS; FASC)	Screen reliance / integration with PRC/other foreign adversary linked tech in critical communications or data systems for national security risk	<ul style="list-style-type: none"> - Expansive view of national security - Heavy focus on PRC-origin software, hardware and technology in connected devices/equipment, telecommunications, - Initial targeted sector – connected passenger vehicles; others to come including anticipated focus on data centers, software, drones, etc. - Drivers: network integrity, data security, critical infrastructure resilience
Broader Trade/ Geopolitical Levers	Economic Sanctions	Restrict financial flows, transactions or access to US markets for sanctioned territories and actors based on national security and foreign policy	<ul style="list-style-type: none"> - Trump 2.0 focus on transnational criminal organizations (including in Central/South America and Asia) with enhanced enforcement tools - Increasing integration with AML and export control regimes - Secondary sanctions exposure for FFIs and other foreign actors
	Tariff Tools (eg Section 301) and National Security based import restrictions (eg Section 232)	Counter unfair trade practices; reduce trade deficit; collect revenue; reshoring; protect US industry; shape supply chains	<ul style="list-style-type: none"> - Multiple tools (Sections 232, 301, 122, 338) for establishing tariff leverage and preserving negotiated concessions, with timing and scope driven by statutory procedures - Novel intersection of sanctions policy and tariff tools (eg Russia tariffs on India) - Uncharted territory – injection of export control concepts as leverage in trade diplomacy

BUSINESS PLANNING CHALLENGE IN PRACTICE

Current environment for business

- Opaque and uncertain environment with impact on business planning:
- Emerging conflicts of laws issues and complexity of rules across jurisdictions
- Risks of becoming political football

Added layer of complexity in current environment

- Moving fast and breaking things
- Mixed messaging:
 - Surface level permissiveness
 - Under the surface: clear signaling of shifting compliance burden; increased use of conditional authorizations with concessions and security undertakings
- Key takeaways for business

AI CHIP COMPLIANCE GUIDANCE

Due Diligence Guidance

- Engaging in most trade activities involving PRC chips risks violation of US regulations
- Includes sale, transfer, export, re-export, financing, storage & transport
- Specifically references Huawei Ascend chips
- Legal basis: EAR General Prohibition 10

Diversion Guidance

- New “red flags” identified when reviewing transactions involving AI chips
- E.g., if data center does not or cannot affirm it has appropriate infrastructure
- Specific new due diligence measures suggested

End-User & End-Use Restrictions for AI Model Training

- New activities that may require a license related to Country Group D:5 training of AI models when provider “knows” an AI model will be used for a WMD or military intelligence
- Includes US person supporting the training of AI models

"AFFILIATES" (≥50%) RULE

- Significant expansion in compliance responsibilities, issued with immediate effect
- As issued:
 - An "affirmative duty to determine the ownership of other parties to [a] transaction in order to comply"
 - Where there is "knowledge" or reason to know a party to the transaction has at least some listed party ownership, it is the provider's responsibility to determine the percentage of ownership.
 - "Act with caution" in circumstances when one or more listed entities have a direct or indirect ownership that is <50% or the transaction involves the parent of listed entities.
 - Additional due diligence is necessary for a transaction party that has "other significant ties" such as common board membership "or other indicia of control" with a listed entity.
- Temporary suspension in practice

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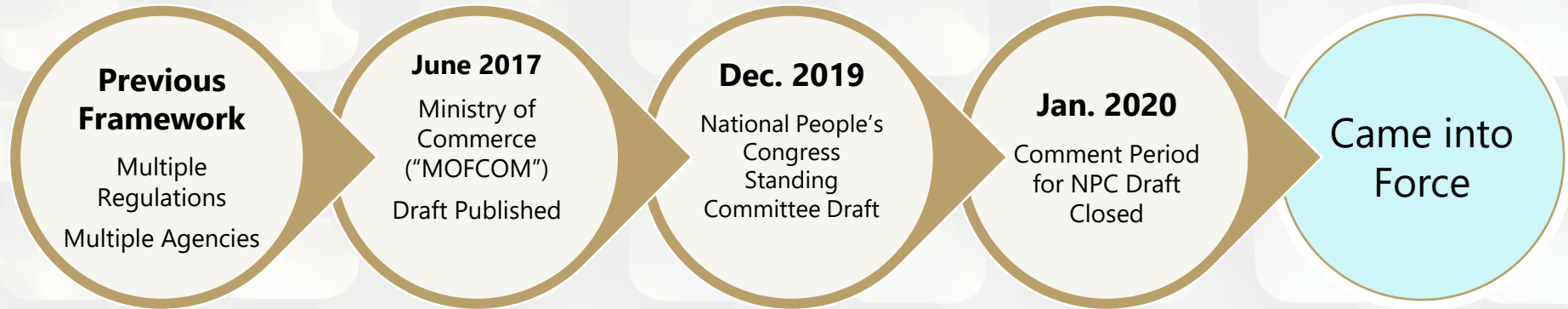
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Q&A

OVERVIEW AND BACKGROUND – FOREIGN TRADE LAW OF CHINA

- China currently has two export control regimes. Generally speaking:
 - Foreign Trade Law Regime – Civilian Technology
 - Export Control Law Regime – Dual-Use Items
- “Catalogue of Technologies Prohibited or Restricted from Export” (updated July 2025) – registration, if not prohibited or restricted
- July 2025 revision adds several technologies related to lithium-ion battery manufacturing to the catalogue (e.g., technologies for making cathode materials and precursors)

OVERVIEW AND BACKGROUND – EXPORT CONTROL LAW OF CHINA



- Numerous Enforcement Regimes
- Creates Compliance and Enforcement Challenges
- China's comprehensive Export Control Law
- Basis to counter increased use of US export controls targeting China
- Significant enforcement authority and broad implications for business
- Dec. 1, 2020
- "PRC Export Control List of Dual-Use Items" (2025)
- "Catalogue of Dual-Use Items and Technologies Subject to Import and Export License Administration" (2025)

SCOPE OF COVERAGE: COVERED ACTIVITIES

- Exporting a Controlled Item (including from special customs zones)
 - Domestic Transfer of a Controlled Item to a "Foreign Person"
 - language not limited to technology
 - broader reach than "deemed exports"?
 - Transit, Transshipment of Controlled Item
- Expanded Reach:
 - Catch-All: ANY item with prohibited end-user, end-use or otherwise implicating 'national security' (discussed below)
 - Re-exports Abroad? – Discussed Below

SCOPE OF COVERAGE: COVERED ACTIVITIES (CONT.)

Catch-All Controls:

1. **Prohibited End-Uses:** Regardless of whether the item is controlled, the export control law would prohibit the foregoing activities where there is **reason to know** or **notice** from the competent authorities of “any of the following risks”:
 - nuclear, biological, or chemical uses related to terrorist activity
 - any uses related, directly or indirectly, to weapon of mass destruction or its delivery vehicle
2. **Prohibited End-Users:** Exports/Transfers to blacklisted parties
3. **National Security:** Any purpose where “*national security* is endangered”

CHINA'S MAJOR EXPORT CONTROL ACTIONS – CRITICAL MINERALS

- **Jul. 3, 2023:** gallium and germanium, two critical minerals that are widely used in the production of semiconductors and other high technology goods
- **Oct. 2023:** high-purity, high-strength and high-density graphite
- **Aug. 15, 2024:** antimony and superhard materials
- **Dec. 3, 2024:** (1) export of dual-use items to US military end users or for US military end uses is prohibited, and (2) gallium, germanium, antimony, and superhard material dual-use items to the United States – presumption of denial; dual-use graphite items to the United States – stricter end-user and end-use reviews
- **Feb. 4, 2025:** tungsten, tellurium, bismuth, molybdenum, and indium – critical minerals used across defense, clean energy and other industries
- **Apr. 9, 2025:** samarium, gadolinium, terbium, dysprosium, lutetium, scandium, and yttrium & related magnets – **heavy/medium rare earth elements**

CHINA'S MAJOR EXPORT CONTROL ACTIONS – CRITICAL MINERALS

- **Oct. 9, 2025:** six proclamations, broad new unilateral controls on rare earth products, raw materials, equipment, and technology; lithium batteries; and superhard materials
- **New medium/heavy rare earth added:** holmium; erbium; thulium; europium; ytterbium, and related items such as permanent magnet materials and optical fiber materials
- **Announcement No. 61 – Extraterritorial Applications & Affiliation Rule**
 - **“De Minimis”:** controlled Chinese rare earth representing 0.1% or above of the foreign-produced item by value
 - **“Foreign Direct Product”:** produced abroad using controlled Chinese rare earth technology
 - **“50% Rule”:** parties on export control list and watch list, plus entities 50% or more owned by these parties

CHINA-U.S. TRADE TALKS IN KUALA LUMPUR

- **Chinese export control-related actions announced so far:**
 - Suspend the six export control “announcements” on Oct. 9 until Nov. 10, 2026
 - Suspend Article 2 of the Dec. 3, 2024, action (presumed denial re gallium, germanium, antimony, and superhard material; heightened scrutiny re graphite) until Nov. 27, 2026
 - Suspend MOFCOM 2025 Announcements Nos. 13 and 21 (Mar. 4 and Apr. 4) re export control list: different wording on length of suspension; require individual approval for resumption of shipments
 - Suspend Unreliable Entity List (“UEL”) Working Mechanism Announcements Nos. 5, 6 & 7 (Mar. 4 and Apr. 4) re UEL designations: different wording on length of suspension; require individual approval for resumption of business

CHINA-U.S. TRADE TALKS IN KUALA LUMPUR

- **Unknown/Pending Issues:**
 - Dec. 3, 2024, Action re US military end use and end users
 - UEL Designations on Oct. 9 (anti-drone technology companies)
 - April 2025 medium/heavy rare earth controls: general license?
 - Chinese Customs' Enforcement Efforts – “smuggling”/lab testing
 - End-use/end-user due diligence
 - Nexperia

TRENDS IN CHINESE EXPORT CONTROLS

- Focus on dual-use items used in critical, strategic and sensitive industries
- Focus on items in which China has a key interest
- Multiple and potentially competing regulatory goals
 - Traditional anti-proliferation concerns
 - Useful tool to counter unfavorable foreign actions
 - Useful tool to protect the industry leading positions
 - Frequent emphases on “dual-use” nature of the controlled items & “control is not an export ban”
 - Economic consequences from “diversification”
- Prudent, strategic but firm positions

IMPLICATIONS FOR INTERESTED PARTIES

- Understanding the “uncertainties”
- Take PRC export control compliance obligations seriously
- Governmental engagement is still worthwhile, but doing it the right way is very important
- Monitor developments on the ground, e.g., enforcement trends and practical issues
- Be proactive in developing a balanced, effective, and coherent strategy to address key supply chain risks

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ISSUES AND CHALLENGES FOR COMPANIES BASED IN EUROPE

1. The EU is caught in the middle of US/China tit-for-tat retaliation... but does not speak with a single voice
2. Dependence on US/China inputs jeopardizes key EU policies and creates practical challenges for EU-based companies
3. Various measures are under consideration, both by companies and governments, with growing calls for the EU to leverage its market access

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ISSUES AND CHALLENGES FOR COMPANIES BASED IN JAPAN

1. Reaction to U.S. and Chinese export control developments;
2. Issues and challenges faced by Japan-based companies;
3. Short-term measures being considered;
4. Long-term, strategic measures being considered.



Questions & Discussion



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