

# Urgent Developments in High-Technology Trade Controls

ATCC Houston

February 6, 2025

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# Please ask questions throughout!

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## Agenda

- Context
- Trump Administration controls as of February 2025
- Trump Administration future considerations
- How to prepare



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## Context: U.S.-China competition

- Pre-2017
- 2017 U.S. National Security Strategy
- “A whole-of-society threat”
- Bipartisan anti-China policy consensus
- N.B. China is not the whole story
  - Rogue states
  - Russia
  - Others
- N.B. U.S.-China trade is not the whole story
  - Bigger picture: globalization vs. fragmentation
  - Other trading partners of China: Russia, Europe, Africa, Asia, Americas



## Context: U.S. “Whole-of-society” response

- Export control revisions
- Entity list listings
- Hong Kong determination
- CFIUS changes
- U.S. industrial policy
- U.S. procurement policy (e.g., Sec. 889)
- Import controls
  - Section 301
  - AD/CVD
  - UFLPA
- Immigration controls
- Telecom licensing controls
- Currency manipulation controls
- Counterespionage (e.g., U.S. campuses)
- Cyberwarfare
- Outbound investment controls
- U.S. diplomatic efforts (e.g., Netherlands and Japan)



## Context: Chinese response

- Export control law
- Unreliable Entities Listings
- Foreign direct investment reviews



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## Trump administration controls: 2025

- 1989 arms embargo
- 2019 Huawei Entity List designation and rules
- 2020 Chinese Military End-User restrictions
- 2022 ECAD and transistor rules
- October 2023 semiconductor rules

## Semiconductor controls: October 2023 rule

- New ECCNs for semiconductors and related technology
- New foreign direct product rules
- New sanctions-like prohibition on U.S. Person “facilitation”
- Certification provision
- Temporary General License (expires 4/7/23)

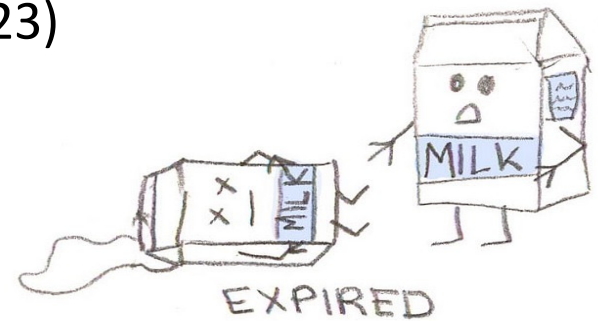


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## Advanced computing controls

### Advanced Computing FDP Rules (EAR Section 734.9(h))

- Covers items in the advanced computing sector
- produced outside the United States either:
  - knowing that the item is destined to China (either directly or as incorporated into another non-EAR99 item), or
  - the technology is developed by entities in China for the production of integrated circuits
- Template certificate available

### Supercomputer End-Use FDP Rule (EAR Section 734.9(i))

- Cover direct products of software or technology subject to the EAR either:
  - in ECCNs 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991; or
  - produced by a plant that is a product of those ECCNs;
- where knowledge the product will be used for certain activities with supercomputers in China



## Foreign direct product (FDP) rules added in 2024

Three New FDP Rules:

1. **Advanced Computing FDP Rule**
2. “Supercomputer” FDP Rule
3. The Expanded Entity List FDP Rule (FN4)



## Advanced Computing FDP Rule

(i) Product Scope:

- (1) The foreign-made item is the **direct product of software or technology subject to the EAR and specified in ECCNs 3D001...**, and
- (2) The foreign-made item meets these standard: **ECCNs 3A090, 3E001 ...**,

*3A090 - high performance ICs*

- a. Integrated circuits that have or are programmable to have an aggregate bidirectional transfer rate over all inputs and outputs of 600 Gbyte/s or more to or from integrated circuits other than volatile memories, and any of the following:

## Advanced Computing FDP Rule

(ii) Destination or end-use scope: there is knowledge that foreign-made item is:

- (1) destined to China; or
- (2) technology developed by a China-headquartered entity for the production of a mask or an IC wafer or die.





## Foreign Direct Product (FDP) Rules

Three New FDP Rules:

1. Advanced Computing FDP Rule
2. “Supercomputer” FDP Rule
3. The Expanded Entity List FDP Rule (FN4)



## Supercomputer FDP Rule

- (i) Product Scope: any foreign-made item that is the **direct product of software or technology** subject to the EAR and specified in ECCNs 3D001, ....
  
- (ii) Country and end-use scope: there is “knowledge” that the foreign-made items will be used in the design, development, production, operation, installation, maintenance, ...of a “supercomputer” located in or destined to China.





A What?!





## Supercomputers

- “Computing ‘system’ having a collective maximum theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops within a 41,600 ft<sup>3</sup> or smaller envelope.”
- Only a couple of hundreds of those in the world (mostly U.S. and China)



## Foreign Direct Product (FDP) Rules

Three New FDP Rules:

1. Advanced Computing FDP Rule
2. “Supercomputer” FDP Rule
3. The Expanded Entity List FDP Rule (FN4)



## Footnote 4 FDP Rule

- The Entity List is list of companies and persons who are under more severe export control requirements.
- In October, BIS added 28 Chinese companies to the Entity List, including Dahua Technology, Hikvision, Iflyteck, Megvii Technology...



## FN1 v FN4 FDPR

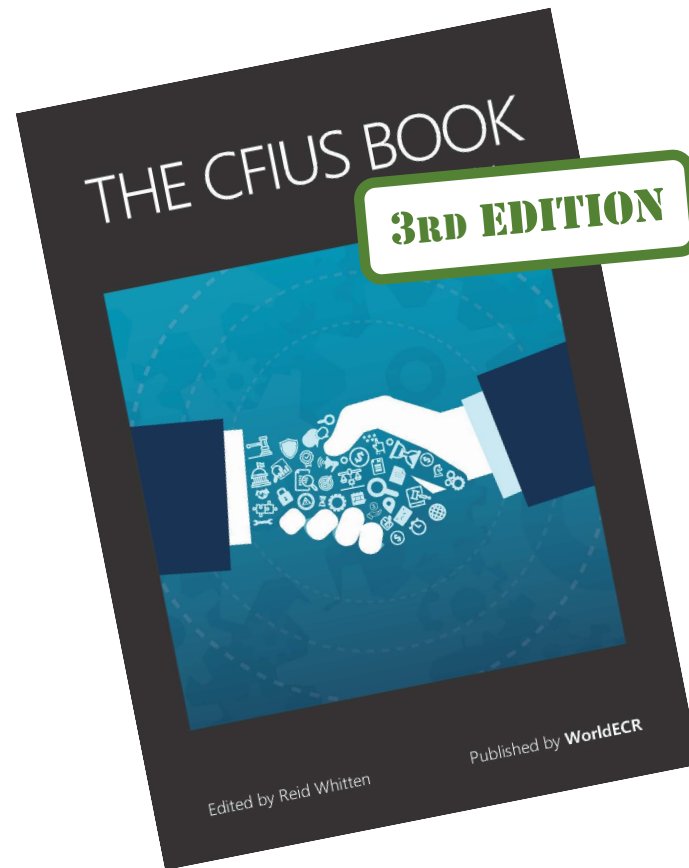
- Essentially similar to the FN1 FDPR (Huawei)
- Product Scope is broader!
  - 5D002
  - 5E002

## 2025 Controls: China trade controls

### China: U.S. entity listings by administration

Targeting China	Trump	Biden
SDN List Additions	216 Chinese individuals / entities	432 Chinese individuals / entities
Entity List	259 Chinese individuals / entities	412 Chinese individuals / entities
Justification	Reinforce sanctions against Iran and North Korea	Aimed at China's connection to Russia
Focus	Missiles, nuclear weapons, unmanned aerial vehicles, and related semiconductors.	Dual-use technologies, biotechnology, quantum computing, semiconductors.

## Foreign direct investment controls





## Foreign direct investment controls, cont'd

- “America First” agenda may slow down foreign investment
- CFIUS may block transactions
- New outbound investment review



## Foreign direct investment controls, cont'd





## Foreign Direct Investment controls, cont'd

### CFIUS Actions



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## Future Trump Administration options

- Increase Entity List use on China's semiconductor and tech sectors
- Target legacy chip manufacturing
- Further restrict advanced chip manufacturing
- Apply FDPR to chipmaking equipment exports from U.S. allies to China
- Continue enforcement actions against Chinese companies engaged in illicit transshipment of goods to Russia



## Future Trump Administration options, cont'd

- Impose sanctions on Huawei, SMIC, Hikvision, and other Chinese tech firms
- Increase the use of the NS-CMIC List, restricting U.S. persons from trading in securities of listed entities



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## Trade Compliance as Business Strategy



Your Competition





## Compliance as Business Strategy, cont'd

- Eliminate cognitive bias in planning
- Scenarios, options, tabletop exercises
- Modular solutions



# Questions?

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# Thank you!

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