

Confidential

Navigating US Technology Regulations

- AmCham Shanghai's Tech & Innovation Committee

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Ron Cai, Senior Counsel



- Ron Cai has more than 34 years of legal experience assisting clients in U.S.-China business projects. He is a seasoned expert in Chinese TMT regulations and market entry practices. Ron is familiar with a wide range of technology industries, including AI, cloud computing, internet of things, e-commerce, digital media and entertainment, on-line games, e-health care, high-speed railway, internet of vehicles, and renewable energy. Ron speaks and writes frequently on Chinese TMT laws and practice.
- Ron also handles international mergers & acquisitions, general business and corporate law for multinational companies in China, international business transactions, and dispute resolution. Ron advises clients on contract law, employment and labor law, intellectual property rights, technology licensing, international finance, regulatory approvals, and corporate compliance.

US Export Control Agencies



Department of State
Directorate of Defense Trade Controls (DDTC)
• International Traffic in Arms Regulations (ITAR)



Department of Commerce
Bureau of Industry and Security (BIS)
• Export Administration Regulations (EAR)



Department of Treasury
Office of Foreign Assets Controls (OFAC)
• OFAC Sanctions

DDTC

- Defense Articles and Services

- ⚙️ Supervise commercial exports of **defense articles** and **defense services**
- ⚙️ The Department of State is responsible for the export and temporary import of defense articles and services under the **International Traffic in Arms Regulations** (ITAR).
- ⚙️ The **Directorate of Defense Trade Controls** (DDTC) at the Department of State implements the ITAR, including the **United States Munitions List** (USML).

US Export Control Agencies



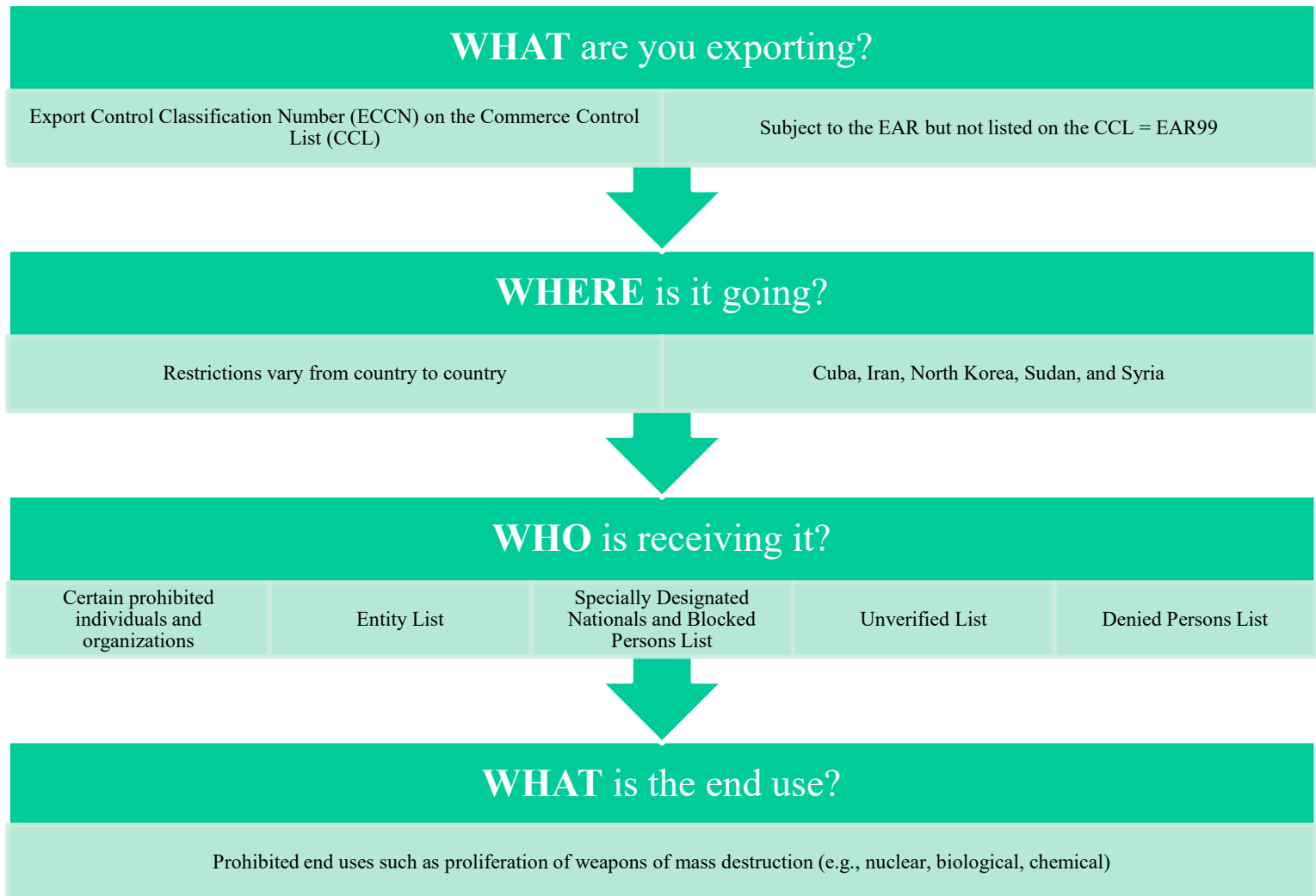
BIS

- Export

- ☀ Any **item** that is sent from the United States to a foreign destination is an **export**.
- ☀ **“Items”**: commodities, software or technology
 - such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information
- ☀ **“Export”**:
 - Going to a wholly-owned U.S. subsidiary in a foreign country
 - A foreign-origin item exported from the U.S., transmitted or transshipped through the U.S. or being returned from the U.S. to its foreign country of origin
 - Release of technology or source code to a foreign national in the U.S.

BIS

- Licensing Requirements



US Export Control Agencies



Department of State

Directorate of Defense Trade Controls (DDTC)

- International Traffic in Arms Regulations (ITAR)



Department of Commerce

Bureau of Industry and Security (BIS)

- Export Administration Regulations (EAR)



Department of Treasury

Office of Foreign Assets Controls (OFAC)

- OFAC Sanctions

Sanction Programs

Countries

Groups of
Individuals

Chinese
Military
Companies
Sanctions

Russia, Iran,
North Korea,
Cuba,
Venezuela, etc.

Specially
Designated
Nationals
(SDN) List

Non-SDN
Lists

Russia as an Example



DDTC

restricts the export
of any defense
articles to Russia



BIS

restricts the export
of items under the
EAR (mainly
commercial and
dual-use items) to
Russia



OFAC

may sanction
Russian individuals
or entities for
various reasons,
thereby restricting
other financial
activities and
services with such
sanctioned persons

Trends in US Restrictions on Investment in China

☀ Expanding Restrictions on Exports to China

- Adding more Chinese entities on sanction lists (BIS Entity List, OFAC SDN List, etc.)
- Adding new export controls under the EAR for exports to China such as advanced integrated circuits (“ICs”), semiconductor manufacturing equipment, etc.
- Adding prohibition on activities or services of any US person that could support the development or production of ICs in China
- Targeting forced labor in Xinjiang, China

Trends in US Restrictions on Investment in China

⚙️ Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern (the “E.O.”) by President Biden

→ In the E.O., the President directs the Secretary of the Treasury to issue regulations that:

1. **Prohibit** U.S. persons from undertaking transactions involving certain entities located in or subject to the jurisdiction of a country of concern, and certain other entities owned by persons of a country of concern, engaged in activities related to defined sub-sets of technologies and products
2. **Require notification** by U.S. persons to Treasury regarding transactions

Trends in US Restrictions on Investment in China

💡 The E.O.:

↳ **“Country of Concern”**: China, including Hong Kong and Macau.

↳ **“Technologies and Products”**:

1. semiconductors and microelectronics;
2. quantum information technologies; and
3. certain artificial intelligence systems.

Trends in US Restrictions on Investment in China

- ⦿ Advance Notice of Proposed Rulemaking (“ANPRM”) by the U.S. Department of the Treasury
 - ↳ Requirements on U.S. persons
 - ↳ Specific categories of the transactions
 - ↳ Involving the foreign persons
 - ↳ Excepted transactions
 - ↳ Initial details on the sub-sets of technologies and products
 1. Semiconductors and microelectronics;
 2. Quantum information technologies; and
 3. Certain artificial intelligence systems.

Thank you!