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A Roadmap for Export Controls? Project 2025 and the Future of U.S. Exports – Part II

Article By:

Reid Whitten

J. Scott Maberry

Jordan Mallory

Julien Blanquart

Joséphine Vacarie

The second Trump administration has come flying out of the starting blocks on international trade policy actions—imposing and rescinding, shaping and reshaping tariffs, sanctions, and export controls. The executive orders and directives have come so thick and fast that it is not always simple for businesses to chart a consistent policy direction and develop their plans to account for what might be coming next.

However, there is in fact a pretty clear map that could indicate the U.S. policy direction with respect to export controls.

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) may well follow the map that was drafted by the same people who are now among the BIS leadership**.** The cartographers, as it were, are James Rockas and Robert Burkett. Rockas and Burkett now serve as the Deputy Under Secretary and Chief of Staff, respectively, at BIS. Both are listed as authors of the chapter on the Department of Commerce in the Project 2025 Mandate for Leadership publication by the Heritage Foundation.[1] Regardless of one's views on Project 2025, the publication is a useful indicator of the future of U.S. export controls, among other policies.

In this article, we examine what the proposed "modernization" of the Export Administration Regulations (EAR) outlined in Project 2025 looks like, and analyze how the Project 2025 proposals could be implemented in future U.S. export regulations.

The Checklist

The section of Project 2025 dedicated to BIS presents a list[2] of key priorities for "EAR

modernization," as follows:

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1. Eliminating the "specially designed" licensing loophole;
2. Redesignating China and Russia to more highly prohibitive export licensing groups (country groups D or E);
3. Eliminating license exceptions;
4. ***Broadening foreign direct product rules;***
5. ***Reducing the de minimis threshold from 25 percent to 10 percent—or 0 percent for critical technologies;***
6. ***Tightening the deemed export rules to prevent technology transfer to foreign nationals from countries of concern;***
7. Tightening the definition of "fundamental research" to address exploitation of the open U.S. university system by authoritarian governments through funding, students and researchers, and recruitment;
8. Eliminating license exceptions for sharing technology with controlled entities/countries through standards-setting "activities" and bodies; and
9. Improving regulations regarding published information for technology transfers.

On first reading, some of these proposals may not seem to fit neatly within the familiar EAR framework. That might make it hard to picture how they will be implemented in regulations, much less to plan for them.

But that's just the sort of picturing we propose to take on!

We have worked our way through the list above. We have asked ourselves how those broad, potentially seismic changes might actually be put into practice. Where is there real room for rewriting the regulations? Where is there precedent in export regulatory history? (Where what's past be prologue, to borrow a phrase)?

Here we present our initial thoughts on what may be coming. We note that none of these points constitutes legal advice. But they may be useful for considering where your organization may wish to consider the possibility of future export control regulations.[3] And they may come fast, so get ready. As the poet said, defer no time. Delays have dangerous ends.

We present our findings in three parts (in three days), dividing the list to conquer it and to do so without overburdening our readers.

4. "Broadening foreign direct product rules"

Foreign Direct Product Rules (FDPRs) extend U.S. export controls to cover foreign manufactured items that are the direct product of certain U.S.-origin technology, software, or equipment.[4] In 2020, the FDPRs were broadened significantly to cover foreign made items destined for the Chinese telecommunications equipment maker Huawei and certain of its affiliates, and a handful of other Chinese and Chinese-owned companies. In general, there are two pieces to an FDPR, the Product Scope (what the control applies to), and the Destination Scope (at what countries or companies the control is aimed).

Since BIS brought the FDPR hammer out of the toolbox, it has found plenty of nails. There are now

ten separate FDPRs applicable to Product Scopes such as Supercomputers and semiconductor manufacturing equipment, or to Destination Scope targets such as the Russian and Belarusian militaries. In terms of writing regulations, it is likely easiest for the U.S. government to aim a broad product scope control at a narrow target, singling out a company or group of companies. However, recent EAR amendments have placed broad controls on artificial intelligence by defining a set of AI model weights that may be subject to controls globally.

We fully expect new FDPRs to contain broader Product Scope to cover technologies the administration considers critical (e.g., semiconductor manufacturing, autonomous vehicles, or AI). Likewise, we expect new FDPRs may contain several new companies in the Destination Scope, as the administration develops new targets over time.

5. “Reducing the de minimis threshold from 25 percent to 10 percent—or 0 percent for critical technologies”

Currently, a product made outside the United States may be subject to U.S. export controls if it incorporates more than a *de minimis* amount of U.S.-origin controlled content by value. That is, if you make a computer in France, but the hard drive is U.S.-origin and incorporated into your French computer, then the value of that hard drive may account for more than the *de minimis* amount of value of that computer. As a result, that computer may be controlled by U.S. export controls, even as it is exported from France as a French-made item.

For most countries, the *de minimis* threshold of U.S. content is 25% of the value of the foreign-made item. However, for certain countries (*e.g.,* Iran) it is 10%, and for others (*e.g.*, Cuba), it is 0%. In cases where the threshold is 0%, the *de minimis* rule operates like the ITAR see-through rule: *any* U.S.-origin controlled content in the foreign made item will trigger U.S. controls for export to the country with a 0% *de minimis* level.

It follows that a reduction of the *de minimis level* would significantly expand the extraterritorial jurisdiction of BIS. It would give BIS control of a broad swath of foreign made products that would be exported to the country with the lower *de minimis* threshold.

6. “Tightening the deemed export rules to prevent technology transfer to foreign nationals from countries of concern”

When a person discloses controlled technology to a foreign person, the release of that technology is considered an export to the home country of that foreign person. That is the case regardless of where the release occurs, even if both persons are in the United States. The release of technology—through a discussion, through visual inspection, or through written communication—is “deemed” to be an export to the foreign person’s country of nationality. Similarly, a release of U.S.-controlled technology in a foreign country by a person authorized to have that technology to a person of a third-country nationality, is a deemed *reexport* to that person.

So when an engineer in Denmark is collaborating with his U.S. colleagues on controlled technology development, the technology is exported to Denmark. If he discusses the technology with his Chinese colleague in Denmark, that discussion may be considered a deemed reexport to China. However, in certain cases, if the Chinese national is an employee of the same company and the company is authorized to receive the technology, the technology may be shared with the Chinese national without any further licensing.[5]

That scenario presents a tempting target for a BIS looking to tighten controls on technology going to China. The rule could simply be changed so that a person from China (or Russia or any other country of concern) could not receive the controlled technology without further licensing. Alternatively, export licenses might be written to include provisos prohibiting certain deemed reexports, e.g., to China.

In either case, as a Danish (or EU or other third-country) employer, you may need to consider whether you can hire that graduate student from a country of concern or whether you can staff certain projects with persons with certain nationalities. At the same time, non-U.S. companies aiming to comply when hiring employees from U.S. countries of concern will need to balance that compliance against any local employment laws on hiring decisions made on the basis of national origin.

Conclusions and Early Indications

The second Trump administration has issued, rescinded, revised, and reissued a substantial number of tariffs, sanctions, and export control measures. Although it is easy to be overwhelmed by the volume of actions, some of the policy direction of the new administration is clear. And as outlined here, the Commerce Department chapter of the Project 2025 Mandate for Leadership provides strong indicators of the administration's policy direction on export controls.

At the same time, developments outside the four corners of Project 2025 suggest that certain reforms may already be in motion. On April 10, 2025, Landon Heid—President Trump's nominee for Assistant Secretary of Commerce for Export Administration—testified before the Senate Banking Committee and indicated that BIS may act "relatively quickly" to apply Entity List restrictions to subsidiaries of listed entities, drawing a parallel to OFAC's 50% rule. If implemented, this shift would materially expand the scope of compliance obligations for exporters, reexporters, and technology providers by effectively capturing foreign subsidiaries and affiliates that have so far fallen outside the scope of licensing requirements.

Heid's remarks also flagged broader enforcement priorities—particularly around China's acquisition of artificial intelligence capabilities. He pointed to risks associated with transshipment through jurisdictions such as Hong Kong and suggested BIS may pursue tighter controls to curb diversion and illicit procurement of advanced technologies. Those developments, while not explicitly part of Project 2025, reflect an accelerating trajectory toward more expansive and aggressive export control enforcement.

Together, the Project 2025 blueprint and the emerging policy posture from BIS leadership offer a coherent preview of what the next phase of U.S. export regulation may look like. Companies would do well to monitor those signals and begin scenario planning for a regulatory environment in which the scope of control is broader, the tools are sharper, and the compliance expectations are higher.

FOOTNOTES

[1] Available at 2025_MandateForLeadership_CHAPTER-21.pdf.

[2] Id. at p.672.

[3] Additionally, we would be glad to kick these ideas around with others (I know my associates are tired of me talking about it to them). So if you have any comments, questions, or ideas to posit, please feel free to contact the authors directly.

[4] We recognize that the term in the regulations is not “equipment,” but, rather “plant or major component of a plant.” But boy is that longer phrase ungainly, so we will use “equipment” as a shorthand here and trust that it sufficiently conveys the message.

[5] However, there would be some administrative steps involved in making that release lawful.

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