

SheppardMullin

TRADE CONTROLS AS BUSINESS STRATEGY

HOW GEOPOLITICS PUSHED COMPLIANCE INTO FORECASTING

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Introduction

Hello.

Agenda

- The U.S.-China Trade War
 - Where we are and how we got here*
- Stepping Back
 - Lessons to apply across industries*
- Preparing for the Future
 - How Norwegian companies succeed*

Agenda

- The U.S.-China Trade War
 - Geopolitical themes
 - Exchange of fire in a hot trade war
- Stepping Back
- Preparing for the Future

Geopolitical and economic themes

- Anti-China U.S. policy consensus
- U.S.-China competition for global technological dominance
- Technology as a strategic national asset
- “Whole-of-Society” threat and whole-of-society response

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U.S. Actions on China

- 301 Tariffs - 2018
- Non-SDN Chinese Military Industrial Complex - 2019
- Military End User List - 2020
- Xinjiang Uyghur Autonomous Region (UFLPA) - 2020
- Enhanced Foreign Direct Product Rule - 2020
- Semiconductor Regulations -2022

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Military End Users

- The national armed services, police, and intelligence or
- Any person whose actions or functions are intended to support 'military end uses'
 - *Supporting or contributing to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production, of military items*
- Civil-Military Fusion

Military End Users

- But there's a list right?

Military End-User (MEU) List

Supplement No. 7 to Part 744—page 1

SUPPLEMENT NO. 7 TO PART 744 – ‘MILITARY END-USER’ (MEU) LIST

The license requirement for entities listed in supplement no. 7 to part 744 applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to part 744. A license is required to export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to part 744 when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f). No license exceptions are available for exports, reexports or transfers (in-country) to listed entities on the MEU List for items specified in supplement no. 2 to part 744, except license exceptions for items authorized under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR as specified in § 744.21(c). The license application procedure and license review policy for entities specified in this supplement 7 to part 744 is specified in § 744.21(d) and (e).

Military End Users

*Expressio Unius Est
Exclusio Alterius*

Military End Users

- But there's a list right?

. . . Right?



Military End User (MEU) List



The Military End User List ([Supplement No. 7 to part 744](#) of the EAR) identifies foreign parties that are prohibited from receiving items described in Supplement No. 2 of Part 744 of the EAR unless the exporter secures a license. These parties have been determined by the U.S. Government to be 'military end users,' as defined in [Section 744.21\(g\)](#) of the EAR, and represent an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela.

The Military End User List is not exhaustive, and, pursuant to the license requirements in [Section 744.21](#) of the EAR, exporters, reexporters, or transferors must conduct their own due diligence for entities not identified in [Supplement No. 7 to Part 744](#) of the EAR.

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Semiconductor Regs – Holding all the Chips

- New Semiconductor Regulations
- October 7, 2022
- 140 pages of regulations
- On a Friday!

Semiconductor Regs – Holding all the Chips

- New ECCNs
- New FDPRs
- New U.S. Person restrictions

Holding all the Chips - Jurisdiction

- Export Controls v. Sanctions

- Sanctions follow the *person*



- Export controls follow the item



Holding all the Chips - Jurisdiction

- Wait what?
- Restrictions on support?
- Isn't that the provision of services?
- What is this?!?
- Where am I?!?!?!?!?!?!?!?

A Peek Over the Wall: Chinese Countermeasures

September 2020
Unreliable Entity
List (UEL)
Provisions

October 2020
Export Control
Law

January 2021
Counteracting
Unjustified
Extraterritorial
Legislation

January 2021
National Security
Review for Foreign
Investment

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- The Trade War
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 - New tools and weapons
 - New focus for the fray
- Preparing for the Future

New Tools and Weapons

- New ECCNs
 - Probably the most straightforward
 - Challenging to identify the technology to control
 - Will emerging technology ever emerge?

New Tools and Weapons

- Superextraterritoriality
 - Foreign direct product rules
 - Controls on U.S.-person activity
 - Technological containment policy

New Tools and Weapons

- Non-exhaustive lists
 - Used by both sides
 - Provide a category but no specific list
 - Provide a list but say that other items may be included
 - Intentional chilling effect

New Tools and Weapons

- Holding cards still to play
 - China has announced a number of new controls
 - Have not leaned into them fully
 - Still have [powder dry/arrows in quiver/shots to fire/etc.]

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Where is the Next Battleground?

Export Controls

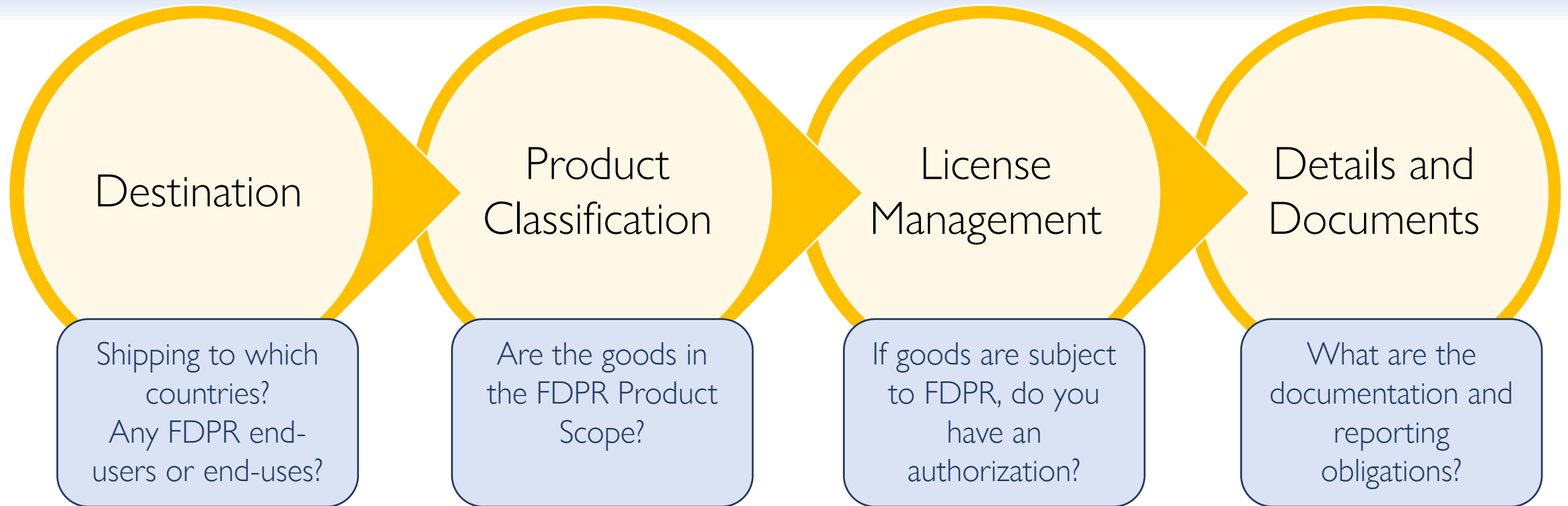
US Considering New China Controls on Quantum, AI, Report Says

The Biden administration is discussing new export controls to further limit China's ability to acquire powerful emerging computing technologies, Bloomberg [reported](#) Oct. 20. The discussions, which are at an "early stage," could lead to new controls on quantum computing technologies and artificial intelligence software, the report said, and industry experts are providing input on "how to set the parameters of the restrictions." The White House and Commerce Department didn't comment.

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 - Practical preparations and risk assessment
 - Seeing the future

Practical Preparations – FDPR



Broader Risk Assessment

- How are our supply chains affected?
- Do we need to change production location, materials, sources, vendors, or investments?
- What collaborations may be off-limits?
- What markets may be restricted or prohibited?

Will we be forced to choose a side?



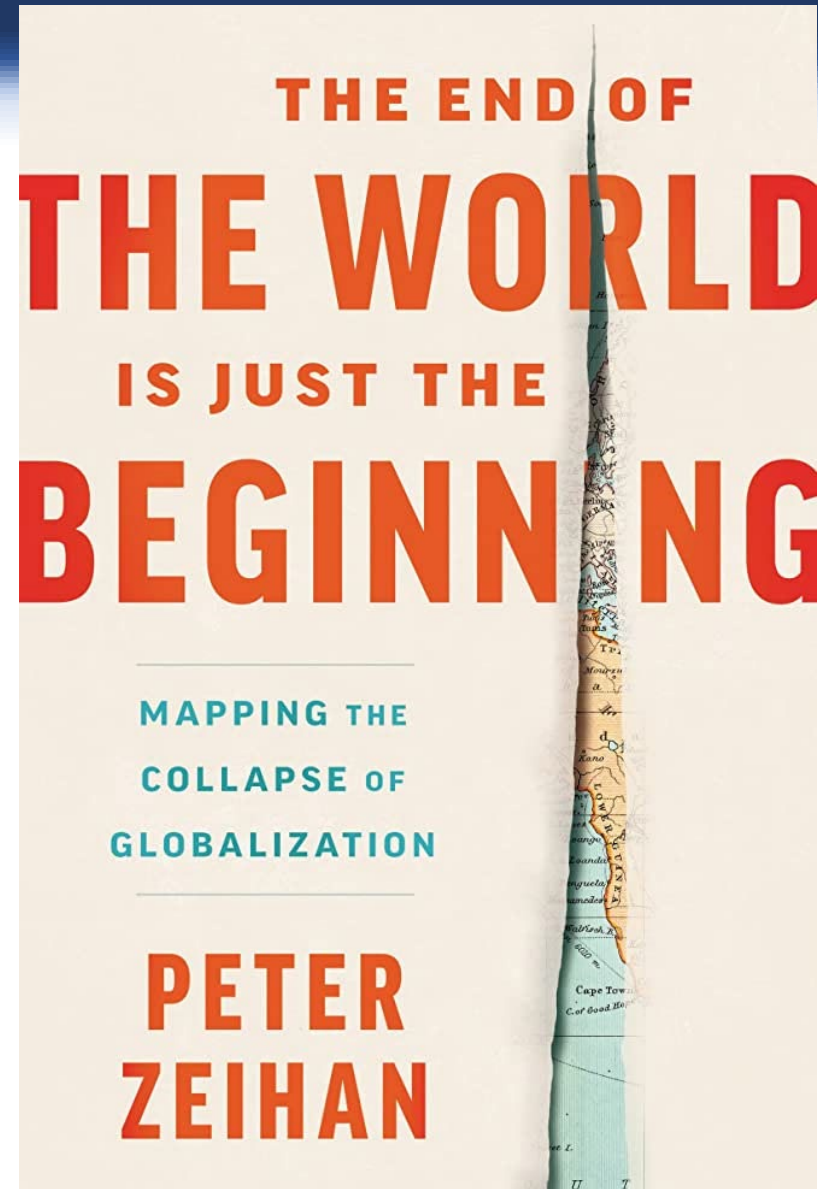
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Where are we headed?

- Balance of forces
- Deglobalization v. Cohesion
- Timeline for changes
- Potential for disruption

Where are we headed?



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- Balance of forces
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Trade Compliance as Corporate Strategy



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Final Thought

Compliance as Business Strategy

Thank you

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