

# U.S. Controls Over Foreign Access to and Influence on Technology and Research in 2020

U.S. companies, academic and research institutions, and individuals are facing greater scrutiny and regulation of their activities with foreign parties involving U.S. technology and research. Many have been caught off guard. Reflecting bipartisan concerns about foreign access to and influence on U.S. technology, the United States has adopted a whole-of-government (WOG) strategy to control and restrict foreign access to and influence on U.S. technology across the innovation pipeline—from research to commerce to exports. This [MassPoint PLLC](#) chart illustrates key U.S. government concerns and legal and policy measures taken to date.

## TECHNOLOGY

**Controlled/Regulated Things: Software, Hardware, Information, R&D, Services**

## TECHNOLOGY PRODUCERS/TRANSMITTERS

**Regulated Parties: Companies, Academic & Research Institutions, Individuals, Government**

## TECHNOLOGY ACCESS/TRANSFER POINTS

**Points of Legal and Policy Intervention**

Lawful (presumptively)

Unlawful

INVESTMENT

COMMERCE/TRADE

ACADEMIC & RESEARCH

ACADEMIC & ECONOMIC ESPIONAGE

Lawful (presumptively)

Illicit

### EXAMPLES

FDI (e.g., M&A, private equity); JVs; venture capital (e.g., tech/biotech startups).

Tech licensing, sales, exports; R&D collaborations; government contracting.

Foreign funding of U.S. academic research; foreign student/researcher participation; academic partnerships, exchanges & talent recruitment.

Academic espionage, economic espionage (e.g., IP theft by former employees, competitors).

### LEGAL/POLICY CONCERNS

“Tech-seeking investment”/access to material non-public information; access to U.S. R&D at a discount; foreign government access to tech/IP openly or surreptitiously.

Tech and R&D transfers to foreign parties and countries of concern (e.g., Huawei) by sales, exports, deemed exports; evasion of U.S. controls; “back door” “espionage” through tech and telecoms hardware.

Foreign student and researcher access to U.S. technology (unwitting “non-traditional collectors” and “spies”); foreign access to U.S. research through research funding, exchange programs; Thousand Talents Plan; Confucius Institute.

Access to tech/research by traditional and non-traditional collectors; IP theft by/for foreign companies and governments; exports to foreign to parties suspected of economic espionage/use of U.S. tech to gain competitive/qualitative advantage; foreign influence.

## U.S. WHOLE OF GOVERNMENT APPROACH

**(Interagency and across branches; bipartisan consensus)**

### LEGAL/POLICY RESPONSES

FIRRMA/CFIUS (JVs; certain passive investment and other “control” transactions; mandatory review of certain critical technology, Emerging & Foundational Technology, and Sensitive Personal Data transactions; mandatory CFIUS - Commerce Dept. coordination. IEEPA potentially available.

Enhanced and new export controls; ECRA; Emerging & Foundational Technology; coordinated enforcement (e.g., criminal prosecutions leading to export blacklisting); increased use of economic sanctions to restrict foreign access to/participation in U.S. tech pipeline/ IEEPA; tech and telecoms supply chain exclusions (e.g., NDAA for FY 2019; EO 13873).

Immigration/visa curbs; Congressional & Executive Branch investigations/reports (e.g., NIH; Dept. of Energy); proposed legislation (e.g., Protect Our Universities Act, Foreign Influence Transparency Act); Higher Education Act § 117 enforcement; prosecutions of academics (e.g., Charles Lieber, Franklin Feng Tao); public pressure on academia (e.g., from Congress); federal funding-based restrictions on foreign collaboration; FBI/law enforcement outreach.

Criminal prosecutions and civil cases against individuals and companies for economic espionage (e.g., Trade Secret theft); foreign funding and conflicts of interest non-disclosure enforcement; export restrictions (related to trade secret theft cases); scrutiny of foreign influence through, e.g., Confucius Institute, Thousand Talents Plan.

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