

Updates on U.S. Export Controls, Sanctions, and National Security

Swedish Export Control Society
Sveriges Exportkontrollförening

Agenda

Government Recent Updates

OFAC | Treasury

BIS | Commerce

DDTC | State

Trivia Questions

Changes in Regulatory Perspectives

Licensing, Enforcement, Listings, Monitoring

Future Focus

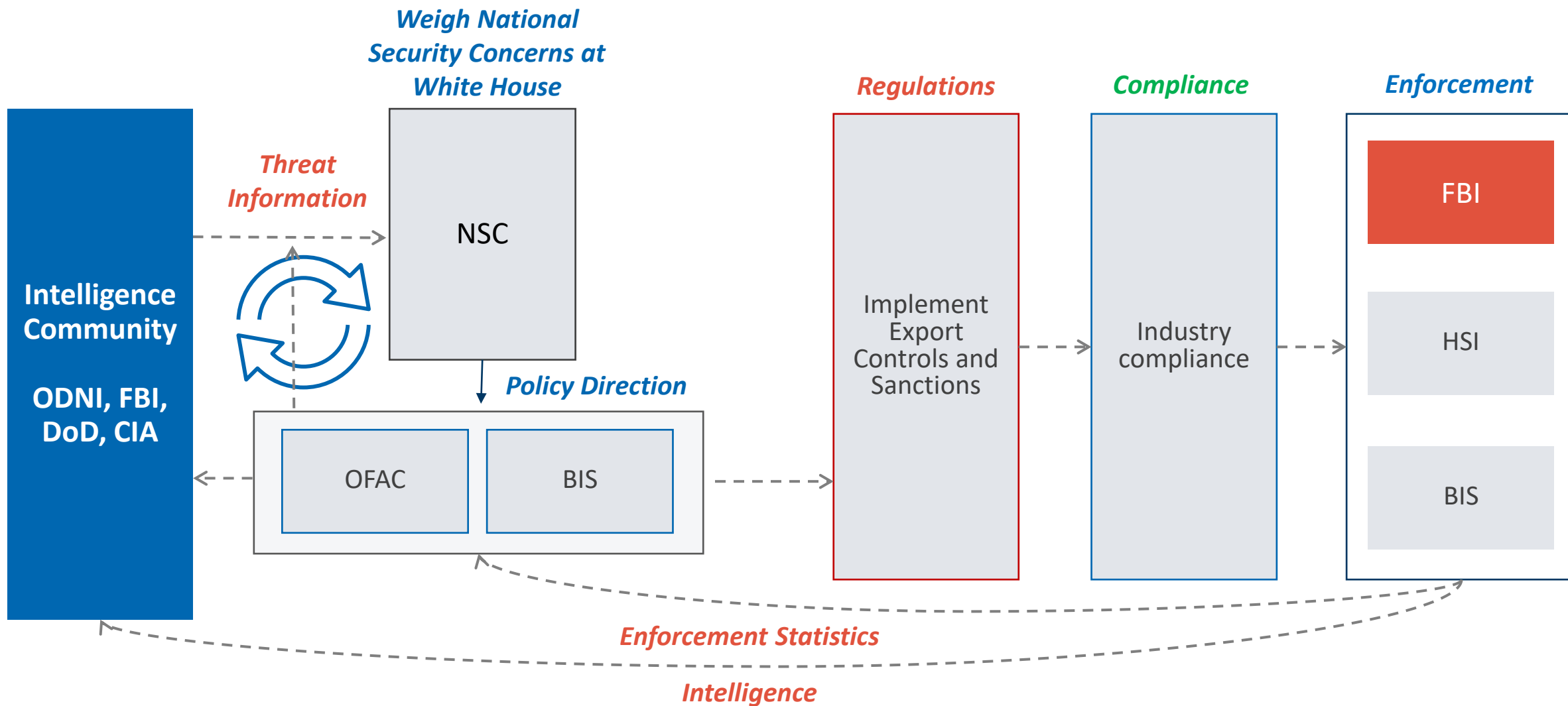
Assessment of Risk

FINAL EXAM

World of Sanctions, Export Controls, and National Security



NS, IC and the Export Control and Sanctions Process





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Government Updates

State | DDTC Updates

The [interim final rule](#), originally published by the U.S. State Department's Directorate of Defense Trade Controls (DDTC) on March 23, 2022, will reorganize and consolidate definitions in the ITAR. Part of a broader agency effort to reorganize the ITAR, this new structure will improve the organization of the regulations by concentrating authorities, policies, and definitions into distinct and logical subparts, removing duplicative text, and standardizing section structure and style. [The DDTC has stated that the rule does not make substantive revisions to the regulations or impose new requirements, but rather, improves clarity.](#)

- Subpart A - General Information: consolidates and explains the legislative authority and purpose of the regulations to assist in understanding their importance and source.
- Subpart B - General Policies and Processes: outlines the general processes and policies of the ITAR.
- Subpart C - Definitions: provides a consolidated list of defined terms that are applicable throughout the ITAR. DDTC, however, notes that the definitions will not be in alphabetical order.



State | EXBS Program

The [Export Control and Related Border Security \(EXBS\)](#) program seeks to prevent the proliferation of weapons of mass destruction and destabilizing accumulations and irresponsible transfers of conventional weapons by building effective national strategic trade control systems in countries that possess, produce, or supply strategic items, as well as in countries through which such items are most likely to transit. The program provides assistance in five core areas:

- *Laws and Regulations*
- *Licensing*
- *Enforcement*
- *Government-Industry Cooperation*
- *Interagency and International Cooperation and Coordination*

Webiste: <https://www.state.gov/export-control-and-related-border-security-program/>



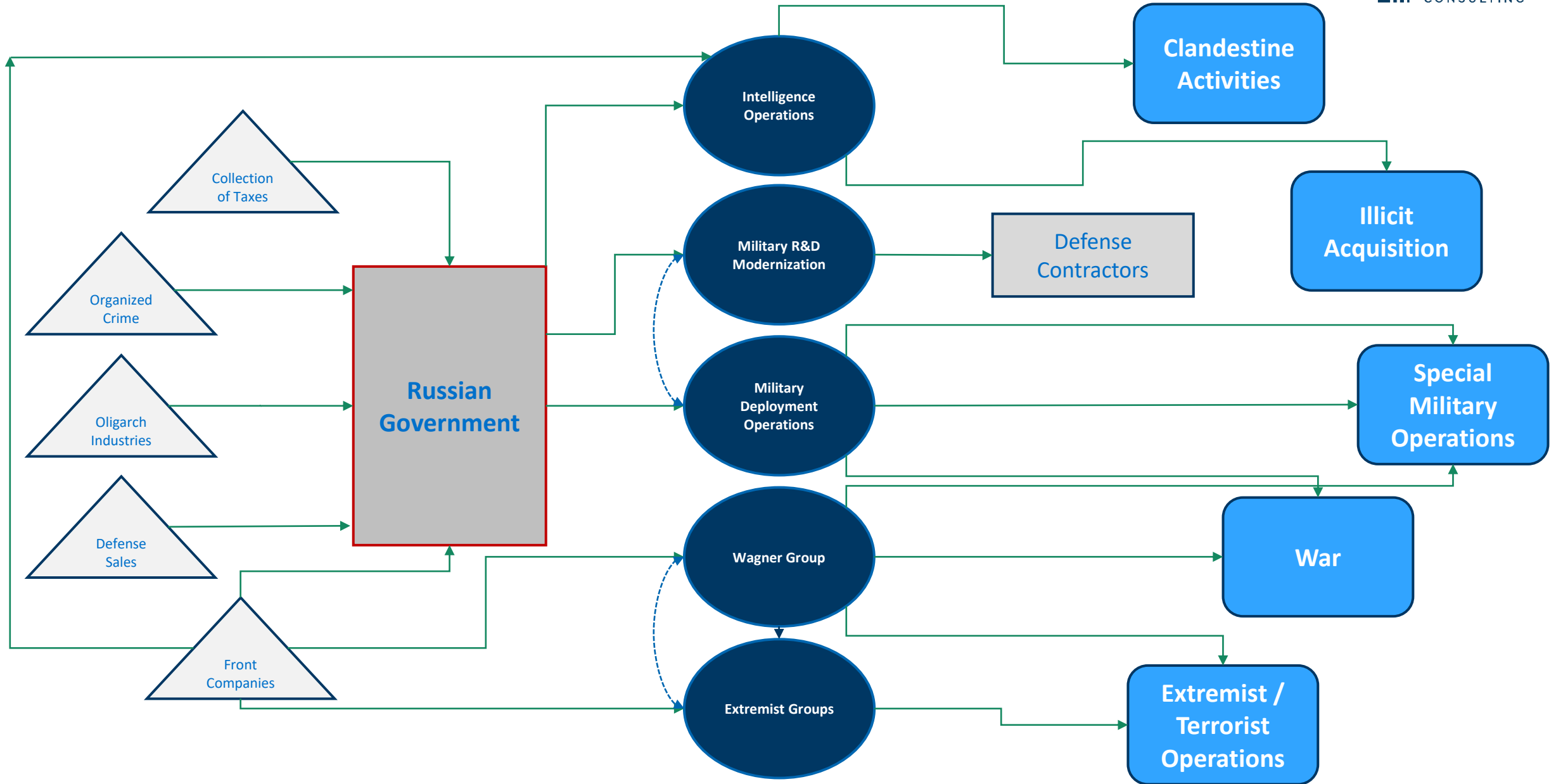
OFAC updates

Where do we even start?

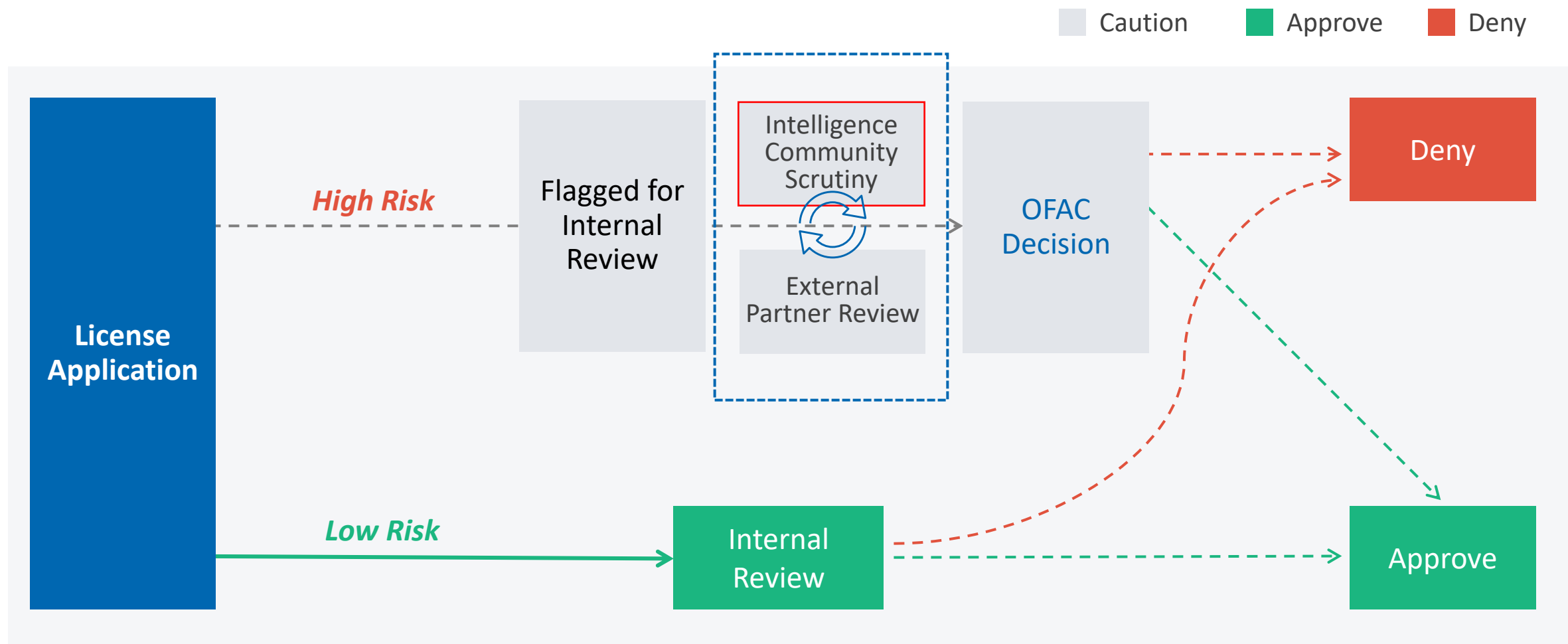
- Russian Harmful Foreign Activities Sanctions Regulation (RuHSR)
- Energy Industry
- Financial institutions
- Revenue generation streams for Russian government
- Russian allies
- Russian defense entities
- Iranian entities
- Chinese defense entities
- General Licenses
- Lots of secondary sanctions, likely more forthcoming



Revenue Generation for Illicit Russian Activities



OFAC License Review Process

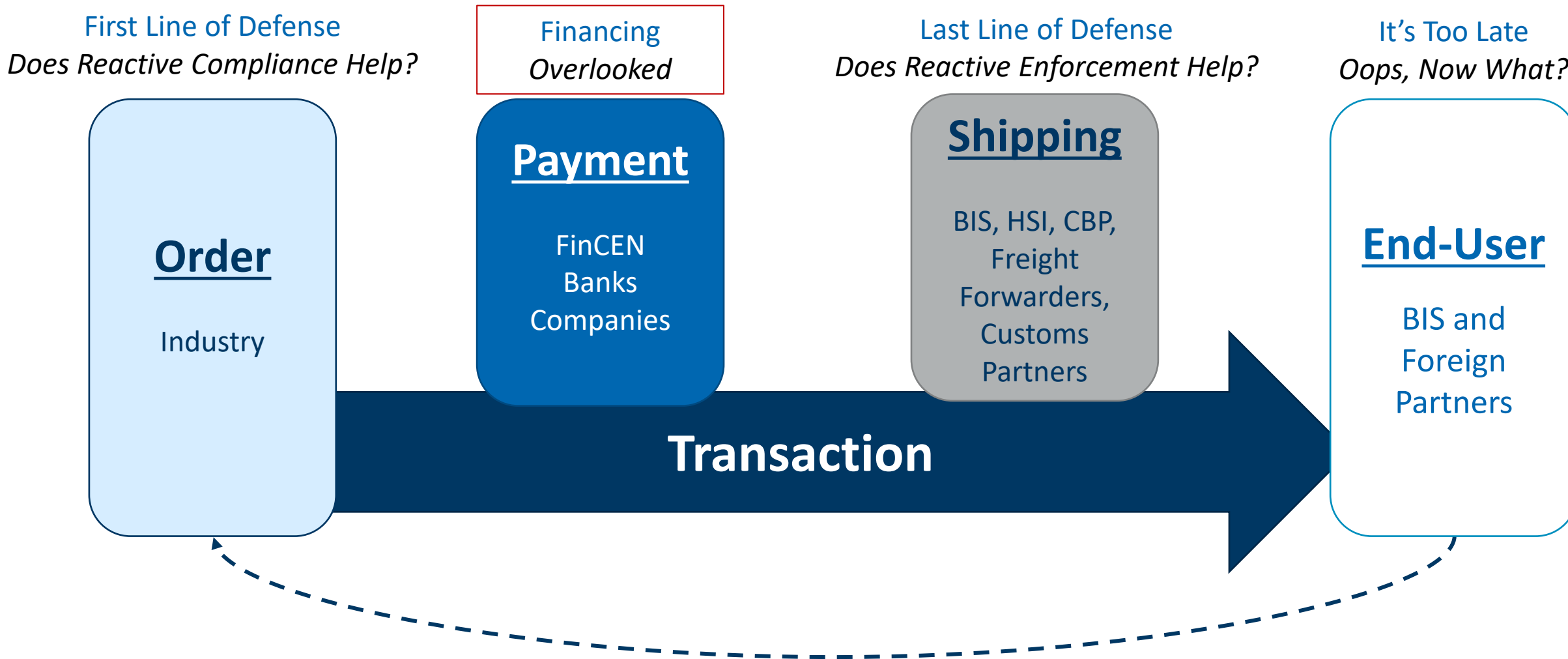


BIS Updates

- Political Appointees
 - Alan Estevez – U/S, 36-year career in DoD
 - Thea Kindler – A/S EA, prosecutor for DOJ NSD
 - Matt Axelrod – A/S EE, prosecutor and national security enforcement career
- Increased budget
- Increases authorities
- Partnerships with FBI, FinCEN, and international partners
- Increasing manpower

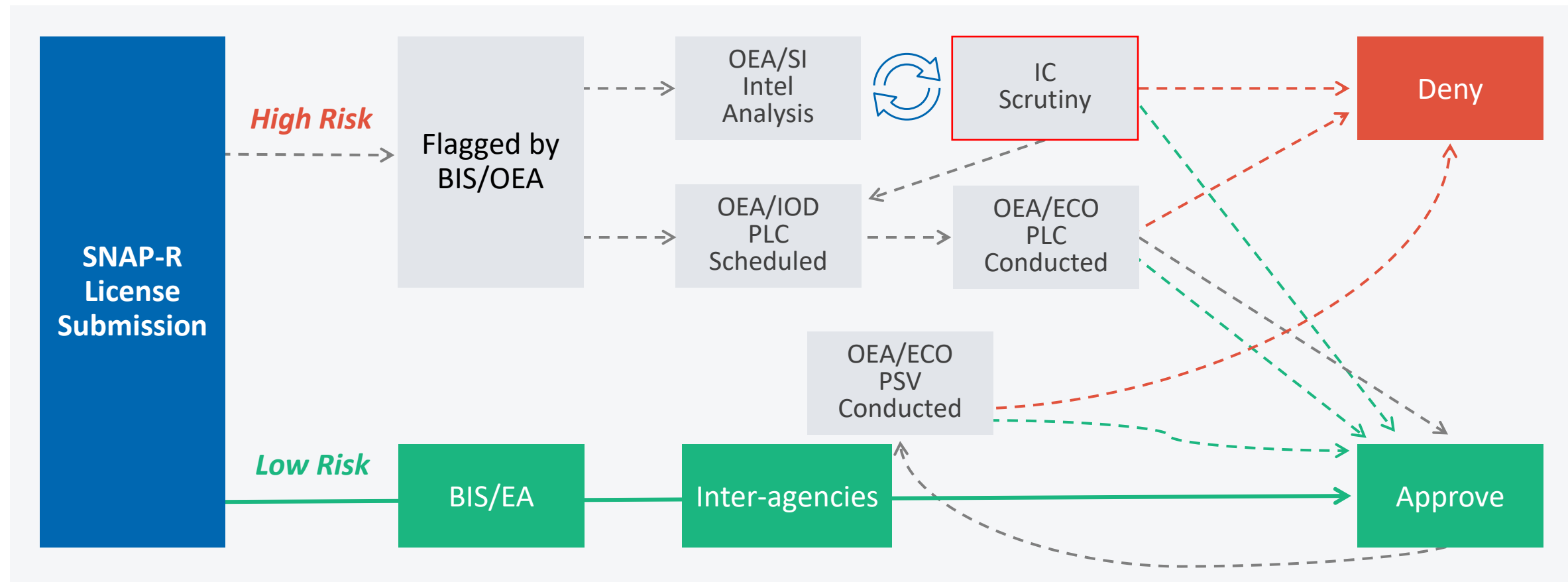


Transactional Scrutiny – BIS and FinCEN



BIS License Review Process

Caution
 Approve
 Deny



“Trust but verify.”

Pres. Ronald Reagan

End Use Monitoring (BIS, DOS, DOD)

Protect international security, foreign and domestic policy, and economic interests by inhibiting the unauthorized export/re-export of items subject to export control.

HISTORIC STATED INTENTIONS

- Facilitate secure trade
- Assist Licensing Process
- Monitor trends in technology transfer
- Build relationships between government and industry
- Minimize illicit transshipment
- Level the playing field for international business
- Verify Bona Fides and End Use, End-User

RECENT STATED INTENTIONS

- **Create opportunities for enforcement actions/operations;**
- Inform adjudication of export control license applications;
- **Prevent diversion** through end-use checks, outreach, and cooperation with foreign governments and industry;
- **Identify violators;** and
- Alert exporters about suspicious inquiries.

OTHER INTENTIONS

- Collect Intelligence Information
- Support Criminal Investigations
- Support Admin Investigations
- Gain Access to Companies
- Outreaches
- Track Commodities
- At the request of a foreign partner

Trivia Questions

Who/what is the first line of defense in export controls and sanctions?

Who/what is the last line of defense?

Which entity in a transaction presents the greatest risk of diversion?

Which type of stated end-user presents the greatest concern in transaction?

Is proactive or reactive compliance better?





Shift in Regulatory Focus

Change in Regulatory Perspectives

ECONOMIC SECURITY

To protect the economic interests of the domestic, regional or international economy with, or independent of, multilateral partners.



Flow of Goods and Services



People and Capital



Information and Technology



GLOBAL STABILITY

Adverse Influences:



Unauthorized Foreign Governments



Terrorist Organizations



Organized Criminal Syndicates



Human Rights Abuse?

INTERNATIONAL SECURITY

To protect international security from the illicit acquisition, transfer and exploitation of sensitive commodities, technologies and information.



Limit Access to Most Sensitive Technology and Weapons Systems



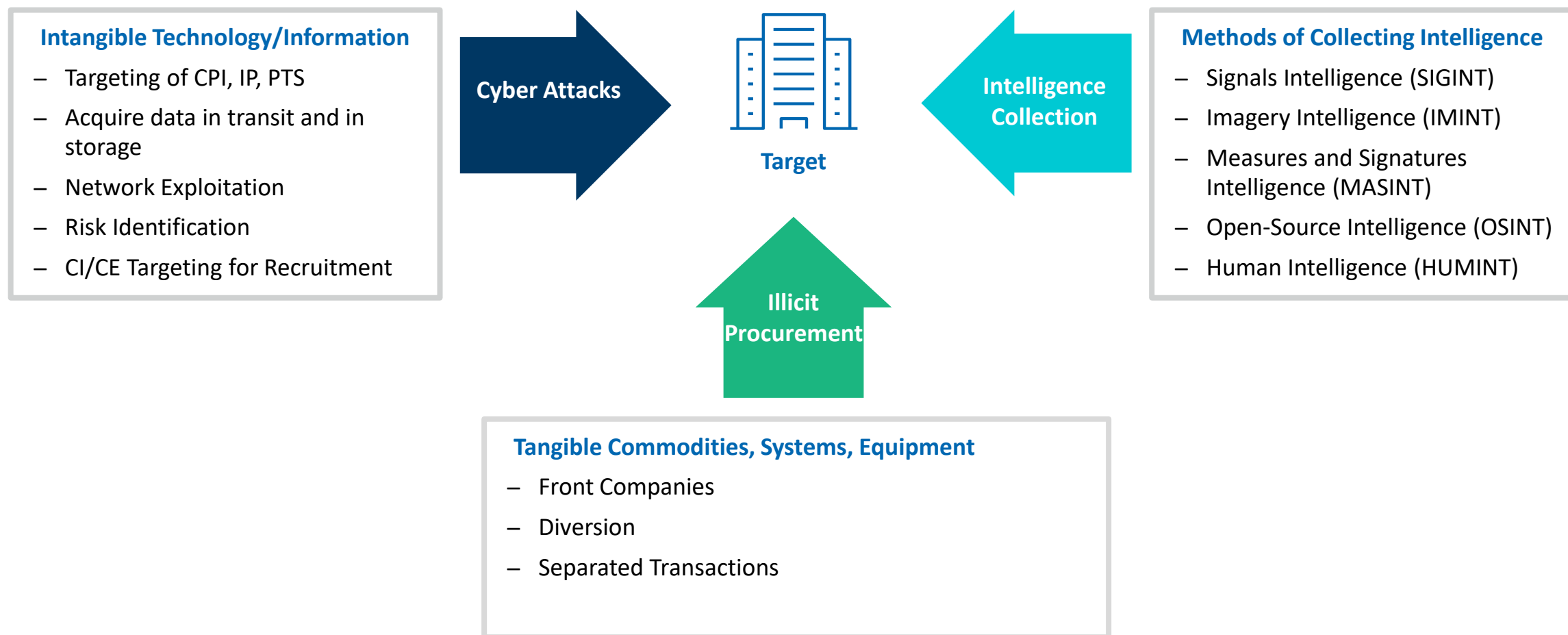
Promote International Stability



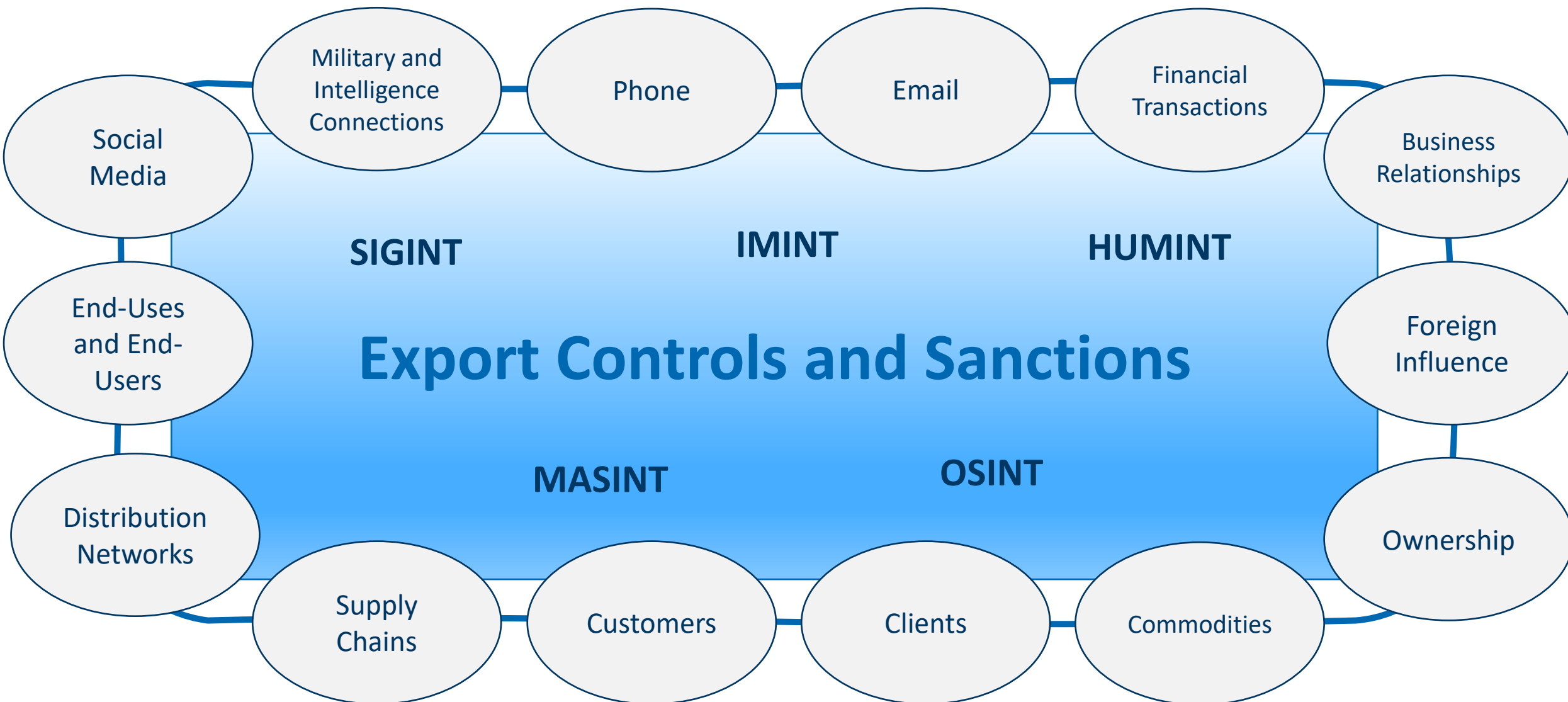
Prevent Proliferation

Multi-Pronged Approach to Illicit Acquisition

The acquisition of a company's critical products, technology and systems (PTS), critical program information (CPI) and intellectual property (IP) is targeted in three ways.



Intelligence Collection Supporting National Security



Overview of Enforcement

What is Export Enforcement?

Enforcement is a process to protect national security, homeland security, foreign policy, and the economic interests with a multi-faceted program focused on sensitive exports to hostile entities or those that engage in onward proliferation.

Export controls and sanctions are only as good as the enforcement of them.

The Export Enforcement Program



Outreaches



Licensing



Intelligence



End-Use
Monitoring



Criminal
Investigations



Admin
Investigations



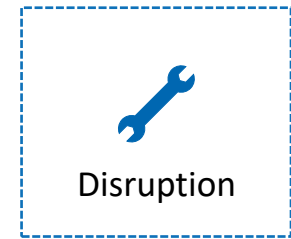
Sanctions



Restrictions



Disruption



Increased Enforcement

Targeting of Oligarchs

Targeting of Money

Increased End-Use Checks

Proactive additions to lists, fewer removals

More investigations involving Russia

Control of trade to Russia, China and Iran

Additional Special Agents sent TDY to foreign countries for investigative purposes

More Temporary Denial Orders on companies thought to be preparing to violate laws

Intelligence collections resources shifting from counterterrorism to counterintelligence targets



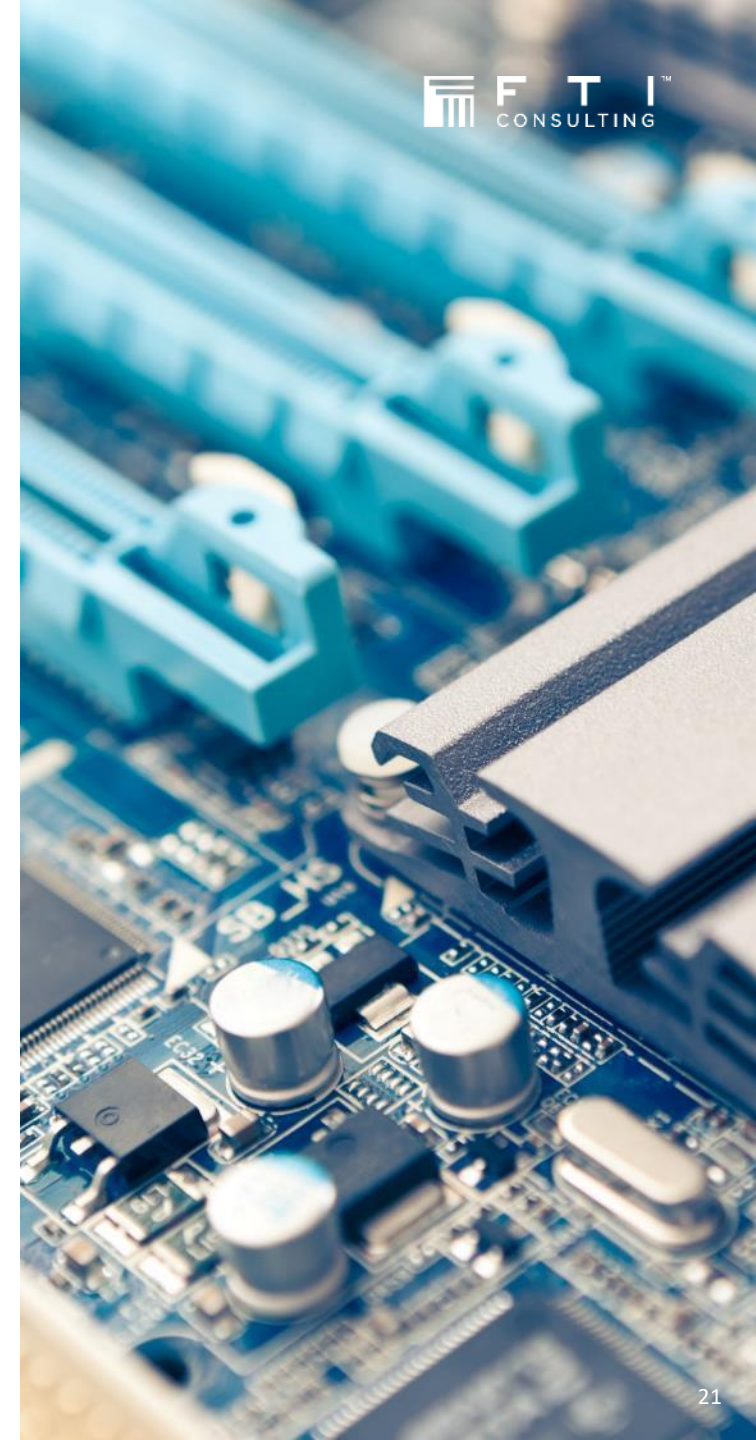
Most Frequently Targeted Commodities (Historically)

Commodities:

- Microelectronics
- Semiconductors
- Semiconductor manufacturing equipment
- Night vision
- Thermal vision
- Scopes
- Aircraft parts
- Computer networking devices
- Encryption
- Deep sea submersible equipment
- Underwater communication equipment

Uses:

- Missiles
- Torpedoes
- Space program
- Special Forces
- Military modernization
- Underwater monitoring
- Secure communications
- Security services





Two white horizontal bars

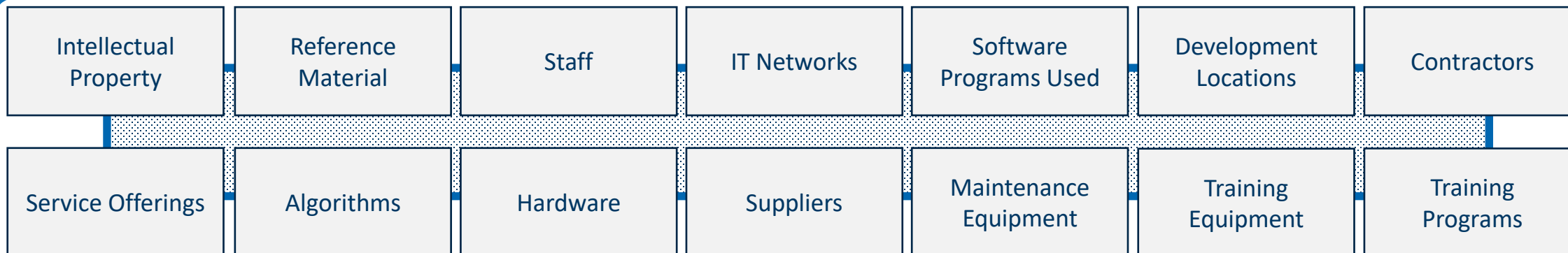
What Can a Company Do?

What is Critical Program Information?

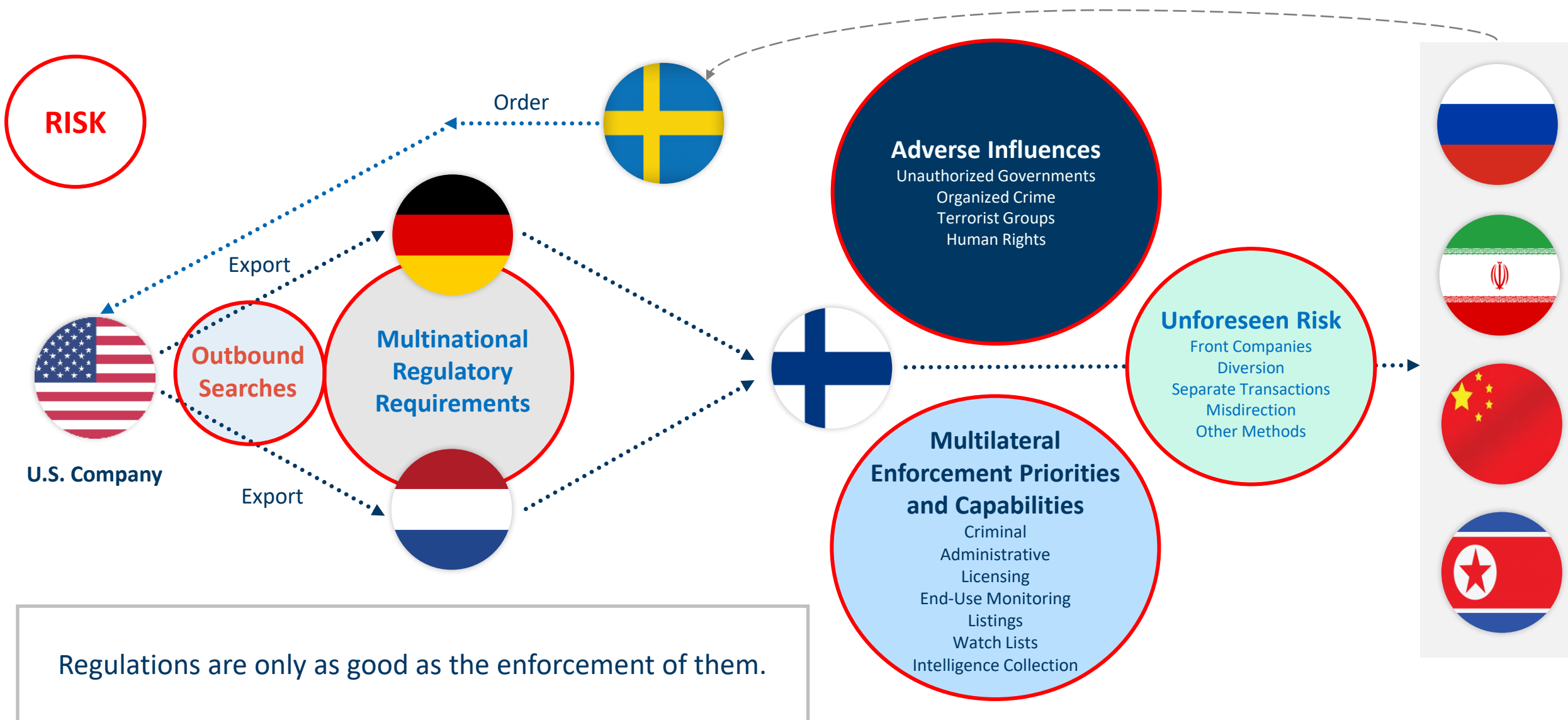
Critical Program Information, or CPI, can be defined as a company's elements that contribute to technical competitive advantage, and that, if compromised, could undermine a company's current and future market share and profitability.



The protection of a company's Critical Program Information (CPI) is a three-part process including enhanced cyber security, foreign threat protection and a robust export control and sanctions program.



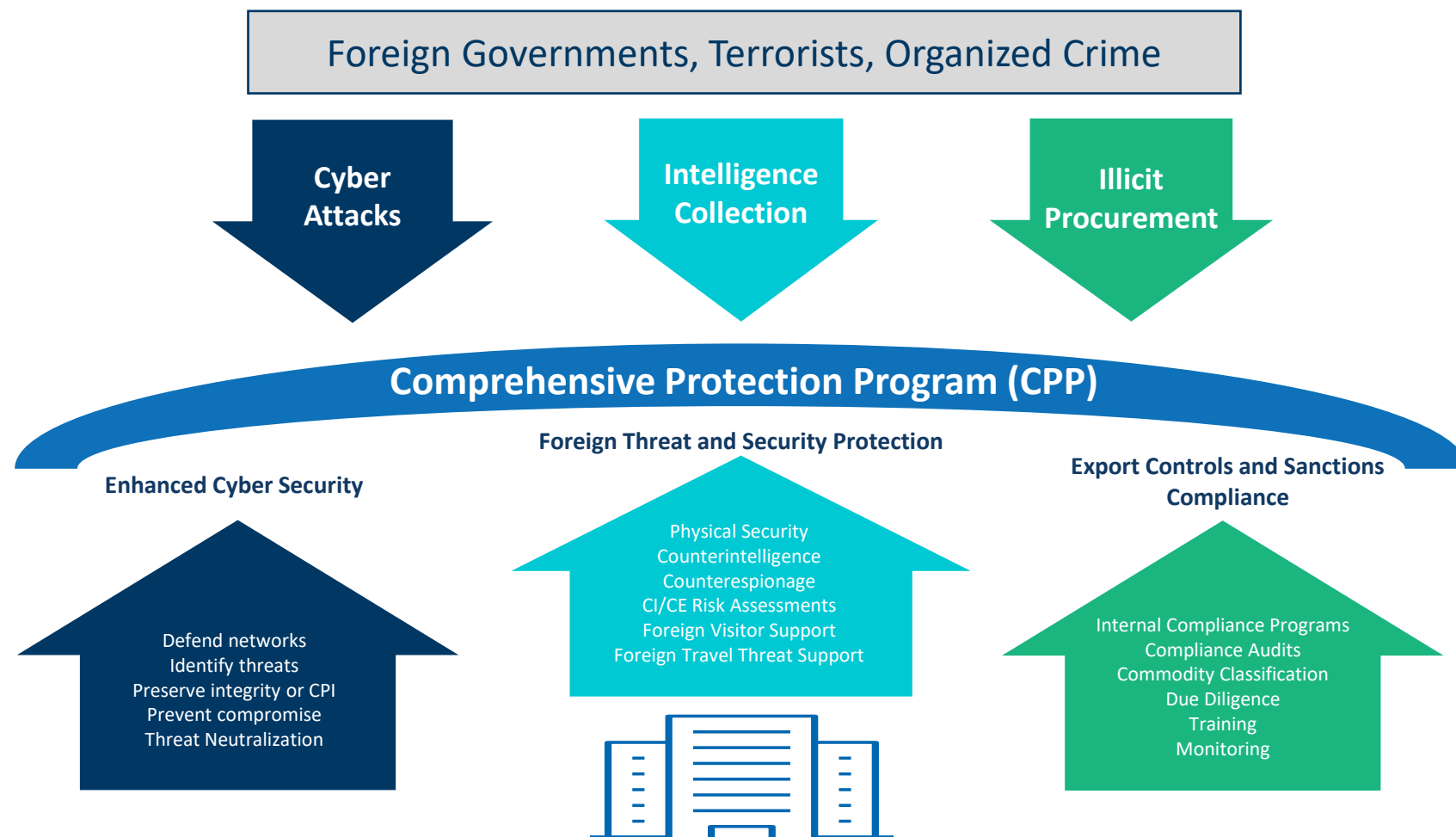
Assessment of Risk with Export Controls and Sanctions



Comprehensive Protection Program (3 Part Process)

Benefits to Company

- Protection of human capital from compromise.
- Protection of critical programs, products and competitive advantage.
- Protection of revenue streams.
- Protection of corporate reputation.
- Protect the supply chain.
- Protection from cybersecurity threats.
- Identification of security and compliance vulnerabilities.
- Assessment of cybersecurity stance and program maturity.



A protection program is only as good as its weakest link.

Target Company's Critical Program Information

Risk Assessment and Mitigation

Risks

- Reputational Risk
- Country of Origin Risk
- Country of Destination Risk
- Commodity Risk
- Political Risk
- Enforcement Risk
- Government Scrutiny Risk
- Licensing Risk
- Customer Risk
- Diversion Risk
- Supply Chain Risk
- Situational Risk
- Resellers Risk
- Distributor Risk
- Industry Risk
- Ownership Risk
- Beneficial Owner Risk
- Financial Risk
- Controlling Interest Risk

Possible Risk Mitigation

- Showing understanding of risks
- Proper due diligence
- Long sighted view of transactions
- Cynicism of entities participating in the transaction
- Deflection of liability
- Detailing risk mitigating measures
- Positive publicity
- Benefit to society
- Choosing the lesser of the evils
- Choosing best option
- Saving work in a file
- Displaying consideration for adverse factors
- Measures approach based on value of transaction and perceived risk

Cautionary Measures

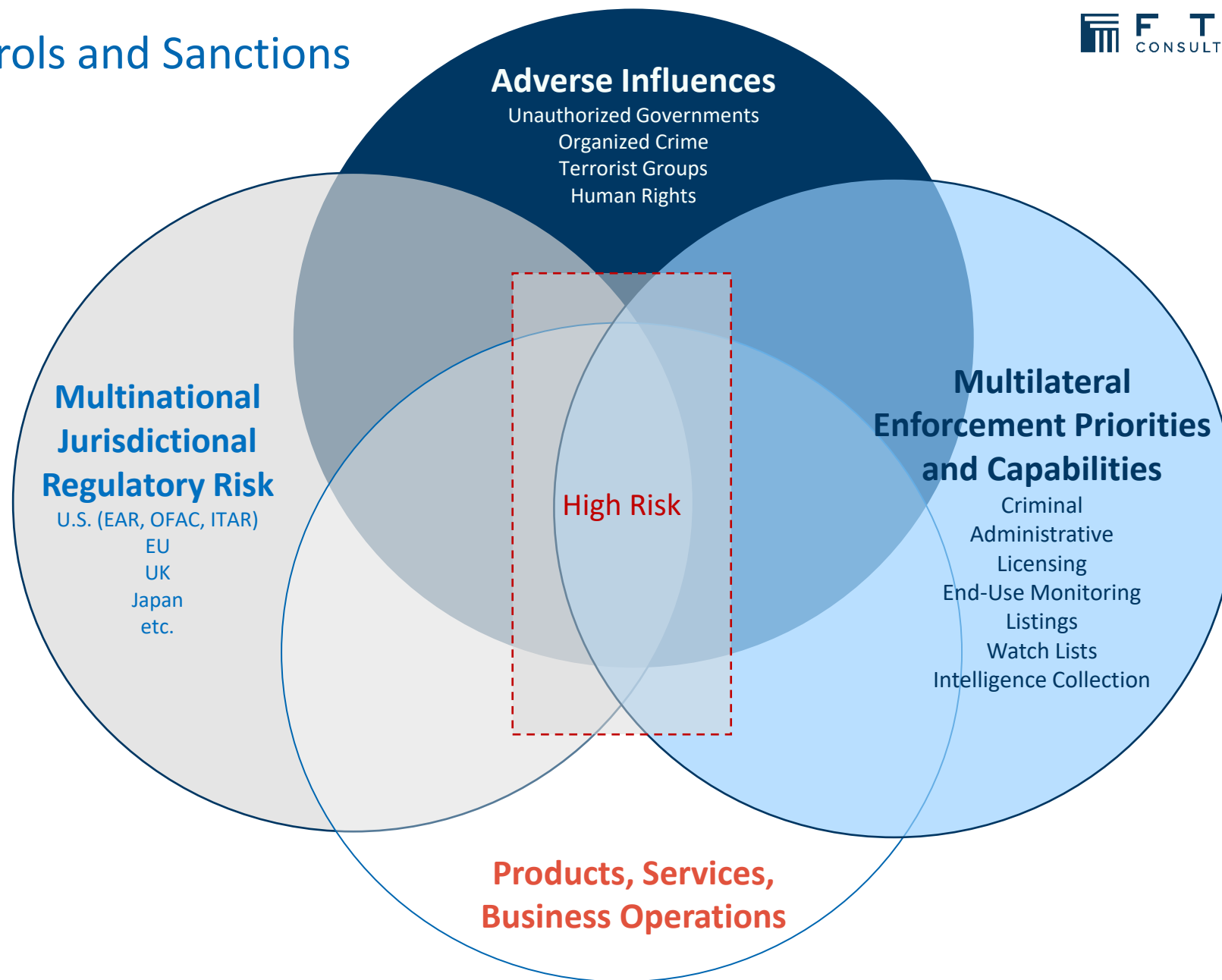
- Never state we did not see a threat to international security
- Don't put words in government's mouths

Compliance with Export Controls and Sanctions

Identifying Resource Focus

Focusing resources on how to comply with export controls and sanctions should be placed on the intersection of:

- multijurisdictional regulations,
- adverse influence, and
- multilateral enforcement priorities and capabilities, and
- a company's products, services, and business operations.



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