

# U.S. Department of Commerce imposes significant new export control restrictions on China, Russia, and Venezuela

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On 28 April the U.S. Commerce Department, Bureau of Industry and Security (BIS) published two final rules and a proposed rule amending the Export Administration Regulations (EAR) that will further restrict and regulate transactions involving a number of countries, impacting China, Russia, and Venezuela in particular. Specifically, these changes include the following:

- A [final rule](#) expanding the military end user/user controls (MEU) to cover a potentially far greater number of entities and activities in all three countries, including China.
- A [final rule](#) eliminating License Exception Civil End Users (CIV), which permits exports, reexports, or in-country transfers of items controlled for national security (NS) reasons to civilian end-users in China, Russia, Venezuela, and other countries.
- A [proposed rule](#) that will eliminate certain provisions of License Exception Additional Permissive Reexports (APR) that currently permit reexports of controlled items to China and certain other countries based on export authorizations issued by the reexporting country.

The final rules go into effect 60 days after their publication in the Federal Register (i.e., 29 June 2020), and the proposed rule has a 60-day comment period ending on 29 June 2020.

These rules will have a significant impact on industry. For example, the rules impose new diligence and export licensing requirements on trade with Chinese entities, particularly large Chinese companies with both civil and military activities (e.g., companies operating in the semiconductor, technology, energy, aviation, and other industries). In addition, there are new electronic filing requirements for shipments to China, Russia, or Venezuela. BIS is already receiving questions from industry on interpretation of certain of these provisions.

## **The MEU rule expands license requirements for China, Russia, and Venezuela, and significantly broadens the scope of covered entities and activities**

The MEU rule greatly expands the scope of export restrictions on China, in particular. The preamble of the rule discusses the increasing integration of the Chinese military establishment with its civilian industry, and emphasizes the difficulty of distinguishing between civil and military entities in China, which indicates that BIS will interpret and apply the new restrictions

broadly. Specifically, the rule provides, "[t]his expansion will require increased diligence with respect to the evaluation of end users in China, particularly in view of China's widespread civil-military integration." The rule makes the following key changes:

- The rule broadens the definition of "military end use" to include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military items described on the U.S. Munitions List, or classified under Export Control Classification Numbers (ECCN) ending in "A018" or under "600 series" ECCNs. The rule does not define what activities constitute "support" or "contribution," but the purpose of this change is to expand the definition of "military end use" to cover not only activities that directly relate to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of covered military items, but also indirect activities that "support" or "contribute" to such activities. The rule also clarifies that any one element of the use definition can trigger the applicability of the "military end use" definition (e.g., can be one of the following activities – operation, installation, maintenance, repair, overhaul, or refurbishing).
- The rule adds a licensing requirement for covered transactions involving a "military end user" in China, bringing the restrictions on China in line with the ones currently in place regarding Russia and Venezuela. At present, the MEU rule's licensing requirements only apply to a "military end use" in China, not all "military end users" in China. Notably, the change in "military end use" expands the restrictions on "military end users," as this term covers any person or entity "whose actions or functions are intended to support" such "military end uses." Therefore, an export license will be required for any person or entity in China whose actions or functions are intended to support even indirect activities that support or contribute to the development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of covered military items.
- The rule also adds a number of new ECCNs to the list of items covered by the MEU rule, including items that are controlled for only anti-terrorism reasons.
- The newly-added ECCNs include: 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990.
  - The rule also expands the scope of items covered under ECCNs 3A992, 8A992, and 9A991.
  - License applications for covered items will be reviewed with a policy of denial.
- The rule requires the filing of Electronic Export Information (EEI) for all items destined for China, Russia, or Venezuela, regardless of the value of the shipment. Previously, EEI filing was only required for most items destined for China, Russia, or Venezuela if the value of the shipment exceeded US\$2,500. EEI will not be required only if the shipment is eligible for License Exception GOV.
- The rule includes a saving clause that grants an additional 30 days (until 27 July 2020) to deliver any items that will now require a license under the MEU rule, provided that the items were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export on 29 June 2020.

To date, BIS has not issued guidance explaining the scope of these restrictions, but they could be interpreted broadly to cover a range of commercial transactions even where the U.S. supplier has no reason to believe that its products will be used in "military end uses." For instance, sales of

certain commercial, off-the-shelf items to a Chinese entity for a purely commercial project may require BIS authorization if the U.S. supplier knows or has reason to know that the Chinese customer is also involved in supporting or contributing to the development, production, or operation of military items. In sum, businesses can expect that these changes will significantly impact their transactions with Chinese entities, particularly large Chinese companies with both civil and military activities (e.g., companies operating in the semiconductor, technology, energy, aviation, and other industries), including the need for robust due diligence even for purely commercial transactions.

### **Elimination of License Exception CIV**

License Exception CIV currently authorizes the export, reexport, and in-country transfer of NS controlled items set forth on the Commerce Control List that would otherwise require a license, provided that the items are destined to civil end-users and civil end-uses in countries in Country Group D:1 (other than North Korea). Country Group D:1 includes China, Russia, Venezuela, and other countries.

Following the elimination of License Exception CIV on 29 June 2020, any such exports, reexports, or in-country transfers will require a BIS license. Notably, this will include any in-country transfers or reexports of items previously exported pursuant to License Exception CIV that are in the foreign recipient's inventory after 29 June 2020.

### **BIS proposes to narrow the scope of License Exception APR**

Currently, License Exception APR authorizes the reexport of certain items from Country Group A:1 countries or Hong Kong to certain destinations, including countries in Country Group D:1, so long as (1) the reexport is consistent with the country of reexport's export authorizations, and (2) the item is not subject to specific reasons for control, such as missile technology and nuclear nonproliferation controls.

The proposed rule would remove countries in Country Group D:1, including China, Russia, and Venezuela, as authorized destinations for items controlled for NS reasons under License Exception APR. This proposed modification is based on concerns about different policies among Country Group A:1 countries and Hong Kong toward the threat caused by increasing integration of the civilian and military industries in China and other Country Group D:1 countries. Specifically, BIS is concerned that the different license review standards between countries in Country Group A:1 may result in the approval of a license that otherwise would be denied if the item were exported directly from the United States.

BIS is seeking information on the volume of transactions that would be affected by this proposed change, how the proposed rule would affect the amount of time necessary to complete such transactions in the future, and how the proposed rule would otherwise affect business. Comments are due no later than 29 June 2020.

### **Next steps**

U.S. exporters should be prepared to comply with the requirements of the revised MEU rule and the elimination of License Exception CIV by 29 June 2020. Any comments on the proposed modification to License Exception APR should also be received by BIS by 29 June 2020.

For further information or assistance, please contact any of the Hogan Lovells lawyers identified below.

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