

US Bureau of Industry and Security adds 28 Chinese entities to the Entity List

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Executive summary

On 7 October 2019, the United States (US) Department of Commerce, Bureau of Industry and Security (BIS) added 28 Chinese organizations to the Entity List for acting "contrary to the foreign policy interests of the United States."¹ Export or re-export transactions subject to the jurisdiction of the US with any of these organizations will require export licenses from BIS that will be subject to a presumption of denial. The authorization of license exceptions is limited.

Detailed discussion

The US Government found that the Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau, 18 of its subordinate municipal and county public security bureaus, and one other subordinate institute were implicated in human rights violations and abuses carried out by the XUAR People's Government Public Security Bureau in their detention and surveillance of Uighurs, Kazakhs, and other members of Muslim minority groups in XUAR. In addition to these government entities, eight technology firms were found to have "enable[ed] activities contrary to the foreign policy interests of the United States."² The firms added to the entity list include video surveillance manufacturers and artificial intelligence start-ups.

Following the most recent addition of a large Chinese technology company in May,³ the newly listed entities follow the trend of the US Government attempting to restrict Chinese advances in surveillance and artificial intelligence.⁴ With wide ranging capabilities and focus including facial-recognition, voice-recognition, and tracking, these companies reflect the increased development of the Chinese surveillance industry. These additions also include some of China's most valuable artificial intelligence start-ups.⁵

Consequently, BIS now requires US exporters and foreign re-exporters to apply for a license to export, re-export, or transfer (in country) any commodity, software or technology (collectively "items") subject to the US Export Administration Regulations (EAR) to these entities. Items "subject to the EAR" include all items in the US, all US-origin items wherever located, and non-US items containing more than a de minimis level of US-controlled content.⁶

BIS imposed a "presumption of denial" on these licenses, which effectively means the license application will likely not be granted and these companies will not be able to procure or obtain any items subject to the EAR.

It should also be noted that while BIS issued a temporary general license authorizing certain, limited activities in the telecommunications industry after adding the large Chinese technology company to the Entity List, at this time, there are no temporary general licenses in place for the 28 new entities.

Actions for businesses

Any company involved in US-China trade or operating in industries with heightened risk (e.g., telecommunications, semiconductors, technology) is encouraged to identify the potential impact of the addition of these companies to the Entity List and subsequently enhancing its export compliance programs to avoid potential violations. Immediate actions for such companies should include:

- ▶ Recognizing the broad and extraterritorial reach of the US export compliance regime as well as establishing or enhancing an export compliance program that properly monitors export control and sanctions compliance requirements.
- ▶ Understanding and determining the export licensing requirements for company products by determining whether products are subject to the EAR and by accurately identifying products' export control classification.
- ▶ Implementing effective software to track transactions and to restrict doing business with prohibited parties (i.e., restricted party/blacklist screening).

Endnotes

1. 84 FR 54002, 9 October 2019.
2. 84 FR 54002, 9 October 2019.
3. See EY Global Tax Alert, [Huawei and affiliates added to the bureau of industry and security's Entity List effectively barring US exports to the company](#), dated 22 May 2019, for background on Huawei and affiliates placement on the Bureau of Industry and Security's Entity List, effectively barring US exports to the company.
4. <https://fortune.com/2019/10/08/china-ai-us-entity-list/>.
5. <https://www.nytimes.com/2019/10/07/us/politics/us-to-blacklist-28-chinese-entities-over-abuses-in-xinjiang.html>.
6. See 15 CFR § 734.3.

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