



Export Agencies Continue Emphasis on Restricted Party Screening Under Export Control Laws

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The U.S. Government is continuing its frequent and highly visible use of denied party lists as an important tool in administering the export control laws. Each of the Bureau of Industry and Security (BIS), the Office of Foreign Assets Control (OFAC) and the Directorate of Defense Trade Controls (DDTC) has its own restricted party lists, and new parties are being added regularly - U.S. exporters are challenged to keep up with the steady flow of changes. The following are examples of recent restricted party actions for exporters to have on their radar screens.

1. BIS Entity List. BIS announced a number of additional designations to the Entity List within recent weeks under §744.16 of the Export Administration Regulations (EAR). These include:

- On December 17, 2021 BIS added a total of 37 entities to the Entity List including 34 in China, 3 in Georgia, 2 in Turkey and 1 in Malaysia. These included the Chinese Academy of Military Medical Sciences and eleven of its research institutes based on BIS's conclusions that they use biotechnology processes to support Chinese military end uses and end users, including purported "brain-control" weaponry. Other reasons for designations include the listed parties' support of China's military modernization, their attempts to acquire U.S.-origin items in support of the Chinese People's Liberation Army and their provision of material support for Iran's defense program. Further details are available [here](#).
- On November 26, 2021 BIS added 27 entities to the Entity List located in China, Japan, Pakistan and Singapore. These included eight Chinese companies as part of BIS's efforts to prevent U.S. emerging technologies "from being used for China's quantum computing efforts that support military applications, such as counter-stealth and counter-submarine applications, and the ability to break encryption or develop unbreakable encryption." (See Federal Register release [here](#).) In addition, sixteen parties in China and Pakistan were added as a result of their work involving Pakistan's nuclear activities and ballistic missile program.
- On November 4, 2021 BIS added 4 entities to the Entity List located in Israel, Russia and Singapore in a widely publicized action. According to the Federal Register Notice, two Israeli

companies - NSO Group and Candiru - were added to the list based on BIS's determination that the entities developed and supplied spyware to foreign governments that used these tools to maliciously target government officials, journalists, businesspeople, activists, academics, and embassy workers. Also, two additional companies were added in Russia and Singapore based on BIS's determination that they traffic in cyber tools used to gain unauthorized access to corporate and individual information systems. Further details are available here.

A large number of parties listed in Entity List designations are located in China, but parties in other countries are frequently designated as well, such as Pakistan, Singapore, Russia, Taiwan, Netherlands and Canada. Common reasons for listings include providing support for the Chinese military, theft of U.S. technology (especially if this will be used to support foreign military efforts), repression of ethnic and religious minority groups, corruption, undermining free and fair elections, malicious cyber activities and evasion of U.S. sanctions such as those on Iran.

2. BIS Military End User List. BIS also administers the Military End User List under the Military End Use/End User regulations set forth at EAR §744.21. In addition, BIS administers the Military-Intelligence End Use/End User regulations set out at EAR §744.22. The following are a number of recent actions under these regulations:

- On November 26, 2021 BIS added the Russian entity Moscow Institute of Physics and Technology to the BIS Military End User List due to its production of military end-use products for an undisclosed military end-user. Further details are available here.
- On December 9, 2021 BIS added Cambodia to the list of countries subject to the Military End Use/End User controls under EAR §744.21 and to the list of countries subject to the Military-Intelligence End Use/End User controls in EAR §744.22. In the action BIS also added Cambodia to the list of countries subject to the licensing policy in EAR §742.4(b)(7) and to the list of countries subject to a U.S. arms embargo under Country Group D:5. Further details are available here.

It is significant to note that the Military-Intelligence End Use/End User regulation not only restricts U.S. exporters from entering into transactions with certain restricted parties, but also prohibits U.S. persons from supporting a military-intelligence end use or a military-intelligence end user in countries covered under the rule.[1] *This requirement applies to activities by U.S. persons even if the items involved are not subject to the EAR.* The term "support" is broadly defined to include performing any contract, service, or employment the exporter knows may assist or benefit the above end uses or end users including ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, conducting negotiations in furtherance of and otherwise facilitating such activities.[2]

3. Non-SDN Chinese Military-Industrial Complex Companies List. On December 16, 2021, the following eight Chinese companies were added to the OFAC Non-SDN Chinese Military-Industrial Complex Companies List (the "Non-SDN CMIC List"):

- Cloudwalk Technology Co., Ltd.;
- Dawning Information Industry Co., Ltd.;
- Leon Technology Company Limited;
- Megvii Technology Limited;
- Netposa Technologies Limited;
- SZ DJI Technology Co., Ltd.;
- Xiamen Meiya Pico Information Co., Ltd.; and
- Yitu Limited.

In addition, on December 10, 2021 OFAC added the Chinese company Sensetime Group Limited to the Non-SDN CMIC List.

4. OFAC SDN List. Perhaps the best-known U.S. restricted party list is the OFAC List of Specially Designated Nationals and Blocked Persons (the "SDN List"). OFAC has continued to add parties regularly to the SDN List in recent months (this is in addition to OFAC's eight other restricted party lists). In December 2021 alone OFAC issued announcements on ten separate occasions announcing new SDN designations under a variety of OFAC sanctions programs including Hong Kong, Central African Republic, Venezuela, N. Korea, Burma, Iran, Syria, Belarus, CAATSA, Counter Terrorism, Counter Narcotics, Kingpin Act and Global Magnitsky programs.

5. BIS Enforcement Action For Dealing With Parties On the Entity List. On November 8, 2021 BIS announced an enforcement action and penalty against SP Industries, Inc. (d/b/a SP Scientific) of Warminster, Pennsylvania for exporting items to Huawei Technologies Co. Ltd. and its two subsidiaries Huawei Device Co., Ltd. and HiSilicon Technologies Co., Ltd., which are listed on the Entity List. BIS is actively enforcing the prohibition against engaging in export transactions with parties on the Entity List, and more enforcement actions likely are underway. Additional information regarding this case is available [here](#).

The above are just examples over an eight-week period of developments involving restricted parties ? additional amendments are occurring on a regular basis.

In the old days, the most important export requirement involved checking your export against the Commerce Control List (CCL) under the EAR and the U.S. Munitions List (USML) under the International Traffic In Arms Regulations (ITAR) to see if an export license was required. In recent years, however, the agencies have been placing increasing emphasis on the *full array* of export requirements under the EAR, OFAC sanctions and ITAR, including:

- Licensing requirements for exports, reexports and in-country transfers of restricted items listed on the CCL or the USML;
- Restrictions on exports to prohibited destinations under the OFAC sanctions programs and to embargoed countries under EAR Part 746;

- Restrictions on transactions with parties listed on the various restricted parties lists promulgated by BIS, OFAC and DDTC;
- Restrictions on exports that will be used in the prohibited end-uses under EAR Part 744; and
- Other requirements including the reporting, recordkeeping, licensing, brokering, reexport/retransfer, antiboycott, export clearance, short supply and Chemical Weapons Convention provisions contained throughout the EAR, ITAR and OFAC sanctions laws.

Restricted party screening is now a critical component of the export compliance tool kit and an important cornerstone of export compliance activities.

There are a number of compliance best practices that exporters frequently utilize in their denied party screening activities, including:

- Frequency of Screening. The designation of prohibited parties is a dynamic process ? parties can be added to a restricted party list at any time. It is possible that a long-time existing customer of a company can be added to a list on a moment?s notice. Consequently many companies screen transactions against prohibited party lists on a regular, ongoing basis rather than only at the time of establishing a business relationship with the party.
- Due Diligence Review. It is prudent to conduct due diligence reviews of transactions to help confirm the identify of parties and other facts that are important in assessing compliance (such as if a party is a military end user or a military-intelligence end user).
- Screening Procedure. Screening can be conducted through a number of techniques including manual screening against official U.S. government restricted party lists or through use of commercially available screening software programs. For example, some companies have automated screening software built into their ERP systems to conduct screening on an automated basis, and many routinely screen all of their existing customers, vendors and other parties on a periodic basis (including retroactive screening in the event a party has been added to the list after an initial screening).
- Search Criteria. Companies often utilize ?fuzzy logic? or similar search techniques to screen for variations in spelling, abbreviated or fictitious names, etc.
- Assessing Matches and False Hits. If there is a match, the Company will need to assess if it is a true match or a false hit and to communicate the results to the company employees involved in the transaction.
- Screening Compliance Tools. There are a growing number of automated compliance tools that can be of great assistance in the denied party screening process. However, companies are advised not to rely blindly on automated compliance resources ? use of such resources should be combined with proper user training, oversight and good old fashioned judgment by experienced export professionals to be the most effective.

Restricted party screening likely will continue to increase in importance in the coming years. Exporters will be well served to pay proper attention to this important function in their compliance efforts.

This article contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at www.williamsmullen.com or contact Thomas McVey, 202.293.8118 or tmcvey@williamsmullen.com.

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[1] See EAR §744.6(b).

[2] EAR §736.2(b)(7)(i)(A) provides in pertinent part: If you are a U.S. person, as that term is defined in § 772.1 of the EAR, you may not engage in any activities prohibited by § 744.6(b) or (c) of the EAR, which prohibit, without a license from BIS, the shipment, transmission, or transfer (in-country) of items not subject to the EAR; facilitating such shipment, transmission, or transfer (in-country); or the performance of any contract, service, or employment (including, but not limited to: ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, or transporting, freight forwarding, or conducting negotiations in furtherance of) that you know or are informed by BIS will support: (5) A military-intelligence end use or a military-intelligence end user, as defined in § 744.22(f) of the EAR, in the People's Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

Related People

- Christopher H. Skinner ? 202.293.8129 ? cskinner@williamsmullen.com

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