

April 2020

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## *Commerce Department Increases Restrictions on Exports to China, Russia, and Venezuela*

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On Tuesday, April 28, the Bureau of Industry and Security (“BIS”) at the U.S. Department of Commerce published two final rules and one proposed rule significantly increasing export control requirements for a large variety of items exported to China, Russia, and Venezuela. All three rules were explicitly issued in furtherance of the Trump Administration’s National Security Strategy released in December 2017, as well as the Trump Administration’s National Defense Strategy released in January 2018. As stated in the rules, their issuance stems from the Administration’s focus on the integration of civilian and military technology development in countries that are of concern for national security reasons. These countries are included in Group D:1 (“D:1 Countries”) of the Country Groups of the EAR, found in [Supplement No. 1 to Part 740](#). D:1 Countries include China, Russia, and Venezuela (among others).

As these changes are quite significant and represent a shift in export control policy towards these three countries, we discuss each final and proposed rule in turn.

### **Elimination of License Exception Civil End Users (“CIV”)<sup>1</sup>**

License Exception Civil End Users (“License Exception CIV”) authorized the export, reexport, or transfer of certain items controlled for national security reasons to most civil end users for civil end uses in D:1 Countries, where such transfers would otherwise require a license. As BIS has determined that such exports, reexports, or in-country transfers should be reviewed by the U.S. Government under a license request, this final rule eliminates License Exception CIV.

License Exception CIV previously authorized the export of hundreds of items on the list of items controlled by BIS (the Commerce Control List, or “CCL”), ranging from ball bearings to certain types of computers and telecommunications systems. License Exception CIV also frequently permitted the export without a license of software and technology used in the development, production, or use of commodities to which License Exception CIV applied.

### **Expansion of Export, Reexport, and Transfer (in-Country) Controls for Military End Use or Military End Users in China, Russia, or Venezuela<sup>2</sup>**

In this final rule, Commerce expands licensing requirements for the export, reexport, or transfer for items controlled for military end use or end users in these three jurisdictions. Unlike the elimination of CIV, this change does not impact all D:1 Countries, only the three specifically identified.



Currently, § 744.21 of the EAR creates a license requirement for any item listed in [Supplement No. 2 to Part 744](#) of the EAR if destined for **military end uses** in China, Russia, or Venezuela and **military end users** in Russia or Venezuela. The rule expands these controls in several ways, including:

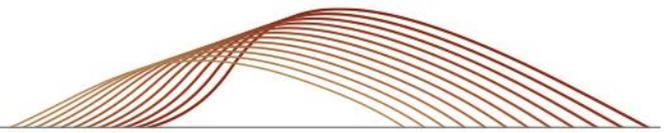
- It adds a licensing requirement for items destined for “military end users” (in addition to items intended for “military end uses”) in China. “Military end users” include the Army, Navy, Air Force, Marines and Coast Guard, plus the National Guard/police, government intelligence and reconnaissance organizations;
- It broadens the list of items included in Supplement No. 2 to include items in the categories of materials processing, electronics, telecommunications, information security, sensors and lasers, and propulsion;
- It makes more restrictive the license review policy under § 744.21 from “case-by-case” to a “presumption of denial”;
- It expands the definition of “military end use,” such that it will now include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described on the United States Munitions List (22 CFR 126.1), or items classified under ECCNs ending in “A018” or under “600 series” ECCNs;
- It moves the license requirement for items described in any paragraph of a 9x515 or “600 series” ECCN away from § 744.21 and, instead, adds a new reason for control on the ECCN entry of the CCL for any such item destined for China, Russia, or Venezuela. By rendering these items controlled by Regional Stability, § 746.8 will control the review of license applications for these items and details specific considerations for review of such applications; and
- It adds additional Electronic Export Information (“EEI”) filing requirements for items destined for China, Russia, or Venezuela to include the ECCN even where no license is required for shipment.

## **Proposed Modification of License Exception Additional Permissive Reexports (“APR”)<sup>3</sup>**

License Exception Additional Permissive Reexports (“License Exception APR”) authorizes the reexport of certain items from countries located in Country Group A:1 (“A:1 Countries”) to specified destinations, if such a reexport is undertaken pursuant to authorization from the A:1 Country. A:1 Countries are Wassenaar participating states, such as those in the European Union, Mexico, Canada, India, Australia, Turkey, South Africa, and South Korea.

As applied to items destined for D:1 Countries, License Exception APR currently permits the reexportation from A:1 Countries of items subject to national-security controls to countries in Country Group D:1.

For example, currently, if a company reexports from Belgium a U.S.-origin item controlled for national security reasons to China, the company would not need a U.S. export license if Belgium authorizes the transfer. Under the proposed rule, BIS would remove countries in Country Group D:1, including China, as License Exception APR-eligible destinations for national security-controlled items. Because BIS is



not able to “readily account for how many items are being authorized for reexport” under License Exception APR, BIS has requested public comments in the next sixty days.

## Next Steps

As BIS notes in the rule expanding controls on military end uses and end users, these expanded controls will “require increased diligence with respect to the valuation of end users in China.” The repeal of License Exception CIV and the expanded definition of military end use is expected to increase the burden on exports to China. For example, many items that now are freely exportable to China without a license – such as encryption items – will require a license if exported to the military or police. Further, the increased burden of filing EEI will escalate the logistical hurdles for exporting items to China. The direct impact on some companies may be minimal depending on the level of scrutiny regarding military end users. Nevertheless, these new onerous restrictions on exports to China may have a chilling effect on U.S. trade with China.

The two final rules are effective sixty days after publication in the Federal Register – **Monday, June 29, 2020**. We regularly advise clients engaging in exports to these restricted jurisdictions and are happy to assist with any questions on these topics.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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<sup>1</sup> Elimination of License Exception Civil End Users (“CIV”), 85 Fed. Reg. 23470 (April 28, 2020), [www.federalregister.gov/d/2020-07240](http://www.federalregister.gov/d/2020-07240).

<sup>2</sup> Expansion of Export, Reexport, and Transfer (in-Country) Controls for Military End Use or Military End Users in the People’s Republic of China, Russia, or Venezuela, 85 Fed. Reg. 23459 (April 28, 2020), [www.federalregister.gov/d/2020-07241](http://www.federalregister.gov/d/2020-07241).

<sup>3</sup> Modification of License Exception Additional Permissive Reexports (“APR”), 85 Fed. Reg. 23496 (April 28, 2020), [www.federalregister.gov/d/2020-07239](http://www.federalregister.gov/d/2020-07239).

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