

Commerce Bans Exports to Dozens of Companies, Including Chinese Semiconductor, Drone Manufacturers

December 21, 2020

The U.S. Department of Commerce (Commerce), Bureau of Industry and Security (BIS) announced that it has added Semiconductor Manufacturing International Corporation (SMIC), drone manufacturer DJI, and dozens of other companies and universities to its Entity List. The new designations prohibit exports, reexports, and transfers of U.S. commodities, software, and technology, including common, off-the-shelf electronic components, commercial drones and related software, semiconductors and related manufacturing technology, as well as basic, low-level EAR99 items, without a license. The ban also extends to foreign-made items that contain greater than *de minimis* controlled U.S. content by value and certain foreign direct products of sensitive U.S. technology. The final rule, which can be found [here](#), is effective immediately.

BIS administers the Export Administration Regulations (EAR), which control exports of commercial, dual-use, and less sensitive military and satellite items. Commerce commented that it added SMIC and ten of its affiliates to BIS's Entity List because of evidence of activities between SMIC and "entities of concern" in the Chinese military industrial complex as well as concerns over China's military-civil fusion doctrine more generally. License applications to export items to SMIC that are used to produce semiconductors at advanced technology nodes – 10 nanometers or below – will be subject to a presumption of denial "to prevent such key enabling technology from supporting China's military-civil fusion efforts." Previously, SMIC was subject to more limited licensing requirements. According to press reports, BIS had specifically informed U.S. chip companies that they

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Practice Areas

Export Controls and Economic Sanctions
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must obtain licenses before exporting certain technology to SMIC. The new Entity List designation results in much tighter restrictions.

Additionally, BIS added DJI, one of the world's largest manufacturers of unmanned aircraft systems ("UAS" or "drones"), because it "enabled wide-scale human rights abuses within China" and throughout the world through DNA collection and analysis or high tech surveillance. DJI's designation is just one of several measures the U.S. government has taken to combat human rights abuses by Chinese companies. It is also consistent with rising concerns about Chinese-made drones in the Administration and on the Hill. This year alone, those apprehensions caused the Department of the Interior to halt its robust UAS program due to cybersecurity concerns surrounding its Chinese-made fleet and prompted the Administration to consider a draft executive order that would both prohibit all U.S. government procurement and operation of drones produced by Chinese entities and ban the operation of UAS over federal lands, in light of national security and cybersecurity issues surrounding the products. Most recently, members of Congress sought to incorporate the American Drone Security Act, which would impose many of the same restrictions as the draft executive order, into this year's National Defense Authorization Act.

In total, BIS added 77 entities to the Entity List, including those that "enable human rights abuses, entities that supported the militarization and unlawful maritime claims to the South China Sea, entities that acquired U.S.-origin items in support of the People's Liberation Army's programs, and entities and persons that engaged in the theft of U.S. trade secrets." While the majority of the entities are Chinese, Commerce also added entities located in Bulgaria, France, Germany, Hong Kong, Italy, Malta, Pakistan, and Russia.

Since the Entity List designation of Huawei back in 2019, the Trump Administration has been increasingly using the Entity List as a tool to target Chinese companies and related entities, including those that are viewed as national security threats or have engaged in human rights abuses in Xinjiang. Wiley continues to closely monitor the U.S. government's efforts to address China's military-civil fusion strategy and human rights concerns and the impact of new restrictions on U.S. and non-U.S. companies. Please contact any of the authors for further information or guidance.

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