

ALERT

Commerce, State Departments Restrict Exports to Cambodia, Citing Corruption, Human Rights Abuses, Chinese Influence

December 13, 2021

On December 9, 2021, the Departments of Commerce and State issued rules restricting a range of exports to Cambodia citing, “significant evidence of corruption, human rights abuses, and an exclusive agreement with the People’s Republic of China (PRC) on military expansion in Cambodia by the Cambodian government.” Commerce’s Bureau of Industry and Security (BIS) placed new restrictions, including end use and end user prohibitions, on exports to Cambodia of certain sensitive items subject to the Export Administration Regulations (EAR). Concurrently, the State Department amended the International Traffic in Arms Regulations (ITAR) to add Cambodia to its list of prohibited countries.

The actions are part of an evolving U.S. policy to address “democratic backsliding” and Cambodia’s increasing ties to China, including the construction of facilities at the Ream Naval Base in Sihanoukville. In addition to the new export controls, in November 2021, the Departments of State, Treasury, and Commerce issued a business advisory “to caution U.S. businesses currently operating in, or considering operating in, Cambodia to be mindful of interactions with entities involved in corrupt business practices, criminal activities, and human rights abuses.” Treasury also designated two “corrupt military officials” as Specially Designated Nationals under its Global Magnitsky Human Rights Accountability Act regulations, which target human rights abuses and corruption.

New Restrictions in the EAR

Authors

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Lori E. Scheetz
Partner
202.719.7419
lscheetz@wiley.law

John R. Shane
Partner
202.719.7222
jshane@wiley.law

Jake Frischknecht
Special Counsel
202.719.3208
jfrischknecht@wiley.law

Practice Areas

Export Controls and Economic Sanctions
National Security

Concerning the new export controls, BIS made the following four changes restricting Cambodia's access to commercial, dual-use, and less-sensitive military/satellite items:

1. Cambodia is subject to a more restrictive licensing policy for national security-controlled products.

License applications for exports to Cambodia of national security-controlled commodities, software, and technology formerly were approved as long as BIS determined, on a case-by-case basis, that the items were for an authorized use in Cambodia and were not likely to be diverted to a use that was contrary to U.S. national security or foreign policy interests.

Going forward, Cambodia is now subject to the same, less favorable licensing review policy as Burma, China, Russia, and Venezuela. Under the new policy, BIS will review applications to determine the likelihood that the items will be diverted for a military end use or to a military end user. While BIS will, generally, approve licenses for items for civil end use/users, applications for items that would make a material contribution to weapons systems or assemblies are subject to a policy of denial.

2. BIS added Cambodia to its military end use/end user rule.

BIS added Cambodia to the list of countries subject to military end use and end user (MEU) controls in Section 744.21 of the EAR. The MEU export controls prohibit, without a license, knowingly exporting, reexporting, or transferring items subject to the EAR – which includes U.S.-origin products, products that are exported from the United States, and certain foreign-manufactured products containing above *de minimis* controlled U.S. content or produced from sensitive U.S. technology or software – that are identified in Supplement No. 2 to Part 744 of the EAR to military end users (e.g., national armed services, national guard and national police, government intelligence or reconnaissance organizations, and companies/other persons that develop, produce, maintain, or use military items, including but not limited to those designated on BIS's MEU List) in Burma, China (including Hong Kong), Russia, Venezuela, sanctioned countries, and now Cambodia or for military end uses in these countries.

3. BIS is restricting exports for military-intelligence end uses/end users in Cambodia.

BIS also added Cambodia to the list of countries subject to military-intelligence end use and end user (MIEU) controls in Section 744.22 of the EAR. These controls restrict exports, reexports, and transfers (in-country) of all items subject to the EAR (including EAR99 items), as well as support activities by U.S. persons, that are for military-intelligence end uses and end users in Burma, Cambodia, China, Russia, Venezuela, and sanctioned countries. Military-intelligence end users are defined as intelligence or reconnaissance organizations of the armed services or national guard, including Cambodia's General Department of Research and Intelligence (GDRI).

4. BIS added Cambodia to Country Group D:5.

Consistent with the ITAR amendment discussed below, BIS added Cambodia to the list of countries subject to a U.S. arms embargo under Country Group D:5, "U.S. Arms Embargoed Countries," in Supplement No. 1 to Part 740 of the EAR. Countries listed in Country Group D:5 are subject to additional restrictions in the EAR, including on *de minimis* U.S. content, license exception availability, and licensing policy for certain items. For example, license applications to export satellite items or "600 series" EAR-controlled military products to Cambodia will now be reviewed consistent with U.S. arms embargo policies, which, for practical purposes, usually means a policy of denial. Exporters to Cambodia also cannot use EAR license exceptions for these items except in limited circumstances.

New Restrictions in the ITAR

In concert with BIS's actions, the Department of State's Directorate of Defense Trade Controls (DDTC) amended Section 126.1 of the ITAR to include Cambodia in the list of countries subject to a policy of denial for exports of defense articles and services. The official designation of Cambodia as a Section 126.1 arms-embargoed country has many implications for U.S. companies. For example, most license applications are subject to a policy of denial, except for exports in furtherance of conventional weapons destruction or humanitarian mine action activities. Most ITAR exemptions also cannot be used for exports to Cambodia. Additionally, even proposals or presentations to sell defense articles or furnish defense services to Cambodia require prior authorization from DDTC, and companies are subject to a mandatory notification requirement if they know of a proposed or actual sale or other transfer of an ITAR-controlled item or service to Cambodia.

Wiley has unparalleled experience and expertise representing a broad range of U.S. and multinational clients in complex export control and sanctions matters. Should you have any questions about this alert or any national security-related matters, please do not hesitate to contact one of the attorneys listed on this alert.