

August 17, 2023

Presentation to AmCham Shanghai Tech & Innovation Committee

Navigating US Export Control and Investment Regime Policies and Recommendations

About Us



- An Asian risk consultancy under G4S, the world's largest private security company, now part of Allied Universal.
- Established in 1992, headquartered in Hong Kong SAR
- 131 consultants working across seven offices in Asia, with diversified international backgrounds in security, law, accounting, banking, military, intelligence and cyber security.
- We identify, assess and mitigate political, integrity and security risks to protect our clients and add strategic value to their businesses.
- We are a trusted advisor to over 60% of fortune 100 companies across a wide spectrum of industries.
- Our clear focus lies in advising leading MNC firms operating in Asia as well as top outbound Asian firms expanding globally.



US Department of Commerce Bureau of Industry and Security (BIS) Lists

The Unverified List, the Entity List, and the Denied Persons List are administered by BIS and impose additional obligations involving products, technology, software, materials, or equipment governed by the **Export Administration Regulations (EAR)** on parties that engage with parties on the lists.

- **The UVL:** Possible to transact, if some type of verification can be provided.
 - 30+ Chinese companies added to UVL in Oct 2022, 30+ more in December.
 - 25 companies were removed in December following end use checks
- **The Entity List:** identifies specific license requirements for the designated entities and individuals, and often prohibits all exports of items subject to the EAR absent specific BIS authorization

10/07/2022			87 FR 60890	Export Administration Regulations: Guidance on Penalty Determinations in the Settlement of Administrative Enforcement Cases Involving Antiboycott Matters
------------	--	--	-------------	---

Bureau of Industry and Security Announces Enhanced Enforcement of the Antiboycott Rules
[Press Release](#)
October 06, 2022



Impact on Biden EO issued on Aug 9, 2023

- Issued to close a loophole.
- Early stages, it's just an idea at this point—no legal ramifications
- Targets China & territories exclusively.
- Only targets quantum computing, AI, and advanced semiconductors.
- The order is most likely to restrict:
 - Acquisition of equity interests—includes mergers and acquisitions, private equity, and venture capital;
 - Joint venture investments;
 - Debt financing transactions; and,
 - Greenfield investment.
- Will likely take effect near the end of the year at the earliest; likely next year

Impact on Biden EO issued on Aug 9, 2023 Pt. 2

- Industry will have 6 more weeks or so to influence the regulations.
- Impact likely to be minimal to none for most companies, finance may be more impacted.
- Sets a precedent.
- Executives should watch which areas the US classifies as critical to national security—those offer clues for the future
- Why did Biden issue an EO? Why didn't this come from Congress?
- People were expecting this for a while, as it was a major loophole in previous tech restrictions/ entity listings, etc.
- So why now?

Recommendations

Managing UVL:

- **What to do when a party is added to UVL:** Cancelling orders is NOT necessary.
 - Additional DD
- **Executed UVL Statement:** Possible to transact, if some type of verification can be provided.
- **End use Statement (to be partnered with a US law firm)**
- **The Entity List:** identifies specific license requirements for the designated entities and individuals, and often prohibits all exports of items subject to the EAR absent specific BIS authorization

Recommendations

Managing companies on the entity list:

- Need a license
- You cannot transact with businesses on the EL, but companies not subject to US jurisdiction on the matter can
- A practical example - batteries

Proactive steps to take:

- Enhanced DD on your important partners
- Engage MOFCOM where possible
 - MOFCOM helped with removal of 25 companies from UVL/EL in Dec
- End use statement (to be partnered with a US law firm)
- Inventory management
- Government affairs in DC
- De minimis requirement (25%)

GET IN TOUCH WITH OUR EXPERTS TODAY

Complex situations demand personal service and bespoke solutions. Contact us to discuss how we can help you.



Howard Wang, Managing Director,
E: howard.wang@hill-assoc.com



Chris Miller, Consulting Manager,
E: chris.miller@hill-assoc.com

群聊: US Tech Regulations:
Risk Mgmt

