

# Commerce Creates Military End User List, Restricting U.S. Exports to China, Hong Kong, Russia, and Venezuela

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On December 21, 2020, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) announced a final rule amending the Export Administration Regulations (EAR) by creating a new Military End User List. The rule provides the “first tranche” of entities, which includes 103 total military end users—58 from China and 45 from Russia—subject to special export licensing requirements. Importantly, the list is not exhaustive. Accordingly, exporters still are required to conduct military end use/end user due diligence in accordance with 15 C.F.R. § 744.21 for exports of covered commercial and dual-use commodities, software, and technology to entities not included on the initial positive list.

The new list builds on a rule published in April 2020 that expanded the universe of U.S. exports subject to controls if such items are intended for a “military end use” or “military end user” in China, Russia, or Venezuela. Practically, BIS’s “MEU rule” subjects even low-level electronics, mass market encryption hardware and software (such as laptops and smartphones), and parts and components for commercial aircraft to a license requirement if destined for a military end use or end user in China, Russia, or Venezuela. The full list of Export Control Classification Number (ECCNs) impacted by the MEU rule are in Supplement No. 2 to Part 744 of the EAR.

The MEU rule published in April broadened BIS’s definition of “military end uses” beyond items for the use, development, or production of military items (as those terms are defined in the EAR) to include any U.S. commodity, software, or technology that supports or contributes to the operation, installation, maintenance, repair,

## Authors

John R. Shane  
Partner  
202.719.7222  
jshane@wiley.law

Lori E. Scheetz  
Partner  
202.719.7419  
lscheetz@wiley.law

Nova J. Daly  
Senior Public Policy Advisor  
202.719.3282  
ndaly@wiley.law

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overhaul, refurbishing, development, or production of military items. The combination of the military end use definition and the military end user definition—which, per BIS guidance, includes any entity that develops, produces, uses, or maintains military items—generally captures transactions with commercial entities in China, Russia, and Venezuela that engage in even relatively small volumes of business with the military.

Since the MEU rule went into effect on June 29, BIS has relied on companies to conduct their own due diligence to determine whether their potential customers were caught by the rule. This has resulted in significant uncertainty in the export community, particularly with respect to how to treat commercial companies as well as companies listed on the U.S. Department of Defense’s lists of companies determined to be owned or controlled by China’s People’s Liberation Army, published pursuant to Section 1237 of the National Defense Authorization Act (NDAA) for Fiscal Year 1999, as amended. In Commerce’s announcement, it noted that it is taking the action “to respond to requests received from the public to identify specific ‘military end users’ by name and address in the regulations.”

The new BIS list, which includes several aerospace and shipping companies, including Aviation Industry Corporation of China (AVIC) and its related entities, eliminates some ambiguity for exporters, as it is now clear that any exports (or reexports/transfers) where a listed entity is a party to the transaction (*e.g.*, as a purchaser, intermediate consignee, ultimate consignee, or end user) require an export license, and most such licenses likely will be denied. The list does not include Commercial Aircraft Corporation of China (COMAC), despite initial press reports. However, it includes Shanghai Aircraft Design and Research Institute, which designs COMAC planes, and Shanghai Aircraft Manufacturing Co, which manufactures COMAC planes. The list also includes Russia’s Foreign Intelligence Service (SVR), which carried out this month’s massive cyber attack on the U.S. government.

Keep in mind that the list is not comprehensive. In other words, industry must continue to conduct due diligence and grapple with the military end user and military end use definitions for any transactions with Chinese, Russian, or Venezuelan companies that are not included in BIS’s initial list. Additionally, while the list is a helpful tool for U.S. companies, publication of the list and the U.S. government’s broader efforts to combat the “military-civil fusion” strategy in China may well result in retaliation by China against U.S. companies. For example, in response to a separate Commerce Department action banning exports to dozens of Chinese companies, this week the Chinese Ministry of Commerce said ([link in Chinese](#)) that it would take necessary measures to safeguard the rights and interests of Chinese companies.

Apart from its new MEU list, BIS is issuing a separate rule formally removing Hong Kong as a separate destination under the EAR, following U.S. Secretary of State Michael Pompeo’s announcement in May that Hong Kong no longer warrants treatment under U.S. law as autonomous from China. As such, Hong Kong now will fall in Country Group D and be subject to arms embargo restrictions in the EAR; exports to Hong Kong also must comply with the MEU rule.

Wiley continues to closely monitor the U.S. government’s efforts to address the growing political, economic, and military competition from China, Russia, and other countries and the impact of such efforts on U.S. and non-U.S. companies. Should you have any questions on the MEU rule or other EAR restrictions, please do not

hesitate to contact one of the attorneys listed on this alert.

*Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this alert.*