

Department of Defense Releases List of Companies Tied to Chinese Military

DESIGNATIONS OPEN THE DOOR FOR SANCTIONS AND COULD HAVE SIGNIFICANT IMPLICATIONS FOR EXPORT CONTROLS, FOREIGN INVESTMENT, AND SUPPLY CHAIN SECURITY.

June 26, 2020

On June 24, 2020, the U.S. Department of Defense (DOD) released a list of companies operating in the United States that it has determined to be owned or controlled by China's People's Liberation Army. The list, which includes prominent Chinese companies such as Huawei, Aviation Industry Corporation of China (AVIC), China Telecom, China Mobile, and Hikvision, opens the door for the President to impose sanctions on these entities and could have significant implications related to areas such as export controls, foreign investment, and supply chain security for any U.S. companies that deal with them. A copy of the list is reproduced in full below.

As background, Section 1237 of the National Defense Authorization Act for Fiscal Year 1999, as amended (Section 1237), directed DOD to produce a list of entities determined to be "operating directly or indirectly in the United States or any of its territories and possessions that are Communist Chinese military companies." The statute defines a "Communist Chinese military company" as any person that "(i) is owned or controlled by, or affiliated with, the People's Liberation Army or a ministry of the government of the People's Republic of China or that is owned or controlled by an entity affiliated with the defense industrial base of the People's Republic of China; and (ii) is engaged in providing commercial services, manufacturing, producing, or exporting."

While DOD's initial determinations were required to be made no later than March 1, 2001, the list released this week appears to be the first iteration. In September 2019, a bipartisan group of Senators and

Authors

Nova J. Daly
Senior Public Policy Advisor
202.719.3282

ndaly@wiley.law

Lori E. Scheetz

Partner

202.719.7419

lscheetz@wiley.law

Daniel P. Brooks

Partner

202.719.4183

dbrooks@wiley.law

Paul J. Coyle

Associate

202.719.3446

pcoyle@wiley.law

Practice Areas

Export Controls and Economic Sanctions

Government Contracts

International Trade

National Security

Telecom, Media & Technology

Representatives sent a letter to Secretary of Defense Mark Esper highlighting Section 1237 as an unutilized statutory authority at the Administration's disposal to confront China's "Military-Civil Fusion" strategy. In the letter, Senators Tom Cotton (R-AR) and Chuck Schumer (D-NY) and Representatives Mike Gallagher (R-WI) and Ruben Gallego (D-AZ) requested that DOD update and publicly release the list as soon as possible in an effort to "combat China's economic espionage in the United States." The list released this week appears to be a direct response to that request.

Section 1237 authorizes – but does not require – the President to impose sanctions under the International Emergency Economic Powers Act (IEEPA) on any entities that appear on the list. Potential sanctions could include designating the listed entities as Specially Designated Nationals (SDNs), which could broadly prohibit U.S. persons from dealing with them, or imposing some more limited form of sanctions. While some members of Congress have already called for imposing sanctions on the listed entities, the Administration has not yet publicly indicated whether it intends to do so.

The DOD determinations could also have implications for new U.S. export control regulations that go into effect on June 29, 2020. The Commerce Department's Bureau of Industry and Security (BIS) recently issued a final rule that will significantly expand export, reexport, and transfer (in-country) controls on "military end users" in China and broaden the list of items subject to BIS's military end user licensing requirements. For purposes of the rule, "military end users" include "the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses.'" While it would not necessarily be obligated to do so, BIS could defer to DOD's determinations and treat the newly listed entities as military end users for purposes of the new rule.

Wiley continues to closely monitor the U.S. government's efforts to address the growing political, economic, and military competition from China and the impact of such efforts on U.S. and non-U.S. companies. Should you have any questions on the DOD list and its implications, please do not hesitate to contact one of the attorneys listed on this alert.

Qualifying Entities Prepared in Response to Section 1237 of the National Defense Authorization Act for Fiscal Year 1999 (PUBLIC LAW 105-261)

- Aviation Industry Corporation of China (AVIC)
- China Aerospace Science and Technology Corporation (CASC)
- China Aerospace Science and Industry Corporation (CASIC)
- China Electronics Technology Group Corporation (CETC)
- China South Industries Group Corporation (CSGC)
- China Shipbuilding Industry Corporation (CSIC)
- China State Shipbuilding Corporation (CSSC)

- China North Industries Group Corporation (Norinco Group)
 - Hangzhou Hikvision Digital Technology Co., Ltd. (Hikvision)
 - Huawei
 - Inspur Group
 - Aero Engine Corporation of China
 - China Railway Construction Corporation (CRCC)
 - CRRC Corp.
 - Panda Electronics Group
 - Dawning Information Industry Co (Sugon)
 - China Mobile Communications Group
 - China General Nuclear Power Corp.
 - China National Nuclear Corp.
 - China Telecommunications Corp.
-

Paul Coyle, a Law Clerk in Wiley's International Trade Practice, contributed to this alert.