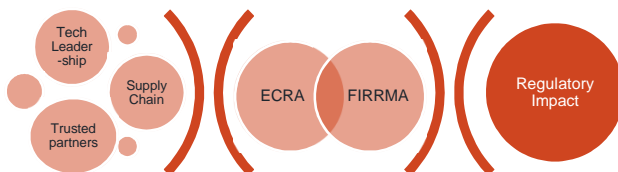




US Policy and Legislation Impacting Doing Business with China



Policy Objectives

- Slowing down Chinese leadership in emerging technology
- Maintaining integrity of US supply chains
- Favor trusted partners aligned with US national security and foreign policy interests

National Defense Authorization Act for Fiscal Year 2019

- Companion legislation: approaching the problem from different angles
- Export Controls Reform Act (**ECRA**)
 - **BIS** – Reviews exports, reexports and transfers (in country)
- Foreign Investment Risk Review Modernization Act (**FIRRMA**)
 - **CFIUS** – Reviews foreign investment in the US

Regulatory Impact

- Extreme scrutiny of Chinese interest investments in US
- Critical assessment of UK/EU relationships with China in connection with UK/EU investments in the US
- Retroactive review of investments in US
- Key companies in China on restricted party lists or at risk: Huawei, Tencent, SMIC, Sinochem and others
- Control exports of emerging and foundational technologies (currently no license required)
- Control exports for military end-uses and end-users in China
- Prohibit non-US made products with US technology, software or equipment from going to Huawei
- Treat Hong Kong like mainland China for export controls
- Prohibit Chinese products use for US government procurements
- Prohibit Huawei product in US telecom system
- Prohibit Chinese apps that collect personal data of US citizens

Agenda

- Emerging and Foundational Technology
- Targeted Entities
- Designated Entity Direct Product Rule
- Military End-use and End-user Rule
- Hong Kong Policy
- Compliance Training is Critical



Export Control Reform Act of 2018 Emerging Technology ANPRM

- Biotechnology, such as:
 - Nanobiology
 - Synthetic biology
 - Genomic and genetic engineering
 - Neurotech
- Artificial intelligence (AI) and machine learning technology, such as:
 - Neural networks and deep learning (e.g., brain modelling, time series prediction, classification)
 - Evolution and genetic computation (e.g., genetic algorithms, genetic programming)
 - Reinforcement learning
 - Computer vision (e.g., object recognition, image understanding)
 - Expert systems (e.g., decision support systems, teaching systems)
 - Speech and audio processing (e.g., speech recognition and production)
 - Natural language processing (e.g., machine translation)
 - Planning (e.g., scheduling, game playing)
 - Audio and video manipulation technologies (e.g., voice cloning, deepfakes)
 - AI cloud technologies
 - AI chipsets
- Position, navigation and timing (PNT) technology
- Microprocessor technology, such as
 - Systems-on-Chip (SoC)
 - Stacked Memory on Chip.
- Advanced computing technology (e.g., memory-centric logic)
- Data analytics technology, such as
 - Visualization
 - Automated analysis algorithms
 - Context-aware computing
- Quantum information and sensing technology
- Logistics technology (e.g., Mobile electric power, modeling and simulation, total asset visibility, or distribution-based Logistics Systems (DBLS)).
- Additive manufacturing (e.g., 3D printing)
- Robotics
- Brain-computer interfaces
- Hypersonics
- Specialized materials (for structures, sensors, etc.)
- Advanced materials (e.g., adaptive camouflage, functional textiles (e.g., advanced fiber and fabric technology), and Biomaterials)
- Advanced surveillance technologies (e.g., faceprint and voiceprint technologies)

Export Control Reform Act of 2018 Foundational Technology ANPRM



- Items subject to control for military end-use or military end-user reasons under Supplement No. 2 to part 744
- AT level or as EAR99 items
- Technologies that have been the subject of illicit procurement attempts
- Some examples:
 - Possibly the following EAR99 or AT controlled items:
 - Equipment, materials and software for semiconductor manufacturing
 - Lasers and sensors for vision-guided manufacturing robotics
 - Non-military underwater sonar and mapping equipment
 - Specialty materials that can be used in aerospace applications
 - Software that allows for intelligence gathering, data mining, artificial or disguised personas on the internet



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Targeted Entities



- BIS Entity List – Prohibits exports, reexport or in-country transfers of some or all items subject to the EAR
 - Numerous Chinese companies, including Huawei
 - Will Semiconductor Manufacturing International Corp (SMIC) be added to Entity List?
- DoD List of “Communist Chinese military companies” operating directly or indirectly in the US
 - Notable examples: Sinochem Group; Aviation Industry Corporation of China (AVIC); Huawei; China Railway Construction Corporation (CRCC)
- Chinese financial institutions targeted
 - Bank of Dandong and Shanghai Pudong Development (SPD) Bank (both doing business with North Korea)
 - Looking at Ant Group and Tencent digital payment platforms
- Chinese apps that capture personal data about US citizens and their location
 - ByteDance (TikTok); Tencent (WeChat)

The Entity List



Control Policy: End-User and End-Use Based

Supplement No. 4 to Part 744 – page 74

COUNTRY	ENTITY	LICENSE REQUIREMENT	LICENSE REVIEW POLICY	FEDERAL REGISTER CITATION
	HiSilicon Optoelectronics Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi), and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a “standards organization” (see §772.1) for the purpose of contributing to the revision or development of a “standard” (see §772.1).	Presumption of denial.	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20.
	HiSilicon Technologies Co., Ltd (HiSilicon), Bantian Longgang District, Shenzhen, 518129, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi), and 744.11 of the EAR, EXCEPT for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a “standards organization” (see §772.1) for the purpose of contributing to the revision or development of a “standard” (see §772.1).	Presumption of denial.	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20.

- A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction
- License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction
- Applications for licenses required by this section will be evaluated as stated in the Entity List entry for the entity that is party to the transaction
- Fn1 makes the entity subject to the “Designated Entity” direct product rule
- Fn2 refers to exception for ongoing security research critical to maintaining the integrity and reliability of existing and currently fully operational network and equipment.

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Foreign Direct Product Rule (Entity List)

- Secretary of Commerce Wilbur Ross explained the expansion of the restrictions as necessary because earlier US Department of Commerce actions had “led them [Huawei] to do some evasive measures. They were going through third parties,” Secretary Ross added, “The new rule makes it clear that any use of American software or American fabrication equipment is banned and requires a license.”
- This rule prevents non-US organizations from exporting items to or for Huawei if:
 - Based on certain **Specified Technology or Software**
 - Produced using equipment based on certain **Specified Technology or Software**
- **Specified Technology or Software** = ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the CCL

Foreign Direct Product Rule (Entity List)

- You may not reexport, export from abroad, or transfer (in-country) without a license or license exception any foreign-produced item when there is “knowledge” that
 - The foreign-produced item will be incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any **Designated Entity**; or
 - Any **Designated Entity** is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”

Designated Entity = any entity with a footnote 1 designation in the license requirement column of the Entity List

- AND the foreign produced item is
 - A direct product of **Specified Technology or Software**; or
 - Produced by any non-US plant or major component of a plant that itself is a direct product of **Specified Technology or Software**

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BIS's Military End-use and End-user Rule



- Expansion of Military End-use and Military End-user Controls – Final Rule
 - Export, reexport or transfer in-country of Supp. 2 Items
 - Knowledge of military end-use or military end-user
 - “Military end-use” means incorporation into:
 - a USML defense article;
 - item classified under ECCNs ending in “A018” or under “600 series” ECCNs; or
 - any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described on the USML, or items classified under ECCNs ending in “A018” or under “600 series” ECCNs.
 - “Military end-user” means
 - 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
- Semiconductor Manufacturing International Corporation (SMIC) Letter
 - SMIC poses an unacceptable risk of diversion to military end use
 - License required to export, reexport or transfer Supp. 2 items to SMIC

Practical/Compliance Implications of Military Rule



Case Study.

US Co. exports US-origin 1C990 composite fabric to China Fabricator. China Fabricator manufacturers prepreg material. Some prepreg material is sold to another contractor in China that uses the material to produce parts for a military application in China.

1. China Fabricator has signed certification confirming no military end-use and not for military end-user. Has US Co. complied with the rule?
2. China Fabricator knows the contractor in China supports both commercial and military applications, but does not know the ultimate end-use for this prepreg shipment. Has China Fabricator complied with the rule?
3. Has China Fabricator made a false statement to US Co.? What are the implications if it has?

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Hong Kong Policy

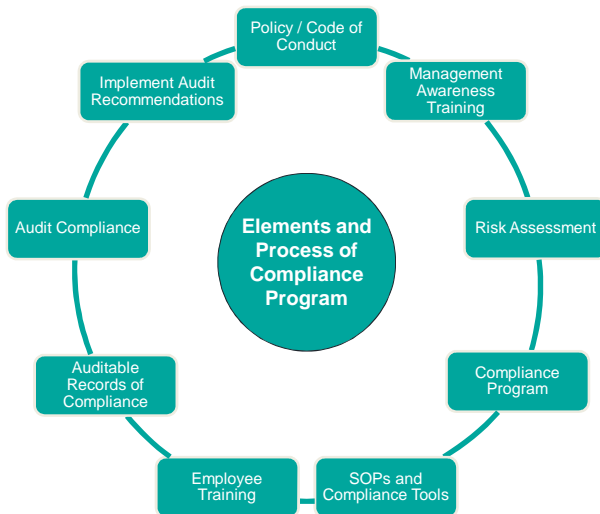
- May 29, 2020 – President directed the heads of executive departments and agencies to begin the process of eliminating policy exemptions under US law that give Hong Kong differential treatment in relation to China.
- DDTC
 - DDTC will not process for approval any new licenses, agreements or amendments to current agreements for Hong Kong.
 - DDTC will not suspend or terminate any previously approved and non-exhausted licenses or agreements.
- BIS
 - BIS has not determined its policy as to future licenses or even as to the continuation of approved licenses involving consignees in Hong Kong.
 - BIS suspended license exceptions for exports to Hong Kong, reexports to Hong Kong, and transfer (in-country) within Hong Kong, of items subject to the EAR that provided differential treatment than those license exceptions available for use with exports, reexports and transfer (in-country) to China.
 - removes the availability of the following License Exceptions for all exports, reexports or transfers (in-country) of items to Hong Kong:
 - Shipments of Limited Value (LVS) (§ 740.3)
 - Shipments to Group B Countries (GBS) (§ 740.4)
 - Technology and Software under Restriction (TSR) (§ 740.6)
 - Computers, Tier 1 only (APP) (§ 740.7(c))
 - Temporary Imports, Exports, Reexports and Transfers (in-country) (TMP) (§ 740.9(a)(11), (b)(2)(ii)(C), and (b)(5))
 - Servicing and Replacement Parts and Equipment (RPL) (§740.10(a)(3)(viii), (a)(4), (b)(1) except as permitted by Country Group D:5, and (b)(3)(i)(F) and (ii)(C))
 - Governments (GOV) (§ 740.11(c)(1) – Cooperating governments only)
 - Gift Parcels and Humanitarian Donations (GFT) (§ 740.12)
 - Technology and Software Unrestricted (TSU) (§ 740.13)
 - Baggage (BAG) (§ 740.14) (except as permitted by § 740.14(d))
 - Aircraft, Vessels, and Spacecraft (AVS) (§ 740.15(b)(1), (b)(2), and (c))
 - Additional Permissive Reexports (APR) (§ 740.16(a) and (j))
 - Strategic Trade Authorization (STA) (§ 740.20(c)(2))

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Role of Compliance Training



- Management Briefing and Awareness Training
 - Understand policy and regulatory compliance obligations
 - Commitment from the top
 - Brief on tasks, timelines and objectives
- Employee Training
 - Understand policy and regulatory compliance obligations
 - Understand compliance program and employee responsibilities
 - **Training should be functionally oriented, consistent and repeatable**

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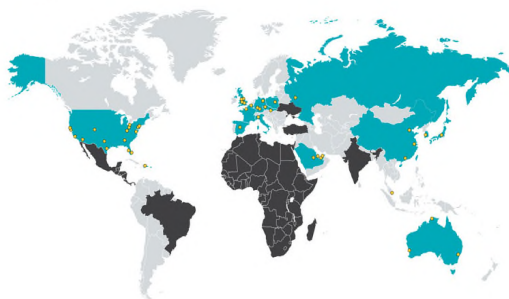
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George Grammas

Partner & Co-Chair, International Trade –
Trade Compliance & National Security
Washington DC / London

T +1 202 626 6234 / +44 20 7655 1301
george.grammas@squirepb.com