

U.S. Department of Commerce Publishes Military End User List for Restricting Exports to China and Russia

December 28, 2020

On December 23, 2020, the U.S. Department of Commerce Bureau of Industry and Security (BIS) issued the anticipated list of designated military end users (MEU List) under Section §744.21 (MEU Rule) of the Export Administration Regulations (EAR) Restrictions (see Federal Register notice). This MEU List provides a "first tranche" of over 100 designated military end users from China and Russia. Per Commerce Secretary Wilbur Ross, "this action establishes a new process to designate military end users on the MEU List to assist exporters in screening their customers for military end users."

Most of the Chinese entities on the MEU List are in the aerospace industry, including seven subordinate institutions of Aviation Industry Corporation of China (AVIC) and eight subordinate institutions of Aero-Engine Company of China. Despite initial press reports, the MEU List does not include Commercial Aircraft Corporation of China (COMAC). MEU List designated entities may consider submitting a petition to the End-User Review Committee requesting removal or modification from the MEU List by addressing why the designated entity should not be considered a "military end user" or involved in "military end uses."

The MEU List, however, is not exhaustive of all "military end users" subject to the MEU Rule. Rather, the U.S. government only named certain military end users. Therefore, the MEU Rule still requires comprehensive due diligence to determine whether a China, Russia or Venezuela business entity is a military end user prior to the export, reexport or transfer (in-country) of any item subject to the EAR and listed in Supplement No. 2 (MEU Items). Exporters of items on the MEU List to China, Russia or Venezuela still must conduct due diligence prior to the export of MEU Items. If the MEU Items are intended for a military end user, then an EAR license is required prior to the export, reexport or in-country transfer. Under the current BIS license review policy, there is a presumption of denial for these corresponding license applications.

As due diligence guidance, BIS also noted that exporters should closely scrutinize those Chinese companies designated by the U.S. Department of Defense (DOD) pursuant to Section 1237 of the National Defense Authorization Act of Fiscal Year 1999, 50 U.S.C. § 1701. For compliance, the DOD-designated entities raise a red flag requiring additional due diligence as to whether a license is required prior to the export, reexport or transfer of MEU Items to the DOD-designated entities. Currently, the DOD has designated thirty-one (31) Chinese companies as "Communist Chinese military companies" (see Miller Canfield update).

The MEU Items include many commercial items listed in Supplement No. 2 arranged by Export Control Classification Numbers (ECCNs) from the following Commerce Control List categories: (1) Materials, Chemicals, Microorganisms, and Toxins, (2) Materials Processing, (3) Electronics Design, Development and Production, (4) Computers, (5) Telecommunications and Information Security, (6) Sensors and Lasers, (7) Navigation and Avionics, (8) Marine, and (9) Propulsion Systems, Space Vehicles and Related Equipment. The MEU Items generally are not otherwise controlled for export, reexport or transfer (in-country) to China, Russia or Venezuela, so exporters should take steps to develop internal compliance tools for alerting the exporter of the need to perform due diligence prior to the shipment of MEU Items to China, Russia or Venezuela.

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If you have any questions about the MEU Rule, submitting a removal petition, or performing due diligence on the MEU List and MEU Items to review applicability to your business, please contact the authors or your Miller Canfield attorney.