



Global Trade Advisory Alert

US Bureau of Industry and Security issues final rule on license review policy for certain controlled items destined for China, Russia, and Venezuela

On 29 October 2020, the US Department of Commerce's Bureau of Industry and Security ("BIS") issued a final rule amending its licensing review policy regarding items controlled for National Security ("NS") reasons that are destined for China, Russia, or Venezuela.

The revised policy does not impose new export restrictions or licensing obligations, but instead provides additional detail on factors the US Government considers in license application decisions. BIS is still maintaining its general policy of approval for license applications involving civil end users and uses. However, among other considerations, the policy states that there is a presumption of denial for license applications if a reviewing agency determines that the export will make a material contribution to the development, production, maintenance, repair, or operation of any of these countries' weapons systems.

BIS and other reviewing agencies will determine where there is a material contribution on a case-by-case basis.

In addition, the final rule provides a non-exhaustive list of factors that BIS will also consider in reviewing export license applications for NS-controlled items destined to China, Russia, or Venezuela, including:

- 1) The appropriateness of the export, reexport, or transfer for the stated end use;
- 2) The significance of the item for the weapons systems capabilities of the importing country;
- 3) Whether any party is a “military end user” as defined in § 744.21(g) of the Export Administration Regulations;
- 4) The reliability of the parties to the transaction, including whether:
 - a. An export or reexport license application has previously been denied;
 - b. Any parties are or have been engaged in unlawful procurement or diversion activities;
 - c. The parties are capable of securely handling and storing the items; and
 - d. End-use checks have been and may be conducted by BIS or another US Government agency on parties to the transaction;
- 5) The involvement of any party to the transaction in military activities, including activities involving the “development,” “production,” maintenance, repair, or operation of weapons systems, subsystems, and assemblies
- 6) Government strategies and policies that support the diversion of exports from their stated civil end use and redirection towards military end use; and
- 7) The scope and effectiveness of the export control system in the importing country.

Finally, BIS has indicated that license application reviews for relevant items will also include an assessment of the proposed impact on the US defense industry, and license applications deemed to have a significant negative impact on the industry will result in the denial of an application.

How we can help

Deloitte’s Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- Helping companies understand the potential impact of BIS’ updating licensing policy on export license applications;
- Supporting companies in drafting export license applications considering the updated license review factors and licensing policy as described in this final rule; and
- Providing targeted end-user and third-party due diligence to help companies maintain compliance with end-user and end-use-based export controls, sanctions, and other regulatory requirements.

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