

# VIEWPOINT.

The American Chamber of Commerce in Shanghai - Viewpoint September 2019

## Reappraising Export Controls for a New Era of U.S.-China Relations

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2019



## ABOUT VIEWPOINTS

AmCham Shanghai's Viewpoint series provide insights and recommendations from AmCham Shanghai member companies on important policy issues impacting foreign companies in China. These reports are based on extensive interviews and research by the AmCham Shanghai Government Relations team. The reports are used in AmCham Shanghai's advocacy efforts with the Chinese and U.S. governments.

## ABOUT US

The American Chamber of Commerce in Shanghai (AmCham Shanghai), known as the "Voice of American Business" in China, is one of the largest American Chambers in the Asia Pacific region. Founded in 1915, AmCham Shanghai was the third American Chamber established outside the United States. As a non-profit, non-partisan business organization, AmCham Shanghai is committed to the principles of free trade, open markets, private enterprise, and the unrestricted flow of information. AmCham Shanghai's mission is to enable the success of our members and strengthen U.S.-China commercial ties through our role as a not-for-profit service provider of high-quality business resources and support, policy advocacy, and relationship-building opportunities.

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*All interviews for this Viewpoint were kept anonymous. AmCham Shanghai would like to thank all interviewees for their contributions to this report.*

## Executive Summary

New technologies and shifting market and political forces are leading many countries to reevaluate their export control regimes. In July 2019 AmCham Shanghai spoke with the export and trade compliance managers, executives, consultants and supply chain managers of 16 of our member companies regarding the recent changes to the United States Department of Commerce's Export Administration Regulations (EAR) and their corresponding negative effects on their respective businesses and industries in China. AmCham Shanghai worked with these companies to identify definitive industry impacts resulting from the recent changes to 1) the Entity List, 2) the Unverified List (UVL), and 3) the proposed rules on emerging and foundational technologies. Our interviewees argued that U.S. export control regulations are confusing and burdensome, and often place U.S. business entities at a competitive disadvantage while not substantially protecting U.S. national security and foreign policy interests. Several major areas of negative impact were identified and are detailed below.

**Loss of Revenue.** The companies confirmed significant losses in revenue through canceled orders and lost sales as current customers and future sales prospects were included on either the Entity List or UVL. Specific sectors such as the semiconductor industry were particularly hard hit.

**Reputational Damage.** U.S. regulatory restrictions preventing certain U.S. companies from competing in China, or otherwise impeding the ability to do so, result in reputational damage which easily spreads to all U.S. entities operating in China. The American reputation for reliability and trustworthiness is the cornerstone of American commercial competitiveness in China. This reputation is diminished with every blocked contract, sale, or delivery, undermining Chinese consumer confidence in U.S. imports.

**Unilateralism Harms Competitiveness.** A unilateral approach to export control is ineffective. Chinese consumers can source many blocked items from non-U.S. sources. Ironically, unilateral control may accelerate China's development of emerging technologies through nationalization and the strengthening of local industries in mainland China.

**Politicization of National Security Damages Trust.** The U.S. actions against Huawei have become overly politicized, causing a widespread perception in China that the U.S. is shrouding its true intentions — to use Huawei as a political cudgel or bargaining chip — behind a veneer of national security. This has resulted in a breakdown of trust between American suppliers and Chinese customers.

**Legal Opacity.** The constant revision of Huawei-related restrictions creates a compliance minefield for U.S. companies. U.S. companies must continuously consult legal counsel or outside consultants, often at great expense, to ensure the correct implementation and modification of compliance procedures to ensure adherence with U.S. regulations. Some also expressed growing frustration over a perceived increase in difficulty in obtaining U.S. Commerce export licenses to China for certain sectors such as semiconductors.

**Policy Announcements too Sudden.** New export control policies are often announced without warning or substantive guidance, depriving industry of the time necessary to analyze, develop and implement new compliance procedures. This not only exposes industry partners to increased compliance risk, but weakens U.S. national security and policy goals, through the rushed implementation of partial, inadequate, unproven and potentially ineffective procedures and practices.

**License Processing too Long; Review Times too Short.** Department of Commerce review times for license applications necessary to continue supplying companies such as Huawei are overly protracted. Onerous documentation requirements and an unrealistically short response window for Bureau of Industry and Security (BIS) to verify the bona fides of certain Chinese entities results in too many Chinese entities being unnecessarily added to the UVL.

# Recommendations

## Preparing New Regulations

- Regulations centered on emerging and foundational technologies should be tailored to avoid unwarranted restrictions. Only truly sensitive technologies should be targeted.
- Partner with industry where possible to build better understanding and consensus regarding potentially targeted technologies and their current availability world-wide.
- Reward companies that have strong compliance programs with certain exceptions to the normal requirements of the EAR, like the ability to use license exceptions or a streamlined export licensing process.
- Consider rewarding companies with verified strong compliance programs with additional exceptions pursuant to the EAR to conduct business without a license, such as the ability to use license exceptions or a streamlined export licensing process. Due diligence investigations by industry regarding the verification of end-user(s) is often more thorough than similar verification checks performed by BIS.

## Regulation Implementation

- New regulations on emerging and foundational technologies should not be a standalone endeavor but should involve partnership with allies and signatories to existent multilateral control regimes.
- Consider industry impact of placing companies on the Entity List and allow a comment period for industry consultation. Targeted Chinese entities are often able to source from other suppliers worldwide, unduly punishing U.S. commercial interests while failing to enforce the desired security or policy concerns.
- Alert industry to major policy changes and allow companies an adequate timeframe to enact the necessary policy changes to ensure effective compliance.

## Lessening the Compliance Burden

- Ensure BIS is adequately staffed thus ensuring license applications are processed effectively and in a timely manner.
- Ensure that both openness and transparency are maintained to the greatest degree possible.
- Invest further in U.S. commercial competitiveness with more funding to critical industries. The Chinese government currently invests far more than the U.S. government does in industries like AI. One of the best ways to safeguard national security is by strengthening U.S. commercial interests abroad.

## Introduction

New technologies and shifting market and political forces are leading many countries to reevaluate their export control regimes. In July 2019 AmCham Shanghai spoke with the export and trade compliance managers, executives, consultants, and supply chain managers of 16 of our member companies regarding the recent changes to the United States Department of Commerce's Export Administration Regulations (EAR) and their corresponding negative effects on their respective businesses and industries in China. AmCham Shanghai worked with these companies to identify definitive industry impacts resulting from the recent changes to 1) the Entity List, 2) the Unverified List (UVL), and 3) the proposed rules on emerging and foundational technologies. The suddenness of policy announcements, unilateral export restrictions, the length of license processing and review

times, politicization of national security issues, and opacity and obscurity in legal regulations within the U.S. export control regimes were pinpointed as major drivers for increased cost, financial loss, and reputational damage harming U.S. competitiveness in China.

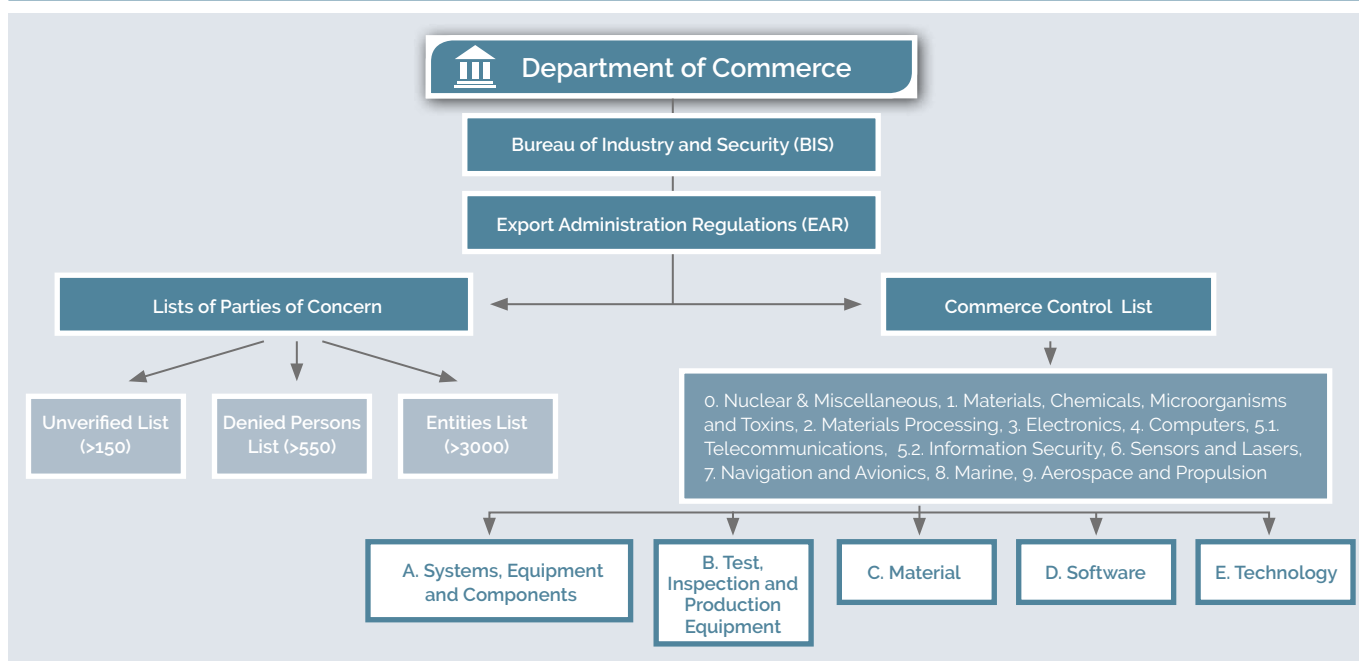
This report was prepared during a period of strained tensions between the U.S. and China. Issues surrounding Huawei and the Section 301 tariffs have significantly damaged existing links between the two nations in the 40th year of U.S.-China relations. Leading elements of Chinese civil and governmental society rigorously claim that recent U.S. actions targeting China are simply an economic containment tool, and not pursued on legitimate national security grounds. A stance of political neutrality on issues of national security is needed to reverse this negative perception.

The U.S. export control regime

is a comprehensive control and enforcement system designed to restrict the distribution of certain U.S. technologies, information, products, and services to foreign entities with the dual goals of protecting U.S. national security and foreign policy interests. However, our interviewees argued that U.S. export control regulations are confusing and burdensome, and often place U.S. business entities at a competitive disadvantage while not substantially protecting U.S. national security and foreign policy interests. U.S. commercial competitiveness abroad is predicated on finding the correct balance between U.S. government interests and the commercial competitiveness of its industries.

This report is separated into three sections. First, a primer is provided on U.S. export controls along with recent developments, focusing specifically on the Department of Commerce's Export Administration Regulations.

## Bureau of Industry and Security (BIS) Structure



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Second, the negative impact of certain elements of the regulatory regime are specified and explored. Finally, recommendations are offered on how to address or ameliorate these issues.

## Primer on U.S. Export Controls

### Export Controls Jurisdiction

The U.S. export controls regime is primarily overseen by three separate agencies: the U.S. Departments of Treasury, State, and Commerce. The Office of Foreign Assets Control, operating under the Department of Treasury, is responsible for enforcing U.S. economic and trade sanctions against specific countries and individuals. The State Department's Directorate of Defense Trade Controls administers the International Traffic in Arms Regulations restricting and controlling the export of defense and military items as catalogued by the U.S. Munitions List; and the Commerce Department's Bureau of Industry and Security (BIS) regulates the export of dual-use items that could compromise U.S. national security or foreign policy interests through the administration of the EAR. The EAR contains the Commerce Control List (CCL), the Entity List, and the UVL.

### Bureau of Industry and Security Export Administration Regulations

U.S.-made products or items that are created abroad and incorporate controlled U.S.-origin content in

certain quantities are subject to the EAR, which regulates how goods, technology, software, or know-how can be exported, reexported, or transferred abroad. Depending on the level of control, a U.S. export license may need to be granted by BIS prior to export, reexport, or in-country transfer. Generally, a license is required for any transactions that may impact U.S. national security or policy interests. At a basic level, this determination depends on the specific item(s) being exported, the country of ultimate destination, and the specific end-user. Pertinent parts of the EAR are detailed below.

*The Commerce Control List.* The Commerce Control List catalogues all items subject to U.S. export controls, including items that require U.S. licenses for export, reexport, and/or in-country transfer. Goods requiring U.S. export license are typically designated as "dual-use," which are commercial items that may have military applications.

*Entity List.* The Entity List is a registry of non-U.S. entities — including businesses, research institutions, government and private organizations, and individuals — that are ineligible to receive any item subject to the EAR without a license. Entities are normally added to the list if they are deemed a threat to U.S. national security or foreign policy interests. License applications to engage in business with entities on the list are typically subject to a "presumption of denial," meaning most are denied; and as

such, most Entity List entities are effectively blocked from engaging in business with their U.S. counterparts. To be removed from the Entity List, designated entities may need to pay a fine and/or implement stringent compliance programs in accordance with BIS requirements.

*Unverified List.* The UVL is a register of entities of concern whose *bona fides* BIS cannot verify. As with the Entity List, transacting with entities on the UVL requires the issuance of an export license. Entities are added to the UVL when BIS is unable to verify their *bona fides*, and not always because these so designated entities threaten U.S. national security or foreign policy concerns. If a UVL entity can provide the documents required for verification to BIS, the entity can typically be removed from the UVL. Broadly speaking, placement on the UVL is preferable to placement on the Entity List.

*The Denied Persons List.* Persons so listed are denied export privileges. Typically, entities/persons on this list have violated the EAR or other U.S. export control regimes.

### Recent developments

*ECRA.* The U.S. export control regime was strengthened by passage of the U.S. Export Controls Reform Act (ECRA) of 2018. ECRA's legislative predecessor, the Export Administration Act (EAA) lapsed in 1994, and in the interim, U.S. presidents have administrated export controls via successive executive

## BIS Emerging Technologies List

1. **Biotechnology**
2. **Artificial intelligence (AI) and machine learning technology**
3. **Position, Navigation, and Timing (PNT) technology**
4. **Microprocessor technology**
5. **Advanced computing technology**
6. **Data analytics technology**
7. **Quantum information and sensing technology**
8. **Logistics technology**
9. **Additive manufacturing**
10. **Robotics**
11. **Brain-computer interfaces**
12. **Hypersonics**
12. **Advanced Materials**
13. **Advanced surveillance technologies**

orders effectively extending the substantive provisions of the EAA. ECRA provides new statutory authority for BIS and provides BIS with a new mandate to create a framework for regulating both “emerging and foundational technologies.” On November 19, 2018, BIS issued an advance notice of proposed rulemaking (ANPRM) seeking public comments on how to identify emerging technologies critical to national security that can provide the U.S. with “a qualitative military or intelligence advantage.” BIS will likely soon release a similar ANPRM relating to foundational technologies.

**Entity List.** On May 16, 2019, China's Huawei Technologies Co., Ltd., and 68 of its non-U.S. affiliates, were added to the Entity List. BIS stated that it had, “reasonable cause to believe that Huawei has been involved in activities contrary to the national security or foreign policy

interests of the United States.” On May 20, to mitigate the commercial burden placed on U.S. companies, BIS issued a 90-day Temporary General License that authorized the continuation of certain transactions with Huawei, which was later extended for an additional 90 days on August 19. Following a significant public backlash from industry and a meeting with President Xi Jinping at the G20 Osaka summit, President Trump announced on June 29 that the U.S. government would agree to the timely granting of export licenses to allow U.S. companies to continue supplying Huawei with items, provided these items did not threaten U.S. national security or foreign policy interests. President Trump reaffirmed this commitment in a July 22 meeting with the CEOs of influential U.S. technology companies. At the time of writing, these licenses are still pending BIS review. On June 24, August 14, and August 19, BIS added dozens more companies, many of which are located in China or affiliated with Huawei, to the Entity List.

**UVL.** On April 11, BIS added 50 entities (37 of them Chinese) to the UVL. Many of the Chinese entities were universities or research institutions. On June 27, eight were removed after BIS successfully verified their respective *bona fides*.

**CIV Exception.** On June 13, BIS announced its intention to remove License Exception Civil End Users (CIV) from the EAR. Exception CIV allows exports without a license to civil end-users of Country Group D:1 (which includes China) of certain items controlled for national security purposes. The removal of CIV may indicate an unwillingness by BIS to trust that exports of previously covered items to D:1 entities will be used solely for civil and not military purposes.

## Issues Impacting Our Companies

### Lost Revenue

Many of our interviewees reported significant losses in revenue through canceled orders and lost sales as current Chinese customers and prospects were included on either the Entity List or UVL. Following Huawei's inclusion on the Entity List, most companies previously supplying Huawei ceased all operations with Huawei, pending further clarification from the Department of Commerce.

One multinational manufacturing firm confirmed a significant loss in revenue as Huawei simply turned to other international suppliers. Financial projections for this multilevel manufacturer predicted a decrease in long-term profit margins due to Huawei's inclusion on the Entity List, negatively impacting their share price. After consulting with U.S. counsel, other interviewees reported they had continued limited business dealings with Huawei through the supply of non-U.S. origin items. However, even these companies reported lost revenue following Huawei's inclusion.

Additionally, some business sectors are disproportionately impacted. A representative from the semiconductor industry related their specific struggles with the recent changes to U.S. export law. This company has 15 to 20 customers, which necessitates a largely inflexible supply chain. Since about one third of their annual revenue

is generated in China, inclusion of clients on the Entity List and UVL represented a significant business loss. Furthermore, because of the nature of the integrated circuit industry such as the existence of Processes of Record, agreements that lock the manufacturing process to prevent changes to the product line, semiconductor companies that miss the initial bidding period are unable to reenter the production process at a later date. Absent the timely grant of a license, companies may be prevented from entering bids. This in turn locks them out of the entire chip-making process, even where a license is subsequently granted after bids are closed.

### Reputational Damage

U.S. regulatory restrictions that prevent certain U.S. companies from competing in China, or impede their ability to do so, result in reputational

damage. Many U.S. entities have heavily localized their operations by selling the products they manufacture domestically in China. Banning these companies from conducting business with Chinese firms not only cuts revenue and market share, but also results in reputational damage which spreads to all U.S. entities operating in China. U.S. reputation for reliability and trustworthiness is the cornerstone of American commercial competitiveness in China. This reputation is diminished with every blocked contract, sale, or delivery, shaking Chinese consumer confidence in U.S. imports. As one manufacturer of high-tech products related, "because of these changes and regulations I see a declining sense of trust and mutual good faith in terms of the supply chain and other partner relationship building."

### Unilateralism Harms Competitiveness

While companies acknowledged the need to protect U.S. national security and foreign policy interests, they also agreed that a unilateral approach to export controls is harmful to U.S. commercial competitiveness and may ultimately prove ineffective since many emerging technologies can easily be sourced within China or from non-U.S. vendors. One company in the semiconductor industry stated, "If we want to limit our export control with certain China companies, I am 100% for this but it should not be the U.S. only. We should be followed by our alliance countries like the European Union, Japan, and Korea. If we act together that is fair, otherwise it will

## De Minimis

To limit the impact of export restrictions, some U.S. multinationals have invoked the EAR's *de minimis* rule, which removes from EAR control certain foreign-made commodities whose components fall under a specified amount of U.S.-origin controlled content (25% for China). Several interviewees noted that these attempts to circumnavigate the spirit of the EAR presented a novel phenomenon — previously, most companies strictly adhered to export controls throughout their respective product lines, largely ignoring the *de minimis* rule. However, the use of this rule, be it correctly or incorrectly, has expanded with the recent additions to the UVL and Entity List. As one export compliance manager related, "then after the Huawei ban happened, people will have to try to do this complicated calculation and see if they can get themselves not subject to EAR."

While invoking *de minimis* is legally legitimate, its invocation is both complex and a high-risk endeavor. Any miscalculation or mistake made significantly increases a company's trade risk and exposes them to increased liability. Unfortunately, companies are faced with the unenviable position of being placed between hammer and anvil. Either invoke the rule and be faced with the very real proposition of increased trade risk or do not invoke the rule and become economically disadvantaged by competitors both at home and abroad.



destroy your industry and economy.” Some companies suggested that the U.S. government could maintain American competitiveness by easing unilateral restrictions while advocating for multilateral adoption of new export controls.

Ironically, unilateral control may accelerate China’s development of emerging technologies through nationalization and the strengthening of local industries in mainland China. A relatively few high-end products — like certain integrated circuits — can only be sourced from U.S. companies. By barring U.S. industry from participating in these markets, foreign competitors will fill the void. “Our competition in terms of market share is getting serious and the competitors would love to see our business with Huawei ending,” said one multinational technology company. “It would accelerate their technology pronouncement.” In short, though such a regulatory bar would serve the short-term goals of U.S. national security and foreign policy, the long-term economic effects may prove severe by allowing foreign vendors, largely unencumbered by U.S. export controls, the time and economic incentive to enter the market, injuring future U.S. competitiveness.

### Politicization of National Security Damages Trust

Our interviewees agreed that U.S. actions against Huawei have become overly politicized, giving rise to a widespread perception in China that the U.S. is shrouding its true intentions

## Huawei Timeline

<b>Oct 8, 2012:</b>	U.S. congressional panel warns that Huawei and ZTE pose a security threat
<b>Aug 13, 2018:</b>	National Defense Authorization Act (NDAA) signed into law
<b>Dec 6, 2018:</b>	Huawei CFO Meng Wanzhou is arrested in Vancouver, Canada
<b>Jan 28, 2019:</b>	U.S. indicts Huawei and Meng Wanzhou on 23 counts of alleged sanctions violations, fraud, and trade secrets theft, among others.
<b>March 7, 2019:</b>	Huawei sues the U.S. government over the equipment ban outlined in the NDAA
<b>May 15, 2019:</b>	BIS adds Huawei to the Entities List
<b>May 20, 2019:</b>	BIS grants Huawei 90-day Temporary General License that authorizes certain transactions to continue
<b>June 29, 2019:</b>	President Trump announces at Osaka G20 Summit that some restrictions on transacting with Huawei would be lifted
<b>July 16, 2019:</b>	Congress introduces The Defending America’s 5G Future Act
<b>Aug 9, 2019:</b>	Bloomberg reports U.S. will hold off granting export licenses to Huawei after China halts purchases of U.S. agricultural products
<b>Aug 9, 2019:</b>	Huawei unveils home-grown OS, says its ready to deploy if blocked from Android
<b>Aug 21, 2019:</b>	BIS extends Huawei Temporary General License and adds 46 more Huawei affiliates to the Entity List

— to use Huawei as a political cudgel or bargaining chip — behind the veneer of national security concerns. According to BIS, Huawei was added to the Entity List because Huawei “has been involved in activities contrary to the national security or foreign policy interests of the United States.” Most interviewees agreed on the legitimacy of this concern; however, a perception exists that Huawei is being used primarily as a “bargaining chip” in the larger trade war as reflected by the recent U.S. actions against Huawei, including tweets by the President, the Executive Order restricting U.S. companies from buying foreign-made telecommunications equipment, advocating U.S. allies to ban Huawei from assisting in the development of 5G networks, and the pending

criminal case against Huawei CFO Meng Wanzhou, among others.

This perception, correct or not, has resulted in a breakdown in trust between U.S. suppliers and Chinese vendors. One manufacturer said: “We are trying to build this whole export compliance based on regulation. We are trying to explain all the reasons behind the export regulation change in an objective way. Right now it is more difficult for us to do that.” Others contrasted the prevailing perceptions surrounding Huawei’s inclusion on the Entity List with the inclusion of ZTE on the Denied Persons List in 2016, arguing that Huawei’s inclusion is seen as politically driven. Current industry perception is that Huawei’s inclusion was the primary driver

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behind the Chinese Ministry of Commerce recent announcement of a pending unreliable entity list of its own. Many companies expressed alarm about possible inclusion on China's list — which Beijing said will punish “companies, organizations, and individuals” who refuse to supply or damage the interests of Chinese companies — if they stop dealing with Huawei. Many interviewees sense a tit-for-tat scenario: China will determine its list based on how stringently the U.S. enforces export controls.

### **Legal Clarity and Opacity**

The constant revision of Huawei-related restrictions creates a compliance minefield for U.S. companies, who must continuously consult legal counsel or outside consultants, often at great expense, to ensure the correct implementation and modification of compliance procedures to ensure compliance. For example, in the past U.S. companies were largely forbidden from conducting business with companies on the Entities List. However, with Huawei, the governing regulations are much less straightforward. General Licenses may authorize limited transactions with Huawei, but only in certain specified and enumerated areas. Likewise, export licenses may be available, but only if the exported components do not violate U.S. national security or foreign policy interests and then only where foreign alternatives are readily available. In most cases, the official guidance provided is either complex or absent

leaving U.S. entities unsure if, how, and to what extent business can be safely conducted without violating U.S. law.

Some of our interviewees also expressed frustration over a perceived increase in difficulty in obtaining U.S. Commerce export licenses to China for certain sectors such as semiconductors. As related by one multinational technology company, their perception is that the U.S. Government has recently become “stingier and more tightly controlled with regard to export controls, especially when it came to business transactions with China.” The negative effects of such perceptions are twofold. First, Chinese vendors may turn to non-U.S.-origin products wherever possible. Second, Chinese sentiments — that U.S. export controls are being used solely as a means of Chinese economic containment — are strengthened.

### **Policy Announcements too Sudden**

All 16 companies we spoke with agreed that new export controls policies are often announced without warning or substantive guidance, depriving industry of the time necessary to analyze, develop, and implement new compliance procedures within the established time frames. The most discussed example was Huawei's inclusion on the Entity List. Huawei's sudden designation resulted in mass disruption of worldwide supply chains. A representative of a technology multinational said, “I remember getting that notification

overnight and I sent it to everyone on our China supply chain management team.

In the U.S. we removed Huawei from our shipping customer list in our system so that you couldn't even find Huawei in our shipping system if you tried. Anything on the road or on the ship was stopped and it put our entire operation in panic mode.” Businesses also stated that they were caught unaware by President Trump's announcement at June's G20 Summit that U.S. entities can continue selling certain products to Huawei, which they characterized as an abrupt and major policy reversal.

Other companies stated their surprise over the recent trade alert issued by international trade law firm Akin Gump that the Department of Commerce plans to end the License Exemption CIV, which many regularly use. BIS held their annual conference in Washington one week before the announcement, yet none of the companies consulted were asked for input or given any indication concerning CIV's removal despite attending the conference and meeting directly with BIS representatives.

### **License Processing too Long; Review Times too Short**

Department of Commerce review times for license applications necessary to continue supplying companies such as Huawei are overly protracted. One software company stated that this review period currently

averages 30 calendar days, and expressed concern that the inter-agency approval required for a Huawei license may further increase processing times.

Likewise, onerous documentation requirements and an unrealistically short response window for BIS to verify the *bona fides* of certain Chinese entities results in too many Chinese entities being unnecessarily added to the Unverified List. Many of the UVL additions are critical consumers of U.S. goods. Many businesses we spoke with expressed marked confusion regarding the recent May

addition of specific Chinese entities, such as universities and research institutions, which pose no apparent threat to U.S. security and foreign policy interests. One manufacturing company speculated that many of the recent additions were the result of the Chinese Ministry of Commerce's failure to timely issue end-use statements required by BIS to verify the respective *bona fides* of Chinese entities. Consequently, the entities were automatically added to the UVL when BIS deadlines elapsed. This negatively impacts U.S. commercial competitiveness, since many of the named Chinese entities will simply partner with non-US suppliers.

## Recommendations

### Preparing New Regulations

- Regulations centered on emerging and foundational technologies should be tailored to avoid unwarranted restrictions. Only truly sensitive technologies should be targeted.
- Partner with industry where possible to build better understanding and consensus regarding potentially targeted technologies and their current availability world-wide.
- Reward companies that have strong compliance programs with certain exceptions to the normal requirements of the EAR, like the ability to use license exceptions or a streamlined export licensing process.
- Consider rewarding companies with verified strong compliance programs with additional exceptions pursuant to the EAR to conduct business without a license, such as the ability to use license exceptions or a streamlined export licensing process. Due diligence investigations by industry regarding the verification of end-user(s) is often more thorough than similar verification checks performed by BIS.

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- Consider industry impact of placing companies on the Entity List and allow a comment period for industry consultation. Targeted Chinese entities are often able to source from other suppliers worldwide, unduly punishing U.S. commercial interests while failing to enforce the desired security or policy concerns.
- Alert industry to major policy changes and allow companies an adequate timeframe to enact the necessary policy changes to ensure effective compliance.

### Lessening the Compliance Burden

- Ensure BIS is adequately staffed thus ensuring license applications are processed effectively and in a timely manner.
- Ensure that both openness and transparency are maintained to the greatest degree possible.
- Invest further in U.S. commercial competitiveness with more funding to critical industries. The Chinese government currently invests far more than the U.S. government does in industries like AI. One of the best ways to safeguard national security is by strengthening U.S. commercial interests abroad.



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The American Chamber of Commerce in Shanghai - Viewpoint September 2019

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