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Trump Administration's First Export Control Action – Reading the Tea Leaves

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On March 25, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced a significant expansion of its Entity List restrictions, adding 80 entities from China, the United Arab Emirates, South Africa, Iran, Taiwan, and elsewhere to the list. As the first major export control action under President Donald Trump's second term, it is worth pausing and considering what this signals about the direction of export controls under this administration. Republican leaders have been vocal for years about the need to close "loopholes" in U.S. export controls, in particular when it comes to China's access to advanced U.S. technology with military applications. These Entity List designations indicate that the Trump administration is focused on doing just that. With this in mind, companies with exposure to China should be thinking about what may be next on this trajectory.

One prominent concern that leading Republicans (and others) have vocalized about perceived "loopholes" in the U.S. Export Administration Regulations (EAR) is that the Entity List generally only imposes restrictions on the specifically designated entities, and not on their parents, subsidiaries, or affiliates that are not on the list or otherwise involved in the activity. These limitations have been widely reported on for years. With many Chinese technology companies operating in sprawling group structures internationally, these limitations have allowed quite a bit of business with such targeted groups to continue despite the Entity List designations that have been imposed in many cases on some of the group companies. This has led to calls, for example, to apply to the EAR's Entity List an approach akin to the "50% rule" that has long been a feature of the sanctions regulations of the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). OFAC's 50% rule extends the restrictions to unlisted entities that are 50% or more owned by listed parties.

These new Entity List designations were designed primarily to curtail China's development of artificial intelligence (AI), high-performance computing, and other advanced technologies, while also targeting other proliferation concerns like unsafeguarded nuclear activities and ballistic missile programs in Pakistan and elsewhere, and Iran's procurement of unmanned aerial vehicle (UAV) components.

While this is consistent with the Biden administration's approach, a particularly notable feature of this recent action was the designation of several additional Inspur entities, seeking to close one of the perceived "loopholes" that Republicans and others have been vocal in criticizing. China-based Inspur is one of the world's largest makers of servers, with an affiliate in the U.S. that reportedly has been using the most advanced Nvidia chips that are subject to global restrictions under the EAR. A few Inspur entities were put on the Entity List in early 2023, making waves in the global electronics sector, and this week several more key Inspur entities were added to the list.

Looking Ahead

While this new BIS action does not fundamentally alter the regulatory framework, it may be a signal of the Trump administration's intent to continue closing "loopholes" in the EAR. It has recently been reported that the administration is looking at expanding the scope of the EAR in several ways, including to capture remote access to controlled hardware and software, which would be a massive expansion of U.S. export control authority. There were legislative proposals to do this in the last Congress that were not enacted. However, there are grave concerns within industry and government about how to craft this type of export control expansion and whether it would be workable.

With experienced staff at BIS reportedly being pushed into early retirement, and the agency facing potential funding cuts, administering and enforcing complex new regulations could be a challenge. At BIS's annual flagship conference last week, no substantive remarks were made by the agency's new political leaders, and the AI panel was abruptly canceled at the last minute with no explanation. Secretary of Commerce Howard Lutnick gave a sweeping speech about an intention to ramp up enforcement of export controls, but offered no detail about any specific plans.

While the administration remains focused on cost-cutting, removing career officials, and accommodating industry concerns, it is unclear how they may also pursue their China-focused national security goals. Companies should continue to watch for signals of what the trajectory will look like over the next four years.

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