

# US Export Controls and China: Confronting the Changing Landscape

# 美国出口管制最新发展： 挑战与应对

1 June 2020

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2020年6月1日

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# Political Context

## 政治背景

- Changes in US trade policy since January 2017
  - In general: Shift from multilateral to bilateral focus, greater willingness to invoke national security as a basis for actions
  - China-specific:
    - Section 301 and other trade actions
    - COVID-19 and impact on the China-US Phase One deal
    - Sanctions and Export Controls
    - “Strategic competition”
- 2017年1月以来美国贸易政策的变化
  - 总体上: 重心由多边转向双边, 更倾向于将国家安全作为行动依据
  - 针对中国:
    - 301调查及其他贸易行动
    - 新冠疫情及其对中美第一阶段经贸协议的影响
    - 制裁与出口管制
    - “战略竞争”

# Export Administration Regulations Amendments

## 修订《出口管制条例》

- Military End-use / End-user Rule
  - Issued 28 April 2020
  - Effective 29 June 2020
  - Applies to items listed in Supp. 2, 15 CFR Part 744 that are “subject to the EAR.”
- When exported item “supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, 'development,' or 'production,' of military items...” in **China, Russia, Venezuela.** (15 CFR § 744.21)
- 军事最终用途/最终用户规则
  - 2020年4月28日颁布
  - 2020年6月29日生效
  - 适用于《出口管制条例》（EAR）第744节附注2中列举的“受EAR管辖”的物项
- 向中国、俄罗斯和委内瑞拉出口“支持或有助于操作、安装、保养、维修、翻修、翻新、‘开发’或者‘生产’军品的”物项时……（EAR第744.21节）

# Foreign-produced Direct Product Rule

## 外国产直接产品规则

- Foreign-produced Direct Product Rule (15 CFR § 736.2(b)(3) )
  - Effective 15 May 2020
- Applies to export, re-export, or transfer (with knowledge or reason to know) of items produced, developed, designed by certain entities on the Entity List (e.g., Huawei and affiliates) that are:
  - A direct product of specified technology or software subject to the EAR; *or*
  - Produced by “any plant or major component of a plant” outside the United States that is a direct product of specified US-origin technology or software.
- 外国产直接产品规则（EAR第736.2(b)(3)节）
  - 2020年5月15日生效
- 适用于（知道或应当知道的情况下）出口、再出口、或转让由实体清单中的特定实体（例如华为及其关联实体）生产、开发、设计的物项，如果该物项是：
  - 受EAR管辖的特定技术或软件的直接产品；*或*
  - 由属于特定的美国原产技术或软件的直接产品的、位于美国境外的“任何工厂或工厂的主要部件”生产。

# Additions to the BIS Entity List

## 中国实体被列入美国商务部产业安全局“实体清单”

- *Forthcoming* Entity List designations (2 batches) announced 22 May 2020
  - 1) 9 Chinese entities linked to “human rights abuses in the Xinjiang Uighur Autonomous Region.”
    - Supplements list of 28 entities added in October 2019 in relation to XUAR.
  - 2) 24 entities in China, Hong Kong, Cayman Islands, “with ties to WMD and military activities.”
- Listing restricts transfers of “items subject to the EAR” **to** persons on the Entity List. (Supp. 4, 15 CFR Part 744)
- 2020年5月22日宣布将（分两批）把33个中国实体加入“实体清单”
  - 1) 9个实体与“新疆维吾尔自治区内的侵犯人权”有关。
    - 是对2019年10月以新疆问题为由将28个实体列入“实体清单”的补充
  - 2) 注册于中国大陆、中国香港、开曼群岛的24个与“大规模杀伤性武器和军事活动”有关的实体。
- 向实体清单上的主体转让“受EAR管辖的物项”受到限制。（EAR第744节，附注4）

# Contact information

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