



Client Alert: US Issues New Tech Restrictions on Leading Chinese High Performance Computing Developers

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The United States government recently announced additional national security-driven changes to the Export Administration Regulations (EAR), which will affect US-China trade relations. This action continues a trend of impactful, China-focused technology restrictions by the US government, with significant implications for trade and business.

New Restrictions on Chinese High-Performance Computing (HPC) Developers

On June 24, 2019 the Bureau of Industry and Security (BIS), an agency of the US Department of Commerce, published a final rule amending the EAR to add two of China's three leading high performance computing (HPC)[1] developers — Sugon and the Wuxi Jiangnan Institute of Computing Technology (WJI) — to the Entity List (Supplement No. 4 to Part 744). This action effectively prohibits transferring any technology or products subject to US export jurisdiction to the listed entities. In addition to Sugon and WJI, three Sugon affiliates — Higon, Chengdu Haiguang Integrated Circuit, and Chengdu Haiguang Microelectronics Technology — were also placed on the Entity List. The final rule also amends the February 2015 Entity List entry for China's third leading HPC developer, the National University of Defense Technology (NUDT), to add one alias (Hunan Guofang Keji University) and four additional locations.

The listings are based on a BIS determination that the subject entities pose a significant risk of being or becoming involved in activities contrary to the national security and foreign policy interest of the United States. As with BIS's May 21, 2019 designation of China's telecom leader, Huawei, and 68 of its non-US affiliates as denied entities and pending changes to US export control of emerging technologies, these restrictions appear intended to protect the current US advantage in certain dual-use critical technologies. Together with a recent Executive Order directing implementation of regulations prohibiting US companies from purchasing IT products determined to be a threat to US national security, and assertive US foreign investment control activity, the additional Entity List designations continue a trend of national security-focused government activity with broad implications for companies, investors, and their counsel.

The Entity List designations prohibit any person (US or foreign) from providing the restricted entities with "items subject to the EAR" (i.e., effectively, all commodities, goods, and software with more than *de minimis* US - origin content) without a BIS-issued license. The BIS license review policy for all listed entities is a presumption of denial. In contrast to the temporary reprieve of a Temporary General License applicable through August 19, 2019 to certain transfers to Huawei, no such exceptions are currently available to the listed HPC developers.

How Ankura Can Help

The new Entity List designations, together with the related investment and network security control activities, reinforce the urgent need for US and international companies, investors, and counsel to proactively adapt to the changing regulatory environment applicable to technology, supply chains, and data security. Ankura's unique experience and expertise as former in-house compliance executives and counsel with global technology companies, technical experts and solution providers, and trusted external advisors allows our team to rapidly and efficiently help our clients and their counsel grapple with and stay ahead of emerging developments.

Ankura's experts can help companies and counsel with:

- Jurisdiction assessment – Conduct technology/commodity classifications and *de minimis* analyses, and advise regarding applicability of the EAR and entity list restrictions to particular products and activities.
- License and advisory opinion support – Assist with engaging BIS to seek export authorizations and/or obtain an opinion regarding the applicability of the EAR to particular fact situations.
- Distribution and supply chain diligence – Identify and mitigate third-party trade compliance, technology, and vendor risks and challenges.
- Network security diligence – Leverage expertise in export controls, data analytics, cybersecurity, and national security to help clients assess and mitigate risks.
- Compliance risk mitigation – Adapt to changing regulatory environments with smart, managed application of business-integrated controls.
- Chinese language capability – Integrate US resident team members fluent in Mandarin.

[1] Simply stated, HPC refers to the ability to process data and perform calculations at high speeds.

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