

美国出口管制新规应对中国、俄罗斯和委内瑞拉的民用和军事技术发展

New Export Control Rules Confront Integration of Civilian and Military Technology Development in China, Russia and Venezuela

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2020年4月28日，美国商务部工业和安全局（BIS）发布两项最终规则将取消对中国、俄罗斯和委内瑞拉的民用最终用户（CIV）许可例外并扩大对这些国家的军事最终用途和最终用户的限制。这些规则通过要求美国政府审查更大范围的出口商品来应对民用和军用技术发展不断融合（尤其在中国）所带来的国家安全风险，这类商品包括为军事最终用途或向军事最终用户运送时仅因反恐怖主义（AT）原因被管制的电子和电信物项（其许可适用推定拒绝的审查标准）。这些最终规则将在2020年6月29日生效。

On April 28, 2020, the U.S. Commerce Department's Bureau of Industry and Security (BIS) published two final rules that will eliminate the license exception for civil end users (CIV) in the People's Republic of China, Russia, and Venezuela and expand military end use and end user restrictions on these countries. These rules confront the national security risks presented by the increasing integration of civilian and military technology development, particularly in China, by requiring U.S. Government review of a broader range of exports including electronics and telecommunications items only controlled for antiterrorism (AT) reasons (with licenses subject to a presumption of denial) when shipped for military end uses or to military end users. These final rules will go into effect on June 29, 2020.

BIS还公布了一项拟议规则将通过限制符合许可例外资格的出口目的地以修改许可例外的额外再出口许可（APR）规则。有关拟议规则的征求意见稿截止日期同样为2020年6月29日。

BIS also published a proposed rule that would modify License Exception Additional Permissive Reexports (APR) by restricting the destinations that will be eligible for the license exception. Comments on the proposed rule are also due June 29, 2020.

有关中国、俄罗斯或委内瑞拉军事最终用途和军事最终用户管制的扩大

Expansion of Controls Related to Military End Use or Military End Users in China, Russia, or Venezuela

根据《出口管理条例》（EAR）第744.21节，[第一项最终规则](#)增加了为中国、俄罗斯和委内瑞拉军事最终用途和军事最终用户的物项出口、再出口和（国内）转移的许可要求。最终规则2020年6月29日生效：

The [first final rule](#) expands license requirements for exports, reexports, and transfers (in-country) of items intended for military end uses and military end users in China, Russia, and Venezuela, pursuant to § 744.21 of the EAR. Effective June 29, 2020, the final rule:

- 对向中国军事最终用户出口实施限制，和目前对委内瑞拉和俄罗斯的要求相似。目前规则下，对明确规定的物项，EAR 第 744.21 节要求当出口商知道 (i) 运往中国、俄罗斯或委内瑞拉的物项将用于军事最终用途，或 (ii) 运往俄罗斯或委内瑞拉（但非中国）的物项将为军事最终用户所用时，需要取得许可。
Imposes a restriction on exports to military end users in China, similar to current requirements for Venezuela and Russia. Currently, for specified items, EAR Section 744.21 requires a license where the exporter has knowledge that (i) an item destined for China, Russia, or Venezuela will be used for a military end use, or (ii) an item destined for Russia or Venezuela (but not China) will be for a military end user.
 - “军事最终用户”这一术语不仅包括“国家武装部队（陆军、海军、海军陆战队、空军或海岸警卫队）以及国民警卫队和国家警察、政府情报或侦查组织”，还包括“其行动或职能旨在支持‘军事最终用途’的个人或实体”。
The term “military end user,” includes not only “the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations,” but also “any person or entity whose actions or functions are intended to support ‘military end uses.’”
 - 许多大型商业生产商和其他公司，尤其是在中国（以及俄罗斯，委内瑞拉相对较少）可能从事一些支持军事最终用途的活动。根据新规则，向该等公司出口受管辖种类的物项（如：3A991 集成电路）可能需要取得许可，即使物项本身将仅用于商业用途。如按此方式解读，该规则将造成广泛的影响；跟进关注 BIS 的进一步指南十分重要。鉴于 BIS 在该规则中提到“中国广泛的军民融合”，在任何解释方法下，出口商均需要在其尽职调查中关注其交易相对方业务中是否有任何方面支持军事最终用途，尤其是在中国的军事最终用途。
Many large commercial manufacturers and other companies, particularly in China (as well as Russia and to a lesser extent Venezuela) may conduct some activities in support of a military end use. Under the new rule, it appears that a license may be required to export the covered categories of items (e.g., 3A991 integrated circuits) to such companies, even if the item itself will be used exclusively in connection with commercial applications. If interpreted in this way, the rule could have a broad impact; it will be important to monitor further guidance from BIS. Under any interpretation, exporters will need to focus their due diligence on whether any aspect of their counterparties’ business supports military end uses particularly in China, given what BIS refers to in the rule as “China’s widespread civil-military integration.”
- 针对向中国、俄罗斯和委内瑞拉的出口商品，**显著扩大适用 EAR 第 744 部分补充条款第 2 条的军事最终用途和最终用户许可要求的物项清单**。该清单现将包括《商业管制清单》（CCL）上的某些材料加工、电子产品、电信、大众市场加密物项、传感器和激光、推进、电子、海军设备以及航空物项。例如，向中国的军事最终用户寄送一片 3A991 芯片、一台 5A992 苹果手机或一份 5D992 微软软件的副本将受这一限制管制。
Significantly expands the list of items subject to the military end use and end user license requirements in Supplement No. 2 to Part 744 of the EAR for exports to China, Russia, and Venezuela. The list will now also include certain materials processing, electronics, telecommunications, mass market encryption items, sensors and lasers, propulsion, electronics, maritime equipment, and aircraft items on the Commerce Control List (CCL). For example, sending a 3A991 chip, a 5A992 iPhone, or a copy of 5D992 Microsoft Windows to a military end user in China would be subject to this restriction.
- **扩大“军事最终用途”定义。“军事最终用途”现定义如下：**
Broadens the “military end use” definition. “Military end use” currently is defined as:
 - 被纳入《美国军火清单》（USML）所述的军事物项；
Incorporation into a military item described on the U.S. Munitions List (USML);
 - 被纳入《瓦森纳协定军火清单》所述的军事物项（见瓦森纳协定网站 <http://www.wassenaar.org>）；
Incorporation into a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at <http://www.wassenaar.org>);

- 根据出口管制分类号码（ECCN），被纳入尾号为“A018”或属于 ECCN 下“600 系列”的物项；或
Incorporation into items classified under ECCNs ending in “A018” or under “600 series” ECCNs; or
- 为了“使用”、“开发”或“生产”上述军事物项的。
For the “use,” “development,” or “production” of military items described above.

“使用”通常为具有六要素的结合定义——意味着需满足全部要素条件以构成“使用”。在此情况下，最终规则扩大了“军事最终用途”的定义以包括支持或有助于军事物项任一“使用”要素的任何物项，所述要素包括运行、安装、维护、修理、彻底检修、翻新、“开发”或“生产”。

“Use” normally has a conjunctive definition with six elements – meaning all the elements need to be satisfied to constitute “use.” In this case, the final rule expands the “military end use” definition to also include any item that supports or contributes to any one of the elements of “use,” i.e., the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items.

- 针对向中国、俄罗斯和委内瑞拉为军事最终用途和最终用户的出口商品，适用推定拒绝许可的政策，而非现有的个案许可审查标准。因此，根据 EAR 第 744.21 节提出的许可申请在大多数情况下将会被拒绝。
Adopts a policy of presumption of denial of licenses for exports to China, Russia, and Venezuela for military end uses and end users, rather than the existing case-by-case license review standard. Accordingly, license applications pursuant to EAR § 744.21 will be denied in most cases.

- 不考虑最终用途或价值，增加对 CCL 所列所有运往中国、俄罗斯和委内瑞拉物项的电子出口信息（EEI）要求。根据美国《对外贸易条例》，针对许多不太敏感的反恐怖主义管制物项，如果其价值少于 2,500 美金，一般完全不要求申报 EEI，且即使申报，EEI 一般不需要明确 ECCN。根据最终规则，除极少例外情况，向中国、俄罗斯和委内瑞拉出口列于 CCL 上的全部有形出口商品时需申报 EEI 以确定相关物项的具体 ECCN 分类。该规则的结果是，即使一家公司同这些国家完全在商业领域内从事业务，其出口申报义务也可能发生变化。

Expands Electronic Export Information (EEI) requirements for all items listed on the CCL that are destined for China, Russia, and Venezuela – independent of end use or value. Per the Foreign Trade Regulations, many less sensitive AT-controlled items generally do not require EEI reporting at all if their value is less than \$2,500, and even if reported, the EEI would generally not need to specify an ECCN. The final rule requires EEI reporting to identify specific ECCNs for tangible exports of all items listed on the CCL to China, Russia, and Venezuela, with very few exceptions. As a result, even if a company does business with these countries entirely in the commercial realm, its export reporting obligations may change.

民用最终用户（CIV）许可例外的取消

Elimination of License Exception Civil End Users (CIV)

[第二项最终规则](#)取消了 CIV 许可例外。CIV 许可例外目前批准因国家安全（NS）原因受管制的某些物项的出口，前提是这类物项是为了民用用途运往 D:1 国家组的民用最终用户，D:1 国家组包括中国、俄罗斯、委内瑞拉、乌克兰和伊拉克。大量物项目前可根据 CIV 许可例外进行出口，包括某些电信设备和电脑。但自 2020 年 6 月 29 日起公司将无法继续使用 CIV 许可例外。

The [second final rule](#) eliminates License Exception CIV. License Exception CIV currently authorizes the export of certain items that are controlled for national security (NS) reasons provided that the items are destined to civil end users for civil uses in Country Group D:1, which includes, among others, China, Russia, Venezuela, Ukraine, and Iraq. A number of items currently may be exported under License Exception CIV, including certain telecommunication equipment and computers. Accordingly, as of June 29, 2020 companies will no longer be able to utilize License Exception CIV.

许可例外的额外再出口许可（APR）规则修改

Modification of License Exception Additional Permissive Reexports (APR)

[第三条规则](#)为修改许可例外 APR 的拟议规则，许可例外 APR 目前批准来自 A:1 国家组或香港的某些物项再出口至位于 B 国家组（只要目的地不同时在 D:2、D:3 或 D:4 国家组中）和 D:1 国家组的目的地。该规则提议除去 D:1 国家组（含中国）目的地作为许可例外 APR 下国家安全管制物项再出口合格接收方的资格。

The [third rule](#) is a proposed rule that would modify License Exception APR, which currently authorizes the reexport of certain items from Country Group A:1 or Hong Kong to destinations in Country Group B (so long as the destination is not also in Country Groups D:2, D:3, or D:4) and Country Group D:1. The rule proposes removing destinations in Country Group D:1, including China, as eligible recipients of national security-controlled items reexported under License Exception APR.