

U.S. Department of Commerce Sanctions Seven Chinese Supercomputer Firms

by Lawrence Ward, Justin T. Huff, Dave Townsend, and T. Augustine Lo

On April 8, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") added seven Chinese supercomputer firms and organizations to its Entity List, the agency's principal export sanctions list. BIS alleges that these seven entities are involved with China's military modernization and weapons programs. These new sanctions signal that the Biden Administration will carry on a long-standing U.S. policy of using the Entity List to target entities believed to contribute to China's military by denying them access that they might otherwise have to advanced American technology.

The seven Chinese supercomputer entities added to the BIS Entity List are as follows:

- National Supercomputing Center Jinan;
- National Supercomputing Center Shenzhen;
- National Supercomputing Center Wuxi;
- National Supercomputer Center Zhengzhou;
- Shanghai High-Performance Integrated Circuit Design Center;
- Sunway Microelectronics; and
- Tianjin Phytium Information Technology.

Because of these designations, exports and transfers of most items with significant U.S. content to these Chinese firms will now require a BIS export license under the U.S. Export Administration Regulations ("EAR"). In its April 8 announcement, BIS also said that it will consider any export license applications for these entities with a presumption of denial.

According to the BIS announcement, the seven listed firms supply China's military with technology that can be used in the development of weapons of mass destruction and hypersonic weapons. The Biden Administration believes that some of that work may depend on the use of advanced semiconductors designed or made with U.S. origin software or other technology. However, much of that semiconductor fabrication takes place at a leading third country semiconductor foundry. The effectiveness of these new Entity List sanctions will then largely depend on the extent to which the supply chains for

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these seven entities rely upon U.S. origin technology or material in the design or production of such purchased semiconductors.

Although there had been some hopes that rising U.S.-China tensions would subside somewhat after the Biden Administration took office in January 2021, the Administration now appears to be following closely President Biden's March 3 Interim National Security Strategic Guidance document. In that White House [release](#), President Biden said:

We must also contend with the reality that **the distribution of power across the world is changing, creating new threats**. China, in particular, has rapidly become more assertive. It is the only competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system....

Given that strategic orientation, it seems probable that the Biden Administration will continue to apply all available technological leverage vis-à-vis China and its military forces through the targeted use of U.S. export controls and economic sanctions administered by BIS or other federal agencies such as the Office of Foreign Assets Control ("OFAC") in the Department of the Treasury. Such measures include the EAR's Entity List and other sanctions previously imposed by BIS on Chinese entities (such as those against Huawei and ZTE), the Military End User List restrictions added by BIS on exports to entities that support China's military, police, and intelligence services, and the Communist Chinese Military Companies sanctions imposed by the Department of Defense and OFAC on U.S. persons trading in the securities of Chinese companies asserted to be owned or controlled by China's People's Liberation Army ("PLA"). Read [more](#).

It should also be kept in mind that the March 3 Interim National Security Strategic Guidance also highlighted President Biden's commitment to human rights. The March 3 document said, "We will ensure that U.S. companies do not sacrifice American values in doing business in China. And we will stand up for democracy, human rights, and human dignity, including in Hong Kong, Xinjiang, and Tibet." The U.S. Government has already named a number of Chinese companies to the BIS Entity List because they are alleged to be applying their advanced technologies (e.g., for facial recognition and electronic surveillance) to support the repression of Uyghurs and other Muslim minority groups in Xinjiang. That human rights stance is likely to translate into more U.S. trade barriers with China on the import side as well as on the export side, such as additional Withhold Release Orders ("WROs") from U.S. Customs and Border Protection ("CBP") that will bar the entry of goods sourced from or made in Xinjiang under the authority of Section 307 of the Trade Act of 1930. Read our [September 21, 2020 article](#) and [January 22, 2021 article](#). The 117th Congress is considering again legislation called the Uyghur Forced Labor Prevention Act that would apply a rebuttable presumption that all goods sourced from or made in Xinjiang were made with forced labor, which would be a considerable change in federal import law and which would greatly complicate existing supply chains for many consumer goods imported into the United States from China.

China stoutly denies that its companies are misusing any technology from the United

States or that any human rights violations are occurring in Xinjiang, Hong Kong or Tibet, all of which China asserts in any case to be purely domestic affairs. Its stated position is that China will continue to pursue its own national interests regardless of such U.S. measures and, if necessary, China will invest in and develop purely domestic Chinese alternatives to U.S.-origin technologies that may be increasingly unlikely to be supplied to Chinese firms or other organizations because of such U.S. actions.

In view of this latest Entity List development and the other export and import measures that have already been taken by the U.S. Government, it would be prudent to expect additional U.S. sanctions will continue to be placed upon Chinese entities that are perceived to support China's PLA or its other security forces, or that allegedly contribute to the violation of human rights in Xinjiang, Hong Kong and Tibet. In the near term, U.S. exporters and importers should understand the businesses of their Chinese suppliers and customers, should have access to current information on U.S. export and import laws and regulations, and should be sure that their international sales or purchase agreements contain appropriate *force majeure*, suspension and termination clauses. In the longer term, many U.S. exporters and importers are doing more contingency planning and considering alternative markets and supply chains in anticipation of these growing geopolitical risk factors, extending efforts probably already spurred by U.S. punitive tariffs on imports of Chinese goods and, more recently, by the global pandemic.

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If you have any questions regarding this eUpdate, please contact the attorneys profiled below. Dorsey's attorneys have had substantial experience counseling clients to address and mitigate the impact of U.S. export and import sanctions.