

Alert | **Export Controls & Economic Sanctions**



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Recent Measures Highlight Critical U.S. Sanctions and Export Controls Considerations for Chinese Companies

In recent months, the United States has implemented a number of high profile trade-related sanctions measures. While the new U.S. tariffs imposed on a variety of Chinese goods have received much attention in the media, the United States has also subjected Chinese companies to fines and other penalties for alleged violations of separate U.S. sanctions and export laws. These actions highlight the extent to which even wholly Chinese companies must consider complex and extraterritorial U.S. sanctions and export controls laws and regulations in their own operations.

U.S. Trade Laws that May Apply to Chinese Companies

- U.S. Export Controls

U.S. export controls laws, including the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), establish restrictions and licensing requirements on the sale, export, and reexport of large categories of U.S. goods and technology. **Importantly, U.S. export controls jurisdiction attaches to commodities forever, worldwide.** This means that once a commodity is manufactured or developed in the United States, or shipped from the United States, it is subject to U.S. export controls law forever, even if the item has subsequently left the United States and has become the property of a non-U.S. party.

In addition, even foreign-made items containing a certain amount of U.S. content or that are the product of U.S. technology may be subject to U.S. export controls jurisdiction in perpetuity.

- U.S. Economic Sanctions

The United States maintains separate, but related, economic sanctions that prohibit U.S. individuals/entities from transacting with certain countries, companies, and individuals described below. These sanctions restrictions apply to all U.S. persons (even U.S. persons working for Chinese companies in China), as follows:

- All U.S. companies
- All employees of U.S. companies (regardless of citizenship or location)
- All U.S. citizens, wherever located (including U.S. citizens that hold multiple citizenships and U.S. citizens that do not reside in the United States or work for non-U.S. companies)
- All U.S. permanent residents (green card holders), wherever located
- All individuals physically present in the United States

U.S. persons are prohibited from engaging in nearly any dealings, direct or indirect, with Cuba, Iran, North Korea, Syria, and the occupied region of Crimea (claimed by Russia and Ukraine). In addition, U.S. persons are prohibited from doing business with a large number of parties on various U.S. sanctions lists, including a number of companies located in China.

Penalties for Violating U.S. Embargos

U.S. and non-U.S. companies that violate U.S. export controls or sanctions laws may be subject to civil or criminal charges. Civil penalties may include fines up to \$289,238 per violation or a multiple of the underlying transaction value. Criminal penalties may include fines up to \$1,000,000 per violation and even prison sentences for individuals.

Additional Penalties: Denial Orders

Particularly in cases where the United States may not be able to force a non-U.S. entity to pay fines, the U.S. government may resort to issuing a “Denial Order” to cut off a non-U.S. company (the Denial Order Party) from its U.S. supply chain. These Denial Orders underscore the broad and extraterritorial nature of U.S. export controls laws and regulations. U.S. Denial Orders typically include the following prohibitions:

- U.S. companies and U.S. individuals (wherever located, worldwide) prohibited from supplying any U.S.-origin commodities to the Denial Order Party. The term “commodities” broadly includes any products, parts, components, hardware end-items, software, or technology developed or produced by a U.S. company.
- Denial Order party prohibited from purchasing, accessing, or otherwise dealing in any U.S.-origin commodities, including U.S.-origin commodities purchased from non-U.S. sources.
- The prohibitions above do not depend on the sophistication, cost, or foreign availability of the U.S. commodities at issue. No U.S.-origin commodities, no matter how simple or complex, may be provided to, or accessed by, the Denial Order Party.

Potential Considerations for Chinese Companies

- *Chinese companies that deal in U.S. commodities.* Chinese companies that directly or indirectly sell or distribute U.S. commodities to any U.S. sanctioned destination/party risk becoming the target of a significant U.S. enforcement action. Chinese companies should consider the extent of their U.S.-related supply chain and their related sanctions-compliance risks. These embargos are not limited to high-tech commodities only, but **any** and all things developed, grown, or manufactured in the United States.
- *Chinese companies that license U.S. technology or software.* Even intangible commodities like U.S. technology or software may be subject to U.S. export and sanctions restrictions. Chinese companies should assess whether they license or deal in U.S. software or technology, and determine whether this triggers any restrictions on the Chinese company.
- *Chinese companies that employ U.S. persons.* If any officer, director, or employee of a Chinese company is a U.S. person, that person may not be involved in any transactions with the sanctioned countries or parties described above. Chinese companies should assess the extent to which their workforce may be subject to U.S. sanctions rules.
- *Chinese companies with U.S. operations.* The U.S. subsidiaries or branches of Chinese companies are subject to the sanctions prohibitions described above. Chinese companies with a U.S. presence or operations should determine whether they are engaged in any dealings that put their U.S. operations at risk.

We note that assessing the points outlined above is complex and particularly fact-specific. Therefore, Chinese companies may wish to engage U.S. counsel to conduct a risk assessment and assist with analyzing potential factors that could subject the Chinese company to U.S. government fines, penalties, or criminal charges.

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Based in Washington, D.C. and Europe our [Export Controls & Economic Sanctions](#) team advises and represents clients on the full range of international goods, software and technology transfer issues. We have broad experience providing export controls and related regulatory counsel to both U.S. and foreign businesses. Our industry-specific experience includes assisting companies in a wide range of industries such as aerospace, defense, firearms and ammunition, electronics, software and information technology, financial services, energy, food, consumer products, biotechnology, medical device, and engineering services.

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