

Senate Bill Proposes to Curb Export Licenses and Impose “Flow Down” Entity List Restrictions

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On June 22, 2023, Senators Rubio (R-FL) and Wicker (R-MS) – the top Republicans on the Select Committee on Intelligence and the Armed Services Committee, respectively – [introduced](#) S. 2170, the Depriving Enemy Nations of Integral Authorizations and Licenses (DENIAL) Act of 2023 to increase Congressional oversight for licensing decisions involving U.S. exports to China and Russia. The [bill would require the](#) Commerce Department’s Bureau of Industry and Security (BIS) to notify Congress and obtain approval before granting any U.S. license request for the export, re-export, or in-country transfer of U.S. technology to covered end users in China and Russia. Congressional review would entail an assessment of several factors, including the specifics of the transaction and an explanation as to why the transaction does not harm U.S. national security or advance the national security interests of the covered country. BIS would have to wait 30 days for Congress to review a transaction before acting on the license application.

The bill may be a response to [reported concerns over](#) the number of Huawei-related export licenses BIS granted last year. Regardless of whether it passes, the bill communicates Congressional concerns that BIS’s licensing process is too lax with respect to technology transfers to China and Russia—a statement that may influence the agency’s licensing process going forward.

Remarkably, the bill also features a provision that would “flow down” Entity List requirements and restrictions to entities that are—or are considered by the Secretary to be—50 percent or more owned, directly or indirectly, in the aggregate, by entities on the Entity List. While the Treasury Department’s Office of Foreign Assets Control has employed a similar rule in its administration of the Specially Designated Nationals and Blocked Persons List, BIS has not done so with respect to the Entity List.

While the prospects for the DENIAL Act are uncertain, there is no shortage of legislative vehicles – including the FY24 defense authorization bill and a pending Senate China competition bill – should it garner some Democratic support. At a minimum, consideration of these provisions sends a message to BIS about Congress’s view of export licensing policy and license approvals. And, if passed, these provisions will require updates to U.S. export control compliance program and screening practices.

Please [contact](#) our sanctions and export team with any questions regarding these latest developments.