

# US Government Imposes Export Restrictions on SMIC, DJI and 75 Other Entities

December 23, 2020

The US Department of Commerce's Bureau of Industry and Security has issued a [Final Rule](#) adding 77 companies to the Entity List, a restricted party list that identifies foreign persons that engage in activities contrary to US national security and/or foreign policy interests. These latest designations by BIS include companies located in China, as well as Bulgaria, France, Germany, Hong Kong, Italy, Malta, Pakistan, Russia and the United Arab Emirates. Most notably, the designations include Semiconductor Manufacturing International Corporation Incorporated and DJI, which are prominent companies in China's semiconductor and consumer drone industries, respectively. Pursuant to these designations, exports, reexports and in-country transfers of commodities, software and technology subject to the US Export Administration Regulations to SMIC, DJI and other designated entities will now require a specific license from BIS.

## The 77 Entity List Designations

As a general matter, designations to the Entity List are made upon a determination that there is a reasonable cause to believe – based on specific and articulable facts – that a particular entity has been involved, is involved or poses a significant risk of being or becoming involved in activities contrary to the national security and/or foreign policy interests of the United States.

Pursuant to the Final Rule – which states that it is effective as of December 18, 2020, prior to its publication in the Federal Register – exports, reexports and in-country transfers of any item (*i.e.*, commodities, software or technology) subject to the EAR to the designated entities will require a specific license from BIS. Items subject to the EAR include all items:

- in the United States (irrespective of origin)
- US-origin items wherever located
- foreign-origin (*i.e.*, non-US) items that incorporate more than a *de minimis* amount of US-origin controlled content
- certain foreign-made direct products of US-origin technology or software
- certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of US-origin technology or software

Exports to designated entities will not be eligible for any license exceptions under the EAR, and license applications for exports to these entities will be subject to a policy of denial with few exceptions.

The Final Rule contains a “savings clause” that authorizes affected shipments to the newly designated entities, provided they were shipped prior to December 18, 2020 and are *en route* via a carrier.

In the case of SMIC and its designated affiliates, the Final Rule explains that the designation is based on China's military-civil fusion doctrine – a strategy by which China seeks to eliminate barriers between its commercial and defense sectors and leverage commercial technologies to achieve military technological superiority – and evidence that SMIC has engaged with entities of concern in China's military industrial complex. Pursuant to the designation, an export license is required for all exports to SMIC and its designated affiliates of all items subject to the EAR. The Final Rule specifies that items uniquely required for production of semiconductors at advanced technology nodes of 10 nanometers or below will be subject to a presumption of denial to prevent the transfer of key enabling technology, while license applications for other items will be reviewed on a case-by-case basis.

The Final Rule specifies that DJI has been designated because of activities determined to be contrary to US foreign policy interests, namely the provision of technology to enable wide-scale human rights abuses through surveillance. Pursuant to the designation, an export license will be required for all exports to DJI of all items subject to the EAR. License applications for items necessary to detect, identify and treat infectious disease will

be reviewed on a case-by-case basis, but license applications involving all other items will be reviewed with a presumption of denial.

Additional information regarding the SMIC- and DJI-related Entity List designations is provided in the table below.

## Compliance Implications

The addition of these 77 companies to the Entity List has immediate and significant implications for companies doing business with SMIC, DJI and other designated entities. Suppliers to these designated companies will need to screen shipments destined for the designated entities and determine whether they contain items or technology subject to the EAR. Such suppliers will generally be prohibited – in the absence of a license – from providing a designated entity with any equipment, software or technology that is of US-origin, contains more than a *de minimis* level of controlled US-origin content or that is otherwise subject to the EAR. The types of activities that could violate these restrictions include:

- sending design information from the United States to a designated entity
- transferring US-origin goods or software to a designated entity within China
- permitting a designated entity to download software or nonpublic technical information from servers in the US
- exporting or transferring non-US origin products that are subject to the EAR to a designated entity

For assistance in assessing the applicability of these new export restrictions to your existing or potential business, please contact a team member on this page.

<b>Entity List Designations Related to SMIC and DJI</b>			
<b>Country</b>	<b>Entity</b>	<b>License Requirement</b>	<b>License Review Policy</b>

<p>China, PRC</p>	<p>DJI, a.k.a., the following four aliases:</p> <ul style="list-style-type: none"> <li>• Shenzhen DJI Innovation Technology Co., Ltd.;</li> <li>• SZ DJI Technology Co., Ltd.;</li> <li>• Shenzhen DJI Sciences and Technologies Ltd.;</li> </ul> <p><i>and</i></p> <ul style="list-style-type: none"> <li>• Da-Jiang Innovations.</li> </ul> <p>14 Floor, West Wing, Skyworth Semiconductor Design Building, No.18 Gaoxin South 4th Ave, Nanshan District, Shenzhen, China, 518057.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Case-by-case review for items necessary to detect, identify and treat infectious disease; Presumption of denial for all other items subject to the EAR.</p>
<p>China, PRC</p>	<p>Ningbo Semiconductor International Corporation (NSI), No. 331-335 Anju Road, Xiaogang Street, Beilun District, Ningbo, Zhejiang; <i>and</i></p> <p>1MC07, Jiuzhou Center, No. 95, Lane 85, Cailun Road, Pudong New Area, Shanghai.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>

<p>China, PRC</p>	<p>Semiconductor Manufacturing International (Beijing) Corporation, a.k.a., the following one alias:</p> <ul style="list-style-type: none"> <li>• SMIC Beijing. No. 18 Wen Chang Road, Beijing Economic-Technological Development Area, Beijing 100176.</li> </ul>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>
<p>China, PRC</p>	<p>Semiconductor Manufacturing International Corporation (SMIC), a.k.a., the following three aliases:</p> <ul style="list-style-type: none"> <li>• Semiconductor Manufacturing International (Shanghai) Corporation;</li> <li>• SMIC Shanghai;</li> <li><i>and</i></li> <li>• Semiconductor Mfg. International Corp.</li> </ul> <p>No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>

<p>China, PRC</p>	<p>Semiconductor Manufacturing International (Shenzhen) Corporation, a.k.a., the following one alias:</p> <ul style="list-style-type: none"> <li>• SMIC Shenzhen.</li> </ul> <p>No. 18 Gaoxin Road, Export Processing Zone, Pingshan New Area, Shenzhen 518118;</p> <p><i>and</i></p> <p>1st Lanzhu Avenue, Pingshan Town, Longgang District, Shenzhen, Guangdong, 518118;</p> <p><i>and</i></p> <p>Qier Road, Export Processing Zone, Pingshan New Area, Shenzhen.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>
<p>China, PRC</p>	<p>Semiconductor Manufacturing International (Tianjin) Corporation, a.k.a., the following one alias:</p> <ul style="list-style-type: none"> <li>• SMIC Tianjin.</li> </ul> <p>No. 19 Xing Hua Avenue, Xiqing Economic Development Area, Tianjin 300385.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>

<p><b>China, PRC</b></p>	<p>Semiconductor Manufacturing South China Corporation, a.k.a., the following four aliases:</p> <ul style="list-style-type: none"> <li>• SMSC;</li> <li>• SMIC Southern Integrated Circuit Manufacturing Co., Ltd.;</li> <li>• SMIC South; <i>and</i></li> <li>• SMIC Southern.</li> </ul> <p>5th Floor, Building 3, No.18 Zhang Jiang Road, China (Shanghai) Pilot Free Trade Zone.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>
<p><b>China, PRC</b></p>	<p>SJ Semiconductor, a.k.a., the following two aliases:</p> <ul style="list-style-type: none"> <li>• SJ Semiconductor (Jiangyin) Corp.;</li> <li><i>and</i></li> <li>• SJ Jiangyin.</li> </ul> <p>6 Dongsheng West Road, Building A8-4, Jiangyin City, Jiangsu Province 214437.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>
<p><b>China, PRC</b></p>	<p>SMIC Holdings Limited, Building 1, No. 1059 Dangui Road, China (Shanghai) Pilot Free Trade Zone, Shanghai.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>

<p><b>China, PRC</b></p>	<p>SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd., a.k.a., the following two aliases:</p> <ul style="list-style-type: none"> <li>• Semiconductor Manufacturing North China (Beijing) Corporation; <i>and</i></li> <li>• SMIC North.</li> </ul> <p>Building 9, No. 18 Wenchang Avenue, Beijing Economic and Technological Development Zone, Beijing.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>
<p><b>China, PRC</b></p>	<p>SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd., a.k.a., the following one alias:</p> <ul style="list-style-type: none"> <li>• Suzhou Design Center.</li> </ul> <p>Room 602, Building 1, No.158 Suyu Road, Suzhou Industrial Park.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>
<p><b>Hong Kong</b></p>	<p>SMIC Hong Kong International Company Limited, a.k.a., the following one alias:</p> <ul style="list-style-type: none"> <li>• SMIC Hong Kong.</li> </ul> <p>Suite 3003, 30th Floor, No. 9 Queen's Road Central Hong Kong.</p>	<p>For all items subject to the EAR. (See §744.11 of the EAR).</p>	<p>Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items.</p>

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

## Key Contacts

Kevin King Washington, DC	kking@cooley.com +1 202 842 7823
Shannon MacMichael Washington, DC	smacmichael@cooley.com +1 202 728 7069
Rebecca Ross Washington, DC	rross@cooley.com +1 202 728 7150
Karen Tsai Washington, DC	ktsai@cooley.com +1 202 842 7857
Christopher Kimball Washington, DC	ckimball@cooley.com +1 202 842 7892

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.