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US Commerce Department Adds 33 Chinese Entities to Unverified List

February 16, 2022

On February 8, 2022, the US Department of Commerce's Bureau of Industry and Security (BIS) added 33 Chinese entities to the agency's Unverified List (UVL). The UVL does not fully prohibit transactions with the designated parties; however, individuals and entities on the UVL are ineligible to receive items subject to the Export Administration Regulations (EAR) by means of a license exception. In addition, exporters must obtain a statement from designated parties prior to exporting, re-exporting or transferring any item subject to the EAR to a designated party, and file an Automated Export System (AES) record for all exports to UVL-designated parties.Global drug development company affiliates WuXi Biologics Co. and WuXi Biologics (Shanghai) Co. were among the 33 entities added.

What is the UVL?

BIS administers and enforces the EAR, which principally regulate exports, re-exports, and transfers of commercial and dual-use items. As part of its administration of the EAR, BIS maintains various lists identifying parties subject to end-user restrictions. BIS's UVL identifies parties whose bona fides – i.e., legitimacy and reliability – it has been unable to verify through pre-license checks or post-shipment verifications. Several factors, including a party's inability to satisfactorily demonstrate the end use of EAR-regulated items and/or lack of cooperation in connection with pre-license checks or post-shipment verifications, may contribute to BIS's designation determinations.

UVL restrictions

As noted, the UVL does not fully prohibit transactions with the listed parties, but it imposes certain restrictions and requirements (as outlined below) on exports, re-exports, and transfers of EAR-regulated items such as hardware, materials, software and technology to UVL parties.

Ineligibility for License Exceptions

Exports, re-exports and transfers to UVL parties of items subject to the EAR are not permitted to be made in reliance on any of the License Exceptions under the EAR. In certain circumstances, this may mean that exporters must obtain specific licenses from BIS to authorize export transactions with UVL parties. Exporters should account for application preparation and processing times in their business planning, as well as the possibility that licenses may not be issued.

UVL statement requirement

Before exporting, re-exporting or transferring to a UVL party an EAR-regulated item that is not subject to a license requirement, exporters, re-exporters and transferers (collectively referred to as an "exporter" or "exporters" below) must obtain a UVL statement from that party that includes these important details about the transaction:

1. The name, address, website and contact details of the UVL party.
2. The UVL party's agreement to not use the item(s) at issue for a prohibited end use, or re-export or transfer the same in violation of the EAR.
3. The intended end use, end user and country of destination.
4. An agreement to timely and full cooperation with BIS's pre-license checks and post-shipment verifications.
5. An agreement to provide copies of related documentation.
6. A certification that the signer is duly authorized to make the representations on the UVL party's behalf.

An exporter may use a singular UVL statement for multiple transactions, provided the underlying information

remains the same and the exporter maintains records identifying each transaction tied to the UVL statement. Exporters must maintain the UVL statement, as well as related export documentation, for a period of five years, pursuant to the EAR's recordkeeping requirements.

AES filings requirement

Exporters must file (or cause their freight forwarders to file on their behalf) an AES record for all exports to UVL parties of EAR-regulated items – regardless of value or destination.

Guidance for affiliates

The UVL requirements and restrictions apply to listed parties only – i.e., parents, subsidiaries and other affiliates of UVL parties are not affected as a result of their affiliation with a listed party. However, transactions with affiliated parties should be considered red flags, and further diligence is recommended to ensure that such parties are legally distinct entities (as opposed to divisions or branches of the UVL party) and to confirm the absence of circumstances suggesting potential unlawful diversion of EAR-regulated items. Exporters of EAR-regulated items to UVL party affiliates should document their diligence on these points and consider obtaining compliance statements from their counterparties.

UVL parties may seek removal from the UVL by submitting a written request to BIS, which may remove such parties upon verification of their bona fides through satisfactory completion of a pre-license check and post-shipment verification.

Compliance implications

Although UVL designations do not preclude all export transactions with the listed parties, they materially increase the regulatory compliance burden for exporters of EAR-regulated items. Exporters doing business with UVL parties must take steps to ensure that:

1. Their export transactions with UVL parties are authorized pursuant to a specific license or because no license requirement applies.
2. They have obtained a proper UVL statement before the export, re-export or transfer of any EAR-regulated items.
3. They are maintaining records as required by the EAR.
4. They are making AES filings for covered exports, re-exports and transfers.

In addition, exporters should confirm that their third-party screening and other diligence protocols are sufficient to identify risks in dealings with UVL party affiliates. These efforts may require the assignment of additional internal resources, increase compliance costs and/or impact business dealings, including contractual obligations and relationships.

If you make or are contemplating making exports, re-exports or transfers to a UVL party, and have questions about the regulatory requirements, please contact Cooley's international trade group for assistance.

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