



April 1, 2022

## WHAT YOU NEED TO KNOW ABOUT Export Controls

### PRO POINTS

- **The U.S. export control system has changed** dramatically since its establishment during World War II. After decades of policy driven by the Cold War, there was a push to liberalize the system in the late 20th and early 21st centuries. With increasing focus on the emergence of China as a competitive adversary, the trend has moved toward more restrictive laws and regulations.
- **While the State Department controls exports** of military equipment, the Commerce Department has the lead on "dual-use" commercial technologies with potential military applications. Commerce's Bureau of Industry and Security reviews around 35,000 license applications each year, most of which are approved.
- **U.S. export controls have** traditionally been aimed at stopping other countries from obtaining nuclear, chemical or biological weapons or building up a destabilizing amount of conventional weapons. But the United States increasingly uses export controls for more broadly defined national security or human rights objectives.
- **The Biden administration has most recently "weaponized"** export controls to an unprecedented degree in response to Russia's war in Ukraine.

### HOW WE GOT HERE

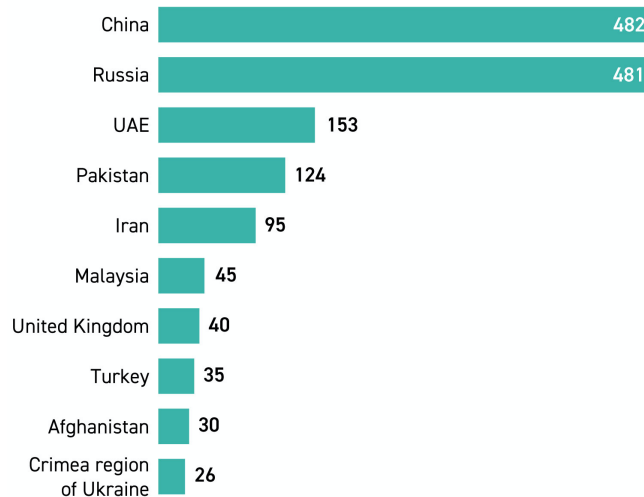
During World War II, Congress authorized the president to control exports of both military equipment and commercial goods. Concern about supply shortages and inflation caused by high demand in war-torn Europe and Asia was the main reason for giving the White House the authority to curtail commercial shipments, according to the Congressional Research Service.

Rising Cold War tensions prompted Congress to pass the Export Control Act in 1949 as part of the U.S. "containment" strategy on the Soviet Union. The United States and its allies in Europe also created the first multilateral structures aimed at preventing Soviet bloc countries and China from acquiring weapons and sensitive technology.

By the late 1960s, there was growing pressure to relax the export control system because of concern that U.S. companies were losing sales to Japanese and European competitors who faced less severe restrictions. Congress passed the 1969 Export Administration Act, which required the Commerce Department to consider whether a potentially controlled good was commercially available from another foreign supplier.

### Entities from China and Russia comprise over half of the Entity List

The Commerce Department has about 1,900 foreign entities on its export control Entity List. These include companies, governments and other entities that are subject to specific license requirements for the export, reexport or transfer of specific items by the Bureau of Industry and Security. Most of them are from the following 10 locations:



Note: Data was last updated on March 3.  
Source: Atlantic Council GeoEconomics Center

Lawmakers continued to liberalize the system, including in the 1979 Export Administration Act, which is the basis for the current Export Administration Regulations. Through the 1980s



and 1990s, Congress frequently let export control legislation lapse, prompting the White House to maintain the system using authority granted to the president under the 1977 International Emergency Economic Powers Act.

The George H. W. Bush administration shifted the focus of export controls to controlling the spread of weapons of mass destruction through its Enhanced Proliferation Control Initiative. The old Soviet-era Coordinating Committee for Multilateral Export Controls was dissolved in 1994 and replaced with the more "loosely-structured" Wassenaar Arrangement in 1996, CRS said.

The Obama administration launched a comprehensive effort in 2009 to streamline and modernize the U.S. export control system. While it fell short of achieving all of its goals, it did succeed in moving some less sensitive items from the State Department's more restrictive Munitions List to the Commerce Department's Commerce Control List.

That included transferring export controls over firearms and ammunition to the Commerce Department, a move that was finalized late in the Trump administration despite objections raised by Senate Foreign Relations Chair Bob Menendez (D-N.J.)

The Obama administration, in March 2016, also initiated a turbulent new period in export controls by placing Chinese telecoms giant ZTE on its "Entity List" for violating U.S. sanctions on Iran. In doing so, exports or transfers to the firm required specific licensing requirements. The Trump administration took similar action against Huawei, an even bigger Chinese firm, in May 2019, further roiling U.S.-China relations.

The Trump administration also started using export controls to prevent the export of surveillance technology that could be used to monitor China's minority Uyghur population. They additionally began adapting U.S. export controls to address China's "military-civil fusion program," which the State Department has described as an "aggressive, national strategy ... to develop the most technologically advanced military in the world."

Congress in 2018 passed the first major update of export control legislation in decades. The Export Control Reform Act directed the president to establish an interagency process to establish new controls on "emerging and foundational technologies." It also requires the administration to consider the impact of a proposed export on the U.S. defense industrial base.

The Biden administration, in response to Russian President Vladimir Putin's invasion of Ukraine, has further weaponized export controls, with the aim of hobbling Russia's economy. It is doing that by using a provision that the Trump administration deployed against Huawei — the Foreign Direct Product Rule. The FDP Rule extends export controls to items produced outside the United States using controlled U.S. technology and software, even if the products themselves do not actually contain U.S. content. It vastly expands the reach of the regulations.

One tool BIS uses to control exports is its Entity List, which was initially established to inform the public of foreign companies or individuals or even government agencies engaged in the diversion of items to weapons of mass destruction programs, CRS notes. It now also includes persons reasonably believed to be involved, or who pose a significant risk of being becoming involved, in activities harmful to the national security and foreign policy of the United States.

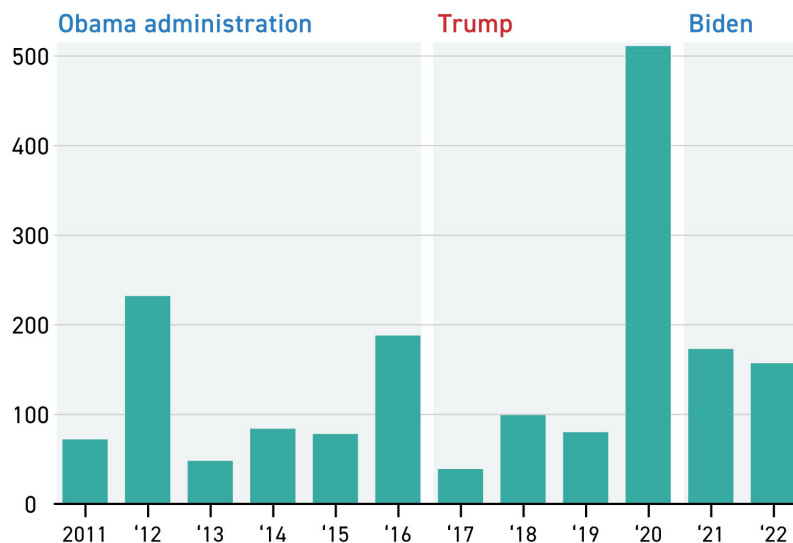


BIS' fiscal 2020 annual report indicated there were over 1,500 entities in 78 countries on the Commerce Department's Entity List, preventing any companies or individuals from exporting controlled products to them without an export license.

The Biden administration added more than 120 Russian entities since the start of 2022. The Atlantic Council estimates the total number on the Entity List is now nearly 1,900 in 81 countries.

### Entity List additions spiked in Trump admin's final year

NUMBER OF NEW ENTITIES AND INDIVIDUALS ADDED ANNUALLY TO ENTITY LIST



Note: Data for 2022 was last updated on March 3.  
Source: Atlantic Council GeoEconomics Center

### WHAT'S NEXT

The Biden administration has proposed increasing funding for BIS to \$200 million in fiscal 2023, compared to \$142 million in fiscal 2022. That includes \$36.2 million to secure the national information and communication technology and services supply chain and \$2.4 million for work on identifying emerging and foundational technologies.

The budget proposal also includes \$10 million in funding to strengthen national security efforts to counter new threats from Russia and China. Some of that money would be used to strengthen enforcement against illegal exports to Russia, to strengthen export license reviews to Russia and to enhance partnerships with allies, the Commerce Department said.

How much of a funding increase BIS will get is up to Congress to decide, but the war in Ukraine and concerns about China's increasing military capabilities create a favorable environment for the administration's budget request.

As Putin continues his war in Ukraine, more Russian entities could be added to the Commerce Department's blacklist in an effort to further squeeze the economy. In addition, there is the potential for Chinese and other foreign companies to be penalized if they are found to be violating U.S. export controls.

Many members of Congress would like the Commerce Department to move faster to identify a list of emerging and foundational technologies that should be subject to export controls to protect national



security, as directed under the 2018 Export Controls Reform Act. The Trump administration identified 37 emerging technologies, including two dozen chemical weapons precursors and others in the aerospace, biotechnology, chemical, electronics, encryption, geospatial imagery and marine sectors.

None of the existing multilateral regimes cover such areas as strategic economic dominance, supply chain resilience, human rights concerns and military-civil fusion, exposing a gap in the systems as countries develop new uses for export controls. Further complicating the situation, Russia is a member of three of the four primary multilateral export control regimes and is currently the chair of the Missile Technology Control Regime.

Some export control experts believe the quick international coordination that occurred in response to Russia's war on Ukraine could lay the foundation for a new multilateral regime employed by "techno-democracies," a term used by the Biden administration to differentiate the United States and its allies from authoritarian regimes.

The U.S. also has moved to forge a new international consensus on the use of export controls through forums such as the G7, the U.S.-EU Trade and Technology Council, the Quadrilateral Security Dialogue with Japan, India and Australia, and the Export Controls and Human Rights Initiative with several other countries.

#### POWER PLAYERS

- **Commerce Secretary Gina Raimondo:** The former Rhode Island governor oversees a huge department, but one agency in particular, the Bureau of Industry and Security, gives her a key watchdog role over the United States' most sensitive technology. She relies heavily on career BIS staff and two recently confirmed assistant secretaries for export administration and export enforcement. She'll also have help from former Defense Department official Alan Estevez, after his recent confirmation by the Senate to be Commerce undersecretary for industry and security.
- **Rep. Michael McCaul (R-Texas):** The top Republican on the House Foreign Affairs Committee, which oversees export control matters, is not shy about pushing for rigorous enforcement of export controls on China. In a recent example, he led a letter urging Raimondo to add CRRC Corporation Ltd. to the Entity List, accusing the Chinese state-owned railway conglomerate of having a long history of transferring sensitive military technology to the Chinese military.
- **Sen. Marco Rubio (R-Fla.):** Both Rubio and Sen. Tom Cotton (R-Ark.) have pressed the Commerce Department to speed up its work on identifying emerging and foundational technologies that should be subject to export controls. Rubio also recently teamed up with McCaul to urge Raimondo to strengthen Entity List rules for China's Semiconductor Manufacturing International Corporation. They also expressed concern that China may divert technology to Russia to avoid U.S. sanctions.
- **Sen. Sherrod Brown (D-Ohio):** While not as outspoken on export controls as some other senators, Brown chairs the Senate Banking Committee, which has jurisdiction over the Bureau of Industry and Security and any nominations to fill slots at the agency. Sen. Pat Toomey (R-Pa.), the top Republican on the panel, has pushed the administration to increase pressure on Putin by deploying "secondary" financial sanctions that would penalize China and other countries that do business with Russian banks.