

## Insights

# DON'T FORGET EXPANSION UNDER U.S. EXPORT CONTROLS OF RESTRICTIONS ON U.S. PERSONS

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In addition to compliance considerations under US sanctions associated with activities of U.S. persons, companies should also ensure that their compliance programs take into account the expansion under U.S. export controls of restrictions applicable to U.S. persons acting in support of certain prohibited activities.

Section 744.6 and General Prohibition 7 of the U.S. Export Administration Regulations (EAR) have for a number of years prohibited U.S. persons from engaging in activities in support of proliferation activities involving nuclear explosive devices, missiles, or chemical and biological weapons. In March 2021, these prohibitions were expanded to specify the scope of “support” activities covered by the regulations and to add a further prohibition on activities that support military intelligence end uses or military intelligence end users in Burma, China, Russia, or Venezuela. Pursuant to a final rule issued by the U.S. Department of Commerce, Bureau of Industry and Security on December 9, 2021, the prohibitions were further expanded to add a prohibition on activities that support military intelligence end uses or military intelligence end users in Cambodia.

Specifically, the restrictions prohibit US persons from engaging in activities that “support” any of the following:

- Design, development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of nuclear explosive devices in or by a country not listed in Supplement No. 3 to Part 744 of the EAR;
- Design, development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of missiles in or by Bahrain, China, Egypt, Iran, Iraq, Israel, Jordan, North Korea, Kuwait, Lebanon, Libya, Macau, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Syria, United Arab Emirates, Venezuela, Yemen, or Cuba;
- Design, development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of chemical or biological weapons in any country;

- Design, development, production, operation, installation, maintenance, repair, overhaul, or refurbishing, shipping, or transfer of a whole plant to make chemical weapons precursors identified in ECCN 1C350 in or by countries that are not members of the Australia Group; or
- Military intelligence end uses or military intelligence end users in Burma, Cambodia, China, Russia, or Venezuela (notably, this is in addition to the restrictions associated with these same end uses or end users imposed under EAR 744.22).

Prohibited “support” includes shipping, transmitting, or transferring items not subject to the EAR (which includes non-U.S. items that are not otherwise subject to U.S. export control jurisdiction) when there is knowledge or reason to know that the item will be used in one of the uses or by one of the users described above and facilitating such shipments, transmissions, or transfers. In addition, prohibited “support” also includes performing any contract, service, or employment that will assist or benefit any of the end uses or end users described above. This includes ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations. For example, under these provisions, authorization from the U.S. Department of Commerce is required for U.S. person involvement in activities that include the sale of items (including non-U.S. items) to or the provision of financing to a military intelligence end user in China, regardless of whether the activities involve any items subject to U.S. export controls.

As under U.S. sanctions, U.S. persons include the following:

- United States citizens, wherever located;
- Permanent resident aliens of the United States, wherever located;
- Entities organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and
- Any person or entity physically in the United States.

Employers with employees located in the United States who are participating in activities outside of the United States and employers with U.S. person employees working at non-U.S. entities should ensure that their compliance programs account for scenarios in which US person activities could involve one of the triggering end uses or end users described above (i.e., nuclear explosive devices, missiles, chemical or biological weapons, whole plants to make chemical weapons precursors, or military intelligence end uses or military intelligence end users in Burma, Cambodia, China, Russia, or Venezuela), even if such activities do not otherwise involve items subject to U.S. export controls. Compliance programs should also contain mechanisms to identify when an activity will require a license and ensure that all such licenses are obtained or all U.S. persons abstain from participating in the activity.

## RELATED PRACTICE AREAS

- International Trade

## MEET THE TEAM



### **Megan A. Gajewski Barnhill**

Washington

[megan.barnhill@bcplaw.com](mailto:megan.barnhill@bcplaw.com)

[+1 202 508 6302](tel:+12025086302)



### **Jennifer Kies Mammen**

Washington

[jennifer.mammen@bcplaw.com](mailto:jennifer.mammen@bcplaw.com)

[+1 202 508 6044](tel:+12025086044)

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