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CLIENT ALERT

Time for Exporters to Evaluate their Screening Capabilities: Reimposition of 50 Percent Rule on the Horizon

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AUTHORS

Britt Mosman | David Mortlock | David Levine

In late 2025, the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**") issued—and then shortly suspended implementation of—the "**Affiliates Rule**" (or the "**Rule**").[1] The Affiliates Rule represented BIS's attempt to expand limits on the diversion of sensitive technologies and to align its enforcement of Export Administration Regulations ("**EAR**") restricted party lists with the Department of the Treasury's Office of Foreign Assets Control's ("**OFAC**") so-called 50 percent rule.[2] President Trump agreed to a year-long suspension of the Affiliates Rule's implementation, beginning November 10, 2025, as part of his trade negotiations with China.[3] That delay ends on November 9, 2026.

[1] https://www.willkie.com/-/media/files/publications/2025/10/bis-brings-the-50-percent-rule-to-export-controls-heightening-compliance-risks.pdf.

[2] https://ofac.treasury.gov/media/6186/download?inline.

[3] https://www.whitehouse.gov/fact-sheets/2025/11/fact-sheet-president-donald-j-trump-strikes-deal-on-economic-and-trade-relations-with-china/.

The Rule imposes significant new diligence obligations on exporters (and re-exporters or transferors) of U.S.-origin commodities and technology, making such parties affirmatively responsible for determining the ownership of foreign entities involved in international transactions. With that suspension nearing its conclusion and BIS aggressively flexing its enforcement authorities, exporters should reacquaint themselves with the demands of the Affiliates Rule and ensure that their diligence and compliance processes incorporate sufficient detail to evaluate potential counterparties.

I. Key Takeaways

- *The Suspension of the Affiliates Rule is set to end on November 9, 2026, absent further action by the Department of Commerce*. While the U.S. and China continue to engage in trade negotiations, the purported focus of the talks is tariffs[4] and so any further suspension of the Rule is not guaranteed.

- Under the Rule, any foreign entity that is owned 50 percent or more (directly or indirectly) by one or more parties on the BIS Entity List or Military End User ("**MEU**") List will be subject to the same restrictions as the designated party. If more than one designated party collectively owns 50 percent or more of the foreign entity, the most restrictive license requirements will apply.

- Exporters, re-exporters, and transferors will be affirmatively responsible for determining the ownership of foreign entities involved in transactions subject to the EAR. Where a listed entity has some ownership but the percentages are uncertain, parties must determine the proportion owned by the listed party or obtain a license from BIS before proceeding, unless a license exception applies.

- BIS has sought larger penalties under the second Trump administration and requested additional enforcement resources from Congress. When the Affiliates Rule snaps back into place, exporters should expect immediate scrutiny from BIS.

II. Affiliates Rule Primer

When introduced in 2025, the Affiliates Rule sought to close a gap in U.S. export control laws—the restrictions imposed on parties designated on the BIS Entity List and MEU List applied to those entities only, and not to subsidiaries or affiliates. In other words, Listed parties could potentially use entities they owned to acquire technology they were otherwise prohibited from receiving. While BIS has always expected exporters to be vigilant for signs of diversion,[5] the Affiliates Rule makes those expectations more concrete and applies clear-cut criteria to the analysis.

Under the Rule, any foreign entity that is owned, directly or indirectly, individually or in the aggregate, 50 percent or more by: (1) one or more listed entities, (2) entities that are subject to export control restrictions by virtue of being designated on the Specially Designated Nationals and Blocked Persons ("**SDN**") List ("**Section 744.8 restrictions**"), or (3) entities subject to such restrictions by operation of the Affiliates Rule, will themselves be subject to the same

4 https://apnews.com/article/china-us-tariffs-trade-trump-xi-summit-f2066bf9ae668afd3a5a2a0658748b4f.

5 *See, e.g.*, Supplement No. 3 to 15 CFR Part 732, "BIS's 'Know Your Customer' Guidance and Red Flags."

restrictions and license requirements as the listed entity. For entities that are owned collectively 50 percent or more by multiple listed parties, BIS will apply the most restrictive license requirements, license exception eligibility, and license review policy applicable to any of their listed owners.

Entity List, MEU List, and Section 744.8 restrictions are enforceable on a strict liability basis, so “knowledge” is not required to trigger these end-user requirements under the EAR. Although BIS expects exporters to adopt a “risk-based approach” to evaluating a counterparty’s ownership, even absent full knowledge of the counterparty’s ownership chain, a party can be liable for export violations under the Affiliates Rule if the counterparty is owned by an Entity List (or MEU or SDN List) designee. Where an exporter *does* have knowledge that its counterparty is owned by a designated party (even if they are unsure of the percentage), the Affiliates Rule imposes an affirmative duty to either determine the ownership level or obtain an export license from BIS.

The Affiliates Rule originally included License Exception TGL, which permitted a phased 60-day implementation period for end users who would otherwise be affected by the Rule, other than Chinese entities. Given the year-long suspension (and opportunity to prepare), however, it is unclear whether a reimposition of the Affiliates Rule would include any similar grace period.

III. Current Export Enforcement Environment

In the year since the Affiliates Rule was first introduced, the second Trump administration’s export control strategy has taken shape, with a clear focus on enforcement. As detailed in its recently released FY2025 Annual Report to Congress (the “**Annual Report**”),[6] BIS imposed approximately $324 million in civil and criminal penalties during calendar year 2025. That figure represented an 18-fold increase over penalties collected in 2024. Individual settlements highlight BIS’s aggressive export violation enforcement—a $95 million penalty against Cadence Design Systems for exports of Electronic Design Automation software and hardware to Entity List parties in China,[7] a $252 million penalty against Applied Materials for exporting semiconductor manufacturing equipment to an Entity List party,[8] and a $36 million penalty on Bosch for shipments to Huawei[9] stand out as particularly noteworthy high-dollar actions.

Exporters should not expect this focus on enforcement to change soon. BIS has hired approximately 70 people in 2026, almost all in its enforcement office, and as of mid-July, had plans to add another 60 by the end of FY2026.[10] BIS has asked Congress to raise the statutory maximum fine for export violations[11] and has requested a 147 percent increase in the budget allocation for its enforcement unit.[12]

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6 https://www.bis.gov/media/documents/fy2025-bis-annual-report.pdf.

7 https://www.bis.gov/press-release/cadence-design-systems-pay-95-million-penalty-bis-unauthorized-exports-chinese-entities-tied-development.

8 https://www.bis.gov/press-release/applied-materials-pay-252-million-penalty-bis-illegally-exporting-semiconductor-manufacturing-equipment.

9 https://www.bis.gov/press-release/robert-bosch-gmbh-bosch-pay-36-million-penalty-bis-violations-pertaining-shipments-huawei.

10 https://foreignaffairs.house.gov/committee-activity/hearings/fy27-bis-budget-the-ai-arms-race-and-the-icts-office.

11 https://foreignaffairs.house.gov/committee-activity/hearings/strengthening-export-control-enforcement.

12 https://www.whitehouse.gov/wp-content/uploads/2026/04/budget_fy2027.pdf.

In this enforcement environment, the reimposition of the Affiliates Rule means that exporters will have very little room for error in their diligence and Know Your Customer ("**KYC**") processes. BIS has clearly prioritized enforcement actions and is putting more resources toward ferreting out parties who are diverting sensitive U.S. technology or whose lax internal controls are enabling those who do. The Affiliates Rule adds a layer of additional diligence that exporters will have an affirmative obligation to undertake to ensure they do not fall on the wrong side of BIS's enforcement efforts. When the Rule goes into effect on November 9, exporters should expect that BIS's enforcement personnel will immediately begin reviewing transactions for the potential involvement of designated entities

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Britt Mosman	**David Mortlock**	**David Levine**
202 303 1057 bmosman@willkie.com	202 303 1136 dmortlock@willkie.com	202 303 1062 dplevine@willkie.com