CLIENT ALERTS & INSIGHTS

NEW BIS 50% Screening Rule Now Delayed One Year: China Deal Changes for Trade Compliance

NOVEMBER 12, 2025

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Key Takeaways:

- The new BIS Affiliates Rule prohibiting dealings with companies that have 50%+ ownership ties to blocked parties on pause through November 2026 due to the U.S.-China Deal.
- The new U.S.-China Deal temporarily pauses potential tariff increases and export control expansion for both countries, including China's expansion of restrictions on certain minerals.
- Screening and due diligence remain best practices - including for technology and software exports - to manage ongoing regulatory risks.

Trade compliance professionals faced a new challenge when BIS launched the new Affiliates Rule that required screening of all parties with 50% interest. Now the new U.S. trade deal with China pauses this increase in export controls activities for one year while also delaying increases in tariffs. This bulletin explains where we stand with the new China deal, then describes its broader impacts for day-to-day compliance obligations for U.S. companies.

The New BIS Affiliates Rule

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") announced effective September 29, 2025, that it would expand restrictions on foreign entities prohibited from receipt of U.S. exports (including certain technology and software) under a new "Affiliates Rule." Historically, companies listed on the BIS Entity List and its Military End User List ("Listed Entities") have been prohibited from receipt of U.S. exports without a license, unless an exemption or exception applied. BIS's Affiliates Rule expanded these restrictions to include any entity that directly or indirectly owns or controls 50% or more interest in a Listed Entity. This change was expected to have impacted many China companies that were formed as affiliates of Listed Entities. In practice, it is very similar to the U.S. Department of Treasury's OFAC rules for party screening and carries with it similar challenges for vetting obscure ownership structure of foreign parties.

The New U.S.-China Deal

More recently, the new U.S.-China Deal pauses escalating tariff and export control activity for one year, beginning on November 10, 2025, including the application of the Affiliates Rule. **However, this means that the Affiliates Rule was technically in place and for a brief period from September 29, 2025, through November 10, 2025. It will take effect again on November 10, 2026.**

The U.S. additionally agreed to lower fentanyl-risk based 20% tariffs on China imports to 10% beginning on November 10, 2025, through November 10, 2026. The 10% reciprocal tariff will remain in effect for a cumulative general China tariff of 20%. The U.S. will also extend the expiration of certain 301 tariffs for this one-year period. The U.S. also suspended the 301 duty investigation applicable to China's Maritime, Logistics and Shipbuilding Sectoral activity.

In response, China agreed to suspend its expansive new export controls on critical minerals for one year, to manage fentanyl trafficking risk and to suspend retaliatory tariffs on U.S. agricultural products. It will also remove certain American countries from its economic sanctions and export controls lists. In another symmetrical change, China will terminate sanctions and investigations applicable to the U.S. maritime, logistics, shipbuilding and semiconductor sectors.

U.S.-China Deal's Impact for Trade Compliance

The new Affiliates Rule increased the practical regulatory compliance risk of export transactions. Although it had similarities to the OFAC 50% Rule it would compound the necessity for additional review of potential unknowns and difficulty in resolving red flags. This hurdle is lessened now due to the U.S.-China deal. However, the Affiliates Rule remains "on the table" for future effect and the general principles motivating the Affiliates Rule remain - trade compliance professionals must use all reasonably available information and cannot self-blind.

Even today, party screening tools and practices remain essential to the operations of U.S companies with high volumes of exports to different customers or distributors. A company's compliance today does not mean its transactions will be lawful tomorrow. Companies can manage risk by conducting new and ongoing periodic screening of the parties to whom they trade and by empowering employees through awareness training to spot "red flags" that may indicate an ownership issue (for example, obfuscation of ownership, or sharing a close name with a listed party). Additional diligence and other cautionary steps may be necessary before proceeding with a flagged transaction.

One point that is often overlooked today is the degree to which technology and software are controlled as exports. Under both the Biden and Trump Administrations, BIS has increasingly focused on the regulation of software and technology exports from the U.S., particularly to China. Technology transfers and software releases will continue to require closer review for the foreseeable future. These exports will require the same kind of end user screening as tangible exports, despite the nature of these items and additional diligence may be required if red flags are identified from end user and sanctions perspectives.

The Benesch Team is experienced at assessing relative risk for company operations and developing high-impact operating procedures as well as other tools, including awareness trainings and policies, to manage compliance of international transactions without interrupting business.

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