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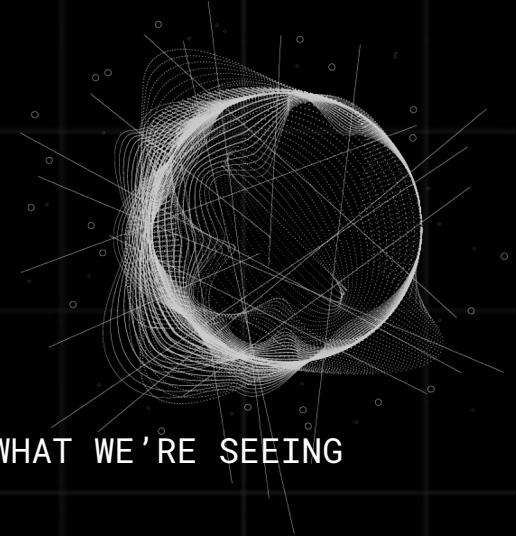
THE BIS AFFILIATES RULE IN CONTEXT

**EXPORT CONTROLS IN TRUMP 2.0 AND
BEST PRACTICES FOR COMPLIANCE**

Date: February 5, 2026

Advanced Topics in Customs Compliance

AGENDA



- + EXPORT CONTROLS IN TRUMP 2.0
- + CONGRESSIONAL OVERSIGHT
- + BIS AFFILIATES RULE
 - + CLOSING THE LOOPHOLE
 - + SUSPENSION
- + WHAT HASN'T CHANGED
- + HOW TO RESPOND + WHAT WE'RE SEEING
- + HOW TO PREPARE
- + RED FLAGS
- + HOW RISK EVOLVES
- + CONGRESSIONAL ACTION TO WATCH
- + STAYING AHEAD: BIS AFFILIATES RULE AS A
SUPPLY CHAIN RISK

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SETTING THE STAGE

EXPORT CONTROLS IN TRUMP 2.0

Although tariff policy has dominated headlines, rapid developments with export controls have complicated the compliance landscape.

AMERICA FIRST TRADE POLICY [1.20.2025]

Instructed the Secretaries of State and Commerce to assess the existing export control architecture and to **“identify and eliminate loopholes in existing export controls – especially those that enable the transfer of strategic goods, software, services, and technology”** to strategic rivals and their proxies.

2025 National Security Strategy [12.4.2025]

“The United States will stand ready to help—potentially through more favorable treatment on commercial matters, technology sharing, and defense procurement—those countries that willingly take more responsibility for security in their neighborhoods and **align their export controls with ours.**”

CONGRESSIONAL OVERSIGHT AND TRANSPARENCY

AMENDS THE EXPORT CONTROL & REFORM ACT OF 2018

- + Mandates annual BIS report to Congressional committees on export license applications and authorization requests of items subject to EAR to D5 countries and entities on BIS EL and MEU list (“covered entities”)
- + Report must include:
 - + Name of entity applying + application date
 - + Name + location of end user
 - + Description of item (i.e. value, ECCN, reason for control)
 - + BIS’s decision
 - + End-use check results

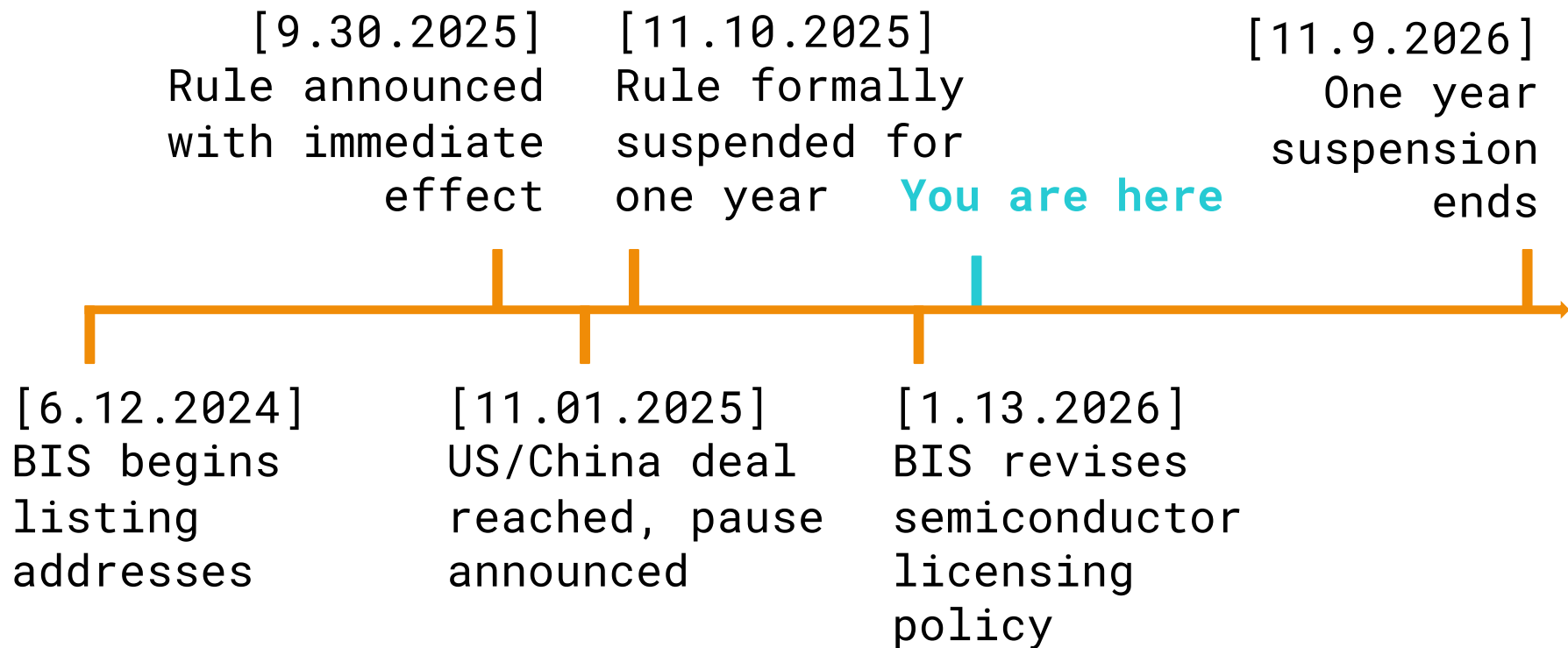
On 8.19.2025, President Trump signed the “Maintaining American Superiority by Improving Export Control Transparency Act” into law.

KEY TAKEAWAYS

- + Companies trying to export a “Covered Entity” will now face increased Congressional scrutiny
- + BIS’s decisions will also face more Congressional scrutiny
- + Reports will not be publicly available except for broad statistics

THE BIS AFFILIATES RULE

A TIMELINE



BIS AFFILIATES RULE

CLOSING THE LOOPHOLE

“I think it is frustrating to BIS, and certainly to the enforcement side of BIS from a national security perspective, that this doesn't exist ... because of how easy it can be for an entity-listed company to set up a different subsidiary, and that's not caught by the entity list.”

- Former Asst. Secretary of Commerce for Export Enforcement **Matt Axelrod**

DIAGNOSING THE PROBLEM

- + “Legally distinct standard” created a whack-a-mole problem for BIS
- + Long-running Congressional support for OFAC 50%-style regulation applied to export controls
- + Guidance identified subsidiaries of listed parties as presenting significant evasion risk

INNOVATIVE AND ITERATIVE

- + In execution, BIS Affiliates Rule differed from most early expectations
 - + Aggregation across BIS Entity List, MEU List, and certain OFAC SDNs
 - + Applying strictest license requirements
- + Red Flag 29 (paused)
 - + Knowledge of listed ownership creates affirmative duty to determine ownership percentage or apply for a license
 - + Departure from OFAC 50% Rule

BIS AFFILIATES RULE SUSPENSION

“The United States will suspend for one year, starting on November 10, 2025, the implementation of the interim final rule titled Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities.”

A NEW ERA OF UNCERTAINTY AND DISRUPTION

- + BIS Affiliates Rule enforcement now suspended until November 9, 2026
- + National security measures were “on the table” in trade negotiations in notable departure from usual practice
- + PRC’s retaliatory use of export controls was a watershed moment
 - + Global supply chains are vulnerable from both directions

KEY TAKEAWAYS

- White House Fact Sheet, 11.1.2025
- + Affiliates Rule still exists; its *enforcement* is on pause for a one-year period and is tied to ongoing negotiations
- + No indications that BIS or DOJ are pausing enforcement against diversion, shell, or front company schemes
- + Some entities covered by the Rule are almost certainly maneuvering
- + Enforcement pause provides ample time to prepare
- + The Rule was effective immediately when originally introduced

WHAT **HASN'T** CHANGED

"LIST SCREENING" HAS BEEN INSUFFICIENT FOR YEARS

- + OFAC 50% Rule is more than a decade old
 - + EU, UK, Canada, and South Korea have all followed suit
 - + "Control Test"
- + Military End Use / End User Rule
- + Uyghur Forced Labor Prevention Act
- + Outbound Investment Security Program (E.O. 14105)
- + Common High Priority List (CHPL) Guidance

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The temporary suspension of the BIS Affiliates Rule is **not** an excuse to not have a robust due diligence and screening program designed to capture non-listed risk.

"During the first phase of this final rule, BIS will continue to evaluate U.S. national security and foreign policy interests related to these non-listed foreign affiliates of listed entities."

- BIS Final Rule 11.10.2025

WHAT **HASN'T** CHANGED

Those who export, reexport, or transfer items subject to the EAR with “knowledge” that the items are **destined to a subsidiary, sister, parent, or other affiliate of a listed entity** are encouraged to take **extra due diligence steps** to ensure that: (i) **the items are not ultimately destined for the listed entity** and (ii) the non-listed foreign affiliate is a separate legal entity (as opposed to a branch or operating division of the listed entity). If you are uncertain whether a planned transaction involving an actor with some relationship to a listed entity would be affected by the obligations pertaining to the listed entity, you may seek an advisory opinion from BIS pursuant to § 748.3.

- BIS FAQ 23 updated 11.10.2025
-

HOW TO RESPOND

IMPLICATIONS FOR INDUSTRY

- + Enforcement remains active
 - + BIS has taken an aggressive enforcement posture in recent years (historic number of additions to the Entity List, inclusion of addresses used by shell companies, Red Flag alerts, issuing guidance, and supplier letters)
 - + DOJ continues to indict procurement agents and diversion networks
- + Recent enforcement patterns show recurring tactics that industry should screen for
 - + Shell/front companies
 - + Transshipment hubs (Hong Kong, Turkey, UAE, etc.)
 - + Affiliate and ownership obfuscation
 - + Commodity and component-level diversion

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PRACTICAL STEPS TO BE PREPARED

- + Apply tri-seal red flags
- + Maintain a risk-based approach to export controls
 - + Understand + screen ownership structures of listed parties
- + Begin identifying your exposure to the Rule in case of snapback

RESPONSES WE'VE SEEN

The rapid announcement, implementation, and temporary suspension of the BIS Affiliates Rule created a challenge for trade compliance professionals. Kharon has identified three broad categories of how companies have responded.

1. Carpe Diem

- + Underwent painful fire drill in September/October
- + Capitalized on buy-in from leadership to invest in being proactive
- + Implemented BIS-50 list into screening to prepared

2. Saved By The Bell

- + Did not move fast enough in September/October to implement solution
- + Suspension announcement provided reprieve
- + Aiming for Q2 deployment of BIS-50 list
- + Will use Q3 to review hits
- + Re-evaluating OFAC-50 screening

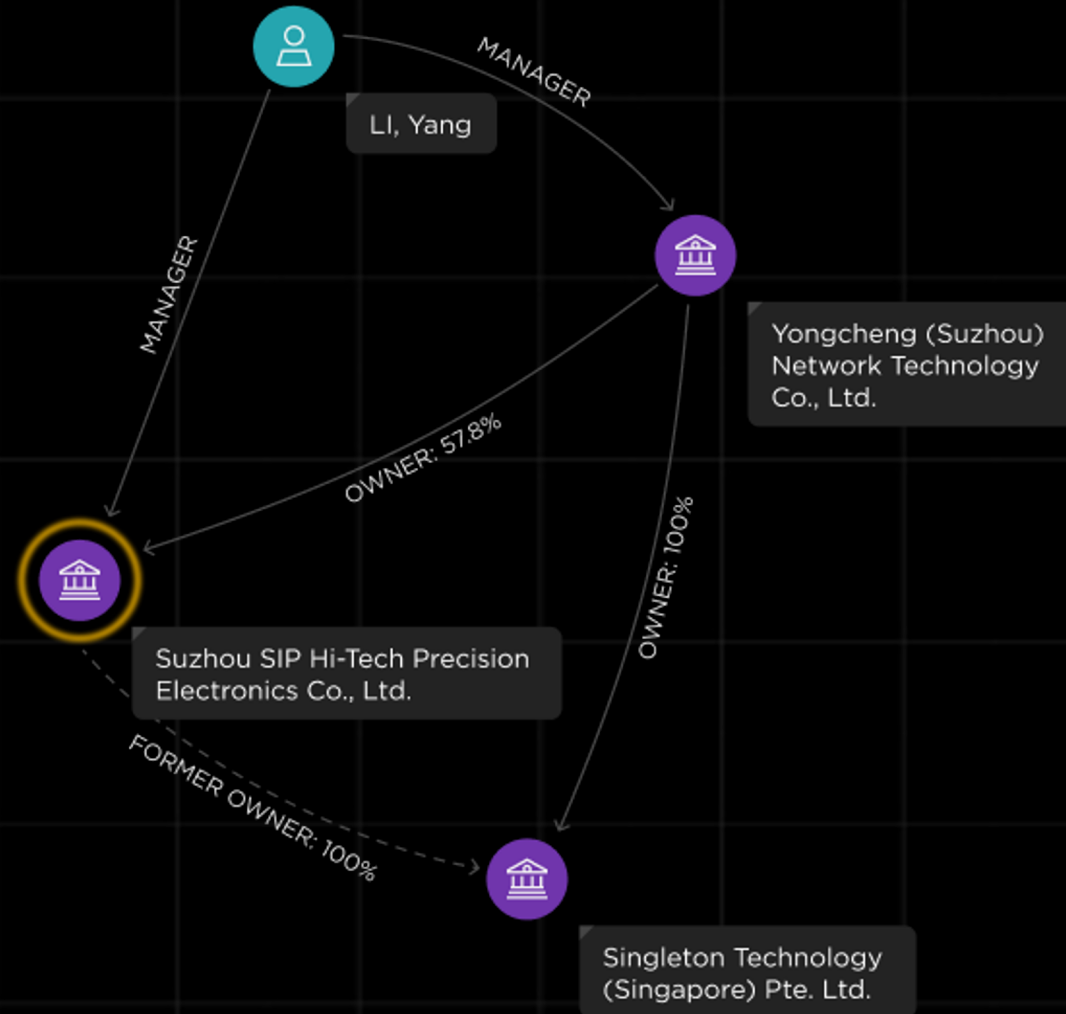
3. Roll The Dice

- + “Analysis paralysis”
- + Rapid developments froze decision-making process
- + Were not already screening for OFAC-50

HOW TO PREPARE

KEY CONSIDERATIONS

- + Remember: the BIS Affiliates Rule was designed to **counter evasion**
 - + Export control evasion remains an enforcement priority
 - + Subsidiaries are *still* considered high-risk for diversion
- + Understanding current exposure to the Rule enables proactive risk management
 - + *Remember: the Rule was effective immediately when first announced*
- + Screen current/potential partners before entering/renewing multi-year contracts potentially contingent upon licenses
- + Implement past guidance

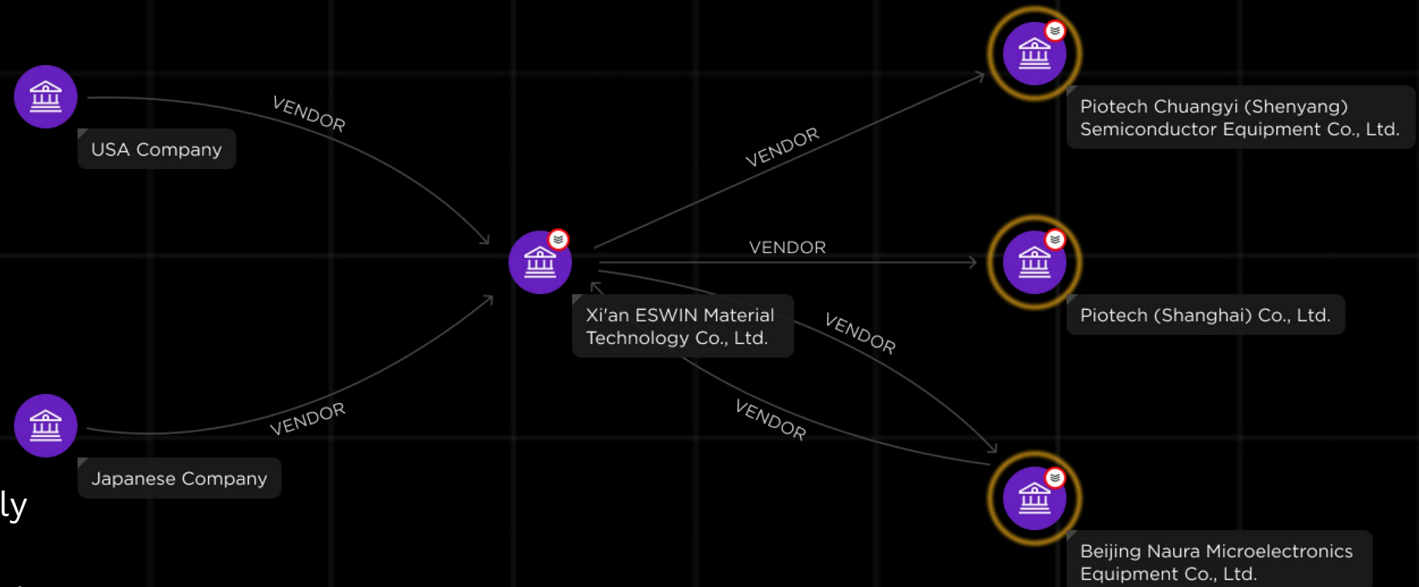


BIS INDUSTRY GUIDANCE TO PREVENT DIVERSION OF ADVANCED COMPUTING INTEGRATED CIRCUITS

[5.13.2025]

+ Highlights growing pattern of illegal diversion schemes targeting advanced computing integrated circuits

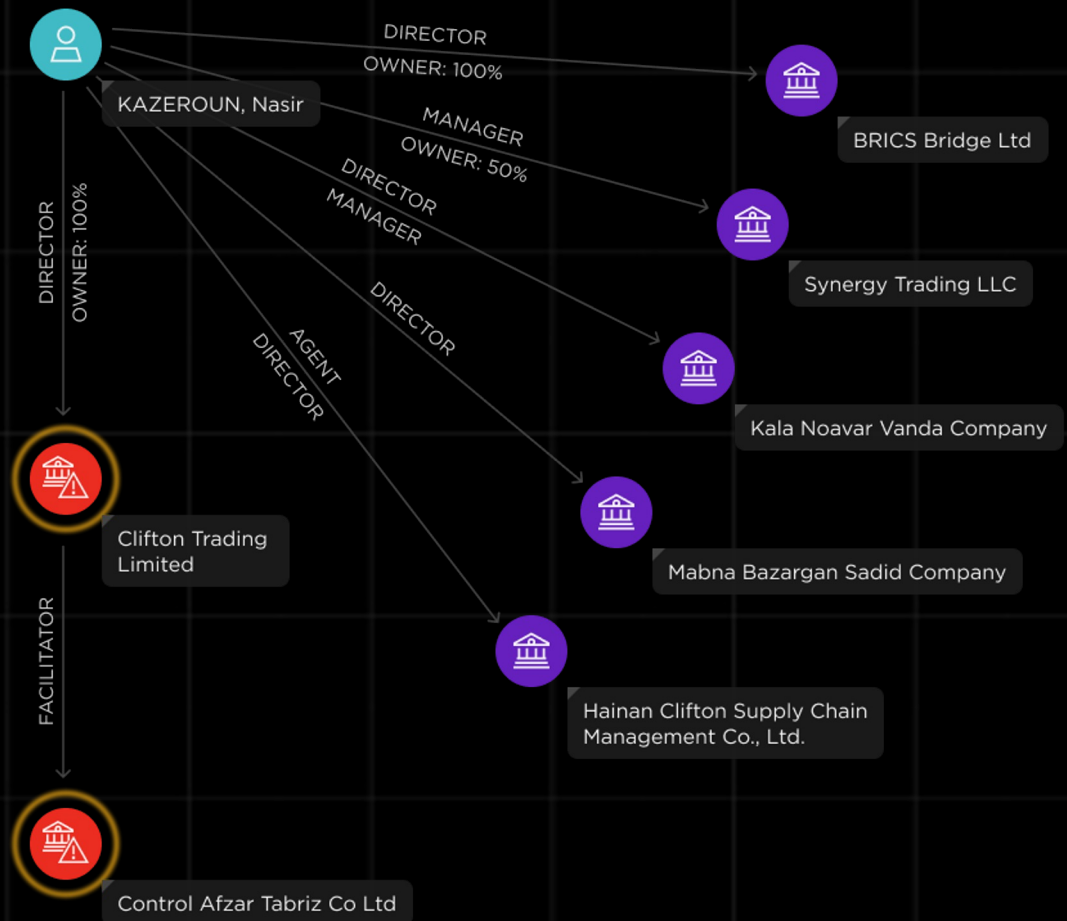
+ Urges industry to closely scrutinize ownership structures, transactional behavior, and **end-use assurances**



GUIDANCE TO INDUSTRY ON IRAN'S UAV-RELATED ACTIVITIES

[6.9.2023]

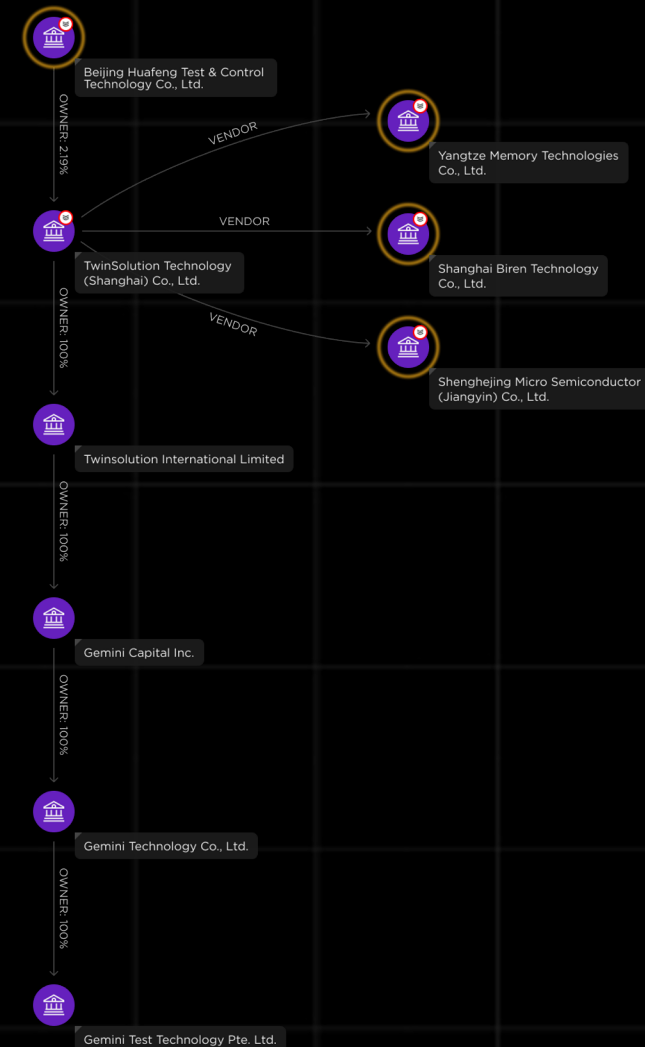
- + **Continuous monitoring** and periodic program updates are essential to detect evolving evasion tactics tied to Iran's defense and UAV procurement networks.



FinCEN & BIS JOINT ALERT II

[5.19.2023]

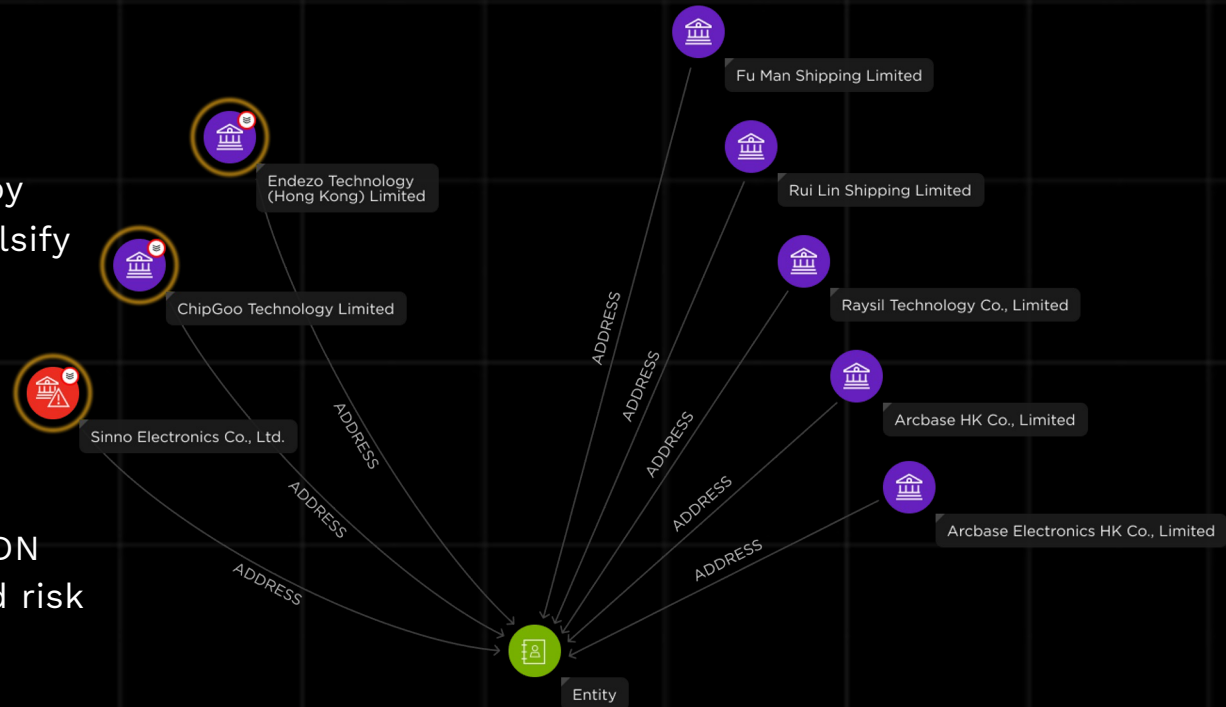
- + Illicit procurement networks use shell + front companies to disguise sanctioned/restricted parties' participation, often spanning multiple jurisdictions
- + Employ **layered ownership chains** and offshore bank accounts to obscure end-user identity
- + Common red flags include customers or addresses that closely resemble those of known sanctioned or Entity-Listed parties



FinCEN & BIS JOINT ALERT

[6.28.2022]

- + Illicit procurement networks employ complicit brokers or affiliates to falsify documentation, conceal end destinations, or mis-declare cargo contents
- + Transactions involving entities **co-located or sharing ownership** with those on BIS Entity List or OFAC SDN List are clear indicators of elevated risk warranting enhanced due diligence



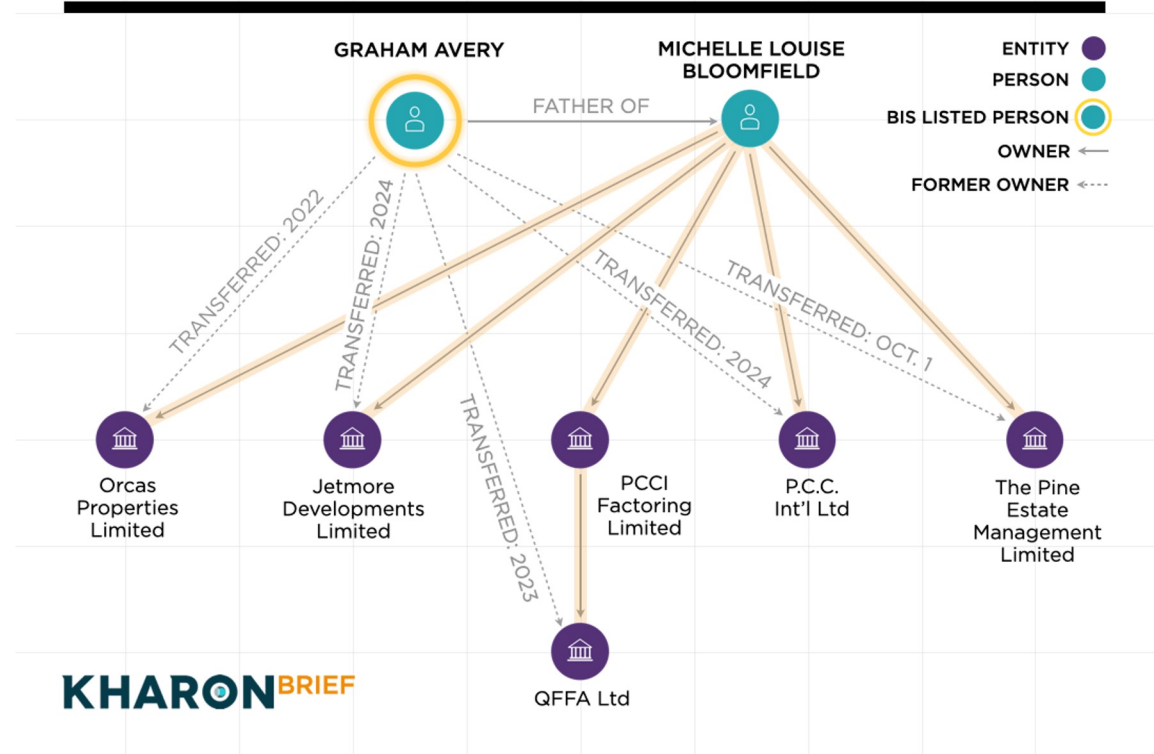
INDIVIDUAL RISK

If a company “acts as an agent, a front, or a shell company for the listed entity in order to facilitate transactions that would not otherwise be permissible with the listed entity, then the company is likely violating, *inter alia*, General Prohibition 10, EAR § 764.2(b)”

- BIS FAQ 23

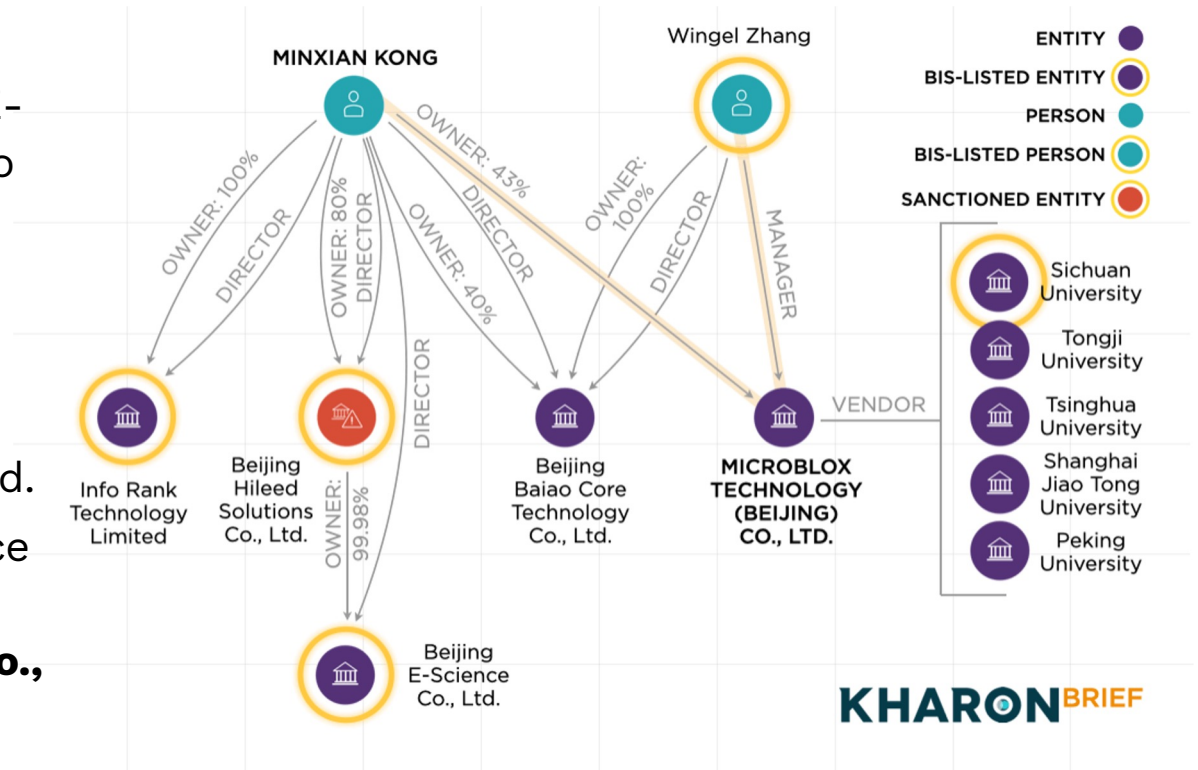
- + BIS added **PremiAir Aerospace Limited** and its owner, **Graham Avery** [UK national], to the Entity List in Sept. 2020
- + Attempted to illicitly procure 412 Bell helicopters on behalf of Iranian MEU
- + Graham has shifted his ownership in over a dozen companies to family and partners, including after the Affiliates Rule was announced

GRAHAM AVERY'S POST-LISTING TRANSFERS TO HIS DAUGHTER



POST-LISTING SUBSIDIARY

- + BIS added **Info Rank Technology, Beijing E-Science Co., Ltd.**, and E-Science manager **Wingei Shang** to Entity List in July 2021
- + BIS did *not* list the companies' owner, **Minxian Kong**
- + Kong owns 80% of OFAC SDN Beijing Hileed Solutions Co., Ltd.
- + **Seven days** after Beijing E-Science was listed, Kong established **Microblox Technology (Beijing) Co., Ltd.**
- + Microblox announced a distribution agreement with a German scientific equipment manufacturer in 2024



OPPORTUNITIES

DEMONSTRATE THAT COMPLIANCE IS NOT A COST CENTER

- + Long-term decision-making and planning is already difficult
- + Congress will now have greater insight into license applications
- + Effective compliance teams can prevent millions of dollars in fines, disruptions, and reputational damage

REEVALUATE EXISTING SCREENING

- + Are you currently screening (effectively) for OFAC-50?
- + Critically examine your existing export control regimen
 - + Would you identify evasion or diversion right now?

BE PREPARED

- + Turn compliance into a CoE
- + Learn the lessons of the October 2025 fire drill
- + Begin identifying exposure to the BIS Affiliates Rule to understand vulnerabilities
- + **Evaders are now on notice**
 - + Heightened vigilance is necessary – anticipate evasion

CONGRESSIONAL ACTIONS YOU SHOULD BE WATCHING

Since enforcement of the BIS Affiliates Rule was suspended, several bills have been proposed tightening export controls and increasing penalties

ECRA Penalty Increase Act [10.28.2025]

H.R. 5853

- + Increases the maximum civil penalty under the Export Control Reform Act (ECRA) from \$300,000 to **\$1.2 million per violation**
- + **Status: Referred to HFAC**

The ADVERSARIES Act [12.1.2025]

H.R. 6331

- + Changes definition of “foreign person” under ECRA to include 1260-H List entities, BIS Entity List entities, and MEU List Entities, **and their subsidiaries/affiliates owned 50% or more**
- + **Status: Referred to HFAC**

The AI Overwatch Act [12.18.2025]

H.R. 6875

- + Requires notification of Congress before approval of advanced AI chip exports to China, Cuba, Iran, North Korea, Russia, and Venezuela
- + Congress has 30 days to review and may block through joint resolution
- + **Status: Passed out of HFAC (42-2-1)**

The RESTRICT Act [12.18.2025]

H.R. 6879

- + Prohibits sales of H200 chips + other advanced AI chips to China
- + Codifies current restrictions on the export of U.S. advanced integrated circuits and products to China as written in Federal Register
- + **Status: Referred to HFAC**

STAYING AHEAD: BIS AFFILIATES RULE AS A SUPPLY CHAIN RISK

HOW VULNERABLE IS YOUR SUPPLY CHAIN NOW?

- + Nexperia disruptions revealed that export controls create supply chain risk
- + Questions to ask:
 - + Do you know your Tier-N suppliers?
 - + Are any of them subject to the Rule?
- + When enforcement resumes, their ability to deliver may be compromised
- + Exposure to the Rule needs to be identified proactively to avoid disruptions (similar to UFLPA)

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THE WALL STREET JOURNAL.

BUSINESS | AUTOS

The Auto Industry Is Panicking About Another Potential Chip Shortage

Chinese-owned chip maker Nexperia has told suppliers it won't ship product after Dutch government took control of company

By [Ryan Felton](#) [Follow](#), [Raffaele Huang](#) [Follow](#) and [Stephen Wilmot](#) [Follow](#)

Oct. 16, 2025 9:00 pm ET



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Nexperia produces high volumes of semiconductors and basic transistors that are used in vehicle systems. PETER DEJONG/AP

RECAP

BROADER ENFORCEMENT HAS **NOT** PAUSED

- + **This** enforcement suspension is set to last until Nov. 9, 2026 and is subject to ongoing trade negotiations
- + The suspension does **not** mean list-only screening is sufficient
- + BIS has stated that entities covered by the Rule are still under scrutiny
- + BIS continues to enforce export control

CONGRESS IS PAYING ATTENTION

- + Congress will receive first BIS report on license applications and decisions in August 2026
- + Understand that there will be increased Congressional scrutiny of BIS decisions **and** business decisions
- + Multiple bills mirroring the Affiliates Rule and increasing penalties have been introduced

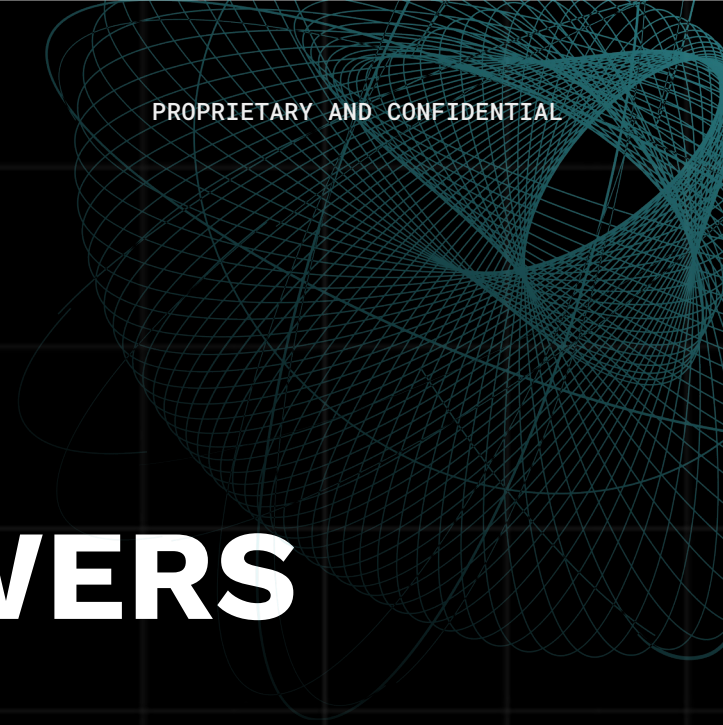
TAKE A BREATH... AND PREPARE

- + The suspension provides an opportunity to prepare
- + Illicit actors are on notice – risk of evasion is high
- + Take this opportunity to evaluate your **whole** program
- + Understand your supply chain and where it is exposed
- + Inform long-term business decisions

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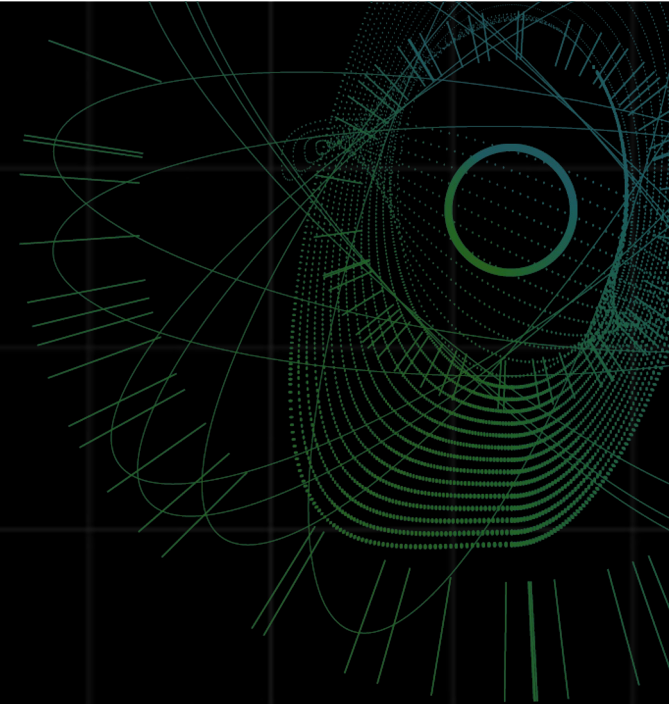
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QUESTIONS & ANSWERS



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