



Commerce Identifies Five Countries and One Individual as “Foreign Adversaries”

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On January 14, 2020 the Trump administration issued an interim rule identifying several countries and one individual as “foreign adversaries” under E.O. 13873, “Securing the Information and Communications Technology and Services (ICTS) Supply Chain.” The new interim rule identifies nation-states China, Russia, Iran, North Korea, and Cuba, and Nicolás Maduro in his individual capacity, as foreign adversaries. This designation subjects certain transactions involving information and communications technology to heightened scrutiny, and those transactions may be prohibited.

You can read about E.O. 13873 [in more detail here](#) but in short, E.O. 13873 prohibits any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service (transaction) by any person, or with respect to any property, subject to the jurisdiction of the United States, if three prongs are satisfied, one of which is the designation of a foreign adversary. **First**, the transaction involves any property in which any foreign country or a national thereof has any interest (including through an interest in a contract for the provision of the technology or service). **Second and third** the Secretary of Commerce (in consultation with other key agencies and departments) determines that:

1. The transaction involves information and communications technology or services by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary; and
2. The transaction poses any of the following risks:
 - A. an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications technology or services in the United States;
 - B. an undue risk of catastrophic effects on the security or resiliency of United States critical infrastructure or the digital economy of the United States; or
 - C. an unacceptable risk to the national security of the United States or the security and safety of United States persons.

By designating these five countries and one individual as “foreign adversaries,” the Department of Commerce satisfies one of three required elements for transactions to be prohibited. Given the overall aggressive stance of the

United States toward infrastructure from companies like Huawei, as well as data privacy concerns about apps like TikTok, companies should monitor whether the incoming Biden administration maintains these designations and continues to enforce the executive order. This rule will not be effective for 60 days, after the administration transition.

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