

NEW BARRIERS TO ENTRY: THE DEPARTMENT OF COMMERCE'S PROPOSED RULE TO BAN IMPORTS OF CHINESE OR RUSSIAN "CONNECTED" VEHICLES AND PARTS

On Monday, September 23, 2024, the U.S. Department of Commerce's Bureau of Industry and Security published a Notice of Proposed Rulemaking ("**NPRM**") that seems to counteract a threat previously only visualized in media productions such as *Leave the World Behind*. This NPRM aims to secure the supply chains of Connected Vehicles from the People's Republic of China ("**PRC**") and Russia by prohibiting the import or sale of certain connected vehicle systems designed, developed, manufactured, or supplied by entities with a sufficient nexus to the PRC or Russia.¹ The prohibition excludes vehicles not used on public roads such as agricultural and mining vehicles. Connected Vehicles utilize specific pieces of hardware and software that allow for both Vehicle Connectivity Systems ("**VCS**") and Automated Driving Systems ("**ADS**"). By virtue of permitting external connectivity, these vehicles are allegedly more vulnerable to malicious operators who can access and collect sensitive data and remotely manipulate cars on American roads.² Thus, the Department of Commerce has issued this NPRM to remedy this loophole in domestic security.

THE PROPOSED PROHIBITED TECHNOLOGY

To effectuate the NPRM, the Department of Commerce has deemed VCS and ADS software and hardware as technologies that pose an undue or unacceptable risk of sabotage to BIS's Office of Information and Communications Technology and Services ("**OITCS**") under Executive Order 13873. The VCS includes the set

¹ Fact Sheet: Protecting America from Connected Vehicle Technology from Countries of Concern, The White House, Sep. 23, 2024.

² Press Release, Commerce Announces Proposed Rule to Secure Connected Vehicle Supply Chains from Foreign Adversary Threats, Bureau of Industry and Security, Sep. 23, 2024.

of systems that allow the vehicle to communicate externally, along with its telematics control units, Bluetooth, cellular, satellite, and Wi-Fi modules. The ADS includes the components that collectively allow a highly autonomous vehicle to operate without a driver behind the wheel.

If the rule is finalized, manufacturers will have some time to comply, but not much. The software prohibitions would go into effect for Model Year 2027 vehicles and the hardware prohibitions would take effect for Model Year 2030 vehicles. The proposed rule would also require that VCS hardware importers and connected vehicle manufacturers that import VCS hardware, import or sell completed connected vehicles that contain covered software in which there is any other foreign interest, submit an annual Declaration of Conformity containing relevant details about the import or sale.³

INITIAL RESPONSES

Given the vast scope of vehicle supply chains, suppliers and automotive associations from third-party countries have verbalized concern for this proposed rule. In particular, the German Automotive Industry Association replied to the Advance NPRM (published on March 1, 2024) urging BIS to limit the scope of its rulemaking because "not all (information and computer technology) components from countries of concern pose a threat to national security."⁴ Another source of concern will likely be what constitutes "sufficient nexus," as the NPRM does not define this term; additional regulations will likely be announced to provide clarity and guidance.

Further, we should anticipate, at least with respect to the PRC, measures designed to counteract the US measures.

POTENTIAL IMPACT ON GLOBAL BUSINESS

As more comments are published in response to the NPRM, during the 30-day comment period (which could be extended) more details will emerge theorizing how this proposed rule could impact global supply chains from the source of critical minerals used in these technologies through the point of sale for American consumers. For now, it seems that the proposed rule could force foreign manufacturers in third-party countries like Germany, South Korea, and Japan to find suppliers other than China or Russia for these key component parts.

As more comments are recorded or published and when the final rule is announced, our Team will continue monitoring Department of Commerce responses and their respective implications for global businesses.

³ NPRM, Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles, Department of Commerce, Bureau of Industry and Security, p. 50.

⁴ Doug Palmer and Joseph Gedeon, "Commerce moves to ban imports of Chinese 'connected' cars and parts," Sep. 23, 2024, Politico.

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