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DW-CHINA TRADE UPDATE (35TH EDITION)

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THE US COMMERCE DEPARTMENT RELEASES SCOPE OF BANS ON TIKTOK AND WECHAT

美国商务部发布对抖音和微信的禁令范围

This past August, our China Team [reported](#) on President Trump's Executive Order 13942, which placed restrictions on any transactions with two of the most popular Chinese social media apps used in the world, TikTok and WeChat. The term "**transaction**" was undefined in the Executive Order at that time, but the President requested the Department of Commerce ("DOC") establish rules to enforce the President's intent within 45 days. Since then, TikTok's parent company, ByteDance Ltd., was forced into negotiations with various U.S. companies to placate the Administration's Executive Order. Within the last few days, ByteDance announced that it had reached an agreement in principle with Oracle and Wal-mart. On Saturday, the President apparently agreed in "concept" to Oracle and Wal-mart taking a 20% stake in TikTok (the details of such a deal and whether the President will get his previous ballyhooed contribution to the Treasury Department remain unclear). Earlier in the day, the President had incorrectly stated that TikTok would be "totally controlled by Oracle and Wal-mart," but as some details emerged, it appears more like a partnership in which Oracle will host data and Wal-mart will receive some commercial rights. In addition, the President insisted that the transaction included a \$5 billion contribution to support a fund to "educate people" about the "real history of our country." ByteDance was unable to confirm the accuracy of this claim by the President.

今年八月，我们中国团队曾报道了特朗普总统的第13942号行政命令，该行政命令限制了与抖音和微信这两款世界上最受欢迎的中国社交媒体应用的任何交易。“交易”一词在当时的行政命令中没有定义，但是总统要求商务部在45天内制定规则和法规从而来执行这一行政命令。此后，抖音的母公司，字节跳动有限公司被迫与多家美国公司进行谈判以与政府的行政命令相协调。在过去的几天，字节跳动宣布已与甲骨文公司和沃尔玛公司在原则上达成协议。上周六，总统似乎对甲骨文公司和沃尔玛公司收购抖音20%的股份这一概念表示同意（交易细节以及总统是否会像其之前大肆宣传地向支付给财政部费用仍不清楚）。当天早些时候，总统错误地指出，抖音将“完全由甲骨文公司和沃尔玛公司控制”，但有一些细节浮出水面，交易看起来更像是甲骨文公司将托管数据并且沃尔玛将获得一些商业权利的合作伙伴关系。此外，总统坚称此次交易包含一笔50亿美元的捐款，用于支持一个“教育人们”有关“我们国家真实历史”的基金。字节跳动尚无法证实总统的这一说法的准确性。

In contrast, WeChat's parent, Tencent Holding, Ltd remained relatively quiet in its response to the President's Executive Order. While it did create a new application known as WeCom, setting it up as a potential alternative to the current WeChat application, and several users initiated litigation challenging the Executive Order, Tencent does not seem ready to sell its U.S. assets.

相反，微信的母公司腾讯控股对总统的行政命令保持了相对平静的反应。虽然腾讯确实创建了一个名为WeCom的新的应用程序，作为目前微信应用程序的潜在替代品，同时许多微信用户对行政命令提起诉讼，但腾讯似乎还没有打算出售其在美国的资产。

Apparently wanting to continue applying pressure on these two Chinese powerhouses, the DOC announced on Friday that it was implementing specific rules to enforce the President's Executive Order, prohibiting certain transactions related to these two mobile applications in order to safeguard the "national security" of the United States.

显然是想继续对这两个中国科技巨头施压，美国商务部周五宣布，为了维护美国的“国家安全”它正在实施具体规定，以执行总统的行政命令，禁止与这两个移动应用相关的某些交易。

Specifically, as of **September 20, 2020**, the following transactions are prohibited:

具体来说，自**2020年9月20日**起，以下交易被禁止：

1. Any provision of service to distribute or maintain the **WeChat** or **TikTok** mobile applications, constituent code, or application updates through an online mobile application store in the U.S.;

通过美国的在线移动应用程序商店发布或维护微信或抖音移动应用程序、其组成代码或应用程序更新的任何服务；

2. Any provision of services through the **WeChat** mobile application for the purpose of transferring funds or processing payments within the U.S.

通过微信移动应用程序提供的任何用于在美国境内转账或处理付款的服务。

In addition, as of **September 20, 2020**, for **WeChat** and as of **November 12, 2020**, for **TikTok**, the following transactions are prohibited:

此外，对于微信，截至**2020年9月20日**；对于抖音，截至**2020年11月12日**，以下交易将被禁止：

1. Any provision of internet hosting services enabling the functioning or optimization of the mobile application in the U.S.;

在美国境内提供任何互联网托管服务，以支持移动应用程序的功能或优化；

2. Any provision of content delivery network services enabling the functioning or optimization of the mobile application in the U.S.;

在美国境内提供任何内容分发网络服务，以支持移动应用程序的运行或优化；

3. Any provision directly contracted or arranged of internet transit or peering services enabling the function or optimization of the mobile application within the U.S.;

在美国境内直接承包或分包的互联网传输或交换服务，以实现移动应用程序的功能或优化；

4. Any utilization of the mobile application's constituent code, functions, or services in the functioning of software or services developed and/or accessible within the U.S.

在美国境内开发或可访问的软件或服务的功能中，使用上述移动应用程序的组成代码、功能或服务。

The DOC's official actions were posted in two [Notices](#), which appear in the Federal Register. The Notices further describe the Prohibited Transactions, define key terms, and importantly describe what is not covered by the DOC's actions. For example, the Notices clarify that the Prohibited Transactions **only apply to business-to-business transactions**. Notably, the Notices also set out exceptions to the Prohibitions, one of which addresses the concerns that most WeChat users have related to personal communication through WeChat. The Notices explain, "[t]hese identified prohibitions do not apply to **the exchange between or among WeChat mobile application users of personal or business information using the WeChat mobile application, to include the transferring and receiving of funds.**" WeChat mobile applications include WeChat Apps running on any mobile device, including a phone, tablet or watch. Interestingly, but perhaps not surprising in light of the Administration's forcing ByteDance's hand to sell to Oracle, the Prohibitions also do not apply to "[t]he storing of WeChat mobile application user data in the United States." This likely is an indication that if WeChat were to store user data in the U.S., the Prohibitions would not apply.

《联邦纪事》的两个公告公布了商务部的正式行动。这两个公告进一步描述了被禁止的交易，定义了关键术语并且着重描述了商务部行动中未涵盖的内容。例如，公告澄清了禁止的交易 **仅仅适用于企业对企业之间的交易**。值得注意的是，公告同时列举了禁令的例外情况，其中之一解决了大多数微信用户对使用微信进行个人用户之间交流的担忧。该公告解释说：“这些已确认的禁令不适用于 **微信移动应用程序用户之间使用微信移动应用程序交换个人或商业信息，包括资金的转移和接收。**”微信移动应用程序包括运行在任何移动设备上的微信应用，包括手机、平板电脑和手表。有趣但或许并不奇怪的是，鉴于政府正在强迫字节跳动将抖音出售给甲骨文公司，此次的禁令并不适用于“储存在美国的微信移动应用程序用户数据”。这可能是一个迹象，如果微信在美国存储用户数据，禁令将不适用。

In the meanwhile, the DOC indicated that other prohibitive transactions relating to WeChat or TikTok might be identified at a future date. Provided the U.S. Government determines that WeChat's or TikTok's illicit behavior is being replicated by another app outside of the current scope of ban, the President has the authority to consider whether additional orders may be appropriate to address such activities.

同时，美国商务部表示，其他与微信或抖音有关的禁止交易可能会在日后确定。如果美国政府认为微信或抖音的非法行为被其他超出了目前的禁令范围的移动应用程序所效仿，总统有权考虑是否需要颁布额外的命令来解决此类行为。

In the DOC's Press Release announcing the actions, Commerce Secretary Wilbur Ross stated: "At the President's direction, we have taken significant action to combat China's malicious collection of American citizens' personal data, which promoting our national values, democratic rules-based norms, and aggressive enforcement of U.S. laws and regulations." The Press Release goes on to claim that each App collects vast swaths of data from users, including network activity, location data, and browsing and search histories, and each is "subject to" mandatory cooperation with the intelligence services of the Chinese Communist Party. Ironically, one might wonder why the U.S. government has not taken a similar interest in the collection activities of major U.S. tech companies like Facebook and Google. Each of these companies collect similar kinds of user data, and each frequently surrenders this information to the U.S. government. In fact, during the first half of 2019, Facebook reported that the number of government demands for user data increased to 128,616 in the first half of the year. The U.S. government led the way with 50,741 demands for user data resulting in some information being shared in 88% of the requests. Reportedly, two-thirds of those requests came with a gag order, preventing the company from telling users about the request for their data. Facebook tracks and reports these government requests in an online report that you can obtain at <https://transparency.facebook.com/>. With TikTok and WeChat historically outside of its jurisdiction, the U.S. government did not enjoy those same privileges. Now, as TikTok commits to storing such data in the U.S., this situation is likely to change. How WeChat responds shall be interesting to observe. But, for now, users in the U.S. can continue to use the voice and messenger services offered by WeChat for personal and business reasons.

在商务部宣布采取行动的新闻稿中，商务部长威尔伯·罗斯表示：“在总统的指示下，我们已经采取了重大行动，打击中国恶意收集美国公民个人数据的行为，这促进了我们的国家价值观、基于法制的民主规范以及对美国法律和法规的积极执行。”该新闻稿还称，每个应用程序都从用户那里收集了大量数据，包括网络活动、位置数据、浏览和搜索历史，而且每个应用程序都“受制于”中国共产党情报机构强制合作的要求。具有讽刺意味的是，人们可能会问，为什么美国政府对脸书和谷歌等美国大型科技公司的收集活动没有类似的兴趣。这两家公司都收集类似的用户数据，并经常向美国政府提交这些信息。事实上，在2019年上半年，脸书报告称，政府对用户数据的需求在今年上半年增加到128616次。美国政府以50,741次用户数据请求居首，其中对88%的请求共享了一些信息。据报道，这些请求中有三分之二都附有禁令，阻止公司告知用户此类数据请求。脸书跟踪并报告这些政府请求，您可以通过[HTTPS://TRANSPARENCY.FACEBOOK.COM/](https://transparency.facebook.com/)查看该报告。由于抖音和微信过去并不属于这一管辖范围，美国政府没有执行同样的权利。现在，随着抖音承诺将这些数据储存在美国，这种情况可能会改变。观察微信如何反应将是有趣的。但目前，美国用户可以继续使用微信提供的语音和短信服务，以满足个人和商业需要。

As of the writing of this Alert, a federal judge has temporarily blocked the President's Executive Order banning downloads of WeChat. In the Preliminary Injunction, the court found that WeChat users' First Amendment rights may be threatened by the President's Order and the government had not shown how the Order was narrowly tailored to resolve the Administration's national security concerns. While the preliminary injunction only temporarily suspends the President's ban on downloading the WeChat App, the court order has no impact on using WeChat for personal and business communications, as that was already permitted by the DOC's rules.

在写这篇简报之时，一名联邦法官已经暂时阻止了总统禁止下载微信的行政命令。在法院的预先禁制令中，法院裁定微信用户所拥有的美国宪法第一修正案权利可能受到总统行政命令的威胁，且政府并没有表明该行政命令是如何具有针对性地来解决政府对国家安全的担忧。虽然预先禁令只是暂时中止了总统对下载微信应用程序的行政命令，但法院的裁定对使用微信进行个人和商务通讯没有影响，因为这已经是商务部颁布的法规所允许的。

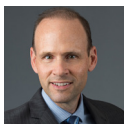
This remains a fluid situation. We will continue to follow and report any new developments.

这仍然是一个变幻莫测的形势。我们将继续关注并报道最新进展。

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