

Commerce Bans U.S. Exports to Huawei

May 17, 2019

Capping a week where the U.S. government ratcheted up trade restrictions on China, the Department of Commerce's (Commerce) Bureau of Industry and Security (BIS) posted a Federal Register notice for public inspection adding Chinese telecom giant Huawei and 68 of its affiliates to its Entity List. This follows the Administration's proposal to subject nearly all Chinese products to Section 301 tariffs and the issuance of an Executive Order that restricts transactions involving information and communications technology and services from a "foreign adversary," which targets China and Chinese companies Huawei and ZTE. The new restrictions on Huawei—which the Secretary of Commerce has announced are effective immediately—prohibit exports, reexports, and transfers of U.S. goods, software, and technology, including common, off-the-shelf electronic components and commercial software, to Huawei.

The export ban on Huawei stems, at least in part, from Huawei's alleged violations of U.S. sanctions, which have been under investigation by the Department of Justice for quite some time. Huawei was indicted in the U.S. District Court for the Eastern District of New York for willfully causing and conspiring to cause the provision of U.S. goods, services, and technology to Iran. In addition, the U.S. government has determined that Huawei generally presents national security and foreign policy concerns. BIS took similar action against ZTE, China's second largest telecommunications equipment manufacturer, back in 2016 for alleged violations of U.S. sanctions and later activated a denial order against the company last April, which has since been lifted.

Much like the restrictions that were imposed on ZTE, the new export restrictions on Huawei will have considerable ramifications on the Chinese company as well as the global telecommunications industry

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Export Controls and Economic Sanctions
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and consumers. BIS's ban covers nearly all U.S.-origin exports of hardware, software, and technology to Huawei, including software and software updates/patches (unless such software is publicly available), electronic parts and components such as chips and routers, and related technology (again, unless that technology is publicly available). From a practical standpoint, users and operators may not be able to receive updates and patches for Huawei network equipment and handsets to the extent such updates or patches are provided from U.S. entities and routed through or customized by Huawei. The sweeping prohibitions also extend to the provision of parts, components, software, or other items that would be used to service or repair equipment already owned by Huawei. Additionally, foreign companies that incorporate U.S. parts and components into their products must carefully assess whether those products are subject to U.S. controls based on their U.S. content, as such products also would fall under the restrictions on Huawei.

At first blush, the odds of obtaining a license from BIS to engage in transactions with Huawei appear slim, as the agency's official licensing review policy is a presumption of denial. There is precedent for a reprieve, though. In 2016, after adding ZTE to its Entity List, BIS later issued temporary general licenses permitting companies to do business with the Chinese telecom corporation. With tensions between the United States and China mounting, it likely will be more challenging to obtain relief this time around.

Wiley Rein continues to closely monitor Huawei-related developments and the impacts and unintended consequences of the U.S. government's crackdown on Chinese telecom companies. Should you have any questions, please do not hesitate to contact one of the attorneys listed on this alert.