

New Regulations Securing the US Information and Communications Supply Chain 保护美国信息和通信供应链的新规

Authority Over Commercial Transactions, Implicating Chinese Suppliers

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影响中国供应商的商业交易监管授权

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On January 19, 2021, regulations were published in the US *Federal Register* implementing Executive Order 13873 of May 15, 2019, "Securing the Information and Communications Technology and Services Supply Chain" (84 FR 22689).

2021年1月19日，美国《联邦公报》发布了实施2019年5月15日第13873号行政命令“保护信息及通信技术和服务供应链”的规定（84 FR 22689）。

These regulations give the US Department of Commerce (Commerce) regulatory authority over certain transactions involving information and communications technology and services (ICTS) (e.g., hardware, software or services used in specific IT or communications applications), where those ICTS are "designed, developed, manufactured, or supplied" by businesses subject to the jurisdiction of "foreign adversaries," which includes the People's Republic of China (China). Under the new rule, Commerce can address and mitigate national security concerns associated with these transactions. Our publication includes a brief summary of the types of commercial transactions captured by the regulations and offers considerations for how businesses may address risks in their supply chains or customer bases. For questions and further details, please reach out to any member of our team listed at the end of this publication.

该规定授予美国商务部（商务部）在ICTS（即用于特定信息技术或通信应用的硬件、软件或服务）是由“外国对手”（包括中国）管辖的企业“设计、研发、制造或供应”时，对某些涉及信息与通信技术和服务（ICTS）的交易进行监管的权力。在新规下，商务部可以解决和缓解与这些交易相关的国家安全关切。本文包括对新规所列的商业交易类型的简要总结以及企业如何应对其供应链或客户群风险的建议。更多问题和信息，请联系末页所列任何一位团队成员。

What Types of Products and Services Fall Within ICTS?

何种产品和服务归入ICTS的范围？

ICTS encompasses any product or service (including hardware, software and cloud-computing services) that is "primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means," including by "transmission, storage, or display." Such products and services include ongoing activities, such as managed services, data transmission, software updates, repairs, or the platforming or data hosting of applications for consumer download.

ICTS包含所有“主要用于满足或实现信息或数据处理、存储、恢复或电子手段通信功能”的产品或服务（包括硬件、软件和云计算服务），包括通过“传输、存储或显示”的方式。这类产品和服务包含正在进行的活动，如受管理服务、数据传输、软件更新、修复或供消费者下载的应用程序的平台服务或数据托管。

How Will Commerce Review "Covered ICTS Transactions"?

商务部将如何审查“受管辖ICTS交易”？

Commerce has the authority to review any acquisition, importation, transfer, installation, dealing in or use of any ICTS (an "ICTS Transaction") to determine if it is a "Covered ICTS Transaction," and if the ICTS has been designed, developed, manufactured or supplied by persons owned by, controlled by or subject to the jurisdiction or direction of foreign adversaries – currently designated as China (which includes the Hong Kong Special Administrative Region (SAR)), Cuba, Iran, North Korea, Russia and the Maduro Regime of Venezuela. For Covered ICTS Transactions that fall within its authority, Commerce can prohibit the transaction or propose mitigation measures to address any undue or unacceptable risks.

商务部有权审查所有ICTS的收购、进口、转让、安装、买卖或使用（“ICTS交易”），以确定其是否构成“受管辖ICTS交易”，以及该ICTS是否由被外国对手——当前包括：中国（包括了香港特别行政区）、古巴、伊朗、朝鲜、俄罗斯和委内瑞拉马杜罗政权——拥有、控制或受其管辖或指示的人设计、研发、制造或供应。对于落入其监管范围的受管辖ICTS交易，商务部可以禁止该交易或提出补救措施以应对任何不合理或不可接受的风险。

What Transactions Are

“Covered ITCS Transactions”?

什么样的交易属于“受管辖ITCS交易”？

新规指出，涉及某些技术、硬件或软件的ICTS交易将会被视为受管辖ICTS交易。除了有限的例外情况之外，受管辖ITCS交易指：（1）由受美国管辖的人进行的或包含了受美国管辖财产的交易；（2）其中包含了任何外国或该国国民对其享有利益（包括通过供应该技术或服务的合同而享有的利益）的财产；（3）在2021年1月19日或之后发起的、进行中的或已完成；并4）涉及6种ITCS终端用途（[关于几类终端用途的总结请见此处](#)）之一。

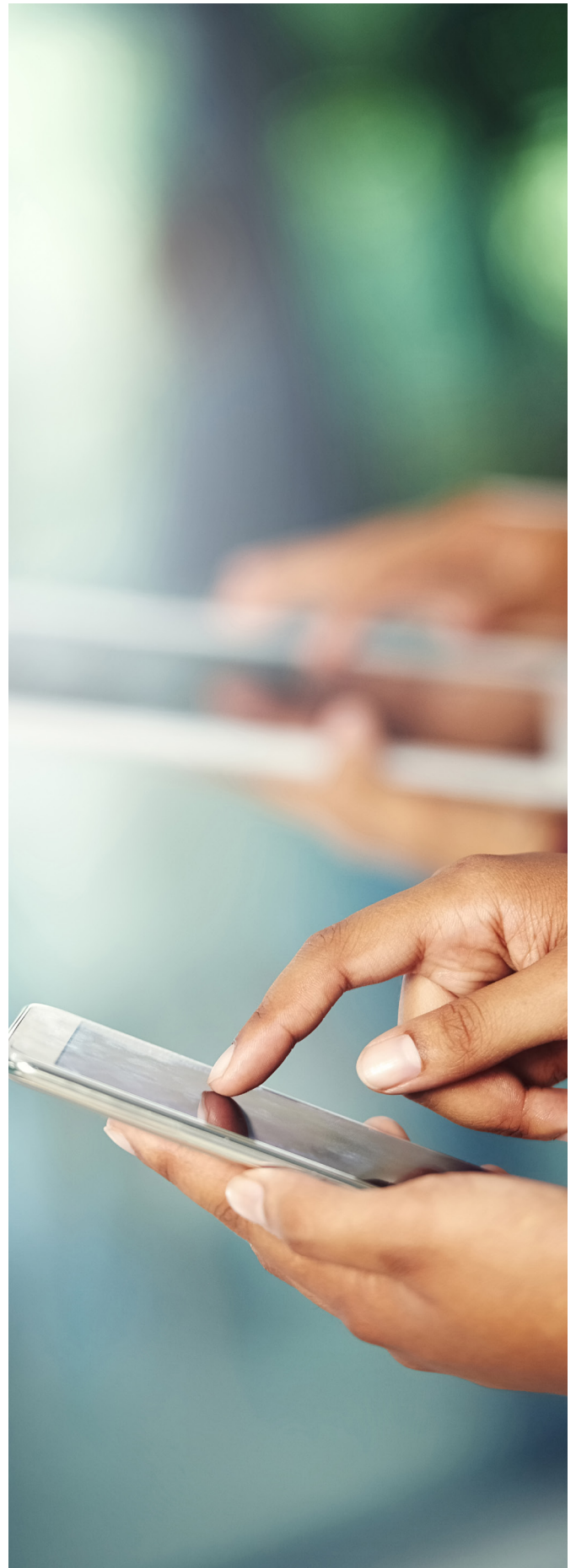
What Constitutes the

Commerce Review Process?

商务部审查程序由什么构成？

Upon learning of an ICTS Transaction (from any number of sources), Commerce will immediately assess (1) whether the transaction is a Covered ITCS Transaction; and (2) whether the ITCS Transaction “involves ICTS designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.” Commerce will then either accept and commence an initial review of the transaction; request additional information; or end the inquiry. If Commerce undertakes an initial review, it will coordinate an interagency process and may request information from the parties. This process will result in an “initial determination” by Commerce to allow the transaction to proceed or, alternatively, to prohibit the ICTS Transaction or to propose mitigation measures. If the latter, parties have 30 days to respond to the initial determination. Upon consideration of the parties’ submissions, Commerce will issue a final determination in coordination with other agencies (and the President, if necessary) that will either (1) prohibit the transaction; (2) not prohibit the transaction; or (3) permit the transaction subject to the adoption of mitigation measures determined by Commerce. This process, from start to final determination, occurs within 180 days, unless extended by Commerce.

在（从任意数量的渠道）得知一项ICTS交易的存在后，商务部将立即评估（1）该交易是否属于一项受管辖ITCS交易；以及（2）该ITCS交易是否“包含由被外国对手拥有、控制或受其管辖或指示的人设计、研发、制造或供应的ICTS”。商务部随后将接受并开始对交易的初步审查或要求更多信息，或终止调查。如果商务部选择开始初步调查，它将协调开展跨机构的审查程序并可能要求交易方提供信息。审查完成后，商务部将会作出的“初步决定”，允许该交易继续进行，或禁止该ICTS交易或提出补救措施。如果结果为后者，交易方有30天时间回应初步决定。在对交易方提交的意见进行考虑之后，商务部将协调其它的机构（如果必要的话还包括总统）发布最终决定，该决定将：（1）禁止该交易；或（2）不禁止该交易；或（3）在实施商务部决定的补救措施的前提下批准该交易。除非商务部决定延期，该程序自开始到结束将在180日内完结。



Is There a Forthcoming Licensing Process?

是否将出台许可制度？

Commerce is expected to issue additional regulations that will implement a licensing regime on or around March 22, 2021, and implement that rule by May 19, 2021. The procedures will establish criteria for any parties to a proposed, pending or ongoing ICTS Transaction to seek a license for that ICTS Transaction. According to Commerce, “[l]icense application reviews will be conducted on a fixed timeline, not to exceed 120 days from accepting a license application.”

我们预计商务部将会发布补充规定，在2021年3月22日前后出台一项许可制度，并在2021年5月19日前加以施行。该制度将为计划的或正在进行的ICTS交易建立获得许可的标准。根据商务部的消息，“许可申请的审查将会在固定时间期限内进行，自接受许可申请之日起不会超过120天”。

When Do the Regulations Go Into Effect and Will They Apply Retroactively?

该新规何时生效，是否具有溯及力？

The regulations were issued as an Interim Final Rule and will take effect on March 22, 2021. In the meantime, Commerce is accepting further public comment before issuing a final rule. However, the just issued regulations will apply to any ICTS Transaction that was “initiated, pending, or completed” on or after January 19, 2021.

新规是以临时最终规定的形式发布的，其将会在2021年3月22日生效。同时，商务部在发布最终规定之前正在接受更多的公众意见。但是，该新规将适用于任何在2021年1月19日及其后“发起的、进行中的或已完成的”ICTS交易。

Considerations for Navigating the New Rule

针对新规的建议

These regulations will extend authority into the supply chains of any company doing business in the US in the six categories of ICTS end uses ([see our summary reference chart of these categories here](#)) within the scope of Covered ICTS Transactions. Importantly, the regulations do not require that a transaction directly involve a business from a “foreign adversary.” Instead, Commerce will assess whether that transaction “involves ICTS designed, developed, manufactured, or supplied” by persons subject to the jurisdiction of a foreign adversary.

新规在受管辖ICTS交易范围内，将使监管授权扩大至所有在美国经营6类ICTS终端用途（[终端用途总结参考图表](#)）的公司供应链。重要的是，新规并不要求交易直接来自“外国对手”的企业。相反，商务部将评估该交易是否“涉及由外国对手管辖的个人或实体所设计、研发、制造或供应的ICTS”。

For example, a transaction between a Japanese component supplier and a US data center business could be reviewed by Commerce upon a finding that the Japanese company was providing ICTS products originally designed or supplied by Chinese sources.

例如，一项由日本零件供应商和美国数据中心企业进行的交易，如果商务部认为该日本公司提供了源于中国设计或供应的ICTS产品，则商务部可对其进行审查。

US businesses with operations in one of the six defined subject areas should analyze their supply chains, if they have not started already, to assess the level of regulatory risks and burdens created by the new regulations. Equally as important, global suppliers in China should analyze their US customer base and downstream US markets to determine the level of exposure that their businesses have under the new regulations. Depending on the types of customers and downstream industries served, global suppliers may want to evaluate proactive measures in advance of the effective date of the new authorities.

运营6类受管辖领域之一的美国企业，应该对它们的供应链进行分析，以评估因新规引发的监管风险和负担的水平。同样重要的是，中国供应商应当对它们的美国客户群及其下游美国市场进行分析，以确定它们的业务受新规影响的水平。根据客户与服务的下游产业不同，中国供应商可能需要在新规生效之前评估相应的积极措施。

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ITAR Handbook

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