



On May 15, 2019, President Donald Trump issued an Executive Order (EO) titled "[Securing the Information and Communications Technology and Services Supply Chain](#)." The long-awaited EO addresses the use in US communications networks of technologies from certain types of foreign companies.

The EO declares a national emergency regarding national security threats from "foreign adversaries" seeking to create and exploit vulnerabilities in US information and communications technology and services "in order to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States."

The term "information and communications technology or services" is defined as any hardware, software, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval or communications by electronic means, including transmission, storage and display.

The term "foreign adversary" is defined as any foreign government or foreign person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the US or security and safety of US persons.

The EO empowers the federal government to block certain transactions involving information and communications technology or services, as described below. While the EO does not specifically refer to China or any other country or to any particular company, the Trump Administration is expected to use the EO to target Chinese telecom vendors, principally Huawei Technologies Co. Ltd. (Huawei).

## Specific Actions in the EO

The EO takes action in three areas:

### 1. Prohibition of Certain Prospective Transactions

The EO prohibits certain transactions where the Secretary of Commerce, in consultation with the heads of certain other federal agencies, has determined that the transaction would pose a risk to national security. The term "transaction" is defined as "any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service." Specifically, Section 1 of the EO prohibits any transaction involving any property in which any foreign country or foreign national has any interest and where the Secretary of Commerce has determined that (a) the transaction involves information and communications technology or services made by entities owned by, controlled by or subject to the direction of a foreign adversary, and (b) the transaction (i) poses an undue risk of sabotage to the design, manufacturing, installation, operation or maintenance of information and communications technology or services in the US, (ii) poses an undue risk to the security of the critical infrastructure or the digital economy of the US or (iii) otherwise poses an unacceptable risk to the national security of the US or the security and safety of US persons. These prohibitions will apply prospectively to any transaction that is initiated, is pending or will be completed after May 15, 2019. The Secretary of Commerce has the ability to design or negotiate measures to mitigate these concerns, and such measures may serve as a precondition to the approval of a transaction that would otherwise be prohibited by the EO.

### 2. Authorization of Secretarial Actions

The EO authorizes the Secretary of Commerce to take actions to implement it, including directing the timing and manner of the cessation of prohibited transactions, adopting rules and regulations, and employing all other powers granted to the President by the International Emergency Economic Powers Act. Section 2(b) of the EO provides that the Secretary of Commerce, in consultation with the heads of certain other federal agencies, will "publish rules or regulations implementing the authorities delegated to the Secretary by this order" within 150 days of the date of the EO. The rules or regulations may, among other things, (a) determine that particular countries or persons are foreign adversaries, and (b) identify (i) persons owned by, controlled by or subject to the direction of foreign adversaries, (ii) particular technologies or countries for which transactions warrant particular scrutiny and (iii) a mechanism and relevant factors for the negotiation of agreements to mitigate concerns raised in Section 1 of the EO.

### 3. Reports to be Produced

The EO also describes several reports that will be produced.

- It authorizes the Secretary of Commerce to submit reports to Congress on the national emergency declared in the EO.
- The Director of National Intelligence (DNI) is required to assess threats to the US from information and communications technology or services made by entities owned by, controlled by or subject to the direction of a foreign adversary, and to produce periodic written assessments of these threats for the President, the Secretary of Commerce and the heads of other agencies. The DNI's first report is due within 40 days of the date of the EO and further assessments will be completed at least annually.
- The EO directs the Secretary of Homeland Security to continue to assess and identify entities, hardware, software and services that present vulnerabilities and pose the greatest threats to the national security of the US, and to produce a written assessment within 80 days of the date of the EO and annually thereafter.

### Implications of the EO

The President's action will impact the supply chain for US communications companies. A number of US rural telecommunications carriers currently use equipment from Huawei in their networks. If the EO is aggressively implemented and enforced, it could have the effect of barring US telecom companies from installing equipment from Chinese vendors in their network infrastructure.

Federal Communications Commission Chairman Ajit Pai, Commissioner Brendan Carr and Commissioner Michael O'Rielly praised the EO. Chairman Pai applauded the President for issuing the EO to safeguard the communications supply chain and stated that "[g]iven the threats presented by certain foreign companies' equipment and services, this is a significant step toward securing America's networks."

### Related US Action

On May 21, 2019, the US Department of Commerce, Bureau of Industry and Security (BIS) is expected to publish in the *Federal Register* a Final Rule designating Huawei Technologies Co., Ltd. (Huawei) and 68 affiliated Huawei entities located in 26 countries (collectively, the Huawei Listed Companies) to the Entity List. Read [our blog post](#) on *The Trade Practitioner* on the key takeaways from the ruling.

### Contacts

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