

US-EU Export Controls and Sanctions Alert: US Commerce Department Adds 46 Huawei Companies to the Entity List and Extends and Updates the Temporary General License

On August 21, 2019, the US Department of Commerce, Bureau of Industry and Security (BIS) published in the *Federal Register* two Final Rules, one that adds and revises a total of 46 of Huawei Technologies Co., Ltd.'s (Huawei) non-US affiliates (collectively, "Huawei Listed Companies") to the Entity List, and another that extends the deadline and clarifies the scope of the previously issued Temporary General License (TGL) for Huawei and the Huawei Listed Companies. Both Final Rules are effective as of August 19, 2019, the date that they were displayed on the "Public Inspection List."

It is important to note that the TGL continues to authorize only certain limited, enumerated transactions with those Huawei Listed Companies on the Entity List. All other exports, reexports and transfers (in-country) of items that are subject to the Export Administration Regulations (EAR) are still prohibited to the Huawei Listed Companies.

Effective Date

BIS intends that both Final Rules apply to all transactions subject to the EAR as of August 19, 2019, at 4:15 p.m. (EDT), the time that the unpublished notices were displayed "on the Public Inspection List" maintained by the Office of the Federal Register. The Final Rule regarding the previously issued TGL originally published on May 22, 2019 (84 Fed. Reg. 23468) now extends the expiration date until November 18, 2019.

TGL Impact

The revised TGL (1) updates the language used to describe the transactions that were previously authorized under the original TGL by narrowing the types of transactions that are specifically permitted under the TGL; (2) alters the certification requirements by requiring parties engaging in a transaction authorized by the TGL to obtain a certification statement and any additional support documentation needed to substantiate the certification statement from the Huawei Listed Company that will receive the item(s); and (3) extends the deadline to November 18 for parties to export, reexport or transfer (in-country) items subject to the EAR that meet one of the conditions listed in the TGL to the Huawei Listed Companies.

TGL Authorized Transactions

TGL contains the conditions that authorize certain transactions subject to the EAR with the Huawei Listed Companies.

Continued Operation of Existing Networks and Equipment

- Authorizes, subject to other provisions of the EAR, support specifically for software for bug fixes, security vulnerability patches and other changes to existing versions of the software for networks and network infrastructure equipment, subject to legally binding contracts and agreements executed between the Huawei Listed Companies and third parties on or before May 16, 2019.

- Such transactions may not enhance the functional capacities of the original software or equipment.
- Adds exclusions specifying the TGL does not apply to end-devices, such as general purpose computing devices, and does not authorize equipment transfers for general business purposes that are not in direct support of an existing "fully operational network."
- Clarifies that "third party" refers to a party that is not one of the Huawei Listed Companies or the exporter, reexporter or transferor, but is an organization such as a telecommunications service provider.
- Clarifies that "fully operational network" refers to a third party network providing services to the third party's customers.

Support to Existing "Personal Consumer Electronic Devices" and "Customer Premises Equipment (CPE)"

- Authorizes, subject to other provisions of the EAR, support specifically for software for bug fixes, security vulnerability patches and other changes to existing versions of software, for existing Huawei "personal consumer electronic devices."
- Such transactions may not enhance the functional capacities of the original software or equipment.
- Defines "personal consumer electronic devices" as including phones and other personally-owned equipment, such as tablets, smart watches and mobile hotspots that were available to the public on or before May 16, 2019.
- Authorized transactions include support for CPE, such as network switches, residential internet gateways, set-top boxes, home networking adapters and other personally owned equipment that enables consumers to access network communications services and distribute them within their residence or small business.

Cybersecurity Research and Vulnerability Disclosure

- Authorizes, subject to other provisions of the EAR, the disclosure to the Huawei Listed Companies of information regarding security vulnerabilities in items owned, possessed or controlled by the Huawei Listed Companies when related to the process of providing ongoing security research critical to maintaining the integrity and reliability of existing and currently "fully operational network" and equipment.

Development of 5G Standards by a Duly Recognized Standards Body

- Amends the original TGL by removing the section for transactions entitled “Engagement as necessary for development of 5G standards by a duly recognized standards body,” because BIS determined that the work developing 5G standards in conjunction with a duly recognized standards body is adequately addressed in the EAR.
- The EAR provides that technology that is “published” and made publicly available pursuant to section §734.7 of the EAR is not considered “technology” or “software” that is controlled by the EAR.

TGL Requirements – Certification Statement

- Prior to making an export, reexport or transfer (in-country) that is subject to the EAR pursuant to the TGL, the exporter, reexporter or transferor must obtain a certification statement and any additional support documentation needed to substantiate the certification statement from the Huawei Listed Company that will receive the item(s).
- The certification statement must specify how the export, reexport or in-country transfer satisfies the provisions of the TGL, including specifying whether the activity(ies) that will be supported by the transaction fall within any of the three conditions specified in paragraph (c) of the TGL.
- For transactions for the “Continued operation of existing networks and equipment,” the exporter, reexporter or transferor must obtain documentation from the Huawei Listed Company receiving the item(s), showing that there was a legally binding contract or agreement executed between the Huawei Listed Company and a third party on or before May 16, 2019.
- The exporter, reexporter or transferor and the Huawei Listed Company receiving the item(s) are each responsible for retaining the certification statement and any additional support documentation needed to substantiate the certification statement. (See part 762 of the EAR for record retention requirements.)
- The certification statement must be in writing (which may be conveyed by email), be signed and dated by an individual of sufficient authority to legally bind the Huawei Listed Company receiving the item(s) and shall provide the following information and certifications:
 - Name of the Huawei Listed Company; complete physical address, to include shipping, corporate and end user addresses, if different (simply listing a post office box is insufficient); telephone number; email address; website (if available); and name and title of individual signing the certification statement
 - Complete list of the item(s), including the applicable Export Control Classification Number(s) or designation (if EAR99) for the item(s) under the EAR, and (for tangible shipments of commodities and software) the quantity(ies) of the item(s) that will be exported, reexported or transferred under the authority of the TGL (this inclusive list may cover multiple exports, reexports or transfers (in-country) under the TGL of the same item(s))

- End-use of the item(s) to be received as an export, reexport or transfer (in-country) falls within the scope of one of the specified authorizing conditions mentioned above (a general statement or declaration that the item falls within the scope of paragraph (c) or the scope of the TGL will not be sufficient, as the specific condition contained in paragraph (c) authorizing the transaction must be identified)
 - Huawei Listed Company receiving the item(s) will comply with the recordkeeping requirements in part 762 of the EAR, including by providing copies of the certification statement and all other export, reexport or transfer (in-country) records required to be retained in part 762 to any authorized agent, official or employee of BIS, the US Customs Service or any other agency of the US government, as required in § 762.7 of the EAR
 - Individual signing the certification statement on behalf of the Huawei Listed Company has sufficient authority to legally bind the Huawei Listed Company
- Exporters, reexporters and transferors may rely on the certification statements for multiple exports, reexports and transfers (in-country) involving the same item(s) to the same Huawei Listed Company, provided the information included remains accurate for those additional exports, reexports and transfers (in-country).
 - If one certification statement is used for multiple exports, reexports or transfers (in-country) made pursuant to the TGL, the exporter, reexporter and transferor must maintain a log or other similar record that identifies each such export, reexport and transfer (in-country) against that specific certification statement, in accordance with the record retention requirements of part 762 of the EAR.

Addition and Revision to Entity List

The Final Rule updating the Entity List designates 27 new entities as Huawei Listed Companies added to the Entity List. It also modifies the original entry for Huawei from May 16, 2019, by adding one alias, Shenzhen Huawei Technologies, and 19 new affiliated entities to that entry, and by moving under the entry for Huawei three non-US affiliates of Huawei that were added as separate entities under China in the rule published on May 21, 2019: Huawei Digital Technologies (Suzhou) Co., Ltd.; Shanghai Huawei Technologies Co., Ltd.; and Zhejiang Huawei Communications Technology Co., Ltd. This Final Rule modifies these three entities by removing them as separate entries, and adding them as affiliates under the Huawei entry. The Final Rule also updates the addresses for those three entities.

Savings Clause

For each of the Huawei Listed Companies added to the Entity List in this Final Rule, shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this Final Rule that were en route aboard a carrier to a port of export or reexport, as of August 19, 2019, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

The savings clause does not apply to exports or reexports to Huawei Digital Technologies (Suzhou) Co., Ltd.; Huawei do Brasil Telecomunicacoes Ltda; Huawei Technologies Research & Development Belgium NV; Shanghai Huawei Technologies Co., Ltd.; or Zhejiang Huawei Communications Technology Co., Ltd., which were added to the Entity List in the rule published on May 21, 2019. The savings clause listed in that rule applies to those entities.

Impact of Designation on the Entity List

Designation of an organization on the Entity List does not block all dealings with the organization, as would occur for an organization designated as a Specially Designated National (SDN) by the Office of Foreign Assets Control (OFAC). The Entity List is more targeted in its application. Section 744.16(a) of the EAR provides that no person may “export, reexport, or transfer (in-country) items specified on the Entity List to listed entities without a license from BIS.” In the case of the Huawei Listed Entities, the “items specified” are all items subject to the EAR. Therefore, the designation prohibits all exports, reexports or transfers to the Huawei Listed Companies of any item subject to the EAR by any person – both US persons and non-US persons.

Exports From the US

The designation prohibits all exports from the US to the Huawei Listed Companies. Every item in the US (and not under the jurisdiction of another agency) is subject to the EAR. This includes items of foreign origin in the US temporarily. For example, the designation would prohibit the return of non-US origin equipment to a Huawei Listed Company.

Foreign-made Items

While the designation applies to all items in the US, it does not apply to all foreign-made items. Only foreign-made items that are “subject to the EAR” are restricted by the designation. If the foreign-made item is not subject to the EAR, it can be delivered from a third country to the Huawei Listed Companies by US persons or non-US persons. Importantly, Entity List restrictions apply only to items subject to the EAR.

Subject to the EAR

All items in the US and foreign-made items containing more than a *de minimis* amount of controlled US content are subject to the EAR, but if the controlled US content is *de minimis*, the foreign-made item is not subject to the EAR. The *de minimis* calculation involves a comparison of the value of the controlled US content in relation to the value of the product to be delivered to a Huawei Listed Company. Generally, a foreign-made product is not subject to the EAR if the controlled US content is equal to or less than 25% of the value of the foreign-made product. A US item is controlled content if it would require a license for export to the destination for the foreign-made product. EAR99 content is not controlled content for China or other locations of the Huawei Listed Companies. As a result, many foreign-made products supplied to the Huawei Listed Companies are not restricted by the Entity List designation, even if they do contain US content. Even a substantial amount of EAR99 content from the US would not cause the foreign-made product to be subject to the EAR when the end destination is a Huawei Listed Company.

Continuation of Services and Support

In addition to prohibiting exports, reexports and transfers of new products to the Huawei Listed Companies, the Entity List designation prohibits supplying replacement parts that are subject to the EAR and providing services that would amount to a deemed export or reexport of technology subject to the EAR.

Payment for Items Delivered

The EAR does not prohibit suppliers from being paid for items previously delivered to the Huawei Listed Companies.

Possibility of Obtaining a License

While the EAR does contemplate that a license could be obtained to export, reexport or transfer items subject to the EAR to the Huawei Listed Companies, the Entity List establishes a policy of a presumption of denial for the license application.

New Huawei Listed Companies Added to the Entity List

- Argentina
 - Huawei Tech Investment Co., Ltd. Argentina
- Australia
 - Huawei Technologies (Australia) Pty Ltd.
- Bahrain
 - Huawei Technologies Bahrain
- Belarus
 - Bel Huawei Technologies LLC, including one alias (BellHuawei Technologies LLC)
- China
 - Hui Tong Business Ltd.
 - Shanghai HiSilicon Technologies Co., Ltd.
 - Shenzhen HiSilicon Technologies Co., Electrical Research Center
- Costa Rica
 - Huawei Technologies Costa Rica SA, including one alias (Huawei Technologies Costa Rica Sociedad Anonima)
- Cuba
 - Huawei Cuba
- Denmark
 - Huawei Denmark
- France
 - Huawei France, including one alias (Huawei Technologies France SASU)
- India
 - Huawei Technologies India Private Limited, including one alias (Huawei Technologies India Pvt., Ltd.)
- Indonesia
 - Huawei Tech Investment, PT.
- Italy
 - Huawei Italia
 - Huawei Milan Research Institute

- Kazakhstan
 - Huawei Technologies LLC Kazakhstan
- Mexico
 - Huawei Technologies De Mexico S.A.
- New Zealand
 - Huawei Technologies (New Zealand) Company Limited
- Panama
 - Huawei Technologies Cr Panama S.A.
- Portugal
 - Huawei Technology Portugal
- Romania
 - Huawei Technologies Romania Co., Ltd.
- Russia
 - Huawei Russia
- South Africa
 - Huawei Technologies South Africa Pty Ltd.
- Sweden
 - Huawei Sweden
- Thailand
 - Huawei Technologies (Thailand) Co.
- United Kingdom
 - Centre for Integrated Photonics Ltd.
 - Huawei Technologies (UK) Co., Ltd., including one alias (Huawei Software Technologies Co., Ltd.)

Modification of Existing Huawei Entry on Entity List

The 19 additional Huawei Listed Companies being included as affiliates under the existing Huawei entry on the Entity List are as follows:

- Beijing Huawei Longshine Information Technology Co., Ltd.
- Hangzhou New Longshine Information Technology Co., Ltd.
- Hangzhou Huawei Communication Technology Co., Ltd.
- Hangzhou Huawei Enterprises
- Huawei Marine networks Co., Ltd.
- Huawei Mobile Technology Ltd.
- Huawei Tech. Investment Co.
- Huawei Technology Co., Ltd. Chengdu Research Institute
- Huawei Technology Co., Ltd. Hangzhou Research Institute
- Huawei Technologies Co., Ltd. Beijing Research Institute
- Huawei Technologies Co., Ltd. Material Characterization Lab
- Huawei Technologies Co., Ltd. Xi'an Research Institute
- Huawei Terminal (Shenzhen) Co., Ltd.
- Nanchang Huawei Communication Technology
- Ningbo Huawei Computer & Net Co., Ltd.
- Shenzhen Huawei Anjiexin Electricity Co., Ltd.
- Shenzhen Huawei New Technology Co., Ltd.
- Shenzhen Huawei Technology Service
- Shenzhen Huawei Technologies Software

Our Export Controls and Sanctions team stands ready to answer any question that you may have on this ruling. Please feel free to contact one of the Trade Practitioners listed below, or you can reach our team at InternationalTradeCompliance@squirepb.com. Be sure to subscribe to [The Trade Practitioner](#) for our updates on this matter and other international trade topics in real-time.

About Us

Our export controls and sanctions lawyers have the ability to provide advice on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial institutions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective.

Our team is part of our overall International Trade Practice, providing a “one-stop shop” solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes. If you have any questions relating to sanctions, please contact a member of our EU or US sanctions team listed herein, or email InternationalTradeCompliance@squirepb.com for assistance.

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