

Department of Commerce Announces New Sanctions on Huawei

May 20, 2019

Last week, the U.S. Bureau of Industry & Security (BIS) added Chinese telecommunications giant Huawei and its non-U.S. affiliates [to the U.S. Entity List](#). The move by the U.S. export control regulator broadly prohibits U.S. and non-U.S. persons from providing the listed Huawei entities with any “items” that are “subject to” BIS’s [Export Administration Regulations \(EAR\)](#).

The sanctions could have a serious impact on Huawei and on companies that supply and do business with the firm. Similar sanctions temporarily imposed on ZTE, another Chinese telecommunications firm, last year were referred to as a “death penalty” ban due to the crippling impact it had on ZTE’s operations.

The new sanctions prohibit the transfer, sale, export, or reexport of physical goods, software, or “technology” to listed Huawei entities. “Technology” is a broad term, including information necessary for the development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of physical goods or software subject to the EAR. And unlike non-U.S. export control rules, many items remain subject to the EAR after they have left the United States. The [U.S. EAR apply to](#) all items in the United States and to all items outside of the United States that were either manufactured in the United States or contain more than de minimis (25 percent) U.S.-origin content, by value. In some instances, items made outside of the United States using U.S. technology or know how can also be subject to the EAR and would be subject to the new prohibitions.

U.S. and non-U.S. companies that conduct direct or indirect business with Huawei should move quickly to review whether ongoing dealings implicate these new sanctions. A first step will be to determine whether any shipments or transfers of items for ultimate use by Huawei will need to be reviewed to determine whether U.S. rules apply. Any pending shipments should be placed on hold until that initial analysis can be completed. Companies that violate the Entity List prohibitions could be subject to significant civil fines or criminal penalties or be added to a U.S. sanctions list.

The new sanctions come days after a [new Executive Order](#) that, once implemented, is expected to prohibit U.S. telecommunications networks from using Huawei equipment.