

BIS's Expansion of Foreign Direct Product Rule Targeting Huawei

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On May 15, 2020, the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**") announced an amendment to the General Prohibition Three, also known as the foreign-produced direct product rule, by exercising existing authority under the Export Control Reform Act of 2018.

By this amendment, BIS expended its export control against Huawei to require foreign companies using U.S. equipment or technology to obtain a license from the agency before selling chip components to Huawei or its affiliates such as HiSilicon. Though limited to Huawei and many of its affiliates, BIS's new rule effectively broadens the United States' assertion of jurisdiction over some foreign products that are directly produced from US software and technology or US-designed manufacturing equipment.

This action is one of a series of recent measures circumscribing US companies trade with Huawei. The Commerce Department first restricted Huawei's access to US products in May 2019, when Huawei and 68 of its affiliates were designated on the BIS Entity List, followed by 46 additional Huawei affiliates in August 2019.

As a result of these designations, BIS imposed a license requirement on exports to those Huawei entities of all items, including commodities, software, and technology subject to the Export Administration Regulations with a presumption that any license application would be denied. Meanwhile, BIS issued a temporary general license, currently extended through August 13, 2020, authorizing limited activities, including those necessary for the continued operations of existing networks and equipment as well as the support of existing mobile services, such as cybersecurity research critical to maintaining the integrity and reliability of existing and fully operational networks and equipment.