

Huawei Licenses: Shifting Priorities and Little Guidance

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The United States' relationship with Chinese telecom giant Huawei sits on rapidly-shifting sands and seems to be a bargaining chip in the ongoing trade war between the U.S. and China.

On May 15, 2019, the Bureau of Industry and Security (BIS) added Huawei and 68 of its affiliates to the Entity List. The Entity List identifies entities that BIS believes pose some threat to U.S. national security interests and require a license for most exports. More recently, on June 29 at the G20 Summit, President Trump announced that he reached a deal with President Xi to relax the trade restrictions on Huawei in return for Chinese purchases of U.S. agricultural products. However, Huawei remains on the Entity List and BIS retains control over issuing licenses on exports subject to the Export Administration Regulations (EAR).

Since the announcement by President Trump, U.S. Commerce Secretary Wilbur Ross announced that BIS will issue licenses for exports to Huawei "where there is no threat to U.S. national security." However, neither the Department of Commerce nor BIS has since issued guidance to indicate what types of licenses BIS considers not to implicate national security interests.

Perhaps further complicating national security concerns, the Washington Post newly reported on July 22 that Huawei has for years been building and maintaining the mobile networks of North Korea. These North Korean networks presumably involved the export of U.S. parts and subcomponents to North Korea in violation of U.S. sanctions on the country. Such a close relationship between Huawei and North Korea highlights the national security threat that caused Huawei to be listed in the first instance and may change BIS's calculus in considering the issuance of licenses.

This news came the same day the White House announced that it plans to issue "timely licensing decisions" after a meeting between President Trump and executives of seven major U.S. technology companies. The White House announcement did not provide specifics as to what may implicate national security or address the news regarding Huawei's trade with North Korea.

The landscape continues to develop, and companies trading with Huawei or any company that deals with Huawei should closely monitor any new changes.

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