

use of U.S. technology and equipment in its supply chain. Pursuant to the Interim Final Rule, the foreign-manufactured commodities now subject to the EAR and requiring a license if destined for Huawei or any of its affiliates named on the Entity List now include the following two categories:

- a. Any items produced or developed by Huawei that are the direct product of certain technology and software subject to the EAR and necessary for semiconductor, telecommunications, and electronics manufacturing; and
- b. Any foreign-produced items that are
 1. made or developed using equipment that is the direct product of certain technology or software subject to the EAR; and
 2. the direct product of software or technology produced or developed by Huawei.

The Interim Final Rule strategically targets Huawei and its affiliates by utilizing the Entity List designations already in place and further described below. Specifically, the Bureau of Industry and Security (BIS) has designated entities on the Entity List – namely, Huawei and many of its affiliates – with a specific footnote indicating that licensing requirements apply for the export, reexport, or in-country transfer of the foreign-produced items described above. License applications for Huawei and its 114 affiliates named to the Entity List are generally met by BIS with a presumption of denial.

A more detailed breakdown of the parameters provided above as well as relevant examples of their potential application follows.

Paragraph a) expands the scope of the EAR to capture items that are produced or developed by Huawei and that are the direct products of certain technology or software that are subject to the EAR, particularly those frequently used in the production of integrated circuits, microprocessors, telecommunications equipment, and digital computers.¹ These foreign-produced items are now subject to export licensing requirements (applications for which are subject to a presumption of denial) if destined for Huawei or the Huawei affiliates designated on the Entity List.

The Interim Final Rule provides the example that if Huawei “produces or develops an integrated circuit design” utilizing Electronic Design Automation software subject to the EAR, that foreign-produced integrated circuit design is subject to the EAR and would require a license if destined for Huawei. This is true regardless of whether the integrated circuit design is foreign-produced or whether it would otherwise be subject to the EAR under the foreign direct product rule or the *de minimis* rule, as further described below.

Paragraph b) applies to items that are the direct product of a plant or major component of a plant, located outside of the United States, when the manufacturing plant or components such as testing equipment or manufacturing equipment are themselves the foreign direct product of listed U.S.-origin technologies or software.² Paragraph b) expands the scope of the EAR to include such items if they are the direct products of technology or software produced or developed by Huawei. Where there is knowledge that such items are destined for Huawei or its designated affiliates, a BIS export license is required (again,

¹ The full list includes technology or software subject to the EAR, and specified in Export Control Classification Numbers (ECCN) 3E001, 3E002, 3E003, 4E001, 5E001, 3D001, 4D001, or 5D001; “technology” subject to the EAR and specified in ECCN 3E991, 4E992, 4E993, or 5E991; or “software” subject to the EAR and specified in ECCN 3D991, 4D993, 4D994, or 5D991 of the Commerce Control List (CCL).

² Items that are the direct product of U.S.-origin software or technology matching the ECCNS listed above.

for which applications are subject to a presumption of denial by BIS). The Interim Final Rule provides by example that paragraph b) applies to integrated circuits, produced by a foreign company outside of the United States, in a foundry using equipment essential to the production of the integrated circuits that is:

1. U.S.-origin equipment; or
2. Foreign-produced equipment that is the direct product of specific U.S.-origin technology or software; and
3. the design for the integrated circuit was produced or developed from software or technology provided by Huawei.

Importantly, items that were in production prior to May 15, 2020, that would newly be subject to the EAR due to the second part of the Interim Final Rule may be exported, reexported or transferred (in-country) to Huawei or its designated affiliates without a license before Sept. 14, 2020.

Entity List Designations and Other Restrictions on Huawei

The Interim Final Rule targets Huawei and follows prior regulatory actions aimed at the Chinese company, as further described in our [GT Alert on May 30, 2019](#), and [GT Alert on April 29, 2020](#). These actions include certain bans on use of Huawei equipment by U.S. government contractors or by certain companies that do business with the U.S. government, as well as recent letters from the Federal Communications Commission (FCC) directing Huawei and other Chinese telecom companies to explain why their authorizations to provide services should not be revoked. Perhaps most consequential has been the addition of Huawei, along with a significant number of Huawei's non-U.S. affiliates, to the BIS Entity List.

Inclusion on the Entity List prohibits businesses worldwide from exporting or reexporting any goods, technology, or software subject to the EAR to entities named to the Entity List. All commodities, including goods, technology, and software, manufactured in the United States or exported from the United States are subject to the EAR for the life of the commodity, and even commodities manufactured outside the United States are subject to the EAR if they contain more than a *de minimis* amount of controlled U.S. content (the "*de minimis rule*") or are covered by the foreign direct product rule.

It has been reported that many companies, and in particular makers of semiconductors and microchips, continued to supply Huawei by shifting production to non-U.S. factories and taking care to produce items that were not subject to the EAR because they did not meet the relevant thresholds under the *de minimis* or foreign direct product rules. The changes in the Interim Final Rule, at least in part, appear designed to address this shift and more comprehensively cut off Huawei's access to its supply chain.

Temporary General License

BIS has again extended the [Temporary General License \(TGL\)](#), permitting companies to continue supplying Huawei and its listed affiliates with certain commodities subject to the EAR. The extended TGL is set to expire Aug. 13, 2020. The TGL was first issued on May 22, 2019, has already been extended several times and, as amended, is designed to allow users of Huawei devices and telecommunications providers, particularly those in rural U.S. communities, to continue operating Huawei devices and network equipment while moving to alternative suppliers.

The TGL continues to be limited in scope, and parties that wish to continue supplying EAR-controlled commodities to Huawei on a temporary basis must carefully analyze each transaction to confirm whether it remains authorized under the TGL. Though the TGL has been extended several times, the [BIS press release](#) announcing the most recent extension indicates that future extensions of the TGL in its current form are unlikely and that companies relying on the TGL should plan accordingly.

Careful Review of Foreign Manufacturing with Potential Nexus to Huawei Required

Whether foreign manufactured commodities are captured under the Interim Final Rule is fact-specific. Companies directly or indirectly involved in Huawei's supply chain will need to review their products carefully to determine whether the Interim Final Rule triggers new licensing requirements

Authors

This GT Alert was prepared by:

- [Cyril T. Brennan](#) | +1 202.533.2342 | brennanct@gtlaw.com
- [Renée A. Latour](#) ‡ | +1 202.533.2358 | latourr@gtlaw.com
- [Sonali Dohale](#) | +1 202.533.2381 | dohales@gtlaw.com
- [Axel S. Urie](#) | +1 202.530.8539 | uriea@gtlaw.com

‡ Admitted in Virginia. Practice in the District of Columbia limited to matters and proceedings before Federal courts and Agencies.

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