

US Government Issues Administrative Subpoena to Huawei Technologies

June 13, 2016

According to recent news reports, the US Commerce Department's Bureau of Industry and Security ("BIS") issued a subpoena in April to Huawei Technologies Co. ("Huawei"), one of the world's largest telecommunications equipment companies, for information regarding Huawei's direct and indirect exports and re-exports of US technology over the last five years to countries that have been designated as supporters of international terrorism, or are otherwise subject to US trade sanctions and economic embargoes, including Cuba, Iran, North Korea, Sudan, and Syria. The subpoena was issued as part of the US government's review of whether Huawei has violated US export control and trade sanctions laws. BIS reportedly issued the subpoena to Huawei's US operations, which are based in Plano, Texas.

BIS has not alleged any wrongdoing by Huawei at this time. However, if BIS's investigation determines that Huawei violated US export control and sanctions laws and acted to the detriment of US interests, BIS could initiate enforcement proceedings against Huawei, as well as any companies that are found to have helped Huawei engage in illegal transactions. Violations of US export controls on dual use and commercial items are punishable by fines equal to the greater of \$250,000 per violation or twice the value of the transaction that is the basis for the violation. Willful (i.e., knowing and intentional) violations are punishable by criminal fines of up to \$1 million per violation and 20 years imprisonment for responsible individuals. In addition, BIS could seek to prohibit or limit exports and reexports to Huawei of products and/or technology that are of US origin or otherwise subject to US export control jurisdiction.

These developments come months after BIS blocked exports from the United States to Zhongxing Telecommunications Equipment Corporation ("ZTE"), a competitor of Huawei, and certain of ZTE's affiliates, due to allegations that ZTE violated US export control laws by exporting products to Iran. As noted in our previous [client alert](#) from March 24, 2016, BIS issued a temporary general license (the "Temporary GL") for exports to ZTE and one of its affiliates, ZTE Kangxun Telecommunications Ltd. The Temporary GL is effective until June 30, 2016, upon which the US government will determine whether ZTE has abided by its commitments. At this time, it is unclear whether BIS will extend the Temporary GL or whether it will be revoked.

BIS's investigation could potentially have significant implications for companies that conduct business with Huawei. Given the above developments, we would encourage clients to undertake the following:

- Review the export classifications (i.e., export control classification numbers or ECCNs) of products and/or technologies exported to Huawei or its affiliates.
- Review sales contracts, purchase order terms and conditions, shipping documentation, and other related materials related to transactions with Huawei or its affiliates for diversion "[red flags](#)" which indicate that items have been diverted to prohibited destinations or end-users, or applied to a prohibited end-use.
- Prepare plans on how to handle possible disruptions if Huawei becomes designated on BIS's Entity List and is prohibited from receiving US/non-US origin products or technologies that are subject to US export control laws.

For assistance on this matter, please contact a member of our export control team, including [Kevin King](#), [Shannon MacMichael](#), [Rebecca Ross](#), and [Karen Tsai](#).

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