Export Control Licensing Decisions for Huawei (November 9, 2020-April 20, 2021)

- Total number of license applications considered: 169

- 113 Approvals (69.3%) $61,432,330,663 (Value of Licenses)
  - Category 3[1]: 7 $2,014,099,305
  - Category 5[2]: 1 $170,000,000
  - AT[3]: 25 $14,260,254,443
  - EAR99[4]: 80 $44,987,976,915

- 48 Returned Without Action[5] (28.4%) $29,775,410,958 (Value of Licenses)
  - Category 6: 1 $1,029,026
  - AT: 6 $5,700,635,407
  - EAR99: 41 $24,073,746,525

- 2 Denials (1.2%) $57,408,002 (Value of Licenses)
  - AT: 1 $57,408,000
  - EAR99: 1 $2

[1] This category lists electronic items, such as semiconductors, that can be controlled for national security and military technology purposes.
[2] This category lists cryptographic information security that can be controlled for national security purposes.
[3] Nearly half (12) of these items were various types of semiconductors.
[4] Nearly half (36) of these items were various types of semiconductors.
[5] The BIS may return an export license application to the applicant for one of the following reasons: (a) The applicant has requested the application be returned; (b) A License Exception applies; (c) The items are not under Department of Commerce jurisdiction; (d) Required documentation has not been submitted with the application; or (e) The applicant cannot be reached after several attempts to request additional information necessary for processing of the application.
* This disclosure is accompanied by an explanatory annex from the Department of Commerce's Bureau of Industry and Security.

Bureau of Industry and Security (BIS) Explanatory Statement Accompanying Public Disclosure of Certain Aggregate Licensing Data – October 19, 2021 (SBU)

DISCLAIMER: these edits and/or comments are provided as technical drafting assistance only and do not express views on the merits. These edits and/or comments have not been formally cleared through the Commerce Department or the Administration and may not represent Commerce Department or Administration views.

- The Department of Commerce, Bureau of Industry and Security (BIS) honors requests for information protected from disclosure by 1761(h) of the Export Control Reform Act (ECRA) when submitted by the chair or ranking member of a committee or subcommittee of appropriate jurisdiction in accordance with the statute. In response to a request from Ranking Member McCaul, BIS provided two documents prepared for internal tracking containing information responsive to his request on license applications for exports to Huawei and Semiconductor Manufacturing International Corporation (SMIC). These documents covered the period from November 9, 2020 to April 20, 2021, and were concurrently shared with the Chairman's staff.

- License applications involving Huawei and SMIC are processed under licensing policies developed by the Trump Administration and maintained by the Biden Administration.

    - License applications involving Huawei are processed under a licensing policy developed by the Departments of Commerce, Defense, Energy, and State in response to President Trump's announcement, following the June 2019 G-20 Summit, that items that "will not impact our National Security"[1] will be approved for Huawei. Additionally, license applications for foreign-produced items controlled by Footnote 1 to the Entity List that are capable of supporting the "development" or "production" of telecom systems, equipment and devices at only below the 5G level (*e.g.,* 4G, 3G, etc.) are reviewed on a case-by-case basis.

    - License applications involving SMIC are processed under a licensing policy, effective December 18, 2020, that imposed a presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology), and case-by-case review for all other items.

- For a number of reasons, even in aggregate form, the licensing information being authorized for public disclosure is of limited utility if Congress is interested in assessing the actual number of exports destined to Huawei and SMIC.

    - First, the licensing information does not include applications that were in the Intent to Deny process during the time period requested by Ranking Member McCaul. As a result, the number of denials listed in the licensing information is not reflective of the actual denials that have been issued since April 20, 2021.

[1] Excerpt of President Trump tweet after June 2019 G-20 Summit: "At the request of our High Tech companies, and President Xi, I agreed to allow Chinese company Huawei to buy product from them which will not impact our National Security."

- Also, the value and quantity of items approved include items that will either not be provided to Huawei at all or not be provided in the authorized quantities. Regarding the former point, because of the expanded Foreign-Produced Direct Product Rule imposed for Huawei, the license data reflects additional Export Control Classification Numbers (ECCNs) and additional value of foreign-produced items that are not destined for Huawei, but that will be used to produce or develop foreign items that go to or are purchased or ordered by Huawei. For example, the data could include authorization for the applicant to reexport or transfer foreign-produced production equipment within the internal supply chain of the applicant to produce items that will be purchased by Huawei. Such equipment was not itself approved for shipment to Huawei, but nonetheless the equipment and its value are included in licensing data related to Huawei because the Foreign-Produced Direct Product Rule applies to such reexports or transfers.

- In addition, approved license applications do not represent actual shipments. Generally, about one-half of all licenses are utilized.

- Also, the two internal tracking documents provided to Ranking Member McCaul by BIS include information on applications for exports of equipment that may not be destined to Huawei or SMIC since those entities only have to be a party to the transaction for the Entity List requirements to apply.

- The existence of approved export licenses for Huawei and SMIC is not, by itself, sufficient to draw accurate conclusions about the effectiveness of BIS's licensing policy or to derive meaningful insight into the exports going to these two companies. Furthermore, the public release of aggregate licensing data for certain PRC companies on the Entity List, over an arbitrary snapshot in time, risks politicizing the licensing process and misrepresenting the national security determinations made by the Departments of Commerce, Defense, Energy, and State.