

# 美国商务部工业安全局（BIS）针对华为修改了“直接产品规则”，但同时延长了华为的临时通用许可证期限

## BIS Amends Direct Product Rule To Target Huawei But Extends Huawei Temporary General License

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2020年5月15日，美国商务部宣布了对“直接产品规则”的修订，该修订进一步限制了华为技术有限公司及其列在“实体清单”上的关联公司，例如海思（统称“华为”）接收国外制造的半导体产品的能力。

On May 15, 2020 the Commerce Department announced an amendment to the direct product rule that further restricts the ability of Huawei Technologies Co., Ltd. and its affiliates on the Entity List, such as HiSilicon (collectively “Huawei”), to receive certain foreign-made semiconductor products.

此外，美国商务部还延长了华为的临时通用许可证（TGL）期限，该延期的许可证授权美国实体和个人直至2020年8月13日前可与华为及其子公司进行某些交易。美国商务部表明，这可能是对该许可证的“最后”一次延期。

The Commerce Department also extended the temporary general license (TGL) that authorizes certain dealings with Huawei and its subsidiaries by U.S. persons through August 13, 2020. Statements from the Commerce Department indicate this may be a “final” extension.

### 本次对“直接产品规则”的修改专门针对华为

#### Huawei-Specific Amendment to the Direct Product Rule

美国商务部工业安全局（BIS）向公众发布了一项自2020年5月15日生效的临时最终规则，要求外国制造商在向华为提供由华为“生产或开发的”某些物项之前，必须先获得出口许可证。

The Bureau of Industry and Security (BIS) released to the public an interim final rule effective May 15, 2020 requiring foreign manufacturers to obtain an export license before supplying Huawei with certain items “produced or developed” by Huawei.

华为于2019年5月被添加到美国工业安全局的“实体清单”中。根据这一指定的规定，任何公司未经美国工业安全局许可禁止将受《出口管理条例》（EAR）管制的物项出口、再出口、或转让给华为。根据商务部，尽管被列入“实体清单”，华为仍继续委托使用美国软件和技术在海外代工厂生产半导体产品。

Huawei was added to the BIS Entity List in May 2019. Pursuant to this designation, companies are prohibited from exporting, reexporting, or transferring items subject to the Export Administration Regulations (EAR) to Huawei without a license from BIS. Despite being added to the Entity List, according to the Commerce Department, Huawei has continued to commission the production of semiconductors in overseas foundries that use U.S. software and technology.

一般而言，因“国家安全”（NS）原因而被管控的外国制造物项在向一些特定国家（包括中国）出口时会受《出口管理条例》的约束，如果这些物项是受国家安全原因管控的美国原产软件或技术的“直接产品”，或者由属于国家安全原因管控的美国原产软件或技术的直接产品的工厂或者工厂主要部分生产的直接产品。

In general, foreign-made items controlled for “national security” (NS) reasons are subject to the EAR when exported to certain countries (including China) if they are the “direct and immediate product” of NS-controlled U.S.-origin software/technology or a plant or major plant component that is a direct product of NS-controlled U.S.-origin software or technology.

新的临时规则为“实体清单”中的某些当事人（方）添加了脚注 1 的特别指定，对向该加注了脚注指定的当事方出口的物项施加了额外的限制。当前，华为及其在“实体清单”中的关联公司在脚注 1 中被特别指定。没有其他实体受该脚注 1 的约束。

The new interim rule adds a Footnote 1 designation to certain parties on the Entity List, imposing additional restrictions on items destined for such parties. Currently, Huawei and its affiliates on the Entity List are designated with Footnote 1. No other entities are subject to Footnote 1.

根据新的临时规则，如果以下外国制造的物项被出口到脚注 1 指定的实体，则该物项受《出口管理条例》的约束：  
Under the new interim rule, the following foreign-made items are subject to the EAR if destined for an entity with the Footnote 1 designation:

- 符合如下情况的物项：
  - 在下列出口管制分类编号（ECCN）中指定的、受《出口管理条例》约束的软件或技术的直接产品；以及
  - 任何由脚注 1 指定的实体“生产或开发”的物项。
- Items that are:
  - the direct product of software or technology subject to the EAR and specified in the following ECCNs; and
  - “produced or developed” by any entity with a Footnote 1 designation.

以及

- 符合如下情况的物项：
  - 工厂或工厂的主要组成部分的直接产品，该工厂或工厂主要组成部分是受《出口管理条例》约束并在下列出口管制分类编号中指定的美国原产技术或软件的直接产品；以及
  - 由脚注 1 指定的实体生产或开发的软件或技术的直接产品。

- Items that are:
  - the direct product of a plant or major component of a plant that is a direct product of U.S.-origin technology or software subject to the EAR and specified in the following ECCNs; and
  - a direct product of software or technology produced or developed by an entity with a Footnote 1 designation.

该规则中提到的出口管制分类编号（ECCN）包含 ECCN 3E001、3E002、3E003、4E001、5E001、3D001、4D001 或 5D001 中列明的美国原产技术或软件；以及 ECCN 3E991、4E992、4E993 或 5E991 中列明的美国原产技术；或者 ECCN 3D991、4D993、4D994 或 5D991 中列明的美国原产软件。

The covered Export Control Classification Numbers (ECCNs) identified in the rule are U.S.-origin technology or software that is specified in ECCNs 3E001, 3E002, 3E003, 4E001, 5E001, 3D001, 4D001, or 5D001; technology specified in ECCNs 3E991, 4E992, 4E993, or 5E991; or software specified in ECCNs 3D991, 4D993, 4D994, or 5D991.

工厂的主要组成部分是指对某一物项生产必不可少的设备，包括测试设备。属于该规则提到工厂或工厂主要组成部分的直接产品的物项本身，即使不分类为以上所列的出口控制分类编号之中，也受该规则限制。

A major component of a plant means equipment that is essential to the production of an item, including testing equipment. Items that are the direct product of a covered plant or major component of a plant do not themselves have to be classified in one of the listed ECCNs to be restricted under this rule.

暂行最终规则并未表明美国工业安全局将如何对指定实体“生产或开发”的物项一词进行解释。

The interim final rule did not indicate how BIS will interpret the term “produced or developed” by a designated entity.

该规则将不适用于在 2020 年 5 月 15 日之前已开始生产且在 2020 年 9 月 14 日之前出口的外国制造的物项的运输。The rule will not apply to shipments of foreign-produced items whose production had started prior to May 15, 2020 and are exported before September 14, 2020.

为响应临时最终规则的宣布，中国商务部扬言要发布“不可靠实体清单”。“不可靠实体清单”已于去年宣布，但从未发布或正式实施。此清单是否会发布还有待观察。如果发布的话，可能会对清单上的美国和非美国公司施加限制的程度也还有待观察。

In response to the announcement of the interim final rule, China’s Ministry of Commerce threatened to publish its “Unreliable Entities List”. The Unreliable Entities List had been announced last year but was never published or formally implemented. It remains to be seen whether this list will be published, and if so, the extent of restrictions that may be imposed on U.S. and non-U.S. listed companies.

## 延长临时通用许可授权期限和 5G 合作

### Extension of Temporary General License Authorization and 5G Collaboration

与此行动同时，美国工业安全局还宣布将华为的临时通用许可证期限延长至 2020 年 8 月 13 日。临时通用许可证没有其他更改。

In conjunction with this action, BIS also announced the renewal of Huawei’s TGL through August 13, 2020. There are no other changes to the TGL.

在临时通用许可证的第一个版本中，美国工业安全局授权允许就 5G 标准开发与作为公认的国际标准机构一份子的华为进行合作。美国工业安全局于 2019 年 8 月延长该临时通用许可证期限时，删除了该项授权。这导致许多美

国公司由于担心在合作讨论中披露受《出口管理条例》管制的技术而停止了与华为作为成员之一的国际标准机构的合作。

In the first version of the TGL, BIS authorized engagement with Huawei necessary for the development of 5G standards as part of duly recognized international standards bodies. BIS subsequently removed this TGL authorization when it was renewed in August 2019. This caused many U.S. companies to cease collaborating with international standards bodies in which Huawei was a member, out of a concern that such discussions could involve the release of technology subject to the EAR.

报道称，美国商务部正在批准一项允许美国公司与华为合作的规则，合作内容范围限于为下一代 5G 网络设定全球标准。但该声明尚未发布。

Reports suggest the Commerce Department is nearing approval of a rule that would permit U.S. companies to collaborate with Huawei on setting global standards for next generation 5G networks, but no such announcement has been made to date.