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Tightening the Cordon – U.S. Restricts Licensing Policy and Adds Allies to Technology Controls

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Key takeaways

- On Monday, February 13, 2023, the U.S. government will officially issue a stricter policy of denial for providing lower-tech items to Huawei.
- Technological containment continues as the Netherlands and Japan move to impose U.S.-style restrictions on semiconductor exports to China.

1. Additional U.S. restrictions on foreign suppliers to Huawei

Huawei is prohibited from receiving U.S.-origin items because it is designated on the U.S. Entity List. Further, because Huawei is designated with a Footnote 1 (FN 1), non-U.S. items that are the Foreign Direct Product of U.S.-origin technology and software may not be exported, reexported, or transferred to Huawei without a license from the U.S. Department of Commerce, Bureau of Industry and Security (BIS).

Current U.S. licensing policy for Foreign Direct Product Rule (FDPR) products is to deny the provision of such products to Huawei if those products could be used to support the development or production of telecom systems, equipment, and devices below, at, or above the 5G level. A new policy will go into effect next week (and may have informally been in effect for some months now) that will lower that bar and restrict that position.

Under the new policy, it is likely that BIS will deny applications to export, reexport, or transfer items for use in or with products operating below the 5G level to Huawei—including 4G, Wi-Fi 6 and 7, artificial intelligence, and high-performance computing and cloud items. That policy may also be applied to other FN1 and FN4 designated entities.

The formal introduction of this new licensing policy is not entirely surprising for those in the industry that have faced challenges in obtaining export licenses for the past months, and even years. BIS has already denied—or allowed to sit unprocessed for months—applications related to lower-tech items including 4G-only chips and 5Ghz Wi-Fi-only chips.

However, the new policy may even go further and deny a license for any export of FDPR products to Huawei. There are even reports that BIS may revoke previous licenses granted for exports to Huawei.

2. EU and Japan joins the efforts

As the United States imposed further restrictions back in October, the Biden Administration began pushing U.S. allied countries to implement similar controls. That effort has resulted in both the Netherlands and Japan reaching an agreement with the U.S. to impose further restrictions on the export of semiconductors and related technology and manufacturing equipment to China.

Reports indicate that the Biden administration is not yet announcing precise measures or details of the agreement. However, as mentioned in our blog article here, the Netherlands will likely impose similar restrictions to the United States, though likely without any of the extraterritorial application that is a hallmark of U.S. regulations released in October 2022, which we discussed here. If that is the case, the Netherlands would be the first Member State in the European Union (EU) to align with U.S. measures on semiconductors, which may lead to further EU-wide restrictions on the export of semiconductors to China. For the moment, the lack of EU action has left some reportedly concerned that the bloc is vulnerable to retaliation from China and that this agreement has made the bloc look weak in its relationship with the United States.

Japan, the Netherlands, and the United States declined to comment further on the content of the agreement and the new controls to be implemented by Japan and the Netherlands. However, the Dutch government has already forbidden sales of some of the country’s most advanced semiconductor machinery, known as extreme ultraviolet (EUV) lithography systems, to China. We expect further controls on the chips themselves, as well as related technology.

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