

BIS Releases Statistics on Export Licenses to Huawei and SMIC Showing Majority of License Applications Were Approved

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In response to a request from the ranking member of the House Foreign Affairs Committee, the Department of Commerce's Bureau of Industry and Security (BIS) provided export license statistics related to Chinese firms Huawei and Semiconductor Manufacturing International Corporation (SMIC). According to BIS documents released by the Committee on October 21, 2021, between November 9, 2020 and April 20, 2021, BIS approved 113 export licenses involving Huawei out of 169 applications received. Although the statistics cover less than a year and presumably involve applications for items that the applicants were confident did not pose a national security risk to the U.S., it is nevertheless an important data point for current or future Huawei business partners wondering about the chances of obtaining an export license for their products. Those chances are apparently pretty good—approximately 69% of all license applications related to Huawei were approved. The news is even better for those who want to export to SMIC, as more than 91% of all license applications received related to SMIC during the same period were approved by BIS.

Both Huawei and SMIC were added to the Commerce Department's Entity List in 2019 and, since then, an export license is required to export to these entities any item controlled under the Export Administration Regulations, including EAR99 items, which is essentially all U.S.-origin products and technology. Such license applications are supposedly subject to a presumption of denial standard of review by BIS. The reality is apparently just the opposite. Only 2 of 169 Huawei-related applications were denied outright with another 48 returned without action—likely because the applicant failed to provide information required by BIS or requested the application be returned potentially in the face of opposition to the application from BIS. Similarly, only 1 of the SMIC-related applications was denied, with 17 returned without action. A summary of the license determinations, based on data provided by BIS, is below.

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

- Total Number of Applications: 169
- 113 Approvals (69.3%) with a Total License Value of \$61,432,330,663

Approvals by Export Classification

Classification	Total Approvals
Category 3 (Electronics Design Development and Production)	7
Category 5 (Telecommunications/Information Security)	1
Items controlled for Antiterrorism reasons only (typically do not require an export license to China)	25
EAR99 (typically do not require an export license to China)	80

- 48 Returned Without Action (RWA) (28.4%) with a Total License Value of \$29,775,410,958

RWAs by Export Classification

Classification	Total RWAs
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Category 6 (Naval Vessels and Special Naval Equipment)	1
Items controlled for Antiterrorism reasons only	6
EAR99	41

- 2 Denials (1.2%) with a Total License Value of \$57,408,002

Denials by Export Classification

Classification	Total Denials
Items controlled for Antiterrorism reasons only	1
EAR99	1

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

- Total Number of Applications: 206
- 188 Approvals (91.3%) with a Total License Value of \$41,892,580,680

Approvals by Export Classification

Classification	Total Approvals
Category 2 (Materials Processing)	26
Category 3 (Electronics Design Development and Production)	10
Category 5 (Telecommunications/Information Security)	3
Items controlled for Antiterrorism reasons only (typically do not require an export license to China)	28
EAR99 (typically do not require an export license to China)	121

- 17 RWAs (8.3%) with a Total License Value of \$1,159,996,615

RWAs by Export Classification

Classification	Total RWAs
Category 2 (Materials Processing)	2
Category 5 (Telecommunications/Information Security)	3
Items controlled for Antiterrorism reasons only (typically do not require an export license to China)	1
EAR99 (typically do not require an export license to China)	11

- 1 Denial (0.5%) with a Total License Value of \$57,408,000

Denials by Export Classification

Classification	Total Denials
Items controlled for Antiterrorism reasons only (typically do not require an export license to China)	1

Again, it is likely that applicants only submitted applications to export items that they believed they could convince BIS did not pose a national security threat (i.e., they would not have assisted with the development of 5G technology or enhanced surveillance capabilities).

BIS noted that nearly half of the antiterrorism and EAR99 items were semiconductors and that in many cases the end user was not Huawei or SMIC. BIS attempted to downplay the significance of any conclusions that could be drawn from the data, saying disclosing licensing data for “an arbitrary snapshot in time” risked “politicizing the licensing process and misrepresenting the national security determinations” made by the agencies involved in adjudicating licenses (Commerce, State, Defense and Energy). Nevertheless, it should be encouraging to the industry to see that BIS is open to granting export licenses involving these two entities and presumably to other Chinese companies that have been added to the Entity List.

Foley Hoag’s [Trade Sanctions & Export Controls practice](#) has significant experience with BIS license applications, including those involving Huawei, and can assist companies with assessing the chances of a particular application being approved and preparing the license application.

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