

EXHIBIT 36



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

December 9, 2019

Via email to:

Lauren Hartz, Jenner & Block LLP
lhartz@jenner.com

Re: FOIA Appeal, Case File FY19-92

Dear Ms. Hartz:

This letter is the response of the Office of the United States Trade Representative (USTR) Freedom of Information Act (FOIA) Appeals Committee to your FOIA appeal, which we received on November 8, 2019, of our September 17, 2019 response to the FOIA request you submitted on May 1, 2019. You sought records related to the investigation or prosecution of Huawei or Meng Wanzhou, or the allegations against Huawei and Ms. Meng in the EDNY indictment.

You have appealed the adequacy of USTR's search for records and our application of FOIA Exemption 5, asserting that the redacted portions of the documents are not pre-decisional and deliberative. You did not appeal our application of FOIA Exemption 6. The Committee has carefully reviewed your appeal and the actions taken by our FOIA Office in responding to your request.

The Committee has determined that the search for records was sufficient. We reviewed the actions of the FOIA Office and determined that the search for responsive records was comprehensive and based on the broadest set of initial search terms you provided. Utilizing eDiscovery software, the FOIA Office conducted searches using the timeframes and more than 70 search terms and phrase combinations your office provided. The searches captured the correct spelling of the name 'Ren Zhengfei'. FOIA staff spent nearly ten hours reviewing search results.

None of the eleven responsive records we located demonstrates any connection between USTR and the investigation, prosecution, or EDNY indictment of Huawei or Meng Wanzhou. The Committee has confirmed with staff of the relevant USTR offices that they neither are aware of any USTR involvement in these matters nor any additional records responsive to your request.

With respect to information the FOIA Office withheld under Exemption 5, the Committee affirms the FOIA Office's actions in part. At the time of our response, we reasonably foresaw

that disclosure would harm an interest protected by Exemptions 5. Due to the passage of time, and after consultations with the State Department concerning page 9, we no longer foresee that disclosure would harm those interests. Therefore, we are releasing certain information previously withheld under Exemption 5 on pages 6 and 9. The Committee affirms that the remaining redactions under Exemption 5 because the information is both predecisional and deliberative in nature, the release of which would cause foreseeable harm to USTR's deliberative process.

If you are dissatisfied with our adjudication of this appeal, you may contact the Office of Government Information Services (OGIS) at NARA to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park MD 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. You may also seek judicial review in the United States District Court for the judicial district in which you are located or have your principal place of business, or in the District of Columbia, as provided in 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in cursive script, reading "Fred L. Ames", enclosed within a rectangular border.

Fred L. Ames
Freedom of Information Act Appeals Committee

RE: [EXTERNAL] Huawei/China talks

From: "Davis, Emily K. EOP/USTR" (b) (6)
:
To: James Politi <james.politi@ft.com>, "Emerson, Jeffrey W. EOP/USTR" <jeffrey.w.emerson@ustr.eop.gov>
Date: Thu, 06 Dec 2018 11:21:42 -0500

Hi James – We have no announcements or comments at this time.

Thanks,

Emily

From: James Politi <james.politi@ft.com>
Sent: Thursday, December 6, 2018 10:10 AM
To: Emerson, Jeffrey W. EOP/USTR <Jeffrey.W.Emerson@ustr.eop.gov>; Davis, Emily K. EOP/USTR <Emily.K.Davis@ustr.eop.gov>
Subject: [EXTERNAL] Huawei/China talks

Hi Emily and Jeff,
Hope all is well. I was wondering if you could give me some guidance on the China talks, first in terms of timing - when will the next round of negotiations begin with Chinese officials, is it the 17th of December ? Also what is the impact of the prosecution of Huawei's CEO Sabrina Meng on the case and when did ambassador Lighthizer know about it and was it discussed at the dinner in Buenos Aires ?
Thanks very much
James

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James Politi
Financial Times
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1667 K St NW Suite 825
Washington DC 20006
Tel: +12024340985
Mobile: +12027744339
Twitter: @jamespoliti
><https://www.facebook.com/ftitaly/><



FW: Huawei situation...

From: "Wentzel, Roger A. EOP/USTR" (b) (6)
:
To: "Hurtado, Rufino EOP/USTR" <rufino.hurtado@ustr.eop.gov>
Date: Thu, 06 Dec 2018 11:52:20 -0500

From: Schneller, Keith D. EOP/USTR <Keith.D.Schneller@ustr.eop.gov>
Sent: Thursday, December 6, 2018 9:28 AM
To: Bomer Lauritsen, Sharon E. EOP/USTR <Sharon_E_BomerLauritsen@ustr.eop.gov>; Doud, Gregory F. EOP/USTR <Gregory.F.Doud@ustr.eop.gov>
Cc: Wentzel, Roger A. EOP/USTR <Roger_Wentzel@ustr.eop.gov>; Doherty, Julia M. EOP/USTR <Julia_Doherty@ustr.eop.gov>
Subject: Huawei situation...

The news that came out last night about HuaWei founder's daughter being detained in Canada could (b) (5)

HuaWei was founded by Mr. Ren Zhengfei who grew up in a poor family in Guizhou Province (poorest province in China) and made it into the PLA after the Cultural Revolution. He founded HuaWei in '87. Now he's worth \$3.4 billion and has excellent political connections in China. HuaWei employees 180,000 people in 170 countries. It is the third largest seller of smartphones in the world after Apple and Samsung and expects to sell 200 million handsets this year. His daughter, Meng Wanzhou, was being groomed to take over the company in the future. She was detained while changing plans in Canada last Saturday.

This action could (b) (5) but China's Ministry of Commerce started putting out "positive" statements about initiatives the Chinese government will take to address US concerns about IP violations, tech transfer, etc.

The WP posted an excellent article this morning summarizing this situation:

CHINA PROTESTS 'DESPICABLE HOOLIGANISM' AFTER ARREST OF HUAWEI EXECUTIVE [WASHINGTON POST 12/6]

By Anna Fifield

BEIJING — China has strongly protested to the United States and Canada on Thursday after the surprise arrest in Vancouver of a top executive at Huawei Technologies, the world's largest maker of telecoms network equipment.

Meng Wanzhou, Huawei's chief financial officer and the daughter of the company's founder, is set to appear in court Friday for a bail hearing after being arrested on Saturday while changing planes. According to multiple news reports, Meng was arrested at the United States's request because Huawei is suspected of trying to evade American sanctions on Iran. U.S. prosecutors have reportedly been investigating since 2016 whether Huawei violated U.S. export and sanctions laws by shipping of U.S.-origin products to Iran.

The arrest, made on the very same day that President Trump and China's Xi Jinping sat down for dinner together in Buenos Aires to negotiate a truce in their trade war, is being viewed here as politically motivated.

The United States is "resorting to despicable hooliganism," the nationalist Global Times wrote in an editorial published Thursday. "Anybody can see that the United States is maliciously picking holes in Huawei, trying to give it a hard time using the American legal system," said the paper, which often reflects the foreign policy views of the Communist Party.

The "persecution" of Huawei is "clearly contrary to the spirit of the consensus" forged between Trump and Xi, it said. The two sides are now entering talks to try to find a way out of the tit-for-tat tariff war within the 90-day time frame set by Trump.

The Commerce Ministry is trying not to let Meng's arrest derail that process. "The China and U.S. trade teams are now in smooth communication and good cooperation," spokesman Gao Feng said. "We are full of confidence that China and the U.S. can reach an agreement within 90 days."

But over at the Foreign Ministry, spokesman Geng Shuang said that the Chinese government had made "stern" and "solemn" representations to both the United States and Canada over Meng's arrest.

"We have asked them to clarify the grounds for the detention, to release the detainee and earnestly safeguard the legal and legitimate rights and interests of the person involved," Geng said.

The investigation into Huawei appears similar to a previous case against ZTE Corp, another Chinese telecommunications equipment company, which pleaded guilty last year to violating U.S. export sanctions on Iran.

ZTE was initially blacklisted in the U.S., a move that brought it to the brink of bankruptcy, but after Trump's intervention that was downgraded to a \$892 million fine and outside monitoring of its business activities.

But no one was detained or arrested in the ZTE case, and Huawei has not been formally accused of breaching the sanctions.

"My jaw dropped when I saw this news," said James McGregor, chairman of the greater China region for APCO Worldwide, a business consultancy. "This is so different from anything we've seen before. Serious legal action taken with political timing."

More than almost any other company, Huawei has come to symbolize the potential and the threat of a rising China. It has quickly become one of the pillars of the new, high-tech economy championed by Xi, who has ambitions for China to become the world leader in high-tech manufacturing.

Huawei employs 180,000 people in some 170 countries and earned \$92.5 billion last year. It is the world's third largest seller of smartphones, after Apple and Samsung, and expects to sell 200 million handsets this year.

But the Shenzhen-based company has also become synonymous with a darker side of China's rise, founded on suspicions that it has links to the Chinese military or security services.

The United States, Britain, Australia and New Zealand — four of the five countries in the "Five Eyes" intelligence-sharing network, the other being Canada — have blocked Huawei from their networks on security grounds.

Trump signed a bill in August banning U.S. government agencies from using Huawei and ZTE hardware ranging from smartphones to routers and networking devices.

There are widespread concerns that Chinese technology could contain spyware that could be used to infiltrate American systems or otherwise snoop on Americans.

Huawei has repeatedly insisted that it is a private company and China's government has also rejected the allegations. A government spokeswoman recently even used the suggestion to make a joke. After reports in October that China was eavesdropping on calls Trump was making on his iPhone, a spokeswoman quipped that if the American president is worried about his Apple device being tapped, "he can use Huawei."

The suspicions about spying have their basis in the fact that Huawei was founded by a man who spent about 20 years in the People's Liberation Army, including reportedly serving in a military technology division.

In many ways, founder Ren Zhengfei's life story exemplifies the Chinese dream.

He was born into a poor family in the remote, rural province of Guizhou in 1944, and was initially denied entry to the Communist Party because of his family's poor political standing. Two years after the Cultural Revolution, in 1978, while he was doing his military service, he was finally admitted.

After he finished in the PLA, he started Huawei in 1987 with the equivalent of \$3,000.

"I always had this faith that I should work hard, devote myself to good causes, and be even ready to sacrifice my life for the interest of the people," Ren said during a visit to New Zealand in 2013.

The company rapidly became a technological giant and Ren is now estimated to be worth \$3.4 billion, according to the Forbes Rich List.

He is not only enormously wealthy, he also now has excellent political connections. When Xi went to Britain for a state visit in 2015, Ren gave him a tour of Huawei's London office.

Now 74, the founder had been widely seen as grooming his oldest daughter, who uses the English name Sabrina Meng, to take over the running of the company from him, although he has denied that.

Meng studied at Huazhong University of Science and Technology and, after graduating in 1992, started working at China Construction Bank. A year later, she joined her father's company, working for a time as a telephone operator.

"I served as a secretary, and helped on sales and exhibitions etc. when the company was small. My early jobs in Huawei were very trivial," she said in an interview with the 21st Century Business Herald in 2013.

She returned to her university in 1997 to do a master's degree in accounting, then returned to Huawei's finance department. This "was the real start of my career," she told the paper.

As Huawei took off, so too did Meng's career.

She was the brains behind setting up five global service centers around the world and a global payment center in Shenzhen, credited with boosting Huawei's accounting efficiency, according to her official company biography.

Then in 2007, she led a partnership between Huawei and IBM that helped the Chinese company develop its data systems. More recently, she has been focused on Huawei's finances and long-term development plans as the company's chief finance officer.

Earlier this year, she was named deputy chairwoman of the company's board.

Chinese Internet commentators rallied behind Meng on Thursday. One person on Weibo, using the name "Seavees," quoted a line from the patriotic Chinese blockbuster movie "Wolf Warrior 2": "Chinese citizens: When you are in danger overseas, don't give up. Remember, there is a strong motherland behind you."

Some analysts questioned the timing of the arrest, if not the substance.

"There may be a legal basis for this, but politically, the timing is corrosive," said James Zimmerman, a former head of the American Chamber of Commerce in China. "We're in the middle of a some very sensitive, tense negotiations and they're doing something that is unprecedented in four decades of U.S.-China relations."

In the past, China has retaliated swiftly against similar kinds of actions. The question now is whether Beijing will react this time and risk sparking a new battle in the trade war.

"I've never seen China take something like this lying down," said McGregor, who has lived in China for nearly three decades. "For now, China seems to be taking a measured approach. But this could get ugly very quickly."

[Return to Top](#)

Best Regards,

Keith Schneller
Agricultural Affairs
Office of the U.S. Trade Representative
O: 202-395-9575
C: (b) (6)
E: keith.d.schneller@ustr.eop.gov

Fwd: Flagging: Huawei actions

From: jeffrey.d.gerrish@ustr.eop.gov
To: "Lighthizer, Robert E. EOP/USTR" (b) (6)@ustr.eop.gov>
Date: Sat, 26 Jan 2019 10:53:54 -0500

Begin forwarded message:

From: "Willems, Clete R. III EOP/WHO" (b) (6)@who.eop.gov>
Date: January 26, 2019 at 9:34:15 AM EST
To: "Gerrish, Jeffrey D. EOP/USTR" <Jeffrey.D.Gerrish@ustr.eop.gov>
Subject: Fwd: Flagging: Huawei actions

See below

Sent from my iPhone

Begin forwarded message:

From: "Baker, Brittany G. EOP/WHO" <(b) (6)@who.eop.gov>
Date: January 25, 2019 at 7:02:22 PM EST
To: "Lin, Merry S. EOP/WHO" (b) (6)@who.eop.gov>, "Willems, Clete R. III EOP/WHO" <(b) (6)@who.eop.gov>, "Varga, Susan C. EOP/WHO" (b) (6)@who.eop.gov>
Subject: RE: Flagging: Huawei actions

Yes – sent to him.

From: Lin, Merry S. EOP/WHO (b) (6)@who.eop.gov>
Sent: Friday, January 25, 2019 6:48 PM
To: Willems, Clete R. III EOP/WHO (b) (6)@who.eop.gov>; Baker, Brittany G. EOP/WHO (b) (6)@who.eop.gov>; Varga, Susan C. EOP/WHO (b) (6)@who.eop.gov>
Subject: Flagging: Huawei actions

Clete – would recommend flagging for Jeff for USTR's awareness. Susan/Brittany – please can you flag for Larry?

DOJ just informed that they will take the following Huawei-related actions on Monday. We understand that A/AG Whitaker will hold a press conference, at which he will:

- Unseal a criminal indictment against Huawei for theft of trade secrets in a case pending in federal court in Washington state.

- Publicize/release additional details about allegations against Meng in connection with the extradition request.

Thanks,
Merry

Merry S. Lin, CFA
Senior Advisor for International Economic Affairs
National Economic Council
Phone: (b) (6)

RE: [EXTERNAL] Trade talks - Huawei

From : "Emerson, Jeffrey W. EOP/USTR" <jeffrey.w.emerson@ustr.eop.gov>
To: James Politi <james.politi@ft.com>, "Davis, Emily K. EOP/USTR" <emily.k.davis@ustr.eop.gov>
Date: Mon, 28 Jan 2019 18:16:14 -0500

We don't have a comment. Thanks for checking. For your planning, there is a pool photospray at the start of the meeting on Wednesday being organized by the White House.

From: James Politi <james.politi@ft.com>
Sent: Monday, January 28, 2019 5:59 PM
To: Emerson, Jeffrey W. EOP/USTR <Jeffrey.W.Emerson@ustr.eop.gov>; Davis, Emily K. EOP/USTR <Emily.K.Davis@ustr.eop.gov>
Subject: [EXTERNAL] Trade talks - Huawei

Hi Emily and Jeff - is there any reaction from ambassador Lighthizer to concerns that the Huawei indictment could damage the trade negotiations ? Also, do you have logistical information about the talks ? Best, James

--

James Politi
Financial Times
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Washington DC 20006
Tel: +12024340985
Mobile: +12027744339
Twitter: @jamespoliti
><https://www.facebook.com/ftitaly/><

RE: Acting Attorney General Whitaker News Conference: 3:30pm

From : "Wineland, Timothy N. EOP/USTR" <timothy_wineland@ustr.eop.gov>
To: "Fleming, Bon E" <flamingbe@state.gov>, "Howe, Julia M. EOP/USTR" <julia_m_howe@ustr.eop.gov>
Date: Mon, 28 Jan 2019 14:39:32 -0500

Very helpful, thanks Bon -Tim

From: Fleming, Bon E <FlemingBE@state.gov>
Sent: Monday, January 28, 2019 2:38 PM
To: Wineland, Timothy N. EOP/USTR <Timothy_Wineland@USTR.EOP.GOV>; Howe, Julia M. EOP/USTR <Julia_M_Howe@ustr.eop.gov>
Subject: FW: Acting Attorney General Whitaker News Conference: 3:30pm

Here is more detail.

I've learned a little more from DOJ and NSC. There is still a lot of churn on the focus of the message within DOJ and the other agencies, and how to answer various questions at the (pushed back) 4:30pm presscon. (b) (5) Details:

- Two charges will be unsealed at the press conference. They are from two separate US Attorneys' offices.
- The first charge is related to cyber-enabled theft of trade secrets against Huawei, a U.S. subsidiary, and a foreign subsidiary. It involves the theft of some T-Mobile tech. (two week-old press below)
- The second charge will be the unsealing of the DOJ charges against Meng, the reason behind her arrest in Canada. DOJ originally wasn't planning on unsealing these charges, so this is a new decision by them.
- DOJ and NSC has basically asked that we refer to DOJ for press inquiries. We'll have cleared boilerplate language ready to go. (b) (5) They have some hold lines to deal with questions until the press conference.

I'll try to give everyone a readout of the press conference and note any further surprises.

RE: crim indictment against Huawei released

From: "Chen, Philip D. EOP/USTR" <philip_d_chen@ustr.eop.gov>
"Millan, Juan A. EOP/USTR" <juan_millan@ustr.eop.gov>, "Buis, William L. EOP/USTR" <william_buis@ustr.eop.gov>, "Tsao, Arthur N. EOP/USTR" <arthur_n_tsao@ustr.eop.gov>
To:
Date: Mon, 28 Jan 2019 17:17:26 -0500

Attachments
: huawei_et_al._indictment__0.pdf (3.85 MB)

Indictment attached

Indictment is a public document and not included here.

From: Chen, Philip D. EOP/USTR
Sent: Monday, January 28, 2019 5:16 PM
To: Millan, Juan A. EOP/USTR <Juan_Millan@ustr.eop.gov>; Buis, William L. EOP/USTR <William_Buis@ustr.eop.gov>; Tsao, Arthur N. EOP/USTR <Arthur_N_Tsao@ustr.eop.gov>
Subject: crim indictment against Huawei released

<https://www.justice.gov/opa/pr/chinese-telecommunications-conglomerate-huawei-and-huawei-cfo-wanzhou-meng-charged-financial>

Chinese Telecommunications Conglomerate Huawei and Huawei CFO Wanzhou Meng Charged With Financial Fraud

Huawei Device USA Inc. and Huawei's Iranian Subsidiary Skycom Also Named Defendants

Other Charges Include Money Laundering, Conspiracy to Defraud the United States, Obstruction of Justice and Sanctions Violations

A 13-count indictment was unsealed earlier today in federal court in Brooklyn, New York, charging four defendants, including Huawei Technologies Co. Ltd. (Huawei), the world's largest telecommunications equipment manufacturer, with headquarters in the People's Republic of China (PRC) and operations around the world. The indicted defendants include Huawei and two Huawei affiliates — Huawei Device USA Inc. (Huawei USA) and Skycom Tech Co. Ltd. (Skycom) — as well as Huawei's Chief Financial Officer (CFO) Wanzhou Meng (Meng).

From: Chen, Philip D. EOP/USTR
Sent: Monday, January 28, 2019 4:17 PM
To: Millan, Juan A. EOP/USTR <Juan_Millan@ustr.eop.gov>; Buis, William L. EOP/USTR

<William_Busis@ustr.eop.gov>; Tsao, Arthur N. EOP/USTR <Arthur_N_Tsao@ustr.eop.gov>

Subject: Apparently there will be a crim indictment against Huawei shortly

Top US officials to make China-related enforcement announcement

- They include US Acting Attorney General Matthew Whitaker and Commerce Secretary Wilbur Ross, Justice Department says
- US prosecutors reportedly plan to file criminal charges against Huawei Technologies