

Vol. 42, No. 40

October 10, 2022

## BIS Drops the Hammer on China Chips

Commerce's Bureau of Industry and Security (BIS) is implementing a series of changes to its export controls to restrict the People's Republic of China's (PRC's) ability to both purchase and manufacture certain high-end chips used in military applications.

The export controls announced in the two rules restrict the PRC's ability to obtain advanced computing chips, develop and maintain supercomputers, and manufacture advanced semiconductors used by the PRC to produce advanced military systems.

These rules state that foreign government actions that prevent BIS from making compliance determinations will impact a company's access to U.S. technology through addition to the Entity List.

"BIS's ability to determine whether a party is in compliance with our export control rules is a core tenet of our enforcement program," said **Assistant Secretary of Commerce for Export Enforcement Matthew S. Axelrod**. "Where BIS is prevented by a host government from conducting our end-use checks in a timely manner, we will add parties to the Unverified List, and if the delay is extreme enough, the Entity List, to prevent the risk of diversion of any U.S. technology that could undermine our national security interests."

**Controls Related to Advanced Computing and Semiconductor Manufacturing** address U.S. national security and foreign policy concerns in two key areas. First, the rule imposes restrictive export controls on certain advanced computing semiconductor chips, transactions for supercomputer end-uses, and transactions involving certain entities on the Entity List. Second, the rule imposes new controls on certain semiconductor manufacturing items and on transactions for certain integrated circuit (IC) end uses.

© Copyright 2022 Gilston-Kalin Communications LLC P.O. Box 7592 Arlington, VA 22207  
All rights reserved. Subscription and corporate site license information 301.460.3060

[www.wttonline.com](http://www.wttonline.com)

Editor: Frank Ruffing +1.703.283.5220. [fruffing@tradereqs.com](mailto:fruffing@tradereqs.com)

*Specifically, the rule:*

- Adds certain advanced and high-performance computing chips and computer commodities that contain such chips to the Commerce Control List (CCL);
- Adds new license requirements for items destined for a supercomputer or semiconductor development or production end use in the PRC;
- Expands the scope of the Export Administration Regulations (EAR) over certain foreign-produced advanced computing items and foreign produced items for supercomputer end uses;
- Expands the scope of foreign-produced items subject to license requirements to twenty-eight existing entities on the Entity List that are located in the PRC;
- Adds certain semiconductor manufacturing equipment and related items to the CCL;
- Adds new license requirements for items destined to a semiconductor fabrication “facility” in the PRC that fabricates ICs meeting specified. Licenses for facilities owned by PRC entities will face a “presumption of denial,” and facilities owned by multinationals will be decided on a case-by-case basis.
- Restricts the ability of U.S. persons to support the development, or production, of ICs at certain PRC-located semiconductor fabrication “facilities” without a license;
- Adds new license requirements to export items to develop or produce semiconductor manufacturing equipment and related items; and
- Establishes a Temporary General License (TGL) to minimize the short-term impact on the semiconductor supply chain by allowing specific, limited manufacturing activities related to items destined for use outside the PRC.

*The text of the rule is available on the Federal Register website [[here](#)].*

**Revisions to BIS’s Unverified List** to clarify that a sustained lack of cooperation by the host government that effectively prevents BIS from determining compliance with the EAR may lead to the addition of an entity to the Entity List.

The rule stipulates that sustained lack of cooperation by a foreign government that prevents BIS from verifying the bona fides of companies on the Unverified List (UVL) can result in those parties being moved to the Entity List, if an end-use check is not timely scheduled and completed.

The rule adds 31 new entities to the UVL and removes 9 entities that have met relevant requirements.

**Export Enforcement has issued a policy memorandum “[Addressing Foreign Government Prevention of End-Use Checks](#)”**. The policy calls for adding parties to the Unverified List 60 days after checks are requested but host government inaction prevents their completion, and an additional 60-day process for adding UVL parties to the Entity List when there is a sustained lack of cooperation by a host government to facilitate completion of the checks.

Text of the rule, which includes the list of parties added and removed, is available on the Federal Register’s website [[here](#)]. The rule takes effect on October 7, 2022.

As of the effective date of this rule, the specified semiconductor manufacturing equipment is controlled for RS reasons under the EAR, in order to immediately address concerns with the PRC’s

demonstrated intent and ability to use the specified items for activities of U.S. national security and foreign policy concern.

Due to the urgent need for this rule to counter China's actions, it will not be published as a Section 1758 technology rule, which would include a notice and comment period (50 U.S.C. 4817(a)(2)(C)). However, BIS is interested in hearing from the public about the items in this rule and the scope of the new control.

This rule adds to the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR) certain advanced computing chips and the computers, "electronic assemblies," and "components" that contain them; (2) establishing a new end-use control for certain CCL items destined for "supercomputers"; and (3) creating two new Foreign Direct Product (FDP) rules related to advanced computing and "supercomputers" and expanding an existing FDP rule for certain entities listed on the Entity List.

## White House Signs onto EU Data Privacy

President Biden signed an Executive Order October 7 directing the steps that the United States will take to implement the U.S. commitments under the European Union-U.S. Data Privacy Framework (EU-U.S. DPF) announced by President Biden and European Commission President von der Leyen in March of 2022.

The E.O. creates a multi-layer mechanism for individuals from qualifying states and regional economic integration organizations, to obtain independent and binding review and redress of claims that their personal information collected through U.S. signals intelligence was collected or handled by the United States in violation of applicable U.S. law, including the enhanced safeguards in the E.O.

Under the first layer, the **Civil Liberties Protection Officer in the Office of the Director of National Intelligence (CLPO) will conduct an initial investigation** of qualifying complaints received to determine whether the E.O.'s enhanced safeguards or other applicable U.S. law were violated and, if so, to determine the appropriate remediation. The E.O. builds up the existing statutory CLPO functions by establishing that the CLPO's decision will be binding on the Intelligence Community, subject to the second layer of review, and provides protections to ensure the independence of the CLPO's investigations and determinations.

As a second layer of review, the E.O. **authorizes and directs the Attorney General to establish a Data Protection Review Court ("DPRC")** to provide independent and binding review of the CLPO's decisions, upon an application from the individual or an element of the Intelligence Community.

Judges on the DPRC will be appointed from outside the U.S. Government, have relevant experience in the fields of data privacy and national security, review cases independently, and enjoy protections against removal. Decisions of the DPRC regarding whether there was a violation of applicable U.S. law and, if so, what remediation is to be implemented will be binding.

To further enhance the DPRC's review, the E.O. provides for the DPRC to select a special advocate in each case who will advocate regarding the complainant's interest in the matter and ensure that the DPRC is well-informed of the issues and the law regarding the matter. The White House called for the Attorney General to issue regulations on the establishment of the DPRC.

## Axelrod Beats Antiboycott Drum

Assistant Secretary for Export Enforcement Matt Axelrod unveiled October 6 an anticipated enhancement of Antiboycott Rules, aligning them with current export enforcement practices.

1. **Enhanced Penalties.** Penalty amounts imposed will reflect the seriousness of the violation and will be commensurate with the harm caused. For the most serious violations – Category A violations will be subject to the maximum. Penalties for Category B, and Category C violations will also be increased.
2. **Reprioritized Violation Categories** in a manner that reflects our current view of their relative seriousness.
3. **Admissions of Misconduct.** In the past, we have allowed companies to pay a reduced penalty without admitting misconduct. In other enforcement contexts, including in our administrative export enforcement cases, companies must admit their conduct in order to obtain a resolution.
4. **Focus on Foreign Subsidiaries of U.S. Companies.** Commerce will be more aggressive in exploring ways to deter foreign parties from issuing or making boycott requests of U.S. persons. "We will bring a renewed focus to our enforcement efforts against controlled foreign subsidiaries of U.S. parent companies when they act in violation of our antiboycott regulations."

"Antisemitism too often manifests itself in attempts to delegitimize Israel through conspiracy theories and through discourse that dehumanizes Jewish people," Axelrod told members of the American Jewish Council while announcing the action. "Given the remaining anti-Israel holdout, as well as the serious rise in antisemitism, I want to ensure that we in the Commerce Department are doing what we can to have the strongest possible anti-boycott enforcement program."

The text of the rule released today is available on the Federal Register's website [here](#). The policy memo regarding the implementation of the rule is available on the BIS Export Enforcement website [here](#).

## Europeans Impose Eighth Package of Sanctions against Russia.

This package introduces new EU import bans worth €7 billion to curb Russia's revenues, as well as export restrictions. The package also lays the basis for the required legal framework to implement the oil price cap envisaged by the G7.

**The package includes New Export Restrictions**, banning of the export of coal including coking coal, specific electronic components, technical items used in the aviation sector, as well as certain

chemicals. A prohibition on exporting small arms and other goods under the anti-torture Regulation has been added.

**Import Restrictions include a ban on the import of Russian finished and semi-finished steel products** (subject to a transition period for some semi-finished), machinery and appliances, plastics, vehicles, textiles, footwear, leather, ceramics, certain chemical products, and non-gold jewelry.

**Implementing the G7 oil price cap.** The package marks the beginning of the implementation within the EU of the [G7 agreement on Russian oil exports](#). The price cap would allow European operators to transport Russian oil to third countries, provided its price remains under a pre-set “cap”.

**Financial, IT consultancy and other business services** that can no longer be provided to the government of Russia or legal persons established in Russia now include IT consultancy, legal advisory, architecture and engineering services.

**Deterring sanctions circumvention.** The EU has introduced a new listing criterion, which will allow it to sanction persons who facilitate the infringements of the prohibition against circumvention of sanctions.

## McCaul Wants Close Look at BIS

House Foreign Affairs Committee ranking Republican Michael McCaul (Texas) plans to take a “hard look” at export controls if he becomes chairman of the panel in the next Congress. Looking at export controls also means looking at the agency in charge – the Commerce Department’s Bureau of Industry and Security, he told a program yesterday sponsored by the Atlantic Council.

BIS has been ignored by Congress for too long, Mr. McCaul said. “I’m going to be looking under the hood of this relatively unknown agency.” If he chairs Foreign Affairs next year, the congressman said he will implement a 90-day review of BIS, including having the bureau’s top officials testify before the committee, in order to understand how export controls are being enforced. “They’ve never had any real oversight,” Mr. McCaul commented.

BIS has denied less than 1 percent of export licenses requests, approving exports to Chinese companies like Huawei and semiconductor manufacturers SMIC, he said. That low number of denials reflects the Commerce Department’s focus on supporting industry over national security, resulting in the export of critical technologies to China. “We are literally aiding and abetting the Chinese war machine.”

Given Commerce’s business-friendly focus, Congress should take a look at whether BIS should be moved to the State Department, Mr. McCaul said.

## Tai Raps FTAs, Touts Industrial Policy

In remarks at the Roosevelt Institute’s Progressive Industrial Policy Conference, US Trade Representative Katherine Tai spelled her take on the nexus of Trade and Industrial Policies:

“We’ve been doing FTAs for almost forty years now. And while some sectors of the economy have benefited, many in this room know that the traditional approach to trade—marked by aggressive liberalization and tariff elimination—also had significant costs: concentration of wealth. Fragile supply chains. De-industrialization, offshoring, and the decimation of manufacturing communities.

“At the same time, we’ve experienced over two decades of the PRC’s non-transparent, state-directed industrial dominance policies conducted on a massive scale. Traditional trade tools and the multilateral trading system failed to address these distortions, and markets even rewarded them. The global impacts of these policies have profoundly limited the ability of workers and industries in open markets and free societies like ours to thrive or even survive.

“This has led many people to view trade and globalization with increased hostility—and to a lack of confidence in our very institutions. We believe industrial policy and trade policy must complement each other if we are going to realize this goal.

“To get this right, trade has got to be about more than just unfettered liberalization, cheap goods, and maximizing efficiencies. Now, we have not sworn off market opening, liberalization, and efficiency. But it cannot come at the cost of further weakening our supply chains, exacerbating high-risk reliances, decimating our manufacturing communities, and destroying our planet.

### **\*\* Briefs \*\***

**August Trade Figures** The U.S. Census Bureau and the U.S. Bureau of Economic Analysis [announced](#) October 5 that the goods and services deficit was \$67.4 billion in August, down \$3.1 billion from \$70.5 billion in July, revised. Year-to-date, the goods and services deficit increased \$132.3 billion, or 24.4 percent, from the same period in 2021. Exports increased \$329.8 billion or 19.9 percent. Imports increased \$462.1 billion or 21.0 percent. Deficits were recorded, in billions of dollars, with China (\$33.5), European Union (\$13.5), Mexico (\$9.8), Vietnam (\$9.6), and Canada (\$7.4) the top five.

**Ways & Means Dems Call on WTO to Straighten Up.** House Ways and Means Chairman Richard Neal (D-Mass) led a delegation to Geneva last week, where he reportedly emphasized the need for the institution’s reform. Our friends at *Washington Trade Daily* report a chastised Director-General Ngozi Okonjo-Iweala telling members Thursday that “WTO reform is key to members of the US Congress and business community,” and “absent the movement of this reform, the WTO will not be seen as delivering,” emphasizing that “we really have to work on issues of WTO reform.” Former Ways and Means Trade Counsel Angela Ellard currently serves as Deputy Director General at the WTO.

**WTO Budget Proposal Gets Frosty Reception** The DG’s proposals for increasing the budget by 7.7 percent next year to CHF 212.45 million came under intense questioning from the Netherlands, Germany, Sweden, the United States, India, and several other countries. The DG said it is important to have an increase in the budget to carry out new activities, including “improving the skills of the WTO staff as well as inducting new staff”. Reportedly the WTO has overspent funds during the



past 18 months, including costly air travel and the implementation of Secretariat reforms recommended by McKinsey and Company.

**UK-US Launch Dialogue on Technology and Data** Secretary of Commerce Gina Raimondo and UK Secretary of State for Digital, Culture, Media and Sport, The Rt Hon Michelle Donelan MP announced Friday the launch of a new senior-level Comprehensive Dialogue on Technology and Data. The program for the coming year will focus on three work strands: Data, Critical and Emerging Technologies; and Secure and Resilient Digital Infrastructure. The UK welcomed the EO "[Enhancing Safeguards for US Signals Intelligence Activities](#)," (see "White House" above).

**FMC / Chassis Action** The Federal Maritime Commission has awarded a \$500,000 contract to the National Academies of Science (NAS) to conduct a study examining intermodal chassis pools and provide recommendations on best practices for their management. The study was mandated by Section 19 of the Ocean Shipping Reform Act of 2022 (OSRA).

**OFAC / More Iran Sanctions**, designating additional leaders within Iran's government and security apparatus for the shutdown of Iran's Internet access and the continued violence against protesters. The action follows OFAC's September 22 designation of Iran's Morality Police, its senior leadership, and other senior leaders of Iran's security organizations.

**OFAC / Burmese Arms Dealers** designating three individuals and one entity connected to Burma's military regime pursuant to Executive Order (E.O.) 14014. Aung Moe Myint was sanctioned by the European Union on February 21, 2022, and by the United Kingdom on March 25, 2022. Dynasty International Company Limited is a Burmese company that was founded by Aung Moe Myint and has been used to facilitate arms deals on behalf of the Burmese military, to include the import of aircraft parts.

**OFAC / DPRK Fuel Procurement Network** designating individuals and entities for activities related to the exportation of petroleum to the Democratic People's Republic of Korea (DPRK). OFAC's actions target Singapore-based Kwek Kee Seng, Taiwan-based Chen Shih Huan, and Marshall Islands-registered company New Eastern Shipping Co Ltd, which were involved in the ownership or management of the *Courageous*, a vessel that has participated in several deliveries of refined petroleum to the DPRK. The *Courageous*, known as the *Sea Prima* during much of its illicit activity, conducted UN-prohibited STS transfers with the DPRK vessels and at least one direct delivery at Nampo, DPRK.

**OFAC / Western Balkans** designating two individuals and one business entity in Bosnia and Herzegovina (BiH) pursuant to Executive Order (E.O.) [14033](#). These designations follow OFAC's September 26 designation of a corrupt state prosecutor in BiH and build on other recent sanctions imposed on individuals and entities in the region. Per the 1995 Dayton Peace Agreement, BiH consists of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska, home to most Bosnian Serbs. According to [Foreign Policy](#) Bosnian Serb leader Milorad Dodik has emerged as the most pro-Russian politician in the Balkans.

**OFAC / Rhino Horn, Ivory, and Pangolins** formed the core of a wildlife trafficking enterprise cited in an OFAC Action against Malaysian national Teo Boon Ching and his company Sunrise Greenland Sdn. Bhd. The endangered and threatened wildlife and parts were shipped from Africa, through Malaysia and Lao, to consumers in Vietnam and China.

**BIS / Russian Aviation Sanctions Extended** Temporary Denial Orders for Azur Air, Aeroflot, and UTair Aviation. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (section 746.8(a)(1) of the EAR). Over 500 Western-origin aircraft are in Russia and require parts.

**BIS / More Russian Entity List Adds** Including the Russian Institute of Radio Navigation and Time, technical organizations related to the development of quantum computing technologies, which would further enable Russia's malicious cyber activities, or are otherwise important to Russia in developing advanced production and development capabilities, along with the Sevastopol Naval Plant, in the Crimean region of Ukraine.

**CBP / Customs-Trade Partnership Against Terrorism (CTPAT)** and CTPAT Trade Compliance Program; notice allowing for an additional 30 days for public comments. The CTPAT Program comprises of two different program divisions, CTPAT Security and CTPAT Trade Compliance. Current CTPAT importers are given the opportunity to receive additional benefits in exchange for a commitment to assume responsibility for monitoring their own compliance by applying to the CTPAT Trade Compliance program. [\[87 FR 60185\]](#)

### \*\*\* Calendar \*\*\*

**October 13 Under Secretary for Industry and Security Alan F. Estevez and Assistant Secretary for Export Administration Thea D. Rozman Kendler** will conduct a public briefing on the New China Chip Rules and associated actions. The call will begin at 9:00 AM EDT and conclude at 10:00 AM EDT. *The telephone number for attending this event is **253-292-3452** (Conference ID: 394 490 430#) further info on the [BIS website](#).*

**October 17. Center for a New American Security** 9:30AM–10:30AM EDT for the launch of a five-installment series of reports advising on a uniquely American industrial policy. [\[Register\]](#)