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# Department of Commerce Tightens Restrictions on the Export of Advanced Computing Chips and Semiconductor Manufacturing Equipment to China

On October 17, 2023, the Department of Commerce's Bureau of Industry and Security ("BIS") announced new export controls further restricting the export of certain advanced computing chips and semiconductor manufacturing equipment to the People's Republic of China ("PRC").<sup>1</sup> These measures follow a year after BIS announced significant export controls in October 2022 that restricted the export of high-end chips and semiconductor manufacturing equipment to the PRC.<sup>2</sup> These new restrictions, which generally take effect on November 16, 2023, signal the U.S. government's continued focus on restricting the PRC's access to certain advanced technologies.

## Further Restrictions on the Export of Advanced Computing Chips to the PRC

The new rule on the export of advanced computing chips retains the licensing requirements imposed by the October 2022 rule on the export of certain advanced computing chips to the PRC and makes two substantive changes:

- **Expanding the Parameter Restrictions:** The October 2022 rule restricted the export of high-end chips to the PRC, but U.S. companies continued to be able to export chips that were below the thresholds established by the rule. The new restrictions expand the technical parameters of the chips that are subject to those October 2022 controls. The update adds a new "performance density threshold" restriction, that is intended to "prevent future workarounds." It also removes the "interconnect bandwidth" as a parameter for identifying restricted chips. Further, under a license exception program, the new rule will also introduce a "notification" requirement for the export of certain lower-performance chips to China and other countries subject to a comprehensive arms embargo. BIS will then have 25 days to determine whether the transaction may proceed under the existing license exception or instead require a license.<sup>3</sup> These

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<sup>1</sup> BIS, *Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern* (Oct. 17, 2023), available [here](#). ("BIS Press Release").

<sup>2</sup> The October 2022 BIS rule, as BIS summarized: imposed "controls on additional types of semiconductor manufacturing equipment," updated "the U.S. persons restrictions while codifying previously existing agency guidance, to ensure U.S. companies cannot provide support to advanced PRC semiconductor manufacturing while avoiding unintended impacts" and expanded "license requirements for semiconductor manufacturing equipment to apply to additional countries beyond the PRC and Macau, to 21 other countries for which the U.S. maintains an arms embargo." See BIS Press Release; see also, BIS, *Commerce Implements New Export Controls on Advanced Computing and Semiconductor Manufacturing Items to the People's Republic of China (PRC)* (Oct. 7, 2022), available [here](#).

<sup>3</sup> This license exception program is the "License Exception Notified Advanced Computing." See BIS Press Release.

technical expansions of the parameters, and the introduction of the notification requirement for certain lower-performance chips, will apply the export restrictions to a broader array of advanced computing chips.

- *Targeting Circumvention:* The new restrictions seek to prevent the circumvention of U.S. export controls through the exports of these materials to subsidiaries of Chinese companies. The new rule establishes a licensing requirement for the export of controlled chips to any company that is headquartered in the PRC (and any other country subject to a comprehensive arms embargo) or Macau, or whose ultimate parent company is headquartered in one of those countries. These restrictions are intended to prevent companies in China and Macau from obtaining controlled chips through their foreign subsidiaries and branches.

These restrictions, published under the Advanced Computing Chips Interim Final Rule (“AC/S IFR”), will generally take effect on November 16, 2023.<sup>4</sup>

### Further Restrictions on the Export of Semiconductor Manufacturing Equipment to the PRC

BIS also announced a rule that will impose further controls on the export of semiconductor manufacturing equipment to the PRC. These restrictions will apply to types of equipment beyond those subject to the October 2022 rule and will make alterations to the October 2022 rule, which BIS stated are intended “to ensure U.S. companies cannot provide support to advanced PRC semiconductor manufacturing while avoiding unintended impacts.” These restrictions, published under the Export Controls on Semiconductor Manufacturing Items Interim Final Rule (“SME IFR”), generally take effect on November 16, 2023.<sup>5</sup>

### Additions to the Entity List

BIS also added to the Entity List two PRC entities, Biren Technology and Moore Threads Intelligent Technology, and their subsidiaries (a total of 13 entities) that are involved in the development of advanced computing chips. BIS stated that these companies “have been found to be engaged in activities contrary to U.S. national security and foreign policy interests.” As a consequence, “foundries producing chips for these listed parties will need a BIS license before the foundries may send such chips to these entities or parties acting on behalf of these entities[.]”<sup>6</sup> These additions to the Entity List are effective on October 17, 2023.<sup>7</sup>

### Looking Ahead

The rules signal a continued focus by the U.S. government on restricting the export of advanced computer chips and semiconductor manufacturing equipment to China. These actions reflect the Biden-Harris administration’s objective, as National Security Advisor Jake Sullivan stated in 2022, to utilize export controls to “maintain as large of a lead as possible” vis-à-vis countries of concern on “certain technologies, such as advanced logic and memory chips” given their “foundational nature.”<sup>8</sup>

These export control measures have been augmented by President Biden’s August 2023 Executive Order restricting U.S. investment in certain sectors in China, including (i) semiconductors and microelectronics, (ii) quantum information technologies

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<sup>4</sup> BIS, *Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections* (Oct. 18, 2023; Federal Register public inspection date), available [here](#).

<sup>5</sup> BIS, *Export Controls on Semiconductor Manufacturing Items* (Oct. 18, 2023; Federal Register public inspection date), available [here](#).

<sup>6</sup> BIS Press Release.

<sup>7</sup> BIS, *Entity List Additions* (Oct. 17, 2023), available [here](#).

<sup>8</sup> The White House, *Remarks by National Security Advisor Jake Sullivan at the Special Competitive Studies Project Global Emerging Technologies Summit* (Sep. 16, 2022), available [here](#).

and (iii) certain artificial intelligence systems. The Department of Treasury has published an Advanced Notice of Public Rulemaking to solicit public comments on how it should implement the Executive Order.<sup>9</sup>

We expect that the export of advanced computing chips and semiconductor manufacturing equipment to the PRC will be an area of further action by BIS. By enacting these new rules, BIS has signaled its intention to continue to tighten the restrictions and close potential loopholes.

BIS's Bureau of Enforcement has prioritized enforcement efforts related to the transfer of sensitive technology to China, and we expect that it will continue to do so. In February 2023, the Department of Commerce and the Department of Justice announced the establishment of the Disruptive Technology Strike Force.<sup>10</sup> Assistant Secretary of Commerce Matt Axelrod has emphasized that "[t]he purpose of the Strike Force is to focus and prioritize enforcement efforts to prevent our adversaries from advancing their development of these disruptive technologies[.]"<sup>11</sup> Notably, this year, BIS announced a \$300 million resolution with Seagate, the largest standalone administrative penalty imposed in BIS history, for violations of export controls related to China.<sup>12</sup> BIS's Bureau of Enforcement is, as Assistant Secretary Axelrod put it, "hyper-focused on preventing the PRC from illegally obtaining sensitive U.S. items."<sup>13</sup>

We will continue to monitor actions taken by BIS and provide further updates as appropriate.

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<sup>9</sup> See Paul, Weiss, *President Biden Issues Executive Order Creating Unprecedented Outbound Investment Review Prohibitions Targeting China* (Aug. 23, 2023), available [here](#).

<sup>10</sup> See Paul, Weiss, *Deputy Attorney General Announces Creation of Disruptive Technology Strike Force* (Mar. 3, 2023), available [here](#).

<sup>11</sup> BIS, *Assistant Secretary for Export Enforcement Matthew S. Axelrod Remarks to the American Association of Exporters and Importers' 102nd Annual Conference and Expo* (June 21, 2023), available [here](#).

<sup>12</sup> See Paul, Weiss, *BIS Imposes \$300 Million Penalty Against Seagate for Export Control Violations and Makes Controversial Changes to Voluntary Self-Disclosure Program* (May 1, 2023), available [here](#).

<sup>13</sup> BIS, *Statement of Matthew S. Axelrod Assistant Secretary of Commerce for Export Enforcement Before the Senate Banking, Housing, and Urban Affairs Committee Hearing Entitled, "Countering China: Advancing U.S. National Security, Economic Security, and Foreign Policy"* (May 31, 2023), available [here](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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