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BIS Issues Interim Final Rule to Implement Additional Export Controls on Advanced Computing and Semiconductor Items

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On October 7, 2022, the Department of Commerce's Bureau of Industry and Security (BIS) issued an **Interim Final Rule** implementing additional export controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. BIS made clear in its announcement that advanced computing items and "supercomputers" can be used to enhance data processing and analysis capabilities, including through artificial intelligence (AI) applications, and that China is "rapidly developing exascale supercomputing capabilities" that have multiple uses, including military applications. These revisions are intended to restrict China's "ability to both purchase and manufacture certain high-end chips used in military applications." As a result, with this rule, BIS "seeks to protect U.S. national security and foreign policy interests by restricting [China's] access to advanced computing for its military modernization, including nuclear weapons development, facilitation of advanced intelligence collection and analysis, and for surveillance."

Specifically, the rule:

1. Adds certain advanced and high-performance computing chips and computer commodities

that contain such chips to the Commerce Control List (CCL);

2. Adds new license requirements for items destined for a supercomputer or semiconductor development or production end use in China;

3. Expands the scope of the EAR over certain foreign-produced advanced computing items and foreign produced items for supercomputer end uses;

4. Expands the scope of foreign-direct product rule for items subject to license requirements to 28 existing entities on the Entity List that are located in China;

5. Adds certain semiconductor manufacturing equipment and related items to the CCL;

6. Adds new license requirements for items destined to a semiconductor fabrication "facility" in China that fabricates ICs meeting specified. Licenses for facilities owned by Chinese entities will face a "presumption of denial," and facilities owned by multinationals will be decided on a case-by-case basis. The relevant thresholds are as follows:

   - Logic chips with non-planar transistor architectures (i.e., FinFET or GAAFET) of 16nm or 14nm, or below;

   - DRAM memory chips of 18nm half-pitch or less;

   - NAND flash memory chips with 128 layers or more.

7. Restricts the ability of U.S. persons to support the development, or production, of ICs at certain Chinese-located semiconductor fabrication "facilities" without a license; and,

8. Adds new license requirements to export items to develop or produce semiconductor manufacturing equipment and related items.

To assist companies whose activities and supply chains involving China may be impacted by this rule, BIS has provided a "model certificate" to assist exporters "with the process of resolving potential red flags" over whether items are subject to the EAR based on the advanced computing foreign direct product rule. It has also established a Temporary General License (TGL) that will allow specific, limited manufacturing activities related to items destined for use outside of China.

This rule will become effective in phases. The semiconductor manufacturing items restrictions are effective as of October 7, 2022; the restrictions on U.S. persons' ability to support the development, production, or use of ICs at certain Chinese-located semiconductor fabrication "facilities" is effective as of October 12, 2022; and, the advanced computing and supercomputer controls, as well as the other changes in the rule, are effective on October 21, 2022. Public

comments on all aspects of this Interim Final Rule must be submitted to BIS no later than December 12, 2022.