



Semiconductors Trade Update: Macau, IFR Comment Period, and CHIPS Funds

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With the ink barely dry on the October 7, 2022 Export Administration Regulations (“EAR”) advanced semiconductors and supercomputing interim final rule (the “Semiconductor IFR”), the U.S. Department of Commerce (“Commerce”) continues to pull multiple levers in a bid to fundamentally change the trajectory of global advanced semiconductors manufacturing in the United States’ (“U.S.”) favor. Most immediately, industry’s ability to participate in the Semiconductor IFR’s comment period is rapidly closing. **All Semiconductor IFR comments are due on January 31, 2023.** For an overview of the Semiconductor IFR and some of the rules it introduced that are mentioned below, please review our previous article: [*BIS Imposes New Controls Targeting China’s Semiconductor and Advanced Computing Industries.*](#)

The open comment period notwithstanding, Commerce’s Bureau of Industry and Security (“BIS”) extended the Semiconductor IFR’s China-specific Regional Stability (“RS”) control to the Macau Special Administrative Region of China (“Macau”) **effective January 17, 2023**. This new RS China/Macau control applies to Export Control Classification Numbers (“ECCNs”) 3A090, 3B090, 3D001, 3E001, 4A090, 4D090, and 4E001. Exports, reexports, and transfers of such items to or within Macau are now more limited in terms of EAR license exceptions availability. Macau is also now subject to the advanced computing and supercomputer foreign-produced direct product rules, the supercomputer and semiconductor manufacturing end-use controls, and targeted restrictions on U.S. persons’ activities in or relating to Macau. To justify some of the above measures, BIS noted “China has invested large amounts of capital to develop a special economic zone to develop semiconductors in Macau” resulting in “diversion concerns.” However, outside the Semiconductor IFR context, the EAR continues to treat Macau as a destination independent of China. (Contrast this with Hong Kong, which has required all the same onerous export, reexport, and in-country transfer EAR authorizations as China since the U.S. concluded its autonomy had been compromised in 2020.)

Also, since publishing the Semiconductor IFR, BIS added a number of Chinese entities to the Entity List in December 2022, including twenty-one (21) entities involved in “major artificial intelligence (AI) chip research and development (R&D), manufacturing, and sales . . . that are or have close ties to government organizations that support the [Chinese] military and defense industry.”

These aggressive measures—and, in particular, the Semiconductor IFR—haven’t come without a price. Many U.S. and international firms utilizing U.S. software and technology have had to recalibrate their operations and seek

licenses to prevent export controls violations. One U.S. provider of design and engineering services for crystal pullers—Nexcel Electronic Technology Inc. (“NETI”)—described in [a November public comment](#) a “catastrophic impact” to its business operations that would “result in the shutdown of the company and the termination of all of the company’s employees.” NETI was presumably able to avert a worst-case scenario, as it was [reported](#) in December that BIS issued NETI a four-year license to continue its operations.

However, while the compliance costs and risks of operating semiconductor-related sales and supply chains in China have risen, firms willing to expand semiconductor manufacturing operations in the U.S. have much to look forward to in 2023. Commerce has publicly stated it will begin soliciting applications [next month](#) for approximately \$50 billion in funding to boost U.S. manufacturing of mostly advanced semiconductors. U.S. firms looking to benefit from those funds are advised to review Commerce’s strategy paper (which we summarized [here](#)) and follow updates on CHIPS.gov.

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Winston & Strawn attorneys will continue to monitor U.S. export controls on U.S.-origin semiconductors, parts, components, software, and technology, along with the CHIPS Act. Please contact the authors or your Winston relationship partner if you have questions, would like assistance with submitting a comment to the Semiconductor IFR, or wish to be added to Winston’s Global Trade & Foreign Policy Insights mailing list.

WINSTON’S SEMICONDUCTOR INDUSTRY EXPERIENCE

Winston boasts a cross-disciplined team of attorneys with significant experience assisting clients in the semiconductors and materials science industry. Our semiconductors group helps our clients to navigate various intellectual property, securities, international trade, CFIUS, and antitrust issues, including those involving alleged conspiracies to unreasonably restrain trade, illegal imports, alleged anticompetitive licensing schemes, FRAND violations, and monopolization claims. We have worked to get punitive consumer class actions dismissed, Section 337 investigations settled, and high-profile claims by competitors and licensees dismissed. In his prior role as the Deputy Assistant Secretary for Investment Security at Treasury, one of our key international trade partners oversaw several CFIUS reviews of high-profile semiconductor company transactions. Our firm includes over 20 attorneys with technical degrees in life sciences and high-tech sectors (including industrial and systems engineering, electrical engineering, and computer engineering), and attorneys with experience working for leading semiconductor companies, allowing us to truly understand the technology involved in this field. We also have extensive experience overseas, with a particularly strong presence in Asia, often allowing us to pursue a comprehensive legal strategy across jurisdictions to help our clients achieve their business goals.

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