

CLIENT ALERT

BIS Export Control Update Conference Highlights U.S. Priorities

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Export controls are an important arrow in the U.S. foreign policy quiver, and industry should expect continued aggressive enforcement—this was the theme of the day during the recent U.S. Department of Commerce Bureau of Industry and Security (“**BIS**” or the “**Bureau**”) Export Control Update Conference (the “**Conference**”). The government officials speaking at the Conference — which drew 1200 practitioners to Washington, D.C. on March 27-29 — projected continued enthusiasm for controls as a critical tool of U.S. policy. They also reviewed recent changes made to the U.S. export control regime and previewed BIS priorities both for regulation and enforcement.

Unmistakably, the focus of U.S. export control authorities continues to be on Russia and China. The Conference heard from Ukraine’s ambassador to the United States, and multiple officials reinforced the message that it is a U.S. priority to keep homegrown technology out of Russian hands. Additionally, China’s rise, and the importance and likely evolution of semiconductor and advanced computing controls, was another theme repeated by the officials who spoke. The key to both of these efforts is the importance of the United States’ allies in coordinating and enforcing multilateral controls. The Conference also made clear that U.S. export control priorities will continue to be a major focal point of U.S. diplomatic efforts in both Europe and Asia, including the continued expansion of foreign controls. Further, BIS does not appear to intend its enforcement tempo to taper—after a year in which the Bureau issued its largest ever penalty, enforcement officials signaled that they intend to continue their aggressive efforts.

Below we review several of the most important takeaways from the Conference.

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I. China and Russia Continue to Take Center Stage

Preventing U.S.-origin technology from being used against the United States and its allies was a constant thread throughout the Conference. Most evocatively, multiple speakers referenced U.S.-origin items being found in debris on Ukrainian battlefields and urged industry to “step up” for the Ukrainian war effort. For producers and exporters, this translates into continued attention being paid by enforcement arms to items on the [Common High Priority List](#), particularly chips and other integrated circuits, and particularly when such items are being exported to Turkey, the Middle East, Central Asia, and the Caucasus. These jurisdictions are home to substantial numbers of Russian shell companies, and BIS officials at the Conference encouraged exporters to be wary of red flags—such as companies placing similar or identical orders to those previously made by Russian companies.

The theme of U.S. technology being used “against” the United States was also repeated with respect to the new controls imposed on advanced semiconductor and computing technology. Officials emphasized that the controls were intended as national security measures (and *not* economic tools) meant to slow Chinese military technology and surveillance advances, even if “freezing” Chinese capability was unrealistic. Again, BIS officials highlighted red flags that industry should be attuned to—including “end user” addresses co-located in office parks with hundreds of other companies, as one official cited a rate of over 24% negative results out of over 1,500 Bureau-conducted end use checks. Regulators indicated that the semiconductor and advanced computing regulations would “continue to evolve at a faster pace” than many export control veterans are used to, as the Bureau attempts to keep pace with technological advances.

II. International Cooperation Efforts

One notable change in the global export control environment in the past several years has been the willingness of allies to impose controls in concert with the United States. The lock-step imposition of controls on Russia by the U.S., UK, and EU following the invasion of Ukraine,¹ and the ability of the United States to convince Japan and the Netherlands to join the advanced semiconductor controls on China,² represent a veritable sea change in the global regulatory landscape, as companies have had to account for broader regulatory hurdles that had not previously been applied to some non-U.S. activities. Both American and international presenters at the Conference indicated that such coordination was unlikely to slow any time soon.

¹ “FACT SHEET: Joined by Allies and Partners, the United States Imposes Devastating Costs on Russia,” White House (February 24, 2022), <https://www.whitehouse.gov/briefing-room/statementsreleases/2022/02/24/fact-sheet-joined-by-allies-and-partners-the-united-states-imposes-devastating-costs-on-russia/>.

² See Allen, Gregory and Benson, Emily, “Japan and the Netherlands Announce Plans for New Export Controls on Semiconductor Equipment,” Center for Strategic and International Studies (April 10, 2023), <https://www.csis.org/analysis/japan-and-netherlands-announce-plans-new-export-controls-semiconductor-equipment>.

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U.S. government speakers at the Conference made clear that continued regulation with allies would be a focal point of U.S. diplomatic engagement. Officials presented this coordination both as important for achieving the policy goals of the controls themselves (*i.e.*, additional countries imposing controls would more effectively keep priority goods out of Russian or Chinese hands) and as a means of protecting the interests of U.S. industry (so that it is not at a disadvantage compared with European competitors). U.S. enforcement officials also indicated that cooperation, such as last year's "[quint-seal memorandum](#)" issued with the other "Five Eyes" countries (UK, Canada, Australia, and New Zealand) would continue. Meanwhile, representatives from Europe and Japan seemed to echo the positive review of recent coordinated actions and previewed additional developments coming. Spain and France appear poised to enact their own controls of advanced computing and semiconductor technology, and the EU may move up its review and overhaul of its dual use list by a year to Q1 of 2025. In short, industry should prepare for the continued expansion and enforcement of export control restrictions beyond the United States as other advanced economies take such measures seriously.

III. High Enforcement Tempo

Last year witnessed the highest number of enforcement actions and the imposition of the [highest civil enforcement penalty](#) in BIS's history. Numerous officials mentioned these as points of pride and indicated that such aggressive enforcement was likely to be the norm for the near future. Enforcement officials noted that they were pairing their high enforcement tempo with additional guidance to industry—offering [updated guidance](#) to freight forwarders and a new "[Don't Let This Happen to You](#)" [publication](#) as examples. BIS's enforcement arm is also increasing its outreach to U.S. manufacturers whose goods have been found in missiles and drones recovered in Ukraine. Similarly, BIS has begun sending "commercially available datasets" listing over 600 foreign entities who have been identified as exporting dual-use to Russia in an attempt to spur additional diligence on the part of U.S. businesses. The underlying message, though, was that U.S. exporters were being given every opportunity to ensure compliance with existing export controls, and that aggressive enforcement proceedings were likely to follow.

IV. Other Noteworthy Items

While no true "breaking news" was made at this year's Conference, there were several other items of note from BIS:

- BIS is engaging in increased coordination with the Department of Treasury, particularly FinCEN. FinCEN has implemented two new Suspicious Activity Report ("**SAR**") "key terms," allowing financial institutions to flag suspected export control violations.
- BIS's new [Office of Information and Communications Technology and Services](#) has a broad mandate, but true enforcement is likely still far out. The Office has been charged with implementing four separate Executive Orders and has issued two Advanced Notices of Proposed Rulemaking in the last several months (related to [cloud services](#)

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and [connected vehicles](#)), though speakers at the Conference were not able to estimate when these preliminary regulatory actions would translate into final rules.

- BIS's Office of Boycott Enforcement is now publishing a [list](#) of parties that have made boycott requests of U.S. companies. U.S. parties should check this list as one possible reference if they believe they may have been the target of an illegal boycott request.
- Although speakers did not directly address the impact that the upcoming U.S. election might have on export controls, several noted the continuity—particularly with respect to China—in export control efforts over the past two administrations.

Speakers at the Conference repeatedly referenced the fact that export controls have historically been considered rather technocratic and obscure, but they were clearly energized by what they described as “revitalization.” Although many speakers also noted BIS's operating budget has not increased since 2010 (on an inflation-adjusted rate), each indicated that the Bureau was primed to continue both updating its regulations and carrying out enforcement actions. Accordingly, U.S. manufacturers and industry participants should be prepared to continue to devote resources to export control compliance as controls continue to be a feature of U.S. foreign policy.

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