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CLIENT ALERT

BIS Paves the Way for Chip Exports to China While Privileging Domestic Investment

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The Trump Administration has taken its first affirmative steps toward a more industry-friendly semiconductor export control regime, while concurrently illustrating its strategy for prioritizing domestic capacity.

On January 13, 2026, the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**") announced a new rule (the "**January 13 Rule**" or the "**rule**") revising the BIS's existing export review process for certain semiconductor chips destined for China. While the January 13 Rule is not the awaited-for replacement to the now-rescinded Biden-era AI Diffusion Rule, it does provide a path to increased exports for certain U.S. manufacturers and suggests the approach that BIS will take to high-end semiconductor export licensing going forward. The January 13 Rule eases the existing review process only for a very specific set of semiconductor chips, marking a significant shift from a presumption of denial to a case-by-case standard for review for those products. The January 13 Rule is effective as of January 15, 2026.

At the same time, however, President Trump announced that the United States ("**U.S.**") would impose a 25 percent tariff on those same semiconductor chips, when they are imported into the U.S. for subsequent re-export. These tariffs are also set to take effect on January 15, 2026.

Together, the conditions for export licensing and the simultaneous imposition of tariffs demonstrate a new strategy for trying to maintain U.S. superiority in compute capacity, while permitting U.S. businesses to continue to grow their overseas (and particularly Chinese) customer base.

1. Context for BIS's Change to Licensing Policy

As we have previously highlighted, during the Biden administration the U.S. imposed a series of export control measures on advanced semiconductors and related equipment that specifically targeted Chinese purchasers and end users. These efforts culminated in the so-called AI Diffusion Rule, which BIS published in January 2025, that advanced worldwide restrictions and a related licensing scheme and validated an end-user program for certain highly capable chips (and manufacturing equipment), as well as added new controls on some artificial intelligence model weights.

The restrictions in the AI Diffusion Rule were slated to go into effect in mid-May 2025. The Trump administration, on May 13, 2025, announced that it was rescinding and halting enforcement of the rule's provisions, stating that it "would have stifled American innovation and saddled companies with burdensome new regulatory requirements." BIS's rescission announcement left the formal changes to the Export Administration Regulations ("**EAR**"; including, e.g., the apparent worldwide licensing requirements for certain items) in place for the time being, but stated that it "plans to publish a regulation formalizing the rescission and will issue a replacement rule in the future." No formal rescission or replacement rule has yet been published, however, leaving the export community with significant uncertainty over BIS's approach to licensing.

Into that void, BIS's January 13 Rule provides welcome certainty for at least a subset of high-end semiconductors, and insight into BIS's potential future approach for a wider variety of items. It is not, however, a full replacement for the AI Diffusion Rule.

2. Substance of the January 13 Rule

a. Effect of the January 13 Rule

For export license applications related to high-end semiconductor chips that meet the criteria BIS lays out in the January 13 Rule (discussed further below), BIS will now review those requests on a case-by-case basis rather than with a presumption of denial. Practically, this means that BIS will be likely to approve at least some of these applications (as opposed to the high likelihood of rejection that came with the presumption of denial). Whether or not BIS actually approves an individual license application, however, will likely depend on the identity of the exporter, the identity of the customer and end user(s), and BIS's evaluation of the U.S.'s national security interests.

b. Coverage of the January 13 Rule

As noted above, the January 13 Rule revises the license review process for only certain semiconductor chips. Specifically, the January 13 Rule applies to semiconductors available for commercial sale in the United States as of January 13, 2026 with a total processing performance ("**TPP**") less than 21,000[1] and a total DRAM bandwidth under 6,500 GB/s.[2] The January 13 Rule specifically identifies the Nvidia H200 and AMD MI325X as examples of chips at this capability level, and indeed the rule seems relatively narrowly tailored for these high-profile U.S. exports.

In order to ensure that only chips that meet BIS's technical criteria are exported, the January 13 Rule imposes a requirement that a qualified third-party testing lab must review the technical capabilities of the chip to ensure it matches what is represented in the license application. Rather than reviewing each chip individually, a review of a representative sample of the semiconductors will suffice. The rule provides that the third-party lab conducting the review must meet the following qualifications:

- The lab must be U.S.-headquartered and not under the control of an entity or whose ultimate parent company is headquartered in Macau or a D:5 country;
- The lab must not have any financial ties, including interest or ownership, to any parties involved in the transaction; and
- The lab must have the necessary expertise to compare and confirm the technical capabilities listed in the license application and what the semiconductors' actual technical capabilities are.

Certification from the third-party lab must then be submitted to BIS as part of the licensing process.

The January 13 Rule maintains a presumption of denial for applications involving exports to entities that are headquartered, or have a parent company headquartered, in Macau or a destination in Country Group D:5, including end-users located outside of destinations in Country Group D:5 or Macau.

c. Conditions for the Applicability of the Revision

For semiconductors that meet the performance criteria described above, BIS will also require that exporters certify to a number of conditions and provide a significant amount of information before considering the license request.

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1 TPP is a measure that BIS introduced in its October 2023 Advanced Computing Interim Final Rule (88 Fed. Reg. 73458) to measure semiconductor performance, and that is defined in Technical Note 2 to Export Control Classification Numbers 3A090.a and 3A090.b in the Commerce Control List.

2 As defined in the notes to paragraph (dd)(1) in supplement no. 2 to part 748 of the EAR.

The list of certifications required under the January 13 Rule are as follows:

- The chips meet the performance metrics stipulated above;
- The chips are commercially available in the United States, meaning there are enough to avoid delay of fulfillment for existing and new U.S.-end use orders, with supporting data to confirm the certification;[3]
- "[G]lobal foundry capacity for similar or more advanced products for end-users in the United States" will not be diverted by production of the chips which are exported to China;
- The aggregate compute capacity (as measured by TPP) of the chips exported to China and Macau will not exceed 50 percent of the capacity shipped to U.S.-end use customers;
- The transaction does not involve prohibited end users (as described in EAR Part 744) or implicate prohibited end uses;[4] and
- The ultimate consignee has adopted and will use Know Your Customer policies and physical security measures to ensure unauthorized parties are not able to gain remote access.

In addition to these certifications, the applicant must also provide a range of information and supporting materials to BIS, some of which may be difficult to obtain. Specifically, the request must also include a list of all remote end users (that is, end users who might access the chips via an Infrastructure-as-a-Service provider) located in, or whose ultimate parent company is headquartered in, the following countries: Belarus, China, Cuba, Iran, Macau, North Korea, Russia, and Venezuela. The applicant must also identify how many units of the chip to be exported have been shipped in the United States as of the date of the license application, and specify a range of technical measurements.[5]

3. Tariffs on Certain Advanced Chips

While potentially loosening export control restrictions for these chips, the Trump Administration virtually simultaneously announced the imposition of a 25 percent tariff on certain advanced semiconductors, and specifically identified the Nvidia H200 and AMD MI325X as subject. These tariffs are being imposed under Section 232 of the Trade Expansion Act of 1962, a national security-related tariff program that is also managed by BIS, and pursuant

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[3] BIS did not specify what "supporting data" would be sufficient for exporters to demonstrate capacity to support any notional new U.S. customers.

[4] Military and military-intelligence end-use/user are defined in 15 CFR §§ 744.21(f) and (g), as well as 744.22(f)(1) and (f)(2). The transaction must also not be for a nuclear, missile, or chemical or biological weapons end use/user as defined under 15 CFR § 744.2-4 or for a party subject to 15 CFR § 744.8 or 744.11.

[5] Such measurements include the TPP, the total DRAM bandwidth, the interconnect bandwidth, copackaged DRAM capacity, and the peak power consumption at max TPP.

to which there was already an active investigation related to semiconductors.[6] BIS has not released the specific parameters of this tariff program, but the White House stated that the tariffs are not applicable to chips that are imported for the purpose of expanding U.S. domestic capacity.[7] The White House's press release notes that these tariffs will likely not be the only ones on semiconductors: "In the near future, President Trump may impose broader tariffs on imports of semiconductors and their derivative products, as well as an accompanying tariff offset program to incentivize domestic manufacturing as previously announced."[8]

4. Forward-Looking Assessment

While the January 13 Rule is applicable to a relatively narrow set of high-profile, high-performance semiconductor products, collectively, the recent actions suggest the type of considerations the Trump administration is using as it reconsiders U.S. export control policy and that BIS may include when it promulgates a full replacement to the AI Diffusion Rule. Specifically, the reliance on third-party labs to certify semiconductor performance and U.S. customer-related statistics are relatively novel features of a U.S. export licensing scheme. The resort to third-party certifications suggests that, despite a relatively accommodating approach to industry, BIS has not been satisfied with the self-certifications made by U.S. exporters and manufacturers previously. And the incorporation of domestic consumption data reflects a new approach to the goal of maintaining the U.S.'s technological edge in advanced computing capability vis-à-vis China.[9] When considered in tandem with the new Section 232 tariffs—apparently applicable only to chips that are re-exported from the United States—the Trump Administration's actions appear intended to permit increased exports of advanced technology by U.S. manufacturers while privileging U.S. capacity build-out.

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6 *See*, Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Semiconductors and Semiconductor Manufacturing Equipment, Dept. of Commerce (90 Fed. Reg. 15950, Apr. 16, 2025), https://www.federalregister.gov/documents/2025/04/16/2025-06591/notice-of-request-for-public-comments-on-section-232-national-security-investigation-of-imports-of.

7 Because BIS has not published the specific parameters, it is unclear precisely to which chips the tariffs will apply. However, the fact that both the January 13 Rule and the White House press release on tariffs specifically identify both the Nvidia H200 and AMD MI325X strongly suggests that the coverage will be similar if not identical.

8 Fact Sheet: President Donald J. Trump Takes Action on Certain Advanced Computing Chips to Protect America's Economic and National Security, White House (Jan. 14, 2026), https://www.whitehouse.gov/fact-sheets/2026/01/fact-sheet-president-donald-j-trump-takes-action-on-certain-advanced-computing-chips-to-protect-americas-economic-and-national-security/.

9 It is worth noting that Senate Banking Committee ranking member Elizabeth Warren welcomed this development, saying that "if BIS implements its regulation in good faith, it will not approve a single license for Nvidia to sell H200s to China" since "demand for AI chips in the United States far outstrips supply, and we should not let companies like Nvidia sell to Chinese tech giants as U.S. companies, startups, and universities wait in line." Warren Statement on New BIS Regulation Considering Licenses for the H200s, U.S. Senate Comm. on Banking, Housing, and Urban Affairs (Jan. 14, 2026), https://www.banking.senate.gov/newsroom/minority/warren-statement-on-new-bis-regulation-considering-licenses-for-the-h200s.

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