

TO: INTERESTED PARTIES

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FR: CHINA TECH THREAT

RE: FIVE AREAS TO WATCH DURING THIS CRITICAL 60 DAY WINDOW

On October 7 the U.S. Commerce Department's Bureau of Industry and Security (BIS) [issued](#) new export controls targeting Chinese chipmakers. Thomas Friedman of the *New York Times* [said](#) the new regulations are "a formidable new barrier...that will block China from being able to buy the most advanced semiconductors from the West or the equipment to manufacture them on its own." Analyst Jordan Schneider of the Rhodium Group [tweeted](#) that the controls are "wreaking havoc on China's chip industry." As just one example of the damage already done, Apple has [halted](#) plans to use YMTC chips.

We are now 20 days into a pivotal 60-day window ending on December 6 that will give a clearer read on the true impact of the export controls and whether the Commerce Department follows through on enforcement actions.

On October 27, Martijn Rasser of the Center for New American Security (CNAS) interviewed BIS Under Secretary Alan Estevez. Mr. Estevez provided clarifying comments about the new rules, and stated "we are not done" regarding semiconductors. Yet questions about the implementation of the new rules remain.

Here are five areas which analysts, journalists, and policymakers should monitor in the weeks ahead:

1. END-USE VERIFICATION

BIS added 31 Chinese [entities](#) – including YMTC – to its Unverified List (UVL). If a company is on the UVL, it means the Commerce Department has been unable to verify that controlled technologies aren't being used in ways contrary to U.S. national security interests. Given the overall state of U.S.-China relations, and the fact that YMTC chips are almost certainly being used in ways harmful to U.S. national security (i.e. by the Chinese military), it's doubtful that the Chinese government will allow companies on the Unverified List to comply with BIS end-use checks. The significance of these checks prompts a host of questions:

- When does the Commerce Department plan to begin these end-use checks?
- How will it determine if the Chinese government or the company is impeding the end-use check, and what criteria will Commerce use?
- Does Commerce have enough resources to conduct adequate end-use checks in China, and will it have appropriate access to all of the data, documentation, export/transfer records that it needs, even for technology transfer? In today's interview, Under Secretary Estevez said that he could always use more resources, but did not mention specifics about his present capabilities:
 - How many end-use check officials does Commerce have in China?
 - How many end-use checks does each official conduct per year?
 - How many days are involved, on average, in each end-use check?
- Will Commerce publish the findings of its end-use checks and specify what it specifically examined? This can be done in a public manner that protects proprietary data, as BIS's sister bureau at Commerce, the International Trade Administration's Export and Compliance Office, does routinely and has hundreds if not thousands of such public reports as examples.
- What about the reaction in China? Will Chinese companies already on the UVL, such as YMTC, allow end-use inspections or continue shutting out the Commerce Department over the next two months?
- Is Commerce pursuing a [much-deserved](#) end-use check with CXMT? If so, when did it initiate a request, and is CXMT on a running clock right now? If not, when will Commerce make a request?

2. TRANSFERRING COMPANIES ON THE UNVERIFIED LIST TO THE ENTITY LIST

Chinese companies' compliance with BIS' end-use checks will also likely determine whether they land on the Entity List. If "sustained lack of cooperation by a host government" prevents BIS from conducting end-use checks for a company on the UVL, that company can be added to the Entity List after a 60-day process. The Commerce Department is making it clear that the UVL is an on-ramp to the Entity List. Under Secretary Estevez today noted that, "if there's smoke, there's often fire."

While the pathway is clear; what really matters is whether the Commerce Department will work on the appropriate timeline and take the necessary enforcement action to make it happen.

- Does the Commerce Department have to wait until the end of the 60-day window to start preparing an Entity List designation?
- Since YMTC has been involved in activities that undermine U.S. national security – e.g. it is reportedly under [investigation](#) for selling chips to Huawei – why hasn't it already been designated to the Entity List? In other words, what is BIS waiting for?
- Finally, if YMTC and others are designated to the Entity List, will Huawei-type foreign direct product rules apply? And will the license review policy for all exports be "presumption of denial," or will the more relaxed "case-by-case" license review policy apply?

3. CONGRESSIONAL OVERSIGHT

While Congress has no formal role in the issuance or enforcement of the rules, multiple Democrat and Republican members of Congress have spent the last two years [demanding](#) that the Commerce Department add YMTC to the Entity List, reflecting a concern that the Department actually do what it is empowered to do.

- Now that the Commerce Department has laid out a clear pathway for YMTC and other Chinese tech entities to land on the Entity List, will Congress keep up the pressure to make sure the Department does what it says it can do?
- If a change of congressional leadership happens, will a new Chair of the House Foreign Affairs Committee provide more intense oversight?

4. U.S. CITIZENS SUPPORTING CHINESE CHIP PRODUCTION

BIS has also now "[restricted] the ability of U.S. persons to support the development, or production, of ICs (integrated circuits) at certain PRC-located semiconductor fabrication "facilities" without a license." Translation: Americans can't work at a Chinese semiconductor facility inside China without permission. This could potentially govern hundreds, if not thousands of American engineers and other support staff working inside China.

However, the prohibition applies only to specific activities. Non-advanced Chinese fabs can still hire engineers and the engineers can assist fabs with technologies that have crossover application to advanced chips.

Still, this rule has already had an immediate impact: The *Wall Street Journal* [reported](#) that American semiconductor manufacturing equipment companies such as KLA Corp and Lam Research are hitting pause on their operations in China and pulling out their staff based at YMTC. YMTC has [asked](#) its core U.S. staff to leave. Similarly, the Dutch company ASML – another supplier of high-end chipmaking equipment [issued](#) a notice to its U.S. staff saying “US employees must refrain –either directly or indirectly–from servicing, shipping, or providing support to any customers in China until further notice.”

This novel rule could deprive top Chinese semiconductor firms like YMTC and CXMT of critical brainpower they will need to survive, but only if the U.S. government enforces it.

- What agency will be tasked with policing these special immigration situations? Is this a function for Commerce/BIS or another, such as ICE or the State Department?
- How will the U.S. government punish American citizens who do not obey this rule?

5. REVIEW OF LICENSE APPLICATIONS

The new export controls impose a bevy of new license requirements on American firms seeking to export semiconductor-related technologies to China. But some of those requirements are only good insofar as licenses to export American technologies are denied. BIS has not had a strong track record in this respect: The *Wall Street Journal* [reported](#) that BIS approved 88% of all tech exports to China in 2021, down from a still-high 94% in 2020. Today Under Secretary Estevez noted that the high approval percentage is misleading since many initial applications are withdrawn during early discussions when it becomes clear they will be denied.

On the other hand, a license application that is “returned without action” could also be counted as an implicit approval. BIS may be converting many applications that would otherwise be denied to “returned without action” status to hide the true level of critical technology exports to China.

It’s worth tracking whether BIS follows through in becoming more aggressive in denying licenses for the export of items used for semiconductor fabrication.

Some of the license requirements helpfully institute a “presumption of denial” policy for items bound for any semiconductor fabrication facility owned by the PRC producing certain chips. But there’s a loophole. This policy applies only to parts destined for Chinese-headquartered companies, not companies with a Chinese ultimate beneficial owner. Chinese semiconductor companies can circumvent the rules by re-incorporating in a jurisdiction outside China.

- Will the applications be made publicly available? If so, how can policymakers and interested experts conduct an independent review of submitted applications?
- How will BIS close the loophole of companies headquartered outside of China but still owned/controlled by the PRC?

Any individual or organization is free to [comment](#) on the BIS’s recent rules, even anonymously. China Tech Threat will continue to monitor developments and gauge whether the Commerce Department’s actions align with Under Secretary Estevez’s words: “We will use our full gamut of capability...to enforce our rules.” Time will tell how serious the Commerce Department is about following through.