

BPE Global Hot Topic – October 2022

Making Sense of the New Controls Related to Semiconductor Manufacturing

WHY THIS RULE MAY APPLY TO YOUR COMPANY EVEN IF YOU DON'T PRODUCE SEMICONDUCTOR MANUFACTURING EQUIPMENT



We always appreciate it when global trade makes the headlines of mainstream media because it ultimately lifts the awareness of our industry. But when a 139-page regulatory change to advanced computing and semiconductor manufacturing drops and is partially effective that same day – it is a challenge to all.

The purpose of these new regulations is to strengthen our national security and hobble China's ability to access critical technologies that enable their military and economic ambitions. The Bureau of Industry and Security (BIS) has implemented broad prohibitions which might impact companies that don't do anything even remotely associated with semiconductor manufacturing.

Companies must ask two basic questions to determine if they might be impacted by these new rules:

1. Do you do any business, either directly or indirectly, with companies in the People's Republic of China (PRC)?
2. Do those companies in the PRC use your product, software, or technology to develop or produce integrated circuits?

If you answer yes to both questions, your next step will be to review your client list/resellers and ask every single one in the PRC if they:

1. Fabricate integrated circuits that include advanced node semiconductor capabilities
2. Develop or produce any other type of integrated circuits
3. Develop or produce "parts," "components" or "equipment" for any of the following:
 - Semiconductor manufacturing devices or materials
 - Semiconductor test equipment for testing finished or unfinished semiconductor devices
 - High performance integrated circuits
 - Test, inspection, and production commodities for military electronics

The new BIS semiconductor regulations prohibit activities associated with advanced node semiconductor capabilities at factories in the PRC. But the regulations are written in such a way that all items subject to the Export Administration Regulations going to PRC facilities that develop semiconductor manufacturing and test equipment would also be prohibited. This means that exporting conveyor belts to PRC factories developing or producing semiconductor manufacturing or test equipment would be prohibited. The new regulations also prohibit U.S. persons from supporting the development or production of ICs at certain PRC-located semiconductor fabrication facilities. And BIS's licensing policy for these types of activities is one of denial.

The best way to tackle these new regulations is by obtaining an End Use declaration from your customers or resellers who have PRC customers. We've created an End Use declaration that we are happy to share with you.

In addition to implementing an end use review for all exports to the PRC, you should review your product, software and technology classifications. Specifically, determine if your advanced computing semiconductor chips and semiconductor manufacturing equipment are caught under the new ECCNs which are 3X090 and 4X090. In



BPE Global
139 Pierce Street
San Francisco, CA 94117
T 877-264-3836
info@bpeglobal.com

addition, you should review your 5D992.c software to determine if it exceeds the performance parameters of 3X090 or 4X090.

One important detail in these new rules is that the only license exception available for items that are now classified under the new ECCNs 3A090 and 4A090 is RPL. This will allow companies to service and replace parts that were part of items that were not previously subject to license requirements.

Much of this rule became effective on October 7th which means that you may already have potential violations. That makes it urgent that you have a thorough understanding of these new regulations even though BIS hasn't provided all the details. A risk-based approach would be to put a hold on your exports to China that involve semiconductor fabs or parties that develop or produce semiconductors. Then you can review and release each transaction once any red flags have been cleared.

This is only the beginning. There will be more details released on October 21st regarding the revisions to the Foreign direct Product ("FDP") rules, supercomputer end use, modifications to Chinese entities on the Entity List, recordkeeping, a temporary general license and the changes to the Commerce Control List (CCL). What has been implemented so far might be the tip of the iceberg, so stay tuned.

BPE Global is an 18-year-old global trade compliance consulting firm. Beth Pride is the President of BPE Global. You can reach Beth by email at Beth@BPEGlobal.com or by phone at 1-415-845-8967.