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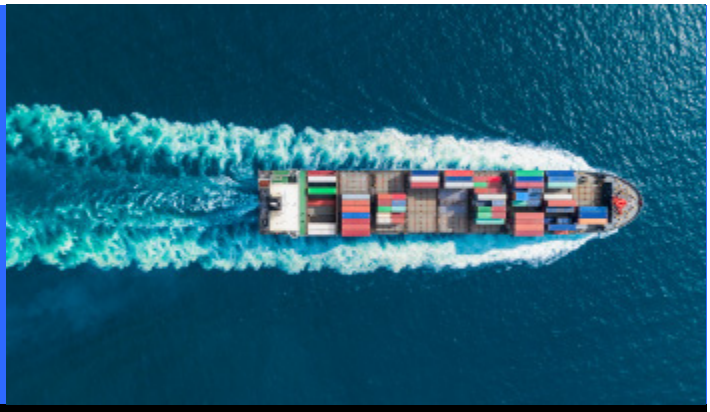

Sanctions & Export Enforcement and International Trade Advisory & Enforcement Update

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The Trump Administration's New Tariffs on and Export Licensing Requirements for Advanced Semiconductors Create Challenging New Cross-Currents, and New Opportunities, for U.S. Manufacturers

Through three related executive actions announced in January, exports of certain advanced semiconductor chips to China or Macau are now permitted under certain conditions—including that they first be imported into the United States, where they will be subjected to a 25% tariff. Imports of semiconductors for domestic use, and of semiconductor manufacturing equipment for domestic use by Taiwanese chipmakers, are excluded from this tariff. When read together, these actions incentivize direct manufacturing of semiconductors in the United States while discouraging U.S. manufacturing of complex electronics dependent on chips manufactured elsewhere.

I. Summary

Last week, the Administration took three actions to reshape how a narrow class of advanced AI chips moves through U.S. supply chains. Companies seeking to understand the impact of these actions must view them together. First, the Department of Commerce's Bureau of Industry and Security (BIS) issued a final rule on January 15, 2026 revising the license review policy for exports of certain advanced computing integrated circuits from the United States to China or

Macau, from a presumption of denial to case-by-case review, contingent on specific exporter certifications. This more favorable licensing review policy is not available for reexports (from one non-U.S. location to another) or transfers (from one end user to another, within a country) to or within China or Macau, which remain prohibited without a license and subject to a licensing policy of denial.

Second, on January 14, 2026, the President issued a Section 232 proclamation imposing a 25% tariff on imports of specified "semiconductor articles" that meet defined performance parameters. The tariffs exempt articles imported for enumerated U.S. domestic uses, and expressly provide that importers have no right to duty drawback (i.e., refunds) for duties paid if the same (or similar) articles are later exported. Both the export licensing policy final rule and the Section 232 proclamation appear designed to cover the same integrated circuits, which both the White House Fact Sheet accompanying the Section 232 proclamation and the BIS rule specifically identify.

Third, on January 15, 2026, the United States and Taiwan reached a trade agreement that offers Taiwanese chipmakers that expand U.S. production a reduced tariff on semiconductors and related manufacturing equipment—sometimes entirely excluding them from the scope of related Section 232 tariffs. In return, Taiwanese companies will invest $250 billion in U.S. manufacturing, including manufacturing semiconductors. To this end, Secretary of Commerce Howard Lutnick has reportedly said that the Trump Administration aims to bring 40% of Taiwan's chip supply chain and production to the United States, or else Taiwan could face tariffs of up to 100% of the value of imported semiconductors.

II. Mechanisms of Action

A. The BIS export licensing rule

Effective immediately, BIS's new rule shifts the license review policy for exports of certain advanced semiconductor commodities to China and Macau from a "presumption of denial" to a "case-by-case" review for specific high-performance chips, provided they are commercially available in the United States and meet precise technical performance, domestic availability, and supply-chain criteria. The covered chips are those subject to the EAR with a total processing power (TPP) less than 21,000, and a total DRAM bandwidth less than 6,500 GB/s. Critically, these chips are one generation removed from what is understood to be the cutting-edge, representing a technology that remains advanced but is already considered mature as even higher performance chips enter the market—and remain restricted for export. We note that less advanced chips are also able to use this licensing policy if they are commercially available and meet the same conditions.

While the Trump Administration has yet to replace the "AI Diffusion Framework" (which it announced should be treated as rescinded in May 2025, with a formal repeal still pending), the targeted relaxation of its licensing policy for these chips may be a kind of roadmap for how the Trump administration will try to strike a balance between preserving the commercial viability of exporting high-end Graphics Processing Units (GPUs) to China, while maintaining its overarching policy objective of slowing China's artificial intelligence (AI) development. The licensing policy also reflects deals President Trump has negotiated with industry leaders who are eager not to be cut out of the Chinese market.

The new review standard is heavily conditioned on several novel certification and oversight requirements that are aimed in part at protecting domestic interests:

1. Exporters must certify that there is sufficient U.S. supply to prevent any delays for domestic customers and that global foundry capacity will not be diverted from producing more advanced circuits for U.S.-based end customers.
2. Exporters must certify that any given shipment to China and Macau does not push a specific chip model's total export ratio to those countries over 50% of the total number of units shipped for U.S. end use.
3. If the hardware will be used to provide remote infrastructure-as-a-service (IaaS), exporters must provide BIS with detailed lists of IaaS end-users, including those located in China and Macau, among other countries.
4. Exporters must certify that items in every shipment have undergone independent testing at a qualified, third-party, U.S.-headquartered lab to verify that their performance specifications match those known for the chip model and covered by the licensing policy before export. If the specifications do not match published specifications for the model, the exporter will need to explain any variations or upgrades.

Through this licensing policy, BIS has the opportunity to refuse to license applications where PRC-based companies would be providing computing power through software as a service (SaaS) or IaaS models to PRC-based end users who are otherwise restricted, such as military end users and those designated on the Entity List or on certain other restricted party lists. This is notable, as it is not clear that BIS has the necessary statutory authority to regulate the provision of services by non-U.S. persons, and conditioning the export of another item—semiconductors—on the ability to evaluate and restrict the end users of downstream services approaches the boundary of BIS's mandate. Previous BIS action to restrict IaaS by advanced artificial intelligence users in China has been limited to a policy statement that exports, reexports, and transfers of AI-capable items, undertaken with knowledge of an IaaS Ai-training end use, and U.S. person support for AI training are both licensable activities. While a bill expanding the scope of the Export Control Reform Act (ECRA) to expressly provide BIS with a mandate to directly regulate such remote access (i.e., by prohibiting exports of services to these parties) passed the House on January 12, 2026, it has not yet become law.

For reasons not explained, the new licensing policy is only available for exports to the PRC and Macau, and not to China- and Macau-headquartered companies located outside of China and Macau. Under the January 15th rule, BIS continues to apply a presumption of denial to license applications to supply the same items to end users located outside of China or Macau that are in any other Country Group D:5 country or that are ultimately owned or operated by companies that are headquartered in Macau or Country Group D:5 (including PRC-based companies).

B. The Section 232 proclamation imposing tariffs on advanced computing chips

On January 14, 2026, a day before the new BIS rule, the President a Section 232 proclamation imposing an immediate 25% ad valorem duty on certain advanced computing chips and specified derivative products effective 12:01 a.m. EST on January 15, 2026. The President based his proclamation on a report from the U.S. Department of Commerce, which summarized the results of Commerce's Section 232 national security investigation into imports of semiconductors and

semiconductor manufacturing equipment. That investigation was initiated April 1, 2025, effectively contemporaneous with the April 2, 2025 launch of the International Emergency Economic Powers Act (IEEPA) reciprocal-tariff regime.

The accompanying White House Fact Sheet identifies the "Covered Products." The duty does not apply where covered chips are imported for enumerated U.S. end uses, including use in U.S. data centers, repairs or replacements performed in the United States, U.S.-based research and development (R&D), U.S. startups, and certain other consumer, civil industrial, and public-sector applications (as well as other uses the Secretary later determines strengthen the U.S. technology supply chain or domestic manufacturing capacity). The proclamation also prohibits CBP from authorizing duty drawback for any Section 232 duties owed under the proclamation that are paid by importers at importation when Covered Products are later reexported—whether as standalone items or as incorporated into higher assemblies, such as AI-capable servers. The proclamation further provides that Covered Products subject to the new Section 232 duty are excluded from the IEEPA fentanyl trafficking duties applicable to Mexico and Canada and from the IEEPA reciprocal tariffs under Executive Order 14257 applicable to the rest of the world; it does not provide a comparable exclusion for the China fentanyl trafficking duties.

C. Two Legal Developments Read Together

Though the BIS rule and Section 232 developments described above address exports and imports, respectively, their full effect can only be understood when they are read together. BIS stated that the new licensing policy (which loosens the previous policy that generally denied licenses for the same items to China and Macau) is "necessary to ensure the national security benefits of U.S. leadership in artificial intelligence (AI)" by considering domestic supply requirements before authorizing some previously denied shipments. The Section 232 proclamation similarly explains that the tariff will "help increase domestic production of semiconductors and reduce our Nation's reliance on foreign sources and foreign supply chains." Though either measure might seem unlikely to result in additional integrated circuits being reserved for U.S. capacity on its own, in combination, the measures operate as a coordinated gating framework to slightly relieve controls on China- and Macau-bound exports, while ensuring that the chips pass through the United States before departure—creating the opportunity to raise revenue on their sale and providing additional opportunities to control their ultimate destination and use. Moreover, both measures incentivize—or at least avoid penalizing—the provision of chips for U.S.-based end uses, before permitting supply to flow to economically competitive firms in China.

Nevertheless, while some domestic industry participants may be protected by the rule change, others may be harmed. As previewed above, a key operational feature of this two-part rulemaking is that BIS's case-by-case review applies only when the exports depart from the United States. For exporters sourcing these chips from offshore production (as is common today), accessing the more favorable review posture (as opposed to a presumption of denial) requires routing transactions through the United States by importing chips that are manufactured abroad into U.S. customs territory. Upon import into the United States, the prospective exporter must pay the new 25% Section 232 tariff and satisfy U.S.-based testing/certification expectations. Only then can the prospective exporter send the chips to China. The new Section 232 tariffs—and particularly the proclamation's no-drawback rule—materially increase the cost of shipping these chips to China—both because they must first be routed through the United States and

tested there, and also because duties paid at importation generally cannot be recovered upon reexport, regardless of whether the integrated circuits are shipped as-is or incorporated into another product.

Thus, while the Section 232 tariff is designed to avoid constraining U.S. access to the Covered Products—as covered chips imported for enumerated U.S. end uses are excluded—the combined regime will increase costs for U.S.-based manufacturers that import covered chips for incorporation into higher assemblies (e.g., AI-capable data center servers, products that incorporate GPUs) for sale outside of the United States. No domestic end-use carve out would apply to their products, and the duties that they will pay are not refundable through duty drawback when the goods are later exported. Consequently, the new rules could potentially harm efforts to reshore complex electronics manufacturing. U.S.-based firms designing and commissioning chips from non-U.S. production facilities (as, currently, minimal U.S.-based production facilities exist) for manufacture in the United States into a final product for international sale will be discouraged by the structure of these tariffs. Furthermore, the new license requirements are likely to present even more significant challenges for parties seeking to export customized application-specific integrated circuits (ASICs) given the bespoke characteristics of such products, which will need to reported where they vary from manufacturers' base models.

D. Implementation Challenges for Using Revised Licensing Policy

Prior to the issuance of BIS's January 15th rule, the chips at issue were subject to an effective export prohibition when destined to China and Macau. While the updated approach represents a partial loosening of these controls, the licensing opportunity it provides imposes significant information gathering burdens on license applicants and compliance challenges for applicants and consignees.

Although the applicant (the exporter) is formally responsible for making the required certifications, many of the underlying details, such as technical specifications, sales numbers and historical export data for the chip model across all channel partners within the United States and across China and Macau as of the date of the application (to certify that exports to China and Macau do not exceed 50% of sales to U.S. end uses), and global factory capacity and order processing times (to certify that there will be no delays to U.S. orders) would only be known by the manufacturer. This creates a substantial burden on the exporter and may lead the interested parties to place orders for delivery abroad directly with manufacturers who are better positioned to provide the required information.

Other data points—such as whether the chip will be used for IaaS and the identities and locations of any IaaS customers—may only be known by the ultimate consignee, and only then by consignees who are willing to provide information on the ultimate end users of the compute and are able to do so under Chinese law. Consignees, particularly those whose business models rely on brokers or channel partners to sell their IaaS, may need to make significant investments in "know your customer" (KYC) due diligence to provide the assurances and end user information required by exporters. Some business IaaS models may not be able to support KYC requirements in their current forms.

Finally, these compliance challenges may be made even more difficult by local developments in China. Recent reports suggest that Chinese authorities may be actively discouraging private business from obtaining covered U.S.-origin products, or even blocking their import at the borders, which could independently limit the practicability of the revised licensing pathway. Further, exporters may struggle to obtain necessary licensing datapoints—like IaaS customer lists—from Chinese consignees, who may be restricted from providing this information as a matter of local law.

Given the significant information, coordination, and compliance challenges, we see only a small handful of companies being able to use BIS's new export licensing policy. While the export licensing requirements may help to ensure that U.S. customers for covered chips remain supplied and the U.S.-Taiwan trade framework may help ultimately develop U.S. semiconductor manufacturing capacity, the Section 232 tariffs on the covered chips will impose new costs on companies that seek to incorporate these chips into products for export to customers globally. Because of the crosscurrents created by the three actions, we may see the Administration make certain adjustments to the tariffs in the coming weeks. In the interim, we are ready to assist any seeking to navigate these new uncharted waters.

The following Gibson Dunn lawyers prepared this update: Lindsay Bernsen Wardlaw, Christopher T. Timura, Alex Chiang*, Dorkas Laura Medina, Hui Fang, Soo-Min Chae, Sarah Burns, Samantha Sewall, Matthew Axelrod, and Adam Smith.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or the following leaders and members of the firm's Sanctions & Export Enforcement, International Trade Advisory & Enforcement, and National Security practice groups:

United States:
Matthew S. Axelrod – Co-Chair, Washington, D.C. (+1 202.955.8517, maxelrod@gibsondunn.com)
Adam M. Smith – Co-Chair, Washington, D.C. (+1 202.887.3547, asmith@gibsondunn.com)
Ronald Kirk – Dallas (+1 214.698.3295, rkirk@gibsondunn.com)
Stephenie Gosnell Handler – Washington, D.C. (+1 202.955.8510, shandler@gibsondunn.com)
Donald Harrison – Washington, D.C. (+1 202.955.8560, dharrison@gibsondunn.com)
Christopher T. Timura – Washington, D.C. (+1 202.887.3690, ctimura@gibsondunn.com)
David P. Burns – Washington, D.C. (+1 202.887.3786, dburns@gibsondunn.com)

Nicola T. Hanna – Los Angeles (+1 213.229.7269, nhanna@gibsondunn.com)
Courtney M. Brown – Washington, D.C. (+1 202.955.8685, cmbrown@gibsondunn.com)
Amanda H. Neely – Washington, D.C. (+1 202.777.9566, aneely@gibsondunn.com)
Samantha Sewall – Washington, D.C. (+1 202.887.3509, ssewall@gibsondunn.com)
Michelle A. Weinbaum – Washington, D.C. (+1 202.955.8274, mweinbaum@gibsondunn.com)
Roxana Akbari – Orange County (+1 949.475.4650, rakbari@gibsondunn.com)
Karsten Ball – Washington, D.C. (+1 202.777.9341, kball@gibsondunn.com)
Sarah Burns – Washington, D.C. (+1 202.777.9320, sburns@gibsondunn.com)
Hugh N. Danilack – Washington, D.C. (+1 202.777.9536, hdanilack@gibsondunn.com)
Justin duRivage – Palo Alto (+1 650.849.5323, jdurivage@gibsondunn.com)
Zach Kosbie – Washington, D.C. (+1 202.777.9425, zkosbie@gibsondunn.com)
Dorkas Laura Medina – Washington, D.C. (+1 202.777.9444, dmedina@gibsondunn.com)
Chris R. Mullen – Washington, D.C. (+1 202.955.8250, cmullen@gibsondunn.com)
Sarah L. Pongrace – New York (+1 212.351.3972, spongrace@gibsondunn.com)
Anna Searcey – Washington, D.C. (+1 202.887.3655, asearcey@gibsondunn.com)
Erika Suh Holmberg – Washington, D.C. (+1 202.777.9539, eholmberg@gibsondunn.com)
Audi K. Syarief – Washington, D.C. (+1 202.955.8266, asyarief@gibsondunn.com)
Scott R. Toussaint – Washington, D.C. (+1 202.887.3588, stoussaint@gibsondunn.com)
Lindsay Bernsen Wardlaw – Washington, D.C. (+1 202.777.9475, lwardlaw@gibsondunn.com)
Shuo (Josh) Zhang – Washington, D.C. (+1 202.955.8270, szhang@gibsondunn.com)

Asia:
Kelly Austin – Denver/Hong Kong (+1 303.298.5980, kaustin@gibsondunn.com)
David A. Wolber – Hong Kong (+852 2214 3764, dwolber@gibsondunn.com)
Fang Xue – Singapore (+65 6507 3692, fxue@gibsondunn.com)
Qi Yue – Beijing (+86 10 6502 8534, qyue@gibsondunn.com)
Dharak Bhavsar – Hong Kong (+852 2214 3755, dbhavsar@gibsondunn.com)
Soo-Min Chae – Singapore (+65 6507 3632, schae@gibsondunn.com)
Hui Fang – Hong Kong (+852 2214 3805, hfang@gibsondunn.com)
Arnold Pun – Hong Kong (+852 2214 3838, apun@gibsondunn.com)

Europe:
Attila Borsos – Brussels (+32 2 554 72 10, aborsos@gibsondunn.com)
Patrick Doris – London (+44 207 071 4276, pdoris@gibsondunn.com)
Michelle M. Kirschner – London (+44 20 7071 4212, mkirschner@gibsondunn.com)
Penny Madden KC – London (+44 20 7071 4226, pmadden@gibsondunn.com)
Irene Polieri – London (+44 20 7071 4199, ipolieri@gibsondunn.com)
Benno Schwarz – Munich (+49 89 189 33 110, bschwarz@gibsondunn.com)
Nikita Malevanny – Munich (+49 89 189 33 224, nmalevanny@gibsondunn.com)
Melina Kronester – Munich (+49 89 189 33 225, mkronester@gibsondunn.com)
Vanessa Ludwig – Frankfurt (+49 69 247 411 531, vludwig@gibsondunn.com)

**Alex Chiang, a law clerk in the Washington, D.C. office, is not yet admitted to practice law.*