EXPORT CONTROLS UPDATE: LICENSING IN LIMBO, ENFORCEMENT ON THE RISE

November 4, 2026

Joint Presentation by the Sanctions & Export Enforcement, International Trade Advisory & Enforcement, and National Security Practice Groups of Gibson Dunn

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Export Control Basics & the Regulatory Landscape

01

Two Regimes, Two Agencies: the EAR and the ITAR

EAR — Commerce (BIS)

- Dual-use and some military items: commodities, software, and technology
- Exports, Re-exports, and Transfers
- Reaches items “subject to the Export Administration Regulations (EAR),” including certain foreign-made items with controlled U.S. content or made with controlled U.S. technology and software
- Also restricts certain end uses, end users, and U.S.-person activities
- Items not listed on the Commerce Control List are “EAR99”
- Primary statutory basis: Export Control Reform Act

ITAR — State (DDTC)

- Defense articles, defense services, and technical data on the U.S. Munitions List
- Exports, Re-exports, Transfers, Temporary Imports and Exports, Brokering
- Primary Statutory basis: Arms Export Control Act
- Registration required for manufacturers, exporters, and brokers, most exports require a license
- “See-through” rule: foreign items incorporating ITAR components remain subject to U.S. export licensing requirements

Four Bases of EAR Jurisdiction — and Broad Definitions of "Export" and "Support"

1. **U.S. origin**
   Item is made in, or exported from, the United States, including foreign origin items located in the United States

2. ***De Minimis* Rule**
   Foreign-made item containing more than a *de minimis* amount of controlled U.S.-origin content (note that sometimes any amount of certain controlled content is enough)

3. **Foreign direct product rules**
   Foreign-made item produced with specified U.S. software, technology, or equipment framed around end user, end uses, and destinations

4. **U.S.-person activity**
   U.S. person support of proliferation, terrorism, or advanced-computing end uses

What counts as an "export"?

- Physical shipment out of the United States
- Electronic transmission of software or technology (e.g., email, download)
- "Deemed export": release of technology to a non-U.S. person in the United States
- Not just sales: hand-carried items, samples, donations, downloads, and transfers to foreign affiliates
- **Support:** Shipping, transferring, or facilitating shipment, transmission, or transfer. Also, performing any contract, service, or employment you know may assist or benefit any of specified end uses or end users including, but not limited to: Ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations in furtherance of

Restricted Party Lists

Entity List

License required for all items subject to the EAR (scope per entry); typically presumption of denial

Military End-User List

License required for specified items; covers Belarus, Burma, Cambodia, China, Russia, and Venezuela

Unverified List

No license exceptions; UVL statement and filing requirements

Denied Persons List

Export privileges denied — no participation in EAR transactions

Affiliates ("50%") Rule: would extend these restrictions to entities ≥50% owned by listed parties — currently suspended (see Section 02)

Overview of the BIS 50% / Affiliates Rule

On September 29, 2025, the Bureau of Industry and Security (BIS) issued the "Affiliates Rule," **a historic expansion of export control restrictions to tens of thousands of additional companies**.

- **How it Works**: A foreign entity owned 50% or more, whether directly or indirectly, individually or in the aggregate, by one or more parties restricted under certain restricted-party lists will be subject to the same license requirements, license exceptions, and licensing policies as its listed owners.
  - Covered lists are: (1) the Entity List; (2) the Military End-User (MEU) List; and (3) Specially Designated Nationals ("SDNs") identified in § 744.8 of the Export Administration Regulations (EAR).
- **Rule of Most Restrictiveness**: A captured unlisted affiliate is subject to the **most restrictive license requirements, exception eligibility, and review policies** applicable to its listed owners.
- **Affirmative Duty to Verify**: If exporters become aware that a counterparty has ownership ties to a listed party, they must confirm the ownership percentage to assess Affiliates Rule applicability. If the percentage cannot be verified, a BIS license is required.
- **Suspension**: On November 10, 2025, as part of the U.S.–China Busan Agreement, BIS suspended the rule for one year. The rule is set to return on November 10, 2026, but will reportedly be extended to January 10, 2027.
- **Cautionary Note**: Even if the Affiliates Rule does not apply, BIS cautions that "significant minority ownership" by a listed entity presents "a Red Flag of potential diversion risk," and expects heightened due diligence.
- **Current Status**: On September 23, 2026, the U.S. and China agreed to extend the Busan truce through January 10, 2027, which is expected to extend the suspension; BIS has not yet issued a confirmatory notice.

Key Personnel

Commerce / BIS

- Secretary: Howard Lutnick
- Under Secretary, Industry and Security: Jeffrey Kessler
- Assistant Secretary, Export Enforcement: David Peters
- PTDO Assistant Secretary, Export Administration: Noah Jaffe

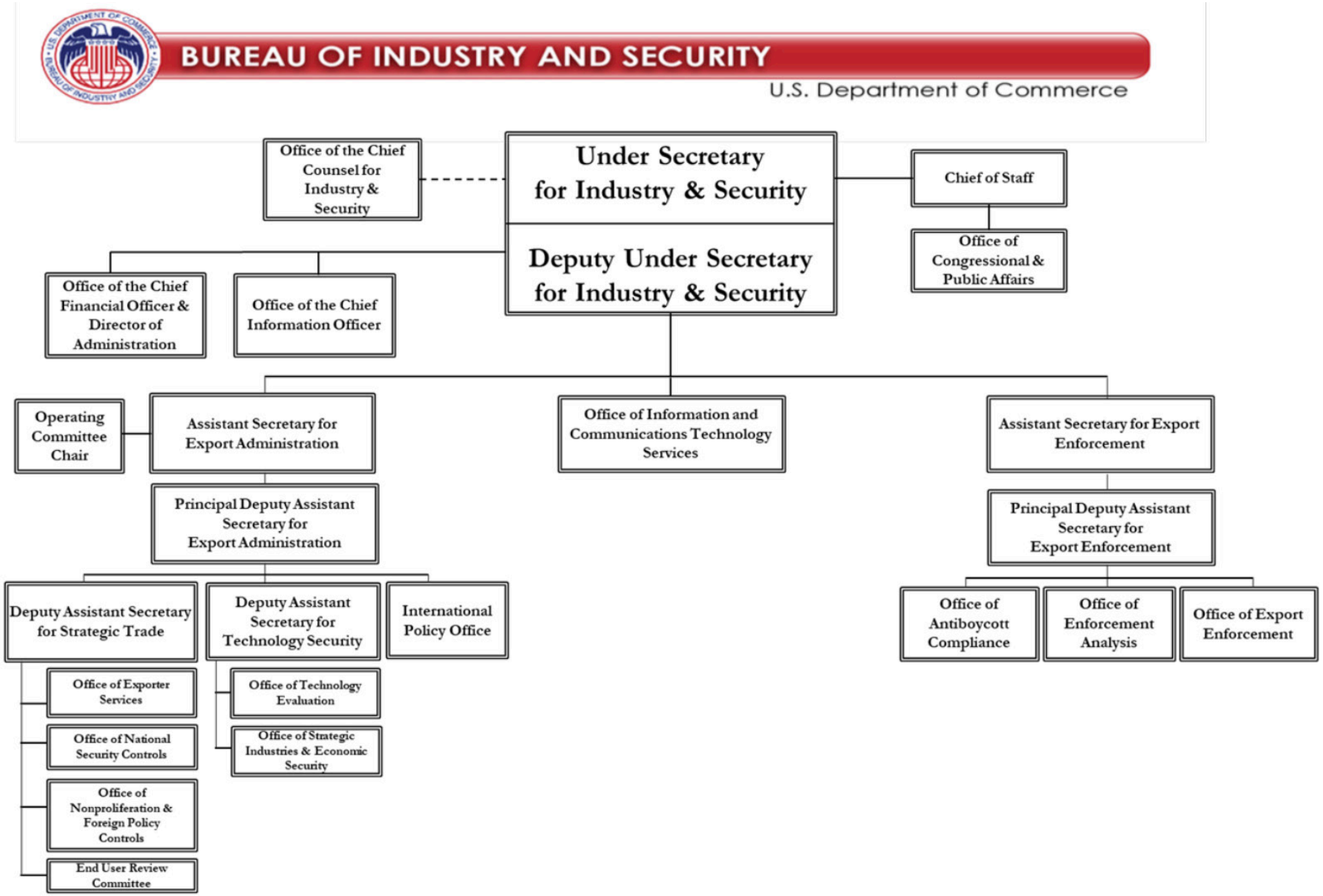
State / DDTC

- Under Secretary, Arms Control and International Security: Thomas G. DiNanno
- Deputy Assistant Secretary, Directorate of Defense Trade Controls: Michael Vaccaro
- Director, Office of Defense Trade Controls Compliance: Jae Shin
- Director, Office of Defense Trade Controls Policy: Sarah Heidema

DOJ

- Attorney General: Todd Blanche
- Acting Deputy Attorney General: Trent McCotter
- NSD Assistant Attorney General: John Eisenberg
- Acting Chief, Counterintelligence and Export Control Section: Christian Nauvel

BIS Organizational Chart



Export Controls Don’t Operate in a Silo

Sanctions (OFAC)

- Certain SDNs also carry EAR license requirements
- Similar ownership tests: OFAC’s 50% Rule and BIS’s Affiliates Rule
- GP-10 reaches financing — banks face both regimes

Tariffs (Section 232)

- 25% tariff on covered advanced chips, no duty drawback
- BIS case-by-case China review only for exports from the U.S.
- Foreign-made chips must enter the U.S. and pay the tariff first

COINS Act

- Restricts U.S. investment in sensitive tech tied to China, Russia, Iran, North Korea, and Cuba
- Some deals prohibited; others notified within 30 days
- Same sectors as BIS. A single China-linked deal may need both an export and an investment review.

OICTS (Commerce)

- Reviews foreign-adversary tech in U.S. supply chains
- Kaspersky software ban (2024)
- Connected Vehicles Rule: PRC/Russia software (MY2027) and hardware (MY2030)
- Office leadership left (Jan. 2026)

Other Agencies

- FCC Covered List: foreign drones, routers, robots, and power inverters
- DOE: Aug. 2026 Executive Order on foreign grid equipment; rules due Dec. 24, 2026

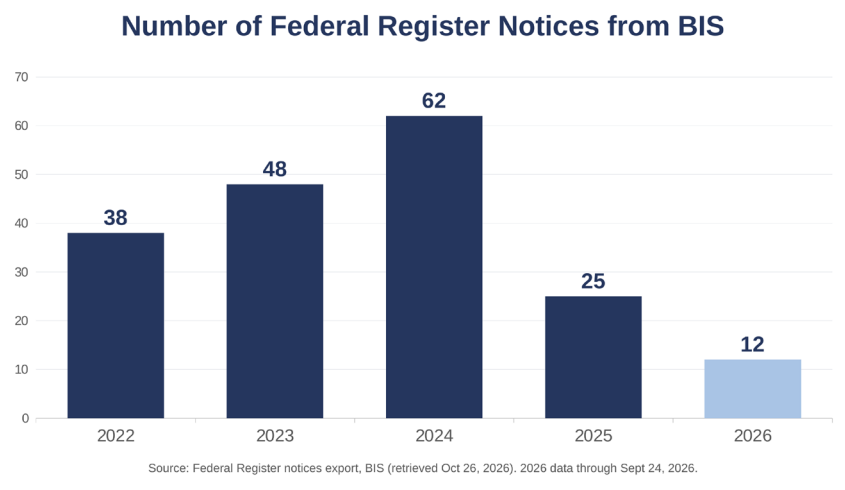
Regulatory & Licensing Trends

02

BIS: A Tale of Two Cities

Licensing & Rulemaking

- Few new rules; growing reliance on ad hoc “is informed” letters
- Entity List additions at their slowest pace since 2008
- License processing times up sharply
- Little formal guidance and limited access to agency staff



Enforcement

- More corporate actions: 7 in 2025 vs. 10 so far in 2026
- Bigger penalties: ~$104M in 2025 vs. ~$300M in 2026 to date
- Major budget and headcount increases requested

Institutional Knowledge Is Leaving as Enforcement Resources Grow

~146 years

of Commerce export-control and trade experience departed in 2026 (GDC estimate), ~117 years at BIS

299 → ~600

BIS positions, this year to next, with most of the projected increase consisting of OEE Special Agents

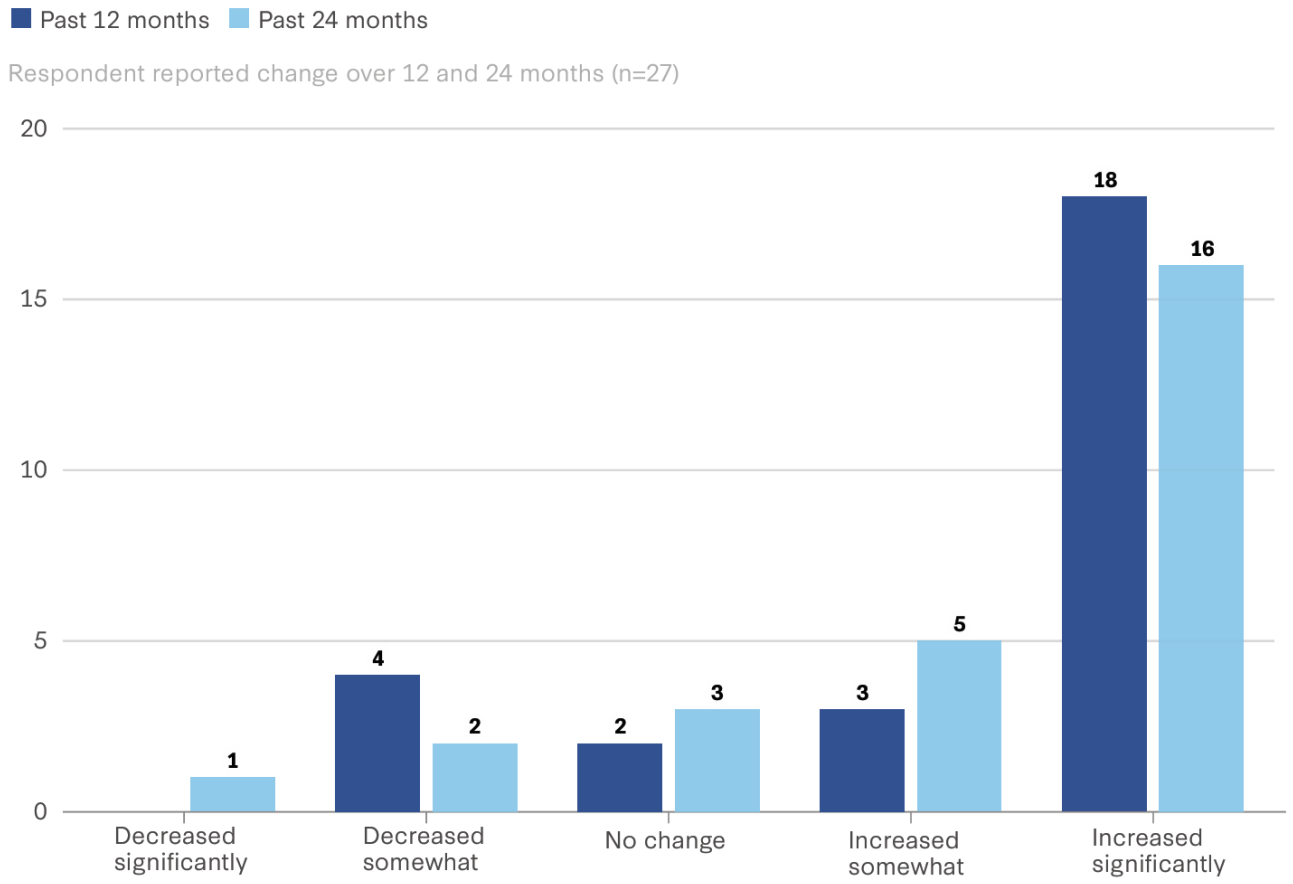
12 → 30

Export Control Officers stationed overseas

- BIS's total 2020 budget is roughly equal to Export Enforcement's 2026 budget
- In July 2026, Under Secretary Kessler requested an increase in BIS's enforcement budget from $122M to $301M
- Partner agencies are stretched: NSD's Counterintelligence and Export Control Section down from 45 to 27 prosecutors; FBI and HSI agents diverted

Licensing Delays Are Widespread

Figure 2: Change in License Processing Times Over Past 12 and 24 Months



Source: CSIS Economics Program Survey, January 16–March 2, 2026.

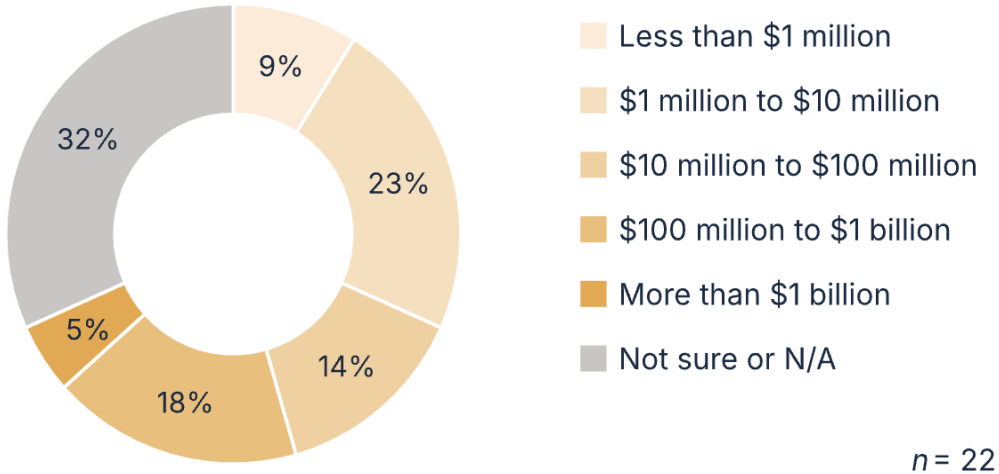
- Under the EAR, BIS is required to resolve applications within 90 days
- CSIS's April 2026 report surveyed senior export compliance professionals at major U.S. tech and semiconductor firms through three leading industry associations: 94% were large firms with dedicated export compliance staff, and 77% had 10+ years of experience with BIS licensing
- 21 of 27 surveyed companies reported longer license processing times over the past 12 months — 18 said "significantly"
- 33% reported waits of over 300 days—meanwhile, the average licensing wait-time in 2023 was 38 days
  - Only 22% reported average review times within the statutory timeframe
- Entity List additions have cooled to their slowest pace since 2008 (CSIS)
- July 2026: bipartisan HFAC criticism of slow designations and ad hoc "is informed" letters

Operating in Uncertainty during a Licensing Slowdown

Industry perspective

- Companies have listed financial harms from delayed export licenses in their earnings calls and SEC filings
- Among respondents who disclosed (2/3 of which were in the semiconductor industry), 76% reported more than $10 million in exports delayed by pending reviews. - CSIS April 2026 Report
- *"24 percent reported more than $50 million [in delayed exports], with individual figures reaching $100 million, $160 million, and $600 million."* - CSIS Apr. 2026 Report
- *"License delays led to lost sales to Chinese competitors (73%), lost sales to international competitors (55%), and lost market share in China (64%)."* - USCBC Aug. 2026 Report

Value of lost business due to license determination delays from Commerce



n = 22

Source: US-China Business Council, Stagnated American Export Licensing Regime Eroding Competitiveness with China, flash survey of 31 member companies (July 2026).

Rules in Limbo

AI Diffusion Rule

Status

- Effective Jan. 13, 2025; Commerce announced its rescission on May 13, 2025 — but the text remains in the EAR, with no formal repeal or replacement.
- May 12, 2026: GAO concluded that BIS's announced non-enforcement of the AI Diffusion Rule was itself a "rule" under the Congressional Review Act, so it could not take effect until submitted to Congress and GAO.
- May 31, 2026 BIS guidance: Licensing requirements apply to destinations outside the U.S. for advanced computing items when they are *for* entities headquartered in, or whose parent company is headquartered in, Country Group D:5 or Macau.

The uncertainty

- Which provisions still bind — and could a future administration enforce today's conduct?

BIS Affiliates ("50%") Rule

Status

- Effective Sept. 29, 2025: extends restrictions to entities ≥50% owned by listed parties.
- Suspended on Nov. 10, 2025, for one year.
- U.S.–China truce extended to Jan. 10, 2027.

The uncertainty

- Return date tied to U.S.–China talks; many companies already screen as if it were in effect.

Data Centers in the Guidance Gap: Five Issues to Watch

1	**Who is it "for"?**	Leasing GPUs to a PRC subsidiary needs a license, but BIS hasn't said whether a data center built to serve China-headquartered customers is a supply "for" them.
2	**Knowledge, not structure**	A reseller or neocloud in the middle won't help if the PRC end user is known, and structuring to avoid knowledge is aggravating. Clients need screening, contractual flow-downs, audit rights, and termination triggers.
3	**Tenant-brought chips**	Chinese tenants increasingly install China-origin advanced chips that BIS presumes are tainted (GP10). Knowingly hosting or servicing them creates exposure. Because BIS is aware of the practice, it could restrict it at any time with no grace period on existing leases.
4	**Remote access (RASA)**	A House-passed bill would make remote access to controlled compute a licensable export, which could cut off PRC tenants mid-lease. Lenders are already pricing in the risk.
5	**A widening risk perimeter**	Near term: being drawn into a tenant-focused investigation. Medium term: RASA, chip location verification, and the Affiliates Rule bring compute inside BIS's reach.

Takeaway: Data center deals are financed on 3-5-year time horizons, so plan compliance around the rules in force at the end of the term, not just those at signing.

Practical Strategies: Guidance and Advocacy Without Normal Channels

- **Frame advocacy around burden, efficiency, and U.S. defense industrial base:** Arguments made in licensing applications, public comments, and agency briefings land best when tied to the administration's deregulatory goals.
- **Comment on proposed rules.**
- **Make experiences with licensing, regulatory burdens known to trade associations.**
- **Ask for a meeting:** BIS is responding to advisory opinion requests less often.
- **Get to know your local OEE field office, including the one covering your offices abroad.**
- **Build licensing contingency, including delays and possible denials, into deal timelines and terms.**

Enforcement Trends

03

How Export Controls Are Enforced

Enforcement tools

- No-action and warning letters
- Civil monetary penalties
- Denial of export privileges
- Seizure and forfeiture
- Criminal prosecution for willful violations
- Entity List designation

Liability standard

Administrative

- Strict liability
- As matter of practice, BIS will not charge without recklessness, knowledge, or willfulness

Criminal

- Requires willfulness
- Corporations and individuals can be charged

Maximum penalties

EAR

- Administrative: greater of ~$374K per violation or 2x transaction value
- Criminal: $1M and/or up to 20 years' imprisonment
- Revoked export privileges

ITAR

- Administrative: greater of ~$1.27M per violation or 2x transaction value
- Criminal: $1M per violation and/or up to 20 years' imprisonment
- Debarment

What the Numbers Show

~3x

2026 penalties to date ($299.6M) vs. all of 2025 ($103.8M)

9 of 10

2026 penalties at $1M or above — vs. frequent five- and six-figure penalties before 2022

$252.5M

Applied Materials — second-largest standalone BIS penalty in history

What's driving it

- Continuation of longstanding trend towards more aggressive enforcement
- Political leadership emphasis on enforcement
- 2022–2024 policy reforms: higher penalties for serious violations
- Feb. 2026: BIS asks Congress to raise the maximum penalty—at least 4x the transaction value being a "good place to start"—and lengthen the statute of limitations.

BIS Corporate Enforcement Actions in 2025

Since 2025, corporate enforcement actions have been brought primarily for committing export control violations related to Russia, China, and Iran. Despite significant personnel changes, enforcement has not slowed.

Names	Date	Charges	Sector	Outcome
Eleview International Inc.	October 23, 2025	Unlicensed export of controlled items to Russia	Shipping and Logistics	$125,000 in civil penalties
Luminultra Technology, Inc.	September 30, 2025	Unlicensed export of luminometers and aqueous test kits to Iran	Industrial Equipment	$685,051 in civil penalties
Hallewell Ventures, Ltd.	September 30, 2025	Unlicensed reexport of aircraft to Russia	Aviation	$374,474 in civil penalties
Andritz Inc.	July 29, 2025	Unlicensed export of refiner plates to Russia	Industrial Equipment	$1,577,397 in civil penalties
Cadence Design Systems, Inc.	July 28, 2025	Unlicensed export of EDA and chip design technology to China	Technology	$95,312,000 in civil penalties
Alpha and Omega Semiconductor Incorporated	June 27, 2025	Unlicensed export of smart power stages, controllers, and related accessories to China	Technology	$4,250,000 in civil penalties
Haas Automation, Inc.	January 17, 2025	Unlicensed export of machine parts to Russia and China	Industrial Equipment	$1,500,000 in civil penalties
			Total civil penalties	**$103,823,922**

BIS Corporate Enforcement Actions in 2026

In 2026, corporate enforcement centered on China: 9 of 10 actions involved Chinese end users, most often Entity-Listed SMIC and Huawei.

Names	Date	Charges	Sector	Outcome
Lambda Research Corporation	October 2, 2026	Unlicensed export of controlled items to Japan and China (Huawei)	Technology	$2,000,000 in civil penalties
Container Manufacturing Ltd.	August 24, 2026	Unlicensed export of controlled items to Russia	Industrial Equipment	$1,000,000 in civil penalties
Plexon, Inc.	August 14, 2026	Unlicensed export of controlled items to China (AMMS)	Technology	$1,700,000 in civil penalties
Robert Bosch GmbH	June 17, 2026	Unlicensed export of controlled items to Hong Kong and China (Huawei)	Technology	$36,184,680 in civil penalties
Coastal PVA Technology	April 13, 2026	Unlicensed export of controlled items to China (SMIC)	Technology	$1,700,000 in civil penalties
Solventum Corporation	March 27, 2026	Unlicensed export of controlled items to China (SMIC, NSI)	Technology	$1,600,000 in civil penalties
Teledyne FLIR LLC and its affiliates	February 26, 2026	Unlicensed export of controlled items to China and Russia	Technology, Industrial Equipment	$1,000,000 in civil penalties
Vizocom ICT	February 24, 2026	Unlicensed export of controlled technology to China	Defense, Technology	$374,474 in civil penalties
Applied Materials, Inc. and Applied Materials Korea	February 11, 2026	Unlicensed re-export of controlled items from South Korea to China (SMIC)	Technology, Industrial Equipment	$252,500,300 in civil penalties
Exyte Management GmbH	January 7, 2026	Unlicensed in-country transfer of controlled items in China (SMIC)	Technology	$1,500,000 in civil penalties
			Total civil penalties	**$299,559,454**

Applied Materials: Record-Level Penalty, New BIS Guidance?

The resolution (Feb. 11, 2026)

- BIS imposed a $252.5 million civil penalty, the second-highest penalty in BIS history, to resolve alleged unlicensed reexports of semiconductor manufacturing equipment to SMIC, an Entity-Listed Chinese foundry.
- Applied shipped ion implanters partially produced in the U.S. to its Korean affiliate for assembly and then onward to China: 56 reexports (or attempted reexports) between 2020 and 2022, worth approximately $126 million, without a license.
- The penalty, twice the transaction value, is the statutory maximum. BIS also required audits and annual certifications.
- BIS rejected reliance on a customs-style "substantial transformation" analysis.
- DOJ and the SEC closed their related investigations without action.

BIS guidance embedded in the settlement

- When construing BIS regulations, exporters should not rely on concepts developed by other U.S. trade agencies.
  - "Substantial transformation," a CBP customs concept, is not an EAR test.
- U.S.-origin items do not become "foreign made" when production of the items begins in the U.S. and the items are then exported to undergo further testing and assembly in a foreign country with little or no foreign-origin parts added.
  - EAR's *De Minimis Rule* did not apply because no foreign-made commodities existed. Production began in the U.S., and virtually all parts were exported from the U.S.
- The amount and cost of labor performed outside of the U.S. should not be factored into *de minimis* rule calculations.
- Open question: what if only part of the process moves offshore?

Lambda Research

BIS Reaches Administrative Enforcement Settlement with Lambda Research Corporation

October 2, 2026

After filing a **voluntary self-disclosure**, Lambda Research Corporation agreed to a **$2 million** civil penalty (**fully suspended and waived** if it complies with the agreement, including by completing compliance training and an audit) to resolve allegations that it exported or transmitted licenses for optical and illumination software without a license. Lambda allegedly exported EAR99 technology to Entity-Listed companies in China and Japan. It also allegedly entered into agreements to service and update the software for these companies. Lambda further allegedly exported a software license to an entity on the Unverified List without a UVL statement.

Key takeaways include:

- Entity List license requirements reach even EAR99 software and the services that support it.
- Each automatic software update is a separate export and a separate violation.
- A party added to the Entity List after the sale still triggers a license requirement for later updates.
- Chinese-based distributors are a key risk area.
- Voluntary self-disclosures and compliance can reduce penalties.

Container Manufacturing

BIS Reaches Settlement with Container Manufacturing Ltd.

August 24, 2026

Container Manufacturing Ltd. agreed to pay a **$1 million** civil penalty to resolve violations involving about **$265,000** in EAR99 spare parts exported to a Russian company, directly and through UAE and Turkish distributors. The items were EAR99, but their Harmonized Tariff Schedule codes appear on BIS's Russian and Belarusian Industry Sector Sanctions List, so they required a license for Russia. The company had screened the Russian customer against the Consolidated Screening List since 2022 with no hits, without a license, however the license requirement turned on the items' tariff codes and destination, not on the customer's identity. The company also kept shipping after its bank refused to process payments for those exports.

Key takeaways include:

- EAR99 items can still require a license for Russia based solely on their HTS code.
- A clean screening result isn't enough: license requirements can turn on the item and destination, not just whether the customer is on a list.
- A bank's refusal to process payments is a red flag that should be resolved.

Trends in Directorate of Defense Trade Controls ("DDTC") Enforcement

Recent Enforcement Actions

- In recent years, there have been major consent agreements with key U.S. defense contractors for **violations involving Russia, China, Iran, and other proscribed destinations.**
- **$36 million resolution** with BAE Systems in August 2026, with $18 million for remedial measures.
- **$36 million resolution** with GE Aerospace in April 2026, with $18 million for remedial measures.
- Record **$200 million resolution** with RTX Corporation in 2024, with $100 million in remedial measures.
- Continued application of **strict liability for acquirors of companies** with past ITAR violations.
- Coordination between DDTC and DOJ's National Security Division ("NSD"), including to prosecute unauthorized access **to ITAR-controlled technical data by North Korean remote workers.**

What To Expect

- **Continued aggressive enforcement of ITAR prohibitions** on the unregistered and unlicensed export of defense articles, defense services, and technical data.
- **Voluntary self-disclosures** continue to be mitigating factors but are not a bar to significant civil penalties—particularly in cases where disclosures reveal a pattern of violations.
- **Strong emphasis on violations involving China and Russia**, with unlicensed exports to both proscribed destinations treated as aggravating factors.
- Emphasis on **closing loopholes in transfer of strategic goods, software, services, and technology**, including enforcement actions involving system-wide employee access to controlled technical data.

One DOJ: The Department-Wide Corporate Enforcement Policy

May 2025
Revised CEP applies only to DOJ's Criminal Division

Before Mar. 2026
NSD applies its own, more stringent enforcement policy

Mar. 10, 2026
First Department-wide CEP: applies to "all corporate criminal matters handled by the Department," except antitrust

What changed in March 2026

- Supersedes component-specific policies, including NSD's
- "Near miss" credit: "a reduction of at least 50% but not more than 75% off the low end" of the Guidelines range (previously a flat 75%)
- Broader concept of recidivism: a criminal adjudication or resolution within the last five years or otherwise based on similar misconduct
- Good-faith disclosure to the wrong DOJ component can still qualify
- Transparency: DOJ to signal eligibility early; resolutions must explain why a particular company received a particular amount of cooperation credit

“Part I” CEP Resolutions: Four-Part Test for Declinations

Under the updated CEP, DOJ will decline to prosecute a company for criminal conduct when <u>all four criteria</u> are met:

1 Voluntary Self-Disclosure

- Self-disclosed “to an appropriate Department criminal component”
- Misconduct “not previously known to the Department”
- “[N]o preexisting obligation to disclose the misconduct”
- Disclosure “prior to an imminent threat of disclosure or government investigation”
- Disclosure “within a reasonably prompt time,” with the burden being on the company to demonstrate timeliness

2 Full Cooperation

- The company “fully cooperated with the Department’s investigation”

3 Remediation

- The company “timely and appropriately remediated the misconduct”

4 Lack of Aggravating Circumstances

- Aggravating circumstances relate to “the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism, specifically, a criminal adjudication or resolution either within the last five years or otherwise based on similar misconduct by the entity engaged in the current misconduct”

“Part II” and “Part III” CEP Resolutions

“Part II” CEP Resolutions

Where a company fully cooperated and remediated but is ineligible for a declination “solely because” its good-faith self-report “did not qualify as a voluntary self-disclosure” and/or “it had aggravating factors that warrant a criminal resolution,” DOJ shall:

- “Provide a Non-Prosecution Agreement (NPA)—absent particularly egregious or multiple aggravating circumstances”
- “Allow a term length of fewer than three years”
- “Not require an independent compliance monitor”
- Provide “a reduction of at least 50% but not more than 75% off the low end” of the U.S. Sentencing Guidelines fine range

“Part III” CEP Resolutions

If a company is not eligible for Part I or Part II:

- Prosecutors “maintain discretion to determine the appropriate resolution including form, term length, compliance obligations, and monetary penalty”
- No “reduction of more than 50% off the fine under the U.S.S.G.”
- “[P]resumption that the reduction will be taken from the low end” of the range for companies that “fully cooperate and timely and appropriately remediate”
- Otherwise, starting point based on the facts, “including (but not limited to) the company’s recidivism”; prosecutors consider U.S.S.G. § 8C2.8 factors

NSD Export Controls Prosecutions: AI Chip Diversion Leads the Docket

Case	Court / Date	Alleged value	Alleged scheme and why it matters
Operation Gatekeeper	S.D. Tex. (Dec. 2025)	$160M+	H100/H200 GPUs relabeled under a fake brand and declared as generic computer parts; $50M+ in GPUs seized
Super Micro Co-founder	S.D.N.Y. (Mar. 2026)	~$2.5B	Servers routed to China through Southeast Asian intermediaries, with falsified documents and dummy servers to mislead internal compliance; securities class action filed within days
Chinese national + two U.S. citizens	N.D. Ga. (Mar. 2026)	~$170M	Servers routed through Thailand-based front companies; uncharged U.S. companies cancelled a 750-server order after end-user verification failed
Earthmade Computer	C.D. Cal. (Oct. 2026)	$300M+	Owner allegedly gave U.S. server makers false end-user paperwork, then shipped to Malaysia and Singapore for reexport to China

Semiconductors remain a national security priority

Southeast Asia is the common transshipment route

Follow-on suits can tail government action

Super Micro Co-Founder

DOJ Indicts Super Micro Co-Founder in S.D.N.Y. for $2.5 Billion

March 19, 2026

DOJ charged Super Micro co-founder Yih-Shyan “Wally” Liaw, its Taiwan general manager, and a third-party broker with **conspiracy to violate ECRA, smuggling, and conspiracy to defraud the United States**. The defendants allegedly used a Southeast Asian pass-through company to order approximately **$2.5 billion** of U.S.-assembled servers containing controlled GPUs in 2024 and 2025 and diverted them to China. Super Micro was not charged but has since received subpoenas. The broker pleaded guilty in October 2026; the Taiwan manager remains a fugitive.

Key takeaways:

- DOJ is pursuing criminal charges against senior insiders personally, with each count carrying up to 20 years in prison.
- Diversion of AI chips to China through Southeast Asian transshipment hubs remains a priority for DOJ and BIS.
- End-use audits can be staged. Verify independently through unannounced checks, serial-number reconciliation, and auditors insulated from the sales team.
- An uncharged company still faces the fallout: Super Micro faced a 33% one-day stock drop, subpoenas, securities suits, and an internal investigation.

NSD Export Controls Enforcement: Potential Benefits of Self-Disclosure

Earlier disclosure, fuller cooperation → more credit

Guilty plea

Cadence Design Systems

July 2025

- No voluntary self-disclosure; DOJ cited the failure to disclose in requiring a plea
- U.S. parent liable for China subsidiary's sales of EDA tools to a restricted PRC military university
- $140M+ in criminal and civil penalties; 3-year probation

"Near-miss" NPA

Extreme Networks

Oct. 2026

- Disclosed to NSD only under the imminent threat of a news story — too late for a declination.

Declination

Robert Bosch GmbH

June 2026

- Disclosed while its own investigation was still running, with settlement and disgorgement. First NSD declination under the new policy.

- **Disclosure to BIS or OFAC alone earns no DOJ credit:** Where criminal exposure is possible, disclose to DOJ NSD in parallel.

Extreme Networks

DOJ Announces First "Near Miss" Non-Prosecution Agreement with Extreme Networks

October 28, 2026

After a **late voluntary self-disclosure**, Extreme agreed to a three-year NPA with NSD and the E.D.N.C., paying **$975,722** in criminal fines and forfeiture, plus **$1.53 million** to OFAC; no monitor was imposed. From 2018 to 2022, a handful of employees at Extreme's Moscow subsidiary fulfilled purchase orders for networking equipment destined for a maker of missile systems owned by an SDN-listed entity, routing them through a front company. Extreme disclosed to NSD days before a journalist's article ran. DOJ found the disclosure untimely but credited full cooperation and remediation.

Key takeaways include:

- A disclosure made under threat of imminent press coverage earns a "near miss" NPA and a fine at half the statutory maximum, not the declination Bosch received.
- A good-faith internal investigation of earlier, incomplete allegations still carried "significant weight," as did producing nearly 400,000 documents, making foreign employees available, and tolling the statute of limitations.
- One set of facts drew multi-agency enforcement; the OFAC penalty exceeded the criminal penalty.

Bosch

BIS Reaches Administrative Enforcement Settlement with Robert Bosch GmbH

June 2026

After filing a **voluntary self-disclosure**, Bosch agreed to pay **$36.2 million** to settle potential civil liability with BIS for improper application of the *de minimis* rule. At the same time, DOJ declined to prosecute Bosch after Bosch agreed to **disgorge $11.4 million** ($3.6 million credited toward the BIS penalty). Two Bosch subsidiaries sold, transferred, and/or exported $72 million in sensor hardware and software to affiliates of Huawei on the Entity List on 109 occasions without the required license or authorization. Bosch initially determined that the Foreign Direct Product Rule did not apply to the hardware after conflating it with the *de minimis* rule despite repeated warnings. Bosch incorrectly concluded that the Foreign Direct Product Rule did not apply to software.

Key takeaways include:

- Even though items are classified as EAR99, are produced outside the U.S., and are used in consumer applications, they can still be subject to the EAR.
- The FDPR extends beyond hardware to software.
- BIS continues to prioritize enforcement involving China and Entity List parties, including for EAR99 products.
- Voluntary self-disclosure and remediation (including adding compliance personnel, expanding compliance resources, and enhancing export controls policies) can qualify companies for declination under DOJ's Corporate Enforcement Policy.

Compliance & Defense Strategies

04

Sources That Can Prompt Scrutiny or Investigations

Internal

- Hotline or compliance report on a China-bound order
- Sales or logistics anomalies
- Screening hits on newly listed customers
- M&A diligence or post-closing integration may surface a target's unlicensed exports
- Audits mandated by prior settlements
- Employee whistleblower pilot program with 10–30% awards from DOJ and FinCEN

DOJ / Agency

- BIS end-use checks: 1,840 in 73 countries in FY2025, with overseas Export Control Officers more than doubling in 2026
- Grand jury or BIS subpoenas after an individual is charged
- Trade Fraud Task Force and FCA qui tam suits on tariff evasion and false origin
- Foreign authorities
- Congress: Committees and Letters to Commerce naming specific exporters
- Follow-on securities suits

Compliance and Defense Strategies Under Regulatory Uncertainty

Best-practice export compliance starts with BIS's eight essential components of an adequate compliance program.

1

Management Commitment

- Executive-signed Management Commitment, recirculated annually
- Resources: staff, budget, screening tools, training

2

Risk Assessment

- Risk areas: export item, operations, customers
- Common risk items: unlicensed exports, technology release, servicing abroad

3

Export Authorization

- Considerations: Jurisdiction, ECCN classification, license determination, screening
- Check the Country Chart and exceptions before shipping
- Screen all parties at order and at export

4

Recordkeeping

- Retain required export records for at least five years
- Keep classification rationale and due diligence files

5

Training

- Tailored by role: awareness for all, in-depth for export compliance team
- Refresh when products, end users, or the EAR change

6

Audits

- Frequent functional audits of single steps (screening, shipping)
- Periodic program-level audit
- Report findings; track corrective actions to closure

7

Handling Violations

- Internal and external reporting channels for suspected violations
- Process to investigate, confirm, and correct; discipline where due

8

Compliance Manual

- Written ECP manual compiling all seven elements and process flows
- Names compliance officers, approvers, and escalation contacts

Compliance and Defense Strategies Under Regulatory Uncertainty

Other Best Practices

- Harden distribution networks; heighten oversight of China operations
- Screen and verify customers, sources of funds, and suppliers
- Document where the rules are in limbo, ensure a defensible, well-reasoned approach, but be ready for agencies to interpret the rules differently
- Build compliance evidence into workflows rather than reconstructing it later
- Engage directly: local OEE field office, in-person meetings, consistent leave-behinds
- Weigh VSDs carefully: they reduce but don’t eliminate penalties (Exyte, Teledyne) and can earn a DOJ declination (Bosch)

Lessons learned from White Collar Investigations

- Scope the trade questions up front: which items, end users, and routes; who approved them; when a VSD is due
- Hold shipping records, end-user certificates, and chats across foreign affiliates and forwarders; stop auto-deletion
- Interview sales and logistics staff before any suspected insider; recuse implicated executives from oversight (Super Micro)
- Protect privilege at every step; affirmative sharing of potentially privileged material with government agencies risks waiver

Key Takeaways

1. **Export controls don’t operate in a silo.** One deal can trigger sanctions, tariff, export, and outbound investment rules at once.

2. **Regulatory uncertainty is itself a risk.** The AI Diffusion Rule, the Affiliates Rule, and data center rules remain in limbo, so plan as if they could be enforced.

3. **Timing of disclosure may drive the outcome.** Cadence pled guilty, Extreme Networks got a near-miss NPA, and Bosch got a declination.

4. **Licensing without normal channels.** Build delays into deal timelines, protect deals contractually, and when meeting with agencies, frame specific requests (e.g., a license, classification, or regulatory carve-out) around how they make the agency’s review simpler and more efficient.

Upcoming Programs

2026/2027 White Collar Webcast Series

Date and Time	Program	Registration Link
Tuesday, November 10, 2026 **9:00 AM – 11:00 AM PT** **12:00 PM – 2:00 PM ET**	**Board Oversight of Enforcement Investigations** Speakers: John Chesley, Monica Loseman, Bill Savitt, Joe Warin	Event Details
Tuesday, December 1, 2026 **9:00 AM – 11:00 AM PT** **12:00 PM – 2:00 PM ET**	**FCPA and Anti-Corruption Enforcement Trends in Global Markets** Speakers: Michael Diamant, Katharina Humphrey, Ning Ning, Benno Schwarz, Patrick Stokes, Oliver Welch	Event Details
Wednesday, December 2, 2026 **9:00 AM – 10:00 AM PT** **12:00 PM – 1:00 PM ET**	**Congressional Investigations** Speakers: Barry Berke, Michael Bopp, Matthew Owen, Laura Plack	Event Details
Thursday, December 10, 2026 **9:00 AM – 10:00 AM PT** **12:00 PM – 1:00 PM ET**	**Corporate DEI Enforcement** Speakers: Stephanie Brooker; Mylan Denerstein; Karin Portlock; Jake Shields	Event Details



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