

## Unpacking The BIS Guidance On Chinese AI Chip Use

By **Peter Lichtenbaum** (August 27, 2025, 5:08 PM EDT)

On May 13, the U.S. Department of Commerce's Bureau of Industry and Security announced new guidance on the application of the Export Administration Regulations' General Prohibition 10, or GP10, to Chinese advanced-computing integrated circuits.[1]

The BIS thereby notified all persons and companies in the U.S. and abroad of the likelihood that Chinese advanced-computing integrated circuits, or ICs, including various Huawei Ascend chips, are likely developed or produced in violation of the EAR. As a result, the BIS may subject companies "engaging in GP10 activities" involving such ICs to enforcement actions for violating GP10.[2]



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In doing so, the BIS aims to deter U.S. and foreign companies from using advanced ICs manufactured in China in the place of U.S.-designed chips, given the ongoing contest between the U.S. and China for artificial intelligence technology dominance.[3]

Advanced ICs are critical inputs in the development of advanced AI models.[4] Currently, the U.S. is home to the companies designing the world's most sophisticated ICs, such as Nvidia's H100[5] and Blackwell graphics processing units.[6]

In a bid to restrict China's ability to develop advanced AI models, the BIS established export controls on advanced ICs in October 2022, cutting off the supply of these GPUs and other high-processing-power ICs to China-based AI developers. If ICs meet the technical parameters of Export Control Classification Number 3A090, they require BIS export licensing, which is generally not available for China or in support of Chinese AI development.[7]

Despite these restrictions, China continues to develop its domestic advanced IC manufacturing base.[8] Currently, Huawei Corp. is the primary designer of high-processing-power ICs in China, including the Ascend line of processors with which Huawei seeks to rival Nvidia's ICs.[9] The recent guidance leverages GP10 to take aim at these and what the guidance refers to as PRC 3A090 ICs.

### GP10 Overview

GP10 prohibits a wide range of activities involving items that are the subject of EAR violations. Companies may not:

sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported, reexported, or transferred (in-country) or to be exported, reexported, or transferred (in-country) with knowledge that a violation of the Export Administration Regulations, the Export Control Reform Act of 2018, or any order, license, license exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item.[10]

For GP10 purposes, "knowledge" includes not only positive knowledge that an EAR violation exists or is about to occur, but also an awareness of a high probability of the violation's existence or future occurrence.[11]

### **Prior Applications of GP10**

Historically, the BIS typically applied GP10 in the context of voluntary disclosures. When a company identified that it had exported items in violation of the EAR, the company would be required by GP10 to refrain from further activities involving the illegally exported items, unless and until it could obtain a GP10 waiver from the BIS' Office of Export Enforcement.[12]

However, in response to the Russian invasion of Ukraine, the BIS instituted rules in 2022 and 2023 establishing export controls on aircraft and other sensitive items bound for Russia and Belarus. Pursuant to these regulations, Russia-bound and Belarus-bound aircraft that are subject to the EAR must first obtain BIS authorization.[13] As part of its enforcement regime, the BIS published a list of aircraft identified as having flown into Russia and Belarus in apparent violation of the EAR.[14]

This list served to provide industry-wide knowledge under GP10 of a high probability that these flights occurred in violation of the EAR. Thus, any company supplying services or engaging in other GP10 activities with respect to the identified aircraft met both the knowledge and activity elements of GP10, making them liable for a GP10 violation.

This application of GP10 represented a shift. The BIS was using its authority to put industry on notice that GP10's knowledge requirement was met in specific circumstances, and thereby to proactively deter industry from engaging in the numerous activities proscribed by GP10.

This could be analogized to the BIS' use of "is informed" letters, which are directed at individual companies, and put those companies on notice of a license requirement.[15] The GP10 announcements for Russia effectively put industry as a whole on notice of a license requirement before they could engage in GP10 activities with respect to the listed aircraft.

### **The May 13 Guidance on PRC 3A090 ICs**

The May 13 guidance follows the same logic as the BIS actions with regard to Russia and Belarus-bound aircraft in 2022 and 2023. In the May guidance, the BIS stated that it aimed to alert "industry to the risks of using PRC advanced-computing ICs, including specific Huawei Ascend chips." [16]

According to the BIS, Huawei's Ascend chips and any other PRC 3A090 ICs are likely subject to the EAR (under one of the EAR's foreign direct product rules), since their manufacture utilized controlled U.S. software or technology, or semiconductor manufacturing equipment that is the direct product of such software or technology.[17] The BIS also noted that these chips may have been produced, purchased or ordered by an entity on the BIS entity list.[18]

As a result, there is a high probability that a license was required during the design and production of these chips. Absent such authorization, the BIS concluded that the chips likely were produced in violation of the EAR.[19]

By placing the industry on notice that the production of Ascend chips and other PRC 3A090 ICs likely violated the EAR, the BIS has effectively ensured that the knowledge element in GP10 is satisfied. Thus, any company found to have engaged in a GP10 activity involving a PRC 3A090 IC that cannot show that the IC was produced with BIS authorization may be found liable for violating GP10.

Accordingly, a key question is what constitutes a GP10 activity involving a PRC 3A090 IC. Given the importance of the policy goal of deterring U.S. and foreign companies from using advanced ICs manufactured in China, as well as the BIS' strong focus on enforcement of China-related export controls, the BIS may broadly construe the scope of GP10 activities.

In subsequent outreach to industry groups, the BIS has indicated as much. In response to industry questions regarding firms' liability for engaging in various kinds of activities relating to PRC 3A090 ICs, BIS officials have stated that they will consider most activities with a connection to a PRC 3A090 IC as raising a GP10 issue.

For example, BIS officials have said that exporting, reexporting or transferring any item to be integrated by a third party into a server containing a PRC 3A090 IC would subject the exporter to GP10 enforcement actions. Similarly, providing updates for software running on computers using PRC 3A090 ICs, if the software supports the use of the chip, would be construed as servicing the chip.

The legal basis for this BIS position is unclear. In such contexts, the exporter arguably is not engaging in a GP10 activity involving the item — PRC 3A090 IC — that is the subject of an EAR violation. For instance, if the exporter supplies its product to a third party that will integrate the product into a server containing a PRC 3A090 IC, the exporter arguably is not using, servicing, etc. the PRC 3A090 IC.

If the BIS plans to maintain its broad interpretation of the May 13 guidance, it would be helpful for industry if it were to state clearly its interpretation in an official document and articulate the legal reasoning that it believes supports the interpretation. And since the BIS presumably considers that the broad interpretation advances U.S. national security, a clearer statement of this interpretation should be consistent with that view.

### **Steps Forward for U.S. Companies**

The May 13 guidance states that U.S. companies should confirm with their supplier,

prior to performing any of the activities identified in GP10 to ensure compliance with the EAR, that authorization exists for the export, reexport, transfer (in-country), or export from abroad of (1) the production technology for that PRC 3A090 IC from its designer to its fabricator, and (2) PRC 3A090 IC itself from the fabricator to its designer or other supplier.[20]

Given that the BIS apparently considers a wide range of activities identified in GP10 as related to PRC 3A090 ICs and therefore prohibited without a license, firms should consider adopting enhanced due diligence processes regarding their use by the firms' counterparties.

Firms may consider conducting enhanced due diligence by (1) identifying whether PRC 3A090 ICs may be

present in their customers' operations such that the firm's products are at risk of being used in connection with PRC 3A090 ICs, and (2) securing confirmation of EAR compliance from their customers in connection with any use of PRC 3A090 ICs.

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*Peter Lichtenbaum is a partner at Covington & Burling LLP. He previously served as the assistant secretary of commerce for export administration at the U.S. Department of Commerce.*

*Covington summer associate Joshua Feldman contributed to this article.*

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[1] Bureau of Industry and Security, U.S. Dep't of Commerce, Guidance on Application of General Prohibition 10 (GP10) to People's Republic of China (PRC) Advanced-Computing Integrated Circuits (ICs) (May 13, 2025), <https://www.bis.gov/media/documents/general-prohibition-10-guidance-may-13-2025.pdf>. GP10 appears in the EAR at 15 C.F.R. § 736.2(b)(10). See also 15 C.F.R. § 764.2(e).

[2] *Id.*

[3] Both the United States and China have identified AI leadership as a matter of national security, citing advanced AI's numerous military and cybersecurity applications. See Army Maj. Wes Shinego, Defense Officials Outline AI's Strategic Role in National Security, DOD News (Apr. 24, 2025), <https://www.defense.gov/News/News-Stories/Article/article/4165279/defense-officials-outline-ais-strategic-role-in-national-security/>; see also Elsa B. Kania, "AI Weapons" in China's Military Innovation, Brookings Institute (Apr. 2020), [https://www.brookings.edu/wp-content/uploads/2020/04/FP\\_20200427\\_ai\\_weapons\\_kania\\_v2.pdf](https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_ai_weapons_kania_v2.pdf).

[4] More colloquially known as "microchips" or simply "chips," ICs are overlapping sets of circuits etched onto a semiconductor surface that form the basis of modern-day electronics' computing power. The processors found in a household desktop or laptop computer, including central processing units (CPUs) and graphics processing units (GPUs), are often versions of ICs. The higher the processing power of an IC, the more advanced programs the computer utilizing that IC can run. See Cristopher Saint & Judy Lynne Saint, Integrated Circuit, Encyc. Britannica, <https://www.britannica.com/technology/integrated-circuit>.

[5] See generally Ian King, What's the H100, the Chip Driving Generative AI?, Bloomberg (June 21, 2023), <https://www.bloomberg.com/news/articles/2023-06-21/what-s-the-h100-the-chip-driving-generative-ai-quicktake?leadSource=uverify%20wall>.

[6] Kif Leswing, Nvidia Announces Blackwell Ultra and Rubin AI Chips, NBC (Mar. 18, 2025), <https://www.nbcwashington.com/news/business/money-report/nvidia-announces-blackwell-ultra-and-vera-rubin-ai-chips/3870708/>.

[7] 15 C.F.R. Pt. 774 (Supp. No. 1). See Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items, 87 Fed. Reg. 62186 (Oct. 13, 2022). Certain 3A090 ICs remain eligible for supply to China, including under EAR license exceptions in circumstances where they are not designed or modified for use in data centers (i.e., where they are designed and marketed

for applications unrelated to training AI models).

[8] Chinese companies initially relied on new Nvidia chips designed not to trigger the technical parameters announced in October 2022. However, the Biden Administration responded by tightening those parameters in October 2023. See Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use: Updates and Corrections, 88 Fed. Reg. 73458 (October 25, 2023). Additionally, some Nvidia chips allegedly have been smuggled into China or imported through other means. See Harry Booth, How China is Advancing in AI Despite U.S. Chip Restrictions, Time (last updated Jan. 28, 2025), <https://time.com/7204164/china-ai-advances-chips/>.

[9] Fanny Potkin, Exclusive: Huawei Aims to Mass-Produce Newest AI Chip in Early 2025, Despite U.S. Curbs, Reuters (Nov. 21, 2024), <https://www.reuters.com/technology/artificial-intelligence/huawei-aims-mass-produce-newest-ai-chip-early-2025-despite-us-curbs-2024-11-21/>.

[10] 15 C.F.R. § 736.2(b)(10). See also 15 C.F.R. § 764.2(e), which additionally prohibits conducting "negotiations to facilitate such activities with respect to" items covered by GP10.

[11] 15 C.F.R. Pt. 772 (definition of "knowledge").

[12] 15 C.F.R. § 764.5(g).

[13] On February 24, 2022, BIS implemented the first of its aerospace export controls targeting Russia's defense, aerospace, and maritime sectors. BIS "impose[d] a policy of denial on sensitive items Moscow relies on," including semiconductors, computers, telecommunications, information security equipment, lasers, and sensors. Press Release, Bureau of Industry and Security, Dep't of Commerce, Commerce Implements Sweeping Restrictions on Exports to Russia in Response to Further Invasion of Ukraine (Feb. 24, 2022), <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/2914-2022-02-24-bis-russia-rule-press-release-and-tweets-final/file>. Subsequently, BIS extended those controls to Belarus's defense, aerospace, and maritime industries. Press Release, Bureau of Industry and Security, Dep't of Commerce, Commerce Imposes Sweeping Export Restrictions on Belarus for Enabling Russia's Further Invasion of Ukraine (Mar. 2, 2022), <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/2916-2022-03-02-bis-belarus-rule-press-release-final/file>.

[14] See <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/2935-2022-03-18-bis-list-of-aircraft-violating-the-ear-press-release-final/file>; see also <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/russia-belarus> ("On March 18, 2022, BIS began public identification of commercial and private aircraft that have flown into Russia in apparent violation of the Export Administration Regulations (EAR). In so doing, BIS is notifying the public that providing any form of service to these aircraft requires authorization. Absent such authorization, any person anywhere — including within Russia — risks violating the EAR and would be subject to BIS enforcement actions which could include substantial jail time, fines, loss of export privileges, or other restrictions. By preventing these aircraft from receiving any service, for example including from abroad, international flights from Russia on these aircraft are effectively grounded.").

BIS has identified hundreds of aircraft which were exported to Russia in apparent violation of U.S. export controls. Bureau of Industry and Security, Dep't of Commerce, Updated List (last updated Oct. 24, 2023), <https://www.bis.doc.gov/index.php/documents/policy-guidance/3371-2023-10-24-bis-list-of-commercial-and-private-aircraft-potential-ear-violations/file>.

[15] 15 C.F.R. § 744.6(c).

[16] See Guidance on Application of General Prohibition 10, *supra* note 1.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] See Guidance on Application of General Prohibition 10, *supra* note 1.