



A Look at the Bureau of Industry and Security (BIS) and their Role in Regulating Export Controls

What is BIS?

The Bureau of Industry and Security (BIS) at the Department of Commerce is responsible for regulating the export of dual-use items – goods or technology that have both commercial and military applications. Some notable examples of dual-use technology are:

- ▶ Semiconductors are fundamental to nearly all modern industrial and national security activities and are essential building blocks for other emerging technologies, such as artificial intelligence (AI), 5G, and quantum computing.
- ▶ Satellites can track weather patterns, gather intelligence, and facilitate military communications.

BIS can stop the export of any good or technology that might harm U.S. national security or foreign policy interests. These restrictions are generally referred to as “export controls.” Export controls are one of our most effective tools to keep U.S. technology out of the hands of our adversaries, including surveillance systems that help imprison people based on race and religion and out of the missile systems aimed at our allies and homeland.

The most well-known example of an export control is Huawei, a Chinese tech company that has direct ties to the Chinese Communist Party’s (CCP) military – the People’s Liberation Army (PLA). The Trump Administration put Huawei on the BIS Entity List, which cut it off from U.S. technology. The case for taking this action was straightforward:

- ▶ Huawei is complicit in the CCP’s genocide of ethnic and religious minorities, including Uyghurs.
- ▶ Huawei has stolen U.S. intellectual property that they then use to help the CCP oppress the people of Hong Kong, and to enrich the PLA.
- ▶ Huawei has been accused of stealing U.S. technology and exporting it to Iran and North Korea, in violation of U.S. sanctions.



What's Going Wrong at BIS?

Access to current and emerging technologies will determine who has the upper hand in U.S.-China strategic competition. The PRC heavily relies on technology from the United States and our allies and partners. As a result, BIS plays a pivotal role in protecting and enhancing U.S. national security by constraining the CCP's technology ambitions.

Unfortunately, currently, less than 1% of all U.S. exports to China need a license, and essentially all licenses for exports are approved. The lack of export controls raises concerns that BIS is overly permissive in approving licenses, and may be prioritizing the profits of private corporations over U.S. national security. HFAC found that BIS denied less than 1% of export licenses to Huawei, giving it access \$60 billion worth of technology, much of it being semiconductors.

In addition, BIS isn't effectively using the Foreign Direct Product Rule (FDPR), despite the rule's tremendous success in slowing down Huawei's 5G rollout in allied countries. FDPR lets BIS require a license for any good produced outside the United States that is a product of a U.S. technology. In other words, if a factory in Taiwan uses a U.S. tool to make a semiconductor, then it needs U.S. government approval to sell that chip to a company under a FDPR.

Importance of Congressional Oversight of BIS

1. **National Security:** PRC law gives the CCP the authority to access or acquire any technology to support its military. This approach challenges a core tenet of the U.S. export control regime that assumes a clear distinction between military and civilian end use and end users. The Export Control Reform Act of 2018 required BIS to enhance technology controls to address Military-Civil Fusion, but BIS has not meaningfully fulfilled this mandate.
2. **Transparency and Accountability:** BIS has a long history of operating outside the public eye. Leadership at BIS must do a better job of consulting and engaging with Congress – including providing regular, detailed information on BIS licensing and entity listing decisions.
3. **Protecting Human Rights:** The CCP is using technology to erect the world's most sophisticated surveillance state, which the CCP uses to silence dissent and carry out a genocide. In 2020, BIS sought public comments to inform rulemaking on how to use export controls on surveillance systems to promote human rights. Nearly two years later, BIS has issued no rule and taken no systematic action.