



**UNITED STATES – MEASURES ON CERTAIN SEMICONDUCTOR AND OTHER PRODUCTS,
AND RELATED SERVICES AND TECHNOLOGIES**

REQUEST FOR CONSULTATIONS BY CHINA

Addendum

The following communication, dated 19 December 2024, from the delegation of China to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

1 My authorities have instructed me to request further consultations with the Government of the United States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article XXIII of the *General Agreement on Trade in Services* ("GATS"), Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement"), and Article 64.1 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement") concerning certain measures of the United States related to trade restrictions on certain advanced computing semiconductor chips, supercomputer items, semiconductor manufacturing items and other items, as well as their related services and technologies destined for or in relation to China. This addendum supplements and does not replace China's request for consultations with the United States dated 12 December 2022 and circulated to WTO members on 15 December 2022 on the same subject.¹ China's revision of that request dated 9 February 2023 was circulated to WTO Members on 10 February 2023,² and an addendum dated 15 September 2023 was circulated to WTO Members on 19 September 2023.³

2 China considers that these measures are inconsistent with the United States' obligations under various provisions of the covered agreements. Pursuant to Article 4.4 of the DSU, the reasons for this request, including identification of the measures at issue and an indication of the legal basis for the complaint, are given below.

I. Background

3 The United States has maintained and implemented an export control regime of certain items, including certain commodities, software and technology. The export control regime is administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") through the Export Administration Regulations (15 CFR Parts 730-774, "EAR").

4 The EAR covers, among others, exports from the United States and transfer of foreign-produced products containing U.S.-origin components or derived from U.S.-origin technology or software. The list of EAR-controlled "items", including commodities, software and technology, is

¹ WT/DS615/1, G/L/1471, S/L/438, G/TRIMS/D/46, IP/D/44.

² WT/DS615/1/Rev.1, G/L/1471/Rev.1., S/L/438/Rev.1, G/TRIMS/D/46/Rev.1, IP/D/44/Rev.1.

³ WT/DS615/1/Rev.1/Add.1, G/L/1471/Rev.1/Add.1, S/L/438/Rev.1/Add.1,
G/TRIMS/D/46/Rev.1/Add.1, IP/D/44/Rev.1/Add.1.

published in Supplement No.1 to Part 774 of the EAR, namely, the Commerce Control List ("CCL"). Each controlled item is designated with an Export Control Classification Number ("ECCN") consisting of a set of digits and a letter. The CCL covers approximately over 2,900 controlled items, far exceeding that of the international export control regime⁴ which covers approximately 1,800 controlled items. In other words, the United States imposes export controls on approximately 1,100 items that are not included in the international export control regime.

5 Apart from items controlled under the ECCN, the EAR also includes an additional "basket category", i.e., the EAR99, which covers any item that is subject to the EAR as defined in §734.3(a) of the EAR but not listed on the CCL.

6 For items subject to the EAR, a license may be required for export, reexport or transfer (in-country) depending on the destination country, receiving party and end use, unless an exclusion or exemption applies. Notably, the destination countries are divided into groups listed in the Commerce Country Chart⁵ and Country Groups,⁶ and the receiving parties are controlled in the Entity List,⁷ the Military End User List⁸ and the Unverified List.⁹ To ensure compliance with the EAR, traders from not only the United States but also other WTO Members must go through as many as 29 steps to determine and carry out their EAR obligations.¹⁰

7 An export control regime should serve to promote global security and facilitate responsible export with respect to the international commitments of non-proliferation. However, the United States abuses its export control regime as a tool to achieve its objectives of maintaining "its leadership in science, technology, engineering and manufacturing sectors".¹¹ As a blatant example, the United States implements export control on items for civilian use and on activities of commercial entities, with a view to weaken the scientific and technological development of other WTO Members and to preserve its technology edge.¹²

⁴ International export control regime consists of multilaterally recognized agreements or resolutions, which include but are not limited to, United Nations Security Council Resolution 1540 (2004), the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

⁵ The Commerce Country Chart is provided in Supplement No.1 to Part 738 of the EAR.

⁶ The Country Groups are provided in Supplement No. 1 to Part 740.

⁷ The Entity List is provided in Supplement No. 4 to Part 744 of the EAR. The Entity List identifies foreign parties that are prohibited from receiving some or all items subject to the EAR unless the exporter secures a license. BIS can add to the Entity List a foreign party, such as an individual, business, research institution, or governmental organization, for engaging in certain activities. In most instances, license exceptions are unavailable for the export, reexport, or transfer (in-country) to a party on the Entity List of items subject to the EAR. Rather, prior license authorization is required, usually subject to a policy of denial.

⁸ The Military End User List is provided in Supplement No. 7 to Part 744 of the EAR. It identifies foreign parties that are prohibited from receiving items described in Supplement No. 2 of Part 744 of the EAR unless the exporter secures a license.

⁹ The Unverified List is published in Supplement No. 6 to Part 744 of the EAR. It is a list of parties whose bona fides BIS has been unable to verify. No license exceptions may be used for exports, reexports, or transfers (in-country) to unverified parties. A statement must be obtained from such parties prior to shipping items not subject to a license requirement.

¹⁰ See Part 732 of the EAR where the 29 steps are listed and explained.

¹¹ See 50 U.S. Code, section 4811 (Statement of policy): "The following is the policy of the United States: (3) The national security of the United States requires that the United States maintain its leadership in the science, technology, engineering, and manufacturing sectors, including foundational technology that is essential to innovation. Such leadership requires that United States persons are competitive in global markets. The impact of the implementation of this part on such leadership and competitiveness must be evaluated on an ongoing basis and applied in imposing controls under sections 4812 and 4813 of this title to avoid negatively affecting such leadership."

¹² The United States' abuse of export control regime is evidenced in the public speeches of its government officials. For example, on September 16, 2022, the National Security Advisor Jake Sullivan explained the United States' ambition and determination to pursue strength "at home" and "around the world" in his speech at the Special Competitive Studies Project Global Emerging Technologies Summit: "[o]n export controls, we have to revisit the longstanding premise of maintaining 'relative' advantages over competitors in certain key technologies. Given the foundational nature of certain technologies, such as advanced logic and memory chips, we must maintain as large of a lead as possible..... [T]echnology export controls can be more than just a preventative tool." See Remarks by National Security Advisor Jake Sullivan at the Special Competitive Studies

8 To achieve these goals, the United States has amended the EAR and adopted a series of disruptive measures targeting China's development in related sectors and in the global semiconductor supply chain. The United States not only imposes export controls itself on China, but also compels other WTO Members to follow suit by virtue of its extra-territorial control. By overstretching the extent of export controls and by bullying other WTO Members, the United States has caused severe disruption to international trade and risked the disintegration of the global semiconductor supply chain.

9 The above-mentioned disruptive measures are outlined in an interim final rule published by BIS on October 7, 2022 ("October 7 IFR")¹³. The October 7 IFR was exempted from the Administrative Procedure Act (5 U.S.C. 553) requirement for notice of proposed rule-making and became effective from October 7, 2022. According to the Office of the Federal Register, a federal agency may confirm an interim final rule by publishing a final rule in the Federal Register.¹⁴ The October 7 IFR places trade restrictions on certain advanced computing semiconductor chips, supercomputer items, semiconductor manufacturing items and their related products, services and technologies destined for China, certain Chinese entities and, in some cases, transferred within or exported from China. The October 7 IFR tightens the control against China's ability to manufacture semiconductor-related products from various regulatory perspectives, including, among others, controlling semiconductor manufacturing equipment and other items for civil use, adding certain Chinese semiconductor companies to the Entity List, imposing a broad end-use control, and imposing broad and vague controls on activities of U.S. corporations and individuals. The October 7 IFR, with its FDP Rules, even compels other Members to follow suit and exert controls on shipments from outside the United States with respect to non-U.S.-origin items. In combination with a presumption-of-denial policy for export control license applications, the October 7 IFR overstretches the extent and effect of the export control regime to an extreme.

10 In the Background section, the October 7 IFR clearly expresses that it is designed to "limit the PRC's ability to obtain advanced computing chips or further develop AI and 'supercomputer' capabilities", to limit "the ability to produce indigenously within China these types of advanced [integrated circuits ("ICs")]" and to "limit the PRC's ability to obtain semiconductor manufacturing capabilities to produce ICs".¹⁵ The extreme, discriminatory and trade-restrictive nature of the October 7 IFR reveals its true intent to maintain technology edge and to suppress the normal and commercial development of semiconductor industry in another Member. The measures nullify and impair the benefits legitimately expected by China under the multilateral trade rules, destabilize the global semiconductor supply chain, and also jeopardize the rule-based multilateral trading system that every Member counts on for their legitimate development rights. In China's view, the October 7 IFR and other disruptive export control measures constitute disguised restrictions on trade that are based on political and economic motivations – notably "leadership in science, technology, engineering and manufacturing" – which cannot be justified by the national security exceptions of the covered agreements.

11 On October 17, 2023, the BIS released two measures updating the controls released by the October 7 IFR. They are titled "Export Controls on Semiconductor Manufacturing Items Interim Final Rule"¹⁶ ("October 17 SME IFR") and "Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections

Project Global Emerging Technologies Summit, September 16, 2022, at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/16/remarks-by-national-security-advisor-jake-sullivan-at-the-special-competitive-studies-project-global-emerging-technologies-summit/>.

¹³ See Bureau of Industry and Security, Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification, 87 FR 62186, Federal Register/Vol. 87, No. 197/Thursday, October 13, 2022, at <https://www.govinfo.gov/content/pkg/FR-2022-10-13/pdf/2022-21658.pdf>.

¹⁴ See Office of the Federal Register, A Guide to the Rulemaking Process, at https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf

¹⁵ See Bureau of Industry and Security, Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification, Section I (Background), 87 FR 62186, Federal Register/Vol. 87, No. 197/Thursday, October 13, 2022, at <https://www.govinfo.gov/content/pkg/FR-2022-10-13/pdf/2022-21658.pdf>.

¹⁶ See Bureau of Industry and Security, Export Controls on Semiconductor Manufacturing Items, 88 FR 73424, Federal Register / Vol. 88, No. 205 / Wednesday, October 25, 2023, at <https://www.federalregister.gov/documents/2023/10/25/2023-23049/export-controls-on-semiconductor-manufacturing-items>

Interim Final Rule"¹⁷ ("October 17 AC/SC IFR"). The October 17 SME IFR and October 17 AC/SC IFR are interim final rules and came into effect on November 17, 2023.

12 Among the multiple updates in the October 17 SME IFR and October 17 AC/SC IFR, China has noted that the controlled country scope under the October 7 IFR has been broadened. While license requirements have been imposed for certain other countries, many of them¹⁸ benefit from a "presumption of approval", contrary to the "presumption of denial" that applies for exports to China.

13 Additionally, the United States requires a license for exports, re-exports, and in-country transfers to entities all over the world who are headquartered in, or whose ultimate parent company is headquartered in, China. These modifications amplify the trade-restrictive nature of the October 7 IFR and the discriminatory measures against China.

14 On April 4, 2024, the BIS released another interim final rule ("April 4 AC/SS/SM IFR") to correct inadvertent errors and made additional clarifications for the October 17 SME IFR and October 17 AC/SC IFR.

15 On December 2, 2024, the BIS released one more measure titled "Foreign-Produced Direct Product Rule Additions, and Refinements to Controls for Advanced Computing and Semiconductor Manufacturing Items" ("December 2 AC/SM IFR"). The December 2 AC/SM IFR updates the controls released by the October 7 IFR with five categories of changes to the EAR, including but not limited to: (1) the addition of new foreign-produced direct product rules; (2) additional revisions related to the production of semiconductors and other conforming changes, including revisions to *de minimis* rules; (3) addition of high-bandwidth memory (HBM) controls; (4) clarification to software keys, and (5) revisions to the CCL. The December 2 AC/SM IFR came into effect on December 2, 2024.

II. The Measures at Issue

16 As noted, the measures at issue are motivated by political and economic considerations for preserving the United States' "leadership" in technology sectors, and constitute discriminatory and disguised trade restrictions. The measures at issue are the set of export control rules that discriminately and arbitrarily restrict the trade of certain advanced computing semiconductor chips, supercomputer items, semiconductor manufacturing items and other items, as well as their related services and technologies. The measure at issues include but are not limited to:

17 The Export Control Reform Act of 2018 (50 U.S. Code Sections 4801 – 4852), including but not limited to Section 4811 (the "Statement of policy");

18 The Export Administration Regulations (15 CFR Parts 730 – 774) (the "EAR");

19 The October 7 IFR, i.e. the Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification (87 FR 62186, Federal Register / Vol. 87, No. 197, October 13, 2022);

20 The October 17 SME IFR, i.e. the Export Controls on Semiconductor Manufacturing Items Interim Final Rule (88 FR 73424, Federal Register / Vol. 88, No. 205, October 25, 2023);

21 The October 17 AC/SC IFR, i.e. Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections Interim Final Rule (88 FR 73458, Federal Register / Vol. 88, No. 205, October 25, 2023);

22 The April 4 AC/SS/SM IFR, i.e. Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections;

¹⁷ See Bureau of Industry and Security, Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections, 88 FR 73458, Federal Register / Vol. 88, No. 205 / Wednesday, October 25, 2023, at <https://www.federalregister.gov/documents/2023/10/25/2023-23055/implementation-of-additional-export-controls-certain-advanced-computing-items-supercomputer-and>

¹⁸ For example, destinations specified in Country Groups D:1 and D:4.

and Export Controls on Semiconductor Manufacturing Items; Corrections and Clarifications (89 FR 23876, Federal Register / Vol. 89, No. 66, April 4, 2024)'

23 The December 2 AC/SM IFR, i.e. Foreign-Produced Direct Product Rule Additions, and Refinements to Controls for Advanced Computing and Semiconductor Manufacturing Items (89 FR 96790, Federal Register / Vol. 89, No. 234, December 5, 2024)

24 FAQs for the measures at issue:

24.1 FAQs for the October 7 IFR - Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification (published by BIS on October 28, 2022, updated on January 25, 2023);¹⁹

24.2 FAQs for "Export Controls on Semiconductor Manufacturing Items" (October 17 SME IFR) and "Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections" (October 17 AC/SC IFR) (published by BIS on December 29, 2023).²⁰

25 The failure of the United States to publish promptly the October 7 IFR in such a manner as to enable traders and other interested parties to become acquainted with it, and to administer the October 7 IFR in a uniform, impartial and reasonable manner.

26 The decisions adding or revising Chinese entities and their subsidiaries in the Entity List with certain footnote designations (for example, Footnote 1, 4 or 5 designations), and the decisions adding or revising the Chinese entities and their subsidiaries in the Entity List that are in or related to the semiconductor industry, including among others:

26.1 The Interim Final Rule (87 FR 62186, Federal Register / Vol. 87, No. 197, October 13, 2022);

26.2 Additions and Revisions to the Entity List and Conforming Removal from the Unverified List (87 FR 77505, Federal Register / Vol. 87, No. 242, December 19, 2022);

26.3 Additions and Revisions of Entities to the Entity List (88 FR 13673, Federal Register / Vol. 88, No. 43, March 6, 2023);

26.4 Additions of Entities to the Entity List and Removal of Entity from the Entity List (88 FR 38739, Federal Register / Vol. 88, No. 114, June 14, 2023);

26.5 Entity List Additions (88 FR 71991, Federal Register / Vol. 88, No. 201, October 19, 2023); and

26.6 Additions and Modifications to the Entity List; Removals From the Validated End-User (VEU) Program (89 FR 96830, Federal Register / Vol. 89, No. 234, December 5, 2024).

27 There is ample evidence that the U.S. is still developing, formulating and updating the export control rules in this regard. Therefore, the measures at issue also include any amendments,

¹⁹ See <https://www.bis.doc.gov/index.php/documents/product-guidance/3181-2022-10-28-bis-fags-advanced-computing-and-semiconductor-manufacturing-items-rule-2/file>, and <https://www.bis.doc.gov/index.php/documents/product-guidance/3211-2023-1-25-updated-fags-for-oct-7-advanced-computing-and-semiconductor-manufacturing-equipment-rule/file>

²⁰ See https://www.bis.gov/sites/default/files/files/2023_Semiconductors-advanced-computing-Frequently_Asked_Questions_003.pdf

replacements, supplements, extension or renewal of the measures listed above as well as any measure relating to, administering or implementing the measures listed above.²¹

28 The following Sections A through G provide an illustrative list of the particular aspects of the measures at issue that China considers to be inconsistent with the covered agreements.

A. ECCN Rules

29 The ECCN Rules control and restrict the export of multiple ECCN items related to advanced computing, supercomputers, and semiconductor manufacturing. The ECCNs are controlled under National Security and Regional Stability reasons under §742.4(a)(4) and §742.6(a)(6).

30 License applications with a destination for China will generally be reviewed by BIS with a presumption of denial. The ECCN Rules also limit the availability of most license exceptions for certain exports, reexports, or transfers to or within China.

31 Furthermore, it appears to China that the EAR controls items of an excessively broad coverage. By the "basket category" EAR99 as provided in §732.3(b)(3), the EAR controls "low-technology consumer goods"²² or "non-sensitive products and potentially sensitive technologies".²³ A license is required when an EAR99 item is destined for any embargoed country, prohibited end-use, or is being exported to or in support of a prohibited end-user (including entities designated in the Entity List). Such license requirement on EAR99 will result in discrimination to trade in non-sensitive commercial items destined for certain WTO Members or commercial end-users, such as the Chinese entities designated in the Entity List.

B. FDP Rules

32 The FDP Rules substantially expand the scope of items that are "subject to the EAR" to cover non-U.S.-origin items in the advanced computing and semiconductor sector (as well as others) that are produced outside the United States and are destined for China or listed entities. The FDP Rules published on October 7, 2022 subject foreign-produced items to the EAR's jurisdiction (and impose license requirements) if such item is either: (i) a "direct product" of "technology" or "software" subject to the EAR and specified under certain ECCNs; or (ii) produced by any plant or "major component" of a plant where the plant or "major component" of a plant itself is a "direct product" of U.S.-origin "technology" or "software" specified under certain ECCNs.

33 The October 7 IFR, October 17 SME IFR and October 17 AC/SC IFR (corrected by the April 4 AC/SS/SM IFR) and the December 2 AC/SM IFR have developed the following categories of the FDP Rules:

33.1 Advanced Computing FDP Rules: provided mainly in §734.9(h) of the EAR, the Advanced Computing FDP Rules apply if the individual or entity has "knowledge"²⁴ that the foreign-produced item that meets certain conditions²⁵ is: (1) destined for China or will be

²¹ The measures at issue also include the final rules or interim final rules, if any, published to amend, replace, supplement, extend, renew, supersede or confirm the October 7 IFR.

²² The description "low-technology consumer goods" of EAR99 is provided by BIS. See <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>.

²³ The description "non-sensitive products and potentially sensitive technologies" of EAR 99 is provide by the Congressional Research Service, U.S. Export Controls and China, March 24, 2022. See <https://crsreports.congress.gov/product/pdf/IF/IF11627>.

²⁴ According to Part 772 of the EAR, knowledge of a circumstance (the term may be a variant, such as "know," "reason to know," or "reason to believe") includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.

²⁵ According to §734.9(h)(1) up to date as of the December 2 AC/SM IFR, the Advanced Computing FDP Rules apply to a foreign-produced item if: (1) it is the "direct product" of "technology" or "software" subject to the EAR and specified in 3D001, 3D901, 3D991, 3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 3E992, 3E993, 3E994, 4D001, 4D090, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E991, or 5E002 of the CCL; or it is produced by any plant or "major component" of a plant when the plant or "major component" of a plant itself is a "direct product" of U.S.-origin "technology" or

incorporated into any "part," "component," "computer" or "equipment" not designated EAR99 that is destined for China, or worldwide to an entity headquartered in, or whose ultimate parent company is headquartered in China; or (2) "technology" "developed" by an entity headquartered in, or whose ultimate parent company is headquartered in China for the "production" of a mask or an IC wafer or die.

33.2 Supercomputer FDP Rules: provided mainly in §734.9(i) of the EAR, the Supercomputer FDP Rules apply if there is "knowledge" that the foreign-produced item that meets certain conditions²⁶ will be: (1) used in the design, "development," "production," operation, installation (including on-site installation), maintenance (checking), repair, overhaul or refurbishing of a "supercomputer" (as defined in §772.1 of the EAR) located in or destined for China; or (2) incorporated into, or used in the "development" or "production" of any "part," "component" or "equipment" that will be used in a "supercomputer" located in or destined for China.

33.3 SME FDP Rules: provided mainly in §734.9(k) of the EAR, the SME FDP Rules apply if there is "knowledge" that the foreign-produced item that meets certain conditions²⁷ will be destined for China.

34 The license applications with destination for China, or for an entity headquartered in or whose ultimate parent company is headquartered in China will be reviewed by BIS with a presumption of denial.

C. De Minimis Rules

35 The De Minimis Rules substantially expand the scope of items that are subject to a license requirement to cover non-U.S.-origin items. §734.4 of the EAR expands the scope of items that are "subject to the EAR" to foreign-made items outside the United States when they contain a certain level of U.S. content. The October 17 SME IFR (corrected by the April 4 AC/SS/SM IFR) and the December 2 AC/SM IFR develop the De Minimis Rules related to the advanced computing and semiconductor sector (as well as others) in §734.4(a)(3), (a)(8) and (a)(9) as follows:

35.1 There is no *de minimis* level for the equipment meeting the parameters in certain ECCN, when the equipment is destined for use in the "development" or "production" of "advanced-node integrated circuits" and the "advanced-node integrated circuits" meet

"software" specified in the ECCNs above; and (2) the foreign-produced item is specified in ECCN 3A090, 3E001 (for 3A090), 4A090, or 4E001 (for 4A090) of the CCL; or an integrated circuit, computer, "electronic assembly," or "component" specified in ECCN 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z.

²⁶ According to §734.9(i)(1) up to date as of the December 2 AC/SM IFR, the Supercomputer FDP Rules apply to a foreign-produced item if: (1) it is a "direct product" of "technology" or "software" subject to the EAR and specified in ECCN 3D001, 3D901, 3D991, 3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 3E992, 3E993, 3E994, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL; or (2) the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a "direct product" of U.S.-origin "technology" or "software" that is specified in ECCN 3D001, 3D901, 3D991, 3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 3E992, 3E993, 3E994, 4D001, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL.

²⁷ According to §734.9(k)(1) up to date as of the December 2 AC/SM IFR, the SME FDP Rules apply to a foreign-produced item specified in ECCN 3B001.a.4, c, d, f.1, f.5, k to n, p.2, p.4, r, or 3B002.c if: (1) it is the "direct product" of "technology" or "software" subject to the EAR and specified in 3D992 or 3E992 of the CCL; or (2) the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a "direct product" of U.S.-origin "technology" or "software" that is specified in ECCN 3D001 (for 3B commodities), 3D901, 3D991 (for 3B991 and 3B992), 3D992, 3D993, 3D994, 3E001 (for 3B commodities), 3E901 (for 3B903), 3E991 (for 3B991 or 3B992), 3E992, 3E993, or 3E994 of the CCL; or it contains a commodity produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a "direct product" of U.S.-origin "technology" or "software" that is specified in ECCN 3D001 (for 3B commodities), 3D901, 3D991 (for 3B991 and 3B992), 3D992, 3D993, 3D994, 3E001 (for 3B commodities), 3E901 (for 3B903), 3E991 (for 3B991 or 3B992), 3E992, 3E993, or 3E994 of the CCL.

the parameter specified in paragraph (1) of that definition in § 772.1 of the EAR;

- 35.2 There is no *de minimis* level related to the SME FDP Rules for a commodity meeting the parameters in certain ECCNs when the commodity contains a U.S.-origin integrated circuit specified under Category 3, 4, or 5 of the CCL, and the commodity is destined for China;
- 35.3 There is no *de minimis* level related to Footnote 5 FDP Rules for an item meeting the parameters in certain ECCNs specified in Category 3B (except certain ECCNs), when the commodity contains a U.S.-origin integrated circuit specified under Category 3, 4, or 5 of the CCL, and the commodity is destined for entities with a Footnote 5 designation, which are all located in or related to the entities located in China.²⁸

36 In other words, any foreign-made equipment meeting the parameters above-mentioned is subject to license requirement when it is destined for China or for entities located in or related to China. The license applications will be reviewed by BIS with a presumption of denial.

D. Entity List and Entity List FDP Rules

37 The EAR maintains an Entity List in Supplement No. 4 to Part 744 of the EAR as a tool to control exports to certain end users. The reasons for an entity to be listed in the Entity List can be very broad.²⁹

38 The procedures for addition to, modification of or removal of an entity from the Entity List are provided in Supplement No.5 to Part 744 of the EAR. Firstly, the addition to the Entity List needs a majority vote of the member agencies of the End-User Review Committee ("ERC")³⁰; in contrast, the criteria for the removal from the Entity List is stricter, requiring a unanimous vote of all ERC member agencies. Secondly, the EAR provides an internal review and remedy mechanism for the member agencies of ERC if it is not satisfied with the outcome of the vote for addition to, modification of or removal of the entity. However, once a decision is made by the ERC (or after the internal review and the remedies are exhausted), the decision is final for the entity concerned and cannot be further reviewed through a regular EAR interagency review process. Therefore, the entity concerned is afforded fewer opportunities than the ERC member agencies to seek review and remedies for the administrative decision that imposes restrictions on trade.

39 With respect to the Entity List itself, generally, the Entity List identifies non-U.S. entities that are prohibited from receiving some or all items subject to the EAR unless the exporter secures a license. However, for certain Chinese entities, the EAR expands the restrictions by applying certain footnote designations, for example, Footnote 1, 4 and 5 designations to the entities in the Entity List. These footnote designations expand the licensing requirements for foreign-produced items by applying broader FDP rules (the Entity List FDP Rules). Because broader FDP rules apply, more foreign-produced items will be subject to the EAR and, therefore, require a license. The Entity List FDP Rules apply if there is the knowledge that a foreign-produced item³¹ will be involved in activities

²⁸ See §734.4(a)(3), (a)(8) and (a)(9).

²⁹ The criteria for revising and adding an entity into the Entity List are provided in §744.11(b) of the EAR. According to §744.11(b), any entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List. The criteria listed in paragraphs (b)(1) through (5) are only "an illustrative list of activities" that cannot represent all and any circumstances.

³⁰ According to paragraph 1 of the Supplement No.5 to Part 744 of the EAR, the ERC composes of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury.

³¹ According to §734.9(e)(1)(i) up to date as of the December 2 AC/SM IFR, the export control in Footnote 1 applies to a foreign-produced item if : (1) it is a "direct product" of "technology" or "software" subject to the EAR and specified in ECCN 3D001, 3D901, 3D991,3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 3E992, 3E993, 3E994, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR; or (2) the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a "direct product" of U.S.-origin "technology" or "software" that is specified in ECCN 3D001, 3D901, 3D991,

of a designated entity with certain footnote designations on the Entity List, or the aforesaid entity is a party to the transaction.³² As illustrated above, the United States applies these designations to a number of Chinese entities or entities related to China.

40 For the entities designated with Footnote 1, 4 or 5, the review policy is set forth in the entry in Supplement No. 4 to Part 744 of the EAR. Most of the designated entities will be reviewed by BIS with a presumption of denial.

E. End User/End Use Rules

41 The new End User/End Use Rules expand the scope of controlled items subject to the license requirement by limiting end use in China. According to §744.23 of the EAR, BIS imposes end-user/end-use controls based upon an individual or entity's knowledge that certain items subject to the EAR are destined for a supercomputer or semiconductor development or production end-use in China.

42 Pursuant to §744.23(a) of the EAR, the following items are subject to license requirements: (1) items specified in certain ECCNs with an end-use related to a supercomputer located in or

3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 3D992, 3D993, 3D994, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the CCL.

According to §734.9(e)(2)(i) up to date as of the December 2 AC/SM IFR, the export control in Footnote 4 applies to a foreign-produced item if: (1) it is the "direct product" of "technology" or "software" subject to the EAR and specified in ECCN 3D001, 3D901, 3D991, 3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 3D992, 3D993, 3D994, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL; or (2) the foreign-produced item is produced by any complete plant or 'major component' of a plant when the complete plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a "direct product" of U.S.-origin "technology" or "software" that is specified in ECCN 3D001, 3D901, 3D991, 3D992, 3D993, 3D994, 3E001, 3E002, 3E003, 3E901, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL.

According to §734.9(e)(3)(i) up to date as of the December 2 AC/SM IFR, the export control in Footnote 5 applies to a foreign-produced item if it is specified in ECCN 3B001 (except 3B001.a.4, c, d, f.1, f.5, g, h, k to n, p.2, p.4, r), 3B002 (except 3B002.c), 3B903, 3B991 (except 3B991.b.2.a through 3B991.b.2.b), 3B992, 3B993, or 3B994, and meets the conditions of either: (1) it is the "direct product" of "technology" or "software" subject to the EAR and specified in ECCN 3D001 (for 3B commodities), 3D901 (for 3B903), 3D991 (for 3B991 and 3B992), 3D993, 3D994, 3E001 (for 3B commodities), 3E901 (for 3B903), 3E991 (for 3B991 and 3B992), 3E993, or 3E994 of the CCL; or (2) the foreign-produced item is produced by or contains a commodity produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a "direct product" of U.S.-origin "technology" or "software" that is specified in ECCN 3D001 (for 3B commodities), 3D901, 3D991 (for 3B991 and 3B992), 3D992, 3D993, 3D994, 3E001 (for 3B commodities), 3E901 (for 3B903), 3E991 (for 3B991 and 3B992), 3E992, 3E993, or 3E994 of the CCL.

³² According to §734.9(e)(1)(ii) up to date as of the December 2 AC/SM IFR, the export control in Footnote 4 apply to a foreign-produced item if there is "knowledge" that: (1) the foreign-produced item will be incorporated into or will be used in the "production" or "development" of any "part, "component," or "equipment" produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR; or (2) any entity with a footnote 1 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, e.g., as a "purchaser", "intermediate consignee", "ultimate consignee", or "end-user".

According to §734.9(e)(2)(ii) up to date as of the December 2 AC/SM IFR, the export control in Footnote 4 apply to a foreign-produced item if there is "knowledge" that: (1) the foreign-produced item will be incorporated into, or will be used in the "production" or "development" of any "part", "component", or "equipment" produced, purchased, or ordered by any entity with a Footnote 4 designation in the license requirement column of the Entity List in Supplement no. 4 to Part 744 of the EAR; or (2) any entity with a footnote 4 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, e.g., as a "purchaser", "intermediate consignee", "ultimate consignee", or "end-user".

According to §734.9(e)(3)(ii) up to date as of the December 2 AC/SM IFR, the export control in Footnote 5 apply to a foreign-produced item if there is "knowledge" that: (1) the foreign-produced item will be incorporated into, or will be used in the "production" or "development" of any "part", "component", or "equipment" produced, purchased, or ordered by any entity with a Footnote 5 designation in the license requirement column of the Entity List in Supplement no. 4 to Part 744 of the EAR; or (2) any entity with a footnote 5 designation in the license requirement column of the Entity List in supplement no. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, e.g., as a "purchaser", "intermediate consignee", "ultimate consignee", or "end-user".

destined to China; (2) certain items subject to the EAR being used in the "development" or "production" of ICs destined to a "facility" located in China where "production" of certain advanced-node ICs occurs, or used in the design of an advanced-node IC that will be "produced" in China; (3) certain advanced computing items when: (i) they are destined to certain destinations and for an entity that is headquartered in, or whose ultimate parent company is headquartered in China; or (ii) the technology controlled is developed by an entity headquartered in, or whose ultimate parent company is headquartered in China; and (4) any item subject to the EAR and specified on the CCL when: (i) it is destined to China for the "development" or "production" of "equipment," "components," "assemblies" or "accessories specified in certain ECCNs or associated software" and "technology"; or (ii) it is exported, reexported, or transferred (in-country) for "development" or "production" of a foreign-made item, whether subject to the EAR or not, that is specified in the certain ECCNs identified in (i) and the "development" or "production" is by an entity headquartered in, or whose ultimate parent is headquartered in China.³³

43 §744.23(b) of the EAR specifies that BIS may inform persons of a new license requirement imposed on certain end-users when BIS considers there is an unacceptable risk of use in, or diversion to, the end uses specified in §744.23(a)(1) through (4) of the EAR.

F. U.S. Persons' Activities Rules

44 The U.S. Persons' Activities Rules restrict U.S. persons from engaging in or facilitating activities supporting the development or production of certain ICs at fabs in China.

45 According to §744.6(c) of the EAR, BIS requires a U.S. person to obtain a license to engage in shipping, transmitting, or transferring (in-country) to or within China, facilitating the activities aforementioned or servicing the activities associated with : (1) any item not subject to the EAR that the individual or company knows will be used in the "development" or "production" of ICs at a "facility" of an entity headquartered in, or whose ultimate parent company is headquartered in China where "production" of "advanced-node integrated circuits" occurs; (2) items not subject to the EAR and meeting the parameters of any ECCN in Product Groups B, C, D or E in Category 3 of the CCL that the individual or company knows will be used in the "development" or "production" of ICs at a "facility" of an entity headquartered in, or whose ultimate parent company is headquartered in China where "production" of IC occurs, but the individual or company does not know, whether "production" of "advanced-node integrated circuits" occurs at such "facility"; and (3) items not subject to the EAR and meeting the parameters of certain ECCNs regardless of end use or end user.³⁴

G. Procedural Deficiencies

46 The United States did not publish promptly the October 7 IFR in such a manner as to enable traders and other interested parties to become acquainted with it and therefore failed to administer the measures in a uniform, impartial and reasonable manner. In or around September 2022, certain semiconductor companies were reported to be informed by BIS of the future publication of the October 7 IFR and were required to halt their exports in advance.³⁵ In other words, the United States enforced certain trade-restrictive measures before the promulgation of such measures.

47 In addition, the procedural discrepancy for adding to and removing from the Entity List as mentioned in Part II.D above constitutes an instance for the United States' failure to administer its export control regime in a uniform, impartial and reasonable manner. The imprecisely and uncertainly broad scope of EAR99, which results in restrictions on non-sensitive and commercial items and on commercial entities that should not have been restricted under the export control

³³ See §744.23 of the EAR

³⁴ See §744.6 (c)(2) of the EAR.

³⁵ For instance, NVIDIA Corporation filed a report to the United States Securities and Exchange Commission on August 26, 2022 that the United States imposed a new license requirement, effective immediately, for any future export of the company's certain types of ICs to China. Systems that incorporate such certain types of ICs were also covered by the license requirement, and the license requirement also included future ICs that achieve equal or greater performance. See Nvidia Corporation, Current Report Pursuant To Section 13 Or 15(d) Of The Securities Exchange Act Of 1934, at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001045810/000104581022000146/nvda-20220826.htm>.

regime, also reflects the United States' failure to administer its export control regime in a uniform, impartial and reasonable manner.

III. Legal Basis of the Complaint

48 The measures at issue described above constitute restrictions on trade and are inconsistent with the United States' obligations under various provisions of the covered agreements, including but not limited to:

49 Article I:1 of the GATT 1994 because, through the measures at issue, individually and collectively, the United States fails to accord, with respect to rules and formalities in connection with exportation, immediately and unconditionally the advantage, favor, privilege and immunity granted to products destined for other WTO Members to like products destined for China;

50 Article XI:1 of the GATT 1994 because the measures at issue, individually and collectively, constitute restrictions instituted and maintained by the United States on the exportation or sale for export of the products destined for China;

51 Article 2 of the TRIMs Agreement because the measures at issue, individually and collectively, constitute investment measures related to trade in goods, which are inconsistent with Article XI of GATT 1994;

52 Article 28 of the TRIPS Agreement because the measures at issue, individually and collectively, prevent patent owners from (a) assigning, or transferring by succession, the patent and (b) concluding licensing contracts;

53 Article X:1 of the GATT 1994 because the United States has instructed certain semiconductor companies to make applications in relation to the new license requirements set forth in the October 7 IFR before such requirements were officially published. The United States failed to publish promptly the October 7 IFR pertaining to trade restrictions in such a manner as to enable governments and traders to become acquainted with them;

54 Article X:3 of the GATT 1994 because the measures at issue constitute laws, regulations, decisions, and/or rulings of general application relating to trade restrictions and the United States fails to administer those measures in a uniform, impartial and reasonable manner.

55 Article VI of the GATS because the United States, through its U.S. Persons' Activities Rules, fails to ensure that its trade-restrictive measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. Furthermore, the United States fails to maintain or institute objective and impartial procedures which, at the request of an affected entity, provide for the prompt review of and appropriate remedies for administrative decisions affecting trade in services.

56 China emphasizes that the measures at issue have impeded trade in a way that exceeds the permissible limits of security exceptions under such provisions as Article XXI of the GATT 1994. The measures at issue arbitrarily over-stretch the normal scope of export controls by seeking to use security exceptions to preserve the United States' economic and technological "leadership". The measures at issue significantly disrupt normal international trade concerning semiconductor-related products and imperil the multilateral trade order that all Members benefit from.

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57 As a result of the foregoing, the measures at issue appear to nullify or impair benefits accruing to China directly or indirectly under the cited agreements.

58 China reserves the right to raise additional claims and legal matters regarding the above-mentioned measures at issue during the course of the consultations. For avoidance of doubt, China considers the scope of this request for consultations to encompass specific instances of the application of the measures described herein, as well as any ongoing conduct resulting from the continued application of these measures.

59 China looks forward to receiving the reply of the Government of the United States to this request and to setting a mutually convenient date for consultations.
