Congress of the United States
House of Representatives
SELECT COMMITTEE ON CHINA

August 6th, 2026

The Honorable Jeffrey Kessler
Under Secretary for Industry and Security
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Under Secretary Kessler,

Thank you for leading recent actions to clarify guidance around worldwide licensing requirements for end users in country group D:5 and Macau. This is a critical step in preventing the Chinese Communist Party (CCP) from accessing high-end U.S. chips and preserving America's technological edge.

But efforts to enforce our AI chip export controls continue to face challenges, including the critical task of ensuring that chipmakers conduct adequate due diligence on their customers. As Chairman of the House Select Committee on China (Select Committee), I urge the Bureau of Industry and Security (BIS) to take action that could substantially enhance enforcement of its existing regulations.

BIS should clarify that the Foundry Due Diligence Rule remains in effect.

In May 2025, BIS announced it would not enforce the Biden administration's "AI Diffusion Rule." This was an important action given the risks that rule posed to the United States' ability to export its AI tech stack to U.S. allies and partners. However, the announcement created ambiguity as to whether front-end fabricators like TSMC can export unpackaged advanced dies to non-approved designers located outside of China, without performing the due diligence specified in the Foundry Due Diligence Interim Final Rule (IFR). These exports enabled Huawei to obtain millions of controlled Ascend logic dies from TSMC, using its front company, Sophgo in 2023 and 2024[1].

The Regulatory Ambiguity

[1] SemiAnalysis, *Huawei AI CloudMatrix 384 – China's Answer to Nvidia GB200 NVL72*, https://newsletter.semianalysis.com/p/huawei-ai-cloudmatrix-384-chinas-answer-to-nvidia-gb200-nvl72.

As you know, in October 2024 researchers at TechInsights found that TSMC had manufactured a key compute chiplet inside Huawei's Ascend 910B and 910C AI processors, despite Huawei being under a strict U.S. export ban since 2020. TSMC had produced roughly $500 million[2] worth of wafers for Sophgo, a Chinese design firm, who ordered them as if they were their own products before diverting them to Huawei. TSMC now faces a potential $1 billion penalty and has cut ties with other firms over similar concerns.

The Foundry Due Diligence Rule was established in January 2025 to close the loophole that Huawei and Sophgo exploited. Prior to that rule, Chinese companies or their front companies could simply lie to TSMC or other advanced chipmakers about the specifications of their chips, and the ultimate end user, to acquire restricted chips despite restrictions. To address this, the Foundry Due Diligence Rule established that any chipmaker or Outsourced Semiconductor Assembly and Test Companies (OSATs) seeking to export chips fabricated on the 14/16 nanometer node or below must presume that those chips qualify as restricted AI chips and were subject to a worldwide license requirement. The rule prescribes various exceptions to the license requirement, and to our knowledge, foundries including TSMC have adhered to the rule since it came into effect.

The regulatory ambiguity at issue here arises from the fact that the worldwide license requirement in the Foundry Due Diligence Rule first appeared in the AI Diffusion Rule, creating a risk that foundries could interpret the non-enforcement of the AI Diffusion Rule to include non-enforcement of the Foundry Due Diligence Rule. The Foundry Due Diligence Rule—specifically its requirements for front-end fabricators—is indispensable for U.S. efforts to maintain a lead over China in the AI race. If fabs like TSMC determine that their chips are not subject to the licensing requirement, it would dramatically increase the risk of another SophGo-like export control failure.

Solutions

There are at least two ways BIS could clarify the current regulatory ambiguity—a targeted clarification and a more comprehensive regulatory action.

BIS could issue guidance similar to its May 31, 2026, guidance concerning entities headquartered in country group D:5 and Macau, clarifying that the worldwide regional stability (RS) license requirement remains in effect for exports from front-end fabricators. This is not a new action—many in the semiconductor industry already appear to have adopted this interpretation—but it would prevent the semiconductor industry as a whole from adopting the highly damaging alternative interpretation referenced previously or using it as cover against any future enforcement actions.

Alternatively, BIS could publish a rule formally rescinding the AI Diffusion IFR, which could amend §744.23 to re-establish a separate worldwide license requirement for exports from front-end fabricators or OSATs. I stand ready to support you in taking these measures.

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[2] Ibid

In closing, I want to reiterate my appreciation for the important work BIS is doing to enforce our semiconductor export controls. Your plans to grow our enforcement capabilities are necessary and welcome; the CCP will exploit every gap in our export control regime to steal our lead in the AI race, and BIS enforcement officers are the most important obstacles standing in their way.

To aid in the Select Committee's understanding of these issues and inform its further work, I request that BIS provide a staff-level briefing by August 31, 2026, covering:

1. BIS plans and decision-making regarding clarification of the Foundry Due Diligence Rule.
2. Investigations into potential chip diversion resulting from non-observance of the Foundry Due Diligence Rule and whether BIS has uncovered any instances of such diversion.

As always, the Select Committee stands ready to support you in strengthening our export control enforcement and safeguarding America's technological edge in the critical AI race against China.

Sincerely,

John R. Moolenaar
Chairman
U.S. House Select Committee on the CCP