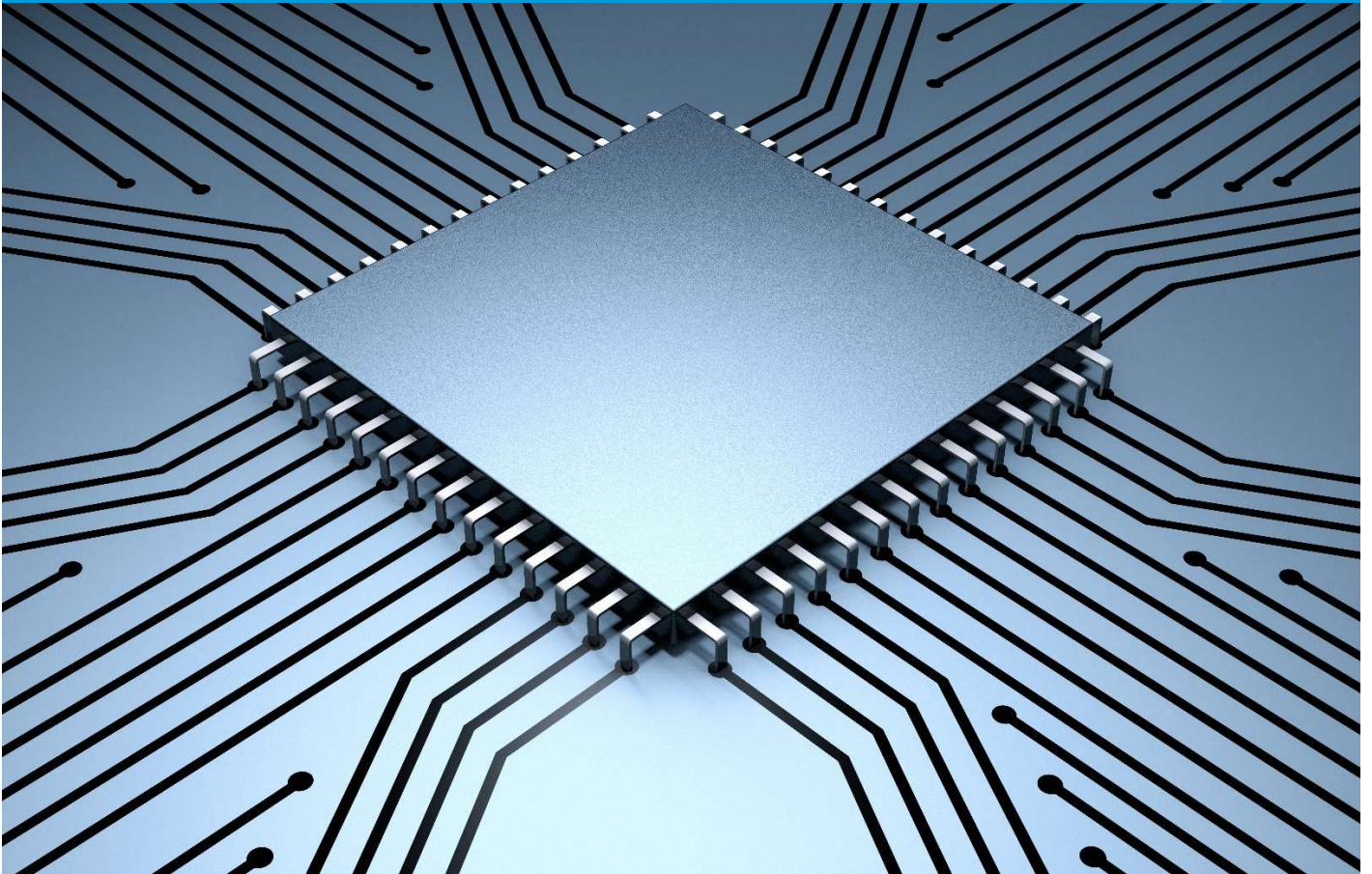


August 2023

Incoming restrictions on US investments into China's technology industries

Latest Executive Order and relevant Advance Notice of Proposed Rulemaking



Introduction

The US government is introducing controls and restrictions on US investment into Chinese technology.

On 9 August 2023, the Biden-Harris Administration issued an Executive Order (the "**Executive Order**") tasking the Secretary of the Treasury (the "**Treasury**") with creating regulations restricting investments by US persons (both individuals and entities) into technology industries in China and the two Special Administrative Regions of Hong Kong and Macau ("**regions of concern**"). This was accompanied by an Advance Notice of Proposed Rulemaking ("**ANPRM**") issued by the Treasury which sets out intended details of those regulations.

The Executive Order



The Executive Order instructs the Treasury to make regulations which would 1) require US persons to **notify** the Treasury of certain transactions, and 2) **prohibit** US persons from undertaking certain other transactions, in either case involving activities related to three sub-sets of technology areas with persons in the regions of concern.

The three sub-sets of technology areas identified in the Executive Order are: 1) semiconductors and microelectronics, 2) quantum information technologies, and 3) certain artificial intelligence systems (the "**Key Areas**"). However, the exact scope of such activities is to be determined by the Treasury during the rulemaking process.

ANPRM – Intended applicability of the restrictions

While the Executive Order lays down a general framework for legislation, the ANPRM provides initial considerations and views with regards to critical definitions and central elements to the regime.

Applicability to US persons

It is expected that the regulations would be applicable to US persons, including US citizens and entities formed under the laws of the United States, as well as their foreign branches and also, possibly, foreign entities under the control of US persons (e.g., overseas subsidiaries).

Categories of transactions envisaged

The Treasury currently has certain types of transactions in mind: acquisition of equity interests; greenfield investments; joint ventures; and debt transactions which are convertible into equity.

However, passive investments such as investments into publicly traded securities, index funds and mutual funds might be excepted under the regime.

It is also conceivable that investments into domestic or overseas subsidiaries of affected Chinese businesses could be subject to these restrictions.

ANPRM – Intended requirements over the Key Areas

Semiconductors and microelectronics

While the Treasury is considering requiring notification for investments into entities in the regions of concern engaged in the design, fabrication, and packaging of less advanced integrated circuits, the Treasury is contemplating a **ban** on investments in more advanced integrated circuits and the installation or sale of supercomputers.

Quantum information technologies

Investments in the production of quantum computers and certain components, the development of certain quantum sensors, and the development of quantum networking and communication systems are likely to be **fully prohibited**.

Certain Artificial Intelligence Systems

The Treasury currently has in mind a notification requirement in relation to investments in software, which incorporates an artificial intelligence system and is designed for military use but is also inviting comments on shaping a prohibition in this regard.

Our US sanctions & trade, and China experts will provide updates on further developments.

Get in touch



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