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The Agency at the Center of America's Tech Fight With China

Washington lawmakers, lobbyists and other parties have been vying to influence how the Bureau of Industry and Security, under the Biden administration, will approach a technology relationship with China.



By Ana Swanson

WASHINGTON — As tensions between the United States and China escalate, a little-known federal agency is at the center of a debate in the Biden administration about how tough an approach to take when it comes to protecting American technology.

The Bureau of Industry and Security, a division of the Commerce Department, wields significant power given its role in determining the types of technology that companies can export and that foreign businesses can have access to.

In recent months, Washington lawmakers, lobbyists and other interested parties have been vying to influence how the agency, under the Biden administration, will approach a technology relationship with China that is both crucial for American industry and national security.

China hawks, including a collection of national security experts, congressional Republicans and progressive Democrats, say that in the past, American industry has held too much sway

over the bureau. They have been pressing the administration to select a leader for the agency who will take a more aggressive approach to regulating the technology that the United States exports, according to people familiar with the discussions.

Their opponents, including some current and former Commerce Department employees, and many in industry and Washington think tanks, caution that putting a hard-liner at the helm could backfire and harm U.S. national security by starving American industry of revenue it needs to stay on the cutting edge of research and encouraging it to relocate offshore.

“It’s a very complicated relationship between the economic and national security interest,” said Lindsay Gorman, a fellow for emerging technologies at the German Marshall Fund. **“The fine line the Commerce Department has to walk is protecting against national security risks that may not be top of mind for the industry in the short run, without killing the golden goose.”**

The bureau’s powers became clear during the Trump administration, which wielded its authority aggressively, though somewhat erratically, using the agency to curb exports of advanced technology goods like semiconductors to the telecommunications company Huawei and other Chinese businesses. It weaponized the bureau’s so-called entity list, adding hundreds of Chinese companies to a list that blocks exports of American products to companies or organizations that pose a national security threat.

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But many of these regulations were enacted haphazardly and often did less to restrict Chinese access to American technology than the Trump administration intended. And at times, President Donald J. Trump offered Chinese companies concessions from these punishments to try to advance a trade deal with China, including offering a reprieve for the Chinese telecom company ZTE and licenses so companies could continue supplying goods to Huawei and Semiconductor Manufacturing International Corporation.

The Biden administration is still carrying out a review of its China policies and has not indicated how it plans to use the bureau’s powers. Its initial engagement with China got off to an acrimonious start last week at a meeting in Anchorage, and President Biden, in his first news conference on Thursday, emphasized investing heavily in new technologies to compete with Beijing.

“The future lies in who can, in fact, own the future as it relates to technology, quantum computing, a whole range of things, including in medical fields,” Mr. Biden said.

“I see stiff competition with China,” he added. “They have an overall goal to become the leading country in the world, the wealthiest country in the world and the most powerful country in the world. That’s not going to happen on my watch because the United States are going to continue to grow and expand.”

Last week, the Commerce Department said it had issued subpoenas to multiple Chinese technology companies asking them to provide more information on their activities, potentially presaging tighter restrictions on their use and transfer of American data.

U.S. officials will soon need to make difficult choices about specific policy actions. That includes how to use the Commerce Department's powers, including whether to block more exports of American technology, whether to keep or scrap Mr. Trump's tariffs on foreign metals, and how to set the standards for national security reviews of foreign investments.

The complication stems from China's position as both the largest export market for many multinational companies, and America's biggest acknowledged security threat.

China's authoritarian leaders have proposed plans to expand their market share in emerging industries like semiconductors, artificial intelligence and quantum computing, while easing the country's dependence on foreign energy and technology. And as Beijing's economic influence and technological capacities grow, so will its military and geopolitical influence.

“China is the only country with the economic, diplomatic, military, and technological power to seriously challenge the stable and open international system — all the rules, values, and relationships that make the world work the way we want it to,” Secretary of State Antony J. Blinken said this month in his first major address, in which he called the U.S. relationship with China “the biggest geopolitical test of the 21st century.”

The Commerce Department is responsible for promoting the interests of American business and has always had a close relationship with industry. But as the China tech competition has intensified, the department has taken on a larger role in regulating company activity, as well. In 2018, Congress updated its laws governing export controls, giving the Bureau of Industry and Security more power to determine what kind of emerging technologies cannot be shared with China and other geopolitical rivals.

But critics say the bureau has given companies and industry groups too much influence over its regulatory process and failed to adopt to the new realities of global competition.

“The industry viewpoint has been the commerce viewpoint since the fall of the Soviet Union, and they're not able to make the adjustment that the world has changed,” said Derek Scissors, a resident scholar at the American Enterprise Institute who advocates stronger export restrictions.

The industry capture is not, in my view, industry saying, ‘Hey, meet me at the Jefferson Memorial and I have a suitcase of money for you.’ It's that these guys have been trained for 30 years to think that exports are good for America and that's that,” Mr. Scissors said. “So surprise, they don't want tighter export controls.”

But distancing the bureau from industry may have repercussions, too. Critics say that without the guidance of industry on complex technological issues, regulations can easily

backfire, harming the American economy while doing little to combat security threats from China. And any policy that hamstring innovation could in turn hold back the American military, which acquires most of its technology from the private sector.

John Neuffer, the chief executive of the Semiconductor Industry Association, said that China accounted for about one-third of his industry's revenue, and that it would be "disastrous" for semiconductor companies to not have access to such a huge and growing market.

"When you start cutting off capital profits that can flow into R&D, many of them coming from the huge Chinese market, you really undermine our ability to stay at the tip of the spear in terms of semiconductor innovation," Mr. Neuffer said.

"The sense of urgency in recent years inclined our leadership to make decisions without reference to what industry thought," said Daniel H. Rosen, a founding partner of Rhodium Group. "We're not going to serve the American interests if we don't consider commercial interests and national security interests at the same time."

The Biden administration has already run into the political minefield surrounding the bureau. In her confirmation hearing in January, Gina Raimondo, the new secretary of commerce, attracted criticism from Republicans when she declined to commit to keeping Huawei on the bureau's entity list. Ms. Raimondo later said that she would use the entity list "to its full effect," and that Huawei and ZTE should be on the list.

With Ms. Raimondo sworn in to her post this month, the Biden administration is considering candidates to lead the Bureau of Industry and Security. It has become a contentious process, a kind of proxy battle among trade advisers, industry groups and lawmakers of both parties for the future of the United States' tech strategy.

One early contender, Kevin Wolf, a partner in the international trade group at the law firm Akin Gump, has run into resistance from some China hawks in Washington over his industry ties. Mr. Wolf, who was previously assistant secretary at the bureau, issued the sanctions against ZTE. He has consistently argued that restrictions that are unclear and unpredictable can backfire, "harming the very interests they were designed to protect."

But critics have found fault with his work on behalf of industry since leaving the government, including counseling clients on what is permitted under Mr. Trump's regulations, and trying to obtain licenses for his clients to supply products to Huawei and S.M.I.C.

Mr. Wolf said that he had merely helped companies understand the new rules, as other export control lawyers do, and that it was the Trump administration that was responsible for creating a new process to grant companies licenses to supply products to listed entities.

Some who believe the Bureau of Industry and Security requires a more fundamental transformation have instead pushed for James Mulvenon, an expert on the Chinese military at research firm Defense Group, who has publicly called for refocusing the bureau's

mandate to place national security interests before those “of Silicon Valley, Wall Street and other multinationals.”

The administration may also be considering less prominent candidates for the bureau’s three Senate-confirmed posts, like Brian Nilsson, a former employee of the Bureau of Industry and Security and the State Department, or export control lawyers like Douglas Jacobson and Greta Lichtenbaum, people familiar with the deliberations say.

Whoever leads the bureau, officials at the National Security Council are likely to play a guiding role, according to people familiar with the deliberations.