ITIF submitted comments to the Bureau of Industry and Security in response to an advance notice of proposed rulemaking regarding extending export controls to “emerging and foundational technologies” (EFTs).

The U.S. Commerce Department’s Bureau of Industry and Security (BIS) issued an advance notice of proposed rulemaking regarding extending export controls to what are termed “emerging and foundational technologies” (EFTs)—new or foundational technologies that in some cases are essential to national security and are not currently covered by existing export control rules. It seeks to establish appropriate controls, including interim controls, on the export, reexport, or transfer (in country) of emerging and foundational technologies.

In considering BIS’s role regarding EFTs there are several issues that are important to recognize and distinguish between. One clearly is the nature of the technology and the potential importance of it for giving our adversaries technological advantages that could be used for military or intelligence purposes. The second is the nature of the technology being transferred: Is it a final product, an intermediate product, a process, or intellectual property? The third is the extent to which foreign countries subject to controls can obtain the controlled technology either domestically or from other nations.

To frame this issue, it’s important to recognize that for the first time since WWII, the United States is facing potentially peer technology competitors, and in the case of China, one that is also an adversary. For much of the post-war period the United States could afford to restrict the exports
of some of its technologies. Not only were fewer other nations able to sell to the targeted nations, but the U.S. lead was sufficient that the loss of sales generally had limited effects on U.S. company technological leadership. Those days are rapidly ending, if not already gone.

In an array of advanced industries, including biotechnology, advanced manufacturing, solar panels, telecommunications equipment, displays, and others, U.S. firms face an array of robust challengers. And in some emerging industries, like artificial intelligence (AI), not only are many nations putting in place robust national AI strategies, but China in particular is poised to catch up and perhaps surpass U.S. firms in AI. Couple this with the relatively anemic and unfocused U.S. national innovation policy for supporting advanced technology leadership and it’s a recipe for continued loss of global market share in advanced industries.