

Congress of the United States
Washington, DC 20515

December 21, 2020

The Honorable Wilbur Ross
Secretary
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230

Dear Secretary Ross:

We appreciate the Department of Commerce's designation of 77 companies, including 60 from the People's Republic of China (PRC), to its Entity List to restrict access of U.S. technology to entities that threaten our national security and foreign policy interests. However, we are deeply concerned that the rules pursuant to the Entity Listing for the Semiconductor Manufacturing International Company (SMIC) will be utterly ineffective in addressing this growing national security threat.

SMIC is a clear threat to U.S. national security, because of its integration into the defense establishment of the PRC and its national strategy for military-civil fusion. These linkages are well-documented by both the Department of Defense, which identified SMIC as a Chinese Communist Party (CCP) military company earlier this month, and private sector researchers at SOS International LLC. It is in the U.S. national security interest to prohibit the transfer of goods that might support SMIC's production of semiconductors, because of the company's role in helping the CCP military's pursuit of "[displacing] the United States to achieve global preeminence in the future."

As written, the SMIC Entity Listing does not effectively mitigate that national security risk. By limiting the presumption of denial only to those items that are "uniquely" required to produce semiconductors at 10 nanometers and below, the Department of Commerce seems to be allowing SMIC access to nearly all semiconductor manufacturing equipment—undercutting the effectiveness of its nominal intent. Based on public commentary by the Taiwan Semiconductor Manufacturing Company, nearly 95 percent of the tools SMIC needs to make advanced semiconductor chips below 10 nanometers can be reused from older generations. In effect, SMIC will not face serious restrictions, because very few tools are "uniquely capable" of producing a certain chip size. Indeed, SMIC publicly stated that its designation has no material adverse effect on the company's short-term operations. Consequently, we are deeply concerned that SMIC's placement on the Entity List by the Bureau of Industry and Security was done for show and parochial commercial interests at the expense of U.S. national security.

Moreover, we fully expect companies to alter their supply chains to exploit shortcomings in the de minimis and Foreign-produced Direct Product Rule (FDPR) to continue sales to SMIC despite the Entity Listing. Your department must apply the same lessons from the Huawei Entity

Listing and expand the FDPR for SMIC to cover any semiconductor manufacturing equipment that is built with or incorporates any U.S.-origin technology. We must ensure that SMIC is unable to access semiconductor manufacturing equipment from any location in world. In addition, we are confused why the Department of Commerce did not apply recent lessons in how to use these controls.

Commercial considerations cannot outweigh national security obligations. The SMIC Entity List rule must be rewritten immediately to close these dangerous loopholes that would allow nearly all sales to SMIC to continue without restriction and support the CCP's stated goal of military preeminence. Specifically, Commerce must mitigate these risks by immediately amending the SMIC rule to set the threshold at 16 nanometers and replace the phrase "uniquely required" with "capable of producing." Any subsequent undersecretary overseeing the Bureau of Industry and Security will need to explain how they intend to write policy with real consequences for CCP companies.

We look forward to working with you promptly to correct the problems in SMIC's placement on the Entity List to best ensure U.S. national security.

Sincerely,



Michael T. McCaul
Member of Congress



Marco Rubio
U.S. Senator

CC:

The Honorable Mike Pompeo, Secretary of State
The Honorable Dan Brouillete, Secretary of Energy
The Honorable John Ratcliffe, Director of National Intelligence
Christopher C. Miller, Acting Secretary of Defense
Robert O'Brien, National Security Advisor