



Congress of the United States
House of Representatives
Washington, DC 20515-0906

June 1, 2023

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20520

Dear Secretary Raimondo,

The Committee on Foreign Affairs and Select Committee on the Strategic Competition between the United States and the Chinese Communist Party (Committees) are deeply concerned about the People’s Republic of China’s (PRC) longstanding and ongoing economic coercion against the United States and our companies. On May 21, the government of the PRC banned its critical information infrastructure operators from purchasing memory chips from a leading U.S. company, Micron, citing purported national security risks. There is no evidence of any such security risks, and the PRC ruling did not detail any specific risks. We agree with your assessment that the conclusion has “no basis of fact,” and the ban is “plain and simple, economic coercion.”¹

General Secretary Xi’s decades long drive to make the PRC economy subservient to his national security agenda is forcing countries, such as the United States, to respond. To keep its highest end semiconductor technology from being used by the Chinese Communist Party’s (CCP) military or to facilitate CCP human rights abuses, the United States had to implement export controls against the PRC. In response to the United States’ legitimate national security action, the CCP lashed out with an arbitrary economic embargo against one American company. Now, the United States must ensure that this economic aggression fails.

The Anti-Boycott Act of 2018 provides a useful framework to examine PRC economic coercion—which often has the practical effect of a boycott. The law makes it the policy of the United States to “oppose restrictive trade practices or boycotts fostered or imposed by any foreign country...against any United States person”² and provides that U.S. persons may be prohibited from exporting goods or technology “which have the effect of furthering or supporting the restrictive trade practices.”³ While it appears that the Anti-Boycott Act of 2018 has not been used in cases of PRC economic coercion against a U.S. or foreign company, it sets

¹ “US Commerce Secretary: US ‘Won’t Tolerate’ China’s Ban on Micron Chips,” VOA, May 27, 2023, <https://www.voanews.com/a/us-commerce-secretary-us-won-t-tolerate-china-s-ban-on-micron-chips/7112089.html>

² Part II—Anti-Boycott Act of 2018, Section 1772(1).

³ Part II—Anti-Boycott Act of 2018, Section 1772(2).

forth a useful, guiding principle that the United States should not be fueling adversaries' restrictive trade policies.

The Commerce Department must rally U.S. partners and allies to defeat this PRC embargo. We must quickly work with Japan and South Korea to ensure Japanese and South Korean companies do not undercut Micron by taking its sales that were lost to the PRC's unjustifiable boycott. According to South Korea's vice-minister of trade Jang Young-jin, however, the South Korean government will not intervene in Samsung's or SK Hynix's sales to prevent the companies from backfilling Micron's market share.⁴ Permitting South Korean companies such as Samsung and SK Hynix to replace Micron's market share—while they at the same time receive specific carve outs from implementing regulations for the CHIPS Act and exemptions from certain export controls to the PRC—would send a dangerous signal to the PRC government and weaken our close alliance with South Korea.

You should make clear to your counterparts that U.S. technology in any memory chip fabrication facility, whether in the PRC or elsewhere, should not be enabling or furthering this restrictive action against Micron. As we build a coalition of likeminded nations, we must also instill confidence that the United States will stand by our allies to defend our collective interests against any future acts of intimidation. We must be clear in our message: this is about defending the free world from PRC economic coercion.

Moreover, this PRC embargo against an American company should not deter but should rather invigorate export control actions against PRC companies that may threaten U.S. national security or foreign policy interests. ChangXin Memory Technologies' (CXMT) products are widely understood to serve military and surveillance end uses and the company co-invests with the PRC government and military-tied entities.⁵ As a result, the Department of Commerce, acting through the Bureau of Industry and Security, has a strong legal basis for placing CXMT on the Entity List with an additional "footnote 4" restriction. Failure to impose a cost upon the PRC for its malign behavior will only invite further such conduct.

We believe that the time has come for the United States—alongside our allies—to firmly push back on the PRC's economic coercion. The U.S. government can no longer sit on the sidelines as the PRC selectively targets U.S. and allied entities with the goal of intimidating our businesses and harming our economic security. Congress overwhelmingly passed the Export Control Reform Act of 2018 to address these issues; nonetheless, the Department of Commerce refuses to fully implement the law and take necessary action against the PRC.

Therefore, we respectfully request that you provide written responses and a joint-committee briefing to relevant staff no later than June 15, 2023, regarding the following topics:

⁴ Ryan McMorrow, *South Korea signals its chipmakers can fill gap after China's ban on Micron*, FINANCIAL TIMES (May 22, 2023) available at www.ft.com/content/93ba7f32-35df-4b5f-a14f-263b26b1f854.

⁵ "Project 506: CXMT and China's Semiconductor Industrial Policy," Horizon Advisory, December 2022, https://issuu.com/horizonadvisory/docs/horizon_advisory_-_project_506_december_2022

- Does the information in the Horizon Advisory report provide sufficient evidence for an Entity Listing of CXMT? If not, what specific facts would need to be furnished?
- Can the Department of Commerce use authorities under the Anti-Boycott Act of 2018 to prohibit U.S. and other companies from supporting or furthering the boycott on Micron products in the PRC? If not, what amendments would be needed to use these provisions for economic coercion?

The Foreign Affairs Committee is the Bureau of Industry and Security's principal oversight committee in the U.S. House of Representatives. Under House Rule X, the Committee has legislative and oversight jurisdiction over "[r]elations of the United States with foreign nations generally," "[e]xport controls, including nonproliferation of nuclear technology and nuclear hardware" and "measures to foster commercial cooperation with foreign nations and to safeguard American business interests abroad."⁶ Furthermore, the Export Control Reform Act of 2018 states, "[a]ny information obtained at any time under any provision of the Export Administration Act of ...under the Export Administration Regulations, or under this part...shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee."⁷

The House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party has broad authority to "investigate and submit policy recommendations on the status of the Chinese Communist Party's economic, technological, and security progress and its competition with the United States" under H. Res. 11.

To make arrangements to deliver a response and schedule the briefing, please contact Committee on Foreign Affairs staff at (202) 226-8467 and Select Committee staff at (202) 226-9678.

Thank you for your attention to this important matter and prompt reply.

Sincerely,



Michael McCaul
Chairman
Committee on Foreign Affairs



Mike Gallagher
Chairman
Select Committee on China

⁶ *Rules of the House of Representatives: One Hundred Eighteenth Congress*, U.S. HOUSE OF REP. 7 (Jan. 10, 2023), <https://rules.house.gov/sites/republicans.rules118.house.gov/files/documents/Rules%20and%20Resources/118-House-Rules-Clerk.pdf>.

⁷ Foreign Investment Risk Review Modernization Act § 1761(h)(2)(B)(i).

CC:

The Honorable Antony Blinken
Secretary
U.S. Department of State

The Honorable Jake Sullivan
National Security Advisor

The Honorable Alan F. Estevez
Under Secretary for Industry and Security
U.S. Department of Commerce