

Congress of the United States
Washington, DC 20515

October 6, 2023

The Honorable Jake Sullivan
National Security Advisor
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Sullivan,

We write to you regarding the Department of Commerce Bureau of Industry and Security's (BIS) failure to update and enforce the October 7 rules on advanced semiconductors. At the National Security Commission on Artificial Intelligence summit in 2022, you referred to export controls as a "strategic asset" to impose costs on and degrade the capabilities of our adversaries. Recent advancements by Semiconductor Manufacturing International Corporation Incorporated (SMIC), which Secretary Raimondo said are "deeply disturbing," suggests the policy of the White House is not being followed by BIS.

Let us be clear: Export controls are not failing national security. Rather, it is the bureaucracy that writes policies, adjudicates licenses, and identifies technology that is failing export controls. This failure cuts to the heart of U.S. national security and foreign policy interests. Indeed, the rationale for the October 7 rules was the use of advanced semiconductors in the People's Republic of China's (PRC) military modernization and human rights abuses, including designing and testing weapons of mass destruction and advanced surveillance systems. Furthermore, advances in large language modeling since the October 7 rules only heightens our national security concerns, especially related to PRC cyber capabilities.

The October 7 rules and SMIC's growing capabilities reveal a stagnant, obscured bureaucracy that does not understand China's industrial policy, does not understand China's military goals, and does not understand technology at all—and does not have the will to act. After years of oversight and continued pressure from the Congress, BIS still appears more inclined to listen and respond to the industries it regulates than elected law-makers.

SMIC is a case study that exemplifies the series of staggering policy compromises by BIS. Make no mistake, BIS's lack of resolve has led to SMIC being more advanced than any current U.S.-based foundry. From granting SMIC validated end-user status in 2007 to decontrolling chip production tools, including lithography machines, in 2015 to a loophole-riddled licensing policy for SMIC's entity listing in 2020, BIS has been enabling SMIC's rise for more than a decade. Regrettably, BIS made its ineffective licensing policy despite Congress pointing out each loophole and insufficiency in its policy. These mistakes are pushing the United States toward a national security crisis.

Nonetheless, BIS still has an opportunity to correct the series of missteps. Four actions must be taken immediately:

1. **Update and issue final Oct. 7, 2022 Rules:** BIS must update these rules to cut off and limit workarounds for advanced semiconductor and tool exports to China.
2. **Take immediate action against SMIC and Huawei:** Following repeated violations of U.S. law and support for China’s military, SMIC and Huawei should be hit with full blocking sanctions, which would cut them off completely from U.S. technology and the U.S. financial system.
3. **Close the Cloud Computing Loophole:** BIS must stop companies in China from circumventing the October 7 rules and entity listings by making the provision of cloud computing a licensable activity.
4. **Enforce the 60-Day Rule for Moving Entities from the UVL to the Entity List:** BIS must stop granting exemptions to its own rule that requires any entity on the Unverified List (UVL) that fails to perform an end-use check within 60 days to be automatically moved to the Entity List. On August 22 of this year, BIS removed 27 entities from the UVL, despite these firms having spent a collective average of 728 days on the UVL without action. Even more alarming, several of the removed firms are PLA suppliers.¹²

None of these challenges are not new. Indeed, the Congress has provided significant resources and information to BIS to accelerate export control actions. However, BIS inaction persists. For these reasons, we would like answers to the following questions within two weeks:

1. When the October 7 rules were discussed at Principals or Deputies level meeting in 2022, did the Administration have a unanimous position to implement the rules? Or did any agency, including Commerce, Defense, or State, formally recommend against the policy?
2. In September Secretary Raimondo downplayed concerns about SMIC’s production to Congress, saying there is “no evidence” that it can produce these chips at scale. In October Secretary Raimondo said Huawei’s and SMIC’s capabilities are “deeply disturbing.” Please provide a classified briefing on what intelligence the Secretary viewed that changed her opinion.
3. Has any member of the End-User Review Committee formally raised concerns about the Department of Commerce’s licensing policy towards SMIC?

If export controls are a national security tool and strategic asset, they must be used. BIS has a narrowing opportunity to act and constrain the CCP military before the moment is lost.

¹⁴【国城安服全案】助力军民融合企业，构建自主网络安全治理能力框架,” goalcent, January, 18, 2023, <http://web.archive.org/web/20230905164708/https://www.goalcent.com/newsInfo/220.html>

²市场资讯, “中邮·军工深度报告|高华科技: 高可靠传感器供应商业业务上下游延伸, 军民双轮驱动成长空间广阔,” Sina, June 11, 2023, <http://web.archive.org/web/20230905164939/https://finance.sina.cn/2023-06-11/detail-imywxhhi3386701.d.html>

Sincerely,



Michael T. McCaul
Chairman
House Foreign Affairs Committee



Mike Gallagher
Chairman
House Select Committee on China

CC: Under Secretary of the Bureau of Industry & Security Alan F. Estevez;
Secretary of Commerce Gina M. Raimondo;
Secretary of State Antony J. Blinken;
Secretary of Energy Jennifer M. Granholm;
Secretary of Defense Lloyd J. Austin