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One Hundred Eighteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

November 4, 2024

The Honorable Alan Estevez
Under Secretary of Commerce for Industry and Security
Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Under Secretary Estevez:

In recent weeks, my congressional colleagues on both sides of the aisle have written to the Department of Commerce to raise significant concerns with the Bureau of Industry and Security's (BIS) inadequate enforcement and implementation of export controls against the People's Republic of China (PRC or China).¹ There is a growing bipartisan frustration that BIS refuses to act on fact-based reports that detail Huawei's efforts to evade and undermine U.S. export controls.² BIS knows about a shadow network of companies connected to Peng Chip, an Entity Listed company used to evade export controls on Huawei's behalf, but is allowing it to operate with impunity.³ BIS's overall aversion to enforcing export controls against the PRC semiconductor industry, including Huawei and Semiconductor Manufacturing International Corporation (SMIC), is undermining the integrity of the U.S. export control regime.

The egregious inaction to enforce export controls against Huawei is unfortunately not an outlier. I write today to express my deep concern with BIS licensing policy and enforcement with respect to SMIC. As the Administration considers updates to its rules on semiconductors and semiconductor manufacturing equipment, BIS must prioritize its core mission as a national security and law enforcement agency.

¹ See Letter from Chmn. John Moolenaar & Ranking Member Raja Krishnamoorthi, H.R. Select Comm. on the Chinese Communist Party, to the Hon. Gina Raimondo, Sec'y, Dep't of Com. (Oct. 16, 2024), <https://selectcommitteeontheccp.house.gov/media/letters/letter-secretary-raimondo-urging-action-against-huaweis-clangestine-chip-network>; See also Alexandra Alper, *Democratic lawmaker takes aim at Biden over TSMC chip in Huawei product, letter shows*, REUTERS (Oct. 31, 2024), <https://www.reuters.com/world/us/democratic-lawmaker-takes-aim-biden-over-tsmc-chip-huawei-product-document-shows-2024-10-31/>.

² Dylan Patel et al., *Fab Whack-A-Mole: Chinese Companies are Evading U.S. Sanctions*, SEMIANALYSIS (Oct. 28, 2024) [hereinafter SEMIANALYSIS], <https://www.semianalysis.com/p/fab-whack-a-mole-chinese-companies>.

³ See *id.*

Across consecutive administrations, executive branch agencies have all agreed that SMIC is a threat to U.S. national security.⁴ BIS's Entity Listing of SMIC in 2020 was an important action, but it needs to be expanded upon.⁵ As I warned, BIS's original decision to limit restrictions only to tools "uniquely capable" of producing 10 nanometer and below chips risked resulting in few, if any, restrictions on SMIC.⁶ In October 2021, the House Foreign Affairs Committee confirmed its fears after releasing licensing data showing that over a six-month timeframe BIS approved \$40 billion worth of exports to SMIC and denied fewer than 1% of licenses.⁷ Today, even the Administration's 2022 expansion of controls on semiconductor manufacturing equipment perpetuates critical gaps in policy and enforcement of SMIC.

It is irreconcilable that only SMIC's most advanced production line (SMIC South) has a presumption of denial licensing policy, whereas the rest of its corporate network faces little to no restrictions. This leads to irrational outcomes. BIS may rightfully deny exports to SMIC South but approve a license for the exact same items to a non-restricted SMIC facility that is physically connected by a wafer bridge to SMIC South.⁸ (A wafer bridge is designed to support frictionless transfers across facilities.)⁹ SMIC is a known PRC military company, but BIS presumes, likely without verification, that SMIC abides by export control licensing terms designed to undercut China's military modernization.

The current SMIC licensing policy ignores PRC laws that give its government explicit authority to compel the transfer of any item, regardless of whether such a transfer violates U.S. law.¹⁰ Foreign persons could be compelled by PRC law to violate U.S. export controls by transferring items to SMIC South. U.S. companies and BIS have essentially no means to verify and stop an illicit transfer because of the PRC's de facto and de jure restrictions on due diligence.

There is growing evidence that SMIC is violating U.S. export control laws. On August 29, Huawei launched its 5G-capable Mate60 Pro smartphone, which has a semiconductor manufactured at SMIC's 7nm process technology (i.e. SMIC South).¹¹ Furthermore, public reports suggest that SMIC South is producing a graphic processing unit (GPU) that, if manufactured in the United States, could not be exported to China.¹² Industry experts suggest

⁴ SMIC is on the BIS Entity List, Treasury Non-SDN Chinese Military-Industrial Complex Companies List, and Department of Defense 1260H Chinese Communist Party Military Companies List.

⁵ Letter from Rep. Michael T. McCaul & Sen. Marco Rubio to the Hon. Wilbur Ross, Sec'y, Dep't of Com. (Dec. 21, 2020), <https://foreignaffairs.house.gov/wp-content/uploads/2020/12/20.12.21-Letter-to-Commerce-re-Entity-Listing-for-the-SMIC-Final.pdf>.

⁶ *See id.*

⁷ *See* Press Release, Michael T. McCaul, Chmn., H.R. Comm. on Foreign Affs., McCaul Brings Transparency to Tech Transferred to Blacklisted Chinese Companies (Oct. 21, 2021), <https://foreignaffairs.house.gov/press-release/mccaul-brings-transparency-to-tech-transferred-to-blacklisted-chinese-companies/>.

⁸ *See* SEMIANALYSIS, *supra* note 2.

⁹ *See id.*

¹⁰ *See* KAREN SUTTER, CONG. RSCH. SERV., R46915, CHINA'S RECENT TRADE MEASURES & COUNTERMEASURES: ISSUES FOR CONGRESS (2021), <https://crsreports.congress.gov/product/pdf/R/R46915>.

¹¹ Anton Shilov, *Huawei's New Mystery 7nm Chip from Chinese Fab Defies US Sanctions*, TOM'S HARDWARE (Sept. 3, 2023), <https://www.tomshardware.com/news/huaweis-new-mystery-7nm-chip-from-chinese-fab-defies-us-sanctions>.

¹² *See* SEMIANALYSIS, *supra* note 2.

that SMIC may soon produce more than one million Huawei Ascend 910B and 910C GPUs.¹³ This production capacity could undermine semiconductor export controls and help China leapfrog the United States in the development of artificial general intelligence. SMIC South's breakthroughs are a smoking gun that a violation of U.S. export control laws is occurring.

If export licenses were being strictly followed, SMIC South would lack access to the U.S. tools, parts, and components needed to fabricate chips. Instead, SMIC South's 7nm breakthrough suggests their operations continue to improve. It appears that BIS likely approved enough licenses to help SMIC stockpile all the items it needs, and the paper promises of export licenses that underly BIS's entire PRC licensing policy are being systemically violated.

Any potential violations by SMIC should result in swift enforcement actions, including possibly criminal prosecutions. I have serious concerns that companies are self-blinding, and BIS is avoiding enforcement actions against SMIC because of commercial interests. Commercial interests must have no influence in law enforcement matters, and the U.S. government must enforce its laws, agnostic to the size, stature, or scale of the foreign entity.

I call for BIS to immediately initiate end-use checks on all SMIC facilities in the PRC, including SMIC South, to verify that licenses are not being violated. If the PRC is unwilling to immediately agree to a comprehensive audit of all SMIC facilities and its books, BIS should pause all existing licenses for SMIC until the Administration can access the facilities and certify to Congress that the diversion of licensed items to unauthorized uses is not occurring. These steps are necessary to ensure BIS is following Congress's clear intent regarding U.S. export control enforcement.¹⁴

BIS must make clear that U.S. export control laws are inviolable. If companies are found to be in violation of export controls, then the U.S. government must act accordingly. I urge you to quickly implement the above recommendations as part of any update to U.S. export controls.

Sincerely,



Michael T. McCaul
Chairman
House Foreign Affairs Committee

¹³ See *id.*; Dwarkesh Podcast, *Dylan Patel & Jon (Asianometry) – How the Semiconductor Industry Actually Works*, at 29:07 (Oct. 2, 2024), <https://www.dwarkeshpatel.com/p/dylan-jon?open=false#%C2%A7scaling-costs-and-power-demand>.

¹⁴ “Implementation and enforcement of United States export controls require . . . appropriate penalties for violations, and the ability to swiftly interdict unapproved transfers.” 50 U.S.C. § 4811(9).