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December 4, 2024

The Honorable Gina Raimondo  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave, NW  
Washington, D.C. 20230

Dear Secretary Raimondo,

I am writing regarding the Bureau of Industry and Security's (BIS) recent December 2, 2024, export control rule on advanced semiconductor technology going to the People's Republic of China (PRC). The placement of some of Huawei's semiconductor facilities to the Entity List, which our Committee called to be put on the Entity List earlier this year, was a positive step.<sup>1</sup> In addition, BIS's new controls on high-bandwidth memory (HBM) technologies are important and will further challenge the PRC's ability to manufacture their own advanced semiconductors.

However, I was disappointed to see BIS's new rule created several loopholes that will still allow bad PRC actors continued access to U.S. technology. The scope, frequency, and brazen nature of these loopholes raise real questions about the culture at BIS and why BIS continues to facilitate shipments of U.S. technology to PRC entities like Semiconductor Manufacturing International Corporation (SMIC) an entity that has broken U.S. law.<sup>2</sup> These observations are not Congress's alone; a recent Center for Strategic and International Studies (CSIS) report found that BIS's implementation of export controls have "both helped and hindered PRC firms."<sup>3</sup> It remains a mystery why BIS would purposefully design their controls in a way that helps PRC firms.

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<sup>1</sup> Select Committee on the CCP. October 16, 2024. "Letter to Raimondo on Huawei's Clandestine Semiconductor Network." <https://selectcommitteeonthecpp.house.gov/media/press-releases/moolenaar-krishnamoorthi-urge-action-against-huaweis-clandestine-chip-network>

<sup>2</sup> Cagan Koc and Mackenzie Hawkins. March 7, 2024. Bloomberg News. "Huawei Chip Breakthrough Used Tech From Two US Gear Suppliers." <https://www.bloomberg.com/news/articles/2024-03-08/huawei-chip-breakthrough-used-tech-from-two-us-gear-suppliers?embedded-checkout=true>

<sup>3</sup> Gregory C. Allen. November 2024. CSIS. "The True Impact of Allied Export Controls on the U.S. and Chinese Semiconductor Manufacturing Equipment Industries." [https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-11/241126\\_Allen\\_True\\_Impact.pdf?VersionId=sHGZwoaG58hB2VjcGtCK6kkHZ8Ri02q7](https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-11/241126_Allen_True_Impact.pdf?VersionId=sHGZwoaG58hB2VjcGtCK6kkHZ8Ri02q7)

Specifically, the new update created a new “License Exception Restricted Fabrication Facility” which is yet **another** list-based approach that will be insufficient to protect U.S. national security. It is deeply confusing that, at a time when the U.S. government’s *entity-by-entity* approach is already facing challenges from PRC circumvention, BIS would try a *fab-by-fab* approach. For example, BIS’s licensing policy towards SMIC Beijing is “presumption of denial”, but SMIC Shanghai has a special carve out for “items designed for production of 200mm wafers”, while SMIC Shenzhen has yet another, different licensing policy.<sup>4</sup>

The new rule also created new loopholes for Huawei’s network of semiconductor fabrication facilities. While I was encouraged that BIS added Si’En Qingdao to the Entity List with a “presumption of denial” licensing policy, other Huawei firms such as SwaySure Technology and Shenzhen Pengxinxu Technology got special carve outs to continue to access certain types of U.S. technology.<sup>5</sup> Meanwhile, BIS has taken no action against ChangXin Memory Technologies (CXMT) which is poised to become a leader in the very same HBM technology BIS just export controlled.<sup>6</sup>

In yet another example, BIS created a new loophole for U.S. companies to continue shipping advanced technology to blacklisted PRC semiconductor fabs that are connected to unlisted fabs via bridges or tunnels. We have long known this is a problem, with a recent report finding that SMIC had used a “wafer bridge” to connect their two facilities – one with a harsh BIS licensing policy, the other with more lax restrictions. SMIC could easily use such a tunnel to transfer sensitive U.S. technology between facilities, in violation of U.S. export control law.<sup>7</sup> BIS needs to establish stronger, not weaker, counter-diversion restrictions for facilities near each other.

There is **no** national security justification for these loopholes. Rather, their existence seems to imply that press reporting on industry influence over BIS are accurate.<sup>8</sup> I ask that with your remaining time at the Department of Commerce, you work to close these loopholes as quickly as possible. I also ask that the Department of Commerce preserve all documents and communications in its custody referring to or related to this most recent export control update so that the transition team can properly identify any other loopholes created over the course of this latest round of updates.

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<sup>4</sup> Department of Commerce. December 2, 2024. “Additions and Modifications to the Entity List; Removals from the Validated End-User (VEU) Program.” <https://public-inspection.federalregister.gov/2024-28267.pdf>

<sup>5</sup> Ibid.

<sup>6</sup> Shilov, Anton. August 4, 2024. Tom’s Hardware. “China’s CXMT beings mass-producing HBM2 memory well ahead of schedule – 2026 was the previously telegraphed target.” <https://www.tomshardware.com/tech-industry/chinas-cxmt-begins-mass-producing-hbm2-memory-well-ahead-of-schedule-2026-was-the-previously-telegraphed-target>

<sup>7</sup> Dylan Patel, Jeff Koch, and Sravan Kundojjala. October 28, 2024. Semianalysis. “Fab Whack-A-Mole: Chinese Companies are Evading U.S. Sanctions.” <https://semianalysis.com/2024/10/28/fab-whack-a-mole-chinese-companies/>

<sup>8</sup> Ellen Nakashima and Eva Dou. December 2, 2024. The Washington Post. “Biden tightens tech controls on China as clock ticks down.” <https://www.washingtonpost.com/technology/2024/12/02/us-china-export-controls-chip-technology-national-security>

Thank you for your attention to this important matter.

Sincerely,



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John Moolenaar  
Chairman  
House Select Committee on the CCP