

Congress of the United States

Washington, DC 20515

March 17, 2022

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

Dear Secretary Raimondo:

We write to express our continued concern with your ineffective export control licensing policy for the Semiconductor Manufacturing International Corporation (SMIC)—a Chinese Communist Party (CCP) military company. This company is a top actor in the CCP’s Military-Civil Fusion Strategy as well as a Chinese state-owned enterprise. Because SMIC is integral to CCP military and technological ambitions, closing loopholes in its licensing policy is critical to combating Beijing. A serious U.S. export control policy should be predicated on denying foreign adversaries’ efforts to supplant American economic, technological, and military leadership.

Although SMIC’s designation on the Entity List is hampering its ability to make the most bleeding-edge semiconductors, it is having little to no effect on its overall production capability. On a bipartisan basis, the House Foreign Affairs Committee has released licensing data that BIS is denying less than one percent of applications to sell technology to SMIC. Because of the failure to fully tamp down on this CCP-controlled company, SMIC is selling its products at record rates around the world and bringing in money. Moreover, there is heightened concern that SMIC may divert technology to Russia, despite U.S. sanctions.

We therefore ask that the Department of Commerce rewrite SMIC’s Entity List rule to close dangerous loopholes that appear to allow nearly all sales to SMIC to continue without restriction. Our specific request was and remains to amend the SMIC rule to set the threshold at 16 nanometers, as well as replace the phrase “uniquely required” with “capable of producing.” We additionally request that all items “capable of producing” at 16 nanometers have a licensing policy of denial and all other items subject to the Export Administration Regulation—including deep ultraviolet lithography—have a presumption of denial. We request all license determinations to SMIC be given to our offices, in accordance with section 1761 of the Export Control Reform Act of 2018, on a monthly basis until SMIC is removed from the Entity List.

Furthermore, we reiterate our request that the Department of Commerce apply the Foreign-produced Direct Product Rule (FDPR) to this updated SMIC Entity Listing, which would cover any semiconductor manufacturing equipment that is built with or incorporates any U.S.-origin technology. Absent clear, substantially similar rules by our trading partners, the Department of Commerce must use its authorities to restrict SMIC’s ability to acquire foreign-produced items that are the direct product of U.S.-origin technology.

We have written to the Commerce Department twice to express these concerns, imploring the department to take all steps necessary to strengthen American economic security. Since our last communication on the topic in March 2021, SMIC has posted record earnings, announcing soaring profits and sales up 39 percent during calendar year 2021. It was the company's strongest growth in annual revenue since 2010.¹ But, as of December 2021, reporting² suggests that the Biden Administration had not yet resolved whether to block additional sales of American technology to SMIC and instead was mulling working with partners and allies in reaching such a decision. We request an update on the state of these discussions if they are indeed occurring, especially in light of SMIC's record profits, by March 25, 2022.

Finally, as the Biden Administration implements updated export controls on the Russian Federation for its further invasion of Ukraine, it must use all tools necessary to monitor potential evasions or violations by the People's Republic of China's (PRC). We are deeply concerned that Assistant Secretary Matthew Axelrod recently acknowledged that BIS has nine export control officers posted overseas, including only two in the PRC and zero in Russia. Considering the PRC's Anti-Sanctions Law and Blocking Statute, we request information from the department about its bandwidth to ensure that foreign companies such as SMIC are in fact adhering to the FDPR, as an inability to do so would render the rule impotent.

Adopting a stronger export control approach vis-à-vis SMIC would fortify American industry, weaken a malign CCP competitor, and further cut off the flow of critical technology to Russia as it upends the rules-based international order and invades a neighboring democracy. Given the CCP's tacit support for Vladimir Putin's further invasion of Ukraine and Beijing's clear alignment with Moscow, the department should act immediately. Thank you for your attention to these important matters, and we look forward to a detailed response.

Sincerely,



Marco Rubio
U.S. Senator



Michael McCaul
U.S. Representative

¹ <https://www.reuters.com/world/china/chinas-smic-earns-record-revenue-2021-boosted-by-global-chip-shortage-2022-02-11/>

² <https://www.reuters.com/technology/us-still-undecided-further-restricting-chinas-smic-sources-2021-12-17/>