

United States Senate

WASHINGTON, DC 20510-0908

June 28, 2023

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 alarm that the U.S. Department of Commerce's Bureau of Industry and Security (BIS) is reportedly preparing to gut semiconductor export controls intended to restrict the People's Republic of China's (PRC) access to advanced computer chips. The report states that BIS will extend waivers that allow South Korean and Taiwanese chipmakers to operate as well as expand high-end semiconductor factories in the PRC.¹ If true, this report exposes BIS's export-control rule as hollow, and provides further evidence that the Biden Administration's talk of "competing" with the CCP is weakness masquerading as strength.

Issued on October 7, 2022, the BIS interim final rule ostensibly restricted the export of high-end semiconductors and semiconductor equipment made with American technology to the PRC. This rule, at best, was a step in the right direction. It restricted cutting-edge technology, while imposing no limits on legacy chips, which make up the bulk of global sales and have dual-use applications that could support the People's Liberation Army. Unfortunately, BIS weakened this modest rule by issuing one-year waivers to Taiwanese firm TSMC, as well as Korean firms SK Hynix and Samsung Electronics. These waivers were presented as a one-year grace period that would allow these chipmakers to end restricted transactions with the PRC. Now it seems this was actually spin, and that BIS will allow these foreign chipmakers to do business freely with the PRC. Undersecretary of Industry and Security Alan Estevez, the head of BIS, reportedly told the semiconductor industry's lobbying group that those waivers will be extended for the foreseeable future. If this report is true, these waivers will deliver sensitive technology to Beijing on a silver platter.

The CCP is executing an all-out campaign of subsidies, threats, and technology theft to build its semiconductor industry, in keeping with General Secretary Xi Jinping's boast that the CCP will be the "gravediggers of capitalism" in the twenty-first century.² The PRC's special interest in this sector is outlined in its Made in China 2025 industrial strategy and other guidelines and policies, such as its Military-Civil Fusion (MCF) strategy. According to the bipartisan U.S.-China Economic and Security Review Commission, "Beijing is attempting to establish a leading position in the next global 'revolution in military affairs' and is employing its [MCF] strategy to gain advantage in key emerging technologies."³ Just this month, a former

¹ <https://www.wsj.com/articles/u-s-to-allow-south-korean-taiwan-chip-makers-to-keep-operations-in-china-5d7d72cc>

² https://www.uscc.gov/sites/default/files/2020-12/2020_Annual_Report_to_Congress.pdf

³ <https://www.uscc.gov/sites/default/files/2019-11/2019%20Annual%20Report%20to%20Congress.pdf>

Samsung executive was arrested and charged by authorities in the Republic of Korea with stealing factory blueprints with the intent of duplicating a Samsung factory in the PRC. This example is one of hundreds. BIS is now making the CCP's job easier by allowing some of the world's biggest chipmakers to sell more chips to the PRC, helping Chinese engineers access, copy, and steal that technology.

BIS's waivers are, at best, a slap in the face to those American, Dutch, and Japanese firms that have agreed to comply with the export controls. Korean and Taiwanese firms, some of the largest and best-connected in the industry, would stand to pick up market share from firms that comply with the export controls and did not lobby for an exemption. These waivers would divide our allies and partners when a united response is needed to confront the CCP. At worst, we fear BIS could point to the very harms caused by its waivers to try to reverse the interim rule entirely.

BIS's export-control rule was presented as the centerpiece of the Biden Administration's attempt to cut off Beijing's access to cutting-edge technology, in keeping with its so-called "small yard, high fence" approach to export controls.⁴ That approach was always inadequate to the scale of the threat. Another round of waivers would make it laughable. If the Biden Administration's goal is to restrict cutting-edge technology to the CCP, why is it contemplating giving indefinite licenses to foreign firms so they can continue offering dangerous technology in the PRC?

If this report is true, it fits with the overall trend of the Biden Administration's broken export-control regime and weakness toward Beijing. In 2021, BIS approved 88 percent of applications for export licenses to the PRC; the previous year, 94 percent of applications were approved.⁵ If the United States is serious about halting the CCP's plans to dominate in the technologies of the future, we must get serious about keeping technology away from the PRC. As such, we urge you to immediately reject these waivers.

Thank you for your attention to this important matter.

Sincerely,



Marco Rubio
U.S. Senator



Josh Hawley
U.S. Senator

⁴ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/10/13/remarks-by-national-security-advisor-jake-sullivan-on-the-biden-harris-administrations-national-security-strategy/>

⁵ <https://www.wsj.com/articles/u-s-approves-nearly-all-tech-exports-to-china-data-shows-11660596886>