

Congress of the United States
Washington, DC 20515

September 14, 2023

Alan Estevez
Under Secretary
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, D.C. 20230

Dear Under Secretary Estevez,

We write regarding recent reports that Huawei Technologies Co. (Huawei) has developed a smartphone containing 7-nanometer (nm) chips, capable of supporting 5G, produced by the Chinese state-owned Semiconductor Manufacturing International Corp. (SMIC).¹ Due to the ubiquity of U.S. origin technology throughout the semiconductor supply chain, these reports suggest a violation of U.S. export control regulations.

We are extremely troubled and perplexed about the Bureau of Industry and Security's (BIS) inability to effectively write and enforce export control rules against violators, especially China. For more than two years, our committees and numerous members of Congress have written you regarding loopholes in BIS rules attempting, unsuccessfully, to restrict technology to Huawei and SMIC, among others.² Despite this knowledge and continued Congressional pressure to adopt stricter policies,³ BIS has continued to grant licenses to Chinese Communist Party (CCP) controlled companies, such as SMIC, worth hundreds of billions of dollars. These companies support the CCP's military and have been responsible for manufacturing semiconductors that power Huawei's 5G devices, in violation of BIS' export controls.⁴

¹ Charlottee Trueman, *Chinese-made 7nm chips in Huawei phone raise questions over US export ban*, Computerworld (Sept. 8, 2023), [computerworld.com/article/3706373/chinese-made-7nm-chips-in-huawei-phone-raise-questions-over-us-export-ban.html](https://www.computerworld.com/article/3706373/chinese-made-7nm-chips-in-huawei-phone-raise-questions-over-us-export-ban.html); *see also* Press Briefing, Karine Jean-Pierre, White House Press Sec., and Jake Sullivan, Nat'l Security Advisor (Sep. 5, 2023), <https://www.whitehouse.gov/briefing-room/press-briefings/2023/09/05/press-briefing-by-press-secretary-karine-jean-pierre-and-national-security-advisor-jake-sullivan-6/>.

² Letter from Hon. Michael T. McCaul to Hon. Alan F. Estevez (Mar. 6, 2023), <https://foreignaffairs.house.gov/wp-content/uploads/2023/03/Final-Huawei-Licensing-Letter-v738.pdf>; *see also* Letter from Hon. Michael T. McCaul and Michael V. Lawler to Hon. Alan F. Estevez (Feb. 16, 2023), <https://foreignaffairs.house.gov/wp-content/uploads/2023/02/2.16.23-FIN-Letter-to-Estevez-on-PRC-SST45.pdf>.

³ Letter From Hon. Marco Rubio, and Hon. Michael T. McCaul, to Hon. Gina Raimondo (March 18, 2021), <https://foreignaffairs.house.gov/wp-content/uploads/2021/03/EB7AC6436706F6B54D5BF1A61544E192.03.18.21-letter-to-sec-raimondo-re-asm1-smic.pdf>; *see also* Letter from Hon. Mike Gallagher, Hon. Michael T. McCaul, Hon. Bill Hagerty, and Hon. Young Kim,, to Hon. Gina Raimondo (Aug. 18, 2023), <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/20230818-raimondo-export-controls-in-beijing-letter.pdf>.

⁴ Yang Jie, Yoko Kubota, Aaron Tilley, *Apple Faces New Challenge in China as Huawei Releases High-Speed Phone*, WALL STREET JOURNAL (Sept. 7, 2023), <https://www.wsj.com/tech/apple-faces-new-challenge-in-china-as-huawei-releases-high-speed-phone-beacda95>.

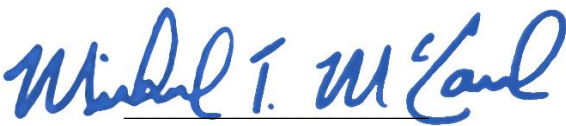
In accordance with the primary goal of preventing malign actors from obtaining or diverting sensitive technologies outlined before the Foreign Affairs Committee earlier this year, the Department should immediately take the following actions:⁵

- (1) Establish a sanctions authority under the International Emergency Economic Powers Act focused on People's Republic of China (PRC) companies that flout U.S. technology controls, and leverage this authority to designate SMIC and Huawei with full blocking sanctions;
- (2) Exercise the authorities under 19 U.S.C. § 1864 to strategically bar the import of SMIC produced semiconductors, particularly those that pose risks to national security, into the United States;
- (3) Place SMIC and Huawei and *all* of their subsidiaries on the Entity List, with a Foreign Direct Product Rule (FDPR) designation;
- (4) Implement a policy of denial for all items subject to the Export Administration Regulations (EAR) for Huawei and *all* of its subsidiaries and spin-off, and successors (e.g. Honor);
- (5) Implement a policy of denial and remove *all* license exceptions for all items subject to the EAR, not just those below 14nm, to SMIC;
- (6) Revoke all existing licenses for SMIC and Huawei; and
- (7) Pursue criminal charges against executives from SMIC and Huawei.

Our committees request a briefing led by BIS in coordination with the offices at the Departments of Defense, State, and Energy that oversee export controls regarding the national security implications of China's violations and circumventions of U.S. export controls, by September 28th.

The circumstances before us demonstrate the need for additional pressure and more effective export controls on our adversaries. We need to enforce laws under your authority against them and not play into their hands. Times have changed in our relations with China. It is beyond time for our bureaucracy to as well.

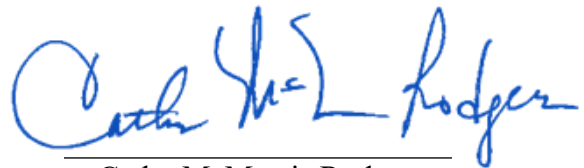
Sincerely,



Michael T. McCaul

Chairman

House Foreign Affairs Committee



Cathy McMorris Rodgers

Chair

House Energy & Commerce Committee

⁵ Combatting the Generational Challenge of CCP Aggression Before the H. Comm. on H. Foreign Affairs, 118th Cong. (2023) (statement of Hon. Alan F. Estevez), <https://docs.house.gov/meetings/FA/FA00/20230228/115362/HHRG-118-FA00-Wstate-EstevezA-20230228.pdf>.



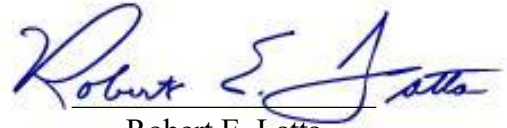
Mike Rogers
Chairman
House Armed Services Committee



Mike Gallagher
Chairman
House Select Committee on China



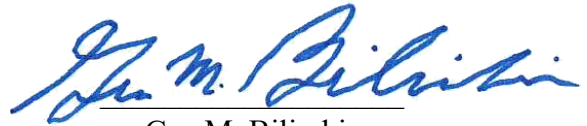
Ann Wagner
Vice Chair
House Foreign Affairs Committee



Robert E. Latta
Chair
Subcommittee on Communications and
Technology



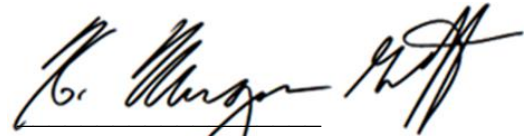
Young Kim
Chairwoman
Subcommittee on Indo-Pacific



Gus M. Bilirakis
Chair
Subcommittee on Innovation, Data, and
Commerce



Brian Mast
Chairman
Subcommittee on Oversight &
Accountability



H. Morgan Griffith
Chair
Subcommittee on Oversight and
Investigations

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CC: Secretary of Commerce Gina M. Raimondo;
Secretary of State Antony J. Blinken;
Secretary of Energy Jennifer M. Granholm;
Secretary of Defense Lloyd J. Austin