To: U.S. Senate Committee on Banking, Housing, and Urban Affairs
From: China Tech Threat
RE: Four Questions for the Commerce Department On Employing China-Focused Export Controls
Date: July 13, 2022

PURPOSE

The U.S. Commerce Department's Under Secretary of Bureau of Industry and Security (BIS), Alan Estevez, is preparing to testify to the Senate Banking Committee on July 14th. This memo serves to inform Senate Banking Committee members and staff on BIS' failure to apply China-related export controls. Specifically, China Tech Threat has noted a potential dissonance between Estevez's stated long-term priority to "stop [China] from using our technology against us" and Secretary Raimondo's assertion that "selling a commodity product to a Chinese company is in and of itself not problematic." What is the Commerce Department's real policy?

Additionally, China Tech Threat filed a FOIA request on July 13th for materials related to an April meeting between Sec. Raimondo and the CEOs of top U.S. semiconductor equipment manufacturers, Applied Materials, Lam Research, and KLA Corp, which have seen significant profits from China over the past two years. As China Tech Threat Co-Founder Roslyn Layton explained, "Secretary Raimondo must either correct the record or explain why America's leading SME companies selling to Chinese military-aligned companies is not a problem."

BACKGROUND

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) exists, in its own words, to "advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership." Principally, the Bureau has the authority to prevent American companies from exporting technologies that can end up in the hands of American adversaries. BIS, for example, has extensively restricted technology exports to Russia as a result of Russia's invasion of Ukraine. Russian companies have also been added to what is known as the Entity List – a list of entities prohibited from accessing certain American technologies.

In recent years China has gained notoriety as the United States' top national security threat. In February of this year, FBI Director Chris Wray cited more than 2,000 investigations focused on the Chinese government trying to steal American information or technology, stating, "there is just no country that presents a broader threat to our ideas, our innovation, and our economic security than China." Meanwhile, BIS has adapted its mission to face the threat of a rising China, which is intent on displacing the United States as the world's leading military, economic, and technological power. In 2020, for example, BIS added Chinese semiconductor manufacturer SMIC to the Entity List.

THE PROBLEM

Under the Biden Administration, BIS has stalled in levying certain China-focused export controls, save for those connected to Russia's invasion of Ukraine. This inaction comes in the face of clear threats to American national security and prosperity stemming from China's technology sector. Greatly at issue is Chinese semiconductor manufacturer Yangtze Memory Technologies Corporation (YMTC), a company tied to the Chinese military which the Chinese government, through approximately $24 billion in subsidies, has tried to turn into a national champion technology firm in the vein of once-dominant Huawei.

YMTC only controls approximately 5% its target market – flash memory chips. But its fortunes may be changing. Credit Suisse analysts, along with multiple news outlets, have reported that YMTC and Apple have developed a partnership for YMTC to supply flash memory chips for the iPhone 14. Such a deal could:

- Compromise iPhone users' security and privacy with untrusted Chinese technology

- Concentrate more chip production in China, increasing supply chain risk

- Force the exit of at least one memory chip supplier from the U.S. or another democratic country, thereby potentially reducing U.S. jobs, including 24,000 jobs with Idaho-based chip firm Micron

- Give legitimacy to state-subsidized military-linked YMTC as a chipmaker

- Bolster the Chinese government's quest to dominate global semiconductor production, reducing U.S. leadership and innovation

China Tech Threat and the Coalition for a Prosperous America recently released an exhaustive report on the implications of an Apple-YMTC deal titled *Silicon Sellout: How Apple's Partnership with Chinese Military Chip Maker YMTC Threatens American National Security*.

Additionally, in July 2021, U.S. Senator Bill Hagerty and U.S. Representative Michael McCaul called on U.S. Commerce Secretary Gina Raimondo to add YMTC to the Entity List, citing "specific facts that link YMTC to the CCP military, the Party-state, and a national semiconductor plan designed to deplete the U.S. defense industrial base." Likewise, after news of Apple's potential partnership with YMTC surfaced in March 2022, U.S. Senator Marco Rubio wrote to CEO Tim Cook, "In a more just world, the Biden Administration would have already added YMTC to its trade blacklists." Effective export controls targeting YMTC would mean stopping the sale of cutting-edge semiconductor manufacturing equipment (SME) from American companies, namely Applied Materials, KLA, and Lam Research. YMTC cannot achieve its ambitions without high-tech chip making tools made almost exclusively by these companies.

There were hopeful signs from the Commerce Department that new export controls targeting YMTC could be coming. On May 9, *The Information* reported that the U.S. Department of Commerce is weighing restrictions on the sale of SME to YMTC. Alan Estevez, confirmed in May as the Under Secretary of BIS, stated that his top priority is "China, China, China." But BIS has

not yet taken any action – perhaps suggesting a misalignment of policy views between Secretary Raimondo and other senior Commerce Department officials. A recent *Bloomberg* story [quotes](#) Raimondo as saying, "I don't think anyone would want the US government to dip into the private sector supply chain and try to micromanage it if nothing wrong is happening."

Even more paradoxically, the U.S. government has appeared to exhibit a "Do as I say, not as I do" approach to export controls. *Bloomberg* [reports](#) that Deputy Secretary of Commerce Don Graves recently flew to the Netherlands to lobby the Dutch technology company ASML from selling advanced chipmaking equipment to China. That trip raises the question – as the *Wall Street Journal* also [noted](#) – if the U.S. Commerce Department is lobbying to curb exports of *Dutch* technologies bound for China, why won't it restrict select high-tech *American* chip making technologies?

QUESTIONS FOR ALAN ESTEVEZ

The American people deserve answers to the following questions from Alan Estevez, scheduled to testify before the Senate Banking Committee on July 14th:

- Does the Commerce Department plan to impose export controls in response to the threat from YMTC? If not, why not?

- Does Secretary Raimondo share Under Secretary Estevez's view that China is a priority issue for the Bureau of Industry and Security? If yes, why hasn't more action been taken?

- Have American semiconductor manufacturing equipment firms such as Applied Materials, KLA, and Lam Research lobbied Secretary Raimondo and/or Alan Estevez against controls on YMTC and related entities? What about Apple?

- What is the justification for the Commerce Department lobbying the Netherlands to impose new export controls on chip making technologies bound for China, while the U.S. takes no corresponding action?

THE SOLUTION

The U.S. must restrict technology exports to and imports from YMTC. The ideal solution requires three steps: (1) adding YMTC to the Entity List; (2) creating a Foreign Direct Product Rule (FDPR) to prohibit the shipment of YMTC chips to Apple; and (3) imposing import restrictions on Apple products using YMTC chips per Executive Order 13873 on Securing the Information and Communications Technology and Services Supply Chain.