



May 22, 2023

The Honorable Gina M. Raimondo
Secretary of Commerce
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Washington, DC 20230

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Comments of the National Foreign Trade Council (NFTC) on the CHIPS Program Office (CPO) National Institute of Standards and Technology (NIST), U.S. Department of Commerce, Proposed Rule on “Preventing the Improper Use of CHIPS Act Funding” 88 Fed. Reg. 17439 (March 23, 2023)

Dear Secretary Raimondo:

The National Foreign Trade Council (the “NFTC”) is pleased to provide written comments on the proposed rule, “Preventing the Improper Use of CHIPS Act Funding,” which contains “national security guardrails” including restrictions on recipients of CHIPS Act funding to expand semiconductor manufacturing capacity in foreign countries of concern, specifically, the People’s Republic of China, Russia, Iran, and North Korea. This proposed rule also contains prohibitions on licensing technology, including patents, and on engaging in joint research and development with persons affiliated with entities and countries of concern.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. The NFTC supports open, rules-based trade, including a level and competitive playing field. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the U.S. Department of Commerce in developing and administering the implementation of the CHIPS Act. We support the goals of the CHIPS Act to strengthen U.S. industries, global supply chains and protect national security and economic security interests.

As the Administration and Congress implement the CHIPS Act and contemplate additional efforts to support American innovation and strengthen supply chains and national security, long-term success will depend on achieving policy coherence across national security, economic security, and competitiveness goals. While we understand that the “national security guardrails” will only apply to recipients of CHIPS Act grants, rules and guardrails must be clear and implementable, based on extensive consultations with industry, and designed to minimize disruptions to the global economy and cross-border business.

NFTC recognizes the nuanced nature of this discussion around a critical industry that is highly specialized. We are concerned that similar measures may be contemplated for other industries without due consideration for potential impacts, including retaliatory measures by

trading partners and foreign countries of concern. We are also concerned about the potential for expanding the scope of the national security guardrails described in this proposed rule to encompass persons and activities not envisioned in the original CHIPS Act legislation. It is important that the scope of this proposed rule remains focused on achieving and facilitating the stated objectives of the CHIPS Act.

For example, the administration of the CHIPS Act must not unfairly disadvantage companies through overly restrictive rules on selective globalization. Guardrails must be clear, consistent and avoid creating redundancies that slow the ability of companies to respond to market conditions. To this end, NFTC encourages greater harmonization within Commerce as well as between Commerce and Treasury in implementing guardrails. We suggest that this effort include coordination between the CHIPS Program Office and the Bureau of Industry and Security on defining “semiconductors critical to national security” and ensuring that new requirements do not conflict with nor inadvertently extend beyond the scope of existing export controls as codified in the Export Administration Regulations.

Semiconductors are the world’s fourth most traded product, with complex and intertwined global supply chains as well as end-users that reach nearly every commercial application. The ubiquity of chips in finished goods and components from nearly every sector of the economy amplifies the impact of the proposed guardrails and risks creating global supply chain shocks. The semiconductor ecosystem includes designers, raw materials, equipment manufacturers, fabrication facilities, software, and test assembly and packaging – all spread across the globe. The U.S. must continue to benefit from relationships with close trade and investment partners and allies, including the European Union, Japan, Taiwan, and Korea. This means ensuring that implementation of the CHIPS Act is done in as consultative a manner as possible and is calibrated to address specific U.S. national security concerns while recognizing and seeking to minimize disruptions to supply chains, operations, and commercial competitiveness of U.S. companies and those from partner and allied jurisdictions. Strengthening America’s technological leadership requires continued and robust access to global supply chains and technological talent, as well as the benefits that come from cross-border research and development efforts.

NFTC is also concerned about how the proposed rule seeks to implement the CHIPS Act’s restriction on the expansion of existing fabs in China. There is an important distinction between physical capacity and production capacity, and it is important that implementing measures are crafted to account for this distinction and avoid undercutting the desired effectiveness and intentions of the original legislation. U.S., partner- and allied-owned facilities in China must be able to maximize their operating efficiency in order to be competitive globally. Ensuring that these firms continue to maintain and grow their control of the global semiconductor supply chain supports key U.S. national security objectives, including those articulated in the Commerce Department’s Interim Final Rule issued October 7, 2022, which imposed new export controls targeting China’s advanced computing and semiconductor manufacturing capabilities.

Finally, the CHIPS Act and these proposed guardrails are unique. Without careful and robust discussion, including consultation across industries, NFTC is concerned that precedents created by these guardrails could expand beyond original legislative intent and be applied to other sectors. This could result in significant disruption to global supply chains

and impede competitiveness by imposing unduly onerous and difficult-to-administer requirements. We have warned of the potential for deleterious consequences from the CHIPS guardrails as proposed and can see the same scenarios playing out across industries in ways that would substantially undermine America's productivity and technological leadership.

Thank you for this opportunity to provide comments. The NFTC welcomes opportunities to discuss this important initiative further.

Sincerely,

A handwritten signature in black ink that reads "Jake Colvin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jake Colvin
President