

November 9, 2020

The Honorable Matthew S. Borman
Deputy Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Re: Agency/Docket No. 200824-0224

Dear DAS Borman:

The undersigned associations are pleased to submit comments in response to the advance notice of proposed rulemaking (ANPRM) on the review of controls for foundational technologies (Agency/Docket No. 200824-0224).

Together, our membership is comprised of leading technology and service companies in the United States and globally, serving consumers and enterprise customers in sectors as diverse as virtual reality, additive manufacturing, semiconductor design, computer storage, ecommerce platforms, social media, automotive production, and telecommunications, among many others. Our respective members also represent every stage of the technology company life cycle, from startups to longstanding public companies, as well as product lifecycle, from research and development to production.

Our membership supports the need to protect national security interests. However, we believe that the lack of a narrow, carefully crafted definition of 'foundational technologies' may lead to export controls becoming a blunt instrument, which could stifle innovation and reduce the competitiveness of our companies. Therefore, it is imperative that any definition of foundational technologies is narrowly tailored to discrete security risks.

Ultimately, the innovative capacity of the technology sector in the United States is critical to the nation's economic growth and national security. With that in mind, we encourage the Bureau of Industry and Security (BIS) to be mindful of the following key points when identifying and controlling foundational technologies:

- ***Narrowly define foundational technologies and link to national security objectives.***
Prior to identifying technologies for control, BIS should lay out a concise and meaningful definition of foundational technologies based on the statutory requirements identified in the Export Control Reform Act (ECRA), including but not limited to linking to specific national security risks. This definition should be clearly communicated to industry, academia, and other stakeholders, and it should allow for clear delineation of technologies that fall inside the scope of potential control and those that are outside. It should be developed in robust consultation with industry experts and technologists to ensure that it is consistent with relevant technology trends.

- **Assess impacts to technology development.** Prior to imposing export controls on foundational or emerging technologies, BIS should assess not only the impact on the development of the technologies themselves, but the impact the controls could potentially have on downstream nascent industries.
- **Evaluate existing export control regimes.** In considering whether to implement additional controls on “foundational technologies,” BIS should consider existing export control regimes and whether such regimes already meet its desired objectives. As an example, the ANPRM references as items for consideration “foundational technologies...that are currently subject to control for military end use or end user reasons.” Because many items are already controlled under the recently modified MEU rule (744.21), it seems likely that the national security concerns underpinning the ANPRM have already been addressed and seeking to control additional items would result in over-control.
- **Dynamic assessments of technology lists.** As technology innovation accelerates, what is considered foundational or emerging will inevitably change. BIS and the U.S. Government should implement dynamic processes to continually study technology trends and consult with experts in industry and academia to understand which technologies continue to be emerging and foundational. Any developments should be reflected in regular changes to the relevant export control.
- **Coordinate with allies.** If a technology is subject to a unilateral control but is not exclusive to the United States, buyers will simply identify new sources that do not incorporate U.S. items or persons. This could eventually contribute to the United States being “designed out” from that particular technology as other markets move ahead with development. Additionally, there are multiple vendors around the world that are already developing and/or selling many of the technologies identified in the ANPRM for potential consideration as foundational technologies. For a control to be effective – and to not raise the risk of excluding the United States from global supply chains – the U.S. Government must prioritize the use of multilateral controls with allies.

Ultimately, our associations stress the need for a balanced approach to identify foundational technologies for control. Any efforts to tighten existing export controls must take into account that the ongoing national security of the United States depends on maintaining U.S. leadership in science, technology, engineering and manufacturing sectors. It is therefore vitally important that any resulting controls do not inadvertently detract from the strength of the technology industry in the United States.

Many of the organizations below have also submitted comments responding to the ANPRM separately, which further detail our various organizations’ feedback on this rulemaking.

We appreciate the opportunity to provide our input in this process. We stand by if you would like clarification on any of our points and look forward to engaging as this process evolves.

Sincerely,

ACT | The App Association

Alliance for Automotive Innovation

Autos Drive America

BSA | The Software Alliance

Coalition of Service Industries (USCSI)

Computer & Communications Industry Association (CCIA)

Computing Technology Industry Association (CompTIA)

Consumer Technology Association (CTA)

Global Business Alliance (GBA)

Information Technology Industry Council (ITI)

Internet Association (IA)

Motor & Equipment Manufacturers Association (MEMA)

National Defense Industrial Association (NDIA)

SEMI

Semiconductor Industry Association (SIA)

Software & Information Industry Association (SIIA)

Telecommunications Industry Association (TIA)

United States Council for International Business (USCIB)

XR Association (XRA)