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March 20, 2008

The Honorable Mario Mancuso
Under Secretary for Industry and Security
United States Department of Commerce
Washington, D.C. 20230

Dear Under Secretary Mancuso:

Thank you for your February 15, 2008 response to my January 29, 2008 letter concerning the Validated End-User (VEU) program. Your timely response is appreciated.

However, I am concerned by your refusal to provide answers to a number of questions, citing the confidentiality provisions of the Export Administration Act of 1979. While I appreciate your vigilance in seeking to protect proprietary business information, I would like to bring to your attention the text of the Export Administration Act confidentiality provisions at 50 U.S.C. app. § 2411(c)(2), which states that "nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office." This provision makes clear that the EAA does not provide a statutory basis for your refusal to respond to questions in my January 29th letter.

Pursuant to Rules X and XI of the House of Representatives, the House Energy and Commerce Committee has jurisdiction over interstate and foreign communications. The Subcommittee on Telecommunications and the Internet is analyzing and evaluating existing laws and regulations pertaining to the international competitiveness of the telecommunications and information services industry. As part of this ongoing oversight responsibility, the Subcommittee wishes to examine the Department's Validated End-User (VEU) program, in order to better understand the impact of this program and how the Department balances trade- and security-related factors in approving commerce with so-called Validated End-Users. Accordingly, as Chairman of the House Subcommittee on Telecommunications and the Internet, I renew the request for all information requested in my January 29, 2008 letter which you did not provide in the February 15th correspondence, specifically questions 1(a), 1(b), 1(c), 4, and 5.

In addition, please provide responses to each of the following questions:

1. Your response states that, as part of its initial internal VEU screening, the Bureau of Industry and Security (BIS) reviews the “proposed VEU compliance plan.” What is this plan? What are the necessary components of this plan? Please provide the citation to the Export Administration Regulations section requiring this plan.
2. Your response states that, as part of its initial internal VEU screening prior to referral to the ERC, BIS refers applications to the intelligence community for review. Which agencies in the intelligence community participate in this review and what are their roles? Does the intelligence community also participate in the subsequent ERC interagency review?
3. Your response states that, as part of its initial internal VEU screening prior to referral to the ERC, the BIS Export Management and Compliance Division conducts a compliance review, including a review “of business databases such as Hoovers and Dun & Bradstreet to verify the applicant's ownership and organizational structure.” Are database searches such as these the only means used by BIS to confirm corporate structure and affiliations? If not, what other means are used?
4. Your response states that the ownership interest of China Electronic Corporation (CEC) in Shanghai Hua Hong NEC Electronics Company, Ltd. (HHNEC) was part of the information available to the interagency End-User Review Committee (ERC) which reviewed HHNEC for VEU status. Your response further states that “HHNEC's structure, ownership, including its parent, subsidiaries, or sibling entities, and business practices were reviewed for its VEU authorization in order to evaluate whether HHNEC or its affiliates were associated with the military or engaging in military or other unauthorized end-uses such as enabling Weapons of Mass Destruction (WMD) programs.” Was information on CEC's military-related subsidiaries, particularly China National Electronics Import & Export Corporation (which is currently under sanction by the United States) and China Electronic Systems Engineering Corporation, also available to all ERC agencies? Were the military or proliferation-related activities of these and other CEC subsidiaries discussed during ERC meetings? If so, were concerns raised by any ERC agencies?
5. Your response notes that “BIS and the ERC will review authorized VEUs on a semi-annual basis,” and that these reviews will include “required reports from the VEUs.” What are these reports? Please provide the citation to the Export Administration Regulations section requiring these reports.

Given the ongoing Congressional oversight and investigation of the VEU program, I strongly recommend that you take no action to expand the VEU program until Congressional concerns have been allayed. Specifically, I expect that no new companies

will be awarded VEU status and no new countries will be made VEU-eligible for the time being.

I look forward to your thorough response to the above requests. Please provide the requested information no later than April 2, 2008.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is written in a cursive style with a large, sweeping "E" and a long, trailing flourish at the end.

Edward J. Markey
Chairman
Subcommittee on Telecommunications
and the Internet