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EDWARD J. MARKEY  
7TH DISTRICT, MASSACHUSETTS

Congress of the United States  
House of Representatives  
Washington, DC 20515-2107

2108 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-2107  
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101  
MEDFORD, MA 02155  
(781) 396-2900

188 CONCORD STREET, SUITE 102  
FRAMINGHAM, MA 01702  
(508) 875-2900

<http://markey.house.gov>

January 29, 2008

The Honorable Carlos M. Gutierrez  
Secretary  
Department of Commerce  
Fourteenth Street and Constitution Avenue, N.W.  
Washington, DC 20230

Dear Secretary Gutierrez:

I write to request information regarding the newly-implemented Validated End-User (VEU) authorization of the U.S. Department of Commerce's Bureau of Industry and Security (BIS). A recent report by the Wisconsin Project on Nuclear Arms Control, "*In China We Trust?: Lowering U.S. Controls on Militarily Useful Exports to China*," has raised serious questions concerning the VEU authorization, in particular whether the VEU authorization has unwisely reduced controls on the sale of dual-use American products to Chinese corporations with significant links to the People's Liberation Army (PLA).

On June 19, 2007, BIS published a Final Rule in the Federal Register amending the Export Administration Regulations (EAR) to establish a new authorization for "validated end-users."<sup>1</sup> According to the Final Rule, the Department developed the VEU authorization to "facilitate legitimate exports to civilian end-users" enabling foreign corporations, initially in China, to receive eligible items without a license if the corporations have been vetted and validated by BIS. Validated end-users are approved in advance by BIS according to criteria established by the Final Rule. One factor considered as part of the VEU process is "the entity's relationships with U.S. and foreign companies."

As you know, on October 19, 2007, BIS authorized five Chinese corporations as validated end-users. Those corporations are Applied Materials China, BHA Aerocomposite Parts (BHA), National Semiconductor Corporation, Semiconductor Manufacturing International Corporation, and Shanghai Hua Hong NEC Electronics Company (HHNEC).<sup>2</sup> However, in its report the Wisconsin Project concluded that two of the five authorized VEU corporations, BHA and HHNEC, are "affiliated closely to China's military industrial complex and to companies that have been punished by the U.S. government for proliferation or other improper export behavior." Given that BIS

<sup>1</sup> 72 Fed Reg 33646

<sup>2</sup> 72 Fed Reg 59164

must review “the entity’s relationships with U.S. and foreign companies,” this finding, if accurate, raises serious questions about the process by which VEU corporations are nominated, reviewed and adjudicated.

I am concerned that the VEU program may increase the risk that dual-use exports will fall into the wrong hands, undermining the national security of our country. While I understand that corporate relationships in China often include direct government investment or management, the fact that such arrangements are common does not mean that such arrangements are benign, especially in the context of an expedited high-technology transfer system such as VEU. The Department should explain in far greater detail its initial choices for VEU authorization, in light of the potential for exports to the five authorized VEU corporations to be retransferred or diverted to other affiliates or subsidiaries of these companies.

In order to better understand the facts and circumstances surrounding the Department’s activities in this area, I request that you provide responses to each of the following questions:

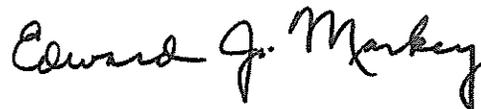
1. Are the corporate relationships of BHA and HHNEC described in the Wisconsin Project report accurate?
  - a. Do you agree with the Wisconsin Project’s finding that HHNEC is majority owned by China Electronics Corporation (CEC), a Chinese government-owned conglomerate which produces military equipment? If not, why not? Specifically, if the Department disagrees with the Wisconsin Project’s analysis, what is the corporate relationship between HHNEC and CEC according to the Department? If the Department agrees with the Wisconsin Project’s finding, why does the Department believe this relationship makes HHNEC appropriate for VEU authorization, especially given the utility of some VEU-eligible items for the military production of CEC and its other subsidiaries?
  - b. Do you agree with the Wisconsin Project contention that BHA is partially owned by AVIC I, a Chinese government entity which produces jet fighters and nuclear-capable bombers, among other military equipment? If not, why not? If the Department disagrees with the Wisconsin Project’s analysis, what is the corporate relationship between BHA and AVIC I according to the Department? If the Department agrees with the Wisconsin Project’s finding, why does the Department believe this relationship makes BHA appropriate for VEU authorization, especially given the utility of some VEU-eligible items for the military production of AVIC-I and its other subsidiaries?
  - c. Was the Department aware of these corporate relationships when HHNEC and BHA were designated as VEUs? If not, what action will the Department of Commerce now take to reexamine HHNEC, BHA, and the other VEU corporations?
2. How were each of these five corporations selected for review for possible VEU authorization? Did they apply, were they nominated by U.S. exporters, or were

they selected by the Department of Commerce? For each of the five Chinese corporations granted VEU designation, please provide a timeline with each step in the VEU decision-making process beginning with how the corporations came to be considered for VEU status and concluding with the decision to grant VEU status. The timeline should include the relevant dates of each step in the process and the U.S. government entities and U.S. and/or foreign companies (if any) involved in each step.

3. What information was provided by each of the prospective VEU corporations prior to BIS issuing the authorization? What information was provided by the nominating company, if there was one? What information was gathered independently by the Departments of Commerce, State, Defense, or other U.S. Government agencies? Was information provided by the prospective VEU corporation or its nominator independently verified by the Departments of Commerce, State, Defense, or other U.S. Government agencies? If yes, how? If not, why not?
4. Please describe the interagency process for considering the five Chinese companies for VEU designation. How many meetings were held to consider each application? For each meeting, please provide the agencies that participated and the title of the representative(s) from each agency. During the review process, did any agency raise concerns that VEU designation for any of the five firms may not be appropriate? If yes, please provide any such correspondence, including memoranda, email or any other correspondence in written or electronic form.
5. Please provide a list of all corporations which have applied for, been nominated for, or are currently under review for VEU status, whether in China or any other country. Have any corporations reviewed for VEU status been denied? If yes, why was each corporation denied?
6. On January 2, 2008, BIS published a Final Rule in the Federal Register dropping the requirement that exporters submit reports on items exported under VEU authorization during the previous year, "because BIS already has access to that information."<sup>3</sup> Please describe in detail how BIS has access to such information. How frequently does BIS intend to examine such information?

I look forward to the Department's response to the questions above. Please provide the requested information no later than February 15, 2008. If you have questions, please have a member of your staff contact Will Huntington or Mark Bayer of my staff at 202-225-2836.

Sincerely,



Edward J. Markey

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<sup>3</sup> 73 Fed Reg 32