

September 28, 2021

Mr. Alan F. Estevez
Under Secretary of Commerce for Industry and Security Designate
United States Department of Commerce
1401 Constitution Ave. NW,
Washington, DC 20230

Dear Mr. Estevez:

Thank you for testifying before the United States Senate Committee on Banking, Housing, and Urban Affairs on September 21, 2021, at the nominations hearing.

To complete the hearing record, we would appreciate your answers to the enclosed questions by September 28, 2021 at 12:00PM. When formatting your response, please repeat the question, then your answer, single spacing both question and answer. Please do not use all capitals.

Send your reply to Mr. Cameron Ricker, the Committee's Chief Clerk. He will transmit copies to the appropriate offices, including the Committee's publications office. Due to current procedures regarding Senate mail, it is recommended that you send replies via e-mail in a Microsoft Word or PDF attachment to Cameron.Ricker@banking.senate.gov.

If you have any questions about this letter, please contact Mr. Ricker at (202) 224-5587.

Sincerely,

Sherrod Brown
Chairman

SB/cr

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Questions for Mr. Alan F. Estevez, of Maryland, to be Under Secretary of Commerce for Industry and Security, from Chairman Sherrod Brown:

- 1) Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?
- 2) What specific measures will you use to evaluate the success of the U.S. Department of Commerce in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you work with the Secretary and senior officials to keep Congress apprised, as appropriate, on the progress being made on these measures?
- 3) What is your plan for creating an inclusive working environment for employees within your office?

Answer (for questions 1-3): I joined Deloitte Consulting as a national security strategy and logistics executive in June 2017 after completing a 36-year career with the Department of Defense. I served as the Principal Deputy Under Secretary of Defense (Acquisition, Technology & Logistics) from 2013 to 2017, and prior to my last appointment, I held several key positions within the Office of the Secretary of Defense.

Throughout my career, I have committed myself to diversity, equity and inclusion in the workplace. I support President Biden’s “Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce” and “National Security Memorandum on Revitalizing America’s Foreign Policy and National Security Workforce, Institutions, and Partnerships,” and I share President Biden’s and Secretary Raimondo’s commitment to the values of equal opportunity, diversity, equity and inclusion. If confirmed, I will work with our leadership team to actively advance equity, civil rights, racial justice, and equal opportunity for all employees and applicants, by implementing measures to root out systemic racism and strengthen civil rights programs while building trust within and outside of BIS.

- 4) Since taking office, the Biden-Harris Administration has demonstrated a keen awareness of the semiconductor shortage and willingness to use its authorities to address this problem, including through the 100 Day Supply Chain Report and summits at the White House. Ohio workers and companies have been particularly hard hit by this shortage. What steps will you take to address this problem? Are there any additional authorities Congress could provide to assist the Administration’s ongoing efforts?

Answer: I believe it is critical for the United States to have diverse, resilient and secure supply chains in critical areas like semiconductors, and that a vibrant domestic semiconductor manufacturing capability is an important component of overall U.S. competitiveness.

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If confirmed, I will support the Commerce Department’s work on the President’s Supply Chain Disruptions Task Force to tackle near-term bottlenecks in the semiconductor industry and to strengthen U.S. leadership in semiconductor manufacturing.

In addition, I understand that, on September 24, 2021, a Bureau of Industry and Security (BIS) “Notice of Request for Public Comments on Risks in the Semiconductor Supply Chain” was published in the Federal Register. According to the Notice, “[w]ith the goal of accelerating information flow across the various segments of the supply chain, identifying data gaps and bottlenecks in the supply chain, and potential inconsistent demand signals, the Department is seeking responses from interested parties (including domestic and foreign semiconductor design firms, semiconductor manufacturers, materials and equipment suppliers, as well as semiconductor intermediate and end-users) to the questions set forth in this notice.” If confirmed, I look forward to supporting any appropriate efforts that may follow from this Notice.

- 5) As you work to address the immediate supply and demand issues related to semiconductors, can you provide a status update on the report required under Section 9004 of the FY21 NDAA?

Answer: I take seriously the requirements of the FY 2021 National Defense Authorization Act (NDAA) and believe in implementing the laws passed by Congress. If confirmed, I commit to consulting with the staff at BIS and the interagency to ascertain the status of the report required under Section 9004 of the FY 2021 NDAA.

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Questions for Mr. Alan F. Estevez, of Maryland, to be Under Secretary of Commerce for Industry and Security, from Ranking Member Patrick J. Toomey:

Congressional Oversight

- 1) Please provide your philosophy on how the Bureau of Industry and Security (BIS) at the Department of Commerce (Commerce) will approach and respond to Congressional information requests (both for documentary information and oral testimony), if you are confirmed.

Answer: I deeply respect the oversight role of the Senate Banking, Housing, and Urban Affairs Committee and the Congress as a whole and take the statutory requirements of the Export Control Reform Act (ECRA) of 2018 seriously. My understanding is that information submitted or obtained in connection with export license applications is subject to Section 1761(h) of ECRA, and that requests for information protected from disclosure by 1761(h) of ECRA are honored when appropriately submitted by either the Chair or Ranking Member of a committee or subcommittee of appropriate jurisdiction. If confirmed, I will work diligently to comply, consistent with the constitutional and statutory obligations of the executive branch, with appropriately submitted requests by Members of Congress for information that is protected from disclosure under Section 1761(h) of ECRA.

- 2) If confirmed, do you intend to respond to information requests differently depending on who is making the Congressional information request (whether it's the chair of the Congressional committee, the ranking member, or another member of Congress)? Please answer "yes" or "no." If your answer is "yes," please explain.

Answer: I deeply respect the oversight role of the Senate Banking, Housing, and Urban Affairs Committee and the Congress as a whole and will respond to requests for information, consistent with the constitutional and statutory obligations of the executive branch. It is my understanding that information submitted or obtained in connection with export license applications is subject to Section 1761(h) of ECRA, and that requests for information protected from disclosure by 1761(h) of ECRA are honored when appropriately submitted by the Chair or Ranking Member of a committee or subcommittee of appropriate jurisdiction.

- 3) Will you commit that, if confirmed, you will respond in a timely manner and fully comply with all information requests from me? Please answer "yes" or "no." If your answer is "no," please explain.

Answer: If confirmed, I will work diligently to respond, consistent with the constitutional and statutory obligations of the executive branch, with requests for information from Congress.

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- 4) Will you commit that, if confirmed, you will make yourself and any other BIS employee expeditiously available to provide oral testimony (including but not limited to briefings, hearings, and transcribed interviews) to the Committee on any matter within its jurisdiction, upon the request of either the Chairman or Ranking Member? Please answer “yes” or “no.” If your answer is “no,” please explain why.

Answer: If confirmed, I will work diligently to respond, consistent with the constitutional and statutory obligations of the executive branch, with requests for information from Congress.

- 5) Commerce Acting Under Secretary for Industry and Secretary Jeremy Pelter said in a recent hearing before the U.S.-China Economic Security Review Commission that Congress can request access to certain BIS information about export license applications and rejections. Will you commit to timely and comprehensive responses to Congressional requests for this information?¹

Answer: I deeply respect the oversight role of the Senate Banking, Housing, and Urban Affairs Committee and the Congress as a whole and will respond to requests for information, consistent with the constitutional and statutory obligations of the executive branch. It is my understanding that information submitted or obtained in connection with export license applications is subject to Section 1761(h) of ECRA, and that requests for information protected from disclosure by 1761(h) of ECRA are honored when appropriately submitted by the Chair or Ranking Member of a committee or subcommittee of appropriate jurisdiction.

China

- 6) In shaping export control policy, BIS’s mission is central to the United States’ high-tech rivalry with China. Do you agree that China’s technological, military, and economic rise poses one of the greatest current challenges to the safety and well-being of the United States?

Answer: Yes. The Government of the People’s Republic of China (PRC) poses one of our most difficult challenges related to U.S. national security and foreign policy objectives, including our ability to maintain U.S. technological leadership in critical areas.

- 7) Please detail your understanding of the national security threat posed by the Chinese Communist Party (CCP), including your assessment of the CCP’s military modernization ambitions, intellectual property theft campaign, and coercion targeting United States allies and partners.

¹ The U.S.-China Economic and Security Review Commission, Hearing on “U.S.-China Relations in 2021: Emerging Risks,” September 8, 2021, <https://www.uscc.gov/hearings/us-china-relations-2021-emerging-risks>.

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Answer: Many of our foreign adversaries, such as the People’s Republic of China (PRC) government, continue to act in an irresponsible manner, including through the diversion of dual use technologies to military uses; theft of intellectual property; human rights abuses; and anti-competitive, unfair and coercive trade practices. All of these activities threaten our values and interests, as well as those of our allies and partners.

- 8) At your September 21, 2021 nomination hearing, you said: “I see no reason that Huawei would come off the Entity List, unless things change.” Please clarify what conditions you believe would need to change for BIS to consider removing Huawei from the Entity List?

Answer: I believe that Huawei poses a national security threat to the United States. Huawei’s involvement in alleged sanctions violations, ties to China’s military, human rights abuses, and theft of intellectual property are deeply concerning. Based on publicly available information that I know today, I do not see a reason to remove Huawei from the Entity List. Furthermore, I understand based on public information that the Biden Administration has not changed its policy regarding restrictions on exports to Huawei and that Huawei continues to be on the Entity List. If confirmed, I will ensure that BIS adheres to the regulatory requirements for removing any party from the Entity List, as well as the FY 2020 National Defense Authorization Act (NDAA) that contains additional conditions on the removal of Huawei from the Entity List.

- 9) If a company requests a license or a waiver to export an item to Huawei:
- a. What factors would you weigh in considering such a request?
 - b. What would make you more likely to grant the request?
 - c. What would make you less likely to grant that request?

Answer: My understanding is that the Bureau of Industry and Security (BIS) works with its interagency partners to consistently apply the licensing policies articulated in the Export Administration Regulations (EAR) to restrict Huawei’s access to technology or software for activities that could harm U.S. national security and foreign policy interests. All export license applications to Huawei are reviewed by the Departments of Commerce, Defense, State, and Energy. It is my understanding that the licensing policy for exports to Huawei and its listed affiliates for items capable of supporting systems, equipment or devices at only below the 5G level (e.g. 4G, 3G) are reviewed on a case by case basis. All others are reviewed under a presumption of denial.

- 10) A BIS interim final rule, entitled “Release of ‘Technology’ to Certain Entities on the Entity List in the Context of Standards Organizations,” issued last year authorizes the release of certain technology to Huawei and its affiliates on the Entity List without a license if such release is made for the purpose of contributing to the revision or

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development of a “standard” in a “standards organization.”² According to reports, Nokia recently opted to suspend its activity with the O-Ran Alliance standards organization out of concern that some participants were added to the Entity List.³ This example highlights the lingering confusion over whether U.S. companies’ participation in technical standards development activity is being chilled and, because of that, whether U.S. and multinational companies are at risk of losing ground in setting global standards to Chinese companies and other competitors. If confirmed, how will you address this ambiguity and facilitate clarification of navigating participation in international standards organizations that include entities on the Entity List?

Answer: I believe it is important to our national security that U.S. companies (and those located in allied countries) participate in standards organizations to help develop the standards that guide the interoperability and functionality of many types of technologies, including those related to the open radio access network technologies represented by the O-RAN Alliance. The Department of Commerce continually evaluates its export controls to protect US national security and foreign policy interests, including technology leadership in international standards development. For example, the Department previously exempted releases to Huawei of technology subject to EAR99 or controlled on the Commerce Control List only for anti-terrorism reasons through standards organization and if released for the purpose of contributing to the revision or development of a standard. As noted in the Office of Management and Budget (OMB)’s Unified Regulatory Agenda, the Commerce Department is preparing a revision to the Export Administration Regulations (EAR) to clarify the applicability of the EAR to releases of technology for standards setting or development in standards organizations. Finally, it is my understanding based on public information that no penalties have been imposed upon parties in connection with standards development.

Emerging and Foundational Technologies

- 11) The Export Control Reform Act of 2018 (ECRA) mandates BIS to identify and control emerging and foundational technologies. Please describe how you will go about implementing this provision. Will you commit to prioritizing the expeditious implementation of this provision?

Answer: If confirmed, I will prioritize identifying and implementing appropriate controls on exports of emerging and foundational technologies, consistent with the Export Control Reform Act (ECRA) of 2018. In addition, I will work to identify such

² Federal Register, “Release of “Technology” to Certain Entities on the Entity List in the Context of Standards Organizations,” June 18, 2020, <https://www.federalregister.gov/documents/2020/06/18/2020-13093/release-of-technology-to-certain-entities-on-the-entity-list-in-the-context-of-standards>.

³ Matt Kapko, “Nokia Freezes O-RAN Alliance Work Over Chinese Meddling Worries,” SDX Central, Aug. 30, 2021, <https://www.sdxcentral.com/articles/news/nokia-freezes-o-ran-alliance-work-over-chinese-meddling-worries/2021/08/>.

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technologies based on the criteria provided in Section 1758(a)(2)(B) of ECRA, which requires that the interagency effort take into account: (i) the development of emerging and foundational technologies in foreign countries, (ii) the effect export controls imposed on emerging and foundational technologies may have on the development of such technologies in the United States, and (iii) the effectiveness of export controls on limiting the proliferation of emerging and foundational technologies to foreign countries.

12) In your preparation for this nomination, have you found an explanation for why, in the three years since ECRA was passed, the only action taken regarding foundational technologies is a request for public comment released on August 27, 2020?⁴

Answer: If confirmed, I will prioritize identifying and implementing appropriate controls on exports of emerging and foundational technologies, consistent with the Export Control Reform Act (ECRA) of 2018. I have not been serving in the Bureau of Industry and Security (BIS) since the enactment of ECRA and therefore do not have all the information necessary to make the most accurate and complete judgment about BIS's progress to date in this area.

13) What steps would you take to ensure the process to identify and control emerging and foundational technologies is as efficient and timely as possible?

Answer: If confirmed, I will prioritize identifying and implementing appropriate controls on exports of emerging and foundational technologies, consistent with the Export Control Reform Act (ECRA) of 2018. I will work to identify such technologies based on the criteria provided in Section 1758(a)(2)(B) of ECRA, which requires that the interagency effort take into account: (i) the development of emerging and foundational technologies in foreign countries, (ii) the effect export controls imposed on emerging and foundational technologies may have on the development of such technologies in the United States, and (iii) the effectiveness of export controls on limiting the proliferation of emerging and foundational technologies to foreign countries. I will make every effort to implement this mandate from ECRA appropriately and in a timely manner.

14) Please list what factors you will take into consideration when considering applying controls on foundational technologies for which the United States is not the only potential source.

Answer: The issue of foreign availability is one example of an important consideration in the process for identifying and implementing appropriate controls on foundational technologies. Because such technologies are already in production, there are often

⁴ Federal Register, "Identification and Review of Controls for Certain Foundational Technologies," August 27, 2020, <https://www.federalregister.gov/documents/2020/08/27/2020-18910/identification-and-review-of-controls-for-certain-foundational-technologies>.

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developers and producers of such technologies in foreign countries, thereby making new unilateral controls less effective. Additionally, foundational technology candidates can be former multilaterally controlled items that have been decontrolled, many times because of widespread foreign availability outside of regime members. As a result, changes in controls for foundational technologies should be carefully calibrated.

15) Will you commit to submitting to Congress, in a classified environment, quarterly summaries of technology control decisions and the process behind them? If not, by what metric, in your view, should Congress assess BIS' progress in implementing ECRA going forward?

Answer: If confirmed, I will work diligently to respond, consistent with the constitutional and statutory obligations of the executive branch, to requests for information and briefings from Congress.

16) Developing export controls on foundational and emerging technologies requires significant subject matter expertise in order to craft appropriate and impactful regulations.

- a. Based on your understanding, does BIS have the necessary technical expertise to carry out this function?
- b. If it does not, how would you address this issue?

Answer: At this time and based on my understanding from publicly available information, I currently have no reason to doubt that BIS has the necessary technical expertise to identify and implement appropriate controls on emerging and foundational technologies. However, I think it is also important that BIS identify any other experts in the U.S. government focused on certain technologies to contribute to this important review. If confirmed, I will rely upon BIS's expert staff and those in other agencies to enhance my technical knowledge and support my decision making with regard to identifying and implementing appropriate controls on emerging and foundational technologies.

Section 232 Investigations

17) The previous administration failed to publicly release several of their Section 232 investigation reports, despite being statutorily-mandated to do so. The Biden Administration agreed to comply with the law and release the overdue reports in Spring-Summer 2021. Do you agree that, in a Section 232 investigation, the executive branch should be obligated to publicly release its Congressionally-mandated 232 report prior to the imposition of remedies?

Answer: If confirmed, I will comply with the requirements of Section 232 of the Trade Expansion Act of 1962, as amended, regarding the public release of Section 232 investigation reports.

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18) Do you believe carbon emissions are a threat to national security?

Answer: The Defense Department has identified climate change as a critical national security threat. Carbon emissions, being one of the leading causes of climate change, are therefore an ongoing threat to our national security.

19) Section 232 tariffs on imported goods are taxes paid by American consumers. These taxes weaken our economy, threaten American jobs, and erode our credibility with other nations. The previous Administration's Section 232 tariffs on steel and aluminum, which were imposed under the false pretense of national security, have directly and negatively impacted my constituents. They have greatly increased costs for American importers and consumers. Do you agree that the U.S. should remove our existing Section 232 tariffs on steel and aluminum?

Answer: Section 232 investigations are initiated to determine the effects of imports of any articles on U.S. national security. Like any tool, Section 232 should be used carefully and based on the criteria in the statute. My understanding based on publicly available information is that the Biden Administration is currently reviewing Section 232 measures and product and country exclusions and is working with the European Union (EU) to cooperatively address global excess capacity in steel and aluminum and to hold countries, such as China, accountable for their trade-distorting policies.

Export Controls

20) Export controls are generally most effective when implemented in a multilateral fashion with a small group of allied nations, thereby preventing the very technology being controlled by the United States from being available from foreign sources.

- a. Will you commit to working with our allies, particularly governments with semiconductor suppliers, and proceeding in a multilateral manner, to the extent possible, as an important way to advance U.S. foreign policy and national security goals?
- b. In particular, will you commit to working with U.S. allies to convince them to agree to impose similar controls on specific end users and end uses so that such controls are imposed not only by the United States on U.S. exporters?

Answer: I agree with the Export Control Reform Act (ECRA) of 2018 Statement of Policy, Section 1752(5), which states that “[e]xport controls should be coordinated with the multilateral export control regimes. Export controls that are multilateral are most effective, and should be tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States and its allies.” Furthermore, when the multilateral regimes cannot achieve U.S. export control

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objectives, BIS should work on a plurilateral basis with likeminded countries. I also support the working group on export controls that is part of the U.S.-EU Trade and Technology Council (TTC). In addition, BIS should continue bilateral discussions with allied countries, especially those supplier countries of certain technologies of concern, to coordinate on common controls and policies.

If confirmed, I will work to share information and reach an understanding with our allies on coordinating license review policy for various types of technologies and seek to have them take into account BIS's restricted party lists when evaluating whether to approve a license. I believe that engagement with allies is critical to the long-term success of our efforts to address national security and foreign policy concerns related to adversaries like the People's Republic of China (PRC).

- 21) Tight unilateral controls on items for which the United States may be the only source, have the strong potential of driving research and development (R&D), and ultimately production, offshore. In the past, very restrictive U.S. controls contributed to robust foreign competition in sectors like machine tools, commercial use of space, and commercial thermal imaging. Under what circumstances would you consider applying a unilateral control on a good or technology? Please describe the criteria you would use in your analysis when considering the application of a unilateral control.

Answer: I agree with Section 1752(6) of the Export Control Reform Act (ECRA) of 2018, which states that “[e]xport controls applied unilaterally to items widely available from foreign sources generally are less effective in preventing end-users from acquiring those items. Application of unilateral export controls should be limited for purposes of protecting specific United States national security and foreign policy interests.” Unilateral controls should be directly tied to important national security or foreign policy concerns and used when effective multilateral or plurilateral controls cannot be achieved.

- 22) By setting U.S. export control policy on items used for both civilian and military purposes, BIS effectively has the power to reshape the supply chains of entire industries and, in some circumstances, impose significant burdens on the economy. Not only is industry significantly impacted by export controls, it is often at the forefront of cutting edge research and technologies. Will you commit to consulting industry stakeholders and maintaining an open channel of dialogue with the business community?

Answer: Yes.

- 23) Will you commit to a process that, except in extraordinary circumstances, provides industry and other stakeholders with reasonable opportunities to comment, and provides stakeholders with adequate notice and time to comply?

Answer: Yes.

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24) U.S. goods have been exported through third countries for eventual use in embargoed states like Iran. Iran has long sought to acquire sensitive military hardware from the United States through the use of front companies and other schemes meant to avoid detection. If confirmed, what steps will you undertake to stop the flow of unauthorized U.S. goods to Iran and other terror-supporting countries such as North Korea and Syria?

Answer: If confirmed, I will use all the tools available at BIS to prevent the transfer of sensitive U.S. technologies to State Sponsors of Terrorism and other countries and entities of concern that threaten U.S. national security and foreign policy interests, and to leverage all-source intelligence and collaboration with other relevant agencies to detect and deter efforts to circumvent export control restrictions.

Semiconductors

25) If Creating Helpful Incentives to Produce Semiconductors for America Act (CHIPS Act) funds are appropriated during this Congress, what role should BIS play in the administration of this new \$52 billion intended to ensure the resilience of the U.S. supply chain of semiconductors?

Answer: I believe it is critical for the United States to have diverse, resilient and secure supply chains in critical areas like semiconductors, and that a vibrant domestic semiconductor manufacturing capability is an important component of overall U.S. competitiveness. If confirmed, I will appropriately use the tools and authorities available at BIS to assist in the review of risks in the U.S. semiconductor supply chain to help protect U.S. resilience in this critical industry. Furthermore, I will work as appropriate with BIS staff and across the Commerce Department to help implement any investments authorized by Congress to shore up our domestic supply chain.

Anti-Boycott Compliance

26) Through the Office of Anti-Boycott Compliance, BIS leads the enforcement of anti-boycott laws to counter malign foreign boycott campaigns. If confirmed, do you commit to fully enforcing U.S. anti-boycott laws and to discouraging foreign counterparts from participating in the boycott of Israel?

Answer: The antiboycott provisions of the Export Administration Regulations (EAR), 15 CFR Part 760 (2021), prohibit, among other activities, a United States person, acting in the interstate or foreign commerce of the United States and with intent to further or support an unsanctioned foreign boycott, from refusing to do business with or in a boycotted country or with a resident or national of a boycotted country pursuant to a request or requirement of a boycotting country. See Section 760.2(a) of the EAR.

My understanding is that the Bureau of Industry and Security (BIS) Office of Antiboycott Compliance (OAC) is committed to vigorous investigation and robust enforcement of the

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antiboycott provisions of the EAR. To that end, OAC analyzes any activities, including alleged refusals to do business, that might implicate these provisions. If confirmed, I will ensure that OAC closely monitors for any report of potential or actual boycott activity that might constitute a violation of the antiboycott provisions of the EAR and, when the facts and circumstances warrant, initiates appropriate action to hold violators accountable.

Answering Questions for the Record

- 27) Please describe with particularity the process by which you answered these questions for the record, including identifying who assisted you in answering these questions along with a brief description of their assistance.

Answer: I was an active participant in drafting the responses to these questions, with assistance from staff of the Commerce Department and the interagency as appropriate.

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Questions for Mr. Alan F. Estevez, of Maryland, to be Under Secretary of Commerce for Industry and Security, from Senator Robert Menendez:

Mr. Estevez, the President, as a candidate, promised that he would return the jurisdiction of the export licensing of semiautomatic weapons from the Commerce Department back to the Department of State, from which the Trump Administration took it. This the President can do by simple regulation, without the need for legislative approval. Until that happens, however, the Department is providing no information to the Congress as to what lethal weapons, including sniper rifles and assault rifles, are being sold to what countries, foreign person, in what quantities and under what conditions, if any.

- 1) Do you agree that the President made a campaign promise as a candidate to return the export control jurisdiction over semiautomatic weapons, including assault rifles and sniper rifles, to the Department of State?
- 2) Has a decision been made by the President, personally, regarding the fulfillment of his campaign promise? If not, will the final decision be put to the President to decide? If not, why not, and who made the decision to not put the issue before the President?
- 3) Why has the Department of Commerce not alerted the Congress, and the SFRC specifically, to pending exports of semiautomatic weapons, including assault rifles and sniper rifles? Will the Department of Commerce do so? And when?
- 4) How many semiautomatic weapons, including assault rifles and sniper rifles, has the Department of Commerce authorized for export, to what countries, in what amounts, since the export jurisdiction of such weapons was transferred from the Department of State?

Answer (for questions 1-4): On January 23, 2020, the Department of Commerce published a final rule (in conjunction with a Department of State final rule) to revise Categories I (firearms, close assault weapons and combat shotguns), II (guns and armaments), and III (ammunition/ordnance) of the U.S. Munitions List (USML) and to transfer items that no longer warrant control on the USML to the Commerce Control List (CCL). Those changes went into effect on March 9, 2020, with the exception of moving jurisdiction from State to Commerce over certain software and technology related to 3D-printed gun files. At the conclusion of litigation, as of late May of this year, the Commerce Department now has regulatory jurisdiction over that type of technology or software, which is subject to export license requirements even if it is made publicly available on the Internet.

I understand that in this transfer of jurisdiction, no firearms were decontrolled. Under the January 2020 Commerce rule which is in effect, Commerce's regulations generally require an export license for the firearms over which export jurisdiction was transferred, as well as technology for the development, production, operation, installation, maintenance, repair, or overhaul of those firearms. The Departments of Defense and State review license

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applications to export these firearms and related technology and software. They and Commerce carefully consider the national security, regional security, and foreign policy, including human rights, implications of all proposed exports subject to the Export Administration Regulations (EAR). Furthermore, Commerce regulations would specifically require a license for the internet posting of software or technology ready for insertion into additive manufacturing equipment or other tools to produce a complete firearm or firearm frame or receiver.

In addition to these frontend restrictions, Commerce's 125 Export Enforcement agents are federal law enforcement officers whose sole mission is to ensure that U.S.-origin technology is not diverted to activities that would be contrary to U.S. law, or to national security or foreign policy interests.

My understanding is that this transfer of jurisdiction began under the Obama Administration with the dual goals of allowing the State Department to focus its resources on the export of defense articles that provide a significant critical military or intelligence advantage gathering benefit and to provide regulatory relief for certain low level items that do not warrant State Department control. Those firearms with a with a critical military or intelligence advantage or, in the case of weapons, have an inherently military function significant military applicability remained under State Department licensing jurisdiction. The second goal of this process was to provide regulatory relief to industry and ease the ability to service existing defense products that were previously exported.

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Questions for Mr. Alan F. Estevez, of Maryland, to be Under Secretary of Commerce for Industry and Security, from Senator Tim Scott:

In 2018, Congress included in the FY19 NDAA an update to our export control laws giving the Department of Commerce the ability to facilitate trade and commerce, while also prioritizing national security oversight.

Our world is changing. And some of our global competitors have begun imposing their presence on the world stage and finding ways around U.S. sanctions.

The last administration understood that fact, which is why they imposed controls on companies like Huawei, including using the Foreign Direct Rule.

- 1) Do you agree that using the Foreign Direct Product Rule on Huawei was effective in stemming its access to critical technology and preventing the spread of its 5G equipment in partner countries?
- 2) Understanding the vital need to facilitate trade that benefits the entire U.S. economy, what quantitative and qualitative benchmarks will you set within BIS to address the total breakdown between China's private sector and the Chinese Communist Party and its military through Military-Civil Fusion?
- 3) If confirmed, will you commit to voluntarily and regularly providing this committee with data and information pertaining to the successes and challenges—including through licensing decisions, emerging and foundational technology controls, and Entity List designations—of maintaining such a vital balance in implementing BIS statutory export control functions?

Answer (for questions 1-3):

My understanding is that the Bureau of Industry and Security (BIS) works with its interagency partners to consistently apply the licensing policies articulated in the Export Administration Regulations (EAR) to restrict Huawei's access to technology or software for activities that could harm U.S. national security and foreign policy interests. All export license applications to Huawei are reviewed by the Departments of Commerce, Defense, State, and Energy. The licensing policy for exports to Huawei and its listed affiliates for items capable of supporting systems, equipment or devices at only below the 5G level (e.g. 4G, 3G) are reviewed on a case by case basis. All others are reviewed under a presumption of denial.

It is also my understanding that in August of 2020, BIS extended the scope of the Foreign Direct Product Rule with respect to Huawei entities to require a license for reexports and transfers of foreign-produced items that are either (i) the direct product of certain U.S. or foreign software or technology subject to BIS jurisdiction or (ii) produced from equipment that itself is the direct product of certain U.S.-origin technology or software. In effect, this

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has imposed a license requirement for many foreign-made items for transactions involving Huawei. I believe the FDPR is an important tool in protecting our national security and foreign policy interests. If confirmed, I will work diligently to ensure that companies fully comply with the FDPR and all other obligations under the EAR.

I am deeply concerned about the People's Republic of China's (PRC) efforts to seek U.S. technologies to further its military modernization, such as through diverting items from civilian to military applications (i.e., its military-civil fusion strategy), creating illicit procurement networks, and stealing intellectual property, among other destabilizing activities. If confirmed, I appropriately use the authorities of BIS under the Export Control Reform Act (ECRA) of 2018 to protect our national security and foreign policy interests while strengthening our technological innovation and leadership.

Lastly, I deeply respect the oversight role of the Senate Banking, Housing, and Urban Affairs Committee and the Congress as a whole and will respond to requests for information, consistent with the constitutional and statutory obligations of the executive branch. It is my understanding that information submitted or obtained in connection with export license applications is subject to Section 1761(h) of ECRA, and that requests for information protected from disclosure by 1761(h) of ECRA are honored when appropriately submitted by the Chair or Ranking Member of a committee or subcommittee of appropriate jurisdiction.