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<https://www.regulations.gov/commenton/BIS-2022-0025-0002>

Eileen Albanese, Director
Office of National Security and Technology Transfer Controls
Bureau of Industry and Security
Department of Commerce
Washington, DC 20230

Re: Comments on RIN 0694—A194; Removal of ECCNs 3B991 and 3B992 from §744.23

Dear Director Albanese:

DuPont de Nemours and its affiliate companies (DuPont) appreciates the opportunity to comment on the above Interim Rule. DuPont believes that the ‘catch-all’ features of the new rule in fact ‘catch too much,’ and should be modified as described herein. DuPont believes that the modifications requested herein are consistent with the policy of the Bureau of Industry and Security (BIS) because they prevent excessive and unnecessary use of unilateral controls and, most importantly, will limit the impact of the Interim Rule on legacy semiconductor manufacturing while not undermining the objective of the Interim Rule. Specifically, DuPont hereby requests that in the final rule BIS omit the ECCNs with AT-only control – 3B991 and 3B992 – from § 744.23(a)(2)(v).

DuPont understands and appreciates the need for BIS to cast a wide net in its efforts reflected in the Interim Rule. DuPont does not object to the stated goals of U.S. national security policy. However, in casting a wide net, BIS has unnecessarily captured technology that is tangential and marginal to the main purpose of the Interim Rule. The items covered by ECCNs 3B991 and 3B992, captured historically and contemporaneously as AT-level, generally uncontrolled-to-China items (as compared to the other ECCNs listed in § 744.23(a)(2)(v)), have no direct relationship to the targeted production in the Interim Rule. These items have utility across the spectrum, including at 23nm and other legacy manufacturing. Disrupting legacy manufacturing in this fashion will have little if any impact on the key development and production of concern in China and goes too far.¹

¹ See the comments of National Security Adviser Jake Sullivan, <https://www.csis.org/events/joongang-csis-forum-2022-alliance-turbulent-times> (instructing that controls be tailored, ““because we really do want them focused on core national security concerns and not sweeping too broadly.”); See also <https://www.csis.org/analysis/assessing-new-semiconductor-export-controls> (“The challenge for U.S. policymakers, then, will be to avoid disrupting the global supply of legacy chips,

DuPont supports the rapid and effective adoption of the more critical controls by other allied jurisdictions. If these specific controls remain unilateral, as BIS has noted,² BIS will have limited success in accomplishing the objective. However, because of the relative low-level of subject technology and its inappropriate focus, as well as the almost absolute historical failure of our allies to adopt any AT-level control, it is very unlikely these restrictions would ever be adopted by our allies. Furthermore, DuPont notes that this technology – from sources not subject to the EAR -- is already widely available in China. Accordingly, even if other jurisdictions were to add these controls on exports to China, the controls would be ineffective.

For ease of reference, § 744.23 (a)(2)(v) reads:

§ 744.23 “SUPERCOMPUTER” AND SEMICONDUCTOR MANUFACTURING END USE

* * *

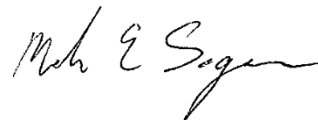
(2) End-use scope. The following activities meet the end-use scope of the prohibition in this section:

* * *

(v) The “development” or “production” in the PRC of any “parts,” “components,” or “equipment” specified under ECCN 3B001, 3B002, 3B090, 3B611, 3B991, or 3B992.

For all these reasons, DuPont respectfully requests that in adopting the Final Rule, BIS omit ECCNs 3B991 and 3B992. If you have any questions or desire any additional information, please contact me at mark.sagrans@dupont.com or at (302) 996-8262.

Sincerely,



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while also preventing China from acquiring advanced chips and the ability to manufacture them. Cutting China off at too large a process node, or spooking the foreign firms that China relies on for SME, could undermine China’s ability to manufacture legacy chips, exacerbating supply chain issues at a time when inflation is at its highest level in decades.”).

² See <https://www.cnas.org/events/special-event-a-conversation-with-under-secretary-of-commerce-alan-f-estevez> ; <https://www.bis.doc.gov/index.php/documents/product-guidance/3182-2022-10-28-bis-written-presentation-public-briefing-on-advanced-computing-and-semiconductor-manufacturing-items-rule/file> (“The last thing I’ll note before getting to your questions is that we at BIS continue to coordinate on export controls with partner countries. We recognize that multilateral controls are more effective than unilateral controls, and foreign engagement on these controls is a BIS priority. As noted above, we will seek multilateral controls on the new ECCNs added to BIS’s CCL by this rule.”).