October 28, 2024

ALLIANCE FOR american manufacturing

Ms. Elizabeth L.D. Cannon
Executive Director, Office of Information and Communications Technology and Services
Bureau of Industry and Security, U.S. Department of Commerce
Herbert C. Hoover Building
1401 Constitution Ave. NW
Washington, DC 20230
Filed Electronically: regulations.gov

RE: Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles (BIS-2024-0005)

Dear Executive Director Cannon:

The Alliance for American Manufacturing (AAM) appreciates the opportunity to submit comments on the U.S. Department of Commerce's (Department) Bureau of Industry and Security (BIS) notice of proposed rulemaking (NPRM) to address undue or unacceptable risks to national security and U.S. persons posed by classes of transactions involving information and communications technology and services (ICTS) that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of certain foreign adversaries, and which are integral to connected vehicles.

About the Alliance for American Manufacturing
The Alliance for American Manufacturing (AAM) is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and support new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America's economic and national security, as well as to providing good jobs for future generations. AAM achieves its mission through research, public education, advocacy, strategic communications, and coalition building around the issues that matter most to America's manufacturers and workers.

AAM Agrees that CVs Can Allow Foreign Adversaries to Disrupt our Economic and National Security
AAM agrees with the Department that CVs afford foreign adversaries – including the People's Republic of China (PRC) – with unprecedented opportunities to compromise U.S. economic and national security. AAM appreciates that the Department is taking steps to address this danger and urges it to proceed swiftly and to take decisive action to address this threat.

Time is of the essence, as there are concerning reports that large amounts of data collected from Chinese vehicles are headed to Beijing. For example, launched in July 2023 to examine the data collection capabilities of a Nio ES8, Project Lion found that "[s]ome 90% of the communications — which includes a range of data from simple voice commands to the car to the vehicle's physical location —

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were sent to China…" The project also uncovered unusual activity in the form of "a single, unencrypted file being downloaded constantly by the vehicle from a nio.com internet address."[1]

This concern is clearly identified in the Department's threat assessment, which states that the "PRC possesses advanced cyber espionage capacities that it exercises through both state and non-state cyber actors exacerbating such risks." AAM agrees with the Department that the PRC's "role in the U.S. connected vehicle supply chain presents undue and unacceptable risks" and shares its concern that "the PRC's automotive sector has historical and ongoing links to the PRC military and is influenced by pervasive government intervention, including through legal and regulatory structures that increase government oversight of and control over PRC-based companies and their foreign subsidiaries."[2]

The Office of the Director of National Intelligence (DNI) Annual Threat Assessment of the U.S. Intelligence Community (2023)[3] noted that "[t]he PRC likely represents the broadest, most active, and persistent cyber espionage threat to U.S. Government and private-sector networks."

The urgency to address these threats is underscored by FBI Director Christopher Wray, who on April 18, 2024, at the Vanderbilt Summit on Modern Conflict and Emerging Threats in Nashville, warned that risks the government of China poses to U.S. national and economic security are "upon us now" – and that U.S. critical infrastructure is a prime target:[4]

> "The PRC has made it clear that it considers every sector that makes our society run as fair game in its bid to dominate on the world stage, and that its plan is to land low blows against civilian infrastructure to try to induce panic and break America's will to resist."
>
> "The fact is, the PRC's targeting of our critical infrastructure is both broad and unrelenting… It's using that mass, those numbers, to give itself the ability to physically wreak havoc on our critical infrastructure at a time of its choosing."

Based on hearings and its work identifying connected vehicles, produced by Chinese entities, as having negative national security implications, the U.S.-China Economic and Security Review Commission (USCC) in its 2021 Report recommends action to address this emerging threat by requiring:[5]

> "…that the U.S. Department of Transportation, in consultation with the U.S. Departments of Commerce, Energy, and Defense, and law enforcement authorities, develop regulations limiting

[1] "Probing a $69,000 Chinese Electric Vehicle for Clues on Spying," Bloomberg. May 15, 2024. Link: https://www.bloomberg.com/news/newsletters/2024-05-15/probing-a-69-000-chinese-electric-vehicle-for-clues-on-spying

[2] NPRM: https://www.federalregister.gov/documents/2024/09/26/2024-21903/securing-the-information-and-communications-technology-and-services-supply-chain-connected-vehicles

[3] Available at https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-UnclassifiedReport.pdf." 89 FR 15068

[4] FBI.gov News: "Chinese Government Poses 'Broad and Unrelenting' Threat to U.S. Critical Infrastructure, FBI Director Says," April 18, 2024. Link: https://www.fbi.gov/news/stories/chinese-government-poses-broad-and-unrelenting-threat-to-u-s-critical-infrastructure-fbi-director-says

[5] USCC 2021 Report, Page 167. Link: https://www.uscc.gov/sites/default/files/2021-11/Chapter_2_Section_2--CCPs_Economic_and_Technological_Ambitions.pdf

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> access for Chinese-owned firms developing autonomous vehicle capabilities to protect U.S. national and economic security interests… Specific attention should be given to data collection activities that may advance the interests of the Chinese military or intelligence agencies. In addition, [this effort should] address any need to protect the data utilized and collected by autonomous vehicles produced and/or serviced by Chinese-owned firms."

AAM Supports Strong Rules to Mitigate and Prohibit ICTS Transactions Involving Connected Vehicles from Foreign Adversaries Including the PRC

Bold action is required to curb the threat to our economic and national security of connected vehicles, hardware, and its associated software from PRC manufacturers and entities. The Department should proceed with haste to finalize robust rules, free of any loopholes, that create a policy framework to impose the strongest possible mitigation measures and to prohibit such ICTS transactions that pose undue or unacceptable risks. The Department's rulemaking must guard against circumvention.

The Department's NPRM is an important step forward and must be advanced as part of a comprehensive approach, including the use of all available trade and national security tools to address this and related issues impacting auto, rolling stock, and related supply chains. AAM has called for a broad range of measures, as outlined in these comments, including imposing exclusionary tariffs, strengthening rules of origin and other content requirements in trade agreements, imposing market limitations and prohibitions, and strictly enforcing eligibility for EV tax credits based on battery and vehicle content.

AAM is Concerned that the Introduction of Chinese Automobiles Could End Up Being an Extinction-Level Event for the U.S. Auto Sector

On February 23, 2024, the Alliance for American Manufacturing issued a report entitled, "*On a Collision Course: China's Existential Threat to America's Auto Industry and its Route Through Mexico*," that documents the threat of Chinese autos to U.S. national security and economic stability.

Excerpts from the report:[6]

> The introduction of cheap Chinese autos – which are so inexpensive because they are backed with the power and funding of the Chinese government – to the American market could end up being an extinction-level event for the U.S. auto sector, whose centrality in the national economy is unimpeachable.
>
> The U.S. auto sector accounts for 3% of America's GDP. It is annually responsible for tens of billions of dollars of annual research and development spending. It supports an entire ecosystem of manufacturers, from steelmaking to semiconductor fabrication. And for nearly a century, it has provided reliable, well-compensated employment for millions of American workers of various levels of educational attainment, making it a pillar of the American middle class.

[6] All citations are noted in the report, which is available at: https://www.americanmanufacturing.org/wp-content/uploads/2024/02/on-a-collision-course-report-final-022324.pdf

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The U.S. auto sector and its extensive domestic supply chain, however, face a growing threat from Chinese competitors, buoyed by the Chinese state. While direct imports of Made in China automobiles have until now been extremely limited, China's auto sector is hardly the uncompetitive laggard of decades past. Thanks to the Chinese Communist Party's (CCP) industrial planning and generous assistance that began in the wake of the 2009 financial crisis, its state-owned and state-supported manufacturers are poised to dominate the burgeoning global EV market. China is estimated to have spent tens of billions of dollars to create an auto sector ready to take advantage of the clean energy shift, with support including tax breaks, favorable lines of credit, land use agreements, extremely limited import competition, and often direct subsidization. Chinese automakers have also benefited from mandatory joint ventures with and forced technology transfers from foreign firms seeking to gain access to the vast Chinese auto market. And, most egregiously, they benefit from the use of forced labor in their supply chains.

The Chinese auto industry's growth has been exponential. The country became the world's leading auto exporter in 2023, selling cars in Europe, Australia, Africa, Mexico and Southeast Asia, and Chinese automakers lead the world in EV production and sales by wide margins. China's technological lead and its extensive supply chains, particularly for critical battery raw materials and components, are deep and secure because of its defined and deliberate industrial policies. Beijing has prioritized reducing dependencies on other countries, which in turn makes the world increasingly dependent on its own supply chains.

And the results of China's industrial bets – mammoth entities like BYD, SAIC Motor and battery maker CATL – are this effort's champions. They are expanding rapidly, without consideration to supply and demand and basic market forces, so much that the Chinese auto sector is estimated to have a production overcapacity of millions of vehicles per year. That overcapacity is now facing outward, in search of new markets to soak up the largesse.

BYD, which became the world's largest EV manufacturer in 2023, is building a factory in the heart of the European Union and is among half a dozen Chinese companies preparing to manufacture in Thailand, thereby gaining access to nearby markets through regional trade pacts.

More alarming, however, are Chinese firms' heavy spending on plants in Mexico, through which they can access the United States by way of the more favorable tariffs under the United States-Mexico-Canada Agreement (USMCA). This strategy is, in effect, an effort to gain backdoor access to American consumers by circumventing existing policies that are keeping China's autos out of the U.S. market.

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Policy Responses Must Be Comprehensive and Proactive

As outlined in the "On a Collision Course" report, AAM supports adopting a comprehensive, proactive, and ongoing strategy to stymie the CCP's penetration of the U.S. market with automobile imports from Chinese manufacturers. This should include, but not be limited to the following steps:

- Impose exclusionary tariffs on all automobile imports from Chinese manufacturers to the United States, including electric vehicles (EV), other new energy vehicles, and internal combustion engine (ICE) vehicles.

- Enact the Leveling the Playing Field Act 2.0 (S. 1856 / H.R. 3882) to stay ahead of new and evolving trade enforcement circumvention tactics used by the China's government.

- Reinstate the Section 421 import surge protection safeguard against China's automotive sector and related industries.

- Improve the Steel Import Monitoring and Analysis (SIMA) System, under the Department of Commerce, to identify emerging import trends and allow for a proactive policy response.

- Fully enforce and tighten USMCA rules of origin (ROO) for all automobile content to ensure that only its signatories benefit from the agreement in an equitable manner.

- Exclude automobiles and component parts manufactured by companies headquartered in a non-market economy, such as China, from gaining any preferential treatment under USMCA, GSP, and any other trade agreement.

- Fully implement and enforce the Uyghur Forced Labor Prevention Act (UFLPA) with additional emphasis on metals, automotive parts, and battery content and raw materials utilized in EVs.

- Strictly enforce the Clean Vehicle Tax Credits authorized under the Inflation Reduction Act (IRA) to ensure that upstream content and raw materials from China do not benefit.

- Fully enforce domestic content preference policies (including Buy American and Buy America laws) for automobile content and rolling stock (e.g., rail and buses).

- Tighten existing laws that block China's state-owned and state-supported companies from accessing taxpayer funded infrastructure projects, including by enacting the Airport Infrastructure Vehicle Security Act (H.R. 2912).

- Enact the Invent Here, Make Here Act (S. 1956) to prevent China from accessing taxpayer-funded research and innovations.

AAM Applauds the Department for Making Clear that Rolling Stock Buses are Covered Under the Proposed Rule

In its comments in response to the Advanced Notice of Proposed Rulemaking (ANPRM), AAM urged the Department to ensure that its proposed definition for "connected vehicles" (CVs) is interpreted broadly to cover of all types of CVs – including all forms of rolling stock, including buses, rail cars, monorails, and other rolling stock CVs. Research by Radarlock finds that PRC manufacturers CRRC[7] and BYD[8] are at the forefront of the PRC's military-civil fusion (MCF) strategy with documented connections to the People's Liberation Army (PLA), China's Communist Party (CCP), and restricted PRC telecommunications entities[9] like Huawei.

CVs in the form of buses, rail cars, monorails, and other rolling stock pose similar risks to U.S. national security and public safety as compared to car and truck passenger vehicles. While automobiles imported from Chinese manufacturers remain limited in the United States today, rolling stock vehicles, including buses and rail cars, from Chinese manufacturers are already in operation in major U.S. cities and at sensitive locations across the United States, raising the urgency for the Department to adopt mitigation measures and prohibitions to the broadest possible definition for CVs. After all, modern rolling stock systems frequently operate in proximity to military locations, government buildings, airports, and other sensitive assets of the United States and are embedded with critical technology including systems covered under the NPRM.

That these vehicles already operate near sensitive locations in the United States, such as military assets, should raise serious concerns as to their ability to conduct surveillance or collect data on the movement of goods or other logistical matters. In fact, Congress specifically blocked the Washington Metropolitan Area Transit Authority (WMATA) from awarding a contract for its 8000-series railcar to Chinese state-owned rail manufacturer CRRC knowing that the WMATA Metro system operates near the Pentagon and countless other government buildings carrying out sensitive activities.

Congress Acted in 2019 to Limit Federal Assistance Purchases of Rolling Stock Vehicles Produced by Chinese State-Owned and State-Subsidized Companies, <u>But Loopholes Remain</u>

Regrettably, the penetration of PRC manufacturers into the U.S. market for rolling stock connected vehicles has been enabled with tax dollars in the form of federal assistance granted by federal departments and agencies, including the Federal Transit Administration (FTA), Environmental Protection Agency (EPA), and Federal Aviation Administration (FAA). A diverse set of U.S. funding recipients providing transportation in sensitive settings have used federal assistance to purchase these CVs from PRC firms.

Congress's 2019 enactment of Sec. 7613 of the FY 2020 National Defense Authorization Act, also known as the *Transportation Infrastructure and Vehicle Security Act (TIVSA),* prohibited the use of FTA federal

[7] "CRRC and Beijing's Dash for Global Rolling Stock Dominance," Bruyere and Picarsic. Radarlock. October 2019. Link
[8] "Building the China Dream: BYD & China's Grand Strategic Offensive," Bruyere and Picarsic. Radarlock. October 2019. Link
[9] Section 889 of the FY19 NDAA, Pub. L. No. 115-232, restricts the federal government and grant recipients from doing business with covered Chinese telecom entities.

assistance by transit project recipients to purchase rolling stock from such restricted entities (including BYD and CRRC) that are state-owned or state-supported. These firms were securing lucrative taxpayer-financed public works *transit* contracts in major U.S. cities, and their business model of importing apparently near-completed vehicles embedded with substantial amounts of parts, components, and upstream content from China for minor assembly in the United States threatened U.S. supply chains, made a mockery of applicable Buy America laws, and raised serious national security concerns. Both labor organizations and industry sectors raised concerns in support of the TIVSA law.

Restricting the flow of U.S. tax dollars to these entities was a clear statement by Congress that the PRC must not have operational control of or backdoor access to U.S. transportation systems or have access to U.S. tax dollars to advance its industrial aspirations and military and surveillance capabilities. While the TIVSA law has successfully restricted federal assistance recipients from purchasing CRRC and BYD rolling stock for *transit* projects, loopholes in the TIVSA law threaten to allow these covered entities to continue accessing taxpayer assisted projects.

Furthermore, BYD is the world's largest producer of electric vehicles and has been the subject of recent attention given that it may seek to establish an auto manufacturing plant in Mexico – right on the doorstep of the U.S. market. On a bipartisan basis, policymakers have proposed a range of policy options to prevent vehicles manufactured by Chinese companies from being sold in the U.S. market. But BYD's buses are already in operation in major U.S. cities and at major U.S. airports – made possible with the backing of our own tax dollars. Labor organizations warned in a 2021 letter supporting the TIVSA law that "BYD's final assembly facility – enabled by U.S. tax dollars – now serves as a foothold for its broader ambitions in batteries and electric vehicles."[10]

Conclusion

The Department should proceed with haste to finalize robust rules, free of any loopholes, that create a policy framework to impose the strongest possible mitigation measures and to prohibit such ICTS transactions where there are undue or unacceptable risks. The Department's rulemaking must guard against circumvention. Thank you for the opportunity to provide comments on this important issue.

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[10] Link: https://aamfg-my.sharepoint.com/:b:/g/personal/sboos_aamfg_org/EYHA5V-jJwVHgRK0NpsF9dYBO9r03TY8bnMXSLBy-uGCAA?e=anLoUX