RE: Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles

Dear Executive Director Cannon:

Thank you for the opportunity to provide comments in response to the recent Notice of Proposed Rulemaking on connected vehicles.

In E.O. 13873, a foreign adversary is defined as "any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security of United States persons."[1] We certainly agree that the track record of espionage from both the People's Republic of China (PRC) and Russia would categorize them under this definition, but it is necessary to explain with full transparency the effects on the consumer that such a regulation would entail. Specifically, how this regulation amounts to a complete ban on the sale of Chinese electric vehicles (EVs), leaving the average American without an affordable domestic alternative if the current administration's EV sales targets are to be met.

Chinese made connected vehicles are undoubtedly a national security concern. Chinese security laws require companies based in China to grant the government access to the data if they deem it necessary[2]. Both the vehicle and software manufacturers are bound by these laws, meaning their products can act as instruments for the purposes of data collection and manipulation by the Chinese government. This data encompasses everything from car sensors to detailed pictures and videos of US critical infrastructure. These fears over such capabilities are not unique to the US government either. China has also been taking them seriously, going so far as to ban American-made Teslas from its government facilities over these exact concerns.[3]

What this notice fails to inform the reader though, is that Chinese EVs *are* Chinese connected vehicles. The ones being sold on the market contain the same connected systems that the Biden Administration seeks to prevent from having access to critical American infrastructure. Though right about these concerns, proceeding with this ban would place the Biden Administration's policies directly at odds with the wellbeing of American businesses and consumers.

Last March, after the initial Advanced Notice of Proposed Rulemaking (ANPRM) on connected vehicles, the EPA released its most comprehensive rule yet on tailpipe emissions. This rule implements "more protective emissions standards for criteria pollutants and greenhouse gases for light-duty and [medium duty] vehicles that will phase in over model years 2027 through 2032."[4] Under these new

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[1] (2019).
[2] Chumak, Alona. "China's Digital Data Sovereignty Laws and Regulations." InCountry, August 20, 2024. https://incountry.com/blog/chinas-digital-data-sovereignty-laws-and-regulations/#:~:text=In%20keeping%20with%20its%20plan%20to%20maintain%20control,data%20access%2C%20including%20sharing%20information%20with%20state%20entities.
[3] Zhai, Kieth, and Yoko Kubota. "WSJ News Exclusive | China to Restrict Tesla Use by Military and State Employees." The Wall Street Journal, March 19, 2021. https://www.wsj.com/articles/china-to-restrict-tesla-usage-by-military-and-state-personnel-11616155643.
[4] Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, Vol. 89 § (2024).

established limits, roughly 56% of all auto sales must be electric and another 13% must be hybrid. The EPA justified the large increase in sales required for this target to be met by pointing to recent developments that automakers including "Ford, GM, Stellantis, BMW, Honda, Volkswagen, and Volvo [all] expressed support for the goal of achieving 40 to 50 percent sales of zero emission vehicles by 2030."[5] (The Biden Administration has also offered billions in subsidies in EV development. The 2023 infrastructure law allocates "$7.5 billion in EV charging, $10 billion in clean transportation, and over $7 billion in EV battery components, critical minerals, and materials"[6] These subsidies along with a $7,500 tax credit for vehicles that qualify make up the current policies in place that the Biden Administration believes will be sufficient to help the US auto industry meet this ambitious 56% target by 2032.

Despite these generous subsidies and tax credits, the EV industry in the US is performing below its initial expectations. Companies who once peddled ambitious plans for industry development are scaling them back. Some of them, such as Apple, have dropped plans for EVs altogether, instead repurposing those funds for development of AI and other technologies[7]. Other companies include EV startup Fisker[8] halting its EV production along with the likes of Mercedes[9] and Volvo[10] dropping their plans to go all electric by 2030. Such actions are the result of a consumer base that is not keeping up with the demand required to meet the original projections outlined in the mandate. This reflects the reality that despite the generous subsidies and tax credits, EVs remain neither practical nor affordable for the majority of prospective car buyers in the US.

Chinese EVs on the other hand, regardless of their grave security risks, are an affordable alternative for many consumers. The newest EVs from Chinese owned BYD sell for the low price of $10,000. These cars have not yet had much success due to tariffs levied by the Biden Administration[11]. However, the price of one of them with tariffs included still falls below the current US average EV price of $50,000.[12] Without these proposed regulations, a shift to consumers buying these vehicles is very probable. They are vastly cheaper than any other EVs on the market and US manufacturers show no sign of creating a product that can compete. The CEO of Ford has even expressed that it will have trouble competing with Chinese EV automakers, lacking both the raw material advantage and the minimal

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[5] *Ibid.* 27848
[6] The White House, "FACT SHEET: Biden-Harris Administration Announces New Standards and Major Progress for a Made-in-America National Network of Electric Vehicle Chargers," February 15, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/15/fact-sheet-biden-harris-administration-announces-new-standards-and-major-progress-for-a-made-in-america-national-network-of-electric-vehicle-chargers/
[7] Allyn, Bobby. "After 10 Years of Development, Apple Abruptly Cancels Its Electric Car Project." NPR, February 28, 2024. https://www.npr.org/2024/02/27/1234315814/apple-cancels-electric-car.
[8] Pickavet, Henry. "The Fall of EV Startup Fisker: A Comprehensive Timeline." TechCrunch, July 29, 2024. https://techcrunch.com/2024/07/29/the-fall-of-ev-startup-fisker-a-comprehensive-timeline/.
[9] Johnson, Peter. "Mercedes-Benz Drastically Backtracks EV Plans, Will Build Gas Cars Well into 2030s." Electrek, February 22, 2024. https://electrek.co/2024/02/22/mercedes-backtracks-ev-plans-gas-cars-2030s/.
[10] Johnson, Peter. "Volvo Backtracks on Its 100% EV Pledge: Here's What the New Plan Looks Like." Electrek, September 5, 2024. https://electrek.co/2024/09/04/volvo-backtracks-100-ev-pledge/.
[11] Domonoske, Camila. "China Makes Cheap Electric Vehicles. Why Can't American Shoppers Buy Them?" NPR, May 6, 2024. https://www.npr.org/2024/05/06/1248065838/cheap-chinese-evs-us-buy-byd-electric-vehicles.
[12] "Electric Car Prices: The Average Electric Car Cost in 2024." Find My Electric, January 25, 2024. https://www.findmyelectric.com/blog/electric-car-prices/.

regulations that have given them the conditions to excel in the market[13]. An increase in Chinese EV sales would be an added disruption to an already struggling domestic industry, but it would be the most probable solution to meet the 56% 2032 sales target.

How then will the Biden administration factor this potential problem facing consumers into the regulation? This ban is a success in its purpose of preventing the widespread adoption of Chinese vehicle technology, but it does not account for the unintended consequences on the US EV market. It does make an exemption for vehicle hardware to "allow market participants adequate time to establish alternative supply chains if necessary,"[14] however, it contains no provision that addresses a Chinese EV ban's effects on the consumer when factoring in the 56% EV sales target.

Consumers are already expected to shift their preferences to EVs to achieve this 56% target. With the addition of this connected vehicle ban, compelling consumers to meet this target within the established timeline would be simply unaffordable for many.

It would also be unrealistic for the US-based EV producers. The supply chain adjustments required are too complex in the short window of time proposed by the Biden Administration. To add, they would be obliged to stop selling most of their gas-powered cars to even make a slight difference in influencing consumer choice. This in turn would lead to even higher prices than before for the consumer, creating a vicious cycle that will inevitably end with lower car sales and increasing losses for the car manufacturers.

What we propose in response to this notice is not a short-term exemption for Chinese EVs, but a twofold solution based on transparency and consistency with the interests of the American people. The first part of the solution is that the final rule must explain how the implementation of this ban will directly impact the sale of Chinese EVs into the US. This is necessary to provide transparency to both the producer and consumer about the full scope of the rule. The term "connected vehicle" covers many different apparatuses, and it is necessary to be abundantly clear about what each one of them are. The second part is a solution proposed in the rule to address the negative effects of the ban with the EV targets in place. It must promote the consumer's right to choose the most practical vehicle in absence of a cheap alternative to US manufactured EVs. It must also acknowledge the lag in development US EV manufacturing has experienced and promote a solution that can address this problem without leading to the vicious cycle of low profits if the current targets remain in place. Both rules cannot ultimately remain in place without drawbacks to the average American and regulators must acknowledge this if the rule is to be effective going forward. Thank you for your consideration.

Sincerely,

Scott Rupert[15]

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[13] Krisher, Tom. "Ford CEO Says Company Will RETHINK Where It Builds Vehicles after Last Year's Autoworkers Strike." AP News, February 16, 2024. https://apnews.com/article/ford-auto-workers-contract-ceo-rethink-factory-locations-ed580b465d99219eb02ffe24bee3d2f7.

[14] 40 Fed. Reg at 79110

[15] Intern for the Heritage Foundation Center for Energy, Climate, and the Environment. I file this comment in my individual capacity; information about my institutional affiliation is provided for identification purposes only. This comment should not be construed to represent the position of the Heritage Foundation.